

Interest in respect of wholesale debt instruments

Part 08-03-11

This document should be read in conjunction with section 246A of the Taxes Consolidation Act 1997.

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Table of Contents

Introduction	3
1 Terms	3
2 Non-resident issuer or paying agent.....	4
3 Resident issuer or paying agent	4
4 “Rolling over” commercial paper	5
5 Outbound payment defensive measures.....	5

Introduction

The purpose of this manual is to provide guidance¹ in relation to section 246A of the Taxes Consolidation Act 1997 (“TCA 1997”).

Section 246A TCA 1997 contains the rules governing the tax treatment of interest paid on wholesale debt instruments.

1 Terms

For the purposes of section 246A and this manual the following definitions are relevant -

A “wholesale debt instrument” means a certificate of deposit or commercial paper.

A “certificate of deposit” is an instrument relating to money which has been deposited with the issuer or some other person, being an instrument –

- a. issued by a financial institution,
- b. which recognises an obligation to pay a stated amount, with or without interest, and
- c. the right to receive the stated amount is transferable.

“Commercial paper” means a debt instrument relating to money which –

- a. is issued by a financial institution or a company that is not a financial institution,
- b. which recognises an obligation to pay a stated amount,
- c. carries a right to interest or is issued at a discount or at a premium, and
- d. matures within 2 years.

An “approved denomination” in relation to a wholesale debt instrument means a denomination of not less than –

- a. €500,000
- b. US\$500,000
- c. In the case of an instrument denominated in a currency other than euro or US dollar the equivalent in that other currency of €500,000.

¹ This material was previously included in Appendix III of the DIRT Guidance Note, published in 2006.

2 Non-resident issuer or paying agent

Subject to Section 817V (see [section 5](#) below), section 246A(3)(a) provides that any interest paid in respect of a wholesale debt instrument is not subject to interest withholding tax and is not subject to Deposit Interest Retention Tax ("DIRT") if –

1. either the issuing bank or company or the paying agent is non-resident and
2. the instrument is held in a recognised clearing system² and is of an approved denomination.

This is provided that the payment is not made by or through a branch or agency through which the non-resident issuer carries on a trade or business in the State.

3 Resident issuer or paying agent

Subject to Section 817V (see [section 5](#) below), section 246A(3)(b) provides that any interest paid in respect of a wholesale debt instrument is not subject to withholding tax and is not subject to DIRT if either the issuing bank or company or the paying agent is resident in the State and –

1. the instrument is held in a recognised clearing system and is of an approved denomination, or
2. the person who is beneficially entitled to the interest is resident in the State and their tax reference number has been provided to the issuer, or
3. the person who is the beneficial owner of the instrument and who is beneficially entitled to the interest is not resident in the State and has made a declaration in writing to the issuer in the [form prescribed by Revenue](#).

Section 246A(4) provides that an issuer or paying agent who makes a payment of interest under 1 or 2 above is required to automatically report tax reference numbers to Revenue along with the details of the interest paid without the deduction of interest withholding tax or DIRT under section 891 TCA 1997³.

Section 246A(5) provides that where an issuer or paying agent is satisfied that a payment can be made under 2 or 3 above then the issuer or paying agent can continue to make payments free from interest withholding tax or DIRT until such a time as they are in possession or aware of information which can be taken to indicate payments can no longer be made free of interest withholding tax or DIRT.

In accordance with section 246A(7) an issuer or paying agent must keep and retain any declarations under 3 above for the longer of –

1. a period of 6 years after the declaration is made and
2. a period which ends not earlier than 3 years after the latest date on which any payment in respect of which the declaration was made is paid.

² Please refer to Tax and Duty Manual (TDM) [Part 08-03-04](#) for further information

4 “Rolling over” commercial paper

For the purposes of section 246A commercial paper must mature within 2 years.

Debt with a life of 2 years, on paper, will not be treated as commercial paper if the intention from the outset is that the debt will be rolled over, on maturation. If the intention on creation was always to construct a longer-term debt, which is documented to look like commercial paper, then the commercial paper treatment will not apply. If the intention was to create a 2 year debt, then the fact that the arrangement was subsequently rolled over will not change its initial character as commercial paper.

When looking at a rollover, factors to consider include:

- Was an alternative source of debt sought? In answering this question, account should be taken of paragraph 5.2 of Tax and Duty Manual (TDM) [Part 08-03-06](#) on the operation of interest withholding tax under section 246, such that notwithstanding that the same US LLC may be the party to whom the rolled over commercial paper is issued, Revenue is prepared to ‘look through’ the US LLC to the ultimate recipients of the interest, subject to the conditions set out in that TDM.
- Are the terms of the subsequent debt the same, in all material respects, as the first?
- Are there any indications from the creation of the first debt instrument, other than the maturity in the loan document, pointing to the expected life of the arrangement?
- Was the commercial paper actually redeemed and reissued?

Debt which in reality was created to have a longer maturity period than 2 years cannot artificially be made to fit within the commercial paper exemption by way of roll over.

Factors relevant to the applicability of the treatment of commercial paper under section 246A, apply equally to the application of section 246 to “yearly interest”.

5 Outbound payment defensive measures

Finance (No.2) Act 2023 inserted Chapter 5 ‘Outbound payments defensive measures’ in Part 33 of TCA 1997. The measures apply to payments of interest and royalties, and the making of distributions, by Irish resident companies, or by Irish branches of non-resident companies, to associated entities who are resident, or situated, in specified territories⁴.

³ Please refer to TDM [Part 38-03-13](#) for further information

⁴ For further information on the outbound payments defensive measures, refer to TDM [Part 33-05-01](#).

The territories within the scope of the measures are those included in Annex I of the EU list of non-cooperative jurisdictions for tax purposes and 'no-tax' and 'zero-tax' territories (together referred to as 'specified territories').

Section 817V TCA 1997 provides for the defensive measures as these concern interest payments. To the extent that section 817V applies to a payment of interest then 246A(3)(a)(A) and 246A(3)(b)(A) cannot apply.

However, the exclusions from interest withholding tax on payments of interest on a wholesale debt instrument held in a recognised clearing system, contained in sections 246A(3)(a)(A) and 246A(3)(b)(A) TCA 1997, will continue to apply where it is reasonable to consider that the company is not, and should not be, aware that any portion of the relevant payment of interest is made to an associated entity.