

Payment and receipt of interest and royalties without deduction of income tax

Part 08-03-06

This document should be read in conjunction with

Interest Payments: Section 246 TCA 1997

Royalty Payments: Section 238, Section 242A and Chapter 6 of Part 8 TCA 1997

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Table of Contents

- 1 Introduction3
- 1.1 Interest Payments.....3
- 1.2 Royalty Payments3
- 2 Meaning of bona fide bank4
- 3 Debt acquired by Irish banks.....4
- 4 Capital Borrowing.....4
- 5 Interest Paid to US Companies and US Limited Liability Companies (LLCs)5
- 5.1 U.S. Companies.....5
- 5.2 U.S. LLCs.....5
- 6 Remittance basis and territorial systems of taxation.....5
- 6.1 Remittance basis6
- 6.2 Territorial systems – Hong Kong.....6
- 7 Exceptional circumstances7
- 8 Payments to certain statutorily tax-exempt bodies7
- 9 Double taxation agreements.....7
- 9.1 Payment of interest8
- 9.1.1 Payments to transparent entities8
- 9.1.2 Return of interest payments made9
- 9.1.3 Documents to be retained9
- 9.2 Payment of Patent Royalties to Individuals Resident Outside the State9
- 9.2.1 Return of royalty payments made10
- 9.2.2 Documents to be retained10
- Appendix 1 – specific circumstances where 246(3)(d) will apply11

1 Introduction

1.1 Interest Payments

As a general rule section 246 TCA 1997 requires the deduction of income tax at the standard rate from yearly interest¹ paid by:

- companies or
- any person to another person whose usual place of abode is outside the State.

Section 246(3) contains an extensive range of exemptions from the general rule to withhold tax. The legislation provides for these exemptions to be allowed automatically and do not require prior approval from Revenue, apart from the exemption under section 246(3)(d) which is discussed at section 7. This TDM sets out guidance, procedures and principles to help taxpayers to operate these exemptions. It also sets out a number of practices in relation to these exemptions.

Ireland's double tax agreements ("DTAs") may limit (i.e. reduce) the rate of Irish tax that can be charged on interest payments made to a resident of a treaty partner (referred to in this TDM as the "DTA rate"). In addition to the exemptions in section 246(3), set out in section 9 of this TDM are the circumstances where the withholding tax rate applied to the payment of interest to a resident of a treaty partner can be reduced to the DTA rate.

If withholding tax is withheld in error, or if a refund is available under a DTA, then a claim for the repayment of the withholding tax deducted can be submitted via the [Form IC6](#) (Company) or [Form IC7](#) (Individual), as appropriate, which are available in the [International Claims Section](#) of www.revenue.ie.

For the purpose of applying the provisions of section 246(3) and the guidance contained in this TDM the term "**paid in the State**" means the payment of any yearly interest amount where –

- (a) the source of the interest payment is in the State, and
- (b) the payment of the interest is, without regard to the exemptions contained in section 246(3), within the scope of Irish interest withholding tax under section 246(2).

1.2 Royalty Payments

As a general rule section 238(2) TCA 1997 requires that on the making of a royalty payment or other sum paid in respect of the user of a patent, the payer is obliged to deduct out of the payment income tax at the standard rate.

However, Chapter 6 (Implementation of Interest and Royalties Directive) of Part 8 TCA 1997 provides an exemption from withholding taxes for royalty payments made to an associated

¹ Refer to TDM 08-03-11 which contains guidance on the commercial paper exemption in section 246A on the basis that the commercial paper must mature within 2 years, and factors to consider in relation to whether or not "rolled over" commercial paper is eligible for that exemption. The same factors are applicable in determining whether or not interest is "yearly interest".

company resident in another EU Member State, and section 242A TCA 1997 provides that withholding tax will not apply to royalties paid by a company in the course of a trade or business to a company resident in a treaty country. In addition to these, Ireland's DTAs may limit the rate of Irish tax that can be charged on royalty payments made to a resident of a treaty partner. Set out in section 9 of this TDM are the circumstances where the withholding tax rate applied to the payment of a royalty to a resident of a treaty partner can be reduced to the DTA rate.

2 Meaning of bona fide bank

Section 246(3)(a) and 246(3)(b) provide that interest paid in the State on an advance from a bank carrying on a bona fide banking business in the State may be paid without deduction of tax and also that interest paid by such a bank in the ordinary course of its business may be paid without deduction of tax.

The term bona fide bank is not defined in the legislation. However, Revenue interpret it to mean:

- the Central Bank of Ireland,
- any credit institution which is the holder of a banking licence granted under **Section 9 of the Central Bank Act 1971**.
- a bank licenced pursuant to **Section 9 of the Central Bank Act 1971** and registered as a designated credit institution under **section 14 of the Asset Covered Securities Act 2001**.
- an Irish branch of a foreign bank operating here under the terms of the **EU Directive 2006/48/EC**.
- an EU branch of an Irish credit institution which is a holder of a banking licence granted under **Section 9 of the Central Bank Act 1971**.
- a building society within the meaning of the **Building Societies Act 1889**, or a society established in accordance with the law of any other Member State of the European Communities which corresponds to that Act.

3 Debt acquired by Irish banks

Section 246(3)(a) excludes from withholding tax interest paid in the State on an advance from a bank carrying on a bona fide banking business in the State. Exemption under this section will apply to interest paid by an Irish corporate borrower to a bank carrying on a bona fide banking business in the State, where the bank did not provide the original advance but took an assignment of the original loan or part of the loan from a foreign institutional lender.

4 Capital Borrowing

Certain circumstances may arise where the payment of interest by a bank or building society on funding raised abroad may not be regarded as arising in the ordinary course of a bona fide banking business in the State, but the interest is treated as an allowable deduction in the computation of trading profits. Revenue is prepared, in these circumstances, to treat the interest as payable on ordinary course borrowing for the purposes of section 246(3)(b)², so that such interest can be paid gross (i.e. without the application of interest withholding tax).

5 Interest Paid to US Companies and US Limited Liability Companies (LLCs)

Section 246(3)(ccc) and (3)(h) provide that withholding tax is not to be deducted from certain interest payments where the recipient of the interest is, by virtue of the law of a relevant territory, resident for the purposes of tax in a relevant territory. A relevant territory means a Member State of the European Communities, other than the Republic of Ireland, or a territory with which Ireland has a DTA.

5.1 U.S. Companies

The requirement to be resident for the purposes of tax in a relevant territory may give rise to difficulties for US companies as the concept of residence for tax purposes is not recognised under US tax law and it is not possible for the payer of the interest to get such a confirmation. It is not the intention of the legislation to exclude US companies from the exemption from withholding tax provided for in either section 246(3)(ccc) or 246(3)(h). To clarify the position for US companies Revenue is prepared to accept that a company which is

- incorporated in the US, and
 - taxed in the US on its worldwide income
- will qualify for the exemption from withholding tax provided for in section 246(3)(ccc) and 246(3)(h).

5.2 U.S. LLCs

An additional difficulty arises for US Limited Liability Companies (LLC's). An LLC has corporate form and personality but can be categorised as a partnership under the Internal Revenue Code of the USA. In these circumstances the LLC is not separately taxed but is treated as a transparent or 'look through' entity for US tax purposes and its income is taken to flow through to its members who are taxed according to US principles as though they received the money directly. Therefore, on a strict interpretation of the legislation an exemption from withholding tax cannot be granted where the interest is paid to US residents through a US LLC.

In recognition of the difficulties arising from the use of US LLCs, for the purposes of applying the exemptions set out in section 246(3)(ccc) or 246(3)(h), Revenue is prepared to 'look through' the US LLC to the ultimate recipients of the interest subject to the following conditions:

1. Where the ultimate recipients of the interest themselves would qualify for exemption from withholding tax under section 246(3)(ccc) or 246(3)(h), and
2. Where business is conducted through an LLC for non-tax commercial reasons and not for tax avoidance purposes.

6 Remittance basis and territorial systems of taxation

Section 246(3)(h)(I) provides an exemption from withholding tax on interest paid by a company or an investment undertaking ("relevant person") where:

² Refer to [TDM Part 04-06-21](#) for a discussion on the deductibility of such interest.

1. the interest is paid to a company that is resident for tax purposes in a relevant territory and
2. the tax regime in the relevant territory is one that imposes a tax that generally applies to interest **receivable** in that territory by companies from sources outside that territory.

6.1 Remittance basis

Where the relevant territory provides for a remittance basis of taxation, under which the relevant territory's tax applies only to interest payments from sources outside that territory that have been received in that territory, such interest would not be exempt from the withholding tax.

However, where such interest:

- is paid to a company that is resident for tax purposes in the relevant territory, and
 - is payable by the relevant person to an account located in the relevant territory,
- it will be treated by Revenue as exempted:

1. under section 246(3)(h)(I) TCA 1997, from withholding tax and
2. under section 198(1)(c)(ii)(I) TCA 1997, from the charge to income tax.

Where the interest is not payable by the relevant person to an account located in the relevant territory it will be subject to withholding tax and chargeable to income tax.

6.2 Territorial systems – Hong Kong

Where the relevant territory provides for a territorial system of taxation, the law of the relevant territory may charge tax on income receivable by a company by reference to such income having its source in the relevant territory, rather than by treating the company as resident for tax purposes in that relevant territory. The company may be chargeable to tax on interest payments only to the extent that such interest payments are treated as derived from a source within the relevant territory. Where such a territorial system applies to the company by which interest is receivable, that interest will not be exempt from tax under section 246(3)(h)(I) TCA 1997 or section 198(1)(c)(ii)(I) TCA 1997.

However, where:

- such interest is paid to a company treated as a resident of Hong Kong for the purposes of the DTA with Ireland, and
- the interest is:
 - subject to the full rate of corporate profits tax that applies in Hong Kong, on the basis that it is treated, by virtue of Hong Kong's Inland Revenue Ordinance, as derived from a Hong Kong source, or
 - included in the corporate treasury profits of the qualifying Corporate Treasury Centre, under section 14D of Chapter 112 of Hong Kong's Inland Revenue Ordinance, and corporate profits tax under Hong Kong's Inland Revenue Ordinance is imposed on those profits, it will be treated by Revenue as exempted:

1. under section 246(3)(h)(I) TCA 1997, from withholding tax and
2. under section 198(1)(c)(ii)(I) TCA 1997, from the charge to income tax.

Where the relevant conditions set out in the preceding paragraph are not satisfied, the interest will be subject to withholding tax and chargeable to income tax.

7 Exceptional circumstances

Revenue has discretionary power under the provisions of section 246(3)(d) to grant permission to a company to pay interest without deduction of withholding tax. However, due to the wide range of exemptions generally available under the section, authorisation under sub-section (3)(d) would only be granted in very exceptional circumstances. An example of where this permission may be given is a *bona fide* transaction involving the payment of interest to an Approved Retirement Fund (within the meaning of section 784A TCA 1997) by a third party. Appendix 1 also sets out one very specific set of circumstances where this permission will be given.

8 Payments to certain statutorily tax-exempt bodies

The European Investment Bank (EIB) is exempt from all direct taxes in Ireland by virtue of Article 21 of [Protocol \(No 7\) on the Privileges and Immunities of the European Union](#).

The European Bank for Reconstruction and Development (EBRD) is exempt from all direct taxes in Ireland by virtue of [S.I. No. 65/1991 - European Bank For Reconstruction and Development \(Designation and Immunities\) Order, 1991](#).

The Council of Europe Development Bank (CEDB) is exempt from all direct taxes in Ireland by virtue of the [Council of Europe Development Bank Act 2004 \(no 37 of 2004\)](#).

The International Finance Corporation (IFC) is exempt from taxation in Ireland by virtue of Section 9 of Article VI of the agreement for the establishment and operation of an international body to be called the international Finance Corporation, as provided for in the [International Finance Corporation Act 1958](#).

Therefore, while these payments are not covered by a specific exemption in section 246, companies may pay interest gross to the EIB, the EBRD, CEDB, and the IFC. There is no requirement that companies seek confirmation from Revenue under section 246(3)(d).

9 Double taxation agreements

This section of the TDM sets out the situations where taxpayers can withhold tax at the DTA rate³ from interest or royalties paid to residents of a treaty partner, rather than withhold and remit an amount of tax that is subsequently refundable under that DTA.

³ <https://www.revenue.ie/en/companies-and-charities/international-tax/tax-treaties/index.aspx>

9.1 Payment of interest

In circumstances where a person would, under a DTA, be entitled to a full or partial refund of any withholding tax deducted, the person may make a self-certification, on a [Form 08-03-06 Interest Payments](#), to the person making the interest payments in order that withholding tax, as required under the provisions of section 246(2) TCA 1997, is applied at the appropriate DTA rate.

The self-certification can only be made in the following circumstances:

1. The person making the payment returns the details required under paragraph 9.1.2 to Revenue and must keep the documents set out under 9.1.3;
2. Absent the self-certification, the payment would be subject to withholding under section 246(2) and the payment being made would not be entitled to an exemption from withholding tax under any of the provisions of section 246(3);
3. The person to whom the interest is paid is the beneficial owner of the interest;
4. The person to whom the interest is paid is neither resident nor carrying on a trade or business in the State;
5. The person to whom the interest is paid is treated as a person (that is to say, treated as opaque rather than transparent)
 - a. for Irish tax purposes and for the purposes of tax imposed by the treaty partner, or
 - b. under the DTA;
6. Under the relevant DTA, that person is treated as a resident only of the treaty partner.
7. The DTA rate provided for under the Interest Article of the DTA that will apply on payments of interest to residents of the treaty partner is lower than 20%;
8. The payee is entitled to relief under the DTA in respect of the interest payment, such that any tax withheld would be fully, or partially, refundable.

The Self-Certification will not be valid if the person making the interest payments is or becomes aware that any of the information provided in the self-certification is incorrect.

The Self-Certification will expire after a period of 5 years or upon any material change in the facts and circumstances of the payee.

9.1.1 Payments to transparent entities

In certain circumstances interest may be paid to a tax transparent vehicle, being one that would be treated for income or corporation tax as equivalent to an Irish partnership.

In all such cases, in order for the self-certification process described in paragraph 9.1 above to apply:

1. each investor (being equivalent to a partner) in the transparent entity must be able satisfy the conditions set out paragraph 9.1, and
2. each investor in the transparent entity must complete a self-certification.

If any one or more of the underlying investors in the transparent entity is unable to satisfy the requirements set out in paragraph 9.1, withholding tax, under the provision of section 246(2) TCA 1997, should be deducted from the gross interest payment being made to the transparent entity.

9.1.2 Return of interest payments made⁴

In order to avail of the treatment outlined in 9.1, the person making the interest payments after deducting tax at the DTA rate rather than at 20%, as provided for above, is required to include details of those payments in their tax return for each year in which a payment is made (either their Form CT1 [Corporation Tax return] or Form 11 [Income Tax return]).

Where the Self-Certification has been obtained and the details of the interest paid are included in the tax return then the fact that tax was not deducted on the payment will not preclude the paying company from obtaining relief which would otherwise be due under section 243(5)(a)(I) TCA 1997 in respect of the payment.

9.1.3 Documents to be retained

The paying company should retain, for the time period specified in section 886 TCA 1997, the Self-Certification form provided by the payee and all necessary information and documentation required to show that

1. the payee is not resident in the State and not trading in the State through a branch or agency;
2. the payee is the beneficial owner of the interest payment;
3. the payee is resident in a country with which Ireland has entered into a DTA;
4. under the terms of the relevant DTA the payee would be entitled to a full or partial refund of any withholding tax suffered.

9.2 Payment of Patent Royalties to Individuals Resident Outside the State⁵

In circumstances where an individual would, under a DTA, be entitled to a full or partial refund of any withholding tax deducted the individual may make a self-certification, on a [Form 08-03-06 Patent Royalty](#), to the person making the royalty payments in order that royalty withholding tax, as required under the provisions of section 238 TCA 1997, is applied at the appropriate DTA rate⁶].

The Self-Certification can only be made in the following circumstances:

The payee is

1. an individual who is neither resident nor carrying on a trade or business in the State,
2. the beneficial owner of the royalty payment;
3. resident for the purposes of tax in a country with which Ireland has entered into a DTA;
4. the DTA rate provided for under the Royalty Article of the DTA that will apply on payments of royalties to residents of the treaty partner is lower than 20%, and

⁴ Section 894 places a responsibility on certain persons or “third parties” to automatically make returns of certain information. Further information regarding third party returns is available in [Tax and Duty Manual 38-03-13](#)

⁵ A similar practice applies in respect of certain patent royalty payments made to Companies Resident Outside the State. For guidance please refer to. [Tax and Duty Manual 08-04-01](#)

⁶ For up to date information on the countries with whom Ireland has a DTA please refer to the Revenue website at: <https://www.revenue.ie/en/tax-professionals/tax-agreements/double-taxation-treaties/tax-treaties-by-country.aspx>

5. The payee is entitled to relief under the DTA in respect of the royalty payment, such that any tax withheld would be fully, or partially, refundable.

The payer can only make payments under this Self-Certification process when the payment is being made in the course of the paying company's trade.

Where a valid Self-Certification has been obtained, and the appropriate information is included on the Form CT1, the fact that tax was not deducted on the payment will not preclude the paying company from obtaining relief which would otherwise be due under section 243(5)(a)(I) TCA 1997 in respect of the payment.

The Self-Certification will not be valid if the person making the royalty payments is or becomes aware that any of the information provided in the self-certification is incorrect.

The Self-Certification will expire after a period of 5 years or upon any material change in the facts and circumstances of the payee.

9.2.1 Return of royalty payments made

In order to avail of the treatment outlined in 9.2, the person making the royalty payments after deducting tax at the DTA rate rather than at 20%, as provided for above, is required to include details of those payments in their Form CT1 [Corporation Tax return] for each period in which a payment is made.

9.2.2 Documents to be retained

The paying company should, for the time period specified in section 886 TCA 1997, retain the Self-Certification form provided by the individual and all necessary information and documentation required to show that:

1. the payee is not resident in the State and not trading in the State;
2. the payee is the beneficial owner of the royalty payment;
3. the payee is resident in a country with which Ireland has entered into a DTA;
4. under the terms of the DTA the payee would be entitled to a full or partial refund of any withholding tax suffered; and
5. the payment is made by the paying company in the course of its trade; and
6. the payment is not part of a back-to-back or conduit arrangement whereby the payment represents all or substantially all of the income received or receivable by the paying company in connection with licensing the same foreign patent.

Appendix 1 – specific circumstances where 246(3)(d) will apply

Assignment⁷ / Novation⁸ of a loan by a bank:

Section 246(3)(a) provides that interest paid in the State on a loan from a bank carrying on a bona fide banking business in the State may be paid without deduction of tax⁹. If a loan advanced to a company is subsequently sold, reassigned or novated from the bank to an SPV then the company will have a withholding tax obligation.

Where the loan is assigned to a “section 110 company” then the provisions of section 246(3)(cc) removes the withholding obligation. However, a “section 110 company” cannot offer any proof of their section 110 status to the company meaning that in the majority of cases a company may not know whether or not a withholding tax obligation has arisen following an assignment of their original loan.

If there is a gross-up clause¹⁰ included in the loan agreement this would in effect increase the company’s interest charge by the amount of the withholding tax to be deducted. Where the company is an SME, in order to avoid this increase it can apply for exemption under the provisions of section 246(3)(d).

Example of gross-up:

A small company had originally borrowed from its bank. Its loan was subsequently reassigned to an entity which is not a bank. The loan agreement does include a gross-up clause. The company is due to pay €100 in interest on its loan. The following will apply:

- The interest payment has to be re-grossed to €125 by the company to take account of the withholding tax to be deducted on the interest payment
- €25 [i.e. €125 @ 20% = €25] withholding tax is deducted by the company from the grossed-up interest payment. The withholding tax will be remitted to Revenue on the company’s annual tax return.
- The new lender receives the full €100 interest payment. The new lender will then file its tax return and claim a credit for the tax withheld, thus receiving €125 in total.

In order for the company to avail of this exemption an application in writing must be made to Revenue under section 246(3)(d). The full facts regarding the loan must be disclosed. Please note that copies of all agreements between each of the parties to the loan and relevant documentation which sets out details of arrangements in place between each of the parties regarding interest payments on the advance/loan may be requested.

⁷ A company may only become aware that the loan has been assigned when they receive new payment instructions or details of a new intermediary who is handling the loan.

⁸ A company should be involved in the novation of a loan from their old bank to the new lender.

⁹ Please refer to Section 2 for the meaning of bona fide bank.

¹⁰ A gross-up clause provides that the interest payment is to be paid in full. If withholding tax applies the payment is grossed up in order that the lender receives its interest payment in full.

The Revenue address to which applications under section 246(3)(d) should be sent is:

Office of the Revenue Commissioners
Business Taxes Policy and Legislation Division
Financial Services Unit
1st Floor
Stamping Building
Dublin Castle
Dublin 2

Upon receipt of all information Revenue will consider applications under section 246(3)(d) whereby interest may be paid gross.