THE 100 GROUP
Taxation ccommittee

Royalties WHT Consultation,
Room 3C/21,
HMRC, 100 Parliament Street,
London
SW1A 2BQ.

23 February 2018

Dear Sirs

Royalties Withholding Tax

We welcome the opportunity to respond to HMRC's consultation on Royalties Withholding Tax. Whilst we have not responded to the specific questions raised in the consultation document, as this is best left to individual companies, we have outlined our view below.

The consultation seeks to extend the scope of UK withholding tax (WHT), effective from April 2019 to payments made to connected companies holding intellectual property (IP) where these payments are made in connection with UK sales. The proposed rules would apply even where the payer has no UK taxable presence. We understand that the proposals included within the consultation underpin HMRCs commitment to ensuring that the UK tax regime is fit for the modern economy and support positions outlined as part of the Digital Economy position paper.

In our view, the proposals outlined would further extend the definition of 'UK source' and also widen the types of payment within scope (although only for cases caught by the new sourcing rules); as such we consider the potential reach to be far wider than the Digital Economy.

Under the proposals, a payment would have a UK source where it is paid (directly or indirectly) to a recipient in a territory that does not have a tax treaty with the UK. This would apply regardless of whether the payer had a taxable presence in the UK. In an extreme case, it would appear the rules may apply even where that presence extends to sales made through a UK distributor. While the stated intention was to target payments to low or no tax jurisdictions, as currently drafted the proposal does not include a minimum tax or substance test.

Furthermore, whilst the types of royalty payment which would be subject to the new rules are one of the areas under consultation, the Government's preferred approach is to use a broad generic definition. The use of a broad generic definition would, in our view, result in a significant number of payments being included with the scope of HMRC's proposals but which would fall outside the current OECD definition of a royalty, to which the UK definition was aligned to as part of the Finance Act 2016.

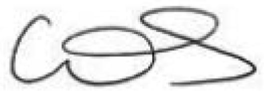
As such, the proposals in the current form are likely to have the unintended consequence of creating a significant additional tax and administrative burden for companies. Whilst we understand and support the Government's commitment to modernising the UK tax regime. We recommend that you reconsider the scope of the proposals as currently drafted, to ensure that there are no unintended impacts for companies, which in turn will support a fairer tax regime for all UK companies.

<u>Who we are</u>

The 100 Group of Finance Directors represents the views of the finance directors of FTSE 100 and several large UK private companies. Our member companies represent almost 90% of the market capitalisation of the UK FTSE 100 Index. Our aim is to contribute positively to the development of UK and international policy and practice on matters that affect our businesses, including taxation, financial reporting, corporate governance and capital market regulation. Whilst this letter expresses the views of The 100 Group of Finance Directors as a whole, those views are not necessarily those of our individual members or their respective employers

Please feel free to contact me at chrisoshea100group@kpmg.co.uk should you wish to discuss our comments. I would be more than happy to meet to discuss these, or any other relevant items, further.

Yours sincerely,



Chris O'Shea
Chairman
Taxation Committee