

EXPLANATORY MEMORANDUM TO
THE EXEMPTION FROM INCOME TAX FOR CERTAIN INTEREST AND
ROYALTY PAYMENTS (AMENDMENT OF SECTION 757(2) OF THE INCOME
TAX (TRADING AND OTHER INCOME) ACT 2005) ORDER 2006

2006 No. 3288

1. This explanatory memorandum has been prepared by the Commissioners for Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.

2. Description

This instrument amends the reference in section 757(2) of the Income Tax (Trading and Other Income) Act 2005 to Council Directive 2003/49/EC (“the Interest and Royalties Directive”) to take account of amendments made to that Directive by a more recent Council Directive.

3. Matters of special interest to the Select Committee on Statutory Instruments

None.

4. Legislative Background

4.1 Chapter 6 of Part 3 of the Finance Act 2004 implemented the provisions of the Interest and Royalties Directive in UK law. The relevant UK provisions are now to be found mainly in the Income Tax (Trading and Other Income) Act 2005, at sections 757 to 767. Within that group of sections, section 757 is of an introductory nature, and section 757(2) gives details of the Interest and Royalties Directive. This Order amends the reference to the Interest and Royalties Directive in section 757(2). The reference has already been amended once before, when the European Union was enlarged by 10 new Member States.

4.2 A recent Council Directive (Council Directive 2006/98/EC adapting certain Directives in the field of taxation, by reason of the accession of Bulgaria and Romania; “the 2006 Directive”) makes necessary consequential amendments to a number of European Directives arising out of the accession of Bulgaria and Romania to the European Union. The 2006 Directive was adopted on 20 November 2006. It has not been reported in the Official Journal yet. A Transposition Note is annexed to this memorandum.

4.3 The FCO deposited an Explanatory Memorandum (13244/04) on 25 October 2004 concerning a Commission strategy paper about progress in the enlargement process of Bulgaria and Romania. The House of Commons European Scrutiny Committee cleared this document from scrutiny on 12 January 2005 as 'politically important'. The House of Lords EU Select Committee cleared the EM on 23 March 2005.

4.4 A further EM (5551/05) was deposited on 16 March 2005 on the Commission's opinion on the applications for accession of Bulgaria and Romania. This was cleared

by the Commons on 23 March 2005 as 'not politically or legally important' and by the Lords on 8 April 2005.

4.5 The FCO deposited a subsequent EM (12824/05) on 10 November 2005 on a Commission monitoring report on the state of preparedness of Bulgaria and Romania for EU accession. The Commons cleared this EM on 23 November 2005 as 'politically important'. The Lords cleared the document on 15 November 2005.

4.6 An EM (9465/06) for the May 2006 Monitoring Report was submitted for Parliamentary scrutiny on 7 June 2006. The Commons European Scrutiny Committee cleared the EM as 'politically important' on 14 June 2006. The Lords European Union Committee sifted the EM to the Select Committee on 13 June 2006.

4.7 A further EM (13085/06) relating to the proposal for the 2006 Directive was cleared by the Commons European Scrutiny Committee in its 39th Report as a document not raising questions of sufficient legal or political importance to warrant a substantive report to the House.

5. Extent

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Paymaster General has made the following statement regarding Human Rights:

In my view the provisions of the Exemption from Income Tax for Certain Interest and Royalty Payments (Amendment of Section 757(2) of the Income Tax (Trading and Other Income) Act 2005) Order 2006 are compatible with the Convention rights.

7. Policy background

7.1 The Interest and Royalties Directive eliminates double taxation of interest and royalties paid by a company in one Member State to an associated company in another. It applies only to specified types of company resident in a Member State.

7.2 The 2006 Directive amends the Interest and Royalties Directive to take account of the accession of Bulgaria and Romania to the European Union on 1st January 2007. It adds certain Bulgarian and Romanian taxes to the list of taxes set out in the Interest and Royalties Directive and adds to the list of companies to which that Directive applies certain types of company provided for under the laws of Bulgaria and Romania.

7.3 As part of its Accession Treaty with the European Union, Romania has been permitted to defer full application of the Interest and Royalties Directive until 2010 for budgetary reasons. Similar transitional arrangements were granted to five Eastern European States on their accession to the EU on 1 May 2004.

8. Impact

A RIA has not been prepared for this instrument as the impact on business is negligible and it has no impact on charities or voluntary bodies. The impact on the public sector is also negligible.

9. Contact

Jeff Worrell at Her Majesty's Revenue and Customs Tel: (020) 7147 2723 or email: jeff.worrell:hmrc.gsi.gov.uk can answer any queries regarding the 2006 Directive.

Transposition Note setting out how the Exemption from Income Tax for Certain Interest and Royalty Payments (Amendment of section 757(2) Income Tax (Trading and Other Income) Act 2005) Order 2006 implements the requirements of Council Directive 2006/98/EC.

The Directive

Council Directive 2006/98/EC of 20 November 2006 (not yet published in the Official Journal) adapting certain Directives in the field of taxation, by reason of the Accession of Bulgaria and Romania

This transposition note only concerns amendments made to Directive 2003/49/EC. Separate transposition notes have been prepared in relation to amendments made to other Directives¹.

Article	Objectives	Implementation	Responsibility
Article 1 and paragraph 9 of the Annex to the Directive.	Amends the list of taxes imposed by member States to which Directive 2003/49/EC applies to include taxes imposed by Bulgaria and Romania. Amends the list of companies to which Directive 2003/49/EC applies to include certain types of company formed under the laws of Bulgaria and Romania.	The Exemption from Income Tax for Certain Interest and Royalty Payments (Amendment of section 757(2) Income Tax (Trading and Other Income) Act 2005) Order 2006.	Her Majesty's Treasury.

¹ See the transposition notes concerning the Value Added Tax (Amendment) (No. 3) Regulations 2006, the Reporting of Savings Income Information (Amendment) Regulations 2006 and the Mutual Assistance Provisions Order 2006.