TDSI

Tax Deduction Scheme for Interest

Guidance Notes for Financial Institutions

HM Revenue & Customs

October 2012

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Updates

1.6	redrafted
1.7	Legislative change from S17/18 to Sch23 to FA 2011
2.2	Tweak to QTD date
2.6	HMRC Trust rulings were only given for Trusts in existence in 1991
2.17	New QTD rules from 6 April 2012
2.28	Tenancy Deposit Protection Scheme
3.23	R85 retrospection
3.48	Debt Relief Order and Individual Voluntary Arrangements
7.2 / 7.4	Correcting interest mistakes.
App 3	Tweak to QTD date

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4. Not ordinarily Resident Accounts

Chapter 1 Introduction

What is the Tax Deduction Scheme for Interest?

1.1 S850 ITA Since 6 April 1991 tax has been deducted from deposit interest paid by deposit-takers and building societies. From 6 April 2008 tax is deducted at the basic rate of tax (BRT). The scheme is known as the Tax Deduction Scheme for Interest (TDSI) and is referred to as "the Scheme" in these guidance notes.

The purpose of these guidance notes

1.2 These notes are for Financial Institutions.

The definition of 'Financial Institution' for the purpose of these guidance notes is a deposit-taker or a building society.

These notes provide general guidance for Financial Institutions on how to operate the Scheme and deduct BRT from appropriate interest payments. They replace the TDSI Guidance Notes issued in March 2010.

Administration of the Scheme

1.3 HMRC's Savings Audit & Share Schemes Office (SASS) administer and audit the Scheme. Their address is

HMRC
SASS
St John's House
Merton Road
Liverpool
L75 1BE

Contact Information

Technical & Audit Tel: 0151 472 6269
Fax: 0151 472 6124
Email: savings.audit@hmrc.gsi.gov.uk

Form supply Tel: 0845 900 0404
Fax: 0845 900 0604

Section 17/18 return format and tape specifications
Tel: 0292 0327285 or 6379
.Email: cni.firm@hmrc.gsi.gov.uk

Who must operate the Scheme?

1.4 All Financial Institutions must operate the Scheme.

How the Scheme works

1.5 Generally, all deposits belonging to individuals are relevant investments, but there are exceptions to this and certain specified deposits are not relevant investments - see

S851 S855 S856 ITA Chapter 2. Financial Institutions deduct BRT when they pay interest on relevant investments, but Financial Institutions may pay interest on relevant investments **without** deduction of BRT in certain circumstances - see Chapter 2. Payment includes crediting interest to an account. Financial Institutions must account for BRT to HMRC and investors are regarded as having paid BRT on the interest.

S850(6) Any reference to interest paid by a building society includes a reference to dividends paid by the society.

S850(6) 'Alternative finance arrangements' (for example Sharia accounts) pay a return which is not interest. But for the purposes of the Scheme, the return received by the investor is treated as if it was an interest payment.

S51 FA 2005 Investors with income tax allowances to cover all or part of their interest may obtain repayment of BRT from HMRC. And some Financial Institutions can (in certain circumstances) repay BRT to investors who register to receive their interest without deduction of BRT part way through a tax year (see paragraph 3.23).

When is BRT deducted?

1.6 S851(2)

- Financial Institutions must deduct BRT at the time interest is paid in the following circumstances:

Banks, other deposit-takers and Building Societies must deduct BRT from interest paid on all relevant investments (see Chapter 2) except those for which they hold a fully completed form R85 (see Chapter 3). Interest paid on deposits, which are not relevant investments, must be paid without deduction of BRT.

In addition:

- **Banks** must also deduct BRT on yearly interest paid on money debts other than relevant investments except where:
    - the payment is made in the ordinary course of its business; or
    - the provisions in chapter 11 of Part 15 of ITA 07 allow the interest to be paid gross (further information is available at http://www.hmrc.gov.uk/manuals/saimmanual/saim9070.htm)
- **Other deposit-takers** must also deduct BRT on yearly interest paid on money debts other than relevant investments except where the provisions in chapter 3 or 11 of Part 15 of ITA 07 allow the interest to be paid gross (further information is available at http://www.hmrc.gov.uk/manuals/saimmanual/saim9070.htm)
- **Building Societies** must not deduct BRT from other forms of interest paid on money debts

The legislation

1.7 The main legislation is in Sections 850 – 873 Income Tax Act 2007 (ITA). This is supported by the following

- The Income Tax (Deposit-takers and Building Societies) (Interest Payments) Regulations 2008 (SI 2008/2682)
- The Income Tax (Interest Payments) (Information Powers) Regulations1992 (as amended) (SI 1992/15)

In this Guidance, references to a section of an Act (for example 'S851') is a reference to the Income Tax Act 2007 unless otherwise stated, and a reference to a regulation is a reference to Statutory Instrument 2008/2682.

Schedule 23 to Finance Act 2011 replaces Section 17 and 18 Taxes Management Act 1970 with effect from 1/4/2012. Further details are available at http://www.hmrc.gov.uk/esd-guidance/s17-s18-si-reporting.htm

but throughout this guidance reference is made to section 17 and section 18.

Who is a deposit-taker?

1.8 A 'deposit taker' is defined as including

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- The Bank of England
- Those persons (banks) with permission to accept deposits under Part 4 Financial Services and Markets Act 2000 who are not building societies, Friendly societies, Credit unions or Insurance companies,
- Municipal Banks,
- Local Authorities
- EEA firms within Sch 3 FISMA 2000 with permissions to accept deposits and Securities Houses who deal in financial instruments as principal.

Enquiries and further information

1.9 Financial Institutions who have any enquiries about the operation of the scheme should contact SASS. If an enquiry concerns a specific deposit account sufficient details of the account (so as not to breach data security issues) should be provided.

Investors who have enquiries about the taxation of their interest should contact their own tax office (or SASS if they do not have a tax office).

These guidance notes can be found on the HMRC website. All bulletins issued before the date shown in the footer are incorporated into these guidance notes. If you would like to receive future bulletins by e-mail please send your e-mail address to savingsaudit@hmrc.gsi.gov.uk

Further information about savings and investments can be found in the HM Revenue & Customs 'Savings and Investments Manual'.

The following forms are available from the HMRC website

R85 (PDF 34K)

R85 Helpsheet (PDF 41K)

R85 Welsh (PDF 40K)

R85 Helpsheet Welsh (PDF 47K)

R85 and Helpsheet Large Print (PDF 48K)

R40

R40 Notes (PDF 97K)

R105 (PDF 430K)

R105 Norwegian (PDF 81K)

R105 (Arabic) (PDF 212K)

R105 (French) (PDF 54K)

R105 (German) (PDF 48K)

R105 (Spanish) (PDF 48K)

R105(PR)(PDF 45K)

Chapter 2 Relevant investments

2. Relevant investments

What is a relevant investment?

2.1 Financial Institutions must deduct BRT from interest on relevant investments unless they hold a fully completed form R85 (see Chapter 3) or the deposit is not a relevant investment because it satisfies one of the conditions in paragraph 2.2.

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A deposit will normally be a relevant investment if

- an individual or individuals is/are beneficially entitled to interest on the deposit (this includes partnerships, other than Scottish partnerships, where all the partners are individuals who are beneficially entitled to interest on the deposit). If a limited liability partnership is made up of individual partners the deposit is a relevant investment, but if a limited liability partnership includes a partner which is not an individual (for example a company) it is not a relevant investment. A limited liability partnership will be regarded as a body corporate if it goes into liquidation and consequently any investment will no longer be a relevant investment.

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- a Scottish partnership in which all the partners are individuals is beneficially entitled to interest on the deposit,
- a personal representative receives interest on the deposit in that capacity, or
- the trustees of a discretionary or accumulation trust receive interest on the deposit in that capacity (see paragraph 2.11).

When is a deposit not a relevant investment?

2.2 If the interest on a deposit belongs to anyone other than those in the list at paragraph 2.1 it is not a relevant investment. Some examples are shown below and a fuller list is given at Appendix 1

- companies (including joint accounts where at least one party to the account is a company),
- unincorporated clubs, societies (including friendly societies) and associations such as members clubs, but not those savings clubs, thrift clubs or Christmas clubs, where interest is paid in proportion to the individual members investment,
- pension funds,
- local authorities,

- parish councils,
- schools under local authority control,
- charities.

S865 In addition, even if it falls within the list in paragraph 2.1 above, a deposit is not a relevant investment if

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- a qualifying certificate of deposit has been issued in respect of it (see paragraph 2.16),

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- it is a qualifying time deposit made before 6 April 2012(see paragraphs 2.17),

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- it is a debt on a debenture issued by a deposit-taker,

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- it is a loan made by a deposit-taker in the ordinary course of his business,

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- it is a debt on a security held with a deposit-taker which is listed on a recognised stock exchange,

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- it is a general client account deposit (see paragraph 2.18),

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- it forms part of a premiums trust fund of Lloyds,
- the deposit is held at a branch outside the UK,

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- it is a deposit for which the Financial Institution has received a valid NOR declaration (see Chapter 4),

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- it is a deposit in an account designated as an ISA, Junior ISA or CTF account (see paragraph 2.22),

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- it is a deposit in respect of which a qualifying uncertified eligible debt security is issued,
- it is a loan made to a building society in connection with a ‘repo’

- it is an investment with a building society that is a loan made by a bank

- it is a security issued by a building society (a Permanent Interest Bearing Share – PIBS) which is listed or capable of being listed on a recognised stock exchange

Anstalts & Stiftungs

2.3 Anstalts and Stiftungs are Liechtenstein business entities which are fiscally opaque.

The current HMRC view is that Anstalts should all be dealt with as if they are companies. For TDSI, this means that Anstalts should receive gross interest.

The current HMRC view is that Stiftungs are Trusts for UK tax purposes. For TDSI purposes, the deposit should be considered to belong to the settlor and the TDSI treatment depends on the nature of the settlor - so if the settlor is an individual, BRT must be deducted.

If the settlor can show that they have not retained an interest, the Financial Institution can treat the Stiftung as an interest in possession trust (see paragraph 2.9) and the TDSI position will depend on the nature of the beneficiary. If the beneficiary is an individual, BRT must be deducted.

Escrow accounts

2.4 An escrow agreement is a contract where a third party (the Financial Institution) holds funds while the buyer and seller complete a transaction. The parties to the agreement determine when the funds should be released before the buyer places the deposit with the institution. After the escrow agreement has been entered, the terms for holding and releasing the money cannot be altered in the absence of an agreement by all the parties.

The financial institution is not a party to the escrow agreement, but is a custodian of the deposit who has no right to alter the terms of the agreement or prevent the parties from altering them if they so agree. The only agreement that the institution must make is to hold the deposit, subject to the terms and conditions of the agreement.

The Financial institution will have to determine which party is beneficially entitled to any

interest and deduct tax if the deposit is a relevant investment.

NOR declarations

2.5 S858 S861 Certain of the categories of non-relevant investments require completion of a declaration before interest can be paid without deduction of BRT (see Appendix 1).

The declarations are

Form R105 – individuals who are NOR in the UK
Form R105(PR) – deceased individuals who were NOR in the UK
Form R105(DAT) – Discretionary & Accumulation trusts in which all the beneficiaries and all the trustees are NOR in the UK

Form R105(AFA) - individuals who are NOR in the UK, and who receive an alternative finance return which is treated as interest.

The declarations must be on forms provided by HMRC or an approved substitute.

Any substitute or 'own versions' of these forms **must** receive approval in writing from SASS before they can be used. Requests for approval should be sent to SASS (see address in paragraph 1.3 or e-mail savings.audit@hmrc.gsi.gov.uk. If substitute versions are used without approval they are not valid. Consequently, any tax which was not deducted from interest payments may be due from the Financial Institutions to HMRC.

Trusts

2.6

- Where interest on a deposit arises to trustees, the deposit may be a relevant investment depending on the nature of the trust. To determine the nature of the trust for this purpose Financial Institutions may rely on information provided by the trustees such as a copy of a letter from a solicitor or accountant acting for the trustees.

Before 1991/92, HMRC issued 'rulings' on the status of a Trust but these are no longer provided. If a long established Trust has such a ruling it can be used as an alternative to the letter mentioned above. If an HMRC ruling is submitted to the Financial Institution, the Institution should seek confirmation that the status of the Trust has remained unchanged.

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But, if the beneficial owner of the interest is an individual, (and therefore the deposit is a relevant investment) the account cannot be registered with a form R85 (see Chapter 3). The reason is that the certificate must be given by the person in whose name the investment is held and who is beneficially entitled to the payment. In this case the investor is the trustee and the account will be held in the name of the trustee, and as the trustee is not beneficially entitled to the payment they cannot complete a form R85.

But it may be possible to accept a declaration form R105 (see Chapter 4). The main types of trust are considered below. Flowcharts at Appendix 4 show whether a form R105 or a form R85 can be signed.

Charities, unit trusts and investment trusts

2.7 Where interest on a deposit arises to trustees of a charitable trust, unit trust (whether authorised or unauthorised) or investment trust the deposit is not a relevant investment (see Appendix 1).

Bare trusts

2.8 A bare trust, also known as a 'simple trust', is one in which each beneficiary has an immediate and absolute right to both the capital and income. The beneficiaries of a bare trust have the right to take actual possession of trust property. The property is held in the name of a trustee, but the trustee has no discretion over what income to pay the beneficiary. In effect, the trustee is a nominee in whose name the property is held and has no active duties to perform.

Where interest on a deposit arises to trustees of a bare trust the status of the deposit depends on the nature of the beneficiary.

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If the beneficial owner of the interest is an individual, (and therefore the deposit is a relevant investment) the account cannot be registered with a form R85 (see paragraph 2.6). The reason is that the certificate must be given by the person in whose name the investment is held and who is beneficially entitled to the payment. In this case the investor holding the account is the trustee, and as the trustee is not beneficially entitled to the

payment they cannot complete a form R85.

The flowchart at Appendix 3 shows whether a form R105 or a form R85 can be signed.

Bare trusts for minors and adults who are mentally incapacitated are specifically allowed to be registered for gross interest with a form R85 if the conditions for giving a form R85 are met (see Chapter 3).

Interest in possession trusts

2.9 This type of trust exists when a beneficiary has a current legal right to the income from the trust as it arises. The trustees must pass all of the income received, less any trustees' expenses and tax, to the beneficiary.

A beneficiary who is entitled to the income of the trust for life is known as a 'life tenant' (a 'liferenter' in Scotland) or as having a 'life interest' (a 'liferent interest' in Scotland).

The income beneficiary need not, and often does not, have any rights over the capital of such a trust. Normally, the capital will pass to a different beneficiary, or beneficiaries, at a specific time in the future or after a specific future event.

Where interest on a deposit arises to trustees of an interest in possession trust the status of the deposit depends on the nature of the beneficiary. If the beneficiary falls within the categories listed in paragraph 2.1 the deposit is a relevant investment - but the exclusions in paragraph 2.2 may apply.

If the beneficial owner of the interest is an individual, (and therefore the deposit is a relevant investment) the account cannot be registered with a form R85. The reason is that the certificate must be given by person in whose name the investment is held who is beneficially entitled to the payment. In this case the investment is held by the trustee, and as the trustee is not beneficially entitled to the payment they cannot complete a form R85.

The flowchart at Appendix 3 shows whether a form R105 or a form R85 can be signed.

Discretionary trusts

2.10 Trustees of a discretionary trust generally have discretion about how to use the income of the trust. They may be required to use any income for the benefit of particular beneficiaries, but the trustees can decide

- how much is paid,
- to which beneficiary or class of beneficiaries payments are made,
- how often the payments are made, and
- what, if any, conditions to impose on the recipients.

The trustees may, or may not, be allowed to 'accumulate' income within the trust for as long as the law allows rather than pass it to the beneficiaries. Income that has been accumulated becomes part of the capital of the trust.

Where interest on a deposit arises to trustees of a discretionary trust the deposit is a relevant investment. And, if the trustees of a discretionary trust are not resident in the United Kingdom, and do not have any reasonable grounds for believing that any of the beneficiaries of the trust is an individual who is ordinarily resident in the United Kingdom or a company which is resident in the United Kingdom, and they make a declaration to that effect to the Financial Institution, the deposit is not a relevant investment (see paragraph 2.1). So where a Financial Institutions receives a fully completed declaration it must not deduct BRT from future payments of interest. See also paragraph 4.27.

A Flat Management Company (FMC) can be both a company and, under Section 42 Landlord and Tenant Act 1987 (LTA), a Discretionary and Accumulation Trust. This means that interest paid on a deposit made by a FMC may be paid net if the FMC requests it to be paid net despite the 'company' status. There will be no Trust Deed in these cases. Financial Institutions will need to hold evidence before they begin making net payments to a company. As there is no Trust Deed we suggest that Financial Institutions obtain a signed declaration from the company certifying that the funds to be held in the bank account are, under section 42 LTA 1987, held by the company in its capacity as a trustee of a trust to hold service charges.

The flowchart at Appendix 3 shows whether a form R105(DAT) can be signed.

Accumulation and maintenance trusts

2.11 An accumulation and maintenance trust is one in which the beneficiary will become entitled to the property, or at least to the income from the property, upon reaching a certain age (no more than 25). The trustees can use the income for the maintenance of the beneficiary before the date on which the beneficiary becomes entitled to the property or to an interest in possession in that property.

Trustees of an accumulation and maintenance trust are given power to 'accumulate' the income of the trust until a certain date, at which time the beneficiary is entitled to the property of the trust or to the income arising from that property.

In England and Wales, the beneficiary (unless the terms of the trust say otherwise) becomes entitled to the income from the property held in the trust when he or she reaches 18, and an interest in possession trust is created at that point with respect to that beneficiary.

The position in Scotland is different, as there is no equivalent entitlement to the income of the trust at age 18. However, Scots law limits accumulation periods so accumulation and maintenance trusts will often end when the beneficiary reaches the age of majority.

A payment of interest to an account belonging to trustees of an accumulation and maintenance trust should not be paid gross unless certain conditions are met -

- the trustees must be not resident in the United Kingdom; and
- they must not have any reasonable grounds for believing that any of the beneficiaries of the trust is an individual who is ordinarily resident in the United Kingdom or a company which is resident in the United Kingdom; and
- they must have made a declaration to that effect to the Financial Institution.

So where a Financial Institution receives a fully completed declaration on form R105 (DAT) it must not deduct BRT from future payments of interest.

The R105 (DAT) is a prescribed HMRC form, and any substitute or 'own' versions of this

forms **must** receive approval in writing from SASS before they can be used. Requests for approval should be sent to SASS (see address at paragraph 1.3). If substitute versions are used without approval they are not valid. And consequently any tax, which was not deducted from interest payments, is due from the Financial Institutions to HMRC.

Substitute versions must be in the same format, and have the same notes as the HMRC form R105 (DAT). The logo can be changed and references throughout the form to 'building society, bank or other deposit-taker' can be changed to the name of the Financial Institution. If the version sent for approval is in a different colour or shade from the HMRC form, a coloured version must be sent to SASS.

The flowchart at Appendix 3 shows whether a form R105 (DAT) can be signed.

Contingent trusts

2.12 This is a trust where the beneficiary's right to receive capital or income is conditional upon him or her satisfying a prior requirement - for example that he or she reaches a specified age or survives a named person. Where interest on a deposit arises to trustees of a contingent trust and the beneficiary is not entitled to the income as it arises the deposit is treated as held by trustees of a discretionary or accumulation and maintenance trust (see paragraph 2.11) until the condition(s) is/are satisfied. If the beneficiary is entitled to the income as it arises the deposit is treated as held by the trustees as an "interest in possession trust" (see paragraph 2.9).

The flowchart at Appendix 3 shows whether a form R105 or a form R85 can be signed.

Will Trusts

2.13 A will trust is a trust established by someone's will. For example, someone (the testator) might make a will directing that a specific legacy, instead of going directly to an individual, be held on trust. Or they might direct that whatever is left over from their estate after paying all debts, funeral costs and legacies, is to be held on trust for minor grandchildren. A will trust can be any type of trust – bare, interest in possession, accumulation/discretionary. It depends on the exact terms of the will that establishes the trust.

The Financial Institution should establish which type of trust the will trust is and follow the relevant guidance in paragraphs 2.7 – 2.14.

Mixed trusts

2.14 A mixed trust is a mixture of more than one type of trust. For example, some of the assets in a trust may be held on an interest in possession trust; other assets may be held on an accumulation/discretionary trust.

Example

Two children benefit from a trust. According to the terms of the trust deed, the beneficiaries are each entitled to half the income when they reach 18, and in the meantime income is to be accumulated or paid at discretion. Zoe reaches 18 while Sarah is still 14. At 18 Zoe is entitled to half the income. The part of the trust benefiting Zoe becomes an interest in possession trust, while the part that benefits Sarah remains an accumulation/discretionary trust until she reaches 18. In other words, when Zoe reaches 18 the trust becomes a mixed trust.

In mixed trusts, the income for each part of the trust will be taxed under the rules that apply to that type of trust. For example, the part of the trust in which there is an interest in possession will be taxed as such, while the accumulation/discretionary part will be taxed as an accumulation/discretionary trust. This applies to trustees and beneficiaries as appropriate.

Trust Offices

2.15 The contact details for HMRC Trust Offices are available from our website.

Qualifying certificates of deposit

2.16 A deposit for which a qualifying certificate of deposit has been issued by the Financial Institution is not a relevant investment.

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A qualifying certificate of deposit is a certificate of deposit under which

- the amount payable by the Financial Institution exclusive of interest, is not less than

£50,000 (or, for a deposit denominated in foreign currency, the equivalent of £50,000 when the deposit is made), and

- the Financial Institution is obliged to pay that amount within 5 years of the deposit being made.

Qualifying time deposits

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An account is a Qualifying Time Deposit (QTD) if the terms & conditions for the account meet the five criteria below

- the deposit is at least £50,000
- repayment to be made at a specified time within 5 years of the QTD being made
- makes no provision for the right to repayment to be transferred
- prevents partial withdrawals
- prevents additions.

A QTD made on or after 6 April 2012 can be a relevant investment (see paragraph 2.1) and if it is the deposit will be subject to TDSI (see paragraph 2.17a).

If all of the above conditions are met in the terms & conditions the account will be a QTD even if it was not the intention of the Financial Institution to offer QTD accounts.

If the terms & conditions do not meet the criteria the account is not a QTD. So, for example, if the terms & conditions do not meet the criteria because they allow additions to the account, but the saver does not make any additions to the account the account is still not a QTD.

Criteria 1 - £50,000

The deposit must be at least £50,000. If the account is not a sterling account, the deposit must be the equivalent of £50,000 at the time the deposit is made – if a change in currency rates mean the account deposit is less than £50,000 after the QTD has been taken out this is acceptable and the account will remain a QTD.

Criteria 2 – repayment within 5 years

The terms & conditions must specify the repayment date. This date must be within 5 years of the QTD being made – repayment on the fifth anniversary is not acceptable.

The repayment date must be specified at the outset - it is not sufficient that the deposit agreement says merely 'x days from the date notice to withdraw is given', it must give the actual date.

If a QTD matures on a non working day it can be repaid on the next working day or it can be repaid on the last working day prior to maturity.

Criteria 3 - repayment to be transferred

The terms & conditions cannot allow the capital to be repaid to a third party upon maturity.

Criteria 4 - withdrawals

The terms & conditions should make it clear that it should be the intention of the saver to leave their capital in the account until the maturity date. A Financial Institution may include a condition that an early withdrawal will incur a penalty. HMRC do not have the authority to prevent capital being returned to the saver before maturity, but will review cases where a Financial Institution has agreed to break a QTD to ensure the correct tax treatment of interest has been followed and to determine whether the deposit was ever in fact a QTD

Criteria 5 – additions

Additions to the account are not permitted – either by the saver or by the Financial Institution. An account may be offered where interest is paid before the maturity date e.g. monthly, but it is 'paid away' to another account. If the terms & conditions allow the interest to be added to the original sum deposited for the purpose of calculating future interest, then the account will not be a QTD.

If a Financial Institution offers a QTD that pays away the interest to another account, but that interest, for system reasons, is credited to the account and subsequently 'paid away' on the same day without ever being added to the original sum deposited for the purpose of calculating future interest, then the account will remain a QTD.

2.17a **Deduction of tax from QTD interest**

A QTD is not a relevant investment if the deposit was made before 6 April 2012. If the deposit is made on or after 6 April 2012, the deposit will be a relevant investment (and tax must be deducted from any interest paid), if any of the conditions in paragraph 2.1 apply. But if the customer is

- a UK non-taxpayer and not liable to pay tax, a form R85 can be completed, or
- not ordinarily resident in the UK, a form R105 can be completed.

Both of these options will allow the interest to be paid gross.

2.17b Broken QTDs

Where any of the conditions cease to be met the QTD is broken and is no longer a QTD. Examples of a QTD being broken include

- additions to the deposit (including capitalised interest),
- withdrawal of part of the deposit before it matures, and
- pooling the deposit with other deposits.

Where a QTD set up before 6 April 2012 is broken, Financial Institutions should pay any accrued interest referable solely to the period in which the deposit was a QTD without deduction of BRT. If the deal continues to run to maturity following a partial withdrawal/addition after a QTD has been broken, BRT must be deducted from any interest paid if the investment is now a relevant investment (see paragraph 2.1).

The bankruptcy of the saver does not mean the QTD rules have been broken. If the saver is declared bankrupt no action is necessary and the QTD will remain a QTD until maturity or until the account ceases to qualify as a QTD for some other reason e.g. a partial withdrawal.

Terms & conditions

The terms and conditions of a QTD should make it clear to the investor that the account is a QTD and therefore, if the deposit was made before 6 April 2012, interest will be paid

without tax taken off. For deposits made after 5 April 2012, BRT must be deducted from any interest if the QTD is a relevant investment (see paragraph 2.1). As the account is a QTD, interest will not be added to the account balance so the terms & conditions should explain how the interest will be treated.

The investor should be made aware that the interest forms part of their taxable income and should be notified to HMRC if necessary.

Roll over

Interest added at the date of maturity can be rolled over as part of the deposit into a new QTD. If the rollover takes place on or after 6 April 2012, the deposit will be a relevant investment if any of the conditions in paragraph 2.1 apply and BRT must be deducted from any interest paid. At maturity, if capital and/or interest is removed and the deposit falls below £50,000 the balance cannot be rolled into a new QTD.

Death of the saver

Where the holder of a QTD made before 6 April 2012 dies, the deposit can remain a QTD (and be entitled to gross interest) as long as the QTD conditions are not breached. But the QTD cannot then roll over into another QTD following maturity.

If an executor closes a QTD made before 6 April 2012 before maturity, the account will cease to be a QTD on closure. Interest accrued up to the date of closure will be paid gross.

Example

Mr A, Mr B and Mr C each open a QTD on 1 August 2008.

The maturity date for each of the QTDs is 31 July 2011.

All 3 men die on 1 September 2010.

Mr A's executors inform the Financial Institution of his death but do not request the removal of funds from the QTD. The QTD has remained unbroken and interest will be paid gross on 31 July 2011.

Mr B's executors inform the Financial Institution of his death and request some of the capital to pay for his funeral expenses. They ask for £3,000 to be paid to them from the QTD on 7 September 2010. The QTD has now been broken. The Financial Institution should pay all accrued interest up to 7 September 2010 gross. But the remaining capital is no longer in a QTD and any future interest must be paid net if the deposit is a relevant investment (see paragraph 2.1).

Mr C's executors inform the Financial Institution of his death and request all of the capital to distribute to his beneficiaries. The Financial Institution pays the capital to them on 7 September 2010. The Financial Institution should pay all accrued interest up to 7 September 2010 gross.

General (undesignated) client account deposits

2.18 A general client account deposit is not a relevant investment. A general client account is a deposit in a client account where

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- the account is not held for one or more **particular** clients,
- the account-holder's treatment of the monies in the account is governed by statutory regulations, and
- under those regulations the account-holder is required to make payments representing interest to some or all of the clients for whom, or on whose behalf, the deposits were received.

In particular, deposits by solicitors, accountancy firms, licensed conveyancers, estate agents or investment businesses operating under the Financial Service and Markets Act Client Money Rules, and containing funds for a number of clients are general client account deposits. The Financial Institution should be able to provide written confirmation supporting the underlying nature of any accounts opened by solicitors etc at audit.

Designated clients' accounts

2.19 Designated client accounts are relevant investments - but the exclusions in paragraph 2.2 may apply - for example, if

- the clients are all NOR and the Financial Institution has received a valid NOR declaration (form R105) signed by the person or one of the persons beneficially entitled to some or all of the interest. If the interest is payable to someone else, the form may be signed by that person instead (see paragraph 4.15),
- the client is a company, or
- the account is held for a child or a person with mental incapacity and is registered for payment of interest without deduction of BRT. Paragraph 3.24 explains who can sign the form R85 on behalf of the owner of the funds.

A designated client account for a person aged 16 or over cannot be registered as the certificate must be given by the person in whose name the investment is held and who is beneficially entitled to the payment. In this case the investor holding the account is the solicitor, and as the solicitor is not beneficially entitled to the payment they cannot complete a form R85.

Office Accounts

2.20 The status of the solicitor, estate agent etc applies to the office account where they themselves are entitled to the interest. Unless a company has an interest in the business or all partners are NOR such deposits must have BRT deducted from any interest paid.

Term bonds

2.21 The majority of term bonds have interest paid or credited annually. But there are term bonds available to investors which have interest paid at maturity. Financial Institutions may wish to make clear in their publicity material the tax implications of term bonds which only pay interest at maturity.

UK savers investing in term bonds which do not have interest paid or credited annually often do not realise that interest payable on the bonds is taxable in the year in which it is received or credited. For example, if a bond matures on its fifth anniversary and all of the interest which has accrued since it was taken out is paid on that date, all of interest is taxable in that one tax year. It will help investors if this is made clear to them

- before they invest, in the publicity material about the product

- during the term of the bond, in the interest statement sent out each year; and
- at maturity in the final interest statement issued.

A UK saver can be a non-taxpayer during the term of the bond, and therefore be eligible to register their accounts (using form R85) to receive gross interest. However, the amount of interest paid when the bond matures, together with any other income they receive, may be such that the saver is liable to pay tax for that year. This will affect UK investor's eligibility to register their savings accounts to receive gross interest. So investors need to know when the tax liability will arise so that they can plan ahead to have capital available to pay any tax bill. This may also affect the amount of money they can re-invest.

Examples

In the following examples the investor is under 65 and has no income other than the building society interest she receives, and has registered for gross interest by completing form R85.

Mrs A invested £30,000 in a term bond on 1 May 2010 which lasted one year and matured on its' first anniversary - 1 May 2011. On 1 May 2011 interest of £3,000 was paid to Mrs A. The interest was taxable in the tax year 2011-12 because this is the tax year in which it was paid. Mrs A did not need to pay any tax because her total income for the tax year 2011-12 was below her allowance of £7,475.

Mrs B invested £30,000 in a term bond on 1 May 2009 which lasted two years and matured on its' second anniversary - 1 May 2011. The interest on this bond is credited to Mrs Bs account on two dates – 1 May 2010 and 1 May 2011. On 1 May 2010 interest of £3,000 was credited to Mrs Bs account. Mrs B did not need to pay any tax because her total income for the tax year 2010-11 was below her allowance of £6,475. Mrs B chose to leave this interest in the account because future interest would now be calculated on the original deposit of £30,000 and the new addition of £3,000.

If Mrs B had chosen a bond that paid interest only on maturity she would have received £6,200 in the tax year 2011-12. If Mrs B's income for the tax year 2011-12 is more than her allowance for that year she should cancel the gross registration and receive all the

interest with tax taken off.

Individual savings Accounts (ISAs and Junior ISAs)

2.22 Interest on ISA accounts is exempt from income tax and is outside the Scheme.

Where an account ceases to be an ISA account Financial Institutions should deduct tax from subsequent payments of interest unless they hold a fully completed

- form R85 (see Chapter 3), or
- a valid NOR declaration on form R105 (see Chapter 4).

For detailed instructions on dealing with the tax consequences of invalid ISA subscriptions or repaired ISAs, see paragraphs 12.38 to 12.54 in Chapter 12 and paragraph 24.3 in Chapter 24 of the http://www.hmrc.gov.uk/isa/isa-guidance-notes.pdf

Child Trust Fund

2.23 Interest on Child Trust Fund accounts is exempt from income tax and is outside the Scheme.

Where an account ceases to be a CTF account Financial Institutions should deduct tax from subsequent payments of interest unless they hold a fully completed

- form R85 (see Chapter 3), or
- valid NOR declaration on form R105 (see Chapter 4).

Guidance for managers of Child Trust Funds is available from our website.

Interest groups

2.24 Some deposit-takers (and possibly building societies) operate accounts for interest groups where the balances from different parties are brought together. The overall balance is used to determine the amount of interest paid and one account is nominated to receive interest. The receiving account may, or may not be part of the group. If all parties to the group are

entitled to gross interest (and the receiving account if this is outside the group), interest can be paid gross. But where there is a mix of parties - some entitled to net and some to gross interest - it is not acceptable to pay all of the interest gross because the receiving account is entitled to gross. Where the group is mixed, interest should be paid after the deduction of tax.

Example

An interest group is made up of 4 accounts (for companies A, B, C & D) with each of these accounts being operated by a separate legal entity. All accounts are entitled to receive gross interest as they are company accounts. Account A has a credit balance of £100,000 but accounts B, C & D are each overdrawn with combined borrowings of £70,000. Account B is nominated to receive all of the interest for the group.
Credit interest is earned on (£100,000 - £70,000) and this is all paid gross into the account of B.

Using the example above, if B was an individual (who should receive interest net) the group is 'mixed' and all interest paid should be paid after deduction of BRT.

Sequestrators

2.25 Sequestration does not change beneficial ownership and the normal Scheme rules apply to the beneficial owner.

Court Appointed Receivers

2.26 Where court appointed receivers hold assets in expectation of paying them to the court to meet a confiscation order it is necessary to determine who is the ultimate beneficiary of the monies. If an individual is beneficially entitled, BRT must be deducted even if a form R85 or R105 is held. If a company is beneficially entitled, the interest can be paid gross. Where a Government Department is entitled to the money, BRT should not be deducted.

If a Financial Institution is unable to determine beneficial ownership tax must be deducted from any interest paid or credited.

Evidence that a deposit is not a relevant investment

2.27 All deposits must be treated as relevant investments unless the Financial Institution is satisfied that it is not a relevant investment. There is no specific information that Financial Institutions must seek in order to be satisfied that a deposit is not a relevant investment. HMRC recommends that Financial Institutions obtain documentary evidence which can reasonably be taken to confirm the nature of the investor. That might be the certificate of incorporation for a company or the registered number for a charity, or the 'constitution and rules' for a club or society.

S857

There is no longer a requirement for a building society to obtain a form 38(NP) to support the payment of gross interest. But they will need to obtain sufficient evidence to satisfy themselves that the payment should be gross.

Tenancy Deposit Protection Scheme

2.28 There are two types of Tenancy Deposit Protection Scheme

Custodial Tenancy Deposit Scheme

There is only one government approved custodial scheme, 'The Deposit Protection Service'. The deposit is held by the scheme in a separate designated account. The scheme is funded by the interest accruing on the deposit held, so it is very unlikely that there will be any 'unused' interest to return to either the landlord or tenant.

Insurance Based Tenancy Deposit Scheme

There are two approved insurance-based schemes; 'The Tenancy Deposit Scheme', and 'mydeposits'. The deposit is held directly by the landlord or managing agent who must pay insurance premiums to the scheme administrator, who must maintain adequate insurance to cover a failure by the landlord or agent to repay the deposit. The deposit can be a relevant investment depending on the status of the landlord or agent making the deposit (see paragraph 2.1). The tenant is not entitled to receive any interest on the deposit.

Chapter 3 Registration for payment of interest without deduction of BRT for UK savers

What is registration?

3.1 Reg 4 UK Investors who are unlikely to be liable to pay income tax for the tax year in which interest is paid may register their accounts for interest to be paid without tax taken off. The accounts may be registered by the investor (that is, the person beneficially entitled to the interest) or, in certain circumstances, by some other prescribed person (see paragraph 3.24).

Reg 6

How does an investor register?

3.2 Reg 5 The person who registers the account must complete and sign the registration form R85 and give it to the Financial Institution. Where form R85 is fully completed and signed by the investor (or some other prescribed person see paragraph 3.24), Financial Institutions must pay interest without deducting BRT until notification is received in accordance with any of the events outlined at paragraph 3.3 below. Financial Institutions are not expected to verify the information given on form R85, but see paragraph 3.11 about the information the form R85 must contain

How long does registration last?

3.3 The registration of an account has enduring effect and continues to apply in subsequent tax years unless and until

- the account is de-registered (see paragraphs 3.51 & 3.52),
- the investor dies (see paragraphs 3.46 & 3.47),
- the investor is declared bankrupt (see paragraph 3.48),
- an investor who is a child reaches the age of 16 (see paragraph 3.37 – 3.39).

Who can register?

3.4 An investor may register an account for payment of interest without deduction of BRT if he or she

- is an individual, and
- is ordinarily resident in the UK, and does not expect to be liable to pay income tax for the tax year in which the interest is paid

Form of written registration

3.5 Financial Institutions may accept registration only on

- the HMRC form R85, or
- a copy form R85 downloaded from the HMRC website (a black and white version is acceptable), or
- a substitute form which has been approved by HMRC (see paragraph 3.6).

R85 - Substitute versions

3.6 The gross registration form R85 for non-taxpayers is a prescribed HMRC form, and any substitute or 'own' versions of this form **must** receive approval in writing from SASS before they can be used. Requests for approval should be sent to:

SASS
Room 330
St John's House
Merton Road
Liverpool
Merseyside
L75 1BB

or e-mail savings.audit@hmrc.gsi.gov.uk

If substitute versions are used without approval they are not valid. And consequently any tax, which was not deducted from interest payments, may be due from the Financial Institution to HMRC.

Substitute forms R85 must include the Helpsheet which must be updated annually, to show the current personal allowances, and each time they are updated they must be approved by SASS. This will encourage eligible savers to register, and reduce the number of accounts that have to be de-registered.

Substitute versions must be in the same format, and have the same notes as the HMRC form R85. The logo can be changed and references throughout the form to 'bank, building society or local authority' can be changed to the name of the Financial Institution. If a substitute version is in a different colour or shade from the HMRC form, a copy of the actual form must be sent to SASS for approval.

Forms R85 which have been completed and are now held on record do not need to be updated.

R85 - obtaining supplies of form R85

3.7 The version on the HMRC website will always be the latest version.

A Welsh version and a large print version of both the R85 and the Helpsheet are also available from the above page.

Supplies of form R85 may be obtained from the St Austell Orderline.

The orderline is open daily from 08.00am - 10.00pm and the contact details for ordering from St Austell are

Telephone 0845 900 0404

Fax 0845 900 0604

Photocopied forms can be used.

R85 - electronic versions

3.8 Reg 8(4) Electronic versions with an electronic signature and faxes sent on or after 6 April 2001 are treated as registrations made in writing and can be accepted in the same way as written registrations/declarations. Electronic signatures must conform to the Electronic Communications Act 2000.

Financial Institutions may produce computerised forms with the account details already printed on the form using either their own approved version or the HMRC version.

Financial Institutions may also use a hypertext link to the HMRC form R85.

If a form R85 attached to an e-mail, or sent by fax, is in the prescribed form or an approved substitute it can be treated in the same way as a paper version. If the form R85 is not the prescribed version or an approved substitute it can be treated as a non-written version and written confirmation can be sent in the usual way (see paragraph 3.9). But if the form is not the prescribed version or an approved substitute, and the Financial Institution does not accept non-written R85s the form cannot be accepted.

R85 - non-written registration

3.9
Reg 8 Non-written registrations for payment of interest without tax taken off are acceptable. Taking registrations by non-written means is optional. Financial Institutions can insist on written registrations.

Where a registration is not in writing, for example when made by telephone or e-mail without an electronic signature, the person making the registration must provide the same information and make the same declaration as if the declaration had been made in writing. A signature is not required. The Financial Institution must then make a declaration confirming all the details provided and send a copy within 30 days to the person making the registration. The copy may be sent by post, fax, in PDF format or e-mail and must show the date it was sent.

On issuing the copy declaration the Financial Institution should advise the person making the registration that he or she has 30 calendar days to notify any corrections.

The registration is valid from the date the Financial Institution creates the confirmatory declaration and the date of creation must be recorded on the Financial Institutions systems.

The date of creation is the date when all of the details are entered onto the Financial Institutions system. This may be different from the date the declaration was printed, issued or posted.

Corrections to the details on the copy confirmatory declaration need not be notified in

writing. But where corrections are notified the Financial Institution must issue a revised copy declaration. Where corrections are notified within the 30-day period the revised declaration will take effect from the date the original copy declaration was sent. Where corrections are notified outside the 30-day period the registration will take effect only from the date the revised copy declaration is sent. Where a correction is made at any time after the original registration Financial Institutions do not need to seek to recover tax that ought to have been deducted, but must immediately issue a revised copy declaration, unless registration is no longer appropriate. Copies of related correspondence should be retained for audit purposes.

R85 - action to take on receipt of form R85

3.10 When a Financial Institution receives a form R85 they should check that the form has been fully completed. But the Financial Institution does not have to verify the information and, in particular, does not have to check whether the investor is eligible to register.

The form must contain the information in paragraph 3.11 and it must be signed by a person in one of the categories listed in paragraph 3.24.

R85 - what information must the form contain?

3.11 The form R85 must contain
Reg 9

- name of Financial Institution,
- branch sort code or roll number as appropriate (unnecessary if the account number is a unique identifier),
- account number(s),
- whether any account is a joint account (by ticking the appropriate box),
- name of investor,
- investor's permanent residential address including postcode,
- the investor's date of birth,

If the box for the NINO is not completed, the form can still be accepted.

R85 - omissions and errors

3.12 Financial Institutions must not accept forms R85 unless they are completed in full.

HMRC recognises that incomplete forms R85 are sometimes accepted, and that there are occasions when it would be unreasonable to return the form to an investor because of a trivial error or omission. HMRC auditors will not treat forms R85 as invalid provided they are satisfied that

- the Financial Institution has, in general, sought to obtain fully completed forms R85, and
- forms R85 have been annotated with missing information where appropriate (see Chapter 9).

R85 - National Insurance Number (NINO)

3.13 A National Insurance Number (NINO) should be completed if the investor has worked in the UK in the three years prior to signing the form (but the form can be accepted if the NINO is not given). Some of the places an investor will find his or her NINO are

- a pension letter,
- a payslip,
- a form P45 or P60,
- a letter from his or her tax office,
- a letter from the Department for Work & Pensions,
- a letter awarding job seekers allowance.

R85 - several accounts

3.14 The form R85 is account specific. Strictly, investors should register each account separately. The form R85 enables two accounts to be registered provided that both accounts are listed on the form and the account numbers are legible. If one of the account numbers is illegible, the form remains valid for the other.

R85 - additional accounts

3.15 When a new account is opened by or on behalf of an investor, a new form R85 should be obtained. See paragraph 3.19 where Unique Investor Identifiers are used.

R85 – address

3.16 This **must** be the investor's permanent residential address. This can include a retirement home, nursing home, hospice, long stay hospital, a student term time address, or a BFPO address.

Financial Institutions must not accept a form R85 containing a mailing 'care of' or PO Box address.

If the investor does not have a permanent residential address, please contact SAAS (at the address in paragraph 1.3 or e-mail savings.audit@hmrc.gsi.gov.uk who will decide whether or not a correspondence address is acceptable.

R85 - different address on form R85 to Financial Institutions records

3.17 Where the address on form R85 is different to that on the Financial Institution's records, the Financial Institution should clarify the situation. This does not mean that different addresses are unacceptable - but Financial Institutions must satisfy themselves of the reason. A record should be kept of the reason. It is up to the Financial Institution how to record this information. But where the address is a retirement home, nursing home, hospice or hospital Financial Institutions may accept a form R85 without making any enquiries.

R85 - address abroad

3.18 An address abroad may indicate that an investor is not ordinarily resident (NOR) in the UK in which case form R85 is not appropriate. In these circumstances the Financial Institution should check whether the investor is ordinarily resident in the UK. If the investor is ordinarily resident in the UK, and the address is a temporary address, the R85 is acceptable. If the investor is NOR in the UK the form R85 is not acceptable but the investor is entitled to complete and submit a form R105 if the Financial Institution operates the R105 scheme (see Chapter 4). No inquiries are necessary if a BFPO number is given on a form R85 **no matter what country or area is quoted.**

R85 - unique investor identifiers

3.19 If a unique identifier number is used for money market deposits or fixed term bonds, which are regularly rolled over, a single form R85 is acceptable.

If a new account is opened a new form R85 must be obtained.

R85 – date

3.20 Financial Institutions may accept an undated form R85 provided it is date stamped on receipt (see Appendix 2). Financial Institutions should date stamp all forms R85 on receipt.

R85 - giving effect to form R85

3.21 When Financial Institutions receive a fully completed form R85 they must pay interest without deduction of BRT for the future.

A form R85 takes effect from the date it is received by the Financial Institution, not from the date it was signed (and see paragraph 3.23 below).

R85 - Lost forms

3.22 If a form R85 is lost or mislaid by the Financial Institution, a replacement should be obtained as soon as possible along with a statement from the investor confirming that he/she has remained not liable to UK tax since the date of the original form (see Chapter 9). HMRC auditors may regard the absence of form R85 as evidence that the account has not been correctly registered for interest to be paid without deduction of BRT. HMRC auditors will look at the circumstances behind the loss in order to ensure that it is simply a case that the original form R85 has been mislaid and not a weakness in procedures and controls at account opening.

Retrospection

3.23 Financial Institutions may offer the facility of refunding any BRT deducted from interest already paid on the account, but only for the tax year in which the account is registered. This is known as retrospection. Financial Institutions may recover the BRT refunded either by setting it off against tax payable on their next CT61 return (see Chapter 5), or by making a claim to the tax office which deals with their corporation tax affairs. But

Reg 4(3)

- Financial Institutions may not offer retrospection in respect of payments of interest for earlier years (see Chapter 6),
- where the account is a joint account, each payment of interest made in the year should be split equally between the investors so that retrospection can be applied to each appropriate part of the account,
- where retrospection is applied to foreign currency accounts, HMRC will pay to the Financial Institution the original sterling amount of BRT paid and included on the relevant form CT61.

If a form R85 is received near the end of one tax year but is not processed until the start of the next tax year, it can be treated as effective for the earlier year for retrospection purposes (if the Financial Institution offers retrospection) provided a Section 975 statement has not been issued.

If retrospection is applied, see paragraph 7.7 for guidance on whether or not the annual S17 information return should be amended.

R85 - who can sign?

3.24
Reg 6

- The investor if he or she is 16 or over at the beginning of the tax year in which the payment of interest is made and the account is in his or her name,
- the parent or guardian of the investor if the investor is under 16 at the beginning of the tax year in which the payment of interest is made,
- the investor if he or she is under 16 at the beginning of the tax year in which the payment of interest is made but will become 16 during the year,
- a person holding a power of attorney to administer the financial affairs of the investor,
- the parent, guardian, spouse or a child aged 16 or over, of the investor where the investor is mentally incapacitated,
- a receiver or other person appointed by any court in the UK to handle the affairs of the investor where the investor is mentally incapacitated,
- a person appointed by the Department for Work & Pensions (DWP) to claim or receive benefits on behalf of the investor where the investor is mentally incapacitated. Such persons are normally able to provide evidence of their appointment, such as a letter from the Department for Works & Pensions.

R85 - investors who cannot sign but can make a mark

3.25 Where the investor can only make a mark, a form R85 may be accepted if it is accompanied by a statement from someone who knows the investor personally or can identify them and has witnessed the making of the mark. (But see paragraph 3.9 about non-written registration which could be given instead.)

R85 - investors who cannot sign or make a mark

3.26 A non-written registration can be made (see paragraph 3.9).

Blind / partially sighted investors

3.27 A non-written registration can be made (see paragraph 3.9). The Helpsheet that accompanies the form R85 is available in Braille, and both the form R85 and the Helpsheet are available in audio and large print versions. To request copies please contact the Registration Helpline on 0845 980 0645.

A large print version is available.

Power of attorney

3.28 Financial Institutions may accept a form R85 signed by someone with power of attorney to administer the financial affairs of the investor but they should ask for sight of the power of attorney. Financial Institutions are not required to carry out any additional checks on the validity of a power of attorney than they would make in other circumstances.

A form R85 may also be signed on behalf of someone who lacks the mental capacity to sign the form him or herself by

- the parent, guardian, spouse or a child aged 16 or over, of the investor
- a receiver or other person appointed by any court in the UK to handle the affairs of the investor
- a person appointed by the Department for Work & Pensions (DWP) to claim or receive benefits on behalf of the investor. Such persons are normally able to provide evidence

of their appointment, such as a letter from the Department for Works & Pensions.

'**Partially liable**' **investors**

3.29 If an investor is unlikely to have to pay tax they can register **all** their accounts to receive interest without tax taken off. But if they are likely to have to pay tax they cannot register **any** of their accounts. It is not possible to register only one account, even if their total gross income is below their allowances, instead BRT must be deducted from all their accounts and they may claim repayment of any overpaid BRT from their Tax Office. Investors who believe they have paid too much tax on their savings, and who do not have a tax office, should ring Leicester & Northants Claims Office on 0845 3667850.

Example

Mrs Smith, who is age 42, has savings in both a bank account and a building society account. She earns about £4000 interest on each of the accounts and she has no other income. Because Mrs Smith's total taxable income is £8000 and her personal tax allowance is only £6475 she cannot register either of the accounts for gross interest. But Mrs Smith believes that she can register one of the accounts for gross interest because the £4000 she receives from that account will be below her tax allowances of £6475. Mrs Smith is not entitled to do this because her total taxable income is more than her allowances. Instead Mrs Smith should have BRT taken off all her interest and then reclaim any tax overpaid from HMRC.

Trust accounts

3.30 Financial Institutions should look closely at the underlying nature of certain types of trusts. For details of registering trust accounts, see

- Bare trusts at paragraph 2.8,
- Interest in possession trusts at paragraph 2.9,
- Discretionary trusts at paragraph 2.10,
- Accumulation trusts and maintenance trusts at paragraph 2.11
- Contingent trusts at paragraph 2.12
- Will trusts at paragraph 2.13

Joint accounts - can investors register with a form R85?

3.31 Joint accounts may be registered
Reg 13

- if each investor is entitled to register (see paragraph 3.4) and provides his or her own form R85, or
- one or more of the investors is entitled to register (see paragraph 3.4) and the Financial Institution is willing to accept a partial registration (see paragraph 3.34).

Where all the investors in a joint account have registered the Financial Institution must pay interest without deduction of BRT.

Joint accounts - investors entitled to gross interest for different reasons

3.32 BRT must be deducted from interest paid to investors who are eligible to receive interest without tax taken off for different reasons. For example where one investor is entitled to register using form R85 and another investor is entitled to sign an NOR declaration on form R105. In other words, a mixture of a registration on form R85 and form R105 is not allowed on the same joint account.

Joint accounts - investors with unequal shares

3.33 Investors who are not liable to income tax and who are beneficially entitled to the interest in unequal shares should apply to their tax office for repayment of BRT deducted. They should not register the account for interest without tax taken off. For example, a brother and sister who are both non-taxpayers, have a joint account with 90% of the investment belonging to the brother and 10% to the sister. The Financial Institution will pay the interest, after deduction of tax, in equal shares but the brother can reclaim 90% of the tax and the sister can reclaim 10%. But because they do not own the money in equal shares they cannot register for interest without tax taken off.

Joint accounts - partial registration

3.34 Financial Institutions who offer the facility of partial registration must split the interest equally between investors and pay interest without deduction of BRT on any portion relating to an investor who has registered. HMRC will treat the BRT deducted on joint accounts as relating to interest paid to investor(s) who have not registered.
Reg 9(1)(b)

Children's accounts

3.35 Children are entitled to income tax allowances in the same way as adults. And, depending on their income, they may or may not be taxpayers. If a child is unlikely to be liable to tax their account can be registered with a form R85.

Children's accounts - who should sign the form R85?

3.36 Reg 6 Children can register if they are due to become 16 during the tax year. Children under 16 cannot register themselves and the R85 must be completed with the child's details and signed by

- a parent or guardian, or
- if there is a care order in force and the local authority designated by the order has parental responsibility under the terms of the Children Act 1989 an authorised representative of the local authority can sign. The signature should be endorsed by the local authority's official stamp.

The form R85 cannot be signed by

- foster carers, or
- grandparents (unless they are the child's guardian).

Children's accounts - held in someone else's name

3.37 Reg 11(2)(c) Financial Institutions may accept form R85 where the account is in someone else's name (for example, a parent or grandparent) if

- the money in the account belongs to a child under 16, and
- the form is completed with the child's details and signed by a parent or guardian.

However, Financial Institutions will want to bear in mind Regulation 9(2) of the Money Laundering Regulations 1993 when accepting accounts where the underlying beneficiary of the monies is not identified in the account designation.

Children's accounts - child's 16th birthday

3.38 Reg A child's account registered for interest without tax taken off may have interest paid

11(2)(b) without tax taken off until 5 April following the child's 16th birthday. After that date, interest must be paid under deduction of BRT.

However the child can re-register himself or herself if the account is in their name and they do not expect to be liable to pay income tax. The child does this by signing a new form R85 at any time during the tax year in which their 16th birthday occurs. If the account remains in the parents name it cannot be re-registered after the child is 16.

The child must sign the form R85 themselves. If the Financial Institution believes the form has been signed by a parent they should query it. Different rules apply if the child is mentally incapacitated- (see paragraph 3.39).

Most Financial Institutions write to the account holder around the time of their 16th birthday to tell them that they must re-register their account. But these letters can be misleading if they don't explain that the child should check that they are eligible to sign a form R85 before they do so. At 16 many children leave school and go into paid employment so they need to consider whether they are eligible to complete a new form. Adopting the following text will help reduce the risk of incorrect registrations and potential complaints.

'Now that you are 16, after the next 5 April, your interest will be paid with tax taken off, unless you complete the enclosed form R85 and return it to us. (The new tax year begins next 6 April) Before completing the form you must check that you are eligible to complete and sign it. You can do this by completing the Helpsheet, and if you have any queries there is a helpline number for you to phone.'

Children's accounts - child's 16th birthday & mental incapacity

3.39 Where a child who is mentally incapacitated reaches the age of 16, and their account has been registered by their parent or guardian, the registration may continue for the future (unless of course the account is de-registered by SASS or the parents or guardians). If the account is not already in the child's name, it is not necessary for the account to be transferred into the child's name, or for the account to be re-registered.

Children's accounts - £100 rule

3.40 There are special rules if the savings have been given by a parent. If gifts from a parent

Reg 4(2) produce more than £100 gross income a year, the whole of the income from the gifts is normally taxed as that parent's income. A child cannot get back any tax on that income. Nor can interest paying accounts be registered to have interest paid without tax taken off.

The £100 rule applies separately to each parent.

Financial Institutions do not have to check where the funds in a child's account have come from. They may wish to draw the parent's attention to the special rules for funds given by a parent.

The £100 rule applies to income arising each year. It does not matter whether the fund is comprised of part capital and part added interest. The £100 rule applies as long as income is over £100 in any one year for any one child from one parent.

Example

If a parent gives a child £2,000 which earns £98 interest the interest belongs to the child for tax purposes and the account can be registered for gross interest. But if the £98 is added to the account, leading to £101 interest being earned in year 2, the interest has now exceeded the £100 limit. This means it now belongs to the parent for tax purposes and the account cannot remain registered gross. If the account holder asks they should be told to cancel the registration.

Diplomats

3.41 Diplomats who come to the UK are normally entitled to certain exemptions from tax. These apply, in particular, to their official remuneration and to any other income arising outside the UK. The exemptions do not extend to private income arising from sources in the UK, for example interest on a savings account.

Foreign diplomats who are resident in the UK for income tax purposes are entitled to the same tax allowances as other UK residents. A diplomat who is ordinarily resident in the UK and does not expect to be liable to UK income tax is therefore entitled to register accounts for payment of interest without deduction of BRT using form R85. If a diplomat is not ordinarily resident in the UK he or she may be eligible to complete a form R105.

The rules for determining whether someone is resident or ordinarily resident in the United Kingdom apply to members of a Diplomatic Mission in the same way as they apply to everyone else. They are explained in the booklet HMRC6 http://www.hmrc.gov.uk/cnr/hmrc6.pdf . (See paragraph 4.2)

Further information for diplomats is available from the HMRC website.

If a member of a Diplomatic Mission is not ordinarily resident in the UK they **may** be able to claim back the tax which has been taken off their interest. To do this they should telephone HMRC Residency on

08450 700 040 if calling from the UK, or

+ 44 151 210 2222 if calling from outside the UK

Child Trust Fund (CTF)

3.42 The interest and dividends paid in respect of money held in a Child Trust Fund (CTF) account are not subject to tax, and must be paid gross. Most CTF accounts do not need the parent (or guardian) to complete a form R85.

There are two circumstances when parents should be invited to complete the R85

- where, as a result of opening the CTF, the child might receive a 'bonus' by virtue of being a member of the institution with which they hold the CTF account (as may happen with some Building Societies).
- where the CTF provider operates a 'feeder account' to take excess CTF subscriptions, in which case the R85 should be completed in respect of the feeder account.

The bonus or interest on the feeder account can only be paid gross if an R85 is held. The £100 rule (see paragraph 3.40) does not apply to CTF accounts.

ISAs

3.43 Interest on an ISA and Junior ISA accounts is exempt from tax and is outside the Scheme

(see paragraph 2.22). Interest paid in respect of ISA subscriptions that are

- voided
- repaired (up to the date of the notice of repair issued by HMRC)

are not exempt from tax. But if the investor is unlikely to have to pay tax they may register the void account with a form R85 and have any future interest paid in the current year without tax taken off.

The £100 rule (see paragraph 3.40) does not apply to Junior ISAs.

Changes to account

3.44 The rules of the Scheme apply each time interest is paid. If there is a change to an account, for example a sole account is transferred into joint names, the circumstances prevailing when interest is next paid will determine whether BRT should be deducted or not.

Changes to name of investor

3.45 Where the investor changes his or her name, for example on marriage, it is not necessary to replace form R85 but Financial Institutions should ensure there is a clear audit trail. An example of a clear audit trail would be annotating the form with the revised details and endorsing the amendment with a date stamp.

Death of investor

3.46 Where Financial Institutions are notified of the death of an investor they must deduct BRT from any future payment of interest even if part of the interest accrued before the date of death. Financial Institutions should not however make any retrospective adjustment where interest was paid without deduction of BRT between the date of death and the date on which they received notification of death.

Death of investor - joint accounts

3.47 Interest is taxable only when it is paid or credited to an account.

The most common sort of joint account is where the parties to the account don't each own a particular share of the account, but they jointly own all the monies in the account. Where

one party to the account dies, his/her share passes automatically to the survivor and any interest paid after the date of death is the income of the survivor.

Example

A husband and wife, Mr and Mrs Jones, have a joint account that will pass automatically to the survivor. Interest paid on the account is split equally between them and, in this case, Mrs Jones, a non-taxpayer, has given a form R85 to the Financial Institution so that she receives her share of the interest without tax taken off.

- If Mr Jones dies, the account automatically passes to Mrs Jones and any interest paid after the date of death is hers. She will receive all of the interest without tax taken off because she has given a form R85. But Mrs Jones' financial circumstances could change as a result of her husband's death, which might result in her becoming liable to tax. If this is the case she should cancel all forms R85 she has signed.

- If Mrs Jones dies, the account passes automatically to Mr Jones and any interest paid after the date of death is his. He is a taxpayer and is not eligible to complete a form R85, so he will receive all of the interest after tax has been taken off.

If there is a delay between the date of death and the notification of the death to the Financial Institution, the Financial Institution will continue to pay interest part net and part gross. If it is the surviving investor who has given a form R85 he or she will be able to claim back from HMRC any tax deducted after the date of death of the other owner. But the Financial Institution can, in certain circumstances, refund the tax to the surviving owner. The circumstances are

- a section 975 statement has not been issued
- it is for the same tax year in which the saver died.

Example

Mr and Mrs Smith have a joint account with a deposit-taker that will pass automatically to the survivor. Interest paid on the account is paid twice yearly in April and September. Mrs Smith has given a form R85 so that she receives her share of the interest without tax taken off. Mr Smith dies in August but Mrs Smith does not notify the deposit-taker of his death

until November. The deposit-taker paid £180 net interest in September which was made up as follows

	Gross	Tax deducted	Net
Mr Smith	£100	£20	£80
Mrs Smith	£100	£0	£100

If Mrs Smith had told the deposit-taker about Mr Smith's death in August, the interest paid in September would have had no tax taken off. Because this interest was paid after Mr Smith died it belongs to Mrs Smith and she can claim back the tax from HMRC. But because a section 975 statement has not been issued and the tax year is the same the deposit-taker may, if they wish, refund Mrs Smith the £20 tax.

But if Mrs Smith did not notify the deposit-taker of her husband's death until the following May the deposit-taker would not be able to refund the tax because the date of death and the refund would not be in the same tax year. (Then Mrs Smith would be able to claim the tax back from HMRC.)

If Financial Institutions offer this service to their investors they may recover the BRT refunded either by setting it off against tax payable on their next CT61 return (see Chapter 5), or by making a claim to the tax office which deals with the corporation tax affairs.

Less commonly, a joint account can be held so that when one party to the account dies, their 'share' of the account does not automatically pass to the other. Instead, it forms part of the estate of the deceased owner. In these circumstances, any interest paid on the deceased's share of the account after the date of death must have tax deducted - whether or not he or she had given a form R85 before his or her death.

Example

Mr and Mrs Brown have a joint account that will not pass automatically to the survivor. Interest paid on the account is paid twice yearly in April and September. Mrs Brown has given a form R85 so that she receives her share of the interest without tax taken off.

- If Mrs Brown dies in August the interest paid in September will all be paid after tax has been taken off, because Mr Brown has not given a form R85 in respect of his share of the interest, and Mrs Brown's share now belongs to her estate (see paragraph 3.46)

- If Mr Brown dies in August the interest paid in September will be paid partly after tax has been taken off and partly without tax taken off. This is because Mrs Brown has given a form R85 in respect of her share of the interest and Mr Brown's share now belongs to his estate (see paragraph 3.46).

Bankruptcy of investor

3.48 Where Financial Institutions are notified of the bankruptcy of an investor they must deduct BRT from any future payments of interest even if part of the interest accrued before the date of bankruptcy. Financial Institutions should not however make any retrospective adjustment where interest was paid without deduction of BRT between the date of bankruptcy and the date on which they received notification of bankruptcy.

If the Financial Institution is notified of a Debt Relief Order or an Individual Voluntary Arrangement, the normal TDSI rules continue to apply and if an account is registered with a form R85, interest can continue to be paid without deduction of BRT.

Transfer of account between branches

3.49 A new form R85 is not required when an account is transferred between branches. But Financial Institutions should ensure that there is a clear audit trail back to the original form R85.

Mergers, take-overs, change of name of Financial Institutions

3.50 New forms R85 will not normally be required when Financial Institutions merge, or if there is a take-over or change of name of Financial Institution. But if new account numbers are allocated the Financial Institution should provide an audit trail back to the original forms R85.

De-registration

3.51 Having received a fully completed form R85 Financial Institutions **must** pay interest without

Reg 11 deduction of BRT unless and until

- they receive instructions to the contrary from the investor or the person who signed form R85 on behalf of the investor, or
- they receive a de-registration notice from SASS, or
- they receive notification that the investor has died, or
- they receive notification that the investor has been made bankrupt.

And for children's accounts, the following also applies

- the 5 April following the child's 16 birthday unless the account has been re-registered by the child (see paragraph 3.38).

De-registration by HMRC

3.52 Reg 12 If HMRC has reason to believe registration is not appropriate, SASS issues a formal notice to the Financial Institution to cancel the registration. The investor will have been informed that SASS will be taking this action. The notice specifies the branch where the account is held (if known) and the investor's name and account number. Where the account is a trustee or nominee account, the full account title is given. HMRC de-registration notices are issued only by SASS and Financial Institutions should de-register the account(s) specified in the notice. If the Financial Institution is aware of other accounts held with them by the same investor that are registered to receive gross interest, these should be deregistered too. But the Financial Institution is not obliged to take deregistration action against any accounts other than those specified in the notice. The Financial Institution does not need to tell SASS whether they have deregistered any other accounts.

On receipt of instructions from HMRC to cancel a registration, Financial Institutions must start to deduct BRT as soon as is practicable, but in any event, within 30 days of the date of issue of the notice.

Financial Institutions should not deduct BRT retrospectively from interest paid before the date of issue of the instructions. But they may, at their option, deduct BRT retrospectively from interest already paid in the 30-day period referred to above.

Re-registration

3.53 Reg 12(6)(7) Financial Institutions **must** not accept another form R85 in respect of an account de-registered by SASS unless and until SASS write to cancel the de-registration notice. Where a de-registration notice has been cancelled by SASS and a fresh fully completed form R85 has been received from the investor, Financial Institutions should give effect to the new form R85 in the normal way.

If the investor moves overseas and become NOR in the UK, they can give a form R105 even if a previously held form R85 was cancelled by HMRC.

Retention of R85

3.54 Reg 8(5) Forms R85 must be retained for at least two years following the closure of the relevant account(s) or from when the Financial Institution starts to deduct BRT.

3,54a Reg 8(2) If the Financial Institution receives a written R85 it can either store it (see paragraph 3.55) or, for certificates received after 30 October 2008, it can apply the non-written procedure of issuing a confirmatory declaration (see paragraph 3.9) in which case the original written certificate need not be retained.
Financial Institution must ensure that the date of creation of the confirmatory declaration is stored on their systems.

If a Financial Institution decide to destroy all forms R85 then they must issue a confirmatory declaration for each form and their systems should reflect the date the original form R85 was completed. A record of when any such exercise was undertaken should be retained for audit purposes.

Storing form R85

3.55 Written forms may be stored in any format which preserves an exact copy of the original. SASS will treat stored copies of the form R85 as retained for the purposes of the regulations, provided that the stored copy and hard copy printouts are legible and are made available to HMRC within the time specified (which will not be less than 14 days)

Audit

3.56 HMRC may audit a sample of accounts which have been registered for payment of interest without deduction of BRT to check that the gross registration scheme is working properly and the rules are being followed. Further information about audit is given in Chapter 9.

Information returns

3.57 Financial Institutions are required to make returns of interest paid on all accounts including those registered for payment of interest without deduction of BRT (see S17 Guidance Notes)

Chapter 4 Not ordinarily Resident Accounts

What is a not ordinarily Resident (NOR) Account?

4.1 S858 - 861 An NOR account is an account where

- the investor is an individual who is not ordinarily resident (NOR) in the UK,
- in the case of joint accounts and partnership accounts, all the joint investors or partners are individuals who are NOR,
- the investors are trustees of a trust, in the income of which no person has an interest apart from an individual who is NOR or a Scottish partnership, all the partners in which are NOR individuals,
- the investors are trustees of a discretionary or accumulation trust and are not resident in the United Kingdom and all the beneficiaries of the trust who are individuals are NOR and any beneficiaries which are companies are not resident in the UK, or
- the account is held by the personal representative of an individual who was NOR at the time of his or her death

and the Financial Institution has received a fully completed NOR declaration.

Individuals - what does 'not ordinarily resident' mean?

4.2 Whether or not an individual is NOR depends on their personal circumstances. This paragraph contains only general guidance. The rules are explained in booklet HMRC6 http://www.hmrc.gov.uk/cnr/hmrc6.pdf

Briefly, an individual is NOR if either

- his or her home, employment and centre of life have always been abroad and he or she
  - never comes to the UK, or
  - visits, or intends to visit, the UK only for short periods (for example on holiday or irregular business visits) which average less than 91 days a tax year, or
  - has come to the UK to work or live, but intends to remain no more than three years, and does not already own accommodation here, buy accommodation during the tax year of arrival, or acquire accommodation on a lease of three years

or more during the tax year of arrival

- is a student who has come to the UK for a period of study or education and will be here for less than four years, does not own or buy accommodation here, or acquire it on a lease of three years or more, and on leaving the UK does not plan to return regularly for visits which average 91 days or more a tax year, or

- he or she is a former UK resident and
  - has left for permanent residence abroad and his or her visits to the UK average less than 91 days a tax year, or
  - is currently working full-time abroad under a contract of employment, and both his or her absence from, and his or her employment outside the UK will last at least a full tax year, and his or her visits to the UK average less than 91 days a tax year, or
  - accompanies or later joins his or her spouse, who is working full time abroad and meets the conditions for being not ordinarily resident, and his or her absence from the UK will last at least a full tax year, and his or her visits to the UK average less than 91 days a tax year.

Non-resident trustees of discretionary or accumulation trusts

4.3 The trustees of a discretionary or accumulation trust are not resident in the UK if

- all of them are not resident in the UK, or
- one or more of them is not resident in the UK and none of the persons who directly or indirectly provided property for the trust was, at the time when the provision was made, resident, ordinarily resident or domiciled in the UK.

Non resident beneficiaries of discretionary or accumulation trusts

4.4 A beneficiary of a discretionary or accumulation trust is any person who is within the class of S861 beneficiaries defined in the trust document and who is capable of receiving income from it whether in the form of income or as accumulated and capitalised income.

Companies

4.5 A company is normally treated as not resident in the UK for tax purposes if it is neither

- incorporated in the UK, nor
- has central management and control of its business in the UK.

NOR declarations

4.6 An account may be treated as a NOR account only where the Financial Institution has received a valid NOR declaration. Financial Institutions have initial and continuing obligations in relation to the validity of NOR declarations. The initial obligation is that a Financial Institution must not pay interest without deducting BRT unless it is satisfied that deposit is not a relevant investment or in the case of a deposit-taker which is not a bank or local authority, is satisfied that it is not required to deduct BRT. The continuing obligation is that a Financial Institution must act on information suggesting a declaration may no longer be valid (see paragraph 4.38). HMRC recommends that a Financial Institution designates a NOR supervisor with responsibility for ensuring that continuing obligations are met. The NOR declaration must be made on one of the following

Form R105 – individuals who are NOR in the UK
Form R105(PR) – deceased individuals who were NOR in the UK
Form R105(DAT) – Discretionary & Accumulation trusts in which all the beneficiaries and all the trustees are NOR in the UK

Form R105(AFA) - individuals who are NOR in the UK, and who receive an alternative finance return which is treated as interest.

Individuals - form R105

4.7 Reg 14 Financial Institutions may accept NOR declarations only on

- the HMRC form R105, or
- a copy form R105 downloaded from the HMRC website (a black and white version is acceptable), or
- a substitute form which has been approved by HMRC (see paragraph 4.16).

Any pre-July 1992 versions of the NOR form which are held on record do not need to be replaced with form R105.

PO Box addresses

4.8 Up to 5 April 2001 a PO Box address could be given on form R105 as a correspondence address or payee address provided an appropriate deposit-taker or building society certificate was in place.

From 6 April 2001, a PO Box address can only be given as a principal residential address if that is an acceptable residential address for the country in question, and would allow the investor to be traced. It is for the Financial Institution to check that a PO Box address is the norm for a country. A record of the checks made should be kept for audit purposes. Financial Institutions should seek confirmation from the investor in all cases where a PO Box address is given as the principal residential address, and retain this information for audit purposes.

UK address

4.9 Where the declaration shows a residential address in the UK it should not be regarded as acceptable unless it is known that the investor is temporarily in the UK (for example, as a student) and the address given is for the time being his or her principal residential address.

Incompatible evidence

4.10 If there is information which appears incompatible with the investor's status as indicated in his or her NOR declaration (for example, he or she appears to have a business in the UK), the Financial Institution cannot be satisfied that the deposit is a relevant investment and is obliged to seek further clarification from the investor of his status before the NOR declaration can be acted upon. The Financial Institution should contact the investor seeking an explanation of why he or she considers themselves to be not ordinarily resident. See also paragraph 4.37.

If the investor is able to satisfy the Financial Institution that the declaration is valid, the Financial Institution can accept the declaration and need take no further action. Financial Institutions are recommended to retain some note of the enquiry.

If the investor is unable to satisfy the Financial Institution that his or her NOR declaration is valid the Financial Institution should deduct BRT from any interest paid on the deposit.

Joint accounts

4.11 Any investor in a joint account may sign the form R105 on behalf of all the other investors. But if that investor ceases to be a party to the account, for example, if he or she dies, a new NOR declaration will be required. Financial Institutions can only pay interest on a joint account without deduction of tax if the investors are eligible to receive interest without deduction of tax for the same reason. For example, where one investor is entitled to register using form R85 and another investor is entitled to sign an NOR declaration on form R105 interest must be paid net. In other words, a mixture of a registration on form R85 and form R105 is not allowed on the same joint account.

Death of an investor

4.12 If one party to a joint account dies or otherwise leaves the account, a new declaration is not required unless that person was the only signatory of the NOR declaration.

Children's accounts

4.13 The form should be completed with the child's details and should be signed by an appropriate person, that is

- the beneficial owner of the interest - the child may sign the form only if he or she is old enough to understand what he or she is signing. HMRC recommends that children below the age of twelve do not sign form R105,
- the person to whom the interest is paid - this could be the trustee of a bare trust or a nominee if they are the person to whom interest is paid. This is regardless of whether the trustee is a grandparent, parent or any other third party, or
- the parent or guardian - the box "I am beneficially entitled to the interest" should be ticked.

There is no requirement for the form to be replaced once the child becomes an adult.

R105 - additional investors

4.14 Financial Institutions should have procedures in place to ensure that where a new party is added to the NOR account then a new form R105 is obtained recording the names and principal residential address of all parties to the account. Any one investor may sign the new

R105 on behalf of all parties..

R105 - who can sign?

4.15 S858 - 859 An 'appropriate person' must sign NOR declarations. An appropriate person is

- the beneficial owner of the interest,
- where the beneficial owner of the interest is a child, see paragraph 4.13
- the person to whom the interest is paid, for example a person holding a power of attorney (the Financial Institution should ask for sight of the power of attorney) or third party mandate (see paragraph 4.36), or a bare trustee (see paragraph 2.8)

The person signing the declaration should tick the relevant box above the signature to show whether or not he or she is beneficially entitled to the interest.

R105 - substitute versions

4.16 The NOR declaration form R105 is a prescribed HMRC form, and any substitute or 'own' versions of this form **must** receive written approval in writing from SASS before they can be used. Requests for approval should be sent to

SASS
Room 330
St John's House
Merton Road
Liverpool
Merseyside
L75 1BB

e-mail savings.audit@hmrc.gsi.gov.uk

If substitute versions are used without approval they are not valid. And consequently any tax, which was not deducted from interest payments, may be due from the Financial Institution to HMRC.

Substitute versions must be in the same format, and have the same notes as the HMRC

form R105. The logo can be changed and the reference to 'building society, bank or other deposit-taker' can be changed to the name of the Financial Institution. If a substitute version is in a different colour or shade from the HMRC form, a copy of the actual form must be sent to SASS for approval.

R105 - obtaining supplies of form R105

4.17 The version on the HMRC website will always be the latest version.

Supplies of form R105 may be obtained from the St Austell Orderline.

The orderline is open daily from 08.00am - 10.00pm and the contact details for ordering from St Austell are

Telephone 0845 900 0404

Fax 0845 900 0604

Photocopied forms can be used.

R105 - electronic versions

4.18 Reg 14 Electronic versions with an electronic signature and faxes sent on or after 6 April 2001 are treated as declarations made in writing and can be accepted in the same way as written declarations. Electronic signatures must conform to the Electronic Communications Act 2000.

Financial institutions may produce computerised forms with the account details already printed on the form using either their own approved version or the HMRC version. Financial institutions may also use a hypertext link to the HMRC form R105.

If a form R105 attached to an e-mail, or sent by fax, is the prescribed form or an approved substitute it can be treated in the same way as a paper version. If the form R105 is not the prescribed version or an approved substitute it can be treated as a non-written version and written confirmation can be sent in the usual way (see paragraph 4.20). But if the form is not the prescribed version or an approved substitute, and the Financial Institution does not

accept non-written R105s the form cannot be accepted

Foreign versions

4.19 The form R105 is available from the HMRC website in the following languages

French
German
Spanish
Arabic
Norwegian

Financial Institutions can download copies.

R105 - non-written declaration

4.20 Reg 14(2)(3) Non-written NOR declarations for payment of interest without tax taken off are acceptable. Taking NOR declarations by non-written means is optional. Financial Institutions can insist on written declarations.

Where a declaration is not in writing, for example when made by telephone or e-mail without an electronic signature, the person making the declaration must provide the same information and make the same declaration as if the declaration had been made in writing. A signature is not required. The Financial Institution must make a copy declaration confirming all the details provided and send it to the person making the declaration. The copy may be sent by post, fax, in PDF format or e-mail and must show the date it was sent.

The date of creation is the date when all of the details are entered onto the Financial Institutions system. This may be different from the date the declaration was printed, issued or posted.

On issuing the copy declaration the Financial Institution should advise the person making the declaration that he or she has 30 calendar days to notify any corrections.
The NOR declaration is valid from the date the Financial Institution creates the copy declaration and the date of creation must be recorded on the Financial Institutions'

systems.

Corrections to the details on the copy declaration need not be notified in writing. But where corrections are notified, the Financial Institution must issue a revised copy declaration. Where corrections are notified within the 30-day period the revised declaration will take effect from the date the original copy declaration was sent. Where corrections are notified outside the 30-day period the declaration will take effect only from the date the revised copy declaration is sent. Where a correction is made at any time after the original declaration Financial Institutions do not need to seek to recover tax that ought to have been deducted, but must immediately issue a revised copy declaration, unless a declaration is no longer appropriate. Copies of related correspondence should be retained for audit purposes.

R105(PR) - personal representatives

4.21 S860 Form R105 completed by an investor before his or her death will remain in force after the date of death during the winding up of the estate. But if the personal representatives open an account in their own names, or transfer funds into an account in their own names, that account will not be an NOR account, unless and until the personal representatives make a NOR declaration. Personal representatives must make their declaration on

- a photocopy of the R105(PR) (see Appendix 6), or
- a downloaded copy of the R105(PR) from the HMRC website
- a substitute form which has been approved by the HMRC.

R105(PR) - who can sign?

4.22 S860 In the case of an investment forming part of a deceased person's estate the form can be signed by either

- the personal representative of the deceased (or legal equivalent in the country where they live), or
- the person to whom the interest is paid.

The person signing the declaration should tick the relevant box above the signature to show whether or not he or she is the personal representative (or legal equivalent in that country).

It is the NOR status of the deceased which is important, and not that of the personal representative. Therefore, it is acceptable for a personal representative who is ordinarily resident in the UK to complete the declaration in respect of a deceased NOR investor.

R105(PR) - substitute versions

4.23 The NOR declaration form R105(PR) is a prescribed HMRC form, and any substitute or draft versions of this form **must** receive written approval in writing from SASS before they can be used. Requests for approval should be sent to

SASS
Room 330
St John's House
Merton Road
Liverpool
L75 1BB

or e-mail savings.audit@hmrc.gsi.gov.uk

If substitute versions are used without approval they are not valid. And consequently any tax, which was not deducted from interest payments, may be due from the Financial Institution to HMRC.

Substitute versions must be in the same format, and have the same notes as the HMRC form R105(PR). The logo can be changed and the reference to 'building society, bank or other deposit-taker' can be changed to the name of the Financial Institution. If a substitute version is in a different colour or shade from the HMRC form, a copy of the actual form must be sent to SASS for approval.

R105(PR) - obtaining form R105 (PR)

4.24 Supplies of the personal representative's NOR declaration form are not available because very few are used. The form can be

- reproduced from the copy at Appendix 5 of these notes, or

- downloaded from the HMRC website

R105(PR) - electronic versions

4.25 Electronic versions with an electronic signature and faxes sent on or after 6 April 2001 are treated as declarations made in writing and can be accepted in the same way as written declarations. Electronic signatures must conform to the Electronic Communications Act 2000.

Financial Institutions may produce computerised forms with the account details already printed on the form using either their own approved version or the HMRC version. Financial Institutions may also use a hypertext link to the HMRC R105(PR).

If a form R105(PR) attached to an e-mail, or sent by fax, is in the prescribed form or an approved substitute it can be treated in the same way as a paper version. If the form R105(PR) is not the prescribed version or an approved substitute it can be treated as a non-written version and written confirmation can be sent in the usual way (see paragraph 4.26). But if the form is not the prescribed version or an approved substitute, and the Financial Institution does not accept non-written R105(PR)s the form cannot be accepted.

R105(PR) - non-written declaration

4.26 Non-written NOR declarations are acceptable.

Where a declaration is not in writing, for example when made by telephone or e-mail without an electronic signature, the person making the declaration must provide the same information and make the same declaration as if the declaration had been made in writing. A signature is not required. The Financial Institution must then make a declaration confirming all the details provided and send a copy to the person making the declaration. The copy may be sent by post, fax, in PDF format or e-mail and must show the date it was sent.

On issuing the copy declaration the Financial Institution should advise the person making the declaration that he or she has 30 calendar days to notify any corrections
The declaration is valid from the date the Financial Institution creates the copy confirmatory and the date of creation should be recorded on the Financial Institutions' systems.

The date of creation is the date when all of the details are entered onto the Financial Institutions system. This may be different from the date the declaration was printed, issued or posted.

Corrections to the details on the copy confirmatory declaration need not be notified in writing. But where corrections are notified the Financial Institution must issue a revised copy declaration. Where corrections are notified within the 30-day period the revised declaration will take effect from the date the original copy declaration was sent. Where corrections are notified outside the 30-day period the R105(PR) declaration will take effect only from the date the revised copy declaration is sent. Where a correction is made at any time after the original R105(PR) declaration Financial Institutions do not need to seek to recover tax that ought to have been deducted, but must immediately issue a revised copy declaration, unless NOR registration is no longer appropriate. Copies of related correspondence should be retained for audit purposes.

Taking registrations by non-written means is optional. Financial Institutions can insist on written declarations.

Trustees of discretionary or accumulation trusts - Form R105 (DAT)

4.27 S861 Trustees of a discretionary or accumulation trust must make their declaration on

- the HMRC form R105(DAT)
- a downloaded copy of form R105(DAT) or
- a substitute form which has been approved by the HMRC.

R105 (DAT) - who can sign?

4.28 S861 In the case of a discretionary or accumulation trust the appropriate person to sign form R105 (DAT) is either

- a trustee of the discretionary or accumulation trust, or
- the person to whom the interest is paid.

The person signing the declaration should tick the relevant box above the signature to show whether or not he or she is a trustee of the discretionary or accumulation trust. See

Appendix 3.

R105(DAT) - substitute versions

4.29 The NOR declaration form R105(DAT) is a prescribed HMRC form, and any substitute or 'own' versions of this form **must** receive approval in writing from SASS before they can be used. Requests for approval should be sent to

SASS
Room 330
St John's House
Merton Road
Liverpool
Merseyside
L75 1BB

or e-mail savings.audit@hmrc.gsi.gov.uk

If substitute versions are used without approval they are not valid. And consequently any tax, which was not deducted from interest payments, may be due from the Financial Institution to the HMRC.

Substitute versions must be in the same format, and have the same notes as the HMRC form R105(DAT). The logo can be changed and the references throughout the form to 'building society, bank or other deposit-taker' can be changed to the name of the Financial Institution. If a substitute version is in a different colour or shade from the HMRC form, a copy of the actual form must be sent to SASS for approval.

R105 (DAT) - obtaining R105 (DAT)

4.30 The version on the HMRC website will always be the latest version.

Supplies of form R105 (DAT) may be obtained from the St Austell Orderline.

The orderline is open daily from 08.00am - 10.00pm and the contact details for ordering from St Austell are

Telephone 0845 900 0404

Fax 0845 900 0604

R105 (DAT) - electronic versions

4.31 Electronic versions with an electronic signature and faxes sent on or after 6 April 2001 are treated as NOR declarations made in writing and can be accepted in the same way as written declarations. Electronic signatures must conform to the Electronic Communications Act 2000.

Financial Institutions may produce computerised forms with the account details already printed on the form using either their own approved version or the HMRC version. Financial Institutions may also use a hypertext link to the HMRC form R105 (DAT).

If a form R105(DAT) attached to an e-mail, or sent by fax, is in the prescribed form or an approved substitute it can be treated in the same way as a paper version. If the form R105(DAT) is not the prescribed version or an approved substitute it can be treated as a non-written version and written confirmation can be sent in the usual way (see paragraph 4.32). But if the form is not the prescribed version or an approved substitute, and the Financial Institution does not accept non-written R105(DAT)s the form cannot be accepted.

R105(DAT) - Non-written declaration

4.32 Non-written declarations are acceptable.

Where a declaration is not in writing, for example when made by telephone or e-mail without an electronic signature, the person making the declaration must provide the same information and make the same declaration. A signature is not required. The Financial Institution must then make a declaration confirming all the details provided and send a copy to the person making the R105(DAT)declaration. The copy may be sent by post, fax, in PDF format or e-mail and must show the date it was sent.

On issuing the copy declaration the Financial Institution should advise the person making the

declaration that he or she has 30 calendar days to notify any corrections
The declaration is valid from the date the Financial Institution creates the copy confirmatory declaration and the date of creation must be recorded on the Financial Institutions' systems.

The date of creation is the date when all of the details are entered onto the Financial Institutions system. This may be different from the date the declaration was printed, issued or posted.

Corrections to the details on the copy declaration need not be notified in writing. But where corrections are notified the Financial Institution must issue a revised copy declaration. Where corrections are notified within the 30-day period the revised declaration will take effect from the date the original copy declaration was sent. Where corrections are notified outside the 30-day period the R105(DAT) declaration will take effect only from the date the revised copy declaration is sent. Where a correction is made at any time after the original R105(DAT) declaration Financial Institutions do not need to seek to recover tax that ought to have been deducted, but must immediately issue a revised copy declaration, unless registration is no longer appropriate. Copies of related correspondence should be retained for audit purposes.

Taking registrations by non-written means is optional. Financial Institutions can insist on written declarations.

R105 (DAT) - change of trustees or beneficiaries

4.33 Where the Financial Institution becomes aware that there has been a change of trustee or beneficiary, it may continue to pay interest without deduction of BRT if it has no reason to believe

- that the trustees are or may be resident, or
- a beneficiary is or may be ordinarily resident/resident in the UK, or
- a new beneficiary is or may be ordinarily resident/resident in the UK.

Action on receipt of NOR declaration

4.34 The identity of a new NOR investor should be verified in accordance with the Money Laundering Guidelines agreed between the representative bodies of banks, building

societies and other interested parties, including the law enforcement agencies.

When Financial Institutions receive a NOR declaration they must ensure that the form is properly completed. The NOR declaration must contain the

- name of the Financial Institution,
- branch, sort code or roll number if appropriate (unnecessary if the account number is a unique identifier),
- name(s) of account holder(s),
- account number,
- full name of investor (see = below if the declaration was given before 6 April 2001), and
- principal residential address of the investor (see = below if the declaration was given before 6 April 2001).

= *If the declaration was given before 6 April 2001 it's the name and address of the person signing the form which was given*

Where the declaration shows a residential address in the UK it should not be regarded as acceptable unless it is known that the investor is temporarily in the UK (for example as a student) and the address given is for the time being his principal residential address.

Financial Institutions may accept an undated NOR declaration, provided it is date stamped on receipt. Financial Institutions are recommended to date stamp all declarations on receipt.

Form R105 - retrospection

4.35 When a Financial Institution accepts a form R105 they cannot offer retrospection and recredit any tax taken off interest already paid in the year – interest can only be paid without tax taken off from the date the form R105 is accepted. HMRC **may** be able to repay the tax taken off before the R105 was received but this would normally only be if the investor lives in a country which has a Double Taxation Agreement (DTA) with the UK or if they are entitled to UK tax allowances for other reasons.

Similarly, if a Financial Institution received a form R105 but made an error and did not set the

R105 signal, they would be able to correct the error for the current year, and recredit any tax deducted if a section 975 statement has not been issued. And, for the reason outlined above, HMRC may not be able to repay earlier years tax.

Power of attorney and third party mandates

4.36 A person holding a power of attorney may sign an NOR declaration on behalf of the beneficial owner of the interest **only if** the power of attorney

- provides that he or she is the person to whom the interest is payable, or
- gives him or her the right to receive the interest as a personal representative, for example a general power of attorney that provides for the holder to receive 'all sums of money' due to the grantor.

A person holding a third party mandate to operate an account may sign a NOR declaration on behalf of the beneficial owner of the interest **only if** the mandate provides that he or she is the person to whom the interest is payable.

Giving effect to the NOR declaration

4.37 When Financial Institutions receive a NOR declaration which is fully completed in the form currently prescribed (or approved) by HMRC, they must satisfy themselves that there are no grounds for believing that the investor is or may be ordinarily resident in the UK or that the trustees are or may be resident in the UK, or that any of the beneficiaries are or may be ordinarily resident/resident, as appropriate. If they are so satisfied they must pay interest without deducting BRT.

If Financial Institutions have any information suggesting that the investor is or may be ordinarily resident in the UK, or that the trustees are or may be resident, or that any of the beneficiaries are or may be ordinarily resident/resident, they must not pay interest without deduction of BRT unless and until they have satisfied themselves that the investor is NOR or that the trustees are not resident and the beneficiaries are NOR/not resident, as appropriate.

The NOR supervisor normally carries out these checks on behalf of the Financial Institution. Financial Institutions must therefore put in place systems (clerical or computer-based) for ensuring that all relevant information is made available to the NOR supervisor. In particular

all accounts in the branch to which the investor or trustees/beneficiaries is/are party, whether deposit or loan accounts (including mortgage accounts), and any such other accounts which are known to the branch should be reviewed. Examples of relevant information which could cast doubt on the validity of the declaration are

- a UK business in which the investor/trustees/beneficiaries appear to participate actively,
- a UK address or postal directions,
- an overseas PO Box or "c/o" address,
- a BFPO address, and
- a notification that the account is the subject of a third party mandate in favour of a UK resident or used as security for borrowing by UK residents or for borrowing in respect of the purchase of the UK property.

In making his or her decisions the NOR supervisor must not ignore information which comes to his or her attention by personal knowledge or otherwise. An example of this might be frequent or regular personal visits to the bank, cash transactions etc. The Financial Institution should put procedures in place so that information of a similar nature which comes to the knowledge of an employee who is responsible for handling any NOR accounts should similarly be drawn to the NOR supervisor's attention.

It will be unusual for such information to provide conclusive proof that the NOR declaration is invalid. However, where the information could reasonably be taken to indicate that the investor may be ordinarily resident in the UK, the trustees may be resident or that any of the beneficiaries may be ordinarily resident/resident, the Financial Institution is obliged to satisfy itself that the evidence does not render the NOR declaration invalid. One way of doing this would be by obtaining written confirmation from the investor. A note of any enquiries made should be kept in the investor's records or the trust records.

It may be possible to resolve doubts which arise without reference to the investor or trustees. For example if the investor is known to be a student in the UK it would be reasonable for him or her to make frequent personal visits to the bank. In such circumstances, no further action need be taken by the NOR supervisor and the NOR declaration may be accepted. NOR supervisors are recommended to retain some record of the decisions.

The continuing obligation

4.38 Once an NOR declaration has taken effect, Financial Institutions must continue to pay interest without deducting BRT unless and until they receive information suggesting that the investor is or may be ordinarily resident in the UK, or the trustees are or may be resident, or any of the beneficiaries are or may be ordinarily resident/resident. This is called the 'continuing obligation'. They must put in place systems so that as far as possible all relevant information which can be readily linked to a NOR account is brought to the attention of the NOR supervisor. Relevant information is that which points to a UK connection, for example

- notification of a UK address,
- change of account title,
- applications for credit cards, loans or mortgages suggesting UK residence,
- use of the deposit as security for borrowing by UK residents or for borrowing in respect of the purchase of UK property,
- the grant of third party mandates in favour of a UK resident,
- the grant of a 'lien' on the account,
- information which comes to the NOR supervisor's attention by personal knowledge,
- the existence of a UK business in which the investor has an active interest, and
- frequent or regular personal visits to the Financial Institution, cash transactions in the UK etc.

Where information indicates that the investor is or may be ordinarily resident in the UK or the trustees are or may be resident in the UK, or any of the beneficiaries are or may be ordinarily resident/ resident in the UK, as appropriate, strictly the Financial Institution should treat the deposit as a relevant investment immediately and begin to deduct BRT. However, provided the Financial Institution has taken steps to satisfy itself that the investor has remained NOR, and, if necessary, has asked the investor to confirm that he or she has remained NOR (or in the case of trustees or beneficiaries that they are NOR/not resident, as appropriate), the Financial Institution may continue to pay interest without deducting BRT for up to 180 days to enable enquiries to be concluded. In exceptional cases HMRC may allow up to a further 180 days. Any Financial Institutions needing more than 180 days should apply to

SASS
Room 330
Merton Road
St John's House
Liverpool
Merseyside
L75 1BB

or e-mail savings.audit@hmrc.gsi.gov.uk

HMRC recommends that where the matter is resolved without correspondence the NOR Supervisor records why he or she considers that the declaration remains valid.

Where the investor or the trustees is/are unable to satisfy the Financial Institution that a NOR declaration remains valid the Financial Institution should treat the deposit as a relevant investment and deduct BRT. Where the investor has not given all the necessary information within 180 days (or any further period HMRC may allow) the Financial Institution must deduct BRT from any future payments of interest.

Overseas Students

4.39 Students entering the UK for a period of study lasting less than four years are normally treated as not ordinarily resident in the UK. HMRC recommend that institutions make a diary note to review these accounts at the end of 4 years. If, at the end of 4 years, there is still a UK address on the account then you have 180 days to check the position with the investor.

If there is a reply and the investor is now ordinarily resident in the UK the Financial Institution should cancel the form R105 and deduct BRT from future payments of interest. The investor may be eligible to complete a form R85.

If there is no reply and there is still movement on the account. The Financial Institution should cancel the form R105 at the end of 180 days and deduct BRT from future payments of interest.

If there is no reply, no movement on the account and no evidence suggesting the investor is

ordinarily resident in the UK interest can continue to be paid gross.

Change of name of investor

4.40 Where the investor changes his or her name, for example by marriage, it is not necessary to replace the NOR declaration but the Financial Institution should ensure there is a clear audit trail. An example of a clear audit trail would be annotating the form with the revised details and endorsing the amendment with date stamp.

Transfer of account between branches

4.41 A new NOR declaration is not required when an account is transferred between branches. But Financial Institutions should ensure that there is a clear audit trail back to the original NOR declaration.

Mergers, take-overs, change of name of Financial Institutions

4.42 Reg 19 New NOR declarations will not be required when Financial Institutions merge, or if there is a take-over or change of name of a Financial Institution. But if new account numbers are allocated the Financial Institution should provide an audit trail back to the original NOR declaration.

Retention of forms

4.43 Reg 14 NOR declarations and deposit-takers/building society certificates (see paragraph 4.44) must be retained for at least two years following the closure of the relevant account(s) or from when the Financial Institution starts to deduct BRT.

Forms may be stored in any format which preserves an exact copy of the original. SASS will treat stored copies of NOR declarations as retained for the purposes of the regulations, provided that

- the stored copy and hard copy printouts are legible, and
- on being given notice by SASS, the Financial Institution will, within a reasonable time, provide a hard copy of the imaged document

If the Financial Institution receives a written R105 the document can either be stored (see paragraph 4.43) or, the institution can opt to issue a confirmation in accordance with non-

written procedures (see paragraph 4.20) in which case the original written declaration need not be retained.

If the Financial Institution has good evidence that a valid NOR declaration or deposit-taker's/building society certificate was held, but has been lost or mislaid, see Chapter 9.

Deposit-taker or building society certificates

4.44 Until 5 April 2001 if a declaration on form R105 did not contain the principal residential address of the person signing it, and the Financial Institution had no reason to believe that the investor was ordinarily resident in the UK (see paragraph 4.1), the Financial Institution could complete a deposit-taker or building society certificate and pay interest without deduction of BRT.

With effect from 6 April 2001 the form R105 must contain the principal residential address of the person beneficially entitled to the interest. See paragraph 4.8 if a PO Box address is shown on a form R105 given after 6 April 2001.

Systems checks

4.45 As part of the Financial Institutions' normal procedures, HMRC recommend that the institution periodically conduct their own internal verification checks to ensure compliance with HMRC requirements governing NOR deposits as detailed in paragraphs 4.37 to 4.43.

Such verification should include examination of a sample of NOR accounts, including specific samples for larger accounts or those accounts where the deposit is earmarked to cover borrowings, a third party mandate is in operation or only correspondence addresses have been provided, in so far as these are identifiable within the systems operated.

The review should extend to the examination of all information contained within the underlying investor record (including any information about accounts held elsewhere), and in respect of the sampled accounts should

- ensure that a valid NOR declaration is held for each account, and
- check that there is no information which might reasonably be taken to indicate that the

investor is, or may be, ordinarily resident in the UK or that the trustees are or may be resident in the UK or that any of the beneficiaries are or may be ordinarily resident/resident in the UK, as appropriate, and if there is such information, that it has been brought to the NOR supervisor's attention.

Where there is such information which has been brought to the attention of the NOR supervisor, or has been part of the investor's or trust's records or was seen by the NOR supervisor in his or her day to day work, the audit or inspection should include a check that he or she has satisfied himself or herself that the investor has remained NOR or that the trustees are not resident and the beneficiaries are NOR/not resident, as appropriate, and that he or she was reasonably entitled to be so satisfied.

Where the Financial Institution does not have his own internal audit or inspection department HMRC recommends the Financial Institution arrange for some form of independent internal checks to be made of his compliance with the procedures and controls relating to NOR deposits.

Diplomats

4.46 Foreign diplomats who enter the UK on a diplomatic mission are normally entitled to certain exemptions from tax. These apply, in particular, to their official remuneration and to any other income arising outside the UK. The exemptions do not extend to private income arising from sources in the UK, for example, interest on a savings account.

If a member of a Diplomatic Mission receives interest from a Financial Institution in the UK, he or she can

- if they are NOR in the UK, make a declaration on form R105 (see paragraph 4.7), or
- if they are OR in the UK, and are unlikely to be liable to income tax, register the accounts for interest to be paid without tax taken off (see paragraph 3.41).

Whether or not an individual, including a diplomat, is NOR depends on their personal circumstances. The rules are explained in the booklet HMRC6 http://www.hmrc.gov.uk/cnr/hmrc6.pdf

United Nations

4.47 The salaries of United Nations workers are usually exempt from income tax but whether or not they are resident or ordinarily resident in the UK is decided in the usual way. Whether or not an individual, including a United Nations worker, is NOR depends on their personal circumstances. The rules are explained in the booklet HMRC6 http://www.hmrc.gov.uk/cnr/hmrc6.pdf

If a UN worker receives interest from a Financial Institution in the UK they may be liable to pay UK income tax, but it is likely they will not be liable because they fall into one of the two following categories

- if they are NOR in the UK, they are entitled to make a declaration on form R105 (see paragraph 4.7), or
- if they are ordinarily resident (OR) in the UK, and are unlikely to be liable to income tax, they are entitled to register the accounts for interest to be paid without tax taken off (see paragraph 3.41).

European Community (EC) Officials

4.48 An official of the European Communities (EC) may be entitled to complete form R105 to receive interest without deduction of BRT if he or she is NOR. A brief outline of the residence status of officials of the European Community is

- an individual who was NOR in the UK, but was ordinarily resident in another member state before taking up such employment and who is working in a member state will remain NOR in the UK,
- an individual who was not ordinarily resident in any member state before taking up such employment will have his/her residence status determined according to the normal rules, or
- an individual who takes up employment as an official of the EC and who works outside the EC, will have his/her residence status determined according to the normal rules

An individual who was ordinarily resident in the UK before taking up employment as an official of the EC, and who works in a member state will remain ordinarily resident in the UK. Such an individual will not be able to complete a form R105 but may be able to complete a form R85 (see Chapter 3).

Visiting armed forces

4.49 Members of visiting armed forces are treated as NOR and may complete form R105 but the residence status of the spouses is determined according to the normal rules. A person is a member of a visiting force if he or she is a member of the armed forces of

Belgium	Greece	Norway	Germany	France
Canada	Italy	Portugal	Netherlands	United States
Denmark	Luxembourg	Turkey		

and is

- based in the United Kingdom, or
- attached to:

Allied Command Atlantic Headquarters
Channel Command
The Channel Committee
Eastern Atlantic Area Command
Supreme Headquarters Allied Forces Europe
North Atlantic Treaty Organisation.

Civilian component of visiting armed forces

4.50 Members of the civilian components of visiting forces are treated as NOR if they have come to the UK solely because they are a member of such a force. A person is a member of a civilian component of a visiting force if his or her passport contains

- an un-cancelled entry made by or on behalf of the sending country stating that the bearer is a member of a civilian component of a visiting force of that country, and
- an un-cancelled recognition stamp of the UK Home Office.

Employees of foreign contractors hired in the UK are not members of the civilian component of a visiting force. The residence status is determined according to the normal rules (see paragraph 4.2).

Sovereign immunity

4.51 An overseas sovereign does not need to complete a NOR declaration. He or she should, instead, provide the Financial Institution with a letter from the Customs and International Directorate of HMRC, granting exemption from tax on the grounds of sovereign immunity. Financial Institutions should retain a copy of the letter for the records. They should pay interest for the future without deduction of BRT.

Emigration

4.52 Strictly, a declaration made in contemplation of, but before, leaving the UK is not acceptable. But Financial Institutions may accept such declarations provided they satisfy themselves, before paying interest without deduction of BRT, that the investor has left the UK.

A note of any enquires made should be kept in the investor's records.

Chapter 5 Accounting for tax

Time of deduction of BRT

5.1 Financial Institutions must deduct BRT when interest is paid or credited on a relevant investment which is not registered for payment of interest without deduction of BRT.

Time of accounting for BRT – deposit-takers

5.2 Deposit-takers must account for BRT deducted

- for each complete quarter ending 31 March, 30 June, 30 September and 31 December which falls within the accounting period, and
- for each part of the accounting period which is not a complete quarter.

For example, if a deposit-taker makes its accounts up to 30 April, it must account for BRT for the periods

- 1 May - 30 June
- 1 July - 30 September
- 1 October - 31 December
- 1 January - 31 March
- 1 April 30 April

Time of accounting for BRT – building societies

5.3 Building societies must account for BRT deducted

- for each complete quarter ending 28 February, 31 May, 31 August and 30 November which falls within the accounting period, and
- for each part of the accounting period which is not a complete quarter.

For example, if a building society makes its accounts up to 31 December, it must account for BRT for the periods

- 1 January - 28 February
- 1 March - 31 May
- 1 June - 31 August
- 1 September - 30 November
- 1 December - 31 December

Method of accounting for BRT

5.4 Financial Institutions must make quarterly returns of interest paid and BRT deducted from that interest on form CT61 to HMRC Accounts Office. These are known as CT61 returns. They must also pay the BRT deducted from interest to HMRC Accounts Office.

If the Financial Institution receives any income from which UK income tax is deducted, it may set that tax against any BRT it has deducted which it is paying to HMRC. But if it does, it cannot also set that tax against its corporation tax liability.

Late CT61 returns or payments of BRT

5.5 BRT is due and payable

- at the time the return ought to be made,
- without the need for an assessment

and is assessable if not paid when it is due. Any tax due for a return period must be paid within 14 days of the end of the return period.

Incorrect CT61

5.6 If it appears that the CT61 return is incorrect, or if there is BRT which ought to have been

included on the return and has not been, HMRC may make an assessment to collect the BRT.

Interest

5.7 Any unpaid BRT will carry interest from the date it was due. It is due to be paid within 14 days of the end of the return period. See also paragraph 5.2 or 5.3.

Where a payment of BRT is made by cheque, when calculating any interest or repayment supplement, the payment will be treated as having been made on the day the cheque is received by HMRC. Where a cheque is received by post following a day when the HMRC office has been closed for whatever reason (including a weekend) the payment will be treated as having been made on the day the office was first closed.

Penalties

5.8 HMRC may charge penalties if the Financial Institution does not make a return, or makes an incorrect return.

Chapter 6 Section 975 statements

The Section 975 statements

6.1 Investors may ask Financial Institutions for a statement of BRT deducted from the interest. Where an investor makes a written request a statement must be provided by the Financial Institution. The Financial Institution cannot make a charge for the original but may for duplicates (see paragraph 6.5). HMRC no longer routinely requires individuals to submit Section 975 statement with the tax repayment claims and it is up to the Financial Institution whether they issue Section 975 statement automatically to all of the investors, or on request basis only.

What the statement must show

6.2 The statement must show

- the amount of interest paid before BRT is taken off (the gross amount),
- and the amount of tax deducted, and
- the actual amount paid (the net amount)

relating to the particular interest payment(s) (or series of interest payments within a tax year) for which the investor requested the statement. And it should state that it is a statement given under Section 975 Income Tax Act 2007.

It is not necessary for Section 975 statements to include the signature of the Financial Institution representative but HMRC recommends that a signature is shown. Facsimile signatures are acceptable. Financial Institutions may issue computer generated statements provided that they are printed on systems generated headed paper and not blank computer paper.

A specimen statements which Financial Institutions may wish to adopt is reproduced at Appendix 5.

Investors are likely to want Section 975 statements as evidence that they have paid income tax by deduction under the Scheme, when they claim repayment of income tax from HMRC. Statement(s) should not include any interest shown on a previous Section 975 statement, whether or not the previous statement relates to an earlier tax year,

because this could result in duplicate repayments of income tax.

Electronic Tax Deduction Statements

6.3 Section 975 statements can be issued electronically.

The issuing of electronic tax deduction statements is voluntary and can only go ahead when both the issuer and recipient agree. Where one of the parties does not agree, it will be necessary to continue issuing Section 975 statements in paper form.

Methods of electronic communication are not prescriptive and possibilities include sending PDF files by e-mail or making the statement available on a secure website for the recipient to download.

Joint accounts

6.4 Where there is a joint account only **one** Section 975 statement should be issued, even where more than one account holder requests a statement. This statement should show details of BRT and interest for the whole account.

Where part of the interest has been paid without deducting BRT, and part after deducting BRT, Financial Institutions should, whenever possible, indicate which account holder(s) has (have) registered for payment of interest without deduction of BRT. This will help investors complete the tax return or claim their repayment.

Duplicate statements

6.5 Where an investor has lost his or her statement a duplicate Section 975 statement may be issued but must be clearly marked 'duplicate' (see paragraph 6.9 regarding charging).

Adjustments to interest details

6.6 Where a Section 975 statement has already been issued showing details of interest payment(s) and either the interest paid or the BRT deducted, is for whatever reason adjusted Financial Institutions **must not** issue further Section 975 statements showing the adjusted interest payment(s) or BRT. Financial Institutions should instead issue a letter of

explanation to the investor showing the adjusted details. Where an additional payment of interest is made because too little interest has previously been paid, a Section 975 statement may be issued showing that payment as a separate payment of interest in the tax year in which it is paid. This may, of course, be later tax year than the one in which the original interest was paid.

Retrospection

6.7 If an investor registers for interest without the deduction of tax part way through a tax year, and a Section 975 statement has been issued for that account before the investor registered, the tax deducted cannot be refunded under the retrospection provisions (see paragraph 3.23) The investor must claim a repayment from HMRC. This ensures that the investor does not receive a refund under the retrospection provisions **and** a repayment from HMRC by making a claim with the Section 975 statement.

Foreign currency accounts

6.8 Where the account is a foreign currency account the Section 975 statement can be shown in the foreign currency. There is no requirement to show the currency in sterling.

Charging for statements

6.9 Financial Institutions may charge for providing **duplicate** Section 975 statements, but not for originals.

Death of investor

6.10 Section 975 statements may be requested for the period up to, and the period from, the date of death of a deceased investor. The statement up to the date of death should show the name of the deceased investor, details of interest payments and BRT deducted from the previous 6 April to the date of death, excluding any payments already shown on a previous statement. The statement should not show interest accrued, but not paid, up to the date of death. Where a Financial Institutions system will not produce a Section 975 statement for the period up to the date of death, the Section 975 statement for the year of death should be supported by an analysis of interest paid, and BRT deducted up to, and from, the date of the investor's death.

The Section 975 statement from the date of death may be in the name of the deceased or

the personal representatives if they have taken control of the account. It should show details of interest payments and BRT deducted from the date of death to the date of closure of the account or the following 5 April, whichever is earlier.

The first interest payment after the date of death may include interest accrued up to the date of death. That payment should be shown on the Section 975 statement relating to the period from the date of death and Financial Institutions should not apportion the interest in any way.

ISAs

6.11 Interest on an ISA, Junior ISA and CTF account is exempt from income tax and is outside the Scheme (see paragraph 2.22). Financial Institutions should not normally issue Section 975 statements in respect of interest paid on an ISA account.

However, interest paid in respect of ISA, Junior ISA or CTF subscriptions that are

- voided, or
- repaired (up to the date of the notice of repair issued by HMRC)

is not exempt from income tax. Financial Institutions should issue Section 975 statements in respect of such interest. However, it **must not** include details of interest paid in respect of valid ISA subscriptions.

Repaired and void ISAs

6.12 A Section 975 statement may be issued for interest paid inside an ISA which has been voided. When the ISA has been repaired the statement may be issued for interest paid inside the ISA before the date of repair.

Security

6.13 Investors may use Section 975 statements to claim repayment of BRT from HMRC. Section 975 statements are therefore valuable documents and Financial Institutions should ensure that blank statements are held securely.

Chapter 7 Adjustments to interest payments

Incorrect treatment of payments of interest

7.1 Financial Institutions may become aware that they have treated payments of interest incorrectly. Examples of common mistakes are

- interest paid with tax taken off when it should have been paid without tax taken off,
- too much interest paid,
- too little interest paid, and
- interest paid without tax taken off when it should have been paid with tax taken off.

What Financial Institutions can do to adjust interest payments and tax deducted?

7.2 Where Financial Institutions discover that they have dealt with interest incorrectly they should follow the guidance in paragraphs 7.3 to 7.9 below to put things right as soon as possible.

Adjustments where interest has been wrongly calculated

7.3 Where a Financial Institution calculates interest to be paid or credited before the actual interest payment date, there may be transactions between the time of calculation and the date interest is paid. As a result the next interest payment may be incorrect. Financial Institutions usually correct this by adjusting the next interest payment. Where interest has been overpaid and the account has been closed see paragraph 7.8.

Adjustments and the CT61 Return

7.4 Financial Institutions should correct the BRT position on incorrect payments of interest by submitting an amended CT61 return setting out the correct position for the relevant return period and send it to HMRC Accounts Office as soon as possible. They should correct the figure of tax payable for that CT61 return period and pay the tax due or deduct the overpaid tax from the tax payable for that CT61 period, as appropriate. Adjustments should be made using the rate in force at the time of the original interest payment.

Where a Financial Institution makes an adjustment to include unpaid BRT, recovery from the investor is a matter between the Financial Institution and the investor.

Retention of evidence

7.5 In all cases, Financial Institutions must retain details of the adjustments made and make them available to HMRC if requested. Details should include

- the name and address of the investor,
- NINO (where provided),
- the account number and branch identifier (if necessary),
- the amount of the adjustment, and
- the tax year(s) to which it relates.

Adjustments and Section 975 Statements

7.6 Where a Section 975 statement has already been issued showing details of the interest payment(s) and either the interest paid or the BRT deducted, is for whatever reason, adjusted, Financial Institutions **must not** issue further Section 975 statements, showing the adjusted interest payment(s) or BRT. Financial Institutions should instead issue a letter of explanation to the investor showing the adjusted details. Where an additional payment of interest is made because too little interest has previously been paid, a Section 975 statement may be issued showing that payment as a separate payment of interest in the tax year in which it is paid. This may, of course, be a later tax year than the original interest was paid.

Adjustments and the Section 17 Return

7.7 Where the Financial Institution has not submitted their Section 17 return (see Chapter 8) before the adjustment is made, the corrected position should, if possible, be shown on the return.

If the return has already been submitted Financial Institutions should retain details of the adjustments for production to HMRC on request. They should not submit a further return showing the adjustments.

Closed accounts

7.8 Where an error is discovered on an account which has been closed, Financial Institutions should, if possible, correct the position. For example, where the Financial Institution has

incorrectly paid interest without deducting BRT, they should pay the BRT to HMRC by submitting an amended CT61 return for the relevant period and paying the additional tax due. Where the Financial Institution is unable to recredit BRT incorrectly deducted, they should issue Section 975 statements to the investor. The investor may then take the matter up with HMRC.

Where too little interest has been paid on closure of an account, an additional payment may be made to correct the position when the error comes to light. The Financial Institution should deduct BRT if appropriate, and may issue a Section 975 statement showing the additional payment. BRT should be deducted at the rate in force for the year in which the additional payment is made.

Where too much interest has been paid on closure of an account, recovery of the overpaid amount is a matter between the Financial Institution and the investor. Where BRT has been deducted from an excessive payment of interest and the BRT has been accounted for to the HMRC, the Financial Institution should recover the excess by submitting an amended CT61 return for the relevant return period correcting the position.

Penalties on term and notice accounts

7.9 Where an investor makes a withdrawal from his or her account before the end of its fixed term, or without giving the required period of notice, some Financial Institutions impose a penalty. Normally, the penalty is deducted from, or reflected in, the next payment of interest on the account. Provided the penalty is not separately charged to the account but is deducted from the interest payment, Financial Institutions should deduct BRT only from the interest actually paid. But where the penalty is charged to the account and the full amount of the subsequent interest payment is paid separately BRT must be deducted from the full amount of interest paid.

Where an account is closed and a penalty is deducted from the final interest Financial Institutions should deduct BRT only from the interest actually paid.

Interest already paid, and BRT already accounted for, remain unaffected by any penalty charged by the Financial Institution, unless the terms of the account **require** a recalculation of interest already paid.

October 2012

Chapter 8 Reporting interest

Reporting under Section 17

8.1 HMRC produce separate guidance on reporting information about interest payments under .

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

If, after reading the Section 17 guidance, you need further advice please contact:

For advice about the scope/interpretation of the legislation and what should be reported

Nicholas Wright
HM Revenue & Customs
1st Floor
Archer House,
John Street
Stockport
Cheshire
SK1 3EA

Tel: 0161 475 8577
Fax: 0161 475 8431
E-mail: nicholas.wright&hmrc.gsi.gov.uk

For advice about The Savings Directive and Savings Income Reporting

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

E-mail: Offshore Personal Tax Team

For advice on how to submit returns or for advice about how to complete the forms contact:

HM Revenue & Customs
Centre for National Information

Tel: 02920 327285 or 6379
E-mail: cni.firm @hmrc.gsi.gov.uk

Reporting under Section 18

8.2 HMRC produce separate guidance on reporting information about interest payments under Section 18 of the Taxes Management Act 1970.
If, after reading the Section 18 guidance, you need further advice please contact the people in paragraph 8.1.

Chapter 9 Audit

Chapter 9 Audit

Introduction

9.1 HMRC conduct a risk based approach to audit in order to check that Financial Institutions have paid the right amount of tax at the right time and, where interest was paid without deduction of BRT, that Financial Institutions were entitled to pay interest without deduction of BRT.

What are the objectives of the audit?

9.2 The objectives of the audit are to determine that

- the right amount of tax has been deducted from payments of interest and the tax has been paid to HMRC at the right time,
- the Financial Institution has satisfied itself that a deposit is not a relevant investment before paying interest without deduction of BRT,
- a fully completed and accurate annual information (Section 17) return has been received,
- Section 975 statements issued were correct, and
- generally, that the Financial Institution has met it's obligations under the legislation.

The auditor's role

9.3 In carrying out the audit, auditors will

- review the Section 17 return for accuracy and completeness
- review the procedures, systems and controls of the Financial Institution,
- check the calculation of the amounts of BRT shown in the quarterly returns, and
- carry out simple checks of accounts which have interest paid without deduction of BRT.

Requirement to make information available for audit

9.4 When required to do so by HMRC, Financial Institutions must make available for inspection all books, documents and records which they have or control containing information Reg 15, 16 relating to accounts on which interest has been paid to enable HMRC to

- determine whether interest was correctly paid without deduction of BRT, or
- verify the amount of BRT deducted.

Voluntary disclosure

9.5 Where a voluntary disclosure is made, this will not lead to a full audit where HMRC are satisfied with the disclosure.

Selection for review

9.6 Initially, selection for review will be based on an analysis of the Section 17 (and EUSD) return made by the Financial Institution. Where possible, this analysis will be carried out at sub-return level but where the number of sub-returns has changed from the previous year the analysis will be by reference to the full return. The return will be compared with returns made for earlier years to identify areas of risk (see paragraph 9.7). Year on year fluctuations in volumetrics may suggest the returns (or previous returns) are incomplete or inaccurate. HMRC may make initial enquiries on issues raised by the returns analysis using an informal desk based approach. If matters cannot be resolved this way this will lead to the issue of an audit notice and a formal audit. The audit will cover not only the identified risk, but additional areas outlined in paragraph 9.9. The audit will include checks to verify the completeness and accuracy of the relevant returns (section 17/18, EUSD and CT61).

Analysis of returns will not identify all areas of risk so HMRC will maintain a risk based cyclical audit of return completeness and accuracy of section 17/18, EUSD and CT61 returns. Returns will be classified as high, medium or low risk based on such factors as size and constituent business of the Financial Institution. Cases deemed to be high risk will receive more frequent audit.

Returns analysis

9.7 The following are examples of the analysis that will be carried out before HMRC contacts the Financial Institution.

- R85 cases – comparing numbers of accounts and amounts of interest (fully gross, partial gross, newly registered accounts)
- R85 cases – comparing numbers of accounts reported without a NINO or date of birth
- R105 cases – comparing the number of accounts and amounts of interest for new/not new accounts
- R85 and R105 – identifying the number of accounts reported without an address or with

a c/o or PO Box address

- Other gross interest paid to individuals – compare number of such accounts and amounts paid
- Other gross interest paid to non-individuals – compare number of such accounts and amounts paid
- Accounts that receive net interest – compare number of accounts and amounts paid.

Analysis of the European Savings Directive return could indicate return errors where there are year on year fluctuations in volumetrics or where there is

- no income code
- no additional information
- non-EUSD country codes
- incorrect naming conventions used.

Notification of audit

9.8 Where initial desk based enquiries have not resolved matters, HMRC normally gives at least 4 weeks' notice of an audit. Auditors may seek a meeting before the audit takes place.

Selecting a sample for audit

9.9 Where an issue is identified and a full audit is required, the audit will cover not only the identified area from the return but also the following areas

- R85 accounts shown as part net / part gross but no tax has been deducted
- R85 minor accounts – investor reaching 17 years old
- R85 – compliance with HMRC deregistration notices
- R85 deceased cases.
- R105 – compliance with initial and continuing obligations
- Other gross cases – no R85 or R105 and investor is an individual
- Other gross cases – non-individuals
- Treasury accounts / QTDs

For each area, auditors will select either a statistically valid or targeted sample, depending upon the area of review, from the Section 17 or Section 18 returns.

These samples will be used to check whether the procedures and controls put in place by the Financial Institution are adequate to meet the requirements of the Scheme.

Generally, auditors take the sample from a list of relevant accounts reported on the most recently received Section 17 or Section 18 return. The samples are either selected randomly or targeted, depending upon the area of review.

Examining Financial Institutions records

9.10 The auditor needs to examine

- records of interest paid after deduction of BRT and without deduction of BRT,
- records of tax deducted (to reconcile tax paid to the HMRC with the CT61 returns),
- forms R85,
- notifications of de-registration,
- NOR declarations (and deposit-taker or building society certificates, if appropriate, for NOR declarations accepted before 6 April 2001),
- computer records, correspondence held on file/microfiche etc including correspondence from investors in relation to NOR accounts,
- records of gross payments made to other non-relevant investments, and
- computer and manual records relating to the compilation of the Section 17 or Section 18 return.

Auditors may want to see other records and may ask to speak to members of the management and staff about the systems used by the Financial Institution.

Although auditors normally inspect recent records, Financial Institutions should retain, on microfiche or similar medium if preferred, forms R85 (see Chapter 3), NOR declarations (see Chapter 4) and deposit-taker or building society certificates (see paragraph 4.44) for at least two years after an account has been closed or interest has ceased to be paid without deduction of BRT.

There are penalties for failing to make records available for inspection.

Use of 'good evidence'

9.11 Auditors may select statistically valid samples of various categories of cases (R85s, R105s) to check for evidence that interest has correctly been paid without deduction of tax. Where forms R85/R105 are missing or incomplete, this will be used as the basis for the audit settlement. In some circumstances auditors will accept 'good evidence' that a missing form did exist but has been lost and auditors may not treat such an account as an error case.

HMRC will allow 'repair' of missing or incomplete forms in certain circumstances. The extension of 'good evidence' also applies where missing or incomplete documentation comes to light in an internal review.

Repair – Missing forms R85

9.12 Where forms R85 are missing, HMRC will ask if there is any evidence that suggests that the form was once held – for example, a letter from the customer, or the NINO and DoB are held on the institution's system and the customer has no other products (e.g. an ISA) where that information could have come from. If there is such evidence, HMRC will not seek a recovery for past periods, but a fresh form R85 must be obtained so that gross payment can continue. If a fresh form R85 is not obtained the Financial Institution must deduct tax from future interest payments.

In all other cases (i.e. where there is no evidence the form was once held), institutions can reduce the error rate used to reach audit settlement by obtaining a fresh form R85 and a statement from the investor confirming when the original form R85 was lodged and that they have remained a non taxpayer since that time. (Sample wording for such a statement is shown in Appendix 8.)

Where a replacement cannot be obtained tax must be deducted from future interest payments, and HMRC will seek a recovery for earlier periods. Where a replacement (and statement) is obtained HMRC will not seek a recovery for past periods.

If the investor confirms that they lodged a form R85 but have since become a taxpayer, the

institution must de-register the account and make future interest payments after the deduction of tax. HMRC will not seek a recovery for past periods unless there is evidence the investor told the institution that they had become a taxpayer but the account was not de-registered.

Where the missing R85 relates to a minor account where the investor has reached 17 years of age, to be eligible for repair there must be some evidence that a fresh form R85 was obtained. This could be correspondence or evidence of a fresh R85 signal. If the existing signal has simply been retained and there is no evidence that a fresh form was obtained the case cannot be repaired.

Repair – Incomplete forms R85

9.13 Forms R85 will be treated as invalid only where

- the form is not signed (or has been signed by the wrong person)
- the account number is not shown on the form (unless the investor only has one account with the institution)
- the account holder's full name and / or address is not shown and there is insufficient information to identify the investor
- the investor's date of birth is omitted (unless it is held separately on the institution's system and has been included on their annual information returns)
- the form is undated (or completed with the wrong date), unless there is contemporaneous evidence, for example, a covering letter from the customer, indicating the date of receipt (in which case it will be treated as valid only from the date of the contemporaneous evidence of receipt).

Where any of these errors are identified, Financial Institutions can reduce the error rate by contacting the investor and obtaining

- a fresh form R85, and
- a statement from the investor confirming they have remained a non taxpayer since the original form R85 was lodged.

Where a replacement cannot be obtained Financial Institutions must deduct tax from future

interest payments, and HMRC will seek an audit recovery in respect of tax that should have been deducted. Where a replacement (and statement) is obtained HMRC will not seek a recovery for past periods.

Repair – R85 signed by the wrong person

9.14 The absence of a 'capacity' box means that where a form is signed in the year in which a child reaches 16 it may be unclear whether the form was signed by the child or their parent (or guardian). If the form has not been signed by the child a fresh one will be required. Where a failure to obtain a fresh form is discovered, the error can be repaired by obtaining a fresh form and a statement from the investor that they have remained a non-taxpayer since age 16.

Repair – investor not contactable

9.15 Where Financial Institutions are unable to contact the investor because

- the investor has died
- the account is dormant

but not where the investor has simply not replied to correspondence, HMRC will be content for the error rate to be calculated by reference to the error rate on accounts with current contact addresses (after repair).

Nor will HMRC seek to recover where the account holder is a child under 16, but Financial Institutions must at least attempt to repair accounts of this sort (and where appropriate, tax must be deducted from future interest payments).

Example

At audit, 1200 'error cases' are discovered made up of

- date of birth missing from forms R85 1000 cases
- age 16 form R85 not replaced 200 cases

Total error cases = 1200 cases

The Financial Institution has current contact details for 1000 of these 1200 cases and issues repair letters to this 1000. A total of 900 responses are received supplying new forms R85 along with confirmation that the investor was not a taxpayer. These accounts are repaired so the 'repair rate' is 90% and the 'error rate' 10%.

No current contact addresses were held for the other 200 cases.

Calculation of tax due is then a 2 stage process.

Stage 1

100 cases with current contact addresses have not been repaired.
Of these, 15 were accounts for under 16s.
The details of the remaining 85 cases are known so the actual tax due for these 85 cases (£A) will form part of the settlement.

Stage 2

200 cases had no current contact address. Of these, 10 were accounts for under 16s.
The details of the remaining 190 remaining cases are known, so the 'error rate' of 10% is applied to the actual tax due for these 190 cases:

Tax due on 190 cases = £B, error rate 10% = £C
Total tax due in settlement = £A + £C and TDSI must be applied to all non repaired accounts (including those of children under 16) for the future.

Repair – R105 account issues

9.16 Where there is a missing or incomplete form R105 (including a non acceptable PO Box address) HMRC will allow Financial Institutions to repair matters by obtaining a fresh form R105 and confirmation from the investor that they have remained NOR since the original form was lodged.

In the case of missing pre 6 April 2001 deposit-taker or building society certificates, institutions can attempt to get a fresh form R105 from the customer plus a statement from them that they have remained NOR since the original R105 was lodged.

Where a replacement cannot be obtained tax must be deducted from future interest payments, and HMRC will seek a recovery for earlier periods. Where a replacement (and statement) is obtained HMRC will not seek a recovery for past periods.

Where a new party was added to a NOR account, but there is no evidence that a fresh form R105 was obtained, then the Financial Institution will need to obtain a form R105 to pay gross for the future. But this cannot be 'backdated' and will only apply from the date of receipt.

Repair – other gross accounts

9.17 Where the Financial Institution has no evidence that the investment is not a relevant investment, evidence must be obtained along with a statement that this has applied since the date interest began being paid gross.

Where evidence cannot be obtained tax must be deducted from future interest payments, and HMRC will seek a recovery for earlier periods. Where evidence (and a statement) is obtained HMRC will not seek a recovery for past periods.

Section 17 & Section18 Independent Audit of Not Fully Reportable accounts

9.18 Where a Financial Institution Section 17 & Section 18 returns are restricted to payments made to investors who have a reportable address in the UK or another Fully Reportable (FR) country, HMRC will, by administrative arrangement, allow the Financial Institution to appoint an Independent Auditor, at their own expense to undertake the audit of Non Fully Reportable (NFR) accounts.
Further details of this arrangement are contained with the guidance notes for Section 17 and Section 18 returns which are available on the HMRC website at
http://www.hmrc.gov.uk/esd-guidance/s17-s18-si-reporting.htm

Specific notes for the appointed auditor are available from Savings and Audit. Contact details are below.

Any Financial Institution wishing to appoint an Independent Auditor should send written notification to Savings and Audit at the address below, providing details of the auditor who will carry out the review.

HMRC
SSAS
St Johns House
Merton Road
Liverpool
L75 1BB

Phone number 0151 472 6269

The application can be made at any time and notifications will be acknowledged within 30 days of receipt. If the appointment is made after the issue of an audit notice the timing of the audit will not be rearranged to accommodate the Independent Auditor.

The Independent Auditor who is appointed must be an auditor registered under the Companies Act 1989 and must be experienced in carrying out audits of such an institution's business.

The written notification of appointment from Savings and Audit to the independent auditor will act as authority for Savings and Audit to send a copy of correspondence including the audit notice to the Independent Auditor. A copy of the Savings and Audit report will only be sent to the appointed auditor if the Financial Institution gives prior authority.

Where an Independent Auditor has been appointed, the audit notice will be sent to the Financial Institution and the Independent Auditor at least 6 weeks prior to the audit commencing. The Independent Auditor will audit Non Fully Reportable cases excluded from Returns under Sections 17 and 18 Taxes Management Act 1970 and gross payments made to individuals in Non-Fully Reportable countries.

Notes for Independent Auditors are issued separately to the Independent Auditor when appointed.

Satisfactory audit results

9.19 Where, on the basis of the audit results and other information available, auditors are satisfied that the interest has been correctly paid without deduction of BRT, the Financial Institution will be advised that no further action is needed.

Unsatisfactory audit results

9.20 In cases where the auditor can reasonably conclude that errors exist throughout the total population of accounts of that type or in a particular portion of them, auditors will

- advise the Financial Institution to pay all BRT underpaid, not just that relating to the accounts in the sample,
- seek to determine by agreement with the Financial Institution the amount of any recovery, and
- where appropriate ask the Financial Institution to make a general payment on account while the correct figure is calculated.

In reaching settlement, HMRC will not normally seek to 'go back' more than 4 years or to the date of the last audit if this is later. HMRC will normally only seek to go back more than 4 years where there is evidence that the Financial Institution has not taken reasonable care in the operation of the Scheme.

Quantifying an underpayment

9.21 Normally, the amount of BRT underpaid can be agreed between the Financial Institution and HMRC after discussion of the audit findings by extrapolating the agreed results of the sample test across the population of accounts of the type in question. So if the audit is into a targeted sample, extrapolation will be restricted to accounts falling into the targeted category and not across the general population.

Where agreement cannot be reached between the Financial Institution and HMRC, HMRC may raise an assessment to collect the BRT underpaid. However, the Financial Institution may undertake further work to quantify the actual amount. That may involve reviewing

- all accounts within the type in question, or

- a further sample of sufficient size to reassure the Financial Institution that the results are reliable enough to be extrapolated across the rest of the account population.

In either event, HMRC will want to agree how the work is to be carried out, including the size and structure of any sample, and to check the results of the review.

Default interest

9.22 BRT due on interest incorrectly paid without deduction of BRT attracts interest under Section 87 TMA 1970.

Reporting the Results

9.23 Auditors will usually report their findings to the Financial Institution within 28 days of the audit visit. Exceptionally and only where an Independent Auditor has been appointed, the NFR element of the report may be sent under separate cover to the Financial Institution within 90 days of the audit visit.

Penalties

9.24 Where interest was incorrectly paid without deduction of BRT, penalties of up to £3,000 may be charged for each incorrect form CT61 (Z) submitted. A maximum penalty of £3,000 will also be considered for any incorrect Section 17 or Section 18 returns submitted.

Audit protection

9.25 There are limited circumstances in which HMRC seeks to review a period which has previously been audited. HMRC does not seek recovery of tax for a period before the end of the period covered by the last audit (whether or not that earlier audit resulted in any recovery) unless

- the settlement was based on misleading or incorrect information provided by the Financial Institution, or
- the settlement was based on computational errors which the Financial Institution could not reasonably have believed were correct or intended, or
- errors arose before the end of the period covered by the last audit which were not

readily susceptible to audit checks.

Advice and help

9.26 New Financial Institutions, and Financial Institutions that are considering major system or procedural changes, can request a help visit which will be tailored to meet the needs of the Financial Institution by contacting savings.audit@hmrc.gsi.gov.uk

Appendices

Appendix 1 Investors whose deposits are not relevant investments

Building Societies

Charities and charitable trusts

Churches

Companies (Ltd, Plc or unlimited)

Corporations sole

Credit Unions

Deposit-takers

Friendly Societies

Individuals in respect of whom the Financial Institution holds a valid not ordinarily resident (NOR) declaration

Individuals who are ordinarily resident in the UK and in respect of whom the Financial Institution holds a registration form for payment of interest without deduction of tax (form R85) (Technically these accounts are relevant investments but the provisions of Section 851 are excluded by Regulations made under Section 852)

Industrial Societies

Investment Trusts

Liquidator's accounts for companies

Local Authorities

Masonic Lodges

Members' clubs (e.g. the Anytown Tennis Club)

Nationalised Industries

Pension Funds

Provident Societies

Public Bodies - Health Authorities, Education Authorities etc.

Regimental accounts

Societies (e.g. the Anytown Local History Society)

Trade Unions

Trustees in bankruptcy

Trustees of accumulation or discretionary trusts where the Financial Institution holds a valid not ordinarily resident declaration (interest paid after 5 April 1996), or where the account was opened before 6 April 1995 and the Financial Institution has not received a notification on form 31(TN) or form 31(FS) TN.

Unit Trusts (authorised and unauthorised)

Appendix 2 Minor omissions or errors on form R85

Chapter 3 of these Guidance Notes emphasises that form R85 must be fully completed before interest can be paid without tax taken off. But the HMRC recognises that, through clerical error, incomplete forms R85 may occasionally be accepted from the investor. In some of these cases it would be unreasonable to return the form R85 to the investor to rectify a trivial omission. Therefore, HMRC auditors will not treat a form R85 as invalid by reason only of a trivial omission or error of the sort described below **provided** the form R85 has been annotated where appropriate, and provided that the deposit-taker has sought generally to ensure that forms R85 are properly completed before they are accepted.

Where appropriate (see below), the deposit-taker should annotate form R85 to insert missing or corrected information, by ensuring it is clear what's been changed and initialling or stamping and dating the amendment. Deposit-takers and building societies should not otherwise insert information on incomplete forms R85.

Name of Investor

The form R85 may still be treated as valid if the investor has not entered his or her name/initials provided the investor can be identified clearly from the information provided. This is particularly important where the account is held in joint names. The institution can annotate the form to reflect the correct information.

Postcode

If the deposit-taker holds details of the postcode in his records, he should annotate the form with those details. The form will not be treated as invalid solely by reason of the missing postcode.

Account number(s)

A form R85 is account specific. Form R85 will not be regarded as invalid because the account number is missing or the investor makes a mistake provided the investor only has one account with the deposit-taker. The financial institution can annotate the form to reflect the correct information.

Institution name & branch

The name of the financial institution and branch (if appropriate) should be shown. The deposit-taker can annotate the form to reflect the correct information.

Joint account boxes

Form R85 will not be treated as invalid if neither of the boxes are ticked provided that all parties to the account can be identified from the underlying customer record..

Date of birth

If the date of birth is the only omission from the form R85 and the investor is clearly identifiable from information on the form (deposit-takers and building societies must be particularly careful in the case of joint accounts) the form will not be treated as invalid provided it is annotated by the deposit-taker. If the investor does not know their date of birth the deposit-taker should note on the form 'date of birth unknown'.

Date

All forms R85 must be signed and dated. But where a form is undated and there is evidence of it having been received before the audit (for example, a date stamp), it will be treated as valid from the date evidenced. Otherwise, it will be treated as valid from the date of the audit.

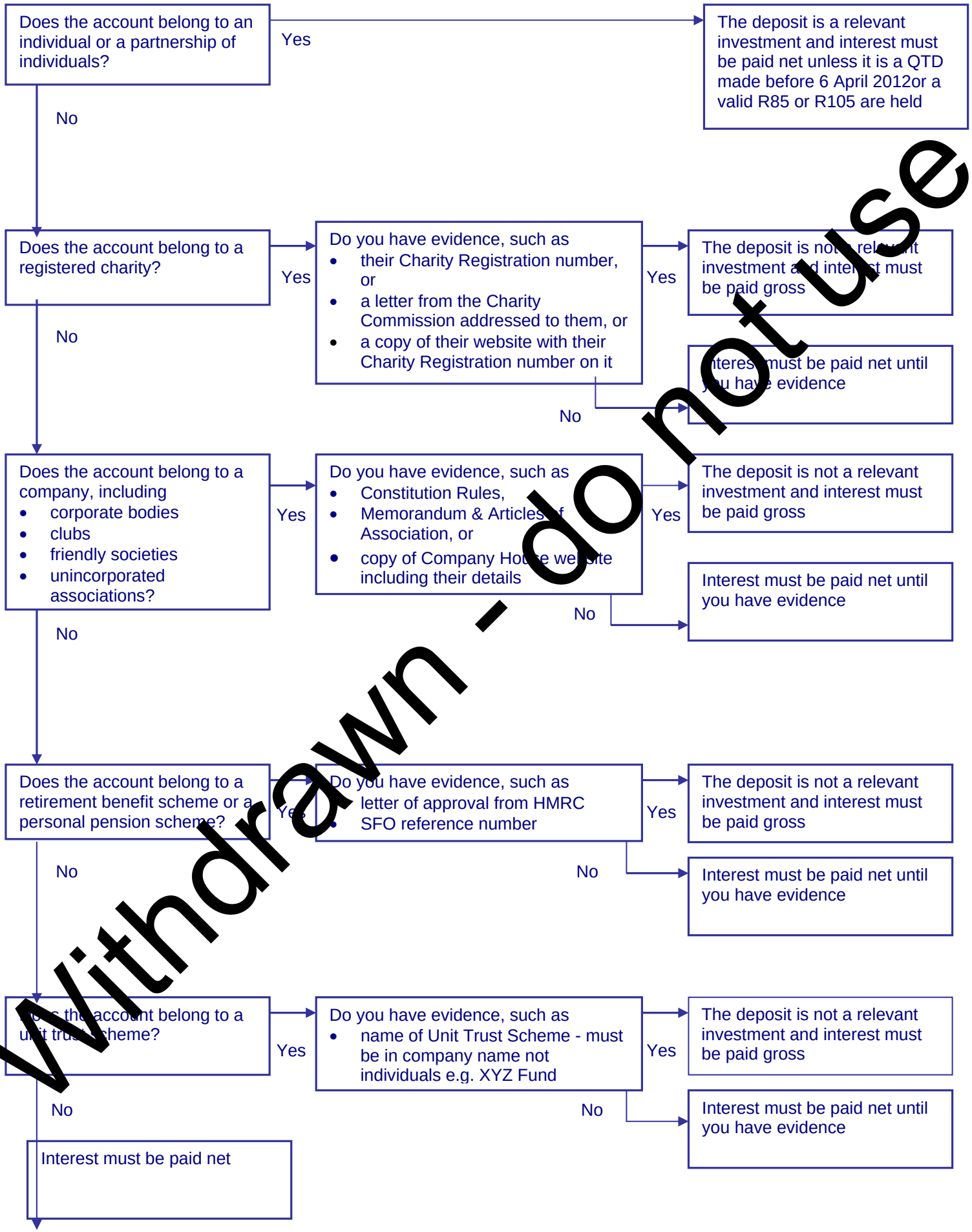
National Insurance number

A form R85 can still be accepted if the National Insurance Number box has not been completed. If the beneficial owner of the account is a minor under the age of 16 years then a National Insurance Number is not required.

Address

The deposit-taker may insert a new permanent UK address on form R85.

Appendix 3 Can a payment be made gross?



October 2012

Appendix4 Trusts – process maps to show whether a form R85 or a form R105 can be signed.

Bare Trusts - Is a form R85 or a form R105 appropriate?

Is the beneficial owner ordinarily resident in the UK?

No

Is the beneficial owner a child (under the age of 16)?

No

A form R105 is appropriate.

It can be signed by

- the beneficial owner
- the person to whom the interest is paid e.g. a legal representative

the form must show

- the name, and
- the principal residential address of the beneficial owner

Yes

A form R105 is appropriate.

It can be signed by

- the child if they are aged 12 or over
- the parent / guardian
- the person to whom the interest is paid e.g. if the account is 'grandparent re grandchild' it can be signed by the grandparent because the interest is paid to them

and the form must show

- the name, and
- the principal residential address of the child

Is the beneficial owner a child?

Yes

A form R85 may be appropriate if the child is unlikely to be liable to tax.

(see paragraph 3.40 for the rules about capital given by parents)

It can be signed by

- child's parent / guardian

and the address must be

- the permanent address of the child

No

Is the adult mentally incapacitated?

Yes

A form R85 may be appropriate if the beneficial owner is unlikely to be liable to tax.

It can be signed by

- the parent
- the guardian
- the spouse of the beneficial owner
- the child (if over 16) of the beneficial owner
- a receiver or person appointed by DWP (see paragraph 3.24)

and the address must be

- permanent address of the beneficial owner

No

A form R85 is not appropriate and must not be completed.

The interest must be paid with tax taken off.

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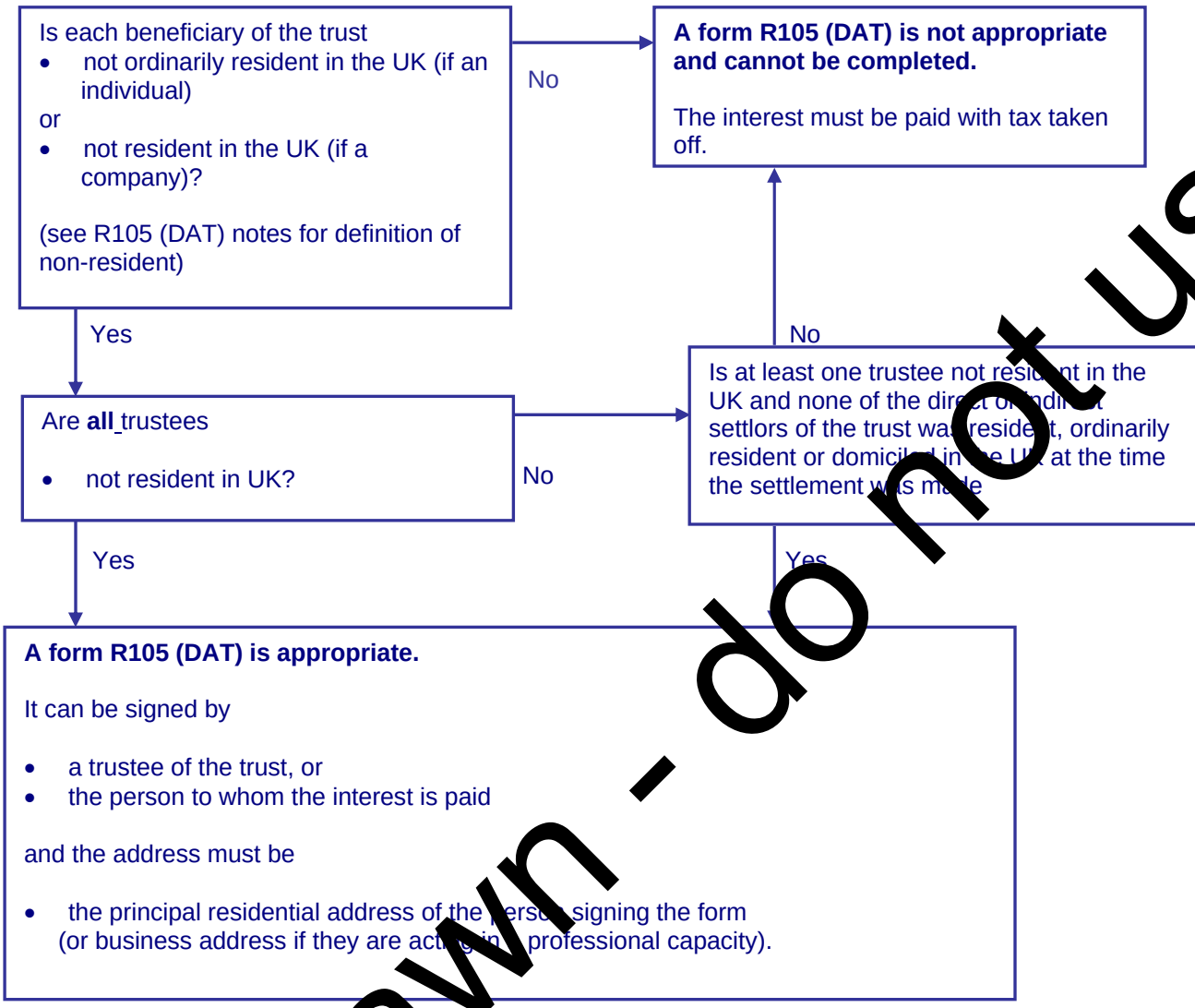
Discretionary or accumulation trusts - Is a form R105 appropriate?



Interest in Possession trusts - Is a form R105 appropriate?

Is the beneficiary UK resident?

(the residency status of the trustees is irrelevant)

Yes

A form R105 is not appropriate and must not be completed.

The interest must be paid with tax taken off.

No

Is the beneficiary a child (under the age of 16)?

Yes

A form R105 is appropriate.

It can be signed by

- the beneficiary if they are aged 12 or over
- the parent of the beneficiary
- the person to whom the interest is paid e.g. a trustee

and the details must be

the name & principal residential address of the beneficiary

No

A form R105 is appropriate.

It can be signed by

- the beneficiary
- the person to whom the interest is paid e.g. a legal representative (or trustees)

the details must be

- the name & principal residential address of the beneficiary

Contingent Trusts - Is a form R105 appropriate?

Is the beneficiary UK resident?

(the residency status of the trustees is irrelevant)

Yes

A form R105 is not appropriate and must not be completed.

The interest must be paid with tax taken off.

No

Is the beneficiary a child (under the age of 16)?

Yes

A form R105 is appropriate.

It can be signed by

- the beneficiary if they are aged 12 or over
- the parent of the beneficiary
- the person to whom the interest is paid e.g. trustee

and the details must be

- the name & principal residential address of the beneficiary

No

A form R105 is appropriate.

It can be signed by

- the beneficiary
- the person to whom the interest is paid e.g. a legal representative

the details must be

- the name & principal residential address of the beneficiary

Mixed trusts - Is a form R85 or form R105 appropriate?

Is part of the trust a bare trust?

No → **A form R85 is not appropriate and must not be completed**.

Is the beneficial owner of the interest ordinarily resident in the UK

No → Follow the appropriate process map for the relevant type of trust

Yes → **A form R105 is not appropriate and must not be completed.**

The interest must be paid with tax taken off.

Yes

Is the beneficial owner of the interest ordinarily resident in the UK?

No → A form R105 is appropriate.

It can be signed by

- the beneficiary if they are aged 12 or over
- the parent of the beneficiary
- the person to whom the interest is paid e.g. a trustee

and the details must be

- the name & principal residential address of the beneficiary

Yes

Is the beneficial owner a child or a mentally incapacitated adult?

No → **A form R85 is not appropriate and must not be complete**

The interest must be paid with tax taken off.

Yes

A form R85 may be appropriate if the child or adult is unlikely to be liable to tax.

For a child it can be signed by

- a child's parent / guardian

and the address must be

- the permanent address of the child

For an adult It can be signed by

- the parent
- the guardian
- the spouse of the beneficial owner
- the child (if over 16) of the beneficial owner
- a receiver or person appointed by DWP (see paragraph 3.24)

and the address must be

- permanent address of the adult.

October 2012

Appendix 5 - Specimen section 975 statement

Anytown Bank
1, High Street
Anytown

Name and address of investor
……
……
……

STATEMENT OF DEDUCTION OF TAX

Statement for the purposes of Section 975 of the Income Tax Act 2007

Account No ……..

*Year to 5 April……..

*Payment date ……/……/……*Delete as appropriate

1. Gross Interest £……

2 Income Tax Deducted £……

3 Net Amount Paid or Credited £……..

Date……/……../……. Signature……

Please keep this statement
- it will help you complete your Self Assessment tax return (if you are sent one)
- it will be accepted by HM Revenue & Customs as evidence of tax deducted if you are entitled to make a claim for repayment of tax.

A duplicate statement will not normally be issued, and HM Revenue & Customs will not necessarily accept statements or passbooks as conclusive evidence of tax deducted.

PLEASE KEEP THIS STATEMENT

PLEASE KEEP THIS STATEMENT

You have a legal obligation to keep records for tax purposes.

Everyone who lives in the United Kingdom (UK) is allowed to earn or receive some income before tax has to be paid. If your income is below this limit and you have money in a bank or building society account which earns interest, you may be paying tax when you don't have to. To find out whether this applies to you (or to an account you look after for someone else), please visit the HM Revenue and Customs website at www.hmrc.gov.uk/tdsi/key-info.htm

If you do not have Internet access or need further help in deciding whether your interest should be paid without tax taken off ring HM Revenue & Customs Gross Registration Helpline on 0845 98 00 645. The opening hours of the Gross Registration Helpline are 8.30am - 5.00pm Monday to Thursday and 8.30am - 4.30pm on Friday.

If you think you are due some tax back please ring HM Revenue and Customs on 0845 366 7850. The opening hours are 8.00am-5.00pm – Monday to Friday.

The Helpline numbers are only for enquiries about bank and building society interest. If you want help on any other tax matter, please visit the HM Revenue and Customs website at www.hmrc.gov.uk.

If you are sent a Self Assessment tax return, you must include:

- the gross amount of interest paid or credited in the tax year (shown at 1 over),
- the amount of tax deducted (shown at 2 over), and
- the net amount of interest after deduction of tax (shown at 3 over).

If you are not sent a Self Assessment tax return, but you are a higher rate taxpayer you should contact your own tax office.

Appendix 6 - R105 for Personal Representatives

Deceased not ordinarily resident investor: application to receive interest without tax taken off

To make an application to receive interest with **no** UK tax taken off

- read the notes on the other side of this form
- complete and return this form to the deceased savers building society, bank or other deposit-taker. They will arrange for interest to be paid without tax taken off. They may not acknowledge receipt of the form so you might want to take a copy for your records.

Name of building society, bank or other deposit-taker	
Branch name (*if appropriate*)	
Sort code (*if applicable)*	- - Account number
Name of account	

Full name	
Principal residential address (This is the address where you usually live. A foreign PO Box address can be given if this is the address to which your mail is sent and is a recognised residential address in the country where you live.) **or,** Business address (if you are acting in a professional capacity).	Postcode

Declaration

I declare that

- the person named above is the (or one of the) personal representatives(s), or the payee of the interest of

and (deceased)

✓ one box only

- immediately prior to his or her death the deceased was not ordinarily resident in the UK.

I am the (or one of the) personal representative(s) and I am authorised to sign this form. ☐

I am not a personal representative but the interest is payable to me. ☐

Signature Date / /

It is a serious offence to make a false declaration

HMRC may check that these details are correct and that the payment of gross

R105(PR)

Building societies, banks and other deposit-takers in the United Kingdom (UK) will normally deduct tax at the basic rate from interest paid or credited to an account. However,

- if you are entitled to the interest in your capacity as a personal representative **and**
- the deceased was not ordinarily resident in the UK immediately before his or her death

you can arrange for the interest to be paid without tax taken off by completing this form.

Throughout this form "interest" includes dividends paid by a building society.

Who should sign the form?

The person to whom the interest is payable or a personal representative of the deceased who is entitled to the interest in that capacity should sign this form.

Where one of a number of personal representatives is a signatory he or she should state that he or she is duly authorised to sign on their behalf.

Enquiries about residence

Contact

Residency
(Foreign Law Unit)
St John's House
Merton Road
Liverpool

L75 1BB

Tel 0151 472 6238

Fax 0151 472 6145

Not ordinarily resident

A deceased individual may be regarded as **not ordinarily resident** in the UK immediately prior to their death if

- **their home, employment and centre of life had always been abroad**,

- they visited the UK only for short periods for example on holiday or irregular business visits which averaged less than 91 days a tax year, **o**

- they came to the UK to work or live and intended to stay here for less than 3 years and did not own (or hold on a lease of 3 years or more), accommodation here for their use, **or**

- they were a student who had come to the UK for a period of study or education for less than 4 years, did not buy (or acquire on a lease of 3 years or more) accommodation for their use, and on leaving the UK intended to visit only for short periods which would average less than 91 days a tax year.

or

- **they were a former UK resident, and**

- they had left for permanent residence abroad, and their visits to the UK average less than 91 days a tax year, **or**

- they were working full-time abroad under a contract of employment, and both their absence from, and employment outside the UK was to la at least a full tax year and their visits to the UK averaged less than 91 days a tax year, **or**

- they accompanied or later joined their husband or wife, who was working full-time abr and met the conditions for being not ordinarily resident, their absence from the UK was to last at least a full tax year, and the

Enquires about this form .

Contact

SSAS
Technical Advice
(Address above)

Tel 0151 472 6269

Fax 0151 472 6124

Minicom 0151 472 6112

orm R85

	R85 for Adult	R85 for Child	R85 for Mentally incapacitated person (adult or child)
Saver over 16	✓	✓	N/A
Saver under 16	N/A	✗	✗
Parent	N/A	✓	✓
Guardian	N/A	✓	✓
POA	✓	✓	✓
Spouse	✗	N/A	✓
Savers child aged over 16	✗	N/A	✓
Person appointed by DWP to receive benefits	✗	✗	✓

Key

✓ acceptable

× not acceptable

N/A circumstances cannot arise

Appendix 8 - Table to show who can sign form R105

	Child	Adult
Saver (if over 12)	✓	✓
Under 12	×	N/A
Parent	✓	N/A
Guardian	✓	N/A
POA	✓	✓
Trustee if interest paid to them	✓	
Trustee if interest isn't paid to them	×	×

Key

✓ acceptable

× not acceptable

N/A circumstances cannot arise

Appendix 9 – Sample wording for investor statement

'I confirm that

- I completed a [form R85] [form R105] for account number …… and passed it to [name of institution] on [date], and

- I have remained [a non-taxpayer] [not-ordinarily resident in the UK for tax purposes] since that date.

Signed …… Date ……..'

If the exact date is unknown, it will be sufficient to use the year in which the form was given.

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