
STATUTORY INSTRUMENTS

2005 No. 1466

**The Montserrat Reporting of Savings
Income Information Order 2005**

PART 1

Introductory Provisions

Citation and commencement

1.—(1) This Order may be cited as the Montserrat Reporting of Savings Income Information Order 2005.

(2) This Order shall come into force on such day, being not earlier than 1st July 2005, as may be notified by the Governor in the Montserrat Gazette.

Extent of the Order

2. This Order extends to Montserrat.

Interpretation

3.—(1) In this Order—

“the European Savings Directive” means Council Directive [2003/48/EC](#) of 3rd June 2003 on taxation of savings income in the form of interest payments⁽¹⁾;

“the European Securities Directive” means Directive [2001/34/EC](#) of 28th May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities as amended⁽²⁾;

“the European UCITS Directive” means 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⁾.

(2) In this Order—

“agent” means paying agent or receiving agent as appropriate;

“Governor” means the person for the time being lawfully administering the government of Montserrat;

“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

(1) OJNo. L157, 26.06.2003, p.38, amended by Decision [2004/587/EC](#) of the Council (OJ No. L 257, 4.8.2004, p. 7) and Directive [2004/66/EC](#) of the Council (OJ No. L188, 1.5.2004, p. 35).

(2) OJ No. L184, 06.07.2001, p.1, amended by Directive [2003/6/EC](#) of the European Parliament and of the Council (OJ No. L96, 12.04.2003, p.16).

(3) No. o.

- (b) by the transfer of a right to settlement under a debt which is itself a money debt, subject to the qualification in article 17;
- “paying agent” has the meaning given in article 4;
- “receiving agent” has the meaning given in article 6;
- “relevant payee” has the meaning given in article 7;
- “resident” and “residence” shall be construed in accordance with article 9;
- “residual entity” has the meaning given in article 5;
- “savings income” has the meaning given in article 8;
- “UCITS” means an undertaking for collective investment in transferable securities within the European UCITS Directive.

(3) For the purposes of this Order a person makes savings income payments to another person if the person—

- (a) makes payments of savings income to another person, or
- (b) secures the payment of savings income for the other person.

(4) In this Order “economic operator” shall be construed in accordance with Article 4 of the European Savings Directive.

(5) In this Order a reference (without more) to an article is a reference to the article of this Order bearing that number.

Meaning of paying agent

4. A paying agent is a person who—

- (a) is established in Montserrat;
- (b) makes savings income payments in the course of his business or profession; and
- (c) makes those payments—
 - (i) for the immediate benefit of a relevant payee; or
 - (ii) to a residual entity established in a member State.

Here a “person” includes any officer in any public office or in any government department and any savings income payments made by such a person will be treated as if the payment were made in the course of that person’s business or profession.

Meaning of residual entity

5.—(1) Subject to paragraph (2), a residual entity is an entity established in a member State or in Montserrat other than an entity—

- (a) which is a legal person;
- (b) the profits of which are taxed under the general arrangements for business taxation; or
- (c) which is a UCITS authorised in accordance with the European UCITS Directive; or
- (d) which is an undertaking for collective investments established in Montserrat and which is equivalent to a UCITS authorised in accordance with the European UCITS Directive.

(2) In paragraph (1)(a) a legal person excludes—

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

(3) A paying agent shall regard an entity as a residual entity unless the paying agent has reason to believe, on the basis of official evidence produced by the entity to the paying agent, that any subparagraph of paragraph (1) applies.

(4) An entity which presents to the paying agent or economic operator a certificate issued by the relevant territory in which that entity is established to the effect that it is to be treated as if it were a UCITS authorised in accordance with the European UCITS Directive shall be treated as such for the purposes of this article.

Here “relevant territory” means, as the case requires, a member State or Montserrat.

Meaning of receiving agent

6. A receiving agent is an entity—
- (a) which is a residual entity;
 - (b) which is established in Montserrat; and
 - (c) to which a savings income payment is made for the benefit of a relevant payee by a person established in a member State in the course of his business or profession.

Meaning of relevant payee

- 7.—(1) The 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 he 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 a paying agent or 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;
 - (iii) which is a UCITS authorised in accordance with the European UCITS Directive;
 - (iv) which is an undertaking for collective investments established in Montserrat which is equivalent to a UCITS authorised in accordance with the European UCITS Directive;
 - (v) which is treated as being an authorised UCITS in accordance with the European UCITS Directive for the purposes of the European Savings Directive by virtue of Article 5(4) of this Order; or
 - (vi) which is a residual entity resident in Montserrat which is treated by the Inland Revenue Department as being equivalent to a UCITS authorised in accordance with the European UCITS Directive;
 - (d) acts on behalf of another individual for whose benefit the payment is received or secured.

(3) An individual who provides evidence that he is acting on behalf of a residual entity must in addition provide the name and address of that residual entity to the agent.

(4) An individual who provides evidence that he acts on behalf of another individual must in addition provide the agent with the name and address, and where appropriate the tax identification

number or date and place of birth, of that individual. The individual providing the evidence must obtain and verify this information in accordance with article 9.

(5) If the agent has information, which suggests that the individual who receives a savings income payment or for whom a savings income payment is secured may not be the relevant payee for the reason referred to in paragraph (2)(d), then paragraph (6) applies.

(6) The agent must take reasonable steps to establish who is the relevant payee and if the agent is unable to identify the relevant payee, he shall treat the individual who receives a savings income payment or for whom a savings income payment is secured as the relevant payee.

Meaning of savings income

8.—(1) Subject to paragraphs (3) to (6) and (8) savings income is—

- (a) interest;
- (b) interest accrued or capitalised at 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;
- (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 40% of its assets in money debts.

(2) In paragraph (1) “interest”—

- (a) includes—
 - (i) prizes attaching to money debts; and
 - (ii) premiums and discounts derived from money debts; and
- (b) excludes—
 - (i) any interest which is not related to a money debt; and
 - (ii) penalty charges for late payment.

(3) In respect of savings income described in paragraph (1)(b), where an agent has no information concerning the amount of interest which 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 savings income described in paragraphs (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) In respect of savings income described in paragraphs (1)(c) and (d), subject to paragraph (9)—

- (a) where a collective investment fund established in Montserrat has invested 15% or less of its assets directly or indirectly, via other collective investment funds or residual entities, in money debts there is no savings income;
- (b) where a collective investment fund—
 - (i) is established in a member State which has derogated from paragraphs (1)(c) and (d) of Article 6 of the European Savings Directive in accordance with Article 6(6) of that European Community Directive; and
 - (ii) the collective investment fund has invested 15% or less of its assets in money debts in accordance with the law of that member State in the application of that derogation, there is no savings income.

(6) In respect of savings income described in paragraph (1)(d)—

- (a) where 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 40%;
 - (b) where 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 1st January 2011 paragraphs (1)(d) and (6)(a) shall have the effect with the substitution of “25%” for “40%”.
- (8) Subject to paragraph (9)—
- (a) where a residual entity established in Montserrat invests 15% or less of its assets directly or indirectly, via collective investment funds or other residual entities, in money debts there is no savings income;
 - (b) where a residual entity—
 - (i) is established in a member State which has derogated from paragraphs (1)(c) and (d) of Article 6 of the European Savings Directive in accordance with Article 6(6) of that Directive; and
 - (ii) the residual entity has invested 15% or less of its assets in money debts in accordance with the law of that member State in the application of that derogation,there is no savings income.
- (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 15% or less of its assets in money debts in accordance with those provisions, there is savings income.
- (10) The percentages referred to in this article shall be determined by reference to the investment policy as laid down in the fund 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.
- (11) In this article a “collective investment fund” is—
- (a) a UCITS authorised in accordance with the European UCITS Directive;
 - (b) an entity which is treated as being a UCITS authorised in accordance with the European UCITS Directive for the purposes of the European Savings Directive by virtue of article 5(4) of this Order;
 - (c) a residual entity established in Montserrat which is treated by the Inland Revenue Department as being equivalent to a UCITS authorised in accordance with the European UCITS Directive; or
 - (d) an undertaking for collective investment established otherwise than in a member State or Montserrat.

This is subject to the following qualification.

If a collective investment fund 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 separate pool shall be treated as a separate collective investment fund.