

S.I. No. 286 of 2005

ORDER

entitled

Taxes Consolidation Act 1997 (sections 898H, 898I, 898J, 898L and 898M)

(Commencement) Order 2005

Made by the Minister for Finance

PRN. A5/0887

Price: €0.76

I, Brian Cowen, Minister for Finance, in exercise of the powers conferred on me by section 898R(3) (inserted by section 90(1) of the Finance Act 2004 (No. 8 of 2004), as amended by section 144(1)(i) of the Finance Act 2005 (No. 5 of 2005)) of the Taxes Consolidation Act 1997 (No. 39 of 1997) hereby order as follows:

1. This Order may be cited as the Taxes Consolidation Act 1997 (sections 898H, 898I, 898J, 898L and 898M) (Commencement) Order 2005.
2. The 1st day of July 2005 is specified as the day on which sections 898H, 898I, 898J, 898L and 898M of the Taxes Consolidation Act 1997 (No. 39 of 1997) come into operation.

GIVEN under my official Seal,

21st June 2005.

Brian Cowen

Minister for Finance

Explanatory Note

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

Commencement Order for sections 898H, 898I, 898J, 898L and 898M of the Taxes Consolidation Act 1997 made under section 898R(3) of the Taxes Consolidation Act 1997 as amended by section 144(1)(i) of the Finance Act 2005

This Order provides for the commencement of sections 898H, 898I, 898J, 898L and 898M of the Taxes Consolidation Act 1997 with effect from 1 July 2005. The order is made under section 898R (3) of the Taxes Consolidation Act 1997 as amended by section 144(1) (i) of the Finance Act 2005.

Sections 898H, 898I, 898J, 898L and 898M relate to the implementation of various aspects of Council Directive 2003/48/EC of 3 June 2003 on the Taxation of Savings Income in the Form of Interest Payments (commonly known as the EU Savings Tax Directive).

Section 90 of the Finance Act 2004 provided for the implementation of the EU Savings Tax Directive into Irish law by inserting a new Chapter 3A into Part 38 of the Taxes Consolidation Act 1997, the text of which is set out in Schedule 4 of the 2004 Finance Act. Sections 898H, 898I, 898J, 898L and 898M are contained within this new Chapter 3A. Section 144 of Finance Act 2005 amended Chapter 3A in certain respects.

Sections 898H and 898I places an obligation on paying agents and others to make certain returns of information to the Revenue Commissioners within three months of the end of a tax year concerning the payment of interest payments made on or after 1 July 2005.

Section 898J authorises the Revenue Commissioners to send the information returned in a return made under section 898H or 898I to the competent authorities of the country of residence of the beneficial owner of the interest payment or, as the case may be, the country of residence of the residual entity.

Section 898L makes provision for a certificate for the purposes of Article 13.2 of the EU Savings Tax Directive. Article 13 of the EU Savings Tax Directive provides exceptions to the withholding tax procedure outlined in the Directive. Member States who are to withhold tax on interest payments made to beneficial owners resident in other Member States are obliged to provide for one or both of two procedures to ensure that beneficial owners may request that no tax be withheld. One being a procedure that ensures that withholding tax shall not be levied where the beneficial owner presents to his paying agent a certificate drawn up in his name by the competent authority of his Member State of residence for tax purposes. This section provides for the issue of such a certificate by the Revenue Commissioners to individuals who are resident in Ireland for tax purposes. The section sets out the details the certificate must contain and the conditions relating to the issuing and validity of the certificate. It also makes provision for certificates where similar articles are contained in the savings tax agreements with the dependent/associated territories (Anguilla, Aruba, British Virgin Islands, Cayman Islands, Guernsey, Isle of Man, Jersey, Montserrat, Netherlands Antilles, Turks & Caicos Islands) or with Andorra, Liechtenstein, Monaco, San Marino and Switzerland.

Section 898M provides for a credit against their Irish income tax or capital gains tax liability of Irish residents for tax withheld under the Directive by certain countries instead of exchanging information. The countries concerned are Austria, Belgium and Luxembourg. If the individual is exempt from tax or has a liability less than the amount deducted, he or she will be refunded the tax withheld or the excess tax withheld. A credit would also be available if a withholding tax is applied under the savings tax agreements with the dependent/associated territories (Anguilla, Aruba, British Virgin Islands, Cayman Islands, Guernsey, Isle of Man, Jersey, Montserrat, Netherlands Antilles, Turks & Caicos Islands) or with Andorra, Liechtenstein, Monaco, San Marino and Switzerland.

Sections 898H, 898I, 898J, 898L and 898M will be commenced with effect from July 1st 2005.