

# Guidance note for TMA section 18 return 2008/09

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### 1. Glossary

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AIF	Authorised Investments Funds – financial products including AUTs, OEICs and any others that may be covered by the Authorised Investment Funds (Tax) Regulations 2006 SI 2006/964 as amended.
AUT	Authorised Unit Trust – a financial product for which a form R105(AUT) is sometimes used to show the beneficial recipient of the interest is NOR and eligible to receive interest gross (i.e. without deduction of tax) (see paragraph 4.9).
OEIC	Open Ended Investment Company – a financial product for which a form R105(OEIC) is sometimes used to show that the beneficial recipient of the interest is NOR and eligible to receive interest gross (i.e. without deduction of tax) (see paragraph 4.9).
ESD	European Savings Directive – EU agreement (2003/48/EC) which is transposed into UK law as the Reporting of Savings Income Information Regulations 2003 (SI 2003/3297)
FR	Fully Reportable – countries whose residents must be included in your report when they receive interest (see paragraph 4.2).
LRT	Lower rate tax
NINOs	National Insurance Numbers
NOR	Not Ordinarily Resident in the UK.
PIBS	Permanent Interest Bearing Shares – interest on these may be reported using the section 17 rules rather than section 18 ones (see paragraph 3.1).
PT	Prescribed Territories. The EU version of FR. SIR returns under ESD must be made of interest paid to persons living in prescribed territories (see SIR guidance notes and HMRC website for a list)
R85	An HMRC form signed by an individual who does not ordinarily pay tax in the UK. Their interest is paid to them gross of LRT (see paragraph 5.3).
R105	An HMRC form in which a person declares that they are to be NOR (see AIF above and paragraph 4.9).
SIR	Savings Income Reporting – ESD returns made under the Reporting of Savings Income Information Regulations 2003 (SI 2003/3297) (see section 7).

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TMA Taxes Management Act 1970 – the primary law covering the main themes and powers for Income Tax and Corporation Tax.

**Note:** We use phrases such as “you need not report here” or “do not report here” in several places in these notes. In each place it means, “You need not report on a return made under section 18 TMA 1970”. Information you do not need to report under section 18 you **might** need to report on another return, e.g. under section 17 TMA 1970 or on the SIR. The phrase does **not** mean that just because the information is not reportable on your section 18 return you do not need to report it to HMRC at all.

### LATEST INFORMATION

**We try and provide you with the most up-to-date information. It is possible, however, that we may need to make changes at short notice or add further help to the website after this guidance note has been published. Where we do make changes after publication we will bring them to your attention in the notice we send you to tell you that you must make a return.**

### 2. Section 18 Return: Guidance Notes for 2008/09

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#### 2.1 Reporting for previous years and other types of reports

These guidance notes only relate to reporting under section 18 for the year 2008/09. Guidance on reporting for 2007/08 is on our website (see paragraph 3.6).

The guidance note for reporting under the SIR is on our website at: [www.hmrc.gov.uk/esd-guidance/sir-guidance.pdf](http://www.hmrc.gov.uk/esd-guidance/sir-guidance.pdf)

#### 2.2 Law regarding returns of interest paid

The primary law under which you must make a return is section 18 (s18) of the Taxes Management Act 1970 (TMA). This section allows us to make regulations to lay out further how the returns system will operate. These are the Income Tax (Interest Payments) (Information Powers) Regulations 1992 (SI 1992/15, as amended). The definitions of Alternative Financial Arrangements (such as accounts compatible with Sharia law) are in sections 46-57 of the Finance Act 2005. Paragraph 2 of schedule 2 to that act lays down that alternative finance returns and profit share returns are to be treated in the same way as interest for section 18 TMA. Although not a return under the law, to make reading these notes easier we refer to the information reported under section 18 as a return.

These notes are based on our view of what the law means. They set out how we apply the section 18 rules. They are to help those who get notices under section 18 to send in returns that are accurate and on time.

#### 2.3 Enquiries, Help visits and Return Flowchart

If you have any enquiries please see the contact information on our website (see paragraph 3.6).

Financial Institutions, in particular those who have not made s18 returns before, can ask for a help visit by contacting us at the address shown in paragraph 3.5.

The flowchart at Appendix 1 shows when a return is required and what to report in it.

#### 2.4 Background

People receive interest on their investments and savings. They may declare such interest on their tax returns and pay any tax due. Section 18 of the TMA allows HMRC to require returns of interest paid or credited so that we can compare it with that declared on tax returns. The information we receive on individuals in some countries outside the UK - the Fully Reportable (FR) countries - is exchanged with the Tax Authorities in those countries. They send us details of UK resident people who receive interest in their country. We make such exchanges using secure methods and procedures.

We will tell you when we want you to make a return by sending you a notice. These can go to any person who pays interest to, or receives interest on behalf of, reportable individuals (see paragraph 4.2). We generally send out the main batch of notices at the end of February each year (see paragraph 3.3). The returns are normally required back with us by the end of June (see paragraph 3.4). There is a penalty for failing to make a return on time (see paragraph 3.9). The notice requires you to provide information about interest you have paid or received and the individuals to whom you have paid it or on whose behalf you have received it over the tax year specified in the notice, e.g. 6 April 2008 - 5 April 2009. You must report the information in one of the formats specified in the notice. You have an obligation under the Data Protection Act 1998 (see paragraph 8.1) to protect the information while it is on the way to us.

Once you make a report of European savings income we include in all notices to report under section 18 a reminder to make your SIR return (see section 7) .

### 3. Returns

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#### 3.1 Who needs to make a return?

Everyone who receives a section 18 notice must make a return, regardless of the nature of their business. This includes UK branches of non-resident businesses. In these cases only the interest paid or received by the UK branch need be put on the return, not any interest paid or received by parts of the business that are not resident in the UK.

This may mean that one interest payment could be reported by more than one person, for example if a broker and their "clearer" both receive notices. If you receive a notice and know that someone else will be reporting entirely the same information, please contact Chris Sexton at the address in paragraph 3.5. You do not have to make enquiries to find out if anyone may be reporting the same interest payments as you.

The notice includes instructions on where to send your completed return.

Some people who get a notice may also be sent a notice to make a return under section 17 of the TMA. The same interest should not be reported under both sections. In the following cases information can be reported on the section 17 return (using the section 17 format and guidance) rather than on the section 18 one:

- **Building societies** reporting interest on Permanent Interest Bearing Shares (PIBS).
- **Local Authorities** reporting interest paid or credited to individuals.
- **National Savings & Investments** should strictly report interest paid on some of their products under section 18 but, if they wish, they can report the information on their section 17 return.

The section 17 format and guidance note are on our website (see paragraph 3.6).

#### 3.2 Delegation of the responsibility to make a return

If you receive a notice to make a return, you can arrange for a third party to complete it on your behalf. **You**, however, remain responsible for the return and its accuracy.

Strictly, a notice should be served on the trustees of each AIF. To make things simpler, however, we issue notices to fund managers asking for information from all the AIFs under their management. The manager who receives the notice then becomes legally responsible for making the return.

#### 3.3 When are notices issued?

We normally issue notices in the February before the end of the tax year that they relate to. For example, the notices covering the tax year from 6 April 2005 to 5 April 2006 were sent out at the end of February 2006. We can, however, issue notices at any time up to three years after the end of the tax year. If you think that you may still receive a notice to report you should retain your records for three years from the end of the tax year.

#### 3.4 What is the time limit for making returns?

Each return will normally cover a whole tax year. The last date for making a return will be in the notice. It is normally the later of **30 June** following the end of the tax year and 4 months after the date the notice was issued.

For example, we issued notices in February 2006 for the tax year 2005/06. They specified that returns be in by 30 June 2006. If a notice was issued on 31 March 2006 it would normally say, "Send us your return by 31 July 2006." See paragraph 7.2 for an exception to these time limits for combined section 18 and ESD returns. You may send in your return before it is due. You can avoid the penalty in paragraph 3.9 by making your return on time.

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### 3.5 Contact with HMRC

You can make your returns on magnetic media (tape or disk) or paper. You must send in your return using the format we specify on our website (see paragraph 3.6)

You can also get a copy from:

Audit Unit (Information Returns) HM Revenue and Customs St Johns House Merton Road LIVERPOOL L75 1BB	Dorinda Jack (Technical Queries) HM Revenue and Customs IMS Security Langley House Benton Park View NEWCASTLE UPON TYNE NE98 1ZZ	Centre for Research & Intelligence (CRI) HM Revenue and Customs Data Capture Unit Ground Floor Ty Glas Road Llanishen CARDIFF CF14 5ZG Tel: <b>0292 032 7373</b>
Tel: <b>0151 472 6136 or 6129</b> Fax: <b>0151 472 6124</b>	Tel: <b>0191 225 7016</b> email via HMRC website	

### 3.6 Link to the HMRC website

All the help, guidance notes and forms you will need to make a prompt and timely return are on our website at:

[www.hmrc.gov.uk/esd-guidance/s17-s18-si-reporting.htm](http://www.hmrc.gov.uk/esd-guidance/s17-s18-si-reporting.htm)

### 3.7 Format of your return

We accept data on ½" magnetic tape, 3.5" floppy disks, CD-ROM or DVD. You may make your return on a single disk or, if you wish, you can send in a separate disk for each reportable country. The notice includes instructions on where to send your completed return.

We also allow returns to be made on paper but the fact that they are difficult to encrypt is, of course, particularly inconvenient for those who only have a few clients to report on. For those who want to use it, we have produced a spreadsheet, which you can get from our website. The completed spreadsheet can be encrypted, copied to a disk or tape and posted to us at the address in the notice. See section 8 for further details of the spreadsheet.

If you choose to make your section 18 return on paper, you must use the combined Savings Income and section 18 form. You must ring our Orderline on 0172 620 1037 and ask for the forms. The return must be on the forms we send you; **we cannot accept photocopies**. The instructions on how to complete the forms are on our website. The notice includes instructions on where to send your completed return. A copy of the form, and the completion instructions are on our website (see paragraph 3.6).

The information that you must report under section 18 has not changed greatly from tax year 2005/06. The paper returns and the spreadsheet are structured so you can combine your reports for section 18 and for ESD onto the same return. The combined form includes some items just for section 18, some just for ESD and some to be used in both sorts of return. The instructions for completing the forms will tell you which boxes to complete when making section 18 returns.

### 3.8 Data Protection Act

Section 18 TMA requires you to provide the information specified in the notice we send you. This information is, therefore, exempt from the non-disclosure provisions of the Data Protection Act 1998 by virtue of section 35(1) of that Act. This exemption, however, only applies to the information specified in the notice we send you. To be certain of fulfilling your Data Protection Act responsibilities, only report information that we have specified in the notice (see paragraph 4.2).

The detail of section 35(1) means that you must still protect the information in your return while it is in transit to us. We have added a section at the end of this note that details the provisions we have made for encrypting your return (see section 8)

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### **3.9 Penalties**

If you are given a notice to make a return, but fail to do so by the due date, you will be liable to an initial penalty of up to £300. If you still do not make a return after we impose an initial penalty, we can impose a further penalty of up to £60 for each day that the return is outstanding.

To avoid a penalty of up to £3,000, do not make a fraudulently or negligently incorrect return.

**4. What is reportable?**

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**4.1 Who to include in your return**

You must only report interest that you have:

- paid to; or,
- received on behalf of

reportable individuals, including partnerships containing such individuals (see paragraphs 5.6 and 5.7).

You must report payments on Sharia compatible accounts and other types of alternative financial arrangements in your return as if these amounts were interest (see paragraph 2.2).

If the payee or recipient is not an individual or not reportable, do not include their interest in your return. For example, if interest is paid to a nominee company acting for an individual, do not include it in your return. Similarly, do not report payments by AIFs to a reputable intermediary.

**But;**

<b>where ...</b>	<b>... see paragraph ...</b>
interest is paid by AIFs in circumstances where they hold a NOR Declaration (form R105);	4.9
an individual has directed you to pay their interest to a third party;	5.1
you hold an R85 form for the recipient of the interest;	5.3

Some examples of who should make the report are in the Custodian flowcharts on our website (see paragraph 3.6).

**4.2 Reportable individuals**

A reportable individual is one for whom you have a residential address in the UK or in a 'Fully Reportable' (FR) country. If you only have one address for an individual then you may use that to decide whether they are reportable. The list of FR countries for 2008/09 is on our website (see paragraph 3.6).

**We give 6 months notice of any change to the list of FR countries.**

From 6 April 2006 countries that have become Prescribed Territories for ESD Reporting (see section 7 of this note) are no longer FR countries for section 18 reporting.

Previously, there was a concession under which some people reported all the interest they paid or received for all their investors, irrespective of whether or not the investors were reportable individuals. This concession was ended on 6 April 2005. Only report in your return the interest and investors you should report on. Do not report everything, even if you think it may be easier for you (see paragraph 3.8).

**4.3 How to decide who are individuals**

To make reporting simpler, if the account holder or recipient of the interest is named in your books as an "entity" rather than an individual you do not have to report their interest. For example,

<b>if the books show ...</b>	<b>... then ...</b>
G&G Investment Club	no report is required, as this does not appear to be an individual. You are not expected to look through your records to find out if this is, in fact, an individual or individuals.

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Green and Griffin	a report is required, as this appears to be 2 individuals (see paragraphs 5.6 and 5.7).
Green (Treasurer)	a report is required, as this also appears to be an individual.

### 4.4 What interest must you include on your return?

You must report all interest paid to, or received by, reportable individuals except that shown in paragraph 4.5. Include in your return:

- interest on all investments paid or received, in the UK, other than passively (see 4.5), to or for any reportable individual;
- foreign interest, i.e. interest received from a non-UK source;
- Quoted Eurobond interest (The definition of a quoted Eurobond is that it is issued by a company, carries a right to interest and is listed on a recognised Stock Exchange);
- Building Society PIBS (but see paragraph 3.1);
- UK Gilt interest (but not accrued interest that is reflected in the sale/purchase price);
- interest distributions by UK AIFs, even if they are not paid as interest but are used to acquire more units or increase the value of existing units; and,
- interest paid on bearer instruments.

### 4.5 What interest should not be reported in the return?

Do not report interest:

- only collected passively (for example, where a bank does no more than clear a cheque for foreign interest, or arranges for such a cheque to be cleared, having taken no steps to secure payment of those monies);
- that is not readily identifiable as interest. For example, do not report where you:
  - actively collect a payment but it may or may not be interest; or
  - receive a **mixture** of credits, some of which are, or may be, interest but you cannot ascertain the amount of any interest without further enquiry.
- on ISAs or PEPs (but see paragraph 4.6);
- paid to, or received on behalf of, the Trustees of a pension scheme, including any SIPP or SSAS that has been approved or registered by us;
- payable to approved or registered pension schemes including Individual Pension Accounts;
- paid by you on cash deposits at your branches outside the UK **unless**:
  - that interest is remitted to the UK;
  - you receive it (other than passively); and,
  - you are acting for a reportable individual(see also paragraph 5.1 regarding interest directed elsewhere);
- paid on investments, other than cash deposits held at your branches outside the UK, unless paid, or received (other than passively), by you in the UK for a reportable individual;
- that has accrued but which has not yet been paid (see paragraph 4.10.7);
- on SAYE/Share Save Schemes

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- on National Savings & Investments Certificates and Childrens Bonds If, however, you receive interest on behalf of others and cannot distinguish this type of interest it can be reported;
- on Child Trust Funds;
- as redemption proceeds of deeply discounted securities; (These were called 'relevant discounted securities' under FA 1996 but are called 'deeply' under ITTOIA 2005; the product is the same.)
- as foreign dividends (not including foreign interest) except where the payer has treated the distribution as interest. Where the financial institution cannot immediately identify if the payment or receipt is interest, then the distribution is not reportable, under the terms of the second bullet above;
- as repo interest; or
- as manufactured payments.

### 4.6 Invalid ISAs and PEPs

You should report interest paid or credited to:

- an invalid ISA;
- an invalid PEP; or,
- a repaired ISA up to the date of repair.

If the ISA is repaired or the ISA/PEP is found to be invalid before you send us the return, show the correct position on the return. If you have already sent us the return do not send us a further return but keep details for production to us at the audit.

### 4.7 Approved Pension Schemes (now Registered Schemes)

We (HMRC) used to approve pension schemes that met certain criteria and issue them with an approval letter. Where this letter was provided to an interest payer, that payer did not have to report the pension scheme's interest on their section 18 return. This system changed on 6 April 2006. We now 'register' pension schemes not 'approve' them. Almost all schemes that we had approved up to the change date transferred directly to the register on that date. Where a pension scheme opens an account after April 2006 it must download details of its registration and give these to the interest payer. Interest payers can rely on previously lodged approval letters as proof of registration for existing accounts / schemes unless they have evidence that the scheme is not registered.

### 4.8 How must I report the information on the return?

Your return must give the information below either for:

- each transaction; or
- the aggregate of the transactions for a particular account or security for a particular individual over the whole tax year.

For example, if a security has paid interest four times in a year to an individual, you may either report the four transactions or a single total figure. Please report consistently over your whole return.

Always include in your return:

- the name(s) and address(es) of the individual(s) to whom the interest has been paid or on whose behalf it has been received. There are different requirements:
  - where a form R85 is held (see paragraph 5.3)

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- where the interest is paid gross by an AIF by virtue of an NOR declaration (form R105) (see paragraph 4.9)
- the amount of interest paid or received before deduction of any tax. If you deduct an overseas withholding tax, you may report either the amount after that deduction or the gross amount before deduction. Please report consistently;
- the UK tax deducted (if any);
- an indicator to identify a joint account or holding and, if known, the number of parties to the account or holding;
- an identification reference number for the account or security. For example, the ISIN, SEDOL or CUSIP number. Where the security does not have a unique reference number you must use the 'universal dummy' – QQ999999 – in your return. This dummy may only be used where there is no number available on a recognised numbering system. The auditor will check when you use the dummy. Where an account number is reported, the branch must also be reported if it is necessary to identify the account completely;
- an indicator where interest is paid and reported in a currency other than sterling, together with the SWIFT standard code for that foreign currency.

### 4.9 R105 cases: savers who are Not Ordinarily Resident in the UK

The R105 form comes in several variants including four versions each of R105(AUT) and R105(OEIC). This paragraph covers all of them but for ease of reading we just refer to R105.

R105s are declarations by individual savers (including unit-holders or shareholders) that they are Not Ordinarily Resident in the UK (NOR). These declarations are given to interest payers and provide them with the authority to pay interest without deducting tax. The name(s) and principal residential address(es) of the "individual(s) beneficially entitled to the interest" must be given on the form. Changes in the 2003 Finance Act to the arrangements for paying interest distributions to overseas investors mean you are only likely to require NOR declarations in a few circumstances. The commonest of these will be for direct payments to an individual unit-holder or shareholder. You can now pay interest distributions gross to overseas investors where the unit holder is a company or unit trust scheme and the so-called "reputable intermediary" condition is satisfied. For further details, please refer to our separate guidance notes at: [www.hmrc.gov.uk/specialist/auth-unit-trust-guide.pdf](http://www.hmrc.gov.uk/specialist/auth-unit-trust-guide.pdf)

Where you have an R105 for an individual, you must include in your return :

- the name(s) of any individual(s) beneficially entitled to the interest (instead of the payee);
- their principal residential address(es) (see below); and
- an indicator to show that the interest has been paid gross by virtue of a form R105.

The principal residential address must be one of the following:

- the address shown on the R105 form. This address can be reported for as long as the form remains valid. There is no need to report either of the alternatives shown below;
- for the second or subsequent year in which gross payment is supported by an R105, a more up-to-date address you know is the new principal residential address; or
- for the fourth or subsequent year in which gross payment is supported by an R105, the correspondence address held on your system. Where more than one correspondence address is held, you should report the address you use for normal investment correspondence.

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The obligation on the trustees of AIFs is limited to checking that they report an address that meets one of these three conditions.

If an investor completes an R105 declaration part way through the year so that they receive some interest under deduction of tax and some gross you should, strictly, make two reports. One of the interest paid with deduction of tax, giving details of the payee. The other of the interest paid without tax deducted, giving details of the individual beneficially entitled to the interest. You may, however, make a single report for the year, giving details of the individual beneficially entitled, together the whole amount of interest paid for the whole year and all the tax deducted from part of that interest.

### 4.10 How to deal with different types of addresses

**You must be able to show the auditor why you included, or excluded, any payment of interest from your return. Keep details of the reasons why you decide to include or exclude any information and of all the checks you make.**

**Reportable addresses that are those that are in the UK or an FR country.**

#### 4.10.1 Customers with more than one address

The investor's address you should report is their residential address. Where your system only holds a correspondence address, and it is not possible to report the residential address, only then can you report the correspondence address. The auditors will investigate where you report an address other than the residential address.

If you hold an R105 form, you must report the permanent residential address (see paragraph 4.9). This may mean that you do not need to report some interest. For example, if you hold a correspondence address in Norway (an FR country) for a Russian investor, you do not need to report the interest if you also hold his residential address in Russia, which is not an FR country.

#### 4.10.2 Changes of address

Generally, an individual's address on 5 April decides whether you need to include them in your return for that year. Include only those individuals who have a reportable address at that date (but see paragraphs 4.10.3 and 5.9). Other dates will be acceptable if, say, your computer system is set up so that the decision on whether to report is made at the time the interest is paid or received.

#### 4.10.3 Closed Accounts

The interest paid/received during the year must be reported if the individual had a reportable address on the date that the account was closed. If you hold a later address on your system, it can be used as the basis for reporting (or non-reporting if the later address is not in the UK or an FR country).

#### 4.10.4 P.O. Box addresses

A P.O. Box address can be reported as a correspondence or payee address but in R105 cases the principal residential address of the individual beneficially entitled to the interest must be reported. Where an R105 is held, a P.O. Box address can be reported as the principal residential address only if that is an acceptable residential address for the country in question, or for that part of the country, and would allow the investor to be traced. You must check whether a P.O. Box address is the norm for any particular country. Confirmation from the investor is acceptable unless you have information to the contrary, for example from your dealings with other customers in that country.

#### 4.10.5 BFPO and C/o addresses

A BFPO or C/o address must be queried in all cases where it is reported as the principal residential address. You must get confirmation from the investor that the BFPO or C/o

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address is their principal residential address. BFPO addresses normally cover large areas such as a whole town, city or country rather than one residential address.

### **4.10.6 "Hold Mail" addresses**

Where you have a continuing relationship with a payee from before 5 April 2001, you can report a "Hold-Mail" address held on your system (even if another address is held in a file or paper record). For example, if the address you have is "Hold mail c/o XYZ Bank, Sheffield branch", this must be reported. You only need report addresses in the UK and FR countries. For example, "Hold mail c/o XYZ Bank, Dubai branch" need not be reported.

For relationships that began on or after 6 April 2001, "Hold-mail" is not acceptable and you must report a full address. This will typically be the residential address to which you would send correspondence if there were no "hold mail" instruction.

### **4.10.7 Whereabouts unknown**

Report interest paid before the payee went "whereabouts unknown", based on their last known address. Do not report interest you cannot pay for the time being because the investor's whereabouts are unknown. When you discover the investor's new address and pay the outstanding interest, report the whole payment for the year in which it is actually made and for the new address.

If your system reports by the date when the interest is payable, we will allow you to report the interest as if it had been paid (using the last known address). Our conditions for this are that it happens in only a small number of cases and suppressing the report, and instead reporting in the tax year the payment was actually made, would be disproportionately expensive. You need not ask to be allowed to do this but keep details for the auditor.

Similarly, if you are reporting interest received on behalf of an individual who has gone "whereabouts unknown", report on the basis of the last known address.

### 5. Particular cases

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#### 5.1 Interest directed elsewhere

Interest is treated as received by person A if it is received by person B, as a nominee for A, at the direction, or with the consent, of person A. For example, where interest on investments held by a nominee is mandated directly to an individual investor's bank account, that interest must be reported by the nominee.

#### 5.2 Interest paid/received on cash awaiting investment

The return requires an entry for 'Security Details'. Where interest is paid or received on cash, enter 'CASH' in the Security Details box.

#### 5.3 Cases where R85 form is held

Some local authorities hold R85 forms relating to accounts that have been registered to receive interest without tax taken off. The section 18 reporting system cannot cope with the additional information we need in such cases. Local authorities in these cases should report using the section 17 format and guidance notes instead of these notes (see paragraph 3.1 second bullet).

Where you are a local authority making such a section 17 return, and you hold an R85 for the account, include in your return the following additional information:

- the date of birth and National Insurance number if these are provided in connection with the account; and,
- an indicator to show when a payment made was the first ever interest payment made to the account.

#### 5.4 Pooled assets

Where interest is received on behalf of, or paid to, an identifiable reportable individual by way of a pooled account, the interest is reportable under section 18. If the interest cannot be tied to a particular individual on receipt into the pool account, it is not reportable on receipt, but will be reportable where it is subsequently paid to a reportable individual.

#### 5.5 Foreign currency accounts

Where interest is paid in a foreign currency, you may report either:

- **that amount of foreign currency** – the report must include an indicator to show that it is a foreign currency and the SWIFT code for that currency (see our website (see paragraph 0) for the list of SWIFT codes); or,
- **the equivalent in sterling** – the foreign currency should be converted to sterling at the rate at which the tax, if any, was converted for payment to us. Otherwise, you may use a rate in force at the date the interest was paid or received, for example, a period end rate.

#### 5.6 Partnerships and other joint holdings

You must report interest paid to any partnership or joint holding where any of the partners or joint holders is a reportable individual.

Where only one or two of the partners or joint holders are reportable individuals, report:

- the 'client name' as being the name of the account or holding title;
- the name(s) of the reportable partner(s) as 'participants'; and

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- the **total** number of partners or joint holders, including those who are not reportable individuals, as the 'number of participants'

If there are more than two reportable individuals in the partnership or joint holding, you may limit your report to just:

- the 'client name' as being the name of the account or holding title;
- the first two named reportable individuals to the account or holding as 'participants'; and
- the **total** number of partners or joint holders, including those who are not reportable individuals, as the 'number of participants'.

If two or more of the partners or joint holders are reportable individuals with the same address you can combine their entries in one report.

### 5.7 Professional partnerships

For professional partnerships, for example, law, accountancy or architecture firms, only report the partnership name and address. For these purposes, a 'professional' partnership is one that is regulated by an independent body (or would be regulated if it were established in the UK).

### 5.8 Trusts and reporting by trustees

If the trustee has completed an R105 form (see paragraph 4.9), you should report details of the individual beneficially entitled to the interest.

You should report any interest paid to an agent for the trustees if the agent is a reportable individual or a partnership (see paragraphs 5.6 and 5.7).

There may be a change of beneficiary or trust type during the course of the year, for example, where a life tenant dies. In other cases the right to the interest may pass to a new beneficiary under the terms of the trust. In all these types of cases, you should report on the basis of who was the beneficiary at the time interest was paid. This may mean you have to make two or more reports for the year, one for each beneficiary or type of trust.

#### 5.8.1 Interest to trustees of Discretionary or Accumulation & Maintenance Trusts

If you pay interest to, or receive interest on behalf of, the trustee of a Discretionary or Accumulation and Maintenance Trust you should make a return in the name of the trustee(s) where they are reportable individuals. If there is more than one Trustee, apply the partnership rules (see paragraphs 5.6 and 5.7).

#### 5.8.2 Interest to trustees of Bare, Interest in Possession or Life Interest Trusts

A Bare trust is a trust where the beneficiary has absolute entitlement to the investments of the trust and any income arising from them. An Interest in Possession trust is where the beneficiary has the immediate entitlement to any income. A Life Interest trust is where the beneficiary (known as a 'life tenant') is entitled to the trust income for a period of time, usually until death but it can be for some other period.

If you pay interest to, or receive interest on behalf of, the trustees of these types of trusts, you should include in your return the name of the beneficiary where they are a reportable individual. If you do not know the name of the beneficiary, you should include the name of the trustee, if the trustee is a reportable individual.

#### 5.8.3 Distributions by trustees to beneficiaries of trusts

There is no requirement for trustees of Discretionary or Accumulation and Maintenance Trusts to report interest received under section 18. They are deemed to have received it on behalf of the trust and the beneficiaries do not have an automatic entitlement to it. Distributions made by these trustees to their beneficiaries are not 'interest' and so are not

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reportable, even if one or more of the beneficiaries has become entitled to their share of the trust income under the terms of the trust and is a reportable individual.

Trustees of Bare, Interest in Possession or Life Interest Trusts may receive a section 18 notice where their beneficiary is a reportable individual. This is because the beneficiary is entitled to the income of the trust in the form in which it arises.

### **5.9 Deceased Investors**

You must report interest paid to, or received on behalf of, deceased reportable individuals up to their date of death, in their name and at their last known address.

Interest paid to, or received on behalf of, executors is reportable if one or more of the executors are a reportable individual. This applies to the whole period of their executorship. Apply the rules for reporting partnerships (paragraphs 5.6 and 5.7) where there is more than one executor.

Executors need only make a return under section 18 where they receive a notice to do so and they need only report assets giving rise to the payment or receipt of interest that have been assigned to a reportable individual beneficiary.

Executors need only report interest paid or received from the date the assets were assigned. Also, you may follow the second subparagraph of paragraph 3.1, on double reporting, where it applies to your circumstances.

### 6. Audit and retention of records

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#### 6.1 Systems and controls

We audit returns to check both the accuracy and completeness of the information. We will conduct a walk-through of your systems and controls for identifying, capturing and reporting payments and clients.

#### 6.2 Accuracy of returns

The auditor will extract a statistically valid sample (using 68% confidence levels) from the return to test that the information reported is accurate. They will compare the sample with information held on your system, client files and account statements to check that the amounts of income and personal details are accurate.

#### 6.3 Completeness

We will extract statistically valid samples (using 68% confidence levels) from your client or payment population to test whether the return is complete. This checks the sampled cases against the return to ensure that appropriate income and clients have been included.

We will also examine payments and clients excluded from the return to check that you were correct to exclude them.

#### 6.4 Independent audit of excluded accounts

By arrangement, we will allow you to appoint an independent auditor, at your expense, to review the product types, client types and addresses you have excluded from your return. They will select statistically valid samples from your excluded accounts (using 68% confidence levels) and check that those customers have been properly excluded from your return. This avoids HMRC staff looking through accounts in which there is generally no UK tax interest.

The independent auditor's report will be an integral part of our audit. The auditor must be registered under the Companies Act 1989 and experienced in carrying out audits of the business of an institution such as yours.

If you wish to arrange this, write to us at the address in paragraph 3.5 with details of the auditor you are proposing. You may apply at any time. We will acknowledge requests within 30 days of receipt.

The results of the independent auditor's review must be sent to our Audit Unit (address in paragraph 3.5) within 21 days of the completion of the work. They will form part of our audit report. Our report is normally issued within 28 days of the completion of our audit.

#### 6.5 Results of audits

If you cannot explain to our satisfaction any material difference between the results of the audits, we may request that the independent auditor do further work or carry out the work ourselves. Where errors are discovered, we may ask you to undertake further work to identify the source of the problems and put them right.

#### 6.6 Retention of records

You must retain all the records you used to make up your return for two years after the end of the period of the return. Thus, you must retain all records for the 2008/09 return period until 06/04/2011.

### 7. European Savings Directive (ESD)

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#### 7.1 Interaction between s18 reporting and Savings Income Reporting (SIR)

The European Savings Directive was brought into effect by the Reporting of Savings Income Information Regulations 2003 (SI 2003/3297), hereafter "SIR", on 1 July 2005. SIR is, in effect, the European Union counterpart to the reporting of interest payments under section 18. The details to be reported and the people who must make the report are not exactly the same for SIR and section 18. The guidance on SIR (what to report and who must report it) is on our website at: [www.hmrc.gov.uk/esd-guidance/sir-guidance.pdf](http://www.hmrc.gov.uk/esd-guidance/sir-guidance.pdf)

For the year 2008/09 you can make your SIR return and your section 18 return on the same form. Include the correct details for each type of report on the form.

#### 7.2 Difference in time limits between ESD and section 18 returns

The time limit for making your SIR return will normally be 30 June after the end of the tax year to which it relates. This is the same as the normal timescale for section 18 returns.

If, however, the notice for an SIR return is issued after 31 May, the time limit for making the return will only be 30 days after the date of issue of the notice. This is different from the time limit for making a report under section 18 (see paragraph 3.4). The practical effect of this is that if you want to make a combined SIR and section 18 return, the shorter 30 days time limit will also apply to the section 18 information.

For example, for the tax year 2006/07, if we issue notices at the normal time in February 2007 you will have until 30 June 2007 if you want to send us a combined return. If the SIR notice is only issued on 1 July 2007, however, and you want to send us a combined return, you would only have until 31 July 2007 for both section 18 and the SIR information.

### 8. Data Protection and security of returns

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#### 8.1 Your responsibilities under the Data Protection Act 1998 (DPA)

We do not set any particular security standards for data coming to us from businesses. We are happy to work with anyone who needs to send us data to help them secure it while it moves. Under the DPA, you are responsible for the security of personal data until we have received it. We have an ongoing review into the security of our data transfers out. We currently secure outgoing data to businesses in the following ways and we encourage everyone to be this careful when transferring information to us.

#### 8.2 What encryption do HMRC use?

We encrypt data to 256-bit standard with a 20 character complex password onto computer media (normally CD/DVD). A secure courier transports the media in secure and tamper evident packaging. A named individual signs for it when received. We send the password separately.

#### 8.3 What encryption can HMRC accept?

You may wish to send us data as password-protected, self-decrypting files on computer disk or tape. We can handle any self-decrypting files that run on Microsoft operating systems. We encourage you to use complex passwords of at least 20 characters and arrange a named person to sign for delivery.

If you are unable to use one of the encryption products below, please contact Dorinda Jack at the address in paragraph 3.5.

- Self-extracting encryption;
- WinZip version 9 or higher; or
- PGP self-decrypting files.

Your hardware or software might prevent data encryption. In such cases, please contact our Centre for Research & Intelligence at the address in paragraph 3.5 to arrange alternative physical security measures with us.

#### 8.4 Where should I send the Password for my self-decrypting file?

We recommend, for encrypted files sent to us on disk or USB stick, that all passwords should be of 20 random characters. Send your password by email to [occ-dcdm@hmrcaspire.com](mailto:occ-dcdm@hmrcaspire.com). Show, as the title of your email, the title of the return you are sending in and your institution reference for this return, e.g. S17 B12345/03. Just type your password into the body of the message without any further message. Please send one email per return sent in.

#### 8.5 Are other methods going to be available?

We know some businesses already use other methods to secure their data transfers. If any of these are your preferred transfer mechanism, please contact Dorinda Jack at the address in paragraph 3.5 so that you can be included directly in later announcements.

- Financial Institutions who use Connect Direct Secure Plus should contact HMRC. We are working to set up links for the coming filing period.
- We are working with our IT supplier to agree how we will accept tapes and cartridges containing data encrypted by products like ZIP390 and DF DSS.
- We will be publishing details of public keys to be used in asynchronous encryption via products like PGP. This will reduce the problems with needing unique password protection for each item of media.

### **8.6 What if I want to use the spreadsheet?**

Some people used to make paper returns because it was easier than using the magnetic media specification to create a computer file for just a handful of clients. As an alternative, given the widespread use of spreadsheets, we have produced a spreadsheet that you can type your return data into. From April 2008, you will be able to download it from our website (see link in paragraph 3.6). Complete instructions for use are on the website. There is no need to ask permission to use it. It is in Excel format from Microsoft Office version 2003.

The completed spreadsheet can be encrypted using one of the systems in paragraph 8.3, copied to a CDROM, DVD, disk or USB stick and then posted to us at the address shown in our section 18 notice to you. Follow the arrangements in paragraph 8.4 to get your password to us.

Start here

