Statutory Instruments

S.I. No. 717 of 2003

EUROPEAN COMMUNITIES (TAXATION OF SAVINGS INCOME IN THE FORM OF INTEREST PAYMENTS) REGULATIONS 2003

PUBLISHED BY THE STATIONERY OFFICE
DUBLIN
To be purchased directly from the
GOVERNMENT PUBLICATIONS SALE OFFICE,
SUN ALLIANCE HOUSE, MOLESWORTH STREET, DUBLIN 2
Or by mail order from
GOVERNMENT PUBLICATIONS, POSTAL TRADE SECTION,
51 ST. STEPHEN'S GREEN, DUBLIN 2
(Tel: 01–6476834/35/36/37; Fax: 01-6476843)
or through any bookseller.

(Prn. 1533) Price: €4.06

European Communities (Taxation of Savings Income in the Form of Interest Payments) Regulations 2003 (S. I. No. 717 of 2003)

I, Charlie McCreevy, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Council Directive 2003/48/EC of 3 June 2003[1] hereby make the following regulations:

Citation.

1. These Regulations may be cited as the European Communities (Taxation of Savings Income in the Form of Interest Payments) Regulations 2003.

Amendment of Part 38 of Taxes Consolidation Act 1997.

2. The Taxes Consolidation Act 1997 (No. 39 of 1997) is amended by inserting the following Chapter into Part 38 (Returns of Income and Gains, Other Obligations and Returns, and Revenue Powers):

"CHAPTER 3A

Implementation of Council Directive 2003/48/EC of 3 June 2003 on Taxation of Savings Income in the Form of Interest Payments[1]

Interpretation (Chapter 3A).

898B.- (1) In this Chapter and in any regulations made under this Chapter, except where the context otherwise requires–

'beneficial owner' has the meaning assigned to it by section

[1] OJ No. L 157, 26.6.2003, p. 38.

898C(1);

‘building society’ and ‘credit union’ have the same meanings, respectively, as in section 256;

‘certificate of residence for tax purposes’, in relation to a third country, means a certificate given by the competent authority of that country certifying that an individual is by virtue of the law of that country resident for the purposes of tax in that country, and references to a tax residence certificate are to be construed accordingly;

‘competent authority’ means –

(a) in relation to a Member State, the authority notified to the European Commission by the Member State for the purposes of the Directive, and

(b) in relation to a third country, the competent authority for the purposes of bilateral or multilateral tax conventions or, in the absence of any such authority, the authority competent in that country to issue certificates of residence for tax purposes;

‘deemed interest payment’ has the meaning assigned to it by section 898E(7)(a):

‘deemed UCITS’ has the meaning assigned to it by section 898D(3)(a);

---

[1] OJ No. L 157, 26.6.2003, p. 38.

‘the Directive’ means Council Directive 2003/48/EC of 3 June 2003[1];

‘electronic means’ includes electrical, digital, magnetic, optical, electromagnetic, biometric and photonic means of transmission of data and other forms of related technology by means of which data is transmitted;

‘interest payment’ has the meaning assigned to it by section 898E;

‘Member State’ means a Member State of the European Communities;

‘money’ includes money expressed in a currency other than euro;

‘money debt’ means a debt arising from a transaction for the lending of money and which may be settled by–

(a) the payment of money, or

(b) the transfer of a right to settlement under a debt which may be settled by the payment of money,

whether or not the debt creates or evidences a charge on assets and whether or not the debt carries a right to participate in the profits of the debtor;

‘official identity card’ has the meaning assigned to it by section 898G(1);

‘paying agent’ has the meaning assigned to it by section 898D(1);

‘PPS number’, in relation to an individual resident in the State, means that individual’s Personal Public Service Number within the meaning of section 223 of the Social Welfare (Consolidation) Act 1993;

‘residual entity’ has the meaning assigned to it by section 898D(1);

‘securities’ includes-

(a) assets which are not chargeable assets for the purposes of capital gains tax by virtue of section 607,

(b) stocks, bonds and obligations of any government, municipal corporation, company or other body corporate, whether or not creating or evidencing a charge on assets, and

(c) any other money debts whether or not evidenced in writing,

but does not include shares (within the meaning of the Companies Act 1963) of a company (within the meaning of that Act) or similar body;

‘strip of a security’ shall be construed in accordance with section 55;

‘UCITS’ has the meaning assigned to it by section 898D(2)(c);

‘UCITS Directive’ means Council Directive 85/611/EEC of 20 December 1985[1];

‘tax year’ means a year of assessment for income tax or capital gains tax, as appropriate;

‘third country’ means a territory other than a Member State;

‘TIN’, in relation to a Member State other than the State, means a unique identification number allocated by the Member State to an individual for the purposes of taxation and, in relation to the State, means an individual’s PPS number.

(2)(a) Subject to paragraph (b), for the purposes of this Chapter an individual’s residence is to be treated as situated in the country in which the individual has his or her permanent address, and any reference in this Chapter to an individual being resident in a country shall be construed accordingly.

(b) Paragraph (a) shall not apply for the purposes of –

(i) the definition of ‘certificate of residence for tax purposes’ in subsection (1) and any use of that definition or of the term tax residence certificate

[1] OJ No. L 375, 31.12.1985, p. 3.

in this Chapter, and

(ii) subsection (3) and any reference in this Chapter to a person being a resident of a territory for tax purposes.

(3) For the purposes of this Chapter, a person is to be regarded as being a resident of a territory for tax purposes if the person is by virtue of the law of that territory resident for the purposes of tax in that territory.

(4) A word or expression that is used in this Chapter and is also used in the Directive has, unless the contrary intention appears, the meaning in this Chapter that it has in the Directive.

Beneficial owner.

898C.-(1) In this Chapter 'beneficial owner', in relation to an interest payment, means an individual who receives the interest payment or an individual for whom the interest payment is secured, but does not include an individual to whom subsection (2) applies.

(2) This subsection applies to an individual (in this section referred to as the 'intermediary') who provides evidence to the person making an interest payment to, or securing an interest payment for, the intermediary that, in relation to the interest payment, the intermediary –

(a) is a paying agent,

(b) acts on behalf of a person (not being an individual) or an undertaking referred to in section 898D(2),

(c) acts on behalf of a residual entity, where both of the conditions set out in subsection (3) are met, or

(d) acts on behalf of another individual (in this section referred to as the ‘other individual’) who receives the interest payment or for whom the interest payment is secured, where the condition set out in subsection (4) is met in relation to the other individual.

(3) The conditions of this subsection are that –

(a) the intermediary provides the name and address of the residual entity to the person making or securing the interest payment, and

(b) the person making the interest payment makes a return to the Revenue Commissioners within 3 months of the end of the tax year in which the information referred to in paragraph (a) is provided to it of each name and address so provided in that tax year.

(4) The condition of this subsection is that the intermediary provides the person from whom he or she receives an interest payment with the identity of the other individual established in accordance with section 898F or 898G, as appropriate.

(5) If a paying agent has information to the effect, or information indicating, that an individual is not the beneficial owner of an interest payment and paragraph (a), (b) or (c) of

subsection (2) does not apply to that individual, the paying agent shall take reasonable steps to identify the beneficial owner in accordance with the provisions of section 898F or 898G, as appropriate.

(6) A paying agent shall treat an individual as the beneficial owner in relation to an interest payment received by, or secured for, the individual if it is otherwise unable to identify a beneficial owner.

Paying agent and residual entity.

898D.-(1) In this Chapter-

'paying agent', in relation to any interest payment, means a person who in the course of the person's business or profession carried on in the State makes the interest payment to, or secures the interest payment for, the immediate benefit of a beneficial owner and includes, in particular, a residual entity but only as respects a deemed interest payment, a Minister of the Government and any agency or body established by statute;

'residual entity', in relation to any interest payment, means a person or undertaking resident in a Member State to which the interest payment is made for the benefit of a beneficial owner or for which the interest payment is secured for the benefit of a beneficial owner, unless the person making the payment is satisfied on the basis of evidence produced by the person or the undertaking that subsection (2) applies to that person or that undertaking.

(2) This subsection applies to a person or undertaking

which-

(a) is a legal person (not being an individual) other than the legal persons referred to in Article 4.5 of the Directive,

(b) is a person within the charge to corporation tax or within the charge to a tax in a Member State of the European Communities other than the State which corresponds to corporation tax in the State, or

(c) is an undertaking for collective investment in transferable securities (in this Chapter referred to as a 'UCITS') recognised as such under the UCITS Directive.

(3)(a) A residual entity shall be entitled to elect for the purposes of this Chapter to be treated in the same manner as a UCITS recognised as such under the UCITS Directive is treated (in this Chapter referred to as a 'deemed UCITS').

(b) Where this election is exercised a reference in this Chapter to a UCITS recognised as such under the UCITS Directive includes a reference to a residual entity which has elected to be treated in the same manner as such a UCITS.

(c) An election under this subsection shall not be valid unless the person or undertaking concerned presents a certificate issued to it by the competent authority of the Member State in which it is resident for tax purposes to the person making an interest payment to it, or securing an interest payment for it, certifying that the election provided for by this subsection has been made by the person or undertaking named on the certificate.

(d) As respects a person or undertaking to which this subsection applies who is resident in the State for tax purposes, the Revenue Commissioners shall make regulations –

(i) prescribing the form in which the election provided for by this subsection is to be made,

(ii) providing for the issue of a certificate to a person or undertaking exercising the election provided for by this subsection,

(iii) prescribing the details to be included on any such certificate,

(iv) requiring a residual entity making such an election to provide them with such information as respects its constitution, legal status, ownership, investments, income, and customers as may be set out in such regulations, and

(v) providing for such incidental matters as may be necessary for the purposes of the preceding provisions of this paragraph.

Interest payment.

898E.-(1) Subject to section 898K, in this Chapter ‘interest payment’ means -

(a) any payment of interest of money, whether yearly or otherwise, including any bonus or interest payable under an instalment savings scheme (within the meaning of section 53 of the Finance Act 1970) and any accumulated interest payable in respect of any savings certificate referred to in section 42;

(b) any dividend or other distribution made in respect of shares in a building society;

(c) any dividend or other distribution made in respect of shares in a credit union;

(d) the excess of any amount received in respect of the redemption of a security, a unit of a security or a strip of a security over the amount paid for the security, unit or strip on issue;

(e) any prize attaching to a security, including a prize in respect of a prize bond issued under section 22 of the Finance (Miscellaneous Provisions) Act 1956;

(f) any amount realised on the sale, refund or redemption of a security, unit of a security, or a strip of a security, which is referable to accrued or capitalised interest, whether or not any such accrued or capitalised interest is separately identified;

(g) subject to subsections (2), (5) and (6), income distributed by–

(i) a UCITS authorised in accordance with the UCITS Directive,

(ii) a deemed UCITS, or

(iii) an undertaking for collective investment established in a territory which is not a Member State of the European Community,

which income derives from an interest payment within the meaning of any of the preceding paragraphs of this subsection and which income is received by any of these undertakings either directly or indirectly from a residual entity;

(h) subject to subsections (2) to (6), income realised on the sale, refund or redemption of shares or units in –

(i) a UCITS authorised in accordance with the UCITS Directive,

(ii) a deemed UCITS, or

(iii) an undertaking for collective investment established in a territory which is not a Member State of the European Community.

(2) Where a paying agent has no information with which to establish the proportion of any income referred to in paragraphs (g) and (h) of subsection (1) which is income derived from an interest payment that paragraphs (a) to (f) of

that subsection relates, then the paying agent is to treat the full amount of any such income as an ‘interest payment’ within the meaning of this section.

(3) (a) Income referred to in paragraph (h) of subsection (1) is only to be regarded as an interest payment where the UCITS, deemed UCITS or undertaking concerned has invested directly, or by way of the acquisition of shares or units in another such UCITS, deemed UCITS or undertaking, more than 40 per cent of its assets in investments which produce or have the potential to produce interest or other income such as is referred to in paragraphs (a) to (f) of subsection (1); but where a paying agent has no information with which to establish the percentage of such assets so invested, then for the purposes of this Chapter more than 40 per cent of such assets are to be treated as so invested.

(b) As and from 1 January 2011, paragraph (a) is to apply with the substitution of ‘25 per cent’ for ‘40 per cent’ in both places in which it occurs.

(4) Where a paying agent is unable to determine the amount of income realised by a beneficial owner from the sale, refund or redemption of any shares or units referred to in paragraph (h) of subsection (1), then the full proceeds from the sale, refund of redemption of the shares or units is to be treated as the amount of income realised by the beneficial owner for the purposes of that paragraph.

(5) Income referred to in paragraphs (g) and (h) of subsection (1) is not to be regarded as an interest payment in

the case of such income from a UCITS (being an undertaking for collective investment in transferable securities within the meaning of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 1989 (S. I. No. 78 of 1989)) or a deemed UCITS (being a person resident in the State) where the UCITS or deemed UCITS investment in assets referred to in paragraphs (a) to (e) of subsection (1) do not exceed 15 per cent of its total assets.

(6) Income referred to in paragraphs (g) and (h) of subsection (1) is not to be regarded as an interest payment in the case of income from a UCITS authorised in accordance with the UCITS Directive or a deemed UCITS established in another Member State where the Member State concerned has exercised the option in paragraph 6 of Article 6 of the Directive to derogate from subparagraphs (c) and (d) of paragraph 1 of that Article.

(7)(a) An interest payment to a residual entity which has not elected to be treated as a UCITS in accordance with section 898D(3) shall, at the time the interest payment is received by the residual entity, be treated for the purposes of this Chapter as an interest payment (in this Chapter referred to as a 'deemed interest payment') made by the residual entity at that time.

(b) This subsection shall not apply to –

(i) a residual entity resident in the State where the residual entity's investment in assets referred to in subsection (1) does not exceed 15 per cent of the total investments of the residual entity, and

(ii) a residual entity established in another Member State where the Member State concerned has exercised the option in paragraph 6 of Article 6 of the Directive to derogate from paragraph 4 of that Article.

(8) For the purposes of this Chapter –

(a) the percentages referred to in subsections (3), (5) and (7)(b) are to be determined by reference to the most recent investment policy of the person or undertaking concerned as laid down in the instrument of incorporation of the person or the rules of the undertaking,

(b) in the absence of the information referred to in paragraph (a) or where a paying agent is in possession of information to suggest that the investment policy is not being implemented, the percentages are to be determined by the actual composition of the assets of the undertaking or the person.

(9) For the purposes of this Chapter any amount credited as interest is to be treated as a payment of interest, and references in this Chapter to interest being paid are to be construed accordingly.

(10) For the purposes of this Chapter any reference in this Chapter to the amount of an interest payment in a case where the interest payment is subject to deduction of tax is to be

construed as a reference to the amount which would be the amount of that payment if no tax were to be deducted from that payment.

(11) For the purposes of this Chapter, penalty charges for the late payment of any interest or other payment referred to in paragraphs (a) to (f) of subsection (1) are not to be regarded as an 'interest payment' within the meaning of that subsection.

Obligations of paying agents where contractual relations entered into before 1 January 2004.

898F.-(1) This section applies for the purposes of enabling a paying agent to establish the identity and residence of an individual to whom the agent may make an interest payment or for whom the agent may secure an interest payment where the agent entered into contractual relations with the individual before 1 January 2004.

(2) A paying agent shall as respects contractual relations entered into before 1 January 2004 between the paying agent and an individual establish–

(a) the identity of each such individual consisting of his or her name and address in accordance with the procedure set out in subsection (3), and

(b) the residence of each such individual in accordance with the procedure set out in subsection (4).

(3) A paying agent shall establish the name and address of an individual using all relevant information at its disposal, in particular information it acquires by virtue of section 32 of the Criminal Justice Act 1994.

(4) A paying agent shall establish the residence of an individual using all relevant information at its disposal, in particular information it acquires by virtue of section 32 of the Criminal Justice Act 1994.

(5) A paying agent who establishes the identity and residence of an individual in accordance with this section shall retain or, in a case where the relevant documentation is held by another person, have access to –

(a) a copy of all materials used to identify the individual,

(b) a copy of all materials used to establish the residence of the individual, and

(c) the original documents or copies admissible in legal proceedings relating to the making of any interest payment to or the securing of any interest payment for the individual where the payment is made or secured on or after 1 January 2005,

for a period of at least 5 years after the relationship between the paying agent and the individual has ended.

(6) (a) Where a paying agent has established the identity and residence of an individual in accordance with the procedures set out in this section, the paying agent shall continue to treat that individual as so identified and so resident until such time as it is in possession, or aware, of information which can reasonably be taken to indicate that the individual

has been incorrectly identified or is not so resident or has changed his or her residence.

(b) Where in accordance with paragraph (a) a paying agent becomes aware or has reason to believe that the individual's circumstances have changed or have been incorrectly established, the paying agent shall take all reasonable efforts to establish the individual's correct identity and residence in accordance with the procedures set out in subsection (4) or (5) of section 898G, as appropriate.

(7) Where an individual informs a paying agent that his or her circumstances as established in accordance with the procedure set out in this section have changed, the paying agent shall establish his or her new circumstances in accordance with the procedure set out in subsection (4) or (5) of section 898G, as appropriate.

Obligations of paying agents in other contractual relations entered into.

898G.-(1) In this section 'official identity card', in relation to an individual resident in the State, means an official document issued by the Revenue Commissioners or the Minister for Social and Family Affairs which document contains the individual's name, address and PPS number and includes any other official document which may be specified in regulations made by the Revenue Commissioners.

(2) This section applies for the purposes of enabling a paying agent to establish the identity and residence of an individual to whom the agent may make an interest payment or for whom the agent may secure an interest payment where –

(a) the agent enters into contractual relations with the individual on or after 1 January 2004, or

(b) in the absence of contractual relations, the agent carries out a transaction on behalf of the individual on or after 1 January 2004,

but where, on the basis of documentary proof of identity and residence presented by the individual which is acceptable for the purposes of section 32 of the Criminal Justice Act 1994, the paying agent is satisfied that the individual is resident in the State this section shall not apply to that individual as respects contractual relations entered into or transactions carried out before 1 June 2004, but where the paying agent comes into possession of, or becomes aware of, information which can reasonably be taken to indicate that the individual is not, or may not be, so resident the paying agent shall take all reasonable efforts to determine the individual's correct identity and residence in accordance with the procedures set out in subsections (4) and (5).

(3) A paying agent shall as respects contractual relations entered into, or as respects a transaction carried out in the absence of contractual relations, on or after 1 January 2004 between the paying agent and an individual establish –

(a) the identity of each such individual consisting of his or her-

(i) name,

(ii) address, and

(iii) in a case where the Member State in which the individual is resident for tax purposes allocates a TIN, the individual's TIN,

in accordance with the procedure set out in subsection (4), and

(b) the residence of each such individual in accordance with the procedure set out in subsection (5).

(4)(a) A paying agent shall establish the name, address and, where relevant, the TIN of an individual by reference to the details of the person's name, address and TIN as set out in the person's passport or official identity card as presented by the individual.

(b) If an individual's address does not appear on his or her passport or official identity card the paying agent shall establish the individual's address on the basis of any other documentary proof of identity presented by the individual which is acceptable for the purposes of section 32 of the Criminal Justice Act 1994.

(c) If there is no TIN or if an individual's TIN does not appear on his or her passport, official identity card or any other documentary proof of identity referred to in paragraph (b) as presented by the individual, such as the individual's certificate of residence for tax purposes, the individual's identity as established in accordance with either or both paragraphs (a) and (b) shall be supplemented by the paying agent establishing the individual's date of birth and place of birth by reference to his or her passport or official identity card.

(5) A paying agent shall establish the residence of an individual-

(a) in the case of an individual who presents a passport or official identity card issued by a Member State and who at the time of such presentation claims to be resident in a third country, by reference to a tax residence certificate issued by the competent authority of the third country in which the individual claims to be so resident, and in the absence of such a certificate the individual is to be regarded as resident in the Member State which issued the passport or other official identity card presented,

(b) in any other case, by reference to the address of the individual as set out-

(i) in his or her passport,

(ii) in his or her official identity card, or

(iii) if the paying agent has reason to believe that the person's residence is other than that shown on his or her passport or official identity card, any other documentary proof of identity presented by the individual which is acceptable for the purposes of section 32 of the Criminal Justice Act 1994.

(6) A paying agent who establishes the identity and residence of an individual in accordance with this section shall retain or, in a case where the documentation is held by another person, have access to –

(a) a copy of all materials used to identify the individual,

(b) a copy of all materials used to establish the residence of the individual, and

(c) the original documents or copies admissible in legal proceedings relating to the making of any interest payment to or the securing of any interest payment for the individual made on or after 1 January 2005,

for a period of at least 5 years after the relationship between the paying agent and the individual has ended.

(7) The Revenue Commissioners may make regulations governing the application of this section in a case where contractual relations are entered into, or any other transaction to which this section applies takes place, by postal, telephonic or electronic means. Any such regulations may provide for the use of notarised or certified copies of the documents referred to in this section.

(8) (a) Where a paying agent has established the identity and residence of an individual in accordance with the procedure set out in this section, the paying agent shall continue to treat that individual as so identified and so resident until such time as it is in

possession, or aware, of information which can reasonably be taken to indicate that the individual has been incorrectly identified or is not so resident or has changed his or her residence.

(b) Where in accordance with paragraph (a) a paying agent becomes aware or has reason to believe that the individual's circumstances have changed or have been incorrectly established, the paying agent shall take all reasonable efforts to determine the individual's correct identity and residence in accordance with the procedures set out in this section.

(9) Where an individual informs a paying agent that his or her circumstances as established in accordance with the procedures set out in this section have changed, the paying agent shall establish his or her new circumstances in accordance with the procedure set out in subsection (4) or (5), as appropriate.

Returns of interest payments made to or secured for beneficial owners.

898H.- (1) Every paying agent shall, as respects an interest payment made to, or secured for, the immediate benefit of a beneficial owner on or after 1 January 2005 who is resident in a Member State other than the State make and deliver to the Revenue Commissioners within 3 months of the end of a tax year (being the tax year 2005 and subsequent tax years) a return of all interest payments so made or so secured by that paying agent during that year consisting of-

(a) the details relating to the paying agent set out in subsection (2),

(b) the details relating to each beneficial owner to which an interest payment is so made or so secured as set out in subsection (3), and

(c) the details relating to the total amount of interest payments so made or so secured as set out in subsection (4).

(2) The details relating to the paying agent are –

(a) name,

(b) address (in the case of a company, the address of the company's registered office, if different), and

(c) tax reference number and for this purpose 'tax reference number' has the meaning assigned to it by section 885 in relation to a specified person within the meaning of that section.

(3) The details relating to a beneficial owner are –

(a) in a case where contractual relations were entered into before 1 January 2004 –

(i) name,

(ii) address, and

(iii) residence (being the individual's country of residence), as established in accordance with the procedure set out in section 898F; and

(b) in a case where contractual relations were entered into on or after 1 January 2004 or where there are no contractual relations –

(i) name,

(ii) address,

(iii) residence (being the individual's country of residence), and

(iv) (A) TIN, or

(B) if there is no TIN or the TIN has not been made available to the paying agent, date and place of birth,

as established in accordance with the procedure set out in section 898G.

(4) The details relating to an interest payment are –

(a) (i) the account number associated with the interest payment, or

(ii) in a case where there is no account number associated with the interest payment, information capable of identifying the asset giving rise to the interest payment,

(b) (i) the total amount of interest payments, or

(ii) in a case where the paying agent is a residual entity, the total amount of deemed interest payments attributable to each beneficial owner who is resident for tax purposes in a Member State other than the State.

(5) Sections 891 and 891A shall not apply to an interest payment which has been included in a return made under this section.

Returns of interest payments to residual entities.

898I.- Every person who in the course of the person's business or profession carried on in the State makes an interest payment to, or secures an interest payment for, a residual entity in a tax year which residual entity is resident in a Member State other than the State, shall make and deliver to the Revenue Commissioners within 3 months of the end of the tax year (being the tax year 2005 and subsequent tax years) a return consisting of-

(a) the name of the residual entity,

(b) the address of the residual entity, and

(c) the total amount of the interest payments so made or so secured by it in the tax year.

Exchange of information between Member States.

898J.- (1) The Revenue Commissioners are authorised to communicate information contained in a return made under section 898H in relation to a beneficial owner of any interest payment to the competent authority of the Member State of residence of the beneficial owner.

(2) The Revenue Commissioners are authorised to communicate information contained in a return made under section 898I in relation to a residual entity to the competent authority of the Member State in which the residual entity is resident.

(3) The Revenue Commissioners are to communicate the information referred to in subsections (1) and (2) to the relevant competent authority within 6 months of the end of the tax year in which an interest payment is made.

Special arrangements for certain securities.

898K.- (1) Subject to subsection (2), section 898D shall not apply to a security (being a security issued under a programme)-

(a) which issued before 1 March 2001, or

(b) where the issuing prospectus was approved before that date by the competent authorities of a Member State (within the meaning of Council Directive 80/390/EEC[1]) or by the responsible authorities of a third country.

(2) Subsection (1) shall cease to apply-

[1] OJ No. L 100, 17.4.1980, p. 1.

(a) in the case of a security issued under a programme promoted by any Government or an entity referred to in the Annex to the Directive, to all securities issued under that programme if on or after 1 March 2002 any further security is issued under that programme, and

(b) in any other case, to any security issued under that programme on or after 1 March 2002.

(3) Subject to subsection (4), this section shall cease to apply as on and from the earlier of –

(a) the end of the transitional period referred to in Article 10 of the Directive, and

(b) 31 December 2010.

(4) If the transitional period referred to in Article 10 of the Directive continues after 31 December 2010, this section shall continue to apply to interest paid in respect of a security referred to in subsection (1) which contains gross-up or early redemption clauses or both.

Certificate for the purposes of Article 13.2 of the Directive.

898L.- (1) Where an individual resident in the State for tax purposes makes an application to the Revenue Commissioners containing such information in relation to –

(a) the individual,

(b) the individual’s contractual relations with a paying agent, and

(c) the identification of the asset which may give rise to an interest payment to be paid or secured by the paying agent,

as the Revenue Commissioners may require, the Revenue Commissioners shall, within 2 months of the receipt of the application, issue a certificate to the applicant containing details of –

(i) the name, address and PPS number of the applicant,

(ii) the name and address of the paying agent identified by the applicant, and

(iii) the account number or other information supplied by the applicant to identify the asset which may give rise to an interest payment to be paid or secured by the paying agent.

(2) A certificate issued in accordance with subsection (1) shall be valid –

(a) for a period of three years from its date of issue, or

(b) until such time as any of the information contained in the certificate becomes inaccurate.

Credit for withholding tax.

898M (1).- Subject to subsections (4) and (5), where tax has been deducted from an interest payment in another

Member State under provisions enacted in that state in accordance with the Directive and the interest payment –

(a) is, or but for an exemption from tax would be, taken into account in computing the total income of an individual for a tax year for the purposes of income tax, or

(b) is not within the charge to income tax for that tax year,

then, the individual may claim –

(i) a credit for the tax deducted from the interest payment against any income tax chargeable on that individual for that year, and the amount of the credit shall be the amount of the tax deducted from the interest payment, and

(ii) where -

(I) the tax deducted exceeds any such income tax chargeable, the excess shall be repaid, or

(II) no such income tax is chargeable, an amount equal to the tax deducted shall be repaid to the individual.

(2) Subject to subsections (3) and (4), where tax has been deducted from an interest payment in another Member State under provisions enacted in that state in accordance with the Directive and the interest payment is, or but for an exemption

from tax would be, taken into account in computing the chargeable gains of an individual for a tax year for the purposes of the Capital Gains Tax Acts, then the individual may claim –

(a) a credit for the tax deducted from the interest payment against the capital gains tax chargeable on that individual for that year, and the amount of the credit shall be the amount of the tax deducted from the interest payment, and

(b) where –

(i) the tax deducted exceeds any such capital gains tax, the excess shall be repaid to the individual, or

(ii) no such capital gains tax is chargeable, an amount equal to the tax deducted shall be repaid to the individual.

(3) The credit referred to in subsection (1) or (2), as the case may be, shall apply only after the application of any other credit to which the individual may be entitled under any arrangement made under section 826 in respect of any tax deducted from the interest payment under provisions other than those referred to in subsection (1) or (2).

(4) The credit or repayment referred to in subsection (1) or (2), as the case may be, shall not be given -

(a) unless the individual claiming the credit or repayment-

(i) makes a claim in that behalf to the Revenue

Commissioners,

(ii) makes a return in the prescribed form of the individual’s total income or chargeable gains, as the case may be, for the tax year in which the interest payment is, or but for an exemption from tax would be, taken into account for the purposes of income tax or capital gains tax, as the case may be, and

(iii) provides to the Revenue Commissioners the statement referred to in subsection (5), and

(b) the Revenue Commissioners are satisfied that tax has been deduced form the interest payment concerned under arrangements enacted in accordance with the Directive.

(5) The statement referred to in subsection (4) is a statement in writing given to the individual by the person who deducted the tax certifying –

(a) the name and address of the person deducting the tax,

(b) the name and address of the beneficial owner of the interest payment,

(c) the date of the interest payment,

(d) the amount of the interest payment, and

(e) the amount of tax deducted from the interest payment.

Miscellaneous and supplemental.

898N.-(1) Where a person is required under this Chapter or under regulations made under this Chapter to-

(a) deliver a return,

(b) give or furnish a certificate,

(c) make a declaration or election,

(d) make an application,

the return, certificate, declaration, election or application is to be made, given or furnished in such form as the Revenue Commissioners may require.

(2) The Revenue Commissioners may nominate any of their officers to perform any acts and discharge any functions authorised by this Chapter or by regulations made under this Chapter to be performed or discharged by the Revenue Commissioners apart from the making of regulations under this Chapter.

(3) Every regulation made under this Chapter shall be laid before Dáil Éireann as soon as may be after it is made and, if a resolution annulling the regulation is passed by Dáil Éireann within the next 21 days on which Dáil Éireann has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done under the regulation.

(4) Regulations made by the Revenue Commissioners

under this Chapter may contain such supplemental and incidental matters as appear to the Revenue Commissioners to be necessary –

(a) to enable persons to fulfil their obligations under this Chapter, or

(b) for the general administration of this Chapter.

Commencement (Chapter 3A).

898O(1).- This Chapter other than sections 898H, 898I, 898J, 898L and 898M shall apply as on and from 1 January 2004.

(2) The provisions of sections 898H, 898I, 898J, 898L and 898M shall come into operation on such day, being a day not earlier than 1 January 2005, as the Minister for Finance may specify by order.”.

GIVEN under my Official Seal,

19 December 2003.

LS

CHARLIE McCREEVY,
Minister for Finance.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These regulations implement Council Directive 2003/48/EC of 3 June 2003 on the taxation of savings income in the form of interest payments.

The regulations directly amend the Taxes Consolidation Act 1997 by inserting a new Chapter – Chapter 3A – into Part 38 (Returns of income and gains, other obligations and returns, and revenue powers) of that Act.

The new Chapter 3A requires paying agents established in Ireland to report to the Revenue Commissioners information about savings income paid to, or secured for, a beneficial owner resident in a Member State of the EU other than the State. The Revenue Commissioners are authorised to pass this information on to the competent authorities of the Member State in which a beneficial owner is resident. Similar reporting requirements are made in respect of certain entities know as ‘residual entities’. Provision is also made for credit for, or refund of, tax deducted where savings income beneficially owned by an Irish resident and arising in Austria, Belgium or Luxembourg is subject to the withholding tax which these countries are authorised to impose under the directive in place of exchange of information.