

FOREWORD

These guidance notes accompany the Government's legislation implementing European Directive 2003/48/EC on taxation of savings in the form of interest payments, which was adopted at a meeting of the ECOFIN Council on 3 June 2003. This Directive is designed to combat tax evasion by individuals on cross-border savings income. Under the Directive, information will be collected about the payment of savings income to residents in certain other countries and exchanged automatically with tax authorities in those countries. The Reporting of Savings Income Information Regulations set out the detailed rules for the UK scheme implementing the Directive. These guidance notes support these regulations and provide practical advice on how UK paying agents can meet their obligations. The Directive and the regulations took effect from 1 July 2005.

The Savings Directive requires the UK to automatically forward to the competent authorities of other EU Member States information on payments of savings income by UK paying agents to residents of the other Member States. Gibraltar, as part of the UK for the purposes of this type of EU Directive, is required to do so on payments of savings income by Gibraltar paying agents to residents of the other Member States. However, as Gibraltar and the UK are not separate EU Member States, the EU Savings Directive provides no legal basis for application of the relevant measures to payments of savings income passing between Gibraltar and the UK. The UK therefore signed a bilateral Savings Tax Information Exchange Agreement with Gibraltar on 19 December 2005 to apply the same measures as provided for by the Directive to payments of income passing between our two jurisdictions. Under the terms of this agreement, the UK will automatically provide information to the Gibraltar Government on savings income payments by UK paying agents to Gibraltar residents. Gibraltar paying agents will apply withholding tax to savings income paid to UK residents during the transitional period, as provided for in the Directive, and the Government of Gibraltar will pass 75% of the tax withheld to HM Revenue and Customs.

This agreement came into force on 1 April 2006, but paying agents should report payments made to individuals or residual entities in Gibraltar from 1 July 2005, as for any other prescribed territory.

UK regulations included Gibraltar as a prescribed territory from 1 July 2005 for these reporting requirements in anticipation of concluding a bilateral agreement with Gibraltar, so as to avoid the need to amend legislation and paying agent operating systems mid-year to take account of this agreement.

This sixth version of the guidance incorporates amendments suggested to expand on certain issues or to clarify what is meant. It also incorporates a small number of corrections, e.g. to cross-references.

The guidance has not been renumbered. Where additional paragraphs have been added or created, they have been numbered [122A] etc. Changes of substance from version 5 have not been highlighted, but are listed here:

- Appendix 1 – the addition of Bulgaria and Romania from 1 January 2007.
- Addition of paragraphs 158A –D to clarify the position regarding BFPO addresses.

These guidance notes are the product of a great deal of consultation (both formal and informal) and close working with all levels of industry and could not have been produced without the time and diligent effort of a great many people. We are very grateful to everyone who took the time to take part in the consultation and either write in or meet us.

It is important to note that this guidance is not set in stone. Comments are very welcome and should ideally be directed to Graham Turner:

HM Revenue & Customs
Charity, Assets and Residence
Offshore Personal Tax Team
St John's House
Merton Road
Liverpool
L75 1BB

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Introduction

1. This note provides guidance on new arrangements for reporting certain payments to some overseas residents. This scheme for ‘savings income reporting’ complements the existing arrangements for reporting on interest payments under sections 17 and 18 of the Taxes Management Act 1970.

Background

2. Section 199 Finance Act 2003¹ provides for the Treasury to make regulations for a scheme to collect information about residents of certain other countries (“prescribed territories” – see Appendix 1) who receive savings income. The scheme will, amongst other things, enable the implementation of the European Directive on the Taxation of Savings² (“the EUSD”). The scheme is being implemented in the Reporting of Savings Income Information Regulations 2003³ (“the regulations”).
3. Under the regulations, paying agents are required to make an annual report to HM Revenue & Customs (HMRC) of savings income payments to relevant payees and residual entities in prescribed territories. HMRC will exchange this information with the tax authority of the prescribed territory concerned.

Purpose and content

4. This guidance gives HMRC’s view on the interpretation of the regulations, and advice and information on relevant practical matters such as the timing and format of the reports which paying agents will have to make. This guidance is not binding and does not affect any person’s right of appeal. Nor is it a full statement of the law as it applies.
5. This note will help you decide if you are a paying or receiving agent who has to make a report under the regulations. It includes guidance on:
 - who is a relevant payee (paragraph 72)
 - what are residual entities (paragraphs 82 to 83)
 - what is savings income (paragraphs 84 to 86)

¹ 2003 c.14.

² Council Directive 2003/48/EC of 3rd June 2003 on taxation of savings income in the form of interest payments, OJ No. L157, 26.06.2003, p.38, as amended by Council Directive 2004/66/EC of 26th April 2004, OJ No. L168, 1.5.2004, p.35, and Council Decision 2004/587/EC of 19 July 2004, OJ No. L257, 4.8.2004, p.7.

³ S.I. 2003/3297, as amended by S.I. 2005/1539.

- the responsibilities of paying and receiving agents (paragraphs 47 to 52)
 - the importance of contractual relations with the relevant payee (paragraphs 54 to 55).
6. If you have to report these guidance notes tell you what and how to report. They include guidance on:
- how identity and residence are to be established
 - what information needs to be reported
 - how to make a report

Who should read this guidance

7. The regulations can apply to **banks, registrars, custodians** and **other financial institutions** that make interest payments or distributions from certain collective investment schemes to individuals or residual entities in prescribed territories. But they may also apply to **financial dealers** and **securities houses** which purchase money debts or units in collective investment schemes from individuals or residual entities in prescribed territories, **businesses** and **public bodies** which redeem money debts or units in collective investment schemes held by individuals or residual entities in prescribed territories and **stockbrokers** and others who act for individuals or residual entities in prescribed territories in the sale of such investments. They may also apply to those who hold or administer money debts and investments in collective investment schemes on behalf of individuals or residual entities in prescribed territories in a professional capacity (such as **accountants, solicitors** or **trust** or **nominee companies**).
8. If you make savings income payments to persons outside the United Kingdom, you may need to read this guidance to decide whether you are a paying agent or a receiving agent.

Reporting under sections 17 and 18, Taxes Management Act 1970

9. Some paying agents report information about interest paid or received under the arrangements set out in section 17 (“S17”) or section 18 (“S18”) Taxes Management Act 1970⁴ (“TMA”). These arrangements remain in place (but, now the regulations are in effect, some payments are now reportable under the regulations instead of under S17 and S18). There are separate guidance notes on S17 and S18 at www.hmrc.gov.uk/s17-s18guidance/index.htm.

⁴ 1970 c.9.

10. Under S17 and S18 the requirement to make a report is imposed by HMRC issuing a notice (see paragraph 5 of the S17 Guidance and paragraph 6 of the S18 Guidance). If a notice is not served there is no requirement for a report.

Reporting under the Reporting of Savings Income Information Regulations ('savings income reporting')

11. Unlike S17 and S18, obligations imposed under the regulations are **automatic**. This follows what the EUSD requires.
12. If, in a business or professional capacity, you make a savings income payment (see paragraph 84) to a relevant payee (see paragraph 72) or a residual entity (see paragraphs 82 to 83) in a prescribed territory, you must notify HMRC that you are a paying agent. We will then send you a notice requiring you to make a report of the reportable savings income you have paid or received. If you received a notice for a tax year, there will be in general no need to notify us in the following year; we will send you a notice automatically. (If we fail to send you a notice in the following year when we should have done so, you should notify us again that you are a paying agent in the normal way.)
13. If, as a residual entity (see paragraph 82), you receive or secure savings income on behalf of a relevant payee, you must notify HMRC that you are a receiving agent. We will then send you a notice at the appropriate time requiring you to make a report of the reportable savings income you have received. If you received a notice for a tax year, there will be in general no need to notify us in the following year; we will send you a notice automatically. (If we fail to send you a notice in the following year when we should have done so, you should notify us again that you are a receiving agent in the normal way.)
14. HMRC normally sends notices under the regulations to any person who currently reports under S17 and/or S18. If you currently report under S17 or S18 but after reading this guidance you believe that you are not a paying agent you should write to the following address:

Audit & Pension Scheme Services
St Johns House
Merton Road,
Liverpool
L75 9BB

Paying agents

15. This section explains who is a paying agent and provides guidance about which persons in the United Kingdom are paying agents for the purposes of the regulations.

16. You are not a paying agent for the purposes of (and do not have an obligation to make reports under) the regulations if:
- you do not make savings income payments in the course of a business or profession
 - the payments you make are not savings income
 - the person to whom you make the payments is resident in the United Kingdom, or
 - the person to whom you make the payments is not a relevant payee or a residual entity in a prescribed territory.
17. You are not a paying agent, therefore, in relation to a specific savings income payment if you make that payment to another person who is a paying agent.

Who is a paying agent?

18. The Directive states that ‘paying agent’ means any economic operator who pays interest to or secures the payment of interest for the immediate benefit of the beneficial owner. The ‘operator’ can either be the debtor of the debt claim or can be the operator charged by the debtor or the beneficial owner with paying or securing the interest. The key term here is ‘paying’ and ties in with the requirement that the paying agent is the last link in the chain.
19. So a paying agent is a person who, in the course of a business or profession, makes savings income payments (in the sense of paragraphs 21 and 84) to individuals (relevant payees) or residual entities in prescribed territories. The paying agent is always ‘the last link in the payment chain’ before the relevant payee or residual entity and is the person that actively initiates a payment directly to a relevant payee or residual entity, or to his or its instructions. A person who has traditionally been regarded as a paying agent (including for the purposes of S17 and S18) or responsible for deducting tax at source from a payment, is likely to be a paying agent for the purposes of the regulations.
20. Where two competing organisations have significant claim to the role of paying agent within the definition provided by the legislation HMRC will accept the organisation that the relevant parties have agreed will be the paying agent. HMRC will accept reports of income prepared and submitted by the paying agent or by an entity to which that function has been outsourced.

Making savings income payments

21. You make a savings income payment if you make a payment of savings income to another person, or if you secure a payment of savings income for another person. You make a payment by paying a sum of money which you

owe or by paying a sum of money on behalf of another person. You secure a payment if you receive a sum of money or if you collect a sum of money on behalf of another person.

22. HMRC considers that making or securing a payment requires a **significant active responsibility** for ensuring that the payment is made or secured. It is necessary to have more than a simple passive or supporting role to be a paying agent.
23. In particular, banks, other financial institutions or other businesses which have a role in the payment process are not regarded as making a payment if their role is essentially passive (they act on instructions from others) or auxiliary (they merely provide services to help the paying agent). A bank or similar institution does not therefore make a payment merely by issuing or sending a cheque, or arranging for the electronic transfer of funds on behalf of one of its customers. Equally, a bank or similar institution does not secure a payment merely by clearing a cheque, arranging for the clearing of a cheque, or receiving an electronic transfer of funds on behalf of one of its customers.
24. HMRC recognises that modern payment arrangements can be complex and that the increasing use of outsourcing by financial institutions means that a number of different organisations can have a role at any specific stage of the payment chain. We expect that in most such cases it will be straightforward to decide who is the paying agent although there may be cases where it is not. The following examples are intended to illustrate the broad principle and provide a starting point for the analysis by potential paying agents of the more complicated arrangements which may exist in practice.

Examples of paying agents who make savings income payments

25. Persons who make savings income payments can include:
 - debtors (in a business rather than a private capacity) themselves
 - persons who are responsible for paying savings income on behalf of debtors.
26. The first example in this category is that of a bank (or building society) which has outsourced many of its administrative or back-office functions to an independent contractor. The bank takes full responsibility for everything that the contractor does and the bank's customers are not aware of the contractor's role or of the fact that the staff with whom they communicate are employees of the contractor rather than the bank.

Answer:

The bank is the paying agent. The outsourcing contractor provides services to the bank but has no responsibility for making savings income payments.

27. The second example in this category is where an issuer of bonds or debentures has appointed a specialist registrar which is responsible for maintaining all the records of the bond holders. The specialist registrar also makes the savings income payments to the bond holders using funds provided by the issuer. These funds are under the control and ownership of the specialist registrar before payment is made.

Answer:

The specialist registrar is the paying agent. The issuer has outsourced both essential administrative services and the responsibility for making savings income payments.

Examples of paying agents who secure savings income payments

28. Persons who secure savings income payments can include:

- professional nominees and nominee companies
- professional persons (such as solicitors or stockbrokers) acting for relevant payees or residual entities.

29. The first example in this category is where a trust company or professional person is appointed to act as bare trustee by a relevant payee. The property includes assets which produce savings income.

Answer:

The trust company or professional person is a paying agent. His responsibilities include collecting the savings income due to the relevant payee and collecting the proceeds of sales or redemptions when the assets concerned are sold or redeemed.

30. The second example in this category is where a stockbroker holds client money and client assets which produce savings income (either as interest or when they are sold or redeemed) using a subsidiary company as nominee. The stockbroker has permission from the Financial Services Authority to safeguard and administer investments for his clients and accepts full responsibility to the clients for the safe custody of the assets by the subsidiary company.

Answer:

The stockbroker is the paying agent. He takes responsibility for securing the savings income due to his clients and has full control over the subsidiary company which formally holds the client's property.

Trustees and personal representatives

31. As explained above, trustees, personal representatives and other persons with similar roles in the UK can be paying agents if they are acting as such in a business or professional capacity.
32. A professional person acting on behalf of trustees or personal representatives may be a paying agent if he receives savings income or makes savings income payments on their behalf. But there are **no** special rules applying to these situations and if you are a trustee or personal representative you will need to consider in the light of the general rules set out in the regulations and the guidance whether the regulations apply to you. This section gives guidance on some of the more detailed issues which arise in that context. Paragraphs 211 to 212 and 217 to 220 of this guidance also give more information on the circumstances in which personal representatives and professional trustees may need to make reports under the regulations.
33. In general, savings income will only be reportable by a professional trustee or personal representative if a beneficiary of the trust or estate is absolutely entitled to the savings income as it arises (and that beneficiary is a relevant payee). In practice, this means that the trust will be:
 - a bare trust, (where the beneficiary has absolute entitlement to the investments of the trust and any savings income arising from them)
 - an interest in possession trust established under the law of England and Wales (but not Scotland), (where the beneficiary has the immediate entitlement to any savings income), or
 - a life interest trust (where the beneficiary (life tenant) has an interest in the trust income for a period of time, usually until death but possibly for some shorter period).

In the case of professional personal representatives, this means that the property in the estate has now vested in the legatees.

34. Savings income received on behalf of a discretionary trust is not reportable and distributions by the trustees of a discretionary trust are not savings income.
35. Paragraphs 213 to 226 of this guidance provide further information in relation to payments to trusts and payments from trusts.
36. Trustees or executors in the UK who are not acting in a business or professional capacity cannot be paying agents under the regulations. They cannot be receiving agents as they are individuals (see paragraphs 37 to 42 below).

Receiving agents

What is a receiving agent?

37. A receiving agent is a residual entity established in the UK which has received a savings income payment from a person established in a prescribed territory or a relevant territory for the benefit of a relevant payee (but not a residual entity).
38. A receiving agent is therefore an entity (i.e. a body of persons or an organisation) which is not a paying agent (nor otherwise excluded from being a residual entity) but which has a responsibility similar to those of a paying agent for securing savings income payments on behalf of a relevant payee. Unlike paying agents, it reports on savings income it receives on behalf of relevant payees, not what it pays to them. In practice, most UK entities making savings income payments to relevant payees will not be residual entities: they will either be legal persons (e.g. companies) or businesses - including UK partnerships - and so will be paying agents. (See paragraphs 82 to 83 below for more information on residual entities.)
39. However, there may be certain unincorporated associations (e.g. clubs and societies) which are not in business and have members resident in prescribed territories. These clubs could have a reporting obligation under the regulations if they receive savings income payments **on behalf of** their members.
40. In general it is unlikely that clubs or societies receive savings income payments on behalf of their individual members. Most clubs and societies receive savings income to add to club funds and to use for club purposes. The members are generally not entitled individually to any of the income it receives and are not, therefore, relevant payees. In those circumstances, a club, society or other unincorporated association is not a receiving agent and need not make a report under these regulations.
41. But there may be some clubs, such as investment clubs, where the rules entitle individual members to shares in the income received by the club. These clubs are receiving agents if they have any members resident in prescribed territories, and have to make reports and comply with the other requirements of the regulations. The responsible officers of these clubs should read all of this guidance.
42. Classification as a receiving agent is not a matter of choice for a club or society. If the rules provide that its members have individual entitlements to savings income received by the club or society and any of them are relevant payees, it is likely to be a receiving agent. If the rules do not provide for individual entitlements for the members, it is unlikely to be a receiving agent for the purposes of the regulations.

Opting to be treated as a UCITS

43. A club or other residual entity which is a receiving agent may apply to be treated as a UCITS (undertaking for collective investment in transferable securities) for the purposes of the regulations. This means that it is treated as a paying agent rather than as a receiving agent for the purposes of the regulations.
44. If you wish to be treated as a UCITS for the purposes of the regulations you should write to HMRC at:
- Audit & Pension Scheme Services
St Johns House
Merton Road,
Liverpool
L75 9BB
45. The letter should include the following information:
- the name and address of the residual entity
 - where the application is sent on behalf of a residual entity, the name, address and position within the residual entity of the person submitting the application. Providing a daytime contact telephone number may assist the processing of the application
 - a statement that the entity:
 - ◆ is established in the UK
 - ◆ is a residual entity
 - ◆ wishes to be treated as a UCITS for the purposes of the regulations
 - a signed and dated declaration by the person making the application that the information in the letter is to the best of his knowledge complete and correct.
46. HMRC will issue a certificate which will be effective from a specified date and it will be valid until it is revoked. The certificate can be revoked at the request of the residual entity.

Responsibilities of paying and receiving agents

Notification and reporting

47. Paying agents are required by the regulations to notify HMRC if they make savings income payments (in the sense of paragraphs 21 and 84) to a relevant payee or a residual entity in a prescribed territory. Receiving agents are required to notify HMRC if they receive savings income payments for a relevant payee.

48. Once a paying or receiving agent notifies HMRC they will receive a notice requiring them to make and deliver a report. The notice is legally binding and will specify the information to be reported, the format in which the report must be made and the date by which the report must be delivered.
49. For more information about notifying and reporting see paragraphs 202 to 206 and 250 to 268 in the guidance.

Obtaining and verifying information

50. Paying agents and receiving agents will need to collect and verify information about the relevant payee and the savings income payments made or secured in order to make an accurate and complete report. Paying agents must also provide details of savings income payments made to or secured for a residual entity.
51. The information that must be reported about the relevant payee varies according to whether the agent has a contractual relationship with the relevant payee, and if so, whether this relationship started on or after 1 January 2004. The 'general rule' applies, and specific checks are required, where the contractual relationship began on or after 1 January 2004 or there are no contractual relationships (see paragraphs 136 to 147). Existing information about relevant payees will be sufficient where contractual relations started prior to 1 January 2004 (henceforth known as the exception to the general rule) – see paragraphs 148 to 151. Agents are likely to want to identify the category into which their customers fall.
52. The rules about reporting on payments to residual entities are simpler and do not depend on whether there is a contractual relationship with the residual entity nor on when it began.

Contractual relations

What is meant by contractual relations?

53. 'Contractual relations' means that the relationship between the agent and the relevant payee is the subject of a contract or series of contracts. Only contracts between the relevant payee and the agent are relevant in this context. In most cases it will be clear whether or not there is a contractual relationship and if so when it began.

The importance of establishing whether there are contractual relations – and if so when they began

54. Under the scheme, paying agents will need to establish the identity and residence of relevant payees. Paying agents will need to report this information and information about the savings income payment to HMRC.

55. There are different rules for establishing the identity and residence of relevant payees and different details should be reported depending on whether the contractual relations were entered into before or on or after 1 January 2004. If the contractual relations were entered into before 1 January 2004 then the exception to the general rule applies. If contractual relations were entered into on or after 1 January 2004, or there is no contractual relationship, the general rule will apply.

Particular circumstances and whether the general rule should apply

56. In most cases, paying agents will know whether a contractual relationship exists and, if so, when it began. However, there will be occasions when it is less clear. Some examples of these are:

- revised, reissued or superseded contracts
- when existing customers purchase new products or services
- where there is a wider ongoing relationship
- when businesses are acquired or merged
- where there is an on-going relationship not defined by contract

Revised, reissued or superseded contracts

57. If the contractual relationship between the paying agent and the relevant payee began before 1 January 2004, the paying agent may continue to report under the exception to the general rule provided the contractual basis for the relationship has continued. For example, the paying agent may issue a new contract when:

- terms and conditions change
- the relevant payee's personal circumstances change
- a product (for example, a bond) matures and the relevant payee decides to re-invest.

58. In these sorts of cases, the underlying contractual basis for the relationship has continued and the paying agent may continue to report under the exception to the general rule.

When existing relevant payees purchase new products or services

59. Where a relevant payee has an on-going, pre-1 January 2004 relationship with a paying agent and newly takes advantage of another product or service from the same paying agent on or after 1 January 2004, the underlying contractual basis for the relationship has continued. The paying agent may continue to report under the exception to the general rules.

60. The same would apply if a pre-1 January 2004 relevant payee changes to a different type of product or service. However, if additional relevant payees are added (for example, a sole account is changed into a joint account) and the new relevant payee joins on or after 1 January 2004, the general rule would apply to the new relevant payee.

Where there is a wider ongoing relationship

61. Where a relevant payee has an on-going pre-1 January 2004 relationship with a paying agent and newly takes advantage of another product or service from a different part of the organisation or group on or after 1 January 2004, treatment under the scheme will depend on whether the organisation comprises separate legal entities.
62. For example, suppose a relevant payee purchased a service from the ABC branch of 123 Ltd prior to 1 January 2004, and in March 2004 the same relevant payee decided to purchase a product from XYZ branch of 123 Ltd. XYZ branch is part of the same legal entity as ABC branch and therefore the pre-1 January 2004 contractual relations would continue.
63. However, if the relevant payee had purchased the pre-1 January 2004 service from 123 (Bank) Ltd, and in March 2004 decided to purchase a new product from 123 (Unit Trust) Ltd, the general rule would apply to the new product, even where 123 (Bank) Ltd and 123 (Unit Trust) Ltd were both wholly owned by 123 (Financial Services) Ltd.

When businesses are acquired or merged

64. When a business is acquired or merged with another business, the precise nature of the contracts will be crucial in determining whether pre-1 January 2004 contractual relations exist. If there is continuity of the legal identity of the paying agent, the exception to the general rule will continue to apply (for example, under the terms of the take-over contract, the acquired paying agent's relationship with the relevant payee continues, perhaps through an agency arrangement). However, if a new legal identity is established then all of the customers may effectively begin new contractual relations with the new paying agent.
65. If new contractual relations have begun, then the paying agent should report under the general rule. HMRC envisages that paying agents would update the records for the transferred relevant payees, for whom the full information is not already held, at the first reasonable opportunity.

Where there is an on-going relationship not defined by contract

66. Since the only relevant contract for these purposes is the contract between the relevant payee and the paying agent, issues may arise where there are on-going relations, but no contract between the relevant payee and the

paying agent. This might happen, for example, when the function of paying the individual is outsourced.

67. Since the on-going business relationship with the relevant payee is not defined by contract, the general rule will apply. This in turn raises the issue of how to deal with existing relevant payees, and any new relevant payees.
68. In these circumstances, HMRC envisages that paying agents would update the records they hold about their existing relevant payees at the first 'reasonable opportunity'.
69. The paying agent will need to ensure that it has adequate arrangements to obtain the information from new relevant payees, either directly or by sub-contracting the task.

What circumstances would qualify as a reasonable opportunity?

70. The position will vary, according to the particular circumstances of the paying agent. A paying agent may, for example, have a reasonable opportunity to update its records if it contacts the relevant payee (either in connection with the product generating the savings income payment or for some other reason), or if the relevant payee contacts the paying agent (perhaps to add to his stockholding or purchase a new product or service).

What if after taking reasonable steps the paying agent is unable to obtain the required information?

71. The normal rules will apply. If the paying agent has taken 'reasonable steps' then it should normally have a 'reasonable excuse'. See paragraphs 152 to 153.

Relevant payees

Who is a relevant payee?

72. Subject to paragraphs 76 to 81 below, a relevant payee is an individual who is resident in a prescribed territory (according to the regulations) and who either receives a savings income payment or is a person for whom a savings income payment is secured. This means that the relevant payee is the individual who either:
 - has received the payment directly from the paying agent, or
 - is the individual on whose behalf the agent receives or secures the payment in accordance with, or awaiting, the individual's instructions.

What is a prescribed territory?

73. Prescribed territories are all the territories for which UK paying agents are required to report information when they pay savings income to individuals resident or residual entities established there.
74. The list of prescribed territories is contained at Appendix 1. It consists of all the other EU Member States, Gibraltar, and some of the dependent and associated territories of EU Member States, namely Aruba, British Virgin Islands, Guernsey, Isle of Man, Jersey, Montserrat and the Netherlands Antilles.

What is a relevant territory?

75. Relevant territories are those dependent and associated territories of Member States which are applying the same measures as the EUSD, but which are not prescribed because the UK is not required to provide information to them. They are relevant because the arrangements between them and the UK require particular treatment as if they were prescribed, for example on the treatment of collective investment schemes established there. The relevant territories are Anguilla, Cayman Islands and the Turks & Caicos Islands.

When is an individual not a relevant payee?

76. If an agent holds information which gives him reason to believe that the individual he pays savings income to (or secures savings income for) does not receive the savings income for his own benefit because he is acting on behalf of another individual, the agent should take reasonable steps to establish who the beneficial owner of the payment is.
77. This will mean different things for different paying agents depending on the information they hold about their payees. However, one example might be that the agent pays an individual who is the trustee of a bare trust. Where a payment is made to a person who is known to act as a trustee⁵ of a bare trust, there is reason to believe that the individual (trustee) is not receiving the payment for his own benefit. The paying agent should take reasonable steps to obtain the beneficiaries' identity and residence details (if they are relevant payees).
78. What is reasonable will depend on the circumstances of the case, but contacting the trustee and asking whether the beneficiaries are relevant payees, and if so for their details, would seem a reasonable starting point.

⁵ An individual acting as bare trustee *in a professional capacity* may well contact you under the procedure at paragraph 80, first bullet, below

79. Another example might include the fact that although you pay one individual, you hold an R105 naming a third party beneficial owner, to enable you to pay the interest gross.

80. In addition, an individual is not a relevant payee if:

- that individual provides evidence that he is himself a paying agent in the United Kingdom or in a prescribed territory. (Paying agents in prescribed territories are called “economic operators” in the regulations; the term paying agent only applies in the regulations to persons established in the United Kingdom.)
- that individual provides evidence that he acts on behalf of:
 - ◆ a residual entity **AND** he provides the name and address of the entity (see paragraphs 82 to 83 below)
 - ◆ a legal person (e.g. a company)
 - ◆ an entity which is taxed under the general arrangements for business taxation (e.g. a partnership)
 - ◆ a UCITS or UCITS equivalent (see paragraph 104 to 109)
 - ◆ an elective UCITS (see paragraph 110)
 - ◆ another individual **AND** he provides to the agent details of the other individual’s identity, verified according to the regulations.

81. Satisfactory evidence might include, for example a written statement on headed paper. Or, for the last bullet point, a signed statement from the individual.

Residual entities

What is a residual entity?

82. A residual entity is an entity – essentially a body of persons or an organisation (not an individual) – which is **not**:

- a legal person (e.g. a company or other corporate body)
- taxed under the general arrangements for business taxation
- a UCITS or UCITS equivalent (see paragraphs 104 to 109 below), or
- an elective UCITS (see paragraph 110 below).

83. However, certain Swedish and Finnish entities (which are normally regarded as legal persons) are treated as residual entities in the regulations. This follows the position in the EUSD. The entities are:
- in Finland, “avoin yhtiö (Ay)” and “kommandittiyhtiö (Ky)/öppet bolag” and “kommanditbolag”
 - in Sweden, “handelsbolag (HB)” and “kommanditbolag (KB)”.
- 83A. Agents may be required to produce evidence where they have determined that an entity, to which they have made a payment, or on whose behalf they have received or secured a payment, is not a residual entity. There are no prescriptive rules for the evidence that will be accepted to confirm that an entity is not a residual entity, normal anti-money laundering Know Your Customer evidence will be sufficient. If the agent is not required to operate KYC procedures then the following gives examples of the sort of evidence that we would regard as suitable:
- a legal person – a certificate of incorporation, or extract from an appropriate company register
 - taxed under the general arrangements for business taxation – a business tax return, or confirmation from the tax authority that the entity is subject to business taxation
 - a UCITS or UCITS equivalent – a copy of the fund prospectus confirming the status, or confirmation of the status from the appropriate regulatory or other relevant authority
 - an elective UCITS – confirmation from the relevant authority

Savings income

What is savings income (overview)?

84. Savings income is broadly any income which is, contains or is derived from interest. Other types of income (e.g. company dividends, pensions, rents, trading profits or employment income) are not considered to be savings income even where they are derived from investments that have been made. Savings income accumulated or rolled-up in some way in the disposal proceeds of certain savings instruments is reportable. Capital gains are not savings income. However, other types of income and capital gains may be included in the amounts that are reportable under the regulations if you are unable to isolate the amount of savings income in a larger payment and in the case of sale or redemption of shares or units in a collective investment fund, savings income is not restricted to income derived from interest.
85. Reports are required for all savings income payments within the meaning of the regulations irrespective of whether these payments would be taxed in the

United Kingdom, the way in which they would be taxed in the United Kingdom or the way in which they would be taxed in the country of residence of the relevant payee or residual entity.

86. The various types of savings income are discussed in paragraphs 87 to 130. The reportable amounts are considered in more detail later in this guidance.

Interest and money debts

87. All interest earned on debts derived from the lending of money is included as savings income. This includes interest on bank and building society accounts as well as interest on all types of debt securities (such as gilt-edged securities or corporate bonds).

88. The term interest also includes for the purposes of the regulations:

- premiums and discounts derived from money debts
- prizes (including premium bond prizes) attributable to money debts
- dividends on building society share accounts, including permanent interest bearing shares (though excluding dividends on shares in former building societies which have incorporated)
- share interest paid by registered industrial and provident societies
- share interest paid by Northern Ireland credit unions
- Interest on ISAs, PEPs and UK authorised SAYE schemes
- Interest on Child Trust Funds

For the avoidance of doubt, interest on money debts is reportable regardless of whether the debt is in bearer or registered form.

89. Savings income does not include any income (including any interest) which does not arise from a money debt. Examples of payments which are not savings income include:

- dividends on ordinary shares in a company (unless the company is an open-ended investment company – see section on collective investment funds below)
- dividends from preference shares
- pensions, annuities and payouts from insurance policies
- lottery, gaming and betting winnings etc (unless as a prize attributable to a money debt – see above)

- payments under contracts for differences
 - manufactured payments arising during stock loans or under sale and repurchase agreements (including where the underlying security is a money debt).
90. There are two types of debt which do not count as money debts for the purposes of the regulations (and so do not produce savings income even where they give rise to interest):
- 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), and
 - certain debt securities which already existed before 1 March 2001 - the position of these securities (“grandfathered bonds”) is discussed in more detail in paragraphs 93 to 96 below.
91. Debts which do not arise from a transaction for the lending of money include any debts arising from ordinary commercial or private transactions to purchase goods, services or other assets (e.g. land). The main consequence of this exclusion is that interest on late paid trade debts is not savings income and is not reportable under the regulations. Penalty charges on late paid debts are also excluded from being savings income.
92. Client money (whether in designated or undesignated accounts) and margin or collateral deposited in the course of transactions in financial (and other) markets are money debts which arise from the lending of money. Interest on such sums is therefore savings income.
- 92A. Structured products and derivatives can take many forms and it is not possible to provide specific guidance on the different forms that they can take. The general principles which underpin the Directive - that only interest on money debts is reportable - applies equally to structured products and derivatives. If the instrument is not a money debt, or does not pay interest, then it will not be reportable. If there is real doubt as to whether an instrument produces interest or not, you should treat the instrument as producing interest for the purpose of the Directive, and report it.

Grandfathered bonds

93. Certain negotiable debt securities are not treated as money debts if they meet certain conditions for the duration of a transitional period which will end no later than 31 December 2010. These securities (“grandfathered bonds”) do not then count as money debts for all purposes of the regulations: interest, premiums and discounts derived from these bonds are not savings income; and investment in these bonds does not count when deciding whether the thresholds which determine whether income from certain collective investment funds is savings income have been passed (see below).

94. A security will be a grandfathered bond if:
- it was first issued before 1 March 2001 or the prospectus was first approved by the appropriate regulatory authority before that date, and
 - no further issue was made on or after 1 March 2002.

If the bond is a government bond (or issued by a related public authority or an international organisation – see the Schedule to the regulations) and a further issue is made on or after 1 March 2002, the whole of the issue (whether made before, on or after 1 March 2002) is not a grandfathered bond. The whole issue of the bond is a money debt.

If the bond is issued by another type of issuer (e.g. a commercial company) and a further issue is made on or after 1 March 2002, only the part of the issue made on or after 1 March 2002 is not a grandfathered bond. This part of the bond issue is treated as a money debt; the rest of the issue (made before 1 March 2002) is not a money debt.

95. On 1 March 2002, the UK Treasury issued additional gilt-edged stock in order to ensure that the transitional protection will not apply to any gilt-edged stocks then in issue. All gilt-edged stock will therefore be money debts and no gilt-edged security will be a grandfathered bond. For more information see the press release issued by the UK Debt Management Office on 26/02/02, available at www.dmo.gov.uk/gilts/press/sa260202b.pdf.
96. Agents may rely on information from recognised industry sources (for example, feeds from established information vendors) to decide whether or not a bond is grandfathered. If you cannot ascertain whether or not a bond is grandfathered you should assume that it is not, i.e. you should treat it as a money debt in the normal way.

Accrued and capitalised interest

97. Savings income is also regarded as paid for the purposes of the regulations when a money debt is sold to a paying agent (or a receiving agent) or redeemed by the debtor. Interest added to an account with a bank or building society when the account is closed is interest in the normal way and treated as such under the regulations. However, accrued interest, premiums and discounts paid out at the redemption of securities by the issuer, or included in part of the price paid by a third party purchaser at sale before redemption are also savings income for the purposes of the regulations.
98. UK market makers who purchase interest-bearing securities from relevant payees or residual entities in prescribed territories or UK agents acting for the seller (e.g. stockbrokers) could therefore be paying agents for the purposes of these regulations. This could be the case even if they are not the paying agent in respect of the coupon payments made to the relevant payee or residual entity selling the securities.

99. Accrued or capitalised interest normally only arises if:

- a security is sold to the paying agent *cum dividend* (**with** an entitlement to the next coupon payment) - in those circumstances the price will include an amount of accrued interest for the period from the last coupon payment date to the date of transfer of the security
- it was a purchased by the seller at a discount, or
- the sale price includes, or takes account of, a premium that is paid on redemption by the issuer.

There is no reportable savings income payment when an interest-bearing security is purchased by a relevant payee or residual entity in a prescribed territory.

100. If the security is purchased *ex dividend* (**without** an entitlement to the next coupon payment), there will not normally be any accrued interest in the selling price and so there may be no reportable savings income. The next coupon payment to the relevant payee or residual entity may, of course, be reportable in the normal way under the regulations by the appropriate paying agent.

101. Transfers of money debts under stock loan or sale and repurchase ('repo') agreements do not give rise to reportable savings income (and manufactured payments which are representative of interest on such debts are also not reportable savings income - see paragraph 89). But a money debt which is acquired by a relevant payee or residual entity under a stock loan or repo agreement may give rise to savings income if the debt is sold, or if interest on the debt is received, by the relevant payee or residual entity during the term of the agreement.

102. For accrued or capitalised interest you may report either the amount of the savings income or the full amount of the proceeds of the sale or redemption of the securities. You may rely on information from established information vendors in order to determine the savings income realised on sale or redemption.

103. Further information on what should be reported can be found at paragraphs 235 – 239 and Appendix 7.

Collective investment funds: introduction

104. Savings income for the purposes of the regulations includes interest contained in distributions paid by certain collective investment funds and the income realised on the sale or redemption of units in such funds. Interest includes premiums, discounts and other income treated as interest on a money debt for the purposes of the regulations. It does not, therefore, include interest on grandfathered bonds.

105. A collective investment fund is an investment fund (or collective investment scheme) which is:
- a UCITS
 - a UCITS equivalent
 - an undertaking for collective investment established outside the UK which is not in a prescribed territory or a relevant territory
 - an elective UCITS.
106. A UCITS is an ‘undertaking for collective investment in transferable securities’ authorised in accordance with the UCITS Directive⁶. Many (but not necessarily all) authorised unit trusts (AUTs) and authorised open-ended investment companies (OEICs) in the UK are UCITS. Unauthorised unit trusts, investment trusts and other closed-ended investment companies cannot be UCITS.
107. A “UCITS equivalent” is a collective investment scheme established in a prescribed territory other than a Member State or in a relevant territory which is treated as equivalent to a UCITS.
108. Investment funds established in the UK, a prescribed territory or a relevant territory are only collective investment funds for the purposes of the regulations if they are UCITS, UCITS equivalents or elective UCITS. Distributions and other payments derived from funds which are not UCITS, UCITS equivalents or elective UCITS in the UK, a prescribed territory or a relevant territory are **not** reportable as savings income under the regulations.
109. A fund outside the UK which is not established in a prescribed territory or a relevant territory should only be regarded as an ‘undertaking for collective investment’ if the following features are present:
- the fund is operated by way of business
 - the investments in the fund are pooled
 - the investors are not involved in its day-to-day management, and
 - the fund is open-ended (i.e. its capital varies with investments and withdrawals by investors like that of an AUT or an OEIC) not closed-ended (i.e. its capital is fixed like that of an investment trust).

⁶ Council Directive of 20 December 1985 on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (85/611/EEC) (as amended).

110. An “elective UCITS” is a residual entity which has been given a certificate by the prescribed territory or relevant territory in which it is established allowing it to be treated as a UCITS. The arrangements for UK residual entities to apply for a certificate are discussed in paragraphs 43 to 46 above.

Collective investment funds: distributions

111. A distribution by a collective investment fund may only count as savings income for the purposes of the regulations if the fund has invested sufficient of its assets in money debts – excluding grandfathered bonds (see above). For funds established in the UK, a prescribed territory or a relevant territory, a threshold of 15% may apply. Whether the threshold applies for a fund depends on the approach taken by the territory **in which the fund is established**.
112. The threshold applies in the UK. Savings income in distributions by UK collective investment funds is only reportable if the fund has invested more than 15% of its assets directly or indirectly (via other collective investment funds or residual entities) in money debts.
113. The position for other territories will depend on whether they have decided to apply the threshold to funds established there.
114. Collective investment funds established outside the UK and the prescribed and relevant territories are not subject to a threshold. All distributions from such funds will be reportable if they invest in any money debts other than grandfathered bonds.
115. Equalisation payments made to investors are a return of capital and are not considered to be savings income.
- 115A An act of income accumulation by an accumulation fund or share/unit class, whereby the value of units or shares is increased, is not treated by the Directive as a payment, despite the fact that it would be treated as taxable income under domestic UK tax legislation. Any such accumulations would be reflected in the value of the units/shares on redemption/disposal, and would comprise a reportable payment under the Directive at that time, subject of course to the 40% money-debt threshold referred to in paragraph 118.
- 115B Likewise, the automatic reinvestment of a distribution into the acquisition of additional units or shares in the same fund, where such reinvestment is automatic under the terms of the fund or share/unit class, and does not require a physical separation of the distribution from the fund and its subsequent reinvestment, is not treated as a payment.
- 115C By contrast, the reinvestment of a distribution into the acquisition of additional units or shares at the election of the owner, or an automatic reinvestment using a process akin to that which is approved for distributing offshore funds (whereby the distributions passes out of the fund's control

and into the hands of a third party, who can **clearly be seen** to receive the distributions prior to reinvesting it in further shares/units on behalf of the investor) would be treated as a reportable payment under the Directive at the time of the distribution.

- 115D Where a paying or receiving agent has data from a system which is designed to report deemed distributions (i.e. accumulations at 115A or automatic reinvestments at 115B), it is permissible for an agent to report such deemed distributions as actual distributions, as long as this approach is followed consistently.
116. Subject to paragraph 124, you may report either the amount of the savings income included in the distribution or the full amount of the distribution.

Collective investment funds: income realised at sale or redemption of fund units

117. Savings income also arises when units or shares in a collective investment fund are sold to a paying agent (or a receiving agent) or redeemed by the fund. This is analogous to the inclusion of accrued interest in the sale or redemption price of a security (see paragraphs 97 to 103 above).
118. Savings income only arises under this heading if the fund has invested more than 40% of its assets directly or indirectly (via other collective investment funds or residual entities) in money debts. This applies to all funds and does not depend on any requirements of the territory in which the fund is established.
119. Subject to paragraph 124, all of the income accumulated by a fund is regarded as savings income if the test is passed. The reportable income is not simply the part of the accumulated income which would be considered to be savings income under the other headings – whether as interest paid, accrued or capitalised interest or savings income in distributions from other funds. Equalisation payments made to new investors since the last *ex dividend* date of a fund are a return of capital and so are not savings income.
120. Subject to paragraph 124, for income realised at the sale or redemption of fund units you may report either the amount of accumulated income or the full amount of the proceeds of the sale or redemption of the shares or units.

Obtaining information about funds

121. Paying and receiving agents need information about the status and composition of funds in order to decide whether or not a fund is a collective investment fund, and if so, whether it passes either the 15% or the 40% test described in paragraphs 111 to 112 and 118 above. Under the regulations, you should normally seek information about fund composition in the investment policy laid down in a fund's rules or instrument of incorporation (or similar constitutional document).

122. Failing that, agents should consider the actual composition of a fund's assets. You may be able to obtain this information from a fund's report and accounts or similar published sources. This information can be assumed to remain current until a further report and accounts becomes published and are generally available to investors. Agents are not expected to inspect original fund documents and may rely upon copies or on information received in the normal way with other fund documentation or literature.
- 122A. In assessing whether or not a threshold has been exceeded, you should base any calculation on the gross assets of the fund, i.e. excluding any loans or overdraft. Cash holdings should be regarded as money debts.
- 122B. If you are unable to ascertain whether or not a fund falls above or below the 15% or 40% threshold, you should consider the relevant threshold to be exceeded.
123. Agents may rely on information from recognised industry sources (for example, feeds from established information vendors) to decide whether the 15% or 40% threshold has been exceeded or to determine the savings income included in the distribution or sale/redemption proceeds. This can include simple statements of whether the relevant threshold has been exceeded and if so the savings income included in the distribution or sale/redemption proceeds, provided it is clear that the recognised industry source has obtained the necessary information about the fund in question from a suitable primary source of information. You may be asked to demonstrate that you have appropriate systems in place to transpose information correctly. You may also be asked to demonstrate that you have taken steps to verify the information, for example by using more than one recognised source, or by performing a random check. This latter check would normally only be made where the initial systems checks had identified problems.

“Home country” rule

124. You may, if you wish, determine whether or not a fund has exceeded a threshold, or the amount of savings income to report in accordance with the “home country” rule. This means that, for a fund established in a prescribed or relevant territory, or one of the five other territories (not prescribed in Appendix 1), this determination is done in accordance with the rules set by the territory in which the fund is established. You may also rely, as provided in paragraph 123, on information provided on this basis by recognised industry sources.

Funds investing in other funds

125. Where a fund invests in other collective investment funds, a calculation of indirect investment should be done by taking the investment by the fund in question in each of the other funds and multiplying that number by the percentage investment of the other fund in money debts. The resulting

products should be added to the direct investment in money debts and the sum divided by the total assets of the fund to establish the percentage invested in money debts. This percentage can then be compared with 15% or 40% to decide which, if any, test has been passed.

Example

A fund is invested £1 million directly in money debts and £3 million in each of three other collective investment funds invested 20%, 50% and 80% respectively in money debts. The top level fund is therefore invested 55% $((£1m + (20\% \times £3m) + (50\% \times £3m) + (80\% \times £3m)) / £10m)$ directly and indirectly in money debts. The top level fund clearly passes both the 15% and the 40% test.

126. A fund which invests in other funds is not the same as an umbrella fund. An umbrella fund is a mechanism for bringing different, separate funds (called sub-funds) within a single fund organisation. Under the regulations, each sub-fund is treated as a separate collective investment fund; the 15% and 40% tests are then applied at that level. (It is, of course, possible that a sub-fund could invest in other funds.) An umbrella fund is not then treated as a collective investment fund for the purposes of the regulations.

Savings income payments and residual entities

127. A residual entity which is an elective UCITS (see paragraph 110 above) is treated as a collective investment fund for all purposes in the regulations. Paragraphs 111 to 116 above (including the 15% test where appropriate) apply in relation to any payments of savings income which it makes. Paragraphs 117 to 120 above (including the 40 % test) apply in relation to any savings income payments arising on the disposal of an investment in an elective UCITS.
128. A similar 15% threshold (to that described in paragraph 111) may apply to savings income payments to other residual entities. The threshold only applies if it is applied by the territory **in which it is established**.
129. The threshold applies in the UK. Savings income paid to a UK residual entity is only reportable by the entity if it has invested at least 15% of its assets directly or indirectly (via other collective investment funds or residual entities) in money debts. If you are unable to determine how much of the entity is invested in money debts, you should assume the threshold is exceeded.
130. The position for other territories will depend on whether they have decided to apply the threshold to residual entities established there. You may make use of established information vendors in determining whether or not a payment is reportable, in accordance with paragraphs 123 and 124.

Reportable amounts (summary)

131. The reportable amounts of savings income are discussed later in the guidance. But in brief, the reportable amounts are:

- for interest, the amount of the savings income
- for accrued or capitalised interest, the amount of the savings income or the full amount of the proceeds of the sale or redemption of the securities
- for collective investment fund distributions, the amount of the savings income included in the distribution (see paragraphs 111 to 116 above) or the full amount of the distribution
- for income realised at the sale or redemption of collective investment fund shares or units, the amount of accumulated income (see paragraphs 117 to 120 above) or the full amount of the proceeds of the sale or redemption of the shares or units.

Establishing identity and residence of individuals

132. Paying agents and receiving agents must establish the identity and country of residence of all individuals whom they have reason to believe are relevant payees. This is an important first step. If you do not have reason to believe, under your current processes that the individual might be permanently resident in a prescribed territory (i.e. money-laundering checks show the individual is resident in the UK) then you do not need to proceed with establishing the identity and residence to EUSD standards.

133. Paragraphs 135 to 151 below describe in detail the rules for establishing the identity and residence of individuals. These rules do **not** apply where payments are made to residual entities (see paragraphs 232 to 233).

Which individuals should I report?

134. The savings income reporting scheme applies only to those individuals whose country of residence is a territory prescribed in the regulations as discussed in paragraphs 73 to 74. A list of the prescribed territories is at Appendix 1.

General rule and exceptions to the general rule

135. There are different rules for establishing the identity and residence of relevant payees and what should be reported. The rules depend on whether the contractual relations between the paying agent and the relevant payee were entered into before or on or after 1 January 2004. If the contractual relations were entered into before 1 January 2004 then the exception to the general rule applies. If contractual relations were entered into on or after 1 January 2004, or there is no contractual relationship, the general rule will apply.

Establishing country of residence – general rule

136. Subject to paragraph 154 to 155 the country of residence for savings income reporting purposes is the country in which the individual has his permanent address, unless that permanent address is outside the EU and the individual has a passport or official identity card issued by a Member State.
137. In these circumstances, the country of residence for reporting purposes will be the Member State that issued the individual's passport or identity card unless that individual can produce a certificate of residence for tax purposes issued by the country in which they have their permanent address. This will have particular relevance for the reporting of individuals in prescribed territories that are not Member States (see the flowchart in Appendix 4).
138. The country of residence for tax purposes is **not** affected by these rules.
139. For guidance about what you should do if an individual has more than one address see paragraph 154 to 155.

Establishing identity - general rule

140. You must verify the identity as well as the residence of individuals to whom you make savings income payments whom you have reason to believe live (under the rules at paragraph 132 above) in a prescribed territory.
141. If the individual is resident in another Member State, you must obtain the individual's name, address and Tax Identification Number ("TIN"). If there is no TIN or the TIN is unavailable, you will need to obtain the date and place of birth instead. The TIN has to be the one issued by the country of residence for tax purposes. Place of birth means the town and country of birth.
142. If the individual is resident in a prescribed territory which is not a Member State, you must obtain the individual's name, address and date and place of birth. Place of birth means the town and country of birth.
143. You should verify the individual's name, date and place of birth by reference to their passport or official identity card. The address and TIN may be verified from these documents or from other documentary evidence.
144. These rules mirror the know your customer (KYC) rules for anti-money laundering purposes in many respects. If you are covered by the anti-money laundering rules you may therefore want to adapt your current KYC systems, such as account opening checks. Unlike the KYC rules, however, the scheme rules will apply to every relevant payee and savings income payment, there is no *de minimis* rule.
145. If you are not subject to the money laundering rules, you should implement a system that enables you to meet your obligations.

146. If some of your individual payees live outside the prescribed territories the system you put in place need not involve obtaining the passport or identity card of every individual who lives outside the prescribed territories purely for reporting purposes. You need to obtain the passport or identity card only if you have reason to believe the individual has an address in a prescribed territory or you are otherwise aware that the individual has presented a passport or other identity card issued by a Member State other than the UK.

Illustrative flow charts – general rules

147. Flowcharts explaining how the general rules might apply in practice are at Appendices 2, 3, 4 & 5.

Appendix 2 – Individuals with a permanent address in the UK

Appendix 3 – Individuals with a permanent address in another Member State.

Appendix 4 – Individuals with a permanent address in a prescribed territory that is not a Member State.

Appendix 5 – Individuals with a permanent address outside the UK and prescribed territories

Establishing identity and residence - exceptions to the general rule

148. You are **not** required to report a TIN or the date and place of birth for individuals with whom you have contractual relations that started before 1 January 2004 nor does it matter where the individual's passport or ID card was issued.
149. For these individuals therefore you should report their name, address and country of residence. You should use information from your existing records, i.e. the information you already hold, including any information held for anti-money laundering purposes. You are not expected to obtain additional documentary verification about these individuals' identity or residence.
150. If the reportable details for such an individual change, you should update your records according to reasonable business practice. Your obligations under savings income reporting are limited to reporting the (updated) details in your records.
151. For example, a UK paying agent pays savings income to an individual with whom he has a pre-1 January 2004 contractual relationship. The individual currently lives in the UK (not reportable). The payee moves permanently to Spain. The individual will become reportable. The paying agent will need to update his records and report the individual at his new Spanish address to fulfil his obligations under the scheme. However, since he has a pre-1 January 2004 relationship with the individual, he does not need to obtain the TIN or the date and place of birth.

Reasonable excuse

152. There may be occasions where you try but fail to obtain the required information from the relevant payee in time to make your report. It is a well-established principle of tax law that, if a person has a reasonable excuse for not having done what they were required to do, they cannot be considered to have failed to comply and therefore no penalty could apply.
153. In order to have a 'reasonable excuse' for not reporting the information you must be able to show that you had taken reasonable steps to obtain it. What is reasonable will always depend on what is proportionate in the circumstances of the case, but we would normally expect you to be able to produce evidence of at least two requests for the information. For specific queries around what constitutes reasonable steps you should contact Eddy Griffin (see paragraph 281).

Particular issues: which address?

Individuals with more than one address

154. The address that you report is to be determined in accordance with the appropriate identification rules described above at paragraphs 140 to 147 (general rules) or 148 to 151 (exceptions to the general rule). For individuals falling under the general rules, you should report the permanent address which you have verified under the appropriate identification rules described above. This will normally be the individual's correspondence address. However, you may report a different address provided you have properly verified that it is the address of the person concerned.
155. For example in the case of an individual falling under the general rules:
- you are aware that an individual has addresses in two prescribed territories, Italy and France. You know that although the individual currently lives at the correspondence address in Italy, he will return to France when his contract is up in three months time. You should verify the address in France.
 - you are aware that an individual has multiple addresses in different EU countries, but it is not clear that the correspondence address is the address that she would think of as her permanent home as several of the addresses are permanently available to her. You should make a judgement from the information available to you. Provided you are able to verify the address you use to the appropriate standard from documents presented by the individual your obligations have been satisfied.
 - the individual has several EU addresses, but you are aware that the individual is resident for tax purposes in France for the income concerned and you hold a certificate of tax residence that verifies this. You should report the French address (a certificate of tax residence is satisfactory documentary evidence of address).

PO boxes

156. In general a PO box address will not be the individual's permanent address and therefore will not generally be the address you should report.
157. PO box addresses should be reported only if they are residential addresses for the area in which the investor lives and would allow him to be traced. It is your responsibility to check whether PO box addresses are acceptable residential addresses. You may accept confirmation of this from the investor, unless you have information to the contrary (you must obtain confirmation from the investor if they have declared a PO box address as their principal residential address on an R105 declaration). You should keep a record of any checks made and/or a copy of the investor's confirmation for audit purposes.
158. You must verify the PO address to the same standard as is required for other addresses.

BFPO addresses

- 158A. The expectation for the vast majority of serving members of the UK Armed Forces (and their spouses or civil partners) who offer a BFPO address as their residential address is that they will continue to be within the United Kingdom's domestic reporting regime as they will not have a 'permanent address' in a prescribed territory (see paragraph 132).
- 158B. Where an individual has no address (that can be verified to normal standards) other than a BFPO address, the BFPO address may be accepted as the residential address where it is supported by a 'statement of identity and address' issued by the MoD of the individual's status and provided by the investor. For these individuals the paragraph above will apply.
- 158C. Where an individual with a BFPO address within a prescribed territory indicates that is their 'permanent address' and does not produce information on the lines of the previous paragraph or, for example, makes an application on form R105, then you must make appropriate checks to normal standards as indicated in paragraph 157/158 above for PO boxes.
- 158D. You should keep a record of any checks made and/or a copy of the investor's confirmation for audit purposes.

C/o addresses

159. Like PO box and BFPO addresses, c/o addresses are only acceptable if they have been verified as a permanent address to the required standard. If a c/o address is accepted on this basis, particular care should be taken to ensure you correctly establish the country of residence (again according to the appropriate rules).

Hold mail addresses

160. Hold mail addresses are not normally acceptable and you should obtain and verify the actual address to the standard described at paragraphs 140 to 147.
161. However, we will accept a hold mail address, if it is the only address held on your system and you have a pre-1 January 2004 contractual relationship with the individual - unless you previously reported the individual under S17 or S18 and the account was opened after 5 April 2001.
162. Under S17 and S18 reporting a hold mail address for an account opened after 5 April 2001 is not acceptable. The only exception to this is for Not Ordinarily Resident (“NOR”) individuals opening new accounts after 5 April 2001, for whom a valid pre-6 April 2001 R105, declaring a hold mail address, is in place.
163. We therefore expect those paying agents who previously reported under S17 or S18 to report a normal address (usually the correspondence address) for all individuals who opened accounts on or after 6 April 2001, **unless** you hold a valid pre-6 April 2001 R105 for an NOR individual who has opened additional accounts, in which case you may report the hold mail address.

Whereabouts unknown

164. If you are reporting a payment of savings income made before the payee went ‘whereabouts unknown’, report on the basis of their last known address.
- 164A. If you are a paying agent, you should not report if you are unable to make the savings income payment because the investor’s whereabouts are unknown. If you subsequently discover the investor’s new address and pay the outstanding savings income you should report that payment in the year the payment is made and the new address.
165. If your system reports by the date savings income is payable, you may report the savings income as if it had been paid (using the last known address) **provided** this happens in only a small number of cases and suppressing the report (and reporting in the tax year the payment was actually made) would be disproportionately expensive.

Closure of account

166. If an account was closed during the year then, subject to paragraphs 177 to 178, you should report the savings income paid if there was a reportable address at the date the account was closed. Or, if you hold a later address on your system, it can be used as the basis for reporting, assuming the address was properly verified under the appropriate rules.

Particular issues: changes of address

167. As noted at paragraph 154, the address that you report is determined in accordance with the appropriate identification rules described at paragraphs 140 to 147 (general rule) or 148 to 151 (exceptions to the general rule). If an individual subsequently changes his permanent address you will need to update your records.

Moving from the UK to a prescribed territory

168. If a UK individual changes address to a prescribed territory you will need to report on the basis of the new address. This may mean you need to obtain additional information and/or update your system.

For example, a UK paying agent pays savings income to an individual who lives in the UK. This is not reportable under the scheme. He has a contractual relationship made on or after 1 January 2004 with the individual.

If the payee moves to Spain, they will become reportable and the paying agent will need to update his records to fulfil his obligations under the scheme. Since he has a relationship which began on or after 1 January 2004 with the individual, he will also need to verify the name and address in addition to obtaining and verifying the TIN or the date and place of birth.

169. Where both the identity and UK address were verified to KYC standards, and the contractual relationship began after 1 January 2004, subsequent changes can be 'self certified' in accordance with paragraph 183.

Moving from one prescribed territory to another

170. If an individual, who is currently reportable because they live in one prescribed territory, moves to a different prescribed territory, you may need to update the address and country of residence information. If the individual moves to a Member State, you may also need to obtain and verify a new TIN, since the information you hold may be out of date (because the TIN to be reported is the TIN issued by the Member State in which the individual resides). If you cannot obtain the new TIN you should obtain, verify and report the date and place of birth.

171. For example, a UK paying agent makes a savings income payment to a Spanish passport holder whose permanent address is in France. The paying agent has a contractual relationship made on or after 1 January 2004 with the individual, who moves permanently to Germany.

The paying agent currently reports the payee's name, address, country of residence (France) and the French TIN. If the payee moves to Germany, the paying agent will need to report the payee's name, new address and country of residence (now Germany). Since it is a relationship made on or after 1 January 2004 he will also – if Germany is now the country of tax residence -

need to obtain and verify the new German TIN or, if it is not available, the date and place of birth.

Moving to countries which are not prescribed territories

172. You do not need to make a report if a **UK** passport holder moves permanently to a country which is not a prescribed territory, although the payment may be reportable under S17 or S18.
173. However, if an individual falling under the general rules and living in the UK (or in another Member State) and who has a passport or ID card issued by a Member State other than the UK moves to a country not covered by the scheme and does not produce a certificate of residence for tax purposes from that country's authorities, a report will be required. You will need to update your records to include all the necessary information.
174. This is because the country of residence for reporting purposes will be the Member State which issued the individual's passport or identity card.
175. For example, a paying agent makes a savings income payment to a Spanish passport holder living in the UK with whom he has a contractual relationship entered into on or after 1 January 2004. The individual moves to Iceland, but does not obtain a certificate of tax residence from the Icelandic authorities.
176. The country of residence for reporting purposes is now Spain. Therefore the paying agent will need to obtain and verify the individual's name and address and either the individual's TIN or date and place of birth.

Individuals who move during the year

177. When an individual moves during the year, there may be more than one country of residence and address for the same reporting period.
178. As long as you report consistently, you may report either the address and country of residence at the time the savings income payment is made, or the address and country of residence at the end of the reporting year (5 April).

Particular issues: R105 cases where there are pre-1 January 2004 contractual relations

179. A declaration on form R105 that an investor is Not Ordinarily Resident ("NOR") in the UK gives a deposit-taker or building society authority to pay interest without tax deducted. Since 6 April 2001, the R105 form has included the names and addresses of the persons beneficially entitled to the interest. (Forms R105 AUT and R105 OEIC have always included these details.) Many R105 cases will fall under the savings income reporting rules. For an individual with whom you have a pre-1 January 2004 contractual relationship, reporting is based on information that you already hold – see paragraphs 148 to 151. Under these rules you should report the address

which the overall information in your possession indicates is most appropriate, including the information available to you on form R105, which may well contain the details that you should report.

Particular issues: documentation and acceptable evidence

Copies of documents

180. Under the regulations you must verify the information you report for individuals falling under the general rules by reference to the relevant details from the passport, official identity card or other documentary evidence presented by the individual as appropriate. You may however accept copy documents (rather than originals) provided they are properly certified. This means that (for non-UK nationals) the copy should be certified by an embassy, consulate or high commission of the country of issue, a lawyer or an attorney. The copies should be dated and signed 'original seen'.
181. You may also accept copies certified by a senior official within another reputable intermediary (for example, you are accepting copy documents from an introducing firm). See paragraphs 190 to 192.
182. You should keep a copy of the documents you see and keep them available for audit purposes.

What 'other documentary evidence' is acceptable?

183. Any document that may be accepted by firms undertaking KYC checks for anti-money laundering purposes. After the initial verification of identity, changes may be 'self certified' (for example, a written notification of change of address or a new TIN from the individual would normally be acceptable 'other documentary evidence' of the change).
184. A certificate of residence for tax purposes issued by the competent authority is acceptable documentary evidence of TIN or address.

What if the individual presents false documentation?

185. You will not be liable if you accepted the document in good faith and had no reason to suspect that the document was false. If you have information that casts doubt on the authenticity of the documentation presented, you should take reasonable steps to establish its authenticity. In this case, we would normally consider that you had taken reasonable steps if you had followed your procedures and complied with your wider legal obligations.

What if the individual does not have a passport or official identity card?

186. If an individual falling under the general rules has a legitimate reason for not being able to present a passport or official identity card you may accept an alternative proof of identity, preferably from an official source. The alternative

evidence offered must be a satisfactory proof of personal identity (not merely a satisfactory evidence of address, for example a utility bill) for money laundering KYC purposes.

Particular issues: sub-contracting and introduced business

Can I sub-contract?

187. You may sub-contract both the task of completing and updating the identity and residence details and the preparation and submission of your report. However, the legal responsibility to establish identity and residence and to provide accurate and complete information remains with you. So, if you decide to sub-contract the work, you will need to be satisfied that the entity you sub-contract to has put adequate arrangements in place.
188. If you sub-contract the preparation and submission of your report, please make sure that the third party who submits the report uses the correct (your) reference and (if the report is on magnetic media) submission document.

What if the person I sub-contract to gets it wrong?

189. There are penalties for supplying incorrect information and responsibility for collecting verifying and reporting the necessary information is yours. If we discover (for example at audit) that the information reported is incorrect the action taken will depend on the circumstances of the case. However, we will take into account whether you can show that you have taken reasonable steps to ensure that the sub-contractor had adequate procedures in place.

What about introduced business?

190. If a new reportable individual is introduced to you on or after 1 January 2004, you will need to report under the general rules (see paragraphs 136 to 147).
191. If a reputable institution certifies that it has completed the identification and residence procedures and is able to provide the required information and supporting evidence (that is, a copy of the documents seen under the general rules), you do not need to repeat identity and residence checks. However, if you come across any information that casts doubt on the information you receive, you would be expected to take reasonable steps to ensure the information was accurate.
192. A reputable institution for the purposes of paragraph 191 includes UK and EU regulated intermediaries. A non-EU regulated intermediary could also be a 'reputable institution' for this purpose if you could place reliance on that intermediary for money-laundering purposes.

Do I need to repeat the identification procedures if the same individual (operating under the general rules) buys a product from a different Group member?

193. If there is more than one paying agent within a Group you may act as 'agents' for each other. How this arrangement would work in practice will vary depending on the commercial circumstances. For example, if one paying agent within the Group supplied the required details to another, this could be treated in a similar way as introduced business. The information could be 'certified', either on a case-by-case basis or on a bulk basis.
194. Alternatively, all the necessary information within a Group may be held on a central database. If so, they might prefer to ensure that (where reportable information was concerned) only information verified in accordance with the general rules was entered onto the database.
195. If the Group member is in another territory you may be able to treat the information provided in the same way, provided they could be treated as reliable for anti-money laundering KYC purposes.
196. As paying agent you remain responsible for ensuring that the information you report is accurate and up to date.
197. Where an individual maintaining pre-1 January 2004 contractual relations with a different paying agent within the Group buys an additional product from you on or after 1 January 2004, you must carry out the full identification procedures as required by the general rules (see paragraphs 136 to 147). The work may be sub-contracted to another Group member in the normal way.

Particular issues: nationality and residence

What if you know an individual has dual nationality?

198. The general rule is that the country of residence is the prescribed territory in which the relevant payee has their permanent address. Dual nationality only raises issues if an individual falling under the general rules gives a permanent address not in a Member State and does not produce a certificate of tax residence. If this is the case and:
 - one of the passports or ID cards is issued by a Member State – you should treat the Member State as the country of residence
 - both of the passports or ID cards are issued by Member States – you should choose according to which you consider the most realistic
 - both of the passports or ID cards are issued by prescribed territories that are not Member States – you should choose according to which you consider the most realistic

- if neither of the passports or ID cards are issued by prescribed territories - the transaction is not reportable under the scheme and the identification rules do not apply.

Will the individual always be able to obtain a certificate of residence for tax purposes from the country of residence?

199. No. If an individual falling under the general rules cannot obtain a certificate of residence for tax purposes from the country in which he lives, you should treat the Member State that issued the passport or ID card as the country of residence for reporting purposes.

Particular issues: record-keeping and retaining evidence

What documentary evidence do I need to keep to demonstrate that I have performed my identification and residence obligations for individuals falling under the general rule?

200. You must be able to produce, at audit, a copy of the documents that you used to verify the identity and residence of such individuals. You must retain these documents for at least two years after the end of the tax year in which the account has closed (or the security has been sold).

If I accept an introduced individual, what evidence do I need to keep?

201. If the individual falls under the arrangements described at paragraph 191, you must be able to produce at audit copies of the documents used by the introducer of the business to verify the identity and residence of individuals and its certification that it has carried out the identity and residence checks to the required standard. These documents must be retained for at least two years after the end of the tax year in which the account has closed (or the security has been sold). If the individual does not fall under the arrangements at paragraph 191 you are responsible for securing the relevant documentation in respect of the individual and paragraph 200 applies.

Reporting

What details will I need to report?

202. The reportable details are:

- your own name and address (we will usually already hold this information)
- details about the relevant payee, and
- details about the savings income payment.

203. For individuals with whom you have contractual relations that began on or after 1 January 2004 and for individuals where there are no contractual relations, the reportable details about the relevant payee resident in a Member State are:

- name
- address
- country of residence (according to the scheme rules), and **either**
- the Tax Identification Number (TIN) **or**, if there is no TIN, or if the TIN is unavailable
- the date and place of birth.

204. For individuals with whom you have contractual relations that began on or after 1 January 2004 and for individuals where there are no contractual relations, the reportable details about the relevant payee resident in a prescribed territory other than a Member State are:

- name
- address
- country of residence (according to the scheme rules), and
- date and place of birth.

205. For individuals with whom you have contractual relations that began before 1 January 2004, the reportable details about the relevant payee are:

- name
- address, and
- country of residence.

205A Codes for the country of residence are at Appendix 6.

206. The necessary details about the savings income payment are:

- the category of savings income payment (see the magnetic media specifications or the form completion notes for more details)
- the account number or other information identifying the money debt or other instrument (for example an ISIN, SEDOL or CUSIP reference), and

- the amount of the savings income payment (see paragraphs 234 to 249 below)
- the currency in which the payment was reported. (Please note there is no rule about which currency you should report in. You may choose whichever is most convenient.)

Data Protection Act

207. You are required by law to provide the information prescribed by the regulations. Disclosure of 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. You should not report any additional information beyond that prescribed as that disclosure would not be covered by the exemption.

Particular cases: deceased investors

Savings income paid to deceased Investors

208. Savings income which was paid to the deceased before the date of their death is reportable in their name and at the last known address, provided the deceased was a relevant payee.

209. Savings income payments made to personal representatives are reportable by an agent if one or more of the personal representatives is a relevant payee. You are not required to identify the beneficiary. Interest paid throughout the period of the administration or executry is reportable.

210. You need not report savings income payments made to personal representatives if they inform you that they are not the relevant payee for one of the reasons set out in paragraph 80, and

- if they are acting on behalf of another individual who is the relevant payee they also provide the name and address of the individual (verified under the normal rules)
- if they are acting on behalf of a residual entity they provide the name and address of the entity

Estates of deceased persons: savings income payments made by personal representatives

211. Professional personal representatives (e.g. solicitors) may be paying agents (see paragraph 32) and should make a report if they make savings income payments to relevant payees or residual entities in prescribed territories. Personal representatives who are not acting in a professional capacity are not required to make a report.

212. Professional personal representatives should report savings income payments once the assets which gave rise to the savings income have been assigned (to a relevant payee or residual entity in a prescribed territory). Only savings income paid from the date the assets were assigned is reportable. Interest earned on money in the estate during the administration or executry and distributed as part of the residue is not reportable.

Particular cases: UK trusts

213. UK trusts are not entities and the persons to whom the regulations may apply are the trustees.

Payments to trustees of UK trusts who are resident in prescribed territories

214. If savings income is paid to a trustee of a trust constituted under the law of England and Wales, of Scotland or of Northern Ireland who is an individual resident in a prescribed territory (according to the appropriate rules – see paragraphs 132 to 151), you should report the trustee's details, unless the trustee fulfils any of the criteria in paragraphs 76 to 81, the most likely being:

- they are a paying agent themselves - professional trustees may well be paying agents, in which case payments to them are not reportable;
- the trustee has told you that he is acting on behalf of another individual (the beneficiary) who is a relevant payee **AND** has provided you with their identity details - in this case you should report the details of the beneficiary concerned;
- you have reasonable grounds to believe that the trust is a bare (simple) trust or an interest in possession trust (or their non-UK equivalents) – in this case you should take reasonable steps to establish from the trustee who is the relevant payee (see next paragraph).

215. For trustee accounts falling under the general rules, you may wish to establish the status of the trust at the outset. For other trustees with whom you have pre-1 January 2004 contractual relations (i.e. falling under the exception to the general rule), you should take such action as is reasonable.

EXAMPLE

If the beneficiary is an NOR individual and you received a form R105 or R105DAT on or after 6 April 2001, you should report the details of the individual beneficially entitled to the interest (on the R105 form), provided the address of the beneficiary is in a prescribed territory. If not, the details are not reportable, but may be reportable under S17 or S18.

216. In any case, if you are unable to obtain the relevant details for the beneficiary you should report the trustee's details.

UK trusts: payments by trustees (other than trustees of unit trusts)

217. This section covers reporting by trustees in general acting in a professional capacity as paying agents.
218. If you are acting in a professional capacity you may be a paying agent (see paragraph 32). Savings income payments received by you may be reportable if they are secured for the immediate benefit of a relevant payee or residual entity in a prescribed territory. Usually this means that the individual or residual entity concerned has a right to the income in the form it is received by the trust. This is the case for bare (simple) or interest in possession (life interest) trusts.
219. You should normally report according to the date on which the savings income payment is received by you. However, if this creates systems difficulties that would be disproportionately expensive to resolve you may report by the date you make the payment to the individual provided you report consistently.
220. Distributions made by the trustees of discretionary or accumulation and maintenance trusts are not savings income and are not reportable.

Particular cases: UK pension funds and charities

221. UK pension funds and charities are usually constituted as trusts and payments of savings income to them are therefore payments to trustees. If payment is made to an individual trustee resident in a prescribed territory then it is reportable under the regulations. No reporting is required in the case of a payment to a corporate trustee. A collective payment (e.g. to the (individual) Trustees of ABC pension fund) need only be reported if the relevant address of the trustees is in a prescribed territory.
222. Likewise, payments of savings income to UK charities (or the trustees of UK charities) need not be reported unless the payment is made to an (individual) trustee resident in a prescribed territory. A collective payment need only be reported if the relevant address of the trustees is in a prescribed territory.
223. A pension fund can only pay out income in the form of a pension. Pensions are not savings income so pension fund trustees do not need to report the payment of pensions. For the same reason, charitable payments (or any other gift) are not reportable under the regulations. A trustee of a pension fund or charity cannot be said to be acting on behalf of the pensioners or the beneficiaries of the charity for the purposes of the regulations since pensioners or beneficiaries are not relevant payees.

Particular cases: foreign trusts

224. The status of a foreign trust is determined by the law of the country in which it is established and you need to apply the normal rules to determine whether the person to whom the payment is made is a relevant payee or a

residual entity in a prescribed territory, and whether a report is required. You should only treat a foreign trust as a residual entity if you are unable to obtain official evidence that it falls into one of the categories which are excluded from being residual entities (see paragraph 82).

225. Similarly, the normal rules will apply to determine whether a payment from a foreign trust is savings income.
226. This section will apply where a foreign pension fund or foreign charity is established as a foreign trust. The normal rules apply in the normal way to reporting payments to foreign pension funds or charities established in other structures.

Particular cases: partnerships and joint holdings

Reporting on UK partnerships where a partner is an individual resident in a prescribed territory

227. Savings income payments to UK partnerships are not reportable. UK partnerships may, of course, be paying agents in their own right under the normal rules. Profit distributions from partnerships are not, of course, savings income and thus do not fall under the EUSD even if the income of the partnership itself derives partly or wholly from savings income.

Reporting on partnerships in prescribed territories

228. How you should treat a partnership in a prescribed territory will depend on its legal status in the country in which it is established. You should only treat a partnership as a residual entity if you are unable to obtain official evidence that it falls into one of the categories which are excluded from being residual entities (see paragraph 82).

Reporting on joint accounts and holdings

229. Normally, you should report the identity, residence and account information and the total amount of savings income attributable to each relevant payee or residual entity in a prescribed territory (see paragraphs 202 to 206 and 232 to 233) unless you are making your report using a combined format, in which case you should report the total amount of savings income paid into the account.

Particular cases: designated client accounts

230. If you are contractually required to make a savings income payment to a professional firm or an individual acting in a professional capacity, you may be asked to send the payment directly to that firm's or individual's client, or transfer the funds directly to a bank account designated in the name of the client. In these cases, you should still regard the payment as made to the professional firm or individual concerned and not to the client without

supporting evidence that the payment is intended for the client. This may mean that the firm or individual concerned is the paying agent (and accordingly should have the obligation to report under the regulations or under the legislation of the prescribed territory concerned).

231. If you are contractually required to make a payment to an individual who is not acting in a professional capacity but he asks you to send the payment directly to another individual or to transfer the funds to a bank account designated in the name of another individual, you should still regard the payment as made to first individual in the absence of evidence that the second individual is the relevant payee (see paragraph 76).

Particular cases: residual entities

232. Paying agents (but not receiving agents) have to report payments they make to residual entities in prescribed territories. There are no requirements to verify the identity and place of establishment of a residual entity and the reportable details do not depend on whether a contractual relationship with the entity was in place before or from 1 January 2004.

233. The reportable details are:

- your own name and address (we will usually already hold this information)
- the name and address of the residual entity (this must include the country in which the residual entity is established)
- the category of savings income payment (see the magnetic media specifications or the form completion notes for more details)
- the account number or other information identifying the money debt or other instrument (for example an ISIN, SEDOL or CUSIP reference), and
- the amount of the savings income payment (see paragraphs 234 to 249 below)
- the currency in which the payment was reported. (Please note there is no rule about which currency you should report in. You may choose whichever is most convenient.)

Reportable amounts

Interest on money debts

234. You should report the actual amount of interest paid or credited to an account, including any premiums, discounts or prizes paid. The term

interest in the regulations has a wider meaning than usual and includes some other types of income (see paragraphs 87 to 92).

Accrued and capitalised interest

235. Interest accrued or capitalised on the sale, redemption or refund of a money debt is reportable. Interest accrued or capitalised includes any premiums or discounts which are earned during the period of ownership of the money debt (see paragraphs 97 to 103).
236. This category does not include any interest credited to an account immediately before the account is closed (i.e. the interest earned from the last interest calculation date to the date of closure of the account.) This interest should be reported as interest paid in the previous category.
237. You may report either the amount of the accrued or capitalised interest or the full amount of the proceeds of the sale, redemption or refund of the money debt. The choice is yours; it is not for the debtor (issuer) of the money debt concerned nor for the recipient of the accrued or capitalised interest (the person who has sold or redeemed the money debt) to decide what is reported. In practice, the necessary calculations are likely to be complex and to require significant information in addition to certain basic details about the security and the sale or redemption price. The implications and some worked examples are discussed in Appendix 7 below but it seems likely that many agents will prefer to report the full proceeds of the sale, redemption or refund.
238. If an interest payment has already been reported as interest (see paragraphs 234 above) when it was added to a money debt, it need not be reported again as part of the accrued or capitalised interest. The intention is that each interest payment should only be reported once. (See also paragraph 236 above on account closure.) There is no requirement to report accrued interest before sale or redemption. If, exceptionally, such interest has already been reported, it should not be reported again when the security is sold or redeemed, and the interest is actually received by the investor.
239. Where a paying or receiving agent has no information concerning the amount of interest which has been accrued or capitalised, the regulations deem the whole amount of the proceeds of the sale, redemption or refund to be savings income. Accordingly that whole amount is reportable. If you are reporting on this basis – which implies that you are not in a position to calculate the amount of accrued or capitalised interest – you should not deduct from the amount reported any previously credited interest even if it has been added to the money debt. Interest which has already been paid out should never be deducted from an amount reportable under this heading; it has not, of course, been added to the debt.

Distributions from collective investment funds

240. Distributions of income may only be reportable if the fund's investment in money debts exceeds the 15% threshold described in paragraph 111.
241. If a report is required then, subject to paragraph 124, you may report either the interest element of the distribution or the whole amount of the income distribution. The choice is the agent's; it is not for the fund concerned nor for the recipient of the distribution to decide what is reported.
242. To exercise this choice, you will need to know the proportion of the distribution which is derived from interest. Where the agent has no information about the proportion of income which is derived from interest, the regulations deem the total amount of income distributed by the fund to be savings income. The whole amount will then be reportable.
243. A distribution is reportable if it is actually paid to the investor. You should report all distributions if they are:
- paid out by means of a cheque or bank transfer;
 - reinvested by the purchase of additional shares or units at the election of the investor; reinvested automatically by the purchase of additional shares or units using a process akin to that which is approved for distributing offshore funds (as described in paragraph 115C).

Income realised on the sale, redemption or refund of units or shares in a collective investment fund

244. Income realised on the sale, redemption or refund of units or shares in a collective investment fund is reportable provided the fund's investment in money debts exceeds the 40% threshold described in paragraph 118.
245. Subject to paragraph 124, all the accumulated income which is realised at that point is regarded as savings income not simply the part of the accumulated income which is derived directly or indirectly from interest.
246. If a report is required then, subject to paragraph 124, you may report either the amount of income which has been accumulated and realised on the sale, redemption or refund of the shares or units, or the whole proceeds of that sale, redemption or refund. The choice is yours; it is not for the fund concerned nor for the recipient of the realised income (the person who has sold or redeemed the shares or units) to decide what is reported.
247. To exercise this choice, you will need to know how much income has been accumulated and realised. Where you cannot determine this amount, the

regulations deem the total proceeds realised at the sale, redemption or refund to be savings income. The whole proceeds of that sale, redemption or refund will then be reportable.

248. If a distribution has already been reported under the previous category when it was reinvested or accumulated, it need not be reported again as part of the realised income. The intention is that each distribution should only be reported once. For example, if interest added to an accumulation fund is reported annually, it should not be reported again when the shares or units in the fund are sold or redeemed, and the interest is actually received by the investor.

Income accrued prior to 1 July 2005

249. Savings income payments made after 1 July 2005 should normally be reported in full. HMRC will not, however, regard a report as incorrect if the amount of savings income reported excludes income which accrued prior to 1 July 2005.

How to make a report

Notice of savings income payments made

250. Paying agents or receiving agents who need to make a report must notify HMRC (at the address shown in paragraph 268) within 14 days of the end of the tax year – i.e. by 19 April – in which they make a reportable payment, **unless** they have already received a notice to make a savings income report for that year.
251. Once you have notified HMRC that you need to make a report, you will be issued with a notice each year (but if, despite the fact you have notified us in respect of a previous year, you do not receive a notice in a later year you should notify us again). Notices are issued in February of each reporting year (with the possible exception of the first reporting year). If you do not receive a notice and you need to make a report, you have until 19 April following the end of the tax year to notify.
252. If you receive a notice but you have no savings income payments to report you must make a NIL report.
253. If your business changes and you stop making reportable savings income payments, you should notify HMRC (at the address shown in paragraph 268) so that you will not receive notices in the future.
254. HMRC will issue a notice to any agent they think should have notified that they have made reportable payments and who has not done so.
255. The notice to make a report of savings income may be combined with the S17 or S18 notice or with both. The notice will specify:

- the information that must be reported,
- the tax year in respect of which the report must be made,
- the form in which the report is to be made,
- the date by which the report must be made, and
- the address to which reports should be sent.

What period will the report cover?

256. Reports will cover all of the reportable savings income payments made during the period specified in the notice. Except for the first reporting year, the period specified will cover a full tax year. The first report may, exceptionally, cover only part of a tax year, because it covers the period from the start of the scheme to the next 5 April. More detailed guidance on the practical aspects of reporting in the first year are given in the magnetic media specifications and in the form completion notes on the HMRC website.

EUSD start date

257. The Savings Income Reporting rules came into effect on 1 July 2005. The first savings income reports will cover the period 1 July 2005 – 5 April 2006 and will need to be submitted to HMRC by 30 June 2006. Reporting under S17 and S18 for tax year 2004/05 should use the revised reporting format as originally planned.

Time limit for making reports

258. The time limit for delivering the report will be in the notice and will normally be 30 June following the end of the tax year to which the notice relates. This is the same as the normal reporting regime for S17 and S18. So for the tax year 2006/07 the notice will be issued in February 2007 and the report must be made by 30 June 2007.

259. If the notice is issued after 31 May, the time limit for making the report will be 30 days after the date of issue of the notice. If you are making a combined report, this time limit will also apply to the S17 and S18 information.

Format of the report

260. Reports can be made on magnetic media or paper. There are 5 reporting options available, 2 for magnetic media and 3 for paper.

261. All reports **must** be submitted in the format specified by HMRC.

Reports submitted on magnetic media

262. The 2 format options for reporting savings income information are:

- a combined savings income and S17 specification

- a combined savings income and S18 specification

263. Both of these formats have a paper equivalent.

264. Data will be accepted on ½” Magnetic Tape and 3.5” (720k/1.44M) floppy discs or compact discs. Copies of the magnetic media specifications which set out the formats and give guidance on making the report are available on the HMRC website.

Reports submitted on paper

265. The 3 format options for making savings income reports on paper are:

- a combined savings income and S17 form
- a combined savings income and S18 form
- a savings income only form

266. Forms for paying agents who want to make their reports (or parts of their reports) on paper are available from HMRC order line **Telephone: 01726 209 024 Paper reports must be made on the forms provided by HMRC. Photocopies are not acceptable.**

267. If you are developing a new system to make your report on magnetic media, you will be able to send a test report to HMRC.

Contacts

268. For advice about making reports (including making test reports), or for advice about how to complete the forms, please contact:

Mr Eddie Dodd
HM Revenue & Customs
Audit Unit (Information Returns)
St Johns House
Merton Road
Liverpool
L75 1BB

Tel: 0151 472 6125 or 6129
Fax: 0151 472 6124
e-mail: eddie.dodd@hmrc.gsi.gov.uk

Audit

269. Savings income reporting returns will be audited in conjunction with the S17 and/or S18 returns

270. The audit approach will follow the S17 and S18 audit regime, with some additional testing to ensure that savings income has been correctly determined, and that appropriate additional information has been obtained and provided where the general rule has been applied.

Procedures and controls

271. The auditor will seek to establish the procedures and controls for identifying and flagging savings income and relevant payees falling under the general and the exception to the general rule.

Accuracy

272. To test that the information returned is accurate a statistically valid sample (using 68% confidence levels) will be extracted from the return. The sample will be checked against information held on the institution's system, client customer files and account statements to ensure that the amounts of income and personal details have been reported correctly.
273. Where contractual relations were established on or after 1 January 2004 or no contractual relationship exists, the auditor will check that the additional information such as TIN or date and place of birth has been captured and reported and that appropriate documentation has been examined.

Completeness

274. To test that the return is complete, a statistically valid sample (using 68% confidence levels) will be taken from the reportable client/account population. The auditor will check the sampled cases against the return to ensure that appropriate income and payees have been returned.
275. The auditor will also examine all or a sample of payments/instruments excluded from the return to test that all savings income has been correctly identified.
276. Where collective investment funds have been excluded, the auditor will review the 15% and 40% money debt tests.
277. Where it is established that a payment or payee are not caught by the regulations, the auditor will check that they have been considered and reported as appropriate under the S17/S18 rules and vice versa.

S17/S18 testing

278. S17 and S18 testing will remain the same. HMRC auditors will continue to test accuracy and completeness of these returns.

279. The role for independent auditors appointed to review cases excluded from S17 and S18 returns by virtue of an address in a Non Fully Reportable country will continue as before.

Help visits

280. Help visits to discuss the new rules, system and controls, information to be reported and the audit regime can be arranged by contacting the Returns Group on 0151 472 6129 or 6136.

Contact

281. For specific queries on the audit regime you should contact:

Mr Eddy Griffin
HM Revenue & Customs
Audit Unit
St Johns House
Merton Road
Liverpool
L75 1BB

Tel: 0151 472 6041
Fax: 0151 472 6124
e-mail: eddy.griffin@hmrc.gsi.gov.uk

Penalties

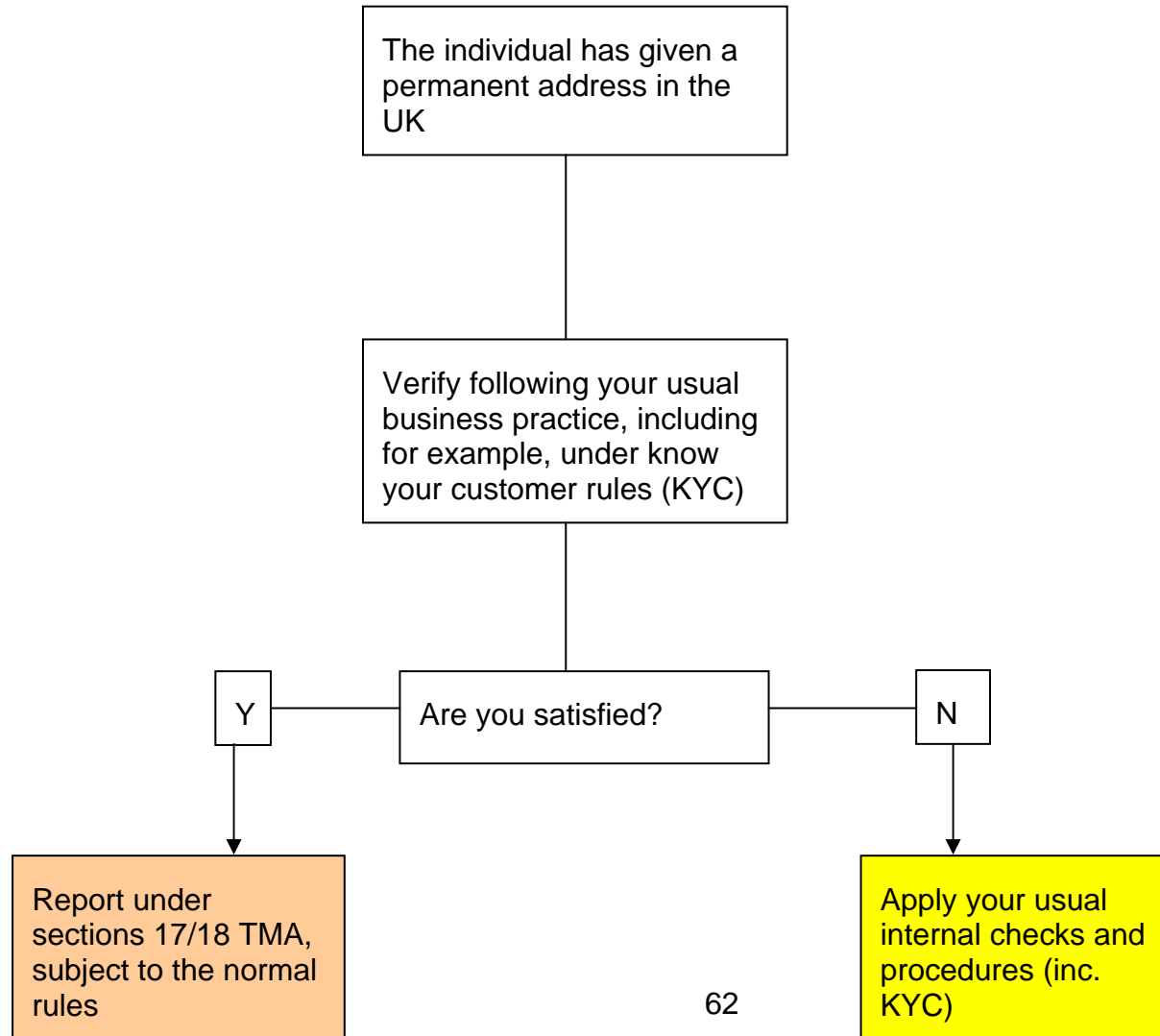
282. An agent who fails to notify HMRC that they have made reportable savings income payments may be charged a penalty of up to £3,000.
283. Agents who are given a notice to make a report, but fail to do so, may be charged a penalty of up to £300, and a further penalty of up to £60 for each day the report remains outstanding after the initial penalty was imposed.
284. Where an agent fraudulently or negligently makes an incorrect report he may be charged a penalty of up to £3,000.

Appendix 1 – Prescribed and relevant territories as at 1 July 2005

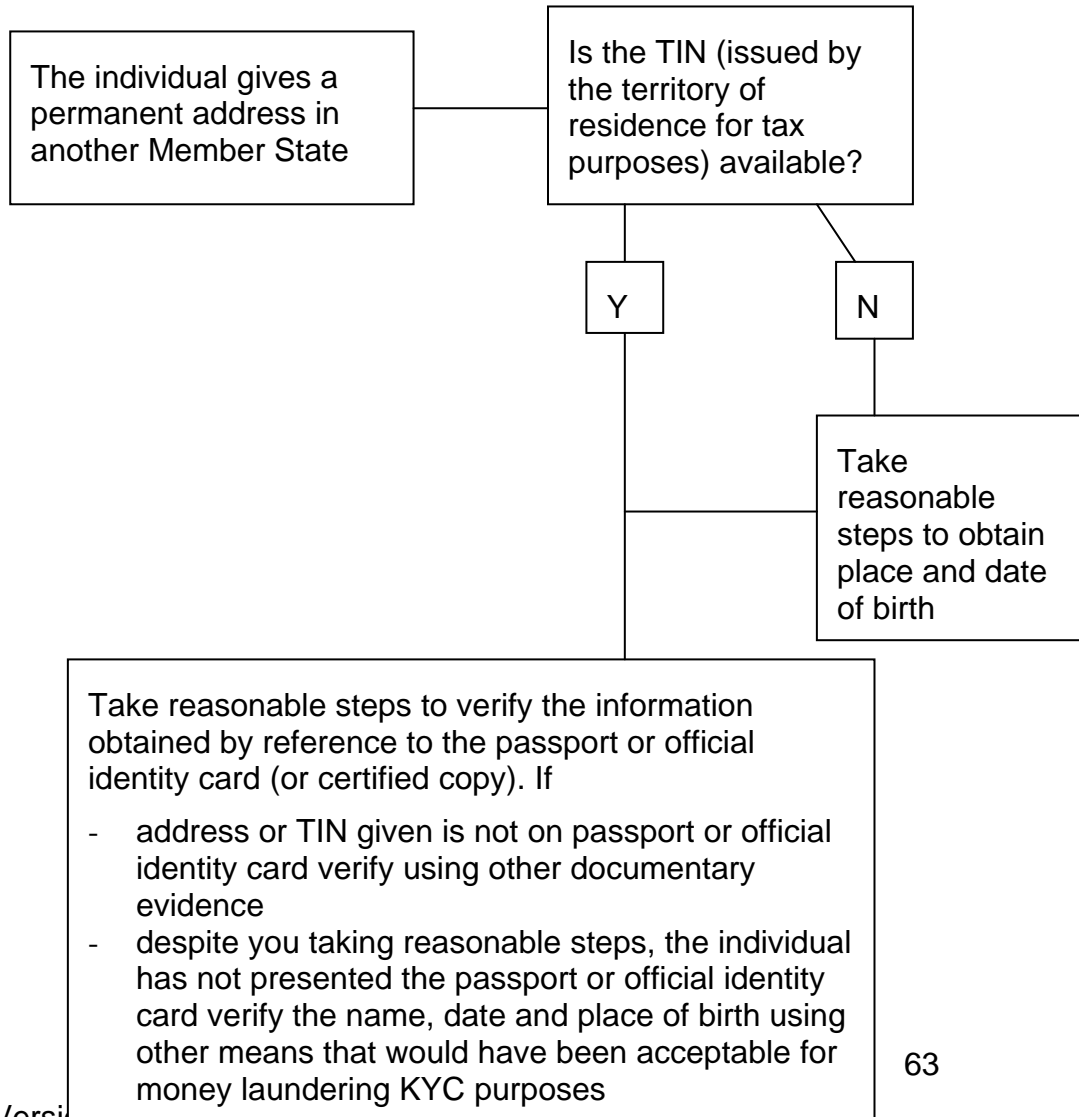
<u>Prescribed territories - Member States</u>	<u>Other prescribed territories</u>
Austria *	Aruba
Belgium *	British Virgin Islands *
Bulgaria (from 1 January 2007)	Gibraltar *
Czech Republic	Guernsey *
Denmark	Isle of Man *
Estonia	Jersey *
Finland	Montserrat
France	Netherlands Antilles *
Germany	
Greece	<u>Relevant territories (not prescribed)</u>
Hungary	Anguilla
Ireland	Cayman Islands
Italy	Turks & Caicos Islands *
Latvia	
Lithuania	<u>Other territories (not prescribed)</u>
Luxembourg *	Andorra *
Malta	Liechtenstein *
Netherlands	Monaco *
Poland	San Marino *
Portugal	Switzerland *
Republic of Cyprus	
Romania (from 1 January 2007)	
Slovakia	
Slovenia	
Spain	
Sweden	

* Territories which are applying a transitional withholding tax

Appendix 2 – Individuals with a permanent address in the UK



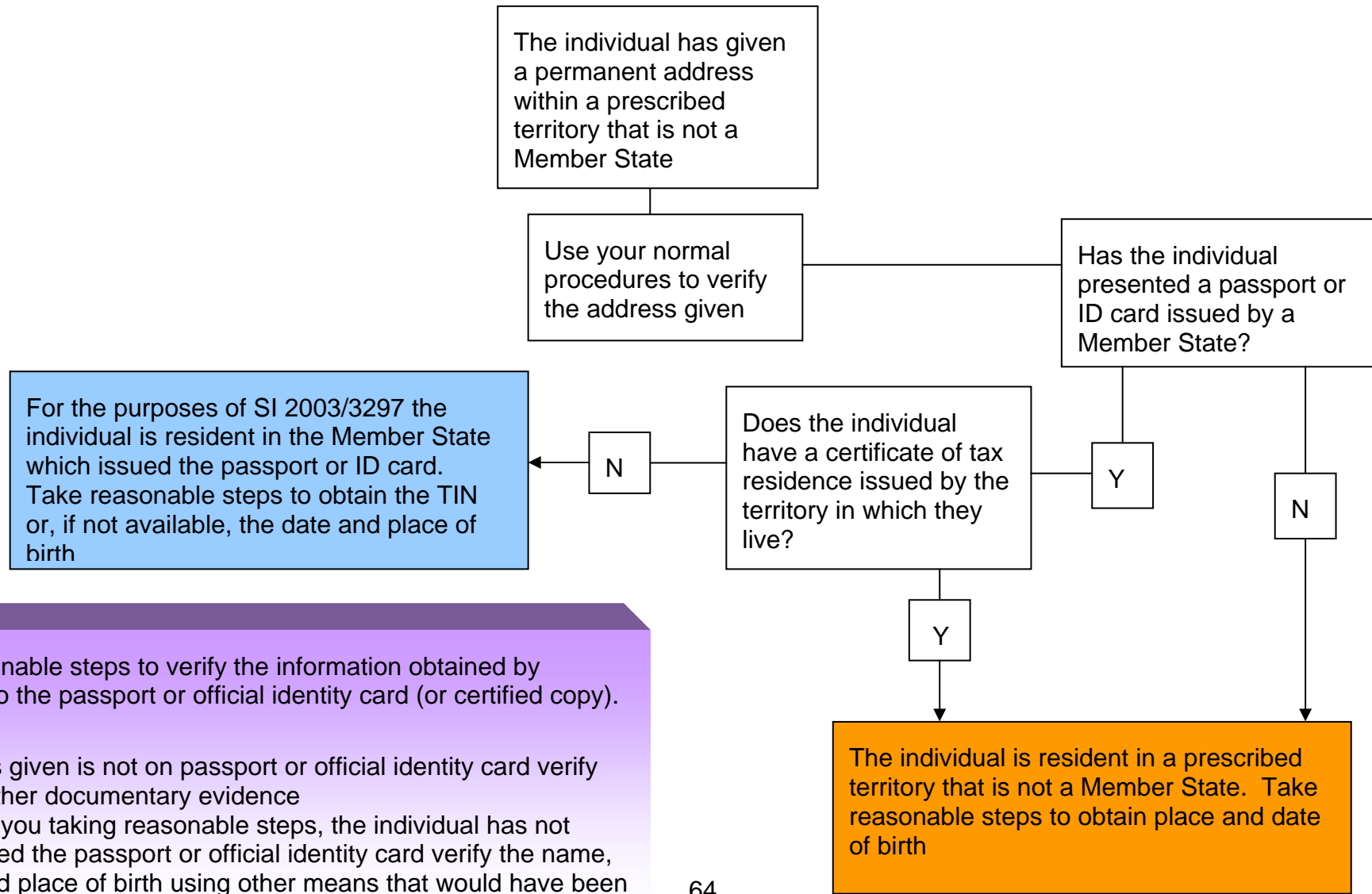
Appendix 3 – Individuals with a permanent address in another Member State



Notes

- 1) 'Place' of birth is town and country of birth
- 2) Other documentary evidence includes certificates of residence for tax purposes
- 3) If the individual's permanent address differs from the address on passport or ID, report the actual address as verified from the 'other documentary evidence'.
- 4) If an individual changes permanent address, verify and report the new permanent address
- 5) Remember that an individual's TIN may change if they move permanently to another member state. If so you should obtain, verify and report the new TIN (or the date and place of birth if it is not available).
- 6) If after taking reasonable steps you are unable to obtain or to verify properly the reportable information, you should record the steps taken and report as much of the required information as possible: provided you have done this you have fulfilled your obligations
- 7) After the initial verification, subsequent changes in address and TIN may be verified on receipt of written confirmation from the individual

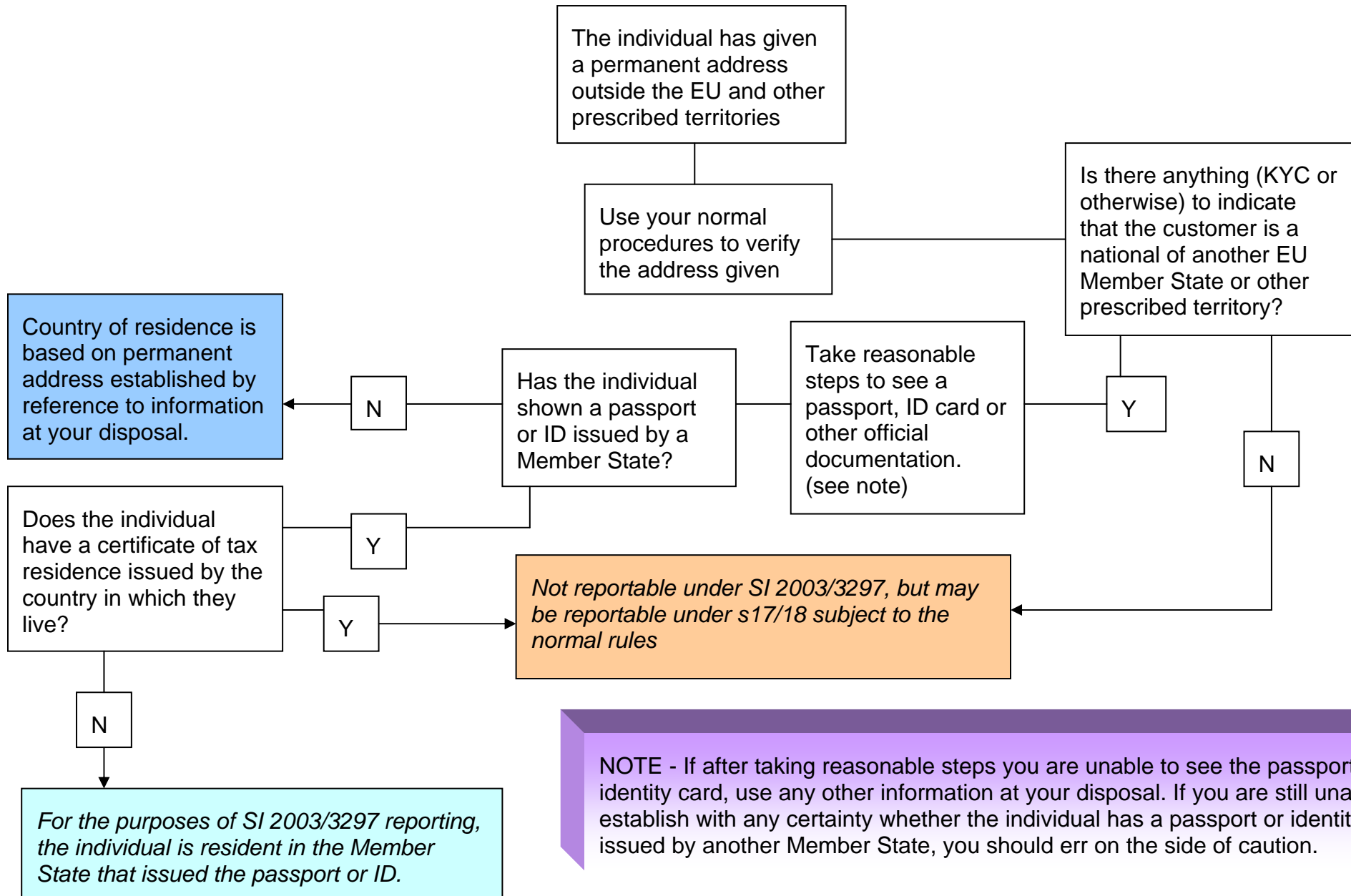
Appendix 4 – Individuals with a permanent address in a prescribed territory that is not a Member State



Take reasonable steps to verify the information obtained by reference to the passport or official identity card (or certified copy). If

- address given is not on passport or official identity card verify using other documentary evidence
- despite you taking reasonable steps, the individual has not presented the passport or official identity card verify the name, date and place of birth using other means that would have been acceptable for money laundering KYC purposes

Appendix 5 – Individuals with a permanent address outside the UK and prescribed territories



NOTE - If after taking reasonable steps you are unable to see the passport or other identity card, use any other information at your disposal. If you are still unable to establish with any certainty whether the individual has a passport or identity card issued by another Member State, you should err on the side of caution.

Appendix 6 – ISO country codes

aw	Aruba
at	Austria
be	Belgium
vg	British Virgin Islands
bg	Bulgaria (from 1 January 2007)
cy	Cyprus
cz	Czech Republic
dk	Denmark
ee	Estonia
fi	Finland (includes Åland Islands)
fr	France (includes Corsica, French Guyana, Guadeloupe, Martinique, Reunion and French St. Martin)
de	Germany
gi	Gibraltar
gr	Greece (includes numerous adjacent islands)
gg	Guernsey (includes Alderney, Herm, Jethou, Brechou (Brechou) and Lihou)
hu	Hungary
ie	Ireland
im	Isle of Man
it	Italy (includes a number of adjacent islands, principally Sardinia and Sicily)
je	Jersey
lv	Latvia
lt	Lithuania
lu	Luxembourg
mt	Malta
ms	Montserrat
nl	Netherlands
an	Netherlands Antilles
pl	Poland
pt	Portugal (includes Azores and Madeira)
ro	Romania (from 1 January 2007)
sk	Slovakia
si	Slovenia

Appendix 6 – ISO country codes

es	Spain (includes Balearic Islands, Canary Islands and Spanish North Africa (Ceuta and Melilla))
se	Sweden

Appendix 7 – Worked examples: accrued and capitalised interest

1. In order to make a report of the accrued or capitalised interest included in the proceeds of the sale, redemption or refund of a money debt, you need to be in a position to calculate the amount of interest which has been accrued or capitalised. This is not straightforward and you will need to know at least:
 - the date on which the person selling (or redeeming etc) acquired the money debt concerned
 - the price at which it was acquired
 - whether the sale was *cum* or *ex dividend*.
2. The reason for this is that the change in value of a money debt will generally include capital gains or losses (as a result of changes in interest rates or in the creditworthiness of the issuer) as well as any accrual of interest or premiums, discounts etc earned during the period of ownership. It is almost always necessary to decide how much of any change of value should be regarded as interest, premiums or discounts, and how much should be regarded as a capital gain or loss. Capital gains and losses are not savings income even when they arise on a money debt.
3. None of the necessary calculations depend on the method of taxation of the savings income or the capital gains or losses in the United Kingdom (from the point of view of a UK recipient or from the point of view of a UK payer or source). Equally the necessary calculations do not depend on the way in which the savings income payment or the capital gains or losses will be taxed in the hands of the recipient in a prescribed territory – whether relevant payee or residual entity.
4. The basic formula for the calculation of accrued or capitalised interest is:
 - *take* the proceeds of the sale, redemption or refund of the money debt
 - *subtract* the cost to the seller of the money debt
 - *subtract* any capital gains made by the seller
 - *add* any capital losses suffered by the seller.

This is equivalent to taking the seller's total net gains from ownership, subtracting the gains already paid out as interest (coupon) payments, then subtracting the capital gains and adding the capital losses.

Example 1

5. Suppose a zero-coupon bond with a par value of £100 is purchased one year before redemption for £90. At redemption the holder (assumed to be a relevant payee) is paid £100 by the issuer. The discount of £10 is included in the £100 redemption proceeds and could be reported by the paying agent (the

Appendix 7 – Worked examples: accrued and capitalised interest

issuer or an agent working for the holder such as a stockbroker) provided he knew that the relevant payee had paid £90 for the bond.

Example 2

6. Now suppose that the relevant payee in example 1 sold the bond to a UK market maker after six months (i.e. six months before redemption) or a UK broker sold the bond on behalf of the relevant payee. The market maker or the broker will be the paying agent in these circumstances. The sale price of the bond will be the market value of the bond at the time of sale which will depend on such factors as the general level of interest rates and the creditworthiness of the issuer. Assuming those were unchanged since the date of issue of the bond, the price would be approximately £95 (the exact price would be calculated using compound interest). But the actual market price would be higher or lower than £95 depending on whether interest rates had fallen or risen or creditworthiness had improved or declined. The amount of savings income in the redemption proceeds would be £5 (£95 - £90). There would also be a capital gain equal to the actual market price less £95 or a capital loss equal to £95 less the actual market price. The paying agent would be able to report £5 of savings income if he had the information to do these calculations. Otherwise he would have to report the sale proceeds - equal to the actual market price.

Example 3

7. Now suppose the relevant payee buys the bond six months before redemption for the same actual market price and receives £100 from the issuer on redemption. This is really the same as example 1 with one crucial difference; the amount of savings income will be £100 less the actual market price which the relevant payee paid for the bond. He would anticipate receiving £100 when the bond was redeemed and so would regard all his gain from his ownership of the bond as income. But the issuer or another paying agent might well not know the actual market price when the relevant payee purchased the bond and so only be able to report the redemption proceeds of £100.
8. You can combine examples 2 and 3. The total gain from ownership of a zero coupon bond is equal to the change in the actual market price in the period of ownership but part of that may be savings income (effectively the interest earned by lending the initial purchase price) and the rest will be a capital gain or loss depending on the movements in interest rates or creditworthiness. But it is only possible for the paying agent to calculate the amount of savings income if he has sufficient information about the length of the seller's period of ownership and the price the seller initially paid for the zero-coupon bond.

Example 4

9. An interest-bearing bond which has always traded at its par value is sold by a relevant payee to a UK market maker (assumed to be the paying agent) one

Appendix 7 – Worked examples: accrued and capitalised interest

month before the next six monthly coupon payment is due. The sale is *cum dividend* and so the actual price paid includes five months' accrued interest. If the paying agent knows that the relevant payee has owned the bond since the previous coupon payment, then he can report five months' accrued interest as the savings income payment. Otherwise he may have to report the full sale proceeds (i.e. the actual price).

10. If the same bond is sold *ex dividend*, the actual market price is the quoted price less one month's accrued interest. It therefore contains no accrued interest and is not reportable provided that the market maker knows that the relevant payee has owned the bond since the previous coupon payment. Otherwise the paying agent may have to report the full sale proceeds (i.e. the actual market price).
11. Example 4 could be combined with examples 1, 2 or 3. Interest bearing bonds do not necessarily trade at their par values and the calculations of capital gains and losses described in those examples may be needed in addition to the accrued interest calculations described in example 4. (The need for these calculations was ruled out of example 4 by the assumption that the bond had always traded at its par value.)