L.N. 193 of 2005

INCOME TAX ACT
(CAP. 123)

European Union Directives (Amendment) Regulations, 2005

BY virtue of the powers conferred by articles 52B and 96 of the Income Tax Act, the Prime Minister and Minister of Finance has made the following regulations:-

Citation and commencement.

L.N. 267 of 2004.

1. (1) The title of these regulations is the European Union Directives (Amendment) Regulations, 2005 and they shall be read and construed as one with the European Union Directives Regulations, 2004, hereinafter referred to as the "principal regulations".

(2) These regulations shall be deemed to have come into force on the 1st May, 2004.

Amends regulation 5 of the principal regulations.

2. For subregulation (1) of regulation 5 of the principal regulations, there shall be substituted the following:

"(1) The Directive of 3 June, 2003 adopted by the Council of the European Communities on the taxation of savings income in the form of interest payments (2003/48/EC) (hereinafter in this regulation referred to as the "Savings Directive") shall have effect in relation to the Income Tax Acts subject to the provisions of subregulations (2) to (5) of this regulation and shall be implemented in accordance with the guidelines contained in Schedules 1 and 2. The provisions of this regulation shall only be applied from 1st July, 2005.".

Adds Schedules 1 and 2 to the principal regulations.

3. Immediately after regulation 5 of the principal regulations, there shall be added the following two schedules:

"SCHEDULE 1

(Regulation 5(1))

Inland Revenue – Malta

Savings Directive Guidelines

Guidelines for the implementation of the Savings Directive in Malta

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1. Aim and Purpose

The ECOFIN Council adopted, on 3rd June, 2003 a Directive (2003/48/EC) on the taxation of savings in the form of interest payments – hereinafter in these Guidelines referred to as the "Savings Directive"[1]. Under the provisions of this Directive, paying agents are required to report to their tax authorities interest payments to relevant beneficial owners and residual entities in certain territories. This information is then to be automatically exchanged with the tax authority of the territory concerned. Furthermore, the Savings Directive provides for the elimination of double taxation which may arise as a consequence of a system of withholding tax which is allowed for a transitional period in the case of Austria, Belgium, Luxembourg and relevant dependant or associated territories of certain Member States.

As a consequence to Malta's accession to the European Union (EU), measures were put in place for the implementation of this Directive. Through the enabling provisions of article 52B of the Income Tax Act, regulations have been enacted (Regulation 5 of L.N. 267 of 2004) which, among other issues, gave effect to the provisions of the Savings Directive as they apply to income tax. These regulations came into effect on the 1st May, 2004.

2. Beneficial Owners

2.1 Persons qualifying as beneficial owners

Subject to certain exceptions specified by the Savings Directive (see next paragraph), a "beneficial owner" means an individual who either receives an interest payment or is an individual for whom an interest payment is secured **[S.D. Art. 2(1)]**. This means that the beneficial owner is the individual who –

2.1.1 has either received the payment directly from the paying agent;
2.1.2 or who is the individual on whose behalf the paying agent receives or secures the payment in accordance with, or awaiting, the individual's instructions.

[1] Council Directive 2003/48/EC of 3rd June 2003 on taxation of savings income in the form of interest payments, OJ No. L157, 26.06.2003, p.38.

2.2 Persons not qualifying as beneficial owners

The Savings Directive specifies those exceptions where an individual who receives an interest payment, or for whom an interest payment is secured, is not a beneficial owner. These exceptions are where –

2.2.1 that individual provides satisfactory evidence that he is himself a paying agent in Malta or in a specified territory **[S.D. Art. 2(1)(a)]**;

2.2.2 that individual provides satisfactory evidence that he acts on behalf of -

(a) a legal person (e.g. a company) **[S.D. Art. 2(1)(b)]**;

(b) an entity which is taxed under the general arrangements for business taxation (e.g. a partnership) **[S.D. Art. 2(1)(b)]**;

(c) an UCITS or an Article 4(3) UCITS **[S.D. Art. 2(1)(b)]**;

(d) a residual entity provided he discloses the name and address of that entity **[S.D. Art. 2(1)(b)]**;

(e) another individual provided he discloses to the paying agent the verified details of the other individual's identity **[S.D. Art. 2(1)(c)]**.

For the purpose of these exceptions, satisfactory evidence includes –

(i) a written statement on headed paper from the relevant authority; and

(ii) for 2.2.2(e), a signed statement from the individual.

Furthermore, if a paying agent holds information which gives him reason to believe that the individual he pays interest to (or secures interest for) does not receive the interest for his own benefit because he is acting on behalf of another individual, the agent should take reasonable steps to establish the identity of the beneficial owner of the payment **[S.D. Art. 2(2)]**. What is reasonable will depend on the circumstances of the case, but it is expected that the said agent should, as a minimum, contact the individual and ask whether there is another beneficiary, whether such beneficiary is a beneficial owner, and if so for the relevant details.

3. Establishing identity and residence of beneficial owners

Paying agents must establish the identity and residence of all individuals they have reason to believe are beneficial owners. The Savings Directive establishes minimum standards for this purpose **[S.D. Art. 3(1)]**.

3.1 Relevance of date of commencement of contractual relations

The minimum standards specified by the Savings Directive for the establishment of identity and residence are different if the contractual relations between the paying agent and the beneficial owner were established before 1st January, 2004 or on or after that date.

"Contractual relations" means that the relationship between the paying agent and the beneficial owner is the subject of a contract or of a series of contracts. Revised, reissued and superseded contracts are to be considered as a series of contracts. Only contracts between the beneficial owner and the paying agent are relevant in this context.

3.2 Establishing identity

3.2.1 Contractual relations started before 1 January, 2004

In this case, a paying agent is required to establish the identity of beneficial owners on the basis of their name and address. One should obtain this information from one's existing records, using the information one already holds, including any information held for anti-money laundering purposes[2] **[S.D. Art. 3(2)(a)]**. One is not expected to obtain additional documentary verification about these individuals' identity.

If the identity details for such an individual change, one should update one's records according to reasonable business practice. One's obligations under the Savings Directive for this purpose are, however, limited to the updated details in one's records.

Where an individual living in Malta or in a territory that is not a specified territory, and with whom a paying agent has a pre-1 January, 2004 contractual relationship, moves permanently to a specified territory, the paying agent will need to update his records regarding this individual's new address to fulfil his obligations under the Savings Directive. However, since he has a pre-1 January, 2004 relationship with the individual, he does not need to obtain any further information such as the Tax Identification Number (TIN) or the date and place of birth.

3.2.2 For contractual relations started on or after 1 January, 2004

In this case, the paying agent is required to establish the identity of the beneficial owner on the basis of the individual's name, address and TIN. The TIN has to be the one issued by the country of residence for tax purposes. If there is no TIN or the TIN is unavailable, the paying agent needs to obtain the date and place of birth instead **[S.D. Art. 3(2)(b)]**. Place of birth means the town and country of birth.

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[2] Pursuant to rules under the Prevention of Money Laundering Act (Cap. 373) and Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (OJ L 166, 28.6.1991, p. 77). Directive as last amended by Directive 2001/97/EC of the European Parliament and of the Council (OJ L 344, 28.12.2001, p. 76).

The paying agent should verify the individual's name, date and place of birth by reference to the beneficial owner's passport or official identity card. The address and TIN may be verified from these documents or, if they do not appear therein, from other documentary evidence **[S.D. Art. 3(2)(b)]**. It is important to note that for the purpose of proper verification, where a paying agent enters into a contractual relationship that is not a pre-1 January, 2004 relation with a beneficial owner living outside the specified territories, the paying agent would need to obtain the passport or identity card of the individual if there is reason to believe that the individual holds a passport issued by a specified territory.

"Other documentary evidence" in this context means any document that may be accepted by firms undertaking "Know Your Client" (KYC) checks for anti-money laundering purposes. If an individual has a legitimate reason for not being able to present a passport or official identity card, one may accept an alternative proof of identity, preferably from an official source. The alternative evidence offered must be a satisfactory proof of personal identity for anti-money laundering "KYC" purposes.

After the initial verification of identity, changes may be 'self certified' (for example, a written notification of change of address or of a new TIN from the individual would normally be acceptable "other documentary evidence" of the change). A certificate of residence for tax purposes issued by the relevant competent authority is acceptable documentary evidence of TIN or address.

3.3 Establishing residence

3.3.1 For contractual relations started before 1 January, 2004

In this case, a paying agent is required to establish the residence of the beneficial owner on the basis of their permanent address according to information from one's existing records, using the information one already holds, including any information held for anti-money laundering purposes[3] **[S.D. Art. 3(3)(a)]**. One is not expected to obtain additional documentary verification about these individuals' residence.

If the residence details for such an individual change, one should update one's records according to reasonable business practice. One's obligations under the Savings Directive are, however, limited to the updated details in one's records.

Where an individual living in Malta or in a territory that is not a specified territory and with whom a paying agent has a pre-1 January, 2004 contractual relationship, moves permanently to a specified territory, the paying agent will

[3] Pursuant to rules under the Prevention of Money Laundering Act (Cap. 373) and Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (OJ L 166, 28.6.1991, p. 77). Directive as last amended by Directive 2001/97/EC of the European Parliament and of the Council (OJ L 344, 28.12.2001, p. 76).

need to update his records regarding this individual's new address to fulfil his obligations under the Savings Directive.

3.3.2 For contractual relations started on or after 1 January, 2004

In this case, residence for the purposes of the Savings Directive is established on the basis of the individual's permanent address based on details found in the individual's passport or official identity card. In the case of beneficial owners having a passport or identity card issued by a specified territory but who declare themselves to be resident in a country that is not Malta or a specified territory, residence is to be established by means of a certificate of residence for tax purposes issued by the country in which they have their permanent address. In the absence of such certificate, the country of residence is to be established on the basis of the territory that has issued the passport or the official identity card.

Where a paying agent enters into a contractual relationship that is not a pre-1 January, 2004 relation with a beneficial owner living outside the specified territories, the paying agent would need to obtain the passport or identity card of the individual if the paying agent has reason to believe that the individual holds a passport issued by a specified territory.

3.4 Documentation and acceptable evidence

3.4.1 Copies of documents

Under the Savings Directive the paying agent must verify the information held by reference to the relevant details from the passport, official identity card or other documentary evidence presented by the individual as appropriate. The paying agent may however accept copy documents (rather than originals) provided they are properly certified. This means that (for non-Maltese nationals) the copy should be certified by an embassy, consulate or high commission of the country of issue, a lawyer or an attorney. The copies should be dated and signed 'original seen'. The paying agent should keep a copy of the documents and make them available in case of request from the Commissioner of Inland Revenue.

3.4.2 Where documentation presented by an individual proves to be false

The paying agent would not be liable if he had accepted a document in good faith and had no reason to suspect that the document was false. If he has information that casts doubt on the authenticity of the documentation presented, he should take reasonable steps to establish its authenticity. In this case, it would normally be considered that reasonable steps had been taken if he had followed the relevant procedures and complied with wider legal obligations.

3.5 Specific issues related to the establishment of identity and residence

3.5.1 Cases of individuals having two passports

Where a person has more than one passport the paying agent should guide himself as follows:

(a) he should rely on other reliable documents (e.g. official ID card or tax residence certificate) in order to establish the residence that is most realistic where –
  (i) one of the passports is issued by Malta and the other by a specified territory;
  (ii) one of the passports is issued by Malta and the other by a territory that is not a specified territory;
  (iii) both passports are issued by specified territories;
(b) the paying agent should consider the specified territory for residence purposes where one of the passports was issued by a specified territory and the other was issued by a territory that is not Malta or a specified territory.

3.5.2 Introduced business

The post-1 January 2004 rules apply where a new reportable individual is introduced to a paying agent on or after 1 January, 2004.

If a reputable institution certifies that it has completed the identification and residence procedures and is able to provide the required post-1 January, 2004 information and supporting evidence (that is, a copy of the documents seen), the paying agent does not need to repeat identity and residence checks. However, if the paying agent comes across any information that casts doubt on the information received, he would be expected to take reasonable steps to ensure the information was accurate.

A “reputable institututution” for this purpose includes Maltese and EU regulated intermediaries. A non-EU regulated intermediary could also be a reputable institution for this purpose if one could place reliance on that intermediary for anti-money-laundering purposes.

4. Paying agents

4.1 Persons qualifying as paying agents

A “paying agent” means an economic operator established in Malta who, in the course of a business or profession, makes interest payments or secures the payment of interest to individuals (relevant beneficial owners) or residual entities

in specified territories **[S.D. Art. 4(1)]**. The paying agent is always 'the last link in the payment chain' before the beneficial owner or residual entity and is the person that actively initiates a payment directly to a beneficial owner or residual entity, or, if different, initiates a payment in accordance with his or its instructions.

Thus it is clear that the provisions of the Savings Directive impose obligations on a number of economic operators such as banks, custodians, certain financial institutions and financial dealers, businesses and stockbrokers. These provisions may also apply to those who hold or administer money debts and investments in collective investment funds on behalf of individuals or residual entities in a professional capacity such as accountants, lawyers, trustees or nominee companies.

These obligations do not extend, however, to foreign branches of economic operators established in Malta. If such foreign branches are situated in a specified territory, they may constitute paying agents in that specified territory. Similarly, a Maltese branch of an economic operator established abroad, whether in a specified territory or in another territory, may constitute a paying agent in Malta.

4.2 Residual entities

A "residual entity" means an entity established in Malta or in a specified territory (essentially a body of persons or an organisation but not an individual) which is not –

(a) a legal person (e.g. a company or other corporate body) **[S.D. Art. 4(2)(a)]**;
(b) taxed under the general arrangements for business taxation (e.g. a partnership) **[S.D. Art. 4(2)(b)]**;
(c) a UCITS or an Article 4(3) UCITS **[S.D. Art. 4(2)(c)** and **Art. 4(3)]**.

For the purposes of the Savings Directive, certain Swedish and Finnish entities (which are normally regarded as legal persons) are treated as residual entities **[S.D. Art. 4(5)]**. These entities are –

(i) in Finland, "avoin yhtiö (Ay)" and "kommandittiyhtiö (Ky)/öppet bolag" and "kommanditbolag"
(ii) in Sweden, "handelsbolag (HB)" and "kommanditbolag (KB)".

4.3 Article 4(2) paying agents

An "Article 4(2) paying agent" means a residual entity which is established in Malta and which has received an interest payment for the benefit of a beneficial owner **[S.D. Art. 4(2)]**.

An Article 4(2) paying agent is therefore a residual entity which receives (not pays) interest and which has a responsibility similar to those of a paying agent for securing interest payments on behalf of a beneficial owner.

The classification as an Article 4(2) paying agent is not a matter of choice for a residual entity. However, a residual entity which is an Article 4(2) paying agent may apply to be treated as a UCITS ('undertaking for collective investment in transferable securities') for the purposes of the Savings Directive **[S.D. Art. 4(3)]**. This means that it will be treated as a paying agent rather than as an Article 4(2) paying agent for the purposes of the Savings Directive.

4.4 Election for a residual entity to be treated as a UCITS

If a residual entity that is an Article 4(2) paying agent wishes to be treated as a UCITS for the purposes of the Savings Directive, it should write to the Director, International Taxation at the address shown in paragraph 9.6.1.

The letter should include the following information –

4.4.1 the name and address of the residual entity;
4.4.2 where the application is sent on behalf of a residual entity, the name, address, telephone number and position within the residual entity of the person submitting the application;
4.4.3 a statement that the entity:
(a) is established in Malta;
(b) is a residual entity;
(c) wishes to be treated as a UCITS for the purposes of the regulations;
4.4.4 a signed and dated declaration by the person making the application that the information in the letter is to the best of his knowledge complete and correct.

The Commissioner of Inland Revenue will issue a certificate which will be effective from a specified date and valid until it is revoked. The certificate can be revoked at the request of the residual entity.

4.5 Persons not qualifying as paying agents

A person is not a paying agent in relation to a specific payment for the purposes of the Savings Directive if –

4.5.1 the payment made is not an interest payment (See section 6.); or
4.5.2 the interest payment is not made in the course of a business or profession; or
4.5.3 the person to whom the interest payment is made is not the beneficial owner or a residual entity.

4.6 The Case of Trustees and Personal Representatives

Trustees, personal representatives and other persons with similar roles in Malta can be paying agents if they are acting as such in a business or professional capacity. A professional person acting on behalf of trustees or personal representatives may be a paying agent if he receives interest or makes interest payments on their behalf.

In general, a professional trustee or personal representative qualifies as a paying agent if a beneficiary of the trust or estate is absolutely entitled to the interest as it arises (and that beneficiary is a beneficial owner). In practice, this means that the trustee of a trust will qualify as a paying agent where the trust is such that the beneficiary has absolute entitlement to the investments of the trust or to any interest arising from them, either for the whole duration of the trust or for a specified period of time. In the case of professional personal representatives, this means that the property in the estate has now vested in the legatees.

A trustee in receipt of an interest payment in relation to a discretionary trust does not qualify as a paying agent and any distribution by the trustee of a discretionary trust is not a payment of interest.

Individual trustees or executors in Malta who are not acting in a business or professional capacity cannot be paying agents. They cannot be Article 4(2) paying agents as they are individuals.

5. Competent Authority

For the purposes of the Savings Directive, "competent authority" in Malta means the Commissioner of Inland Revenue.

6. Interest Payments

6.1 Effecting interest payments

An interest payment is made on a payment of interest to another person, or if a payment of interest is secured for another person. A payment is made by paying a sum of money owed to or on behalf of another person. A payment is secured if a sum of money is received by or collected on behalf of another person.

The making or securing of an interest payment requires a significant active responsibility for ensuring that the payment is made or secured. It is necessary to have more than a simple passive or supporting role to be a paying agent. In particular, banks, other financial institutions or other businesses which have a

role in the payment process are not regarded as making a payment if their role is essentially passive (they act on instructions from others) or auxiliary (they merely provide services to help the paying agent). Therefore, a bank or similar institution does not make a payment merely by issuing or sending a cheque, or arranging for the electronic transfer of funds on behalf of one of its customers. Equally, a bank or similar institution does not secure a payment merely by clearing a cheque, arranging for the clearing of a cheque, or receiving an electronic transfer of funds on behalf of one of its customers.

6.1.1 Examples of paying agents who make interest payments

Persons who make interest payments can include –

6.1.1.1 debtors (in a business rather than a private capacity) themselves;
6.1.1.2 persons who are responsible for making interest payments on behalf of debtors.

The first example in this category is that of a bank which has outsourced many of its administrative or back-office functions to an independent contractor. The bank takes full responsibility for everything that the contractor does and the bank's customers are not aware of the contractor's role or of the fact that the staff with whom they communicate are employees of the contractor rather than the bank. The bank in this case is the paying agent. The outsourcing contractor provides services to the bank but has no responsibility for making interest payments.

The second example in this category is where an issuer of bonds or debentures has appointed a specialist registrar which is responsible for maintaining all the records of the bond holders. The specialist registrar also makes the interest payments to the bond holders using funds provided by the issuer. These funds are under the control and ownership of the specialist registrar before payment is made. The specialist registrar is in this case the paying agent. The issuer has outsourced both essential administrative services and the responsibility for making interest payments.

6.1.2 Examples of paying agents who secure savings income payments

Persons who secure savings income payments can include –

6.1.2.1 professional nominees and nominee companies;
6.1.2.2 professional persons (such as lawyers or stockbrokers) acting for beneficial owners or residual entities.

The first example in this category is where a trust company or professional person is appointed to act as bare trustee by a beneficial owner. The property includes assets which produce interest payments. In this case, the trust company or professional person is a paying agent. His responsibilities include the

collection of the interest payment due to the beneficial owner and of the proceeds of sale or redemption when the assets concerned are sold or redeemed.

The second example in this category is where a stockbroker holds client money and client assets which produce interest payments (either as interest or when they are sold or redeemed) using a subsidiary company as nominee. The stockbroker has permission from the Malta Financial Services Authority to safeguard and administer investments for his clients and accepts full responsibility for the safe custody of the assets by the subsidiary company. The stockbroker is, in this case, the paying agent. He takes responsibility for securing the interest payment due to his clients and has full control over the subsidiary company which formally holds the client's property.

6.2 Categories of interest payments

For the purposes of the Savings Directive, an "interest payment" means broadly any income which is, contains or is derived from interest. Other types of income (e.g. company dividends, pensions, rents, trading profits or employment income) are not considered to be interest payments even where they are derived from investments that have been made. Interest accumulated or rolled-up in some way in the disposal proceeds of certain savings instruments also constitutes an interest payment. Capital gains are not an interest payment. However, capital gains and other types of income may constitute an interest payment if they are included in a payment where it is not possible to isolate the amount of interest in a larger payment.

6.2.2 Interest and money debts ***[S.D. Art. 6(1)(a)]***

All interest earned on debts derived from the lending of money (whether or not the relevant debt claim is secured by mortgage and whether or not it carries a right to participate in the debtor's profit) is included as an interest payment. This includes interest on bank accounts as well as interest on all types of debt securities (such as government securities, corporate bonds and debentures).

For the purposes of the Savings Directive, the term interest also includes -

6.2.2.1 premiums and discounts derived from money debts; and
6.2.2.2 prizes (including premium bond prizes) attributable to money debts.

An interest payment does not include any income (including any interest) which does not arise from a money debt. Examples of payments which are not an interest payment include –

6.2.2.3 dividends on ordinary shares in a company (unless the company is a collective investment fund);
6.2.2.4 dividends from preference shares;

6.2.2.5 pensions, annuities and payouts from insurance policies.

There are two types of debt which do not count as money debts for the purposes of the Savings Directive (and so do not produce interest payments even where they give rise to interest) –

6.2.2.6 debts which do not arise from a transaction for the lending of money (for instance where there is a late payment and compensation interest is paid); and

6.2.2.7 certain debt securities which already existed before 1 March 2001 – referred to in these guidelines as "Article 15 securities" (see next paragraph).

Debts which do not arise from a transaction for the lending of money include any debts arising from ordinary commercial or private transactions to purchase goods, services or other assets (e.g. land). The main consequence of this exclusion is that interest on late paid trade debts does not constitute an interest payment. Penalty charges on late paid debts are also excluded from being an interest payment.

Client money (whether in designated or undesignated accounts) and collateral deposited in the course of transactions in financial (and other) markets are money debts which arise from the lending of money. Interest on such sums therefore constitutes an interest payment.

6.2.3 *Article 15 securities* ***[S.D. Art. 15]***

Certain negotiable debt securities are not treated as money debts if they meet certain conditions for the duration of a transitional period. These securities ("Article 15 securities") do not qualify as money debts for all purposes of the Savings Directive. Interest, premiums and discounts derived from these bonds do not constitute an interest payment and investment in these bonds is not taken into consideration in determining whether the relevant thresholds have been passed in relation to certain income derived from collective investment funds.

A security will be an Article 15 security if –

6.2.3.1 it was first issued before 1 March 2001 or the prospectus was first approved by the appropriate regulatory authority before that date; and

6.2.3.2 no further issue was made on or after 1 March 2002.

If the bond is a government bond (or issued by a related public authority or an international organisation – see Appendix 2 to these Guidelines) and a further issue is made on or after 1 March 2002, the whole of the issue (whether made before, on or after 1 March 2002) is not an Article 15 security. The whole issue of the bond is a money debt. If the bond is issued by another type of issuer (e.g. a

commercial company) and a further issue is made on or after 1 March 2002, only the part of the issue made on or after 1 March 2002 is not an Article 15 security. This part of the bond issue is treated as a money debt; the rest of the issue (made before 1 March 2002) is not a money debt.

The transitional period will end no later than 31 December 2010. If a paying agent cannot ascertain whether or not a security is a Article 15 security, he should assume that it is not i.e. it should be treated as a money debt in the normal way.

6.2.4 Accrued and capitalised interest ***[S.D. Art. 6(1)(b)]***

For the purposes of the Savings Directive, an interest payment is considered also to have been made when a money debt is sold to a paying agent (or an Article 4(2) paying agent) or redeemed by the debtor. Interest added to an account with a bank when the account is closed is interest in the normal way and treated as such under the Savings Directive. Accrued interest, premiums and discounts paid out at the redemption of securities by the issuer, or included in part of the price paid by a third party purchaser at sale before redemption also constitutes an interest payment for the purposes of the Savings Directive.

In this respect, economic operators who purchase interest-bearing securities from relevant payees or residual entities in specified territories or Maltese agents acting for the seller (e.g. stockbrokers) could qualify as paying agents for the purposes of the Savings Directive. This could be the case even if these economic operators are not the paying agent in respect of coupon payments made to the relevant payee or residual entity selling the securities.

Accrued or capitalised interest is normally considered to arise if –

6.2.4.1 a security is sold to the paying agent *cum dividend* (with an entitlement to the next coupon payment) - in those circumstances the price will include an amount of accrued interest for the period from the last coupon payment date to the date of transfer of the security;

6.2.4.2 it was purchased by the seller at a discount; or

6.2.4.3 the sale price includes, or takes account of, a premium that is paid on redemption by the issuer.

If the security is purchased *ex dividend* (without an entitlement to the next coupon payment), it will not normally be considered that there is any accrued interest in the selling price and so there will be no interest payment.

6.2.5 Income from collective investment funds

The interest element included in distributions paid by collective investment funds also constitutes interest payment for the purposes of the Savings Directive. Such

interest element includes premiums, discounts and other income treated as interest on a money debt for the purposes of the Savings Directive. It does not, therefore, include interest on Article 15 securities.

A "collective investment fund" means an investment which is –

(a) an UCITS;
(b) an Article 4(3) UCITS; or
(c) an undertaking for collective investment established outside the EU.

An "UCITS" means an 'undertaking for collective investment in transferable securities' authorised in accordance with the UCITS Directive (Directive 85/611/EEC).

An "Article 4(3) UCITS" is a residual entity which has been given a certificate by the specified territory in which it is established allowing it to be treated as an UCITS.

Therefore, distributions and other payments derived from investment funds established in Malta or in a specified territory constitute interest payments for the purposes of the Savings Directive if they are made by UCITS (or Article 4(3) UCITS). Distributions and other payments derived from investment funds which are not UCITS or Article 4(3) UCITS in Malta or a specified territory does not constitute interest payments under the Savings Directive.

A non-EU fund should only be regarded as an 'undertaking for collective investment' if the following features are present –

(a) the fund is operated by way of business; and
(b) the investments in the fund are pooled; and
(c) the investors are not involved in its day-to-day management; and
(d) the fund is open-ended (i.e. its capital varies with investments and withdrawals by investors) and not close-ended (i.e. its capital is fixed).

6.2.5.1 Collective investment funds: distributions ***[S.D. Art. 6(1)(c)]***

For the purposes of the Savings Directive, a distribution by a collective investment fund contains interest payment if the fund has invested assets in money debts – excluding Article 15 securities. The Savings Directive specifies that Member States may opt to exclude from the definition of interest payment income distributed by collective investment funds that have invested less than 15% of their assets in money debts. The actual threshold for a collective investment fund therefore, depends on the approach the specified territory in which the fund is established has taken to implementing the Savings Directive. For collective investment funds established in Malta, a distribution will contain interest payment if the fund has invested any of its assets directly or indirectly

(via other collective investment funds or residual entities) in money debts – excluding Article 15 securities **[S.D. Art. 6(6)** and **Reg. 5(5) L.N. 267 of 2004]**.

In determining whether there are interest payments in a distribution, it does not matter whether the distribution is paid out (e.g. a dividend cheque is sent to the investor), reinvested by the purchase of additional units or shares or added directly to accumulation units.

6.2.5.2 Collective investment funds: income realised at sale or redemption of fund units ***[S.D. Art. 6(1)(d)]***

An interest payment also arises when units or shares in a collective investment fund are sold to a paying agent (or an Article 4(2) paying agent) or redeemed by the fund. This is analogous to the inclusion of accrued interest in the sale or redemption price of a security.

An interest payment only arises under this heading if the fund has invested more than 40% (25% from 1st January, 2011) of its assets directly or indirectly (via other collective investment funds or residual entities) in money debts – excluding Article 15 securities. This applies to all funds and does not depend on any requirements of the country in which the fund is established.

However, all of the income accumulated by a fund is regarded as an interest payment if the test is passed. The interest payment is not simply the part of the accumulated income which would be considered to be interest payment under the other headings – whether as interest paid, accrued or capitalised interest or interest payment in distributions from other funds, but the total amount paid for the relevant sale or redemption **[Regulation 5(5) L.N. 267 of 2004]**.

6.2.5.3 Obtaining information about funds

Paying agents and Article 4(2) paying agents need information about the status and composition of funds in order to decide whether or not a fund is a collective investment fund, and if so, whether it passes the 40% test. He should normally seek information about fund composition in the investment policy laid down in a fund's rules or instrument of incorporation (or similar constitutional document).

Failing that, paying agents should consider the actual composition of a fund's assets. This information may be obtained from a fund's report and accounts or similar published sources. This information can be assumed to remain current until a further report and accounts become available. If the paying agent is unable to ascertain whether or not a fund falls above or below the 40% threshold, he should consider the relevant threshold to be exceeded.

Paying agents are not expected to inspect original fund documents and may rely upon copies or on information received in the normal way with other fund

documentation or literature. Paying agents may rely on information from recognised industry sources (for example, feeds from established information vendors) to decide whether the 40% test has been passed. This can include simple statements that the test has been passed where it is clear that the recognised industry source has obtained the necessary information about the fund in question from a suitable primary source of information.

6.2.5.4 Funds investing in other funds

Where a fund invests in other funds, a calculation of indirect investment should be carried out by taking the investment by the fund in question in each of the other funds and multiplying that number by the percentage investment of the other fund in money debts. The resulting products should be added to the direct investment in money debts and the sum divided by the total assets of the fund to establish the percentage invested in money debts. This percentage can then be compared with 40% to decide whether the test has been passed.

Example

In the case of a fund which has invested Lm1 million directly in money debts and Lm3 million in each of three other collective investment funds which in turn invested 20%, 50% and 80% respectively in money debts, for the purposes of the Savings Directive, the top level fund would be considered to have invested 55% directly and indirectly in money debts ((Lm1m + 20%xLm3m + 50%xLm3m + 80%xLm3m)/Lm10m). The top level fund clearly passes the 40% test.

6.2.5.5 Umbrella Funds

A fund which invests in other funds is not the same as an umbrella fund. An umbrella fund is a mechanism for bringing different, separate funds (usually referred to as sub-funds) within a single fund organisation. For the purposes of the Savings Directive, sub-funds are to be treated as separate collective investment funds and therefore the 40% test is to be applied at the sub-fund level.

7. Information reporting by the paying agent

7.1 Responsibilities of paying agents and Article 4(2) paying agents

Paying agents are required to notify the Commissioner of Inland Revenue if they make interest payments to a beneficial owner or a residual entity in a specified territory. Article 4(2) paying agents established in Malta are required to notify the Commissioner of Inland Revenue if they receive interest payments for a beneficial owner.

7.2 Initial notification

Paying agents and Article 4(2) paying agents who need to make a report must notify the Assistant Director, Computer Section (at the address shown in paragraph 9.6.2) within 14 days of the end of the tax year in which they make a reportable payment, unless they have already notified the Commissioner of Inland Revenue in a previous year. Following the said initial notification, the Commissioner of Inland Revenue shall issue a registration certificate which will include a Paying Agent Code.

Once the Commissioner of Inland Revenue has been so notified, a report of interest payments needs to be submitted to the Commissioner of Inland Revenue by 28th February of the year immediately following the year in which the interest payments were made **[Reg. 5(3) L.N. 267 of 2004]**.

If the paying agent has notified the Commissioner of Inland Revenue but has no interest payments to report for a particular year, he must make a NIL report.

If the paying agent's business changes and he ceases to make reportable interest payments, he should notify the Assistant Director, Computer Section (at the address shown in paragraph 9.6.2).

7.3 Period to be covered by the report

Reports made during a particular year will cover all of the reportable interest payments made during the previous calendar year. The period specified will cover the twelve months January to December.

7.4 Information to be reported

Following the initial notification, a paying agent (including an Article 4(2) paying agent) is required to report to the Commissioner of Inland Revenue interest payments made to beneficial owners resident in a specified territory. The reporting obligations under the Savings Directive apply only to those beneficial owners whose country of residence is a territory specified in these guidelines. A list of the specified territories is at appendix 1.

The reportable details for each interest payment are:

(i) details about the paying agent as follows –

(a) own name, address and paying agent code;
(b) whether the paying agent is an Article 4(2) paying agent in relation to the particular interest payment;

(ii) details about the beneficial owner as follows -

(a) For individuals with whom the paying agent has contractual relations that began before 1 January, 2004 the reportable details about the beneficial owner are –

(1) name;
(2) address; and
(3) country of residence.

(b) For individuals with whom the paying agent has contractual relations that began on or after 1 January, 2004 and for individuals where there are no contractual relations, the reportable details about the beneficial owner are –

(1) name;
(2) address;
(3) country of residence (according to the Savings Directive), and either:
(4) the Tax Identification Number (TIN); or
(5) (if there is no TIN, or if the TIN is unavailable) date and place of birth.

(iii) details about the interest payment as follows -

(a) the category of interest payment;
(b) the account number or other information identifying the money debt or other instrument;
(c) the amount of the interest payment. This amount is the total amount of interest or income and the total amount of the proceeds from sale, redemption or refund;
(d) the currency in which the payment was reported.

Paying agents (but not Article 4(2) paying agents) have to report payments they make to Article 4(2) paying agents and to residual entities in specified territories. There are no requirements to verify the identity and place of establishment of a residual entity and the reportable details do not depend on whether a contractual relationship with the entity was in place before or after 1 January 2004. The reportable details are -

(a) the paying agent's own name, address and paying agent code;
(b) the name and address of the Article 4(2) paying agent (including where available the relevant paying agent code) or residual entity (this must include the country in which the residual entity is established);

(c) details about the interest payment as in (iii) above.

Reports are required for all interest payments within the meaning of the Savings Directive irrespective of whether these payments would be taxed in Malta, the way in which they would be taxed in Malta or the way in which they would be taxed in the country of residence of the beneficial owner or residual entity.

In general, PO box, c/o and hold mail addresses are not normally acceptable for reporting purposes. They may be acceptable in the case that it is the only address held by the paying agent and there is a pre-1 January, 2004 contractual relationship with the individual. For post-2003 contractual relationships, these may only be acceptable if the relevant address constitutes a residential address for the area in which the individual lives and would allow such individual to be traced.

7.5 Reporting particular interest payments

7.5.1 Interest payments to trustees of Malta trusts who are resident in specified territories

A trust constituted under the law of Malta (Malta trust) is not an entity and the persons to whom the provisions of the Savings Directive may apply are the trustees. Therefore, if an interest payment is paid to trustees of a Malta trust who are individuals resident in a specified territory, the paying agent should report the trustees' details, unless the trustees fulfil any of the following criteria –

(a) they are paying agents themselves - professional trustees may well be paying agents themselves, in which case payments to them are not reportable;
(b) the trustees have provided information that they are acting on behalf of another individual (the beneficiary) who is a beneficial owner and have provided the identity details - in this case the paying agent should report the details of the beneficiary concerned;
(c) the paying agent has reasonable grounds to believe that the trust is a bare trust (i.e. a trust where the beneficiary has absolute entitlement to the investments of the trust or to any interest arising from them, either for the whole duration of the trust or for a specified period of time) - in this case the paying agent should take reasonable steps to establish from the trustees who is the beneficial owner.

For post- 2003 trustee accounts, the paying agent should establish the status of the trust at the outset. For trustees with whom the paying agent has pre-1 January 2004 contractual relations, one should take such action as is reasonable.

In any case, if he is unable to obtain the relevant details for the beneficiary, the

paying agent should report the trustees' details. Where there are more than one trustee resident in specified territories, unless proof is otherwise available, it is to be assumed that each of the trustee has a right for an equal share of the relevant interest payment.

7.5.2 Interest payments by trustees of Malta trusts

If a trustee is acting in a professional capacity one may be a paying agent. Interest payments received by a trustee (who is not acting in a professional capacity) may be reportable if they are secured for the immediate benefit of a beneficial owner or residual entity in a specified territory. Usually this means that the individual or residual entity concerned has a right to the income in the form it is received by the trust. This is the case for bare trusts.

Distributions made by the trustees of discretionary or accumulation and maintenance trusts are not interest payments and are not reportable.

7.5.3 Foreign trusts

The status of a foreign trust is determined by the law of the country in which it is established and the paying agent needs to apply the normal rules to determine whether the person to whom the payment is made is a beneficial owner or a residual entity in a specified territory, and whether a report is required. He should only treat a foreign trust as a residual entity if he is unable to obtain official evidence that it falls into one of the categories which are excluded from being residual entities.

Similarly, the normal rules will apply to determine whether a payment from a foreign trust is an interest payment.

7.5.4 Interest payments to deceased investors

Interest payments which were paid to deceased persons before the date of their death is reportable in their name and at the last known address, provided the deceased was a beneficial owner.

Interest payments made to personal representatives are reportable by a paying agent if one or more of the personal representatives is a beneficial owner. The paying agent is not required to identify the beneficiary. Interest paid throughout the period of the administration or executry is reportable.

A paying agent does not need to report interest payments made to personal representatives if he has been informed that the personal representatives are not the beneficial owners, and –

- they are acting on behalf of another individual who is the beneficial owner

and where they also provide the name and address of the individual (verified as required under the Savings Directive)

- they are acting on behalf of a residual entity and where they provide the name and address of the entity.

7.5.5 Estates of deceased persons: interest payments made by personal representatives

Professional personal representatives (e.g. lawyers) may be paying agents and should make a report if they make interest payments to beneficial owners or residual entities in specified territories. Personal representatives who are not acting in a professional capacity are not required to make a report.

Professional personal representatives should report interest payments once the assets which gave rise to the interest payment have been assigned to a beneficial owner or residual entity in a specified territory. Only interest payments made from the date the assets were assigned are reportable. Interest earned on money in the estate during the administration or executry and distributed as part of the residue is not reportable.

7.5.6 Reporting on Maltese partnerships where a partner is an individual resident in a specified territory

Interest payments to Maltese partnerships are not reportable. Maltese partnerships may, of course, be paying agents in their own right under the relevant provisions of the Savings Directive.

7.5.7 Reporting on partnerships in specified territories

How a paying agent treats a partnership in a specified territory will depend on its legal status in the country in which it is established. He should only treat a partnership as a residual entity if he is unable to obtain official evidence that it falls into one of the categories which are excluded from being residual entities.

7.5.8 Reporting on joint accounts and holdings

A paying agent should report the identity, residence and account information and the total amount of interest payment attributable to each beneficial owner or residual entity in a specified territory. Unless proof to the contrary is available, it is to be assumed that an equal amount is attributable to each beneficial owner and residual entity. A paying agent may, however, opt to report the total amount of the interest payment in relation to the joint account or holding against each of the beneficial owners or residual entities.

7.5.9 Designated client accounts

If a paying agent is contractually required to make an interest payment to a professional firm or an individual acting in a professional capacity, he may be asked to send the payment directly to that firm's or individual's client, or transfer the funds directly to a bank account designated in the name of the client. In these cases, he should still regard the payment as made to the professional firm or individual concerned and not to the client. This may mean that the firm or individual concerned is the paying agent.

If a paying agent is contractually required to make a payment to an individual who is not acting in a professional capacity and who requests that the payment be sent directly to another individual or to transfer the funds to a bank account designated in the name of another individual, he should also regard the payment as made to the first individual. However, this may be information that the first individual is not the beneficial owner **[S.D. Art. 2(2)]**.

7.5.10 Individuals who change address or residence during the year

When an individual moves residence during the year, there may be more than one country of residence and address for the same individual for the reporting period.

As long as a paying agent reports consistently, he may report either the address and country of residence at the time the interest payment is made, or the address and country of residence at the end of the reporting year (31 December).

Where a beneficial owner who is not resident in a specified territory changes address from a territory that is not a specified territory to a specified territory, the paying agent needs to, within 10 days from being first notified of the such change in address, take the necessary action in order to be able to determine whether the change in address also means a change of residence. Thus in the case of contractual relations started –

(a) before 1 January, 2004 the paying agent should update his records in accordance with the provisions of paragraph 3.3.1 by requesting the individual to confirm whether his or her residence has changed or not;
(b) on or after 1 January, 2004 with persons holding a passport or official identity card issued by a specified territory, the paying agent must determine whether the certificate of residence referred to in paragraph 3.3.2 is still valid.

In both the above cases, confirmation of a change in residence should be obtained by the paying agent on the pro forma letter in Appendix 3 – hereinafter referred to as the "Appendix 3 letter". Where the individual does not give the requested information to the paying agent in this regard (i.e. whether the change in address means a change in residence), it shall be considered that reasonable business practice has been followed by the paying agent if at least two requests for such information have been made. Where such attempts to obtain the

necessary information or documents (e.g. updated tax residence certificate in the case of contractual relations started on or after 1 January, 2004) fail, the paying agent shall consider that the change in address signifies a change in residence and shall inform the individual accordingly.

Where the beneficial owner is late in informing the paying agent of a change in residence or where attempts to update one's records have failed, such that the relevant interest payments cannot be reported in time (i.e. by the 28th February of the year immediately following the year in which the interest payments were made) the paying agent must within the earlier of –

(1) 14 days of receiving the duly filled-in Appendix 3 letter; or
(2) 90 days of the sending of the first letter in the attempt to update one's record,

submit to the Commissioner of Inland Revenue the following information:

(a) name, current address and country of residence of beneficial owner;
(b) address and country of residence prior to change in residence;
(c) date of change in residence;
(d) date when the paying agent became aware of the change in residence;
(e) the information specified hereunder which the paying agent has in hand at the time such agent became aware of the change in residence –
    (i) reportable account numbers or other information identifying reportable money debts or other relevant instruments;
    (ii) the relevant categories of interest payment.

7.5.11 Whereabouts unknown

If an interest payment is being reported before the beneficial owner went 'whereabouts unknown', the report is to be made on the basis of his last known address. No report is to be made if the paying agent is unable to make the interest payment because the investor's whereabouts are unknown. If subsequently, the investor's new address is discovered and the outstanding interest payment is made, that payment is to be reported in the year the payment is made with the new address.

7.5.12 Closure of account.

If an account was closed during the year then the paying agent should report the interest payment if there was a reportable address at the date the account was closed. Or, if the paying agent holds a later address on his system, it can be used as the basis for reporting, assuming the address was properly verified under the appropriate rules.

8. Elimination of Double Taxation

A beneficial owner who is a resident of Malta for the purposes of the Income Tax Act and who receives an interest payment that was subject to withholding tax in terms of Article 11 of the Savings Directive, may claim a tax credit of tax so withheld.

Such a claim may be made in accordance with the provisions of articles 80 to 88 of the Income Tax Act i.e. the unilateral relief provisions.

Notwithstanding the total amount of credit allowed under the provisions of article 84 of the Income Tax Act, the tax credit claimed may be equal to the amount withheld **[Reg. 5(6) L.N. 267 of 2004]**.

A claim for refund of the excess amount of tax withheld to the beneficial owner over that charged in Malta may be claimed under the provisions of article 48 of the Income Tax Management Act.

9. Administration Issues

9.1 Application of the Savings Directive

In accordance with a Council Decision of 19 July, 2004 on the date of application of Directive 2003/48/EC on taxation of savings income in the form of interest payments[4], the provisions of the Savings Directive will not begin to take effect until 1st July, 2005. This effectively means that paying agents need to commence reporting in the year 2006 for data relating to the period 1st July, 2005 to 31st December, 2005.

9.2 Sub-contracting the obligations under the Savings Directive

A paying agent may sub-contract both the task of completing and updating the identity and residence details and the preparation and submission of the report. However, the legal responsibility to establish identity and residence and to provide accurate and complete information remains with the paying agent. So, if he decides to sub-contract the work, he will need to be satisfied that the entity that has been sub-contracted has put adequate arrangements in place.

If the paying agent sub-contracts the preparation and submission of the report, he is to make sure that the third party who submits the report uses the correct (the paying agent's) reference.

There are penalties for supplying incorrect information and responsibility for

[4] Council Decision of 19 July, 2004 on the date of application of Directive 2003/48/EC on taxation of savings income in the form of interest payments (2004/587/EC), OJ No. L 257, 04.08.2004, p.7.

collecting verifying and reporting the necessary information is of the paying agent. If it is discovered (for example at audit) that the information reported is incorrect the action taken will depend on the circumstances of the case. However, account will be taken of whether the paying agent can show that reasonable steps were taken to ensure that the sub-contractor had adequate procedures in place.

9.3 Record-keeping and retaining evidence

9.3.1 Documentary evidence needed to be kept to demonstrate that identification and residence obligations have been performed

A paying agent must be able to produce, upon a request by the Commissioner of Inland Revenue, a copy of the documents that were used to verify the identity and residence of individuals. He must retain these documents for at least 5 years after the end of the tax year in which the account was closed (or the security has been sold).

9.3.2 Evidence to be kept when accepting an introduced individual

A paying agent must be able to produce, upon request by the Commissioner of Inland Revenue, the documents used by the introducer of the business to verify the identity and residence of individuals and its certification that it has carried out the identity and residence checks to the required standard. These documents must be retained for at least 5 years after the end of the tax year in which the account was closed (or the security has been sold).

9.4 Data Protection Act, Cap. 440

In accordance with Regulation 5(4)(a) of L.N. 267 of 2004, a paying agent is required to provide the Commissioner of Inland Revenue with information as prescribed by the Savings Directive, and as explained in these guidelines. Consequently, non-disclosure provisions as stipulated under article 7 of the Data Protection Act, Cap. 440 do not apply by virtue of Article 23 (1) (e) and (f) of the same Act. Any additional information reported for the purposes of the Savings Directive beyond that prescribed, would not be covered by the exemption contained in Article 23 of the Data Protection Act.

9.5 Penalties

Paying agents who fail to notify the Commissioner of Inland Revenue may be subject to the provisions of Part IX of the Income Tax Management Act and to any applicable administrative penalties which may be contemplated under the Income Tax Acts.

There may be occasions where a paying agent tries but fails to obtain the

required information from the beneficial owner in time to make the relevant report. If a paying agent has a reasonable excuse for not having done what he was required to do, he cannot be considered to have failed to comply and therefore no penalty could apply.

In order to have a 'reasonable excuse' for not reporting the information a paying agent must be able to show that reasonable steps were taken to obtain it. What is reasonable will always depend on the circumstances of the case, but it is normally expected that a paying agent is able to produce evidence of at least two requests for the information.

9.6 Contacts

9.6.1 Questions of interpretation

For advice regarding the interpretation of the provisions of the Savings Directive, Regulation 5 of L.N. 267 of 2004 or of these guidelines, please contact:

Director, International Taxation
International Tax Unit
Inland Revenue Department

9.6.2. Questions of administration

For advice about making reports, please contact:

Assistant Director, Computer Section
Inland Revenue Department

Appendix 1 – Specified territories as at 1 May 2004

Anguilla
Aruba
Austria
Belgium
British Virgin Islands
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Guernsey
Hungry
Ireland
Isle of Man
Italy
Jersey
Latvia
Lithuania
Luxembourg
Montserrat
Netherlands
Netherlands Antilles
Poland
Portugal
Slovak Republic
Slovenia
Spain
Sweden
Turks and Caicos Isles
United Kingdom

Appendix 2 – List of related public authorities and international organisations as at 1 May 2004

Belgium	Vlaams Gewest (Flemish Region) Région wallonne (Walloon Region) Région bruxelloise / Brussels Gewest (Brussels Region) Communauté française (French Community) Vlaamse Gemeenschap (Flemish Community) Deutschsprachige Gemeinschaft (German-speaking Community)
France	La Caisse d.amortissement de la dette sociale (CADES) (Social Debt Redemption Fund) L.Agence française de développement (AFD) (French Development Agency) Réseau Ferré de France (RFF) (French Rail Network) Caisse Nationale des Autoroutes (CNA) (National Motorways Fund) Assistance publique Hôpitaux de Paris (APHP) (Paris Hospitals Public Assistance) Charbonnages de France (CDF) (French Coal Board) Entreprise minière et chimique (EMC) (Mining and Chemicals Company)
Greece	National Telecommunications Organisation National Railways Organisation Public Electricity Company
Italy	Regions Provinces Municipalities Cassa Depositi e Prestiti (Deposits and Loans Fund)
Latvia	Pašvaldibas (Local governments)
Poland	gminy (communes) powiaty (districts) województwa (provinces) zwiazki gmin (associations of communes) powiatów (association of districts) województw (association of provinces) miasto stoleczne Warszawa (capital city of Warsaw) Agencja Restrukturyzacji i Modernizacji Rolnictwa (Agency for Restructuring and Modernisation of Agriculture) Agencja Nieruchomosci Rolnych (Agricultural Property

	Agency)
Portugal	Região Autónoma de Madeira (Autonomous Region of Madeira) Região Autónoma dos Açores (Autonomous Region of Azores) Municipalities
Slovakia	mestá a obce (municipalities) Železnice Slovenskej republiky (Slovak Railway Company) Štátny fond cestného hospodárstva (State Road Management Fund) Slovenské elektrárne (Slovak Power Plants) Vodohospodárska výstavba (Water Economy Building Company)
Spain	Xunta de Galicia (Regional Executive of Galacia) Junta de Andalucía (Regional Executive of Andalusia) Junta de Extremadura (Regional Executive of Extremadura) Junta de Castilla-La Mancha (Regional Executive of Castilla-La Mancha) Junta de Castilla-León (Regional Executive of Castilla-León) Gobierno Foral de Navarra (Regional Government of Navarre) Govern de les Illes Balears (Government of the Balearic Islands) Generalitat de Catalunya (Autonomous Government of Catalonia) Generalitat de Valencia (Autonomous Government of Valencia) Diputación General de Aragón (Regional Council of Aragon) Gobierno de las Islas Canarias (Government of the Canary Islands) Gobierno de Murcia (Government of Murcia) Gobierno de Madrid (Government of Madrid) Gobierno de la Comunidad Autónoma del País Vasco/Euzkadi (Government of the Autonomous Community of the Basque Country) Diputación Foral de Guipúzcoa (Regional Council of Guipúzcoa) Diputación Foral de Vizcaya/Bizkaia (Regional Council of Vizcaya) Diputación Foral de Alava (Regional Council of Alava) Ayuntamiento de Madrid (City Council of

	Madrid) Ayuntamiento de Barcelona (City Council of Barcelona) Cabildo Insular de Gran Canaria (Island Council of Gran Canaria) Cabildo Insular de Tenerife (Island Council of Tenerife) Instituto de Crédito Oficial (Public Credit Institution) Instituto Catalán de Finanzas (Finance Institution of Catalonia) Instituto Valenciano de Finanzas (Finance Institution of Valencia
International entities	European Bank for Reconstruction and Development European Investment Bank Asian Development Bank African Development Bank World Bank / IBRD / IMF International Finance Corporation Inter-American Development Bank Council of Europe Social Development Fund Euratom European Community Corporación Andina de Fomento (CAF) (Andean Development Corporation) Eurofima European Coal and Steel Community Nordic Investment Bank Caribbean Development Bank

Appendix 3 –Pro Forma Letter of Notification of New Permanent Address

NOTIFICATION OF NEW PERMANENT ADDRESS FOR THE PURPOSES OF THE EU SAVINGS DIRECTIVE

DATE: .....

TO: .....
.....
.....
.....
.....

FROM: (Surname) .....
(Name) .....
(Nationality) .....
(Passport/I.D. Card No.) .....

I/We hereby inform you that with effect from .....my/our permanent address has changed as follows:

Previous Address: .....
.....
.....
.....
.....

New Address: .....
.....
.....
.....
.....

I/We hereby acknowledge that this is a notification of a change in residence for the purposes of the EU Savings Directive and that, as a consequence of this change, interest payments effected to me/us or secured for me/us by yourselves in respect of the account(s) specified below will be reportable by you to the Maltese Tax Authorities in terms of the European Union Savings Directive which Malta has adopted and the relevant Regulations and Guidelines in relation thereto.

I/We confirm that the accounts listed below are all the accounts relevant for the purposes of the EU Savings Directive held with you:

ACCOUNT NUMBER	ACCOUNT TYPE	To be filled in by Paying Agent: CATEGORY OF INCOME
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

CUSTOMER SIGNATURE(S)	TAX IDENTIFICATION NUMBER
.....	.....
.....	.....
.....	.....
.....	.....

To be filled in by Paying Agent:

The undersigned declares that the above information is to the best of his/her knowledge correct and complete.

Signature: ..... Rubber Stamp:
Name: .....
Designation: .....
Date: .....

SCHEDULE 2

(Regulation 5(1))

Inland Revenue – Malta



Savings Directive Guidelines

Reporting Requirements Specifications

Background

The Inland Revenue has issued guidelines for the implementation of the European Union Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments – hereinafter in these Guidelines referred to as the "Savings Directive".

The information required by the Inland Revenue Department for the purpose of the Savings Directive is to be received in electronic format.

Scope of document

This document outlines the process that is to be used by paying agents and economic operators for the submission of information to the Inland Revenue Department in line with the Savings Directive.

It includes a brief description of the business process, the file layout and the rules related to the information that is to be submitted to the Inland Revenue Department.

Business Process

All Paying Agents are to register for the purposes of the Savings Directive with the Inland Revenue Department. This means that both Paying Agents who pay interest income directly to beneficial owners and Paying Agents who receive income on behalf of beneficial owners are to be registered with the Inland Revenue Department.

Paying Agents need to submit information to the Inland Revenue Department in the format described below in electronic format. The electronic file may be submitted on magnetic media such as diskettes and CD's.

The information is to be submitted to the Commissioner of Inland Revenue by 28th February of the year immediately following the year in which the interest payments were made.

The electronic information submitted will be accompanied by the following reconciliation form:-

Inland Revenue Department - Malta

Savings Directive Report Reconciliation Form

A Payor Information

- Registration Number .....
- Name .....
- Contact Name .....
- Contact Address .....
- e-mail Address .....
- Telephone Number/s .....

B File Information

Name	Number of Records	Value of Interests Reported

Name in block capitals

Signature

Date

Savings Directive Report Reconciliation Form

Notes regarding Completion

Payors will complete Section A of the reconciliation form with the registration number given to them by the Inland Revenue for the purposes of this directive. The Name is the official name of the payor.

The Contact Name, Contact Address, Telephone Numbers and e-mail address (if applicable) are details of the person responsible for the compilation of information report submitted to the Inland Revenue.

Section B will contain details of the file information. For each file on the magnetic media that will be submitted to the Inland Revenue, the file name, the number of records and the sum of the interests reported (irrespective of the currency) are to be filled in the appropriate fields.

The form will be completed by the signature, name and date to be filled in by the person responsible for the compilation of the report.

Data Transfer Requirements

Media

The data maybe transferred on double sided high density diskette (1.44 Mb) or on a Compact Disk (CD).

The Inland Revenue Department is considering the Internet as a future medium for these data transfers. Further information regarding this medium shall be issued in due course.

File Naming Structure

The files submitted by Paying Agents on the CD or diskette shall have a unique filename, and this shall be in accordance with the following convention:

PYR9999XXXZYY99V.txt

Where: PYR9999 = Paying Agent Registration Number
XXX = Abbreviation for the Paying Agent given by the Inland Revenue upon registration for this purpose
Z = Report Type which will always be “S” for the Savings Directive report
YY = Last two digits of the year for which filename information relates
99 = Sequential file number
V = Version of the file starting with 1

Examples:

(a) Submission of first report in January / February 2006 relating to an interest payment made in 2005: Filename will be PYR9999XXXS05011.txt.

(b) Submission of additional, new record in February 2006, relating to an interest payment made in 2005 and inadvertently omitted from the first report: Filename will be PYR9999XXXS05021.txt.

(c) Correction of details of an account reported in (a): Filename will be PYR9999XXXS05012.txt.

(d) Correction of details of an account reported in (b): Filename will be PYR9999XXXS05022.txt.

(e) Submission of report in January / February 2007, relating to interest payments effected in 2006 : Filename will be PYR9999XXXS06031.txt.

Format

All records are to be provided as 'pipe –delimited' variable length records. This means that all leading and trailing zeroes or blanks will be removed from the data file records.

The Inland Revenue Department will be using the OECD Automatic Exchange of Information as the main guidelines for the reporting requirements. However the full OECD format will not be implemented. The record lengths specified below should be regarded as maximum values allowed and these maximum values are based on the OECD format. The mandatory data items and related conditions are also in line with the OECD format.

File preparation and handling procedures allow for the amendment and replacement of data files. In the event of account details requiring correction for any reason, the entire file containing the defective records shall be replaced, and re-issued to the Inland Revenue Department with a revised filename, amended with the modified records indicated as Type 2 records in field Number 1. Additional, new records may be submitted in a separate new file with the file name indicating the correct sequence.

Thus in the earlier example, in the case of (c) and (d), Field No 1 for those accounts to which the corrections relate will be 2. All other accounts will show 1 in Field No1. In the case of (a), (b) and (e), Field No1 will always show 1.

Record Layout

The Inland Revenue Department needs the following information for each payment effected to the paying agent or the beneficial owner regarding which, the following general rules apply:

- Where alphabetic characters are required, the Latin Alphabetic characters only are to be reported;
- Characters that are not alphanumeric such as “, !, @, $, %, &, etc should never be reported, except for the character “-“.. These characters have ascii values outside the ranges of 48 to 57 (numeric characters) and 97 to 122 (alphabetic);
- All date formats must be given in ddmmccyy format where dd is day of month, mm is month and ccyy is the full year of the date (e.g. 1999, 2001);
- Data Requirements are: mandatory (M), mandatory subject to conditions (C) or optional (O). In the format described below, where a conditional requirement or validation exists then further explanation is given under the additional information heading.

IRD Field No	OECD Ref	Field Name	Type	Size	Data Requirement	Remarks
1	F001	Document Type Indicator	N	1	M	1= New 2 = Correction
2	F002	Residence Country Code of recipient	A	2	M	Country Codes ISO 3166 2
3		Type of recipient	N	1	M	0=Beneficial Owner 1=Paying Agent Article 4 (2)
4		Pre Jan 2004 Registration	N	1	M	0 = Registered before 01/01/2004 1 = Registered after 31/12/2003
5		Paying Agent Registration Code	AN	7	M	Inland Revenue Registration number of Paying Agent (PYR999)
6	F003	Tax Identification Number of recipient	AN	20	C	Tax Identification Number. May be blank as indicated in Additional information
7	F007	Date of Birth	N	8	C	Date format ddmmccyy Maybe blank if: payment is made to Paying Agent or data in Field 6 (TIN) is given or Field 4 = 0 i.e Registered before 01/01/2004
8	F009	Surname	AN	70	M	Surname of beneficial owner or name of paying agent receiving the income
9	F010	Other Names	AN	70	M/C	All Other Names of beneficial owner or paying agent receiving the income

10	F014	Birth City	AN	35	C	Maybe blank if: payment is made to Paying Agent or data in Field 6 is given or Field 4 = 0 i.e Registered before 01/01/2004
11	F016	Birth Country Code	A	2	C	Country Codes ISO 3166 2 Maybe blank if TIN is given or payment received by a paying agent on behalf of a beneficial owner or Field 4 = 0 i.e Registered before 01/01/2004
12		Abode	AN	25	M	Door Number and/or House Name of beneficial owner or paying agent receiving income on behalf of beneficial owner
13	F029	Street Address	AN	70	M	Street Address of Beneficial owner or Paying Agent Receiving Income
14	F030	City	AN	35	M	City of address of Beneficial owner or Paying Agent Receiving Income
15	F032	Postcode	AN	9	O	Postcode of address Beneficial owner or Paying Agent Receiving Income
16	F033	Country Code	A	2	M	Country Codes ISO 3166 2 of address of Beneficial owner or Paying Agent Receiving Income
17	F034	Other Address Type	N	1	O	0= Residential or Business 1=Registered Office 2=Other/Unknown Type
18		Other address abode	AN	25	C	Door Number and/or House Name of other

						address of beneficial owner or paying agent receiving income on behalf of beneficial owner
19	F036	Other address Street Address	AN	70	C	Street Address of other address
20	F037	Other Address City	AN	35	C	City of other address
21	F039	Other Address Postcode	AN	9	O	Postcode of Other Address
22	F040	Other Address Country Code	AN	2	C	Country Codes ISO 3166 2 of other address
23	F088	Year of date of Payment	N	4	M	Year for which Interest payments were made for the account in ccyy format
24	F090	Type of Income	AN	3	M	As per Rules in Additional Information
25	F091	Currency of Paid Income	A	3	M	Currency code compliant with ISO 4217 3
26	F092	Amount-Major Unit of Income	N	18	M	Major units of currency only, i.e. no decimals, no number formats and no currency indicators will be entered in this field.
27	F103	Bank Account Number	AN	105	M	Relevant IBAN (international Bank Account number) or any identification code or the ISIN code of the debt Claim

Additional Information

IRD Field No	Field Name	Additional Information
6	Tax Identification Number (TIN)	This information may not be given when: Field 4 = 0 i.e. Registered before 01/01/2004 For registrations after 31/12/2003 if TIN is not given then Date of Birth and Place of Birth have to be provided in fields 7, 10 and 11.
7	Date of Birth	Compulsory if information in field 6 (TIN) related to a beneficial owner is not given. It is optional in the other circumstances
9	Other Names	Always mandatory for a beneficial owner. If the recipient is a paying agent on behalf of a beneficial owner then if the name of the paying agent fits in field 8 this field may be left blank.
10	Birth City	Mandatory if TIN (Field 6) is not given or account registered after 31/12/2003, else optional.
11	Birth Country	This field is mandatory when the TIN (Field 6) information is not given or registered after 31/12/2003. Optional in other circumstances.
18	Other Address abode	Mandatory if Other Address is given (Field 17)
19	Other address Street Address	Mandatory if Other Address is given (Field 17)
20	Other Address City	Mandatory if Other Address is given (Field 17)
22	Other Address Country Code	Mandatory if Other Address is given (Field 17)
24	Type of Income	Detailed description of type of Income paid (Article numbers refer to Articles of the Savings Directive): **First Character** must be one of a, b, c, or d where these refer to Article 8 (2) or briefly: a = interest paid in terms of article 6 (1) (a) b = interest paid or full amount from proceeds of sale, redemption or refund in terms of article 6 (1) (b) or (d)

		c = interest paid in terms of article 6 (1) (c) income d = interest paid in terms of article 6 (4) **Second Character** must be 1 or 2 where: 1= Total amount of Interest or income 2 = Total amount of proceed from sale, redemption or refund Therefore: a can only have 1 attributed to it b can have either 1 or 2 attributed to it c can only have 1 attributed to it d can only have 1 attributed to it **Third Character** must be x or y where x relates to payments made directly to beneficial owners (Article4(1)) y relates to payments made to paying agents on behalf of beneficial owners (Article 4(2)).”.