

Interest in respect of wholesale debt instruments

Part 08-03-11

This document should be read in conjunction with section 246A of the Taxes Consolidation Act 1997.

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Introduction

The purpose of this manual is to provide guidance¹ in relation to section 246A of the Taxes Consolidation Act 1997 (“TCA 1997”).

Section 246A TCA 1997 contains the rules governing the tax treatment of interest paid on wholesale debt instruments.

1 Terms

For the purposes of s.246A and this manual the following definitions are relevant -

A “wholesale debt instrument” means a certificate of deposit or commercial paper.

A “certificate of deposit” is an instrument relating to money which has been deposited with the issuer or some other person, being an instrument –

- a. issued by a financial institution,
- b. which recognises an obligation to pay a stated amount, with or without interest, and
- c. the right to receive the stated amount is transferable.

“Commercial paper” means a debt instrument relating to money which –

- a. is issued by a financial institution or a company that is not a financial institution,
- b. which recognises an obligation to pay a stated amount,
- c. carries a right to interest or is issued at a discount or at a premium, and
- d. matures within 2 years.

An “approved denomination” in relation to a wholesale debt instrument means a denomination of not less than –

- a. €500,000
- b. US\$500,000
- c. In the case of an instrument denominated in a currency other than euro or US dollar the equivalent in that other currency of €500,000.

¹ This material was previously included in Appendix III of the DIRT Guidance Note, published in 2006.

2 Non-resident issuer or paying agent

Under s.246A(3)(a) any interest paid in respect of a wholesale debt instrument is not subject to interest withholding tax or Deposit Interest Retention Tax (“DIRT”) if –

1. either the issuing bank or company or the paying agent is non-resident and
2. the instrument is held in a recognised clearing system² and is of an approved denomination.

This is provided that the payment is not made by or through a branch or agency through which the non-resident issuer carries on a trade or business in the State.

3 Resident issuer or paying agent

Under s.246A(3)(b) any interest paid in respect of a wholesale debt instrument is not subject to withholding tax or DIRT if either the issuing bank or company or the paying agent is resident in the State and –

1. the instrument is held in a recognised clearing system and is of an approved denomination, or
2. the person who is beneficially entitled to the interest is resident in the State and their tax reference number has been provided to the issuer, or
3. the person who is the beneficial owner of the instrument and who is beneficially entitled to the interest is not resident in the State and has made a declaration in writing to the issuer in the [form prescribed by Revenue](#).

Under s.246A(4), an issuer or paying agent who makes a payment of interest under 1 or 2 above is required to automatically report tax reference numbers to Revenue along with the details of the interest paid without the deduction of interest withholding tax or DIRT under s.891 TCA 1997³.

Under s.246A(5) where an issuer or paying agent is satisfied that a payment can be made under 2 or 3 above then the issuer or paying agent can continue to make payments free from interest withholding tax or DIRT until such a time as they are in possession or aware of information which can be taken to indicate payments can no longer be made free of interest withholding tax or DIRT.

In accordance with s.246A(7) an issuer or paying agent must keep and retain any declarations under 3 above for the longer of –

1. a period of 6 years after the declaration is made and
2. a period which ends not earlier than 3 years after the latest date on which any payment in respect of which the declaration was made is paid.

² Please refer to Tax and Duty Manual (TDM) [Part 08-03-04](#) for further information

³ Please refer to TDM [Part 38-03-13](#) for further information

4 “Rolling over” commercial paper

For the purposes of s.246A commercial paper must mature within 2 years.

Debt with a life of 2 years, on paper, will not be treated as commercial paper if the intention from the outset is that the debt will be rolled over, on maturation. If the intention on creation was always to construct a longer-term debt, which is documented to look like commercial paper, then the commercial paper treatment will not apply. If the intention was to create a 2 year debt, then the fact that the arrangement was subsequently rolled over will not change its initial character as commercial paper.

When looking at a rollover, factors to consider include:

- Was an alternative source of debt sought? In answering this question, account of paragraph 4.2 of Tax and Duty Manual (TDM) [Part 08-03-06](#) on the operation of interest withholding tax under section 246, notwithstanding that the same LLC may be the party to whom the rolled over commercial paper is issued.
- Are the terms of the subsequent debt the same, in all material respects, as the first?
- Are there any indications from the creation of the first debt instrument, other than the maturity in the loan document, pointing to the expected life of the arrangement?
- Was the commercial paper actually redeemed and reissued?

Debt which in reality was created to have a longer maturity period than 2 years cannot artificially be made to fit within the commercial paper exemption by way of roll over.

Factors relevant to the applicability of the treatment of commercial paper under section 246A, apply equally to the application of section 246 to “yearly interest”.