

BLACKMORE BOND PLC

OPINION

1. I am Instructed to advise Blackmore Bonds Plc on whether it is under an obligation to deduct income tax from payments of interest to UK resident individuals. The interest in question is payable on the A1 and A2 Fixed Interest Secured Bonds 2016. For convenience I will refer to these as “the Blackmore Bonds”.

2. The principal provision relating to the deduction of income tax from the payment of interest is section 874 of the Income Tax Act 2007. A withholding tax is imposed on payments by a company of “yearly interest arising in the United Kingdom”. The amount of the withholding tax is equal to the basic rate of income tax in force for the tax year when the interest is paid.

3. Two important points should be noted. First, the obligation to withhold arises only in respect of yearly interest. The expression “yearly interest” is not defined in statute nor is there any statutory reference to non-yearly, i.e. “short” interest. The distinction rests wholly on case law where it has been held that “yearly interest” is interest on obligations intended by the borrower and lender to last for a year or more.¹

¹ *Cairns v MacDiarmid* [1983] STC 178

4. Second, the obligation to withhold tax arises only in respect of interest arising in the United Kingdom. This means that the interest must have a United Kingdom source. The source of interest payments is a multi-factorial enquiry, having regard to all the circumstances and all the relevant factors.

5. There are a number of cases in which annual interest that has a United Kingdom source may be paid gross by a company. These include where the interest is paid by a bank or building society, by person authorised for the purposes of the Financial Services and Markets Act 2000 or who has permission under that act to accept deposits.²

6. It can be seen from the above that the question in any particular case of whether there is an obligation to deduct income tax from payments of interest depends on a number of factors. For this reason no determination can be made without knowing all the relevant details of the obligation and parties to it.

The Blackmore Bonds

7. The Blackmore Bonds are issued by Blackmore Bond Plc. Blackmore Bond Plc was incorporated and registered in England and Wales. The Blackmore Bonds are for a term of either 4 or 5 years and are issued at £1 per Bond. The Bonds cannot be transferred to a third party and are not listed or traded on any listed exchange. The Bond instruments are governed by English law and include an exclusive jurisdiction clause in favour of the English courts.

² Income Tax Act 2007 ss 875-888A.

8. I confirm that the interest payable by Blackmore Bond Plc on the Blackmore Bonds is “yearly interest arising in the United Kingdom”. The terms of the Bonds exceed a year. The interest has a UK source on account of the fact that Blackmore Bonds Plc is resident and carries on its business in the UK, the interest is paid out of funds in the UK and the Bonds include an exclusive jurisdiction clause in favour of the English courts. Accordingly there is an obligation on Blackmore Bonds Plc to deduct income tax from payments of interest UK resident individuals.

9. I confirm that Blackmore Bond Plc does not fall within any of the exceptions that allow interest to be paid gross on account of the fact that Blackmore Bond Plc is not authorised under the Financial Services and Markets Act 2000 nor has permission under that act to accept deposits,



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