

CAYMAN ISLANDS



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**THE REPORTING OF SAVINGS INCOME INFORMATION
(EUROPEAN UNION) LAW, 2005
(LAW 12 OF 2005)**

**THE REPORTING OF SAVINGS INCOME INFORMATION
(EUROPEAN UNION) REGULATIONS, 2005**

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CAYMAN ISLANDS

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**THE REPORTING OF SAVINGS INCOME INFORMATION
(EUROPEAN UNION) REGULATIONS , 2005**

The Governor, in exercise of the powers conferred by section 6 of the Reporting of Savings Income Information (European Union) Law, 2005, makes the following regulations -

PART I - PRELIMINARY

1. These regulations may be cited as the Reporting of Savings Income Information (European Union) Regulations, 2005. Citation

2. For the purposes of these regulations - Definitions

"agent" means a paying agent or a receiving agent;

"Article" means an article in an Agreement;

"building society" means a society incorporated under section 3 of the Building Societies Law (2001 Revision); (2001 Revision)

"collective investment fund" has the meaning assigned to it by regulation 3;

"economic operator" means a person established in a member state who makes savings income payments in the course of his business or profession;

"elective mutual fund" means an entity that is the holder of a certificate, issued under regulation 14(3), confirming that the entity is to be treated as if it were equivalent to a Mutual Fund;

"money debt" is a debt arising from a transaction for the lending of money and which falls to be, or may be, settled -

- (a) by the payment of money; or

- (b) by the transfer of a right to settlement under a debt which is itself a money debt,

subject to regulation 16;

(2003 Revision)
(2004 Revision)

"Mutual Fund" means a fund licensed pursuant to section 5 of the Mutual Funds Law (2003 Revision) and listed on the Cayman Islands Stock Exchange pursuant to section 194 of the Companies Law (2004 Revision) and includes an elective mutual fund;

"negotiable debt security" means a security that can be transferred from one creditor to another without the approval of the debtor;

"paying agent" means a person -

- (a) who has established a place of business in the Islands through which the person makes savings income payments in the course of his business or profession; and
- (b) who makes those payments for the immediate benefit of -
 - (i) a relevant payee; or
 - (ii) a residual entity established in a member state;

"receiving agent" means an entity -

- (a) which is a residual entity;
- (b) which has established a place of business in the Islands; and
- (c) to which a savings income payment is made for the benefit of a relevant payee by an economic operator;

"relevant payee" has the meaning assigned to it by regulation 5;

"resident" and "residence", in relation to an individual, means the country where the relevant individual has his permanent address;

"residual entity" has the meaning assigned to it by regulation 4;

"savings income" has the meaning assigned to it by regulation 6;

"State issuer" means a government or an entity acting as a public authority or whose role is recognised by an international treaty, if the entity is either listed in the annex to an Agreement or meets the following criteria -

- (a) the entity is clearly considered to be a public entity according to the relevant national criteria;
- (b) such public entity is a non-market producer which administers and finances a group of activities, principally providing non-

- market goods and services, intended for the benefit of the community and which are effectively controlled by government;
- (c) such public entity is a large and regular issuer of debt; and
- (d) the government concerned is able to guarantee that such public entity will not exercise early redemption in the event of gross-up clauses;

"tax identification number" means the number (if any) allocated by the Competent Authority of a member state in which the relevant payee is resident for tax purposes;

"UCITS" means an undertaking for collective investment in transferable securities within the UCITS Directive and includes an elective UCITS authorized as such by the Competent Authority in a member state; and

"UCITS Directive" means the European Union Council Directive 85/611/EEC of 20th December 1985 on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities, as amended.

3. (1) Subject to paragraph (2), "collective investment fund" means -
- (a) a UCITS;
 - (b) a Mutual Fund ;
 - (c) a UCITS equivalent in a country or territory listed in Schedule 1; or
 - (d) an entity established for collective investment outside of the Islands, the European Union or a country or territory listed in Schedule 1.
- (2) If a collective investment fund -
- (a) is a segregated portfolio company registered pursuant to Part XIV of the Companies Law (2004 Revision); or
 - (b) provides arrangements for separate pooling of the contributions of the participants and the profits or income out of which payments are to be made to them and under which participants are entitled to exchange rights in one pool for rights in another,
- each segregated portfolio or separate pool, as the case may be, shall be treated as a separate collective investment fund.

Meaning of "collective investment fund"

Schedule 1

Schedule 1

(2004 Revision)

4. (1) The term "residual entity" means an entity established in a member state or in the Islands, other than an entity -
- (a) which is a legal person;

Meaning of "residual entity"

- (b) the profits of which are taxed under the general arrangements for business taxation in a member state;
- (c) which is a UCITS or a Mutual Fund; or
- (d) which is established in the Islands and on behalf of which a legal person receives or secures a savings income payment on behalf of the entity.

(2) In paragraph (1)(a), “legal person” excludes -

- (a) in Finland, partnerships commonly referred to as avoin yhtiö (Ay) and kommandiittiyhtiö (Ky)/ öppet bolag and kommanditbolag; and
- (b) in Sweden, partnerships commonly referred to as handelsbolag (HB) and kommanditbolag (KB).

Meaning of “relevant payee”

5. (1) An agent shall regard a person as a relevant payee if he is an individual -

- (a) resident in a member state; and
- (b) who has received a savings income payment or for whom a savings income payment has been secured,

unless the individual provides evidence to the agent that the payment is not received or secured for his own benefit because of one of the reasons listed in paragraph (2).

(2) The reasons referred to in paragraph (1) are that the individual -

- (a) is acting as an economic operator;
- (b) acts on behalf of a residual entity;
- (c) acts on behalf of an entity -
 - (i) which is a legal person;
 - (ii) the profits of which are taxed under the general arrangements for business taxation in a member state; or
 - (iii) which is a collective investment fund; or
- (d) acts on behalf of another individual for whose benefit the payment is received or secured.

(3) For the purposes of this regulation, “evidence” includes -

- (a) in the case of an individual acting on behalf of a residual entity, the name and address of that residual entity; and
- (b) in the case of an individual acting on behalf of another individual, the name and address and, where appropriate, the tax identification number or date and place of birth, of that other individual.

(4) An agent shall take reasonable steps to establish the identity of the relevant payee and if the agent is unable to do so, he shall treat the individual who receives a savings income payment or for whom a savings income payment is secured as the relevant payee.

(5) An agent shall be entitled to use information provided to the person on whose behalf he is making the payment in determining whether the person to whom the agent is making a savings income payment or for whom the agent is receiving or securing the savings income payment is a relevant payee.

6. (1) Subject to paragraphs (3) to (6) and (8) "savings income" means -
- (a) interest on a money debt;
 - (b) interest accrued or capitalised upon the sale, refund or redemption of a money debt;
 - (c) income distributed by a collective investment fund which is derived directly or indirectly, via other collective investment funds or residual entities, from interest on a money debt;
 - (d) income realised upon the sale, refund or redemption of shares or units in a collective investment fund if that fund invests directly or indirectly, via other collective investment funds or residual entities, more than forty percent of its assets in money debts.

Meaning of "savings income"

(2) In paragraph (1) "interest" -

- (a) includes -
 - (i) prizes attaching to money debts;
 - (ii) premiums and discounts derived from money debts; and
 - (iii) any dividend derived from shares in a building society; and
- (b) excludes -
 - (i) any interest which is not related to a money debt;
 - (ii) penalty charges for late payment; and
 - (iii) any interest accrued before 1 July, 2005.

(3) In respect of savings income described in paragraph (1)(b), where an agent has no information concerning the amount of interest that is accrued or capitalised at the sale, refund or redemption of a money debt the total amount of the proceeds of the sale, redemption or refund is savings income.

(4) In respect of income described in paragraph (1)(c), where an agent has no information concerning the proportion of income which derives from interest the total amount of the income is savings income.

(5) Subject to paragraph (9), there is no savings income in respect of income described in paragraph (1)(c) and (d) -

Schedule 1

- (a) where a mutual fund has invested fifteen percent or less of its assets directly or indirectly, via other collective investment funds or residual entities, in money debts; or
 - (b) where -
 - (i) a collective investment fund is established in a member state or a country or territory listed in Schedule 1 which has derogated from paragraph (1)(c) and (d) of Article 6 in accordance with an Agreement; and
 - (ii) the collective investment fund has invested fifteen percent or less of its assets in money debts in accordance with the law of that member state or country or territory in the application of that derogation.
- (6) In respect of savings income described in paragraph (1)(d), where -
- (a) an agent has no information concerning the percentage of assets invested in money debts or in shares or units in collective investment funds, that percentage shall be considered to be more than forty percent; and
 - (b) the agent cannot determine the amount of income realised by the relevant payee, the income shall be deemed to correspond to the proceeds of the sale, refund or redemption of the shares or units.
- (7) From 1 January, 2011 paragraphs (1)(d) and (6)(a) shall have effect with the substitution of the words "twenty-five percent" for the words "forty percent".
- (8) Subject to paragraph (9), there is no savings income -
- (a) where a residual entity established in the Islands invests fifteen percent or less of its assets directly or indirectly, via collective investment funds or other residual entities, in money debts; or
 - (b) where a residual entity -
 - (i) is established in a member state which has derogated from paragraph (4) of Article 6 in accordance with Article 6(6); and
 - (ii) the residual entity has invested fifteen percent or less of its assets in money debts in accordance with the law of that member state in the application of that derogation.
- (9) In the application of paragraphs (5) and (8), where the agent cannot ascertain whether or not the collective investment fund or residual entity, as

appropriate, has invested fifteen percent or less of its assets in money debts in accordance with those provisions, there is savings income.

(10) The percentages referred to in this regulation shall be determined by reference to the investment policy as laid down in the rules or instruments of incorporation of the collective investment fund or residual entity concerned and, failing which, by reference to the actual composition of the assets of the collective investment fund or residual entity.

PART II - INFORMATION TO BE REPORTED

7. (1) Where a paying agent makes, or a receiving agent receives or secures, a savings income payment for the immediate benefit of an individual whom the agent believes to be a relevant payee, the agent shall establish the identity and country of residence of that individual in accordance with this regulation.

Determination of identity and residence of relevant payee

(2) In the absence of documentation to the contrary, the country of residence of an individual shall be taken to be his country of residence for tax purposes.

(3) Where contractual relations between an agent and a relevant payee or transactions carried out in the absence of contractual relations are entered into before 1 July, 2005 the agent shall establish the name, address and country of residence of the relevant payee using information at its disposal, including information obtained pursuant to the Money Laundering Regulations (2003 Revision).

(2003 Revision)

(4) Where contractual relations between an agent and a relevant payee are entered into, or transactions are carried out in the absence of contractual relations, on or after 1 July, 2005, the agent shall use reasonable efforts to obtain and verify the information specified in Part A of Schedule 2, and for such purposes may use information obtained pursuant to the Money Laundering Regulations (2003 Revision).

Part A of Schedule 2
(2003 Revision)

(5) Where a relevant payee has a passport or official identity card issued by a member state, but he declares his country of residence to be in a country or territory outside the European Union -

- (a) the agent shall establish the country of residence by means of a certificate of residence for tax purposes or other official documentation issued by a Competent Authority in the country or territory in which the individual claims to be resident; and
- (b) if the individual fails to present such certificate or other official documentation, the member state that issued the passport or

official identity card shall be considered to be the country of residence.

Information reporting by agents 8. (1) When a paying agent makes a savings income payment to a relevant payee or residual entity established in a member state for the immediate benefit thereof, or a receiving agent receives or secures a savings income payment in respect of a relevant payee, the agent shall report to the Competent Authority in the Islands, as the case may be –

- Schedule 2 (a) in respect of a relevant payee, the information specified in Schedule 2; and
- Schedule 3 (b) in respect of a residual entity, the information specified in Schedule 3,

in accordance with paragraph (2) and regulation 9.

Schedule 2 (2) The agent shall within five months following the end of each year send the information specified in Schedule 2 and Schedule 3, as the case may be, to the Competent Authority in the Islands in respect of all savings income payments made, or received or secured, during that year.

Schedule 3

Categorisation of savings income 9. (1) An agent shall identify under which of the following three categories he is reporting the savings income and where the savings income is of the type prescribed in -

- (a) regulation 6(1)(a), report the amount of savings income;
- (b) regulation 6(1)(b) or (d), report either the amount of savings income or the full amount of the proceeds from the sale, redemption or refund;
- (c) regulation 6(1)(c), report either the amount of savings income or the full amount of the distribution.

(2) Where the agent has reported savings income under paragraph (1)(a) or (c), no further report of the same savings income is required under paragraph (1)(b).

Information reporting by the Competent Authority in the Islands 10. The Competent Authority in the Islands shall forward savings income information received from agents pursuant to this Part to the relevant Competent Authority in a member state within six months following the end of the relevant year, in accordance with Article 2(2).

Notification of compliance 11. (1) An agent shall notify the Competent Authority in the Islands within fourteen days of the end of the period prescribed in regulation 8(2) that, as the case may be -

- (a) he has a reporting obligation under Part II; or

(b) he ceases to have any reporting obligations under Part II.

(2) An agent who has made a report under paragraph (1)(a) need not make subsequent annual reports other than a report under paragraph (1)(b), as may be required.

PART III - ENFORCEMENT

12. (1) The Competent Authority in the Islands may, for the purposes of determining whether information contained in a report under Part II by that agent was correct and complete, by notice require an agent -

Compliance inspections
and retention period

- (a) to furnish to the Competent Authority within such time as may be specified in the notice, not being less than twenty-eight days, such information (including copies of any relevant books, documents or other records) as the Competent Authority may reasonably require; or
- (b) to make available to the Competent Authority for inspection, at such time as the Competent Authority may reasonably require, all such copies of books, documents or other records in the agent's possession or under the agent's control.

(2) An agent shall retain, for the period specified in paragraph (3), all such books, documents and other records.

(3) The period specified is -

- (a) in relation to information concerning the identity and country of residence for tax purposes of a relevant payee, the period of two years beginning immediately after the end of the year in which transactions between the relevant payee and paying agent cease;
- (b) in relation to a residual entity, the period of two years beginning immediately after the end of the year in which transactions between the entity and paying agent cease; and
- (c) in relation to information concerning savings income, the period of two years beginning immediately after the end of the year in which the income is reported.

13. (1) A person who, being an agent -

Offences

- (a) without reasonable excuse, fails to comply with a requirement of the Competent Authority in the Islands under regulation 12;
- (b) fails to make a report required under Part II or fraudulently or negligently makes a false report;
- (c) fails to implement procedures in order to comply with Part II;

- (d) with intent to avoid the provisions of Part II, destroys, mutilates, defaces, hides or removes a document; or
- (e) wilfully obstructs an inquiry by the Competent Authority in the Islands made in accordance with regulation 12,

commits an offence and is liable on summary conviction to a fine of three thousand dollars or to imprisonment for a term of twelve months, or to both.

(2) Where an offence under this regulation is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, is guilty of that offence and liable to be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, paragraph (2) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

PART IV – GENERAL

Election to be treated as
a mutual fund

14. (1) Pursuant to Article 5(3), an entity established in the Islands may, on submission of a notice in accordance with paragraph (2), obtain a certificate from the Competent Authority in the Islands to the effect that it is to be treated as equivalent to a Mutual Fund for the purposes of these regulations only.

- (2) The notice shall include -
 - (a) the name and address of the entity;
 - (b) where the notice is given on behalf of the entity, the name, address and position of the person submitting the notice;
 - (c) a statement that -
 - (i) the entity is established in the Islands;
 - (ii) the entity is not a legal person;
 - (iii) the entity is not a Mutual Fund; and
 - (iv) the entity elects to be treated as if it were equivalent to a Mutual Fund; and
 - (d) a signed and dated declaration by the person submitting the notice to the effect that it is to the best of his knowledge correct and complete.

(3) Upon receipt of a notice in compliance with paragraph (2), the Competent Authority in the Islands shall issue a certificate to that entity in the form in Schedule 4 confirming that it is to be treated as if it were equivalent to a Mutual Fund for the purposes of these regulations; and that certificate shall have effect from the date specified therein.

Schedule 4

15. (1) An individual who is resident in the Islands may apply to the Competent Authority in the Islands for a certificate in the form in Schedule 5.

Tax Residence
Certificate
Schedule 5

(2) A certificate issued under this regulation shall be conclusive evidence that the individual named therein is resident in the Islands for tax purposes in relation to any requirement to establish such residence to an agent or economic operator established in a member state or country or territory listed in Schedule 1, for the purposes of Article 4 and any related purposes.

Schedule 1

(3) An application under this regulation shall provide such particulars and be accompanied by such documentation as the Competent Authority in the Islands may specify in guidance notes issued under section 7 of the Law.

16. (1) Until 31 December, 2010, negotiable debt securities to which paragraph (2) applies shall not be considered to be money debts.

Transitional provisions

(2) This paragraph applies to negotiable debt securities-

- (a) which were first issued before 1 March, 2001; or
- (b) for which the original prospectus was approved before that date by a responsible authority for the approval of a prospectus in the country in which the negotiable debt securities have been marketed or sold,

if no further issues of such negotiable debt securities are made on or after 1 March, 2002.

(3) Where a further issue is made on or after 1 March, 2002 of negotiable debt securities described in paragraph (2) issued by a State issuer, the entire issue of such security, consisting of the original issue and any further issue, shall be considered a money debt.

(4) If a further issue is made on or after 1 March, 2002 of a negotiable debt security described in paragraph (2) issued by a person who is not a State issuer, such further issue shall be considered a money debt.

(5) Where an agent cannot ascertain whether paragraphs (2) to (4) apply, the entire issue of the negotiable debt security shall be considered a money debt.

SCHEDULE 1

(Regulations 3, 6
and 15)

LIST OF COUNTRIES AND TERRITORIES

Andorra
Anguilla
Aruba
British Virgin Islands
Guernsey
Isle of Man
Jersey
Liechtenstein
Monaco
Montserrat
Netherlands Antilles
San Marino
Switzerland
Turks and Caicos Islands
United States of America

SCHEDULE 2

RELEVANT PAYEE AND PAYMENT INFORMATION

(Regulations 7
and 8)

PART A

RELEVANT PAYEE INFORMATION

First name of relevant payee

Last name of relevant payee

Permanent address of relevant payee

Address

City or Town

Postal Code

State or Province

Country Code

Tax identification number of relevant payee OR, if not available -

*Date of birth of relevant payee (dd/mm/yy) AND

*Place of birth of relevant payee (country code)

* to be established on the basis of passport or official identity card

PART B

PAYMENT INFORMATION

Name of agent

Capacity of agent

Address of agent

Account number of relevant payee into which savings income payment is made
or (if none) details of source of payment

Savings income payment amount and currency code

Savings income code

Reporting period (year)

SCHEDULE 3

(Regulation 8)

RESIDUAL ENTITY AND PAYMENT INFORMATION

Name of Residual Entity

Address of Residual Entity

Address

City or Town

Postal Code

Country Code

Payment Information

Name of paying agent

Address of paying agent

Account number of residual entity into which savings income payment is made
or (if none) details of source of payment

Savings income payment amount and currency code

Savings income code

Reporting period (year)

SCHEDULE 4

(Regulation 14)

ELECTIVE MUTUAL FUND CERTIFICATE



CAYMAN ISLANDS

**REGULATION 14 OF THE REPORTING OF SAVINGS INCOME
INFORMATION (EUROPEAN UNION) REGULATIONS, 2005**

TAX INFORMATION AUTHORITY

CERTIFICATE FOR TREATMENT AS A MUTUAL FUND

Name and address of entity

As Competent Authority for the purposes of the Reporting of Savings Income Information (European Union) Law, 2005, the Tax Information Authority hereby certifies that the entity named above has exercised the option, in accordance with regulation 14 of the Reporting of Savings Income Information (European Union) Regulations, 2005, to be treated as a mutual fund.

Dated this day of , 20

Director, Tax Information Authority

SCHEDULE 5

(Regulation 15)

TAX RESIDENCE CERTIFICATE



CAYMAN ISLANDS

**REGULATION 15 OF THE REPORTING OF SAVINGS INCOME
INFORMATION (EUROPEAN UNION) REGULATIONS , 2005**

TAX INFORMATION AUTHORITY

TAX RESIDENCE CERTIFICATE

As Competent Authority for the purposes of the Reporting of Savings Income Information (European Union) Law, 2005, the Tax Information Authority hereby certifies that

_____)
(Date of birth: _____)

of

is a resident of the Cayman Islands for tax purposes.

Dated this _____ day of _____, 20____

Director, Tax Information Authority

The Reporting of Savings Income Information (European Union) Regulations, 2005

NOTE: *Under regulation 15 of the Reporting of Savings Income Information (European Union) Regulations, 2005, this certificate is conclusive evidence that the individual named herein is resident in the Cayman Islands for tax purposes in relation to any requirement to establish such residence to an agent or economic operator established in a member state or country or territory listed in Schedule 1 to the regulations, for the purposes of Article 4 of an Agreement on the Reporting of Savings Income Information and any related purposes.*

Made in Cabinet the 23rd day of August, 2005.

CARMENA WATLER

Clerk of the Cabinet.