Isle of Man
Government

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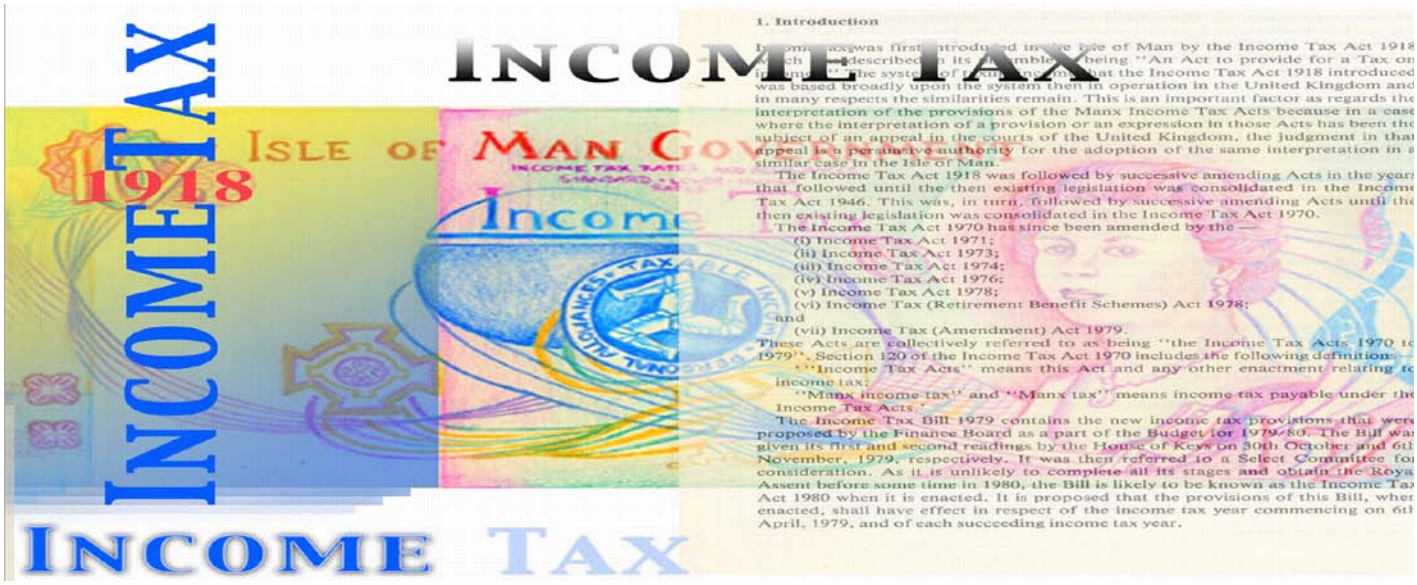


# Application of the European Savings Directive for Isle of Man Paying Agents

## Guidance Note – GN31a

**Effective from 1 July 2011**

The Treasury
- Yn Tashtey
ITD
Income Tax Division

**Issued by the Income Tax Division**
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**PLEASE NOTE:**

This guidance has no binding force and does not affect your right of appeal on points concerning your liability to tax.

The information in this booklet can be provided in large print on request.

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## BACKGROUND

This Guidance Note replaces Guidance Note GN 31 with effect from 1 July 2011.

### A. Introduction

1. The European Savings Directive ("EUSD") came into force in 2005 and provides for automatic exchange of information on savings income. Its ultimate aim is to enable savings income in the form of interest payments made in one participating country to individuals resident in an EU Member State to be subject to effective taxation in accordance with the laws of that Member State.

2. Although the Isle of Man is not part of the European Union, it agreed to introduce measures equivalent to the EUSD with effect from 1 July 2005.

3. For a transitional period, the EUSD allows either exchange of information or the deduction of tax from interest payments (a withholding tax or, as it is called in the Isle of Man, retention tax).

4. The Isle of Man implemented the EUSD by entering into bilateral agreements with all EU member States ("the Agreements").

5. Between 1 July 2005 and 30 June 2011 the Isle of Man's measures equivalent to the EUSD allow for either exchange of information or for retention tax to be deducted.

6. The Isle of Man has, in accordance with the Agreements, elected to apply the automatic exchange of information provisions, in the manner provided for in Chapter II of the EUSD, from 1 July 2011. This means that the retention tax option will cease to be available in the Isle of Man from 1 July 2011. Guidance on the operation of the Island's measures equivalent to the EUSD up to 30 June 2011 can be found in GN 31. The following guidance only applies from 1 July 2011.

### B. What is the purpose of the Guidance Notes?

7. This guidance is intended simply to offer practical assistance to those who are subject to the Agreements. The guidance is not a legal document and does not replace the need to obtain proper legal advice. The notes are intended to help the reader answer for themselves questions such as whether they are a paying agent (see section F for further guidance), whether they are a person to whom interest payments are made (i.e. a beneficial owner, see section G for further guidance), and whether the interest payments made or received must be reported.

8. Primarily, the Guidance Notes are aimed at those who will be considered paying agents within the Isle of Man and will have responsibility for reporting information regarding interest payments made to beneficial owners resident in an EU Member State.

9. The Guidance Notes should have relevance for banks, registrars, custodians and other financial institutions that make interest payments, or distributions from certain collective investment schemes, to beneficial owners. They may also be of interest to financial dealers and securities houses which purchase money debts or units in collective investment schemes from beneficial owners, businesses which redeem money debts or units in collective investment schemes held by individuals and stockbrokers and others who act for individuals in the sale of such investments.

   They may also be relevant for those (such as accountants, solicitors or nominee companies) who hold or administer money debts and investments in collective investment schemes on behalf of individuals.

## C. What has the Isle of Man elected to do?

10. The Isle of Man has, in accordance with the Agreements, elected to apply the automatic exchange of information provisions, in the manner provided for in Chapter II of the EUSD, from 1 July 2011. This means that from 1 July 2011 information regarding interest payments made by paying agents established in the Isle of Man to beneficial owners resident in EU Member States must be reported to the Assessor. The Assessor must communicate the information reported to him to the EU Member State of residence of the beneficial owner.

## D. How are the Agreements brought into effect?

11. Model Agreements upon which the bilateral Agreements with each Member State are based were approved by Tynwald on 19 May 2004. The individual bilateral Agreements were signed by the parties and brought into effect by the Income Tax (Retention of Tax and Exchange of Information) Order 2005. The abolition of retention tax and the move to full information exchange was brought into effect by the Income Tax (Exchange of Information) (Temporary Taxation) Order 2010.

# WHO DOES THE SAVINGS DIRECTIVE AFFECT?

## E. How is the identity and residence of a beneficial owner to be established?

12. The identification rules to be applied should mirror the “know your customer” (“KYC”) rules that already are required to be complied with under the Isle of Man’s anti-money laundering legislation (“AML”). Paying agents should therefore be able to cater for the requirements through their existing KYC systems.

13. The Agreements provide for the application of different requirements depending on whether the contractual relations between the paying agent and the individual commenced before, or on and after 1 January 2004. However, in both cases the requirements will not exceed what is already necessary under AML rules. In most cases it should be clear whether contractual relations exist, and if so, when they began. However, there will be occasions when it is less clear. It will be for the

paying agent to exercise reasonable judgement but, as guidance, pre-1 January 2004 contractual relations can be considered to continue to apply after that date where –

- the underlying contractual basis for the pre-1 January 2004 relationship continues;
- the pre-1 January 2004 customer takes advantage of a new product or service from the same paying agent;
- a business is acquired or merged with another business;
- a pre-1 January 2004 relationship is transferred from one group entity to another.

14. For contractual relations entered into before 1 January 2004 a paying agent can establish the identity of the beneficial owner, consisting of his name and address, by using the information already at his disposal and in accordance with the KYC requirements for AML.

15. For contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1 January 2004, the paying agent must establish the identity of the beneficial owner by obtaining his name and address (and as in pre-1 January 2004 contractual relations this can be achieved using information held under existing KYC requirements for AML) and also, if there is one, a tax identification number ("TIN") allocated by the EU Member State of residence for tax purposes. The TIN should be established from the passport or the official identity card presented by the beneficial owner. If the TIN is not mentioned on the passport, on the official identity card or any other documentary proof of identity presented by the beneficial owner, the identity can be supplemented by obtaining their date and place of birth from their passport or official identification card.

16. In practice, what this means is that if the copy of the passport or identity card or other documentary proof of identity that is held for AML purposes includes a TIN, that information will in consequence be available to the paying agent and should be held on file. There will be no need to ask for a TIN if it does not appear on such documents. Instead, the identity should be supplemented by a reference to the person's date and place of birth obtained from the passport, official identity card or other documentary proof of identity which should already be held to meet AML requirements.

17. The place of residence of the beneficial owner is to be established on the basis of minimum standards which will vary according to when relations between the paying agent and the recipient of the interest are entered into. In general, the residence of the beneficial owner will be established by using the information at the disposal of the paying agent arising from the AML requirements with which the paying agent has to comply. Again, as with the establishment of the identity of the beneficial owner, where contractual relations are entered into, or transactions are carried out in the absence of contractual relations, on or after 1 January 2004, residence is expected to be established on the basis of the address mentioned on the passport, on the official identity card or, if necessary, on the basis of any other documentary proof of identity presented by the beneficial owner.

18. For those individuals to whom the "on or after 1 January 2004" rule applies, and who present a passport or official identity card issued by an EU Member State and who declare themselves to be resident in a jurisdiction other than an EU Member State, residence needs to be established by means of a certificate confirming the jurisdiction of tax residence (see paragraph 19 for an indication of what form that certificate can take) which the individual has received or obtained from a competent authority in the jurisdiction concerned. Failing the presentation of such evidence of residence, the EU Member State which issued the passport or official identity document should be considered to be the country of tax residence.

19. The documents which can provide independent confirmation of tax residence and which will be considered sufficient evidence of residence for tax purposes may vary according to the jurisdiction concerned. In general, the official documentation that is presently obtained to give proof of address for AML purposes would be considered sufficient to satisfy the requirements referred to in paragraph 18. There would therefore be no standard certificate. It will be left to the paying agents to exercise judgement as to whether the documentation in their possession is sufficient.

20. When an individual moves during the year, there may be more than one country of residence and address for the same tax period. The relevant country of residence and address is that at the time the interest payment is made.

## PAYING AGENTS

### F. Who is a paying agent?

21. A paying agent is a person who is established in the Isle of Man (i.e. has a place of business, or is resident, in the Isle of Man) who makes interest payments in the course of his business or profession and makes those payments for the immediate benefit of a beneficial owner who is a resident of an EU Member State.

22. Payments made by a professional trustee will not be subject to reporting requirements unless the beneficiary of the trust concerned is absolutely entitled to the savings income (and that beneficiary is a relevant person for the purposes of the Agreements). This would be the case where the trust is an interest in possession trust and the beneficiary has the immediate entitlement to any savings income. Savings income distributed by the trustees of a discretionary trust does not fall within the scope of the Agreements. (Note: trustees or executors who are not acting in a business or professional capacity are not paying agents.)

23. The following are examples of circumstances in which a person would not be a paying agent, although this list is not exhaustive –

- a bank which passively makes a payment, for example, by processing a cheque or arranging for the electronic transfer of funds on behalf of one of its customers, or receives payments credited to a customer's account;
- a person who only makes payments other than interest payments, for example, pension, annuity and rental income payments;
- a person not in business who makes interest payments, for example, on a personal loan, to an individual resident in an EU Member State (i.e. the individual is not borrowing the money for a business purpose);
- a person who does not make interest payments in the course of a business or profession;
- the payments made are not interest payments;
- the person to whom the payments are made is not an individual resident in an EU Member State.

24. A paying agent is someone who makes an interest payment for the immediate benefit of a beneficial owner. This means that, if a payment is made through an intermediary or a number of intermediaries the paying agent will be whoever is the last person who makes that interest payment. A person is not a paying agent, therefore, if the interest payment is made to another person who is a paying agent. The relevant paying agent is always the one that is the "last link in the payment chain" before the individual resident in the EU Member State who is in receipt of an interest payment. Where the last link in the payment chain is outside the Isle of Man, there is no reporting obligation regarding the payment in the Isle of Man. Whether any information is reported will then depend on whether the last link in the payment chain is within the scope of the EU Directive and the supporting agreements with the named third countries and the dependent and associated territories of a Member State.

25. The Agreements state that "Any entity established in a contracting party to which interest is paid or for which interest is secured for the benefit of a beneficial owner shall also be considered a paying agent upon such payment or securing of such payment". However, this provision does not apply to the following entities which are specifically excluded from the definition of paying agent –

    (a) it is a legal person;

    (b) its profits are taxed under the general arrangements for business taxation; or

    (c) it is an UCITS recognised in accordance with Directive 85/611/EEC of the Council or an equivalent undertaking for collective investment established in the Isle of Man.

    All partnerships operating in the Isle of Man are considered to be covered by (b). For the definition of an equivalent undertaking for collective investment, see paragraph 54. Other investment vehicles can be assumed to be covered by either (a) or (b).

26. The Agreements also provide that "An economic operator paying interest to, or securing interest for, such an entity established in the other contracting party which is considered a paying agent [under the above paragraph] shall communicate the name and address of the entity and the total amount of interest paid to, or secured for, the entity to the competent authority of its contracting party of establishment, which will pass this information on to the competent authority of the contracting party where the entity is established". However, the administrative burden that this would impose is considered to be disproportionate to the value of the information to be provided and this therefore will not be a statutory requirement.

## BENEFICIAL OWNERS

### G. Who is a beneficial owner?

27. A savings income payment (hereinafter referred to as an "interest payment" but see section M for a definition of the savings income that is subject to reporting) made by a paying agent established in the Isle of Man to an individual beneficial owner resident in an EU Member State will be subject to information exchange from 1 July 2011.

28. An individual will not be deemed to be the beneficial owner when he or she –

    (a) acts as a paying agent (see paragraphs 21-26);

    (b) acts on behalf of –

    - a legal person;
    - an entity which is taxed on its profits under the general arrangements for business taxation;
    - a UCITS authorised in accordance with Directive 85/611/EEC or an equivalent undertaking for collective investment established in the Isle of Man (see paragraphs 54-68);
    - an entity to which reference is made in Article 7(2) of the Agreements;

    (c) acts on behalf of another individual who is the beneficial owner and discloses to the paying agent the identity of that beneficial owner.

    If a paying agent holds information which gives him reason to believe that the individual he pays interest to does not receive the interest payment for his own benefit, because he is acting on behalf of another individual, the agent should take the same reasonable steps to establish who the beneficial owner of the payment is as would be the practice in complying with AML and terrorist financing requirements.

29. The reporting obligations will not apply to payments made to residents outside the EU, residents of the dependent or associated territories of the Member States, which will include residents of the Bailiwick of Guernsey, the Isle of Man and Jersey and

residents of Switzerland and the other named third countries (Andorra, Liechtenstein, Monaco and San Marino).

30. Where an interest payment is credited to a joint account and where one of the joint account holders is a resident of an EU Member State, the latter will be subject to information reporting. The details of the information reported may be applied on the basis that interest is allocated equally among the members of the joint account. However, alternative arrangements at the discretion of the paying agent may well be appropriate. What should be kept in mind is the extent to which a joint account holder who is resident in an EU Member State has the benefit of the interest payments credited to the account.

31. There may be other such complications. Another example is where an individual receives an interest payment for a period of which part is spent as a resident outside the EU and part is spent as a resident inside the EU. In these circumstances the guidance in paragraph 20 applies.

32. For payments made after 1 July 2011 but which relate to a period commencing before that date, the full amount of interest paid will be subject to information reporting. Payments made prior to this date can be subject to retention tax or information reporting in accordance with the previous guidance. Therefore, individuals may be subject to both provisions for interest payments received during the tax year commencing 6 April 2011.

33. It is consistent with the aims of the Agreements into which the Isle of Man has entered that the information reporting will not apply to interest payments made to –

- a legal person;
- an entity which is taxed under the general arrangements for business taxation;
- a trust (except in the case of an interest in possession trust where a relevant beneficiary has the immediate and absolute entitlement to an interest payment);
- an unincorporated association or society.

34. For the purposes of the implementation of the Agreements domestic partnerships, foreign partnerships and limited partnerships or equivalent entities are considered to be entities which are taxed under the general arrangements for business taxation.

35. Another guiding principle in the application of the Agreements will be the wish to avoid unnecessary bureaucracy and cost to those who are required to implement the Agreements.

36. These Guidance Notes will not cover every case. In the light of experience, further guidance may be provided but it is important to again emphasise that this guidance will not take the form of legal advice.

## REPORTING

### H. What information must be reported?

37. The paying agent must communicate the following information to the Assessor –

    (a) the identity and residence of the beneficial owner established in accordance with Article 6 of the Agreements (see paragraphs 12-20);

    (b) the name and address of the paying agent;

    (c) the account number of the beneficial owner or, where there is none, identification of the debt claim giving rise to the interest payment;

    (d) information concerning the interest payments specified in Article 4(1) of the Agreements. However, the minimum amount of information concerning interest payments to be reported by the paying agent may be restricted to the total amount of interest or income and to the total amount of the proceeds from sale, redemption or refund.

38. The communication of this information to the Assessor should be automatic and should be undertaken electronically in the prescribed format at least once a year within four months following the end of the tax year for all interest payments made during that year. (Note: the prescribed format will be published in the near future and will be set out in a Practice Note.)

39. The information should be reported for each individual beneficial owner. Therefore, when reporting the interest payments for joint accounts, the interest payments should be apportioned to each account holder.

### I. What information will be exchanged?

40. The Assessor must communicate the information reported to him (see paragraph 37) to the competent authority of the EU Member State of residence of the beneficial owner within six months of the end of the relevant tax year.

### J. Are there any transitional arrangements in relation to the tax year ending 5 April 2012?

41. The reporting obligations described in this guidance only apply to interest payments made on or after 1 July 2011. Interest payments made before 1 July 2011 must be dealt with under the previous rules as set out in the Income Tax (Retention of Tax and Exchange of Information) Order 2005 and GN 31.

42. Paying agents will therefore need to transfer to the Assessor any retention tax retained in respect of interest payments made during the period 6 April 2011 to 30 June 2011 inclusive by 5 August 2012. Beneficial owners can opt to voluntarily

authorise a paying agent to report information prior to 1 July 2011 (see GN 31 paragraph 37).

## SAVINGS INCOME

### K. What savings income is not covered by the reporting requirements?

43. In general, a payment is not an interest payment if –

- it is not interest, or is not derived from interest;
- it is not related to a debt claim;
- the debt claim does not arise from a transaction for the lending of money;
- it is lottery, gaming or betting winnings.

44. More specifically, the following are not regarded as interest payments –

- dividends paid on the ordinary or preference shares of companies;
- any other distributions of business or company profits (including distributions made by partnerships and distributions of profits made in respect of debt claims which also have a right to a share of a company's profits);
- distributions out of the assets of a trust other than in the case of an interest in possession trust where a relevant beneficiary has the immediate and absolute entitlement to interest payments as defined for the purposes of the Agreements;
- employment income and occupational pensions;
- personal pensions, annuities, and payouts from insurance policies;
- returns deriving from derivatives contracts;
- manufactured payments arising during stock loans or under sales and repurchase agreements (including where the underlying security is a money debt);
- trading profits (including the trading profits of a company or partnership);
- rents;
- capital gains (including, without limitation, equalisation payments);
- distributions and other payments derived from investment funds which are not UCITS equivalent.

45. Most, if not all, structured products are considered to be covered by "returns deriving from derivatives contracts", and therefore structured products generically can be expected to be out of scope for information reporting. However, this may not apply if the marketing/prospectus literature refers specifically to the return as "interest".

46. A distribution of income made by a collective investment fund or the proceeds of sale, refund or redemption of units in a collective investment fund is not an interest payment where its investment in debt claims does not exceed 15% of its assets. See paragraph 52.

47. The sale or redemption proceeds of units in a collective investment fund will not be an interest payment subject to information reporting if the fund has invested 25% or less of its assets in debt claims.

48. Examples of instruments which are not debt claims include –

- ordinary or preference shares in companies;
- insurance policies;
- shares in open ended investment companies and units in unit trusts (but there are separate rules which apply to interest payments arising from investments in collective investment schemes which mean that these are reportable in some circumstances (see paragraphs 54-68));
- 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);
- partnership capital;
- early repayment of loans.

## L. What savings income is covered by the reporting requirements?

49. There are four main categories of savings income that will be treated as interest payments and to which information reporting will apply. Broadly, these are –

- interest paid out on debt claims or credited to accounts;
- interest rolled up and paid out when a debt claim is repaid or sold;
- distributions made by unit trusts and other collective investment funds which have the requisite proportion of their investments in debt claims (see also paragraph 46);
- accumulated income relating to units of a collective investment fund which has invested over 25% of its assets in debt claims when the units are redeemed or sold (see also paragraph 47).

## M. What amount of savings income is subject to the reporting requirements?

50. The information reporting requirements should be applied as follows –

(a) interest payments made or credited to an account, relating to debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and, in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures;

in this case, the amount of the interest payment made or credited should be reported;

(Note: penalty charges for late payment shall not be regarded as interest payments.)

(b) interest accrued or capitalised at the sale, refund or redemption of the debt claims referred to in (a) above;

in this case, the amount of interest or income referred to in this sub-paragraph or the full amount of the proceeds of the sale, redemption or refund should be reported;

(c) income deriving from interest payments directly, distributed by undertakings for collective investment where those undertakings are within scope. (Note: the position regarding these undertakings is dealt with more fully in paragraphs 54-68);

the amount of income referred to in this sub-paragraph should be reported (but see paragraph 52);

(d) income realised upon the sale, refund or redemption of shares or units in undertakings for collective investment, where those undertakings are within scope, if they invest directly or indirectly, via other undertakings for collective investment more than 25% of the assets in debt claims as referred to in (a) above;

in this case, either the amount of interest or income referred to in this sub-paragraph or the full amount of the proceeds from the sale redemption or refund should be reported (but see paragraph 52).

51. For the purposes of sub-paragraphs (a) and (b) in the preceding paragraph, information should be reported on a pro rata basis to the period during which the beneficial owner held the debt claim. If the paying agent is unable to determine the period of holding on the basis of the information made available to him, the paying agent shall treat the beneficial owner as having been in possession of the debt claim for the entire period of its existence unless the latter provides evidence of the date of the acquisition.

52. In connection with sub-paragraphs (c) and (d) above the option is available of excluding any income or proceeds, as applicable, from undertakings for collective investment established in the Isle of Man where the investment and debt claims of the type referred to in (a) above held by such entities does not exceed 15% of their assets. This minimum threshold option will be taken advantage of.

53. Where a payment of interest is made by a paying agent after deduction of withholding tax in another jurisdiction, information should be reported regarding the interest payment net of the withholding tax deducted.

## N. The position of collective investment undertakings

54. When defining a paying agent, the Agreements provide that certain types of entity to which interest is paid for the benefit of the beneficial owner shall be considered the paying agent upon the making of such payment to the beneficial owner. However, this does not apply if the entity is a UCITS or is an equivalent undertaking for collective investment established in the Isle of Man. An issue may then arise as to what is meant by "established in the Isle of Man". It is not intended that "established in the Isle of Man" restricts the exclusion of a collective investment undertaking from being a paying agent to collective investment undertakings formed in the Isle of Man. Collective investment undertakings formed elsewhere that are being "administered" in the Isle of Man would also be covered; that is, the word "established" in the Agreements should, where it refers to an undertaking for collective investment, be read as including "administered".

55. The position on collective investment undertakings established in the Isle of Man is complicated by the fact that the Directive refers to a UCITS which is an undertaking for collective investment in transferable securities authorised in accordance with the UCITS Directive (Council Directive of 20 December 1985 (85/611/EEC) on the Co-ordination of Laws, Regulations and Administrative Provisions Relating to Undertakings for Collective Investment and Transferable Securities). The recitals to the Model Agreements confirm that the Isle of Man has legislation that is equivalent in its effect to Directive 85/611/EEC. The equivalent legislation in the Isle of Man is that governing "recognised" funds and other retail funds that are regulated effectively to the same standard as "recognised" funds.

56. For the purposes of the Agreements it is considered that an undertaking for collective investment is only so regarded if the following features are present –

- the fund is operated by way of business;
- investments in the funds are pooled;
- investors are not involved in its day to day management;
- the fund is open ended (i.e. its capital varies with investments and withdrawals by investors like that of an authorised unit trust or an authorised open ended investment company) not closed ended (i.e. its capital is fixed like that of an investment trust).

57. In determining which collective investment undertakings established in the Isle of Man should be considered within the scope of the Agreements, attention should be first focussed on the equivalent legislation in the Isle of Man and then (if the collective investment undertaking is within that legislation) the focus moves to determining whether the collective investment undertaking would be considered (by the law, regulation or practice of any EU Member State or competent regulatory body in any such Member State) to be outside of the scope of Directive 85/611/EEC. The Agreements will not be applicable to a collective investment undertaking established (as defined in paragraph 54) in the Isle of Man unless the collective investment

undertaking concerned would be regarded as within Directive 85/611/EEC in each and every EU Member state.

58. For the purposes of the Agreements, interest payments shall include –

- income deriving from interest payments directly, distributed by –

  (i) a UCITS authorised in accordance with EC Directive 85/611/EEC of the Council; or
  (ii) an equivalent undertaking for collective investment established in the Isle of Man (see paragraph 54 for the definition of "established"); or
  (iii) entities which qualify for the option under Article 7(3) of the Agreements; or
  (iv) other undertakings for collective investment established outside the territory to which the Treaty establishing the European Community applies by virtue of Article 299 thereof and outside the Isle of Man;

- income realised upon the sale, refund or redemption of shares or units in the following undertakings and entities if they invest directly, or indirectly via other undertakings for collective investment or entities referred to below, more than 25% of their assets in debt claims as defined for the purposes of the Agreements–

  (i) UCITS authorised in accordance with Directive 85/611/EEC; or
  (ii) an equivalent undertaking for collective investment established in the Isle of Man; or
  (iii) entities which qualify for the option under Article 7(3) of the Agreements; or
  (iv) other undertakings for collective investment established outside the territory to which the treaty establishing the European Community applies by virtue of Article 299 thereof and outside the Isle of Man.

However, the option exists of including the income above in the definition of interest only to the extent that such income corresponds to gains directly or indirectly deriving through interest payments within the meaning of paragraphs (1)(a) and (b) of Article 8 of the Agreements. This option is exercised at the discretion of the fund manager.

59. When a paying agent has no information concerning the proportion of the income which derives from interest payments, the total amount of the income shall be considered an interest payment.

60. When a paying agent has no information concerning the percentage of the assets invested in debt claims or in shares or units as defined above, that percentage shall be considered to be above 25%. Where the paying agent cannot determine the amount of income realised by the beneficial owner, the income shall be deemed to correspond to the proceeds of the sale, refund or redemption of the shares or units.

61. In respect of paragraphs 59 and 60, where insufficient information is available to enable judgement to be exercised, it is to be expected that the paying agent in

exercising that judgement will give the greater weight to the interests of the beneficial owner. Thus, if a paying agent has made proper enquiries and there remains an element of doubt as to whether information should be reported, it is reasonable to presume that a liability does not arise.

62. The Isle of Man Authorities will not exercise the option of requiring paying agents to annualise interest and of treating such annualised interest as an interest payment (even if no sale, redemption or refund occurs during that period).

63. In determining whether a fund's investment in debt claims exceeds 15%, or 25% of its total assets, attention should be focused on the fund's investment policy as set down in its rules or constitution unless the actual composition of the fund's total assets is less than 15% or 25%, measured at the time the last debt claim investment was acquired. Cash awaiting investment should be ignored for these purposes.

64. Where a fund operates equalisation arrangements, the capital element paid on the first distribution following a subscription will not be treated as an interest payment, subject to the discretion of the fund management.

65. In the case of an umbrella fund, the 15% and 25% percentages referred to above can be applied to either the fund as a whole or to its constituent sub-funds at the discretion of the fund as long as this is applied consistently year on year.

66. In practice, it is probable that for some collective investment undertakings there will be occasion when the percentages referred to above fluctuate one side or the other of the 15% and 25% thresholds. This may be dealt with by focusing on what can be considered the normal course of events. Thus, if at one point in time, the percentages suggest the application of the information reporting requirements but this is not the norm, and the investment policy set down in the fund's rules or constitution is such that the information reporting requirements would not ordinarily apply, it will be acceptable for the paying agent to decide not to report. A similar approach applies to the sale of units of a collective investment scheme.

67. In computing the 15% and 25% thresholds, provision can also be made for set off of borrowing against debt claims.

68. Some general points regarding funds –

- it will be for the paying agent to determine whether or not interest purchased should be deducted;
- interest does not include discounts arising in the secondary markets as opposed to original issue discount;
- limited partnerships are not included in the definition of undertakings for collective investment;
- the return on capital introduced by way of loan is not regarded as interest.

## CONCLUSION

69. This guidance does not cover every aspect of the arrangements entered into through the Agreements. In some cases, this is because the Agreements are considered to be sufficiently clear in themselves. In other cases, it is because it is considered any issues arising would need to be dealt with on a case-by-case basis.