

Dormant Accounts Scheme

Frequently asked questions

All references to a 'bank' include references to a 'building society'.

References to 'reclaim fund' in questions 6, 7, 7A, 7C, 7D, 8, 8A, 8B, 8C, 11, 11A, 11B, 13, 14, 15, 16, 17 and 18 include a reference to sums transferred or to be transferred to one or more charities (see question 2).

The following abbreviations have been used:

TMA 1970
ITA 2007

Taxes Management Act 1970
Income Tax Act 2007

1. What is the scheme designed to achieve?

The Dormant Bank and Building Society Accounts Act 2008 provides the legislative framework for a scheme which is designed to enable balances of money held in dormant bank accounts to be reinvested for the benefit of the community whilst at the same time retaining the rights of the account holders to repayment of such balances against the reclaim fund to whom such balances, or a percentage thereof, have been transferred.

2. How is reinvestment in the community achieved?

Participating banks will transfer, with the agreement of the reclaim fund (which is to be regulated by the Financial Services Authority (FSA)), the balance of dormant accounts to the reclaim fund. The reclaim fund will retain sufficient funds to meet its expenses, comply with FSA financial resource requirements and meet repayment claims. The reclaim fund is obliged to transfer surplus funds for distribution for 'social or environmental' purposes.

Small banks (those with total assets of less than £7 billion for the most recent financial year for which accounts are available) may participate in this scheme or in an alternative scheme whereby they transfer a proportion (agreed with the reclaim fund) of a dormant account balance to one or more charities which the bank considers to have a special connection with it or to a charity which undertakes to use the money in question for the benefit of members of communities that are local to the branches of the bank.

3. How will account holders rights to repayment be maintained?

A bank may only transfer the balance in a dormant account (or proportions of such balances) to the reclaim fund if the latter consents to the transfer. Once a transfer has been made, the bank's liability to repay the account holder is extinguished. Instead, the customer has a legally enforceable right to repayment from the reclaim fund. It is anticipated that account holders will be able to continue their usual relationship with their bank, which will act as agent of a reclaim fund for the purpose of meeting repayment claims.

4. Is participation in the scheme compulsory?

No. The UK scheme differs significantly from similar arrangements in other countries in that the legislation will enable, but not compel, a bank to participate. Participation and the extent of any such participation are, therefore, voluntary. The banking industry is however

committed to supporting the scheme and is taking the lead on selecting or setting up the reclaim fund and putting in place strong reuniting initiatives.

5. What is a dormant account for the purposes of the scheme?

An account is dormant at a particular time if:

- it has been open throughout a period of at least 15 years
- during that period, no transactions have been carried out in relation to the account by, or on the instructions of the holder of the account

6. What is meant by the 'balance of the account'?

The balance of a person's account is the amount owing to that person in respect of that account after interest due and fees/charges payable have been taken into account. So:

- the bank must credit to the dormant account all interest due on all or any part of that account before it is transferred to the reclaim fund
- on a repayment claim, the customer has against the reclaim fund whatever right to payment of the balance the customer would have had against the bank had the transfer had not occurred

7. Does the crediting of interest to the dormant account before it is transferred to the reclaim fund give rise to any reporting obligations under section 17 TMA 1970 or any tax deduction obligations under section 851 ITA 2007?

If the crediting of interest is made to a dormant account in anticipation of the transfer of the dormant account to the reclaim fund, then the reporting and tax deduction obligations will not apply.

7A. Does the crediting of interest to the dormant account in anticipation of or before it is transferred to the reclaim fund give rise to any reporting obligations under The Reporting of Savings Income Information Regulations 2003 (S.I. 2003/3297) (the regulations that implemented the European Savings Directive in the UK)?

Yes. Council Directive 2003/48/EC on taxation of savings income in the form of interest payments (the EU Savings Directive (EUSD)) applies from 1 July 2005. The regulations implementing the Savings Directive in the UK broadly require financial institutions to report payments of savings income made to individuals resident in prescribed territories. Where all the criteria are met - the payment of interest prior to the transfer of a dormant account to the reclaim fund will fall to be reported under the Savings Directive.

If HM Revenue & Customs (HMRC) or the Treasury sought to provide - by way of primary or secondary legislation - that the payment of interest credited to an account transferred to the reclaim fund or whilst the account was held by the reclaim fund (pending reclaim) was not a payment of savings income, the UK would be in contravention of Article 6 of the European Savings Directive.

7B. Where reference is made to reporting obligations, is this subject to whether the customer is actually in scope (e.g. for a country that is not fully reportable) under section 17 reporting?

The Dormant Bank and Building Society Account Regulations will not bring anyone within the scope of the reporting obligations who would not otherwise be within scope.

7C. Where a financial institution credits interest immediately prior to the transfer of the account to the reclaim fund the account holder's whereabouts will have been unknown for a number of years. This situation is not presently covered in the current version of savings income reporting guidance notes. Given that the address held for the account holder will be historic and invalid, if the payment is reportable, what address if any should the paying agent report?

In the event that the Dormant Bank and Building Society Regulations do become law in the UK then HMRC will update European Savings Directive guidance to confirm the reporting requirements if a payment of interest is made (by crediting to the customer's account) immediately before the balance is transferred to the reclaim fund. That payment for European Savings Directive reporting will be regarded as a payment to the individual customer. In making a report, HMRC would expect the paying agent to provide the last known (verified) address and details for the individual (there is no mechanism at present to report a situation where a last known address is now known to be wrong). HMRC would not expect the address field to be left blank or for an entry such as 'whereabouts unknown' to be made as both are contrary to the reporting requirement.

7D. When an account is dormant with the only address being in a prescribed territory from which correspondence is returned unopened, what address do I report for EUSD?

The last known address, verified as appropriate under the regulations.

8. If any interest were to be credited to the dormant account after the balance of that account has been transferred to the reclaim fund, would such a credit trigger the reporting obligations under section 17 TMA 1970 and the tax deduction obligations under section 851 ITA 2007?

No. It is intended that regulations made under section 39 of the Finance Act 2008 will switch off the bank's obligations under section 17 TMA 1970 and section 851 ITA 2007 whilst the balances in dormant accounts have been (or are about to be) transferred to the reclaim fund. Such obligations will however be switched back on again when a repayment claim in respect of that account is settled.

8A. If any interest were to be credited to the dormant account after the balance of that account has been transferred to the reclaim fund would such a credit trigger the reporting obligations under The Reporting of Savings Income Information Regulations 2003 (the regulations that implemented the European Savings Directive in the UK)?

Yes. The reporting obligations are not switched off. When a repayment claim in respect of that account is settled, reporting will continue if at that time or thereafter a payment of interest is made or credited to the account.

8B. If further interest is paid into a dormant account after its balance has been transferred to the reclaim fund, does this interest also have to be sent to the reclaim fund?

The sum transferred by the bank to the reclaim fund should include interest due on that balance up to and including the date of the transfer (less any deductible charges due at that time) plus any additional adjustments made to the dormant account as would have occurred

in accordance with the original contract between the bank and the account holder as if the transfer to the reclaim fund had not occurred.

8C. In relation to R85/R105, what do financial institutions need to do when a customer comes back to reclaim their funds from the reclaim fund pot in terms of the gross/net status?

The form R85/105 is given at account level. If the financial institution is able to make a link between the reclaim and the original account (which may have been closed in the financial institution's book) and show that at the date the balance passed to the reclaim fund there was a valid R105/85 in place then payment should be made gross.

R85 - the R85 has effect until it is cancelled by the investor or by HMRC. If this has not happened, and the financial institution still holds the form, then payment should be made gross. If the R85 is no longer held then the financial institution will need to request a new one from the investor which will confirm whether or not they are liable to tax at the date they make the new declaration. If they are not liable to tax then the payment can be made gross.

R105 - the financial institution has an ongoing obligation for the R105 declaration. In these cases the financial institution will have had no contact with the investor for over 15 years. So if the investor now makes a reclaim and uses a UK address, then HMRC would expect the financial institution to request a new one - and if this is provided the payment can be made gross.

9. When is a repayment claim treated as settled so that the tax deduction and reporting obligations are switched back on?

A repayment claim is settled when the balance of the dormant account is actually paid out to the account holder. This will include the situation where the balance is not physically paid out but instead is credited to an account (whether to the dormant account or another account at the direction of the account holder).

10. Are separate reports required under sections 17 and/or 18 TMA 1970, at prescribed dates for repayment claims?

Separate reports are not required. The figures should be included on the annual return in the normal way for the return of 'missing' investors.

11. Where an R85 form is held for the relevant dormant account prior to the transfer of the account balance to the reclaim fund, how will this affect the repayment claim and reporting under section 17? Will the original form be required by HMRC at any point?

R85 forms have enduring effect unless cancelled by the investor or HMRC - so if a repayment claim is made, interest must be paid gross and reported as such on the section 17 return (along with the R85 indicator).

'Original' R85 forms may be audited on the bank premises by HMRC auditors as now, so the bank will need to retain the R85 (or a copy of it) while the account is in the reclaim fund.

11A. Where an R105 form is held for the relevant dormant account prior to the transfer of the account balance to the reclaim fund, how will this affect the

repayment claim and reporting under section 17? Will the original form be required by HMRC at any point?

Unlike R85 forms which have enduring effect, banks have an ongoing obligation to monitor R105 forms. Before paying interest gross, the bank must check that it has no information that casts doubt on the not ordinarily resident (NOR) status of the investor.

If a bank holds an R105 form and pays interest gross before the account passes to the reclaim fund and then a repayment claim is made, the bank must check whether it has any up to date information which could indicate that the investor is not NOR. If the bank has no information to suggest that the investor is not NOR, interest must be paid gross and reported as such on the section 17 return (along with the R105 indicator if the account was registered after 5 April 2001. However, if information available when the claim is made suggests that the investor could now be UK resident (for example a UK address is given) the bank should carry out checks as it would for any other NOR account. If the investor is now UK resident, tax should be deducted and the section 17 report should show this.

'Original' R105 forms may be audited on the bank premises by HMRC auditors as now, so the bank will need to retain the R105 (or a copy of it) while the account is in the reclaim fund.

11B. There may be a de-registration notice issued by HMRC after the account has been sent to the reclaim fund. Therefore, upon reclaim by the customer the R85 may have been rescinded. It is assumed that some institutions will retain this information should the customer ever come forward to reclaim the funds. Other institutions may wish to close the account on transfer and then verify the tax status at the time the reclaim is made. In the second scenario if a de-registration notice has been issued many years previously it may not be available at the time the reclaim is made. What is HMRC's view on these scenarios?

Scenario 1: There will be no R85 in place (as there is an HMRC de-registration in place) and any interest paid will have tax deducted in the normal way.

Scenario 2: The de-registration notice is issued for a particular account. If that account is closed it is not unreasonable for the link to the HMRC notice to be lost. As there is no account in place at the time of the claim, the default position is that tax must be deducted. If the investor self-certifies that they are a non-taxpayer at this point the bank can pay gross and it will be for HMRC compliance processes to identify cases.

12. Is the date of payment to the account holder the payment point for reporting purposes under section 17?

Yes.

13. When the customer claims a repayment, should the interest paid gross to the account just before it was transferred to the reclaim fund be treated in line with the interest that will be paid when the refund is claimed? For example, £100 of interest was credited gross to the client's account just before the account was transferred to the reclaim fund and when the client requests repayment the accrued interest is £100. The customer does not have an R85 or R105 so will the interest paid net to the client be £160 (£100+£100 less 20% tax=£160)?

The draft regulations made under section 39 Finance Act 2008 will switch off the reporting and tax deduction obligations when the balance of an investor's account (as defined in

section 8(1) Dormant Bank and Building Society Accounts Act 2008) is to be, or has been, transferred to an authorised reclaim fund or an authorised reclaim fund and one or more charities. Where a repayment claim (as defined in section 5(6) of the 2008 Act) to the balance of a dormant account is settled, the reporting and tax deduction obligations are switched back on for **all interest** paid or credited to the account, **or included in the balance of the account**, during and at the end of the relevant dormant period. Therefore, the reporting and deduction obligations will operate on the £200 mentioned in the example above resulting in a net payment of £160 after tax withholding of £40.

14. Are dormant ISAs included in the scheme?

A cash-only ISA could fall within the definition of a dormant account (see question 5 above) and could therefore be transferred to the reclaim fund if the plan manager thinks fit.

15. What happens to the tax-free status of the ISA when it is transferred to the reclaim fund?

The account will retain its tax-free wrapper whilst the balances are transferred to the reclaim fund.

16. What about reporting dormant ISAs when they are in the reclaim fund?

The ISA manager will not need to report prescribed information in relation to cash ISAs which are dormant and have been transferred on their annual report to HMRC.

17. What happens when a repayment claim is made to the reclaim fund in respect of an ISA?

The balance held in the reclaim fund can, if the investor wishes, be reinstated within the ISA tax-free wrapper with an ISA manager. The balance reinstated will not count as a subscription to the ISA for the year in which the repayment claim is made. In addition, the obligations of the manager to report on dormant cash ISAs whose balances have been transferred will be re-activated on the re-instatement of the ISA to an ISA. Once reinstated, the investor will need to make a fresh application before he can begin subscribing to the ISA again (as there will have been a gap of at least one whole tax year since the last subscription was made) but he can make withdrawals or transfers in accordance with the normal ISA rules.

18. Are dormant Child Trust Funds (CTFs) included in the scheme?

A cash-only CTF could be included in the scheme if there is no customer-led activity on the account for 15 years. As a government contribution to the account at age seven (the 'age seven payment') counts as activity on the account, any account receiving an age seven payment cannot be included in the scheme. But age seven payments were stopped in August 2010 so a child born after 1 August 2003 will not receive an age seven payment. It is therefore possible for the accounts of these children to have a 15 year period of inactivity so they could fall within the scheme. If banks or building societies volunteer to take part in the scheme, they can decide whether they want to include dormant CTF account balances in the sums they transfer to the reclaim fund.