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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.11.2008  
COM(2008) 727 final

2008/0215 (CNS)

Proposal for a

**COUNCIL DIRECTIVE**

**amending Directive 2003/48/EC on taxation of savings income in the form of interest payments**

{SEC(2008) 2767}

{SEC(2008) 2768}

(presented by the Commission)

## **EXPLANATORY MEMORANDUM**

### **1. INTRODUCTION**

Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments (the 'EUSD') has been applied in the EU Member States (MS) since 1 July 2005. The ultimate aim of the EUSD, as agreed at the Santa Maria de Feira European Council of 19 and 20 June 2000 and at the ECOFIN Council meeting of 26 and 27 November 2000, is to enable savings income in the form of interest payments made in one MS to beneficial owners who are individuals resident for tax purposes in another MS to be made subject to effective taxation in accordance with the laws of their State of residence.

However, when the EUSD became applicable in 2005, it was apparent that further refinements were advisable to take account of developments in savings products and in investor behaviour. Domestic tax systems have also shifted towards treating income from some types of innovative financial products as equivalent to interest from debt claims. To take account of developments such as these, the EUSD provides that the Commission shall report to the Council every three years on its operation and, where appropriate, propose any amendments necessary in the light of these reports to ensure effective taxation of savings income and to remove undesirable distortions of competition.

Against this background, the Commission presented a first report to the Council on 15 September 2008 (COM (2008)552 final, Council Document 13124/08 FISC 117) on the application of the EUSD following its first three years of operation. The report drew on consultations held with the EU Member States' tax administrations, data provided by them on the first two tax years of application and the findings of an expert group set up by the Commission in 2007 to seek advice from business sectors concerned or likely to be concerned by the EUSD.

As explained in the report, the EUSD has proven effective within the limits set by its scope. It has also had indirect, non-measurable, positive results in enhancing taxpayers' compliance. However, the review process has demonstrated that the current coverage of the EUSD does not fully match the general ambitions expressed in the Council conclusions of 26 and 27 November 2000. In particular, the report drew attention to the need for amendments in relation to the definitions of beneficial owner and paying agent, the treatment of financial instruments equivalent to those already explicitly covered, and some procedural aspects.

On the basis of the report, the Commission proposes to amend the EUSD, taking into account the administrative burden involved and the opinions expressed by the tax administrations of the MS and the expert group, in accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty.

### **2. COMMENTARY ON THE PROPOSED AMENDMENTS TO THE EUSD**

#### **2.1. Article 1 of this proposal**

The most important proposed amendments refer to the definition of savings income, to accommodate developments in savings products in recent years. The proposed amendments are intended to cover not only savings income in the form of interest payments, but other,

substantially equivalent, income from some innovative financial products and from certain life insurance products that are comparable to debt claim products. If more comprehensive solutions ensuring exchange of information between the tax administrations of EU MS on the full range of life insurance contracts were to be implemented, the need to cover benefits from these life insurance products under the EUSD could possibly be reconsidered.

It is also proposed to extend the scope of the Directive to cover, under certain conditions, interest payments obtained by some entities and legal arrangements for the ultimate benefit of individual beneficial owners. Significant refinements are also proposed to the definition of the ‘paying agent upon receipt of an interest payment’, in order to improve the effectiveness of this mechanism and the legal certainty for market operators.

#### *Proposed amendments to Articles 1 and 2 of the EUSD*

Articles 1 and 2 currently deal only with interest payments made for the immediate benefit of individuals. The amendment proposed to Art. 1 is only to bring it into line with the enlarged definition of interest payment proposed for Art. 6.

More significant amendments are proposed to Art. 2. The EUSD does not currently cover payments made to legal entities and arrangements held by individuals. This limitation may provide individuals with opportunities to circumvent the EUSD by using an interposed legal person or arrangement.

Indiscriminate extension to cover all payments to legal entities and arrangements established in other MS or in non-EU jurisdictions would not seem an appropriate solution.

A more efficient solution is to ask paying agents subject to the anti-money laundering (AML) obligations to use the information already available to them under these obligations, insofar as it relates to the actual beneficial owner(s) of a payment made to some legal persons or arrangements (‘look-through’ approach). The EU paying agents should only focus on legal persons and arrangements established in selected jurisdictions outside the EU, where appropriate taxation of interest income paid to these legal persons or arrangements is not ensured. When the beneficial owner identified for AML purposes is an individual resident in another MS of the EU, the payment should be treated by the EU paying agent as made directly to this beneficial owner.

It should be noted that the look-through approach would not be the best option to identify the beneficial owner where economic operators established in the EU make interest payments to other economic operators also established in the EU and therefore falling within the definition of ‘paying agent’. This could lead to multiplying the paying agent’s responsibilities at different layers of a chain of payments. In this case, clarification of the definition and the obligations of paying agents, as proposed in relation to Article 4, seems to be a more reliable and proportionate solution than a look-through approach.

In order to reduce uncertainties and the administrative burden on paying agents, Annex I includes a list of categories of entities and legal arrangements resident in non-EU jurisdictions which do not ensure appropriate and effective taxation of income obtained by such entities and arrangements. The new Art. 18b provides procedures for adapting the Annex.

### *Proposed amendments to Art. 3 of the EUSD*

Three main refinements of Art. 3 are proposed concerning the residence of the beneficial owner.

The first is to ensure regular updating of the information on the permanent address of the beneficial owner by asking paying agents to refer to the ‘best information available to them at a payment date’. This includes information required for anti-money laundering purposes or other evidence to be determined in accordance with the procedures referred to in the new Art. 18b.

Secondly, it is proposed to complement the ‘permanent address’ approach to establish the residence of the beneficial owner with one based on giving prior reference to official proof of tax residence in a specific country where such proof has been voluntarily provided by the beneficial owner to the paying agent. This applies to valid tax residence certificates issued within the last three years. This amendment is in line with the ultimate aim of the EUSD.

Furthermore, it is proposed that when the paying agent has official documentation proving that the residence for tax purposes of the beneficial owner is in a MS different from the one of the permanent address because of diplomatic privileges or other international rules, the residence for the purpose of the EUSD shall be the tax residence according to that official documentation.

### *Proposed amendments to Art. 4 of the EUSD*

The broad concept of paying agent in paragraph 1 has proved to be relatively well understood and does not appear to need major changes apart from clarifying the responsibility of these agents for payments made to their customers through intermediaries established outside the EU. However, the European Banking Federation has raised concerns about exceptional cases of passive receipt or passive payment, where the general principle that the paying agent is the last intermediary in the chain may not be consistently applied by all MS. At present, there is no common guidance regarding concepts of passive receipt or passive payment. This can lead to duplication of tasks or to situations where none of the economic operators involved is considered the paying agent. In order to avoid this, a change is proposed to require MS to take appropriate measures to ensure that paying agents’ responsibilities in respect of the same interest payment do not overlap.

Furthermore, in line with the proposed amendment to Art. 2 in relation to the application of the ‘look-through’ approach to payments to certain entities and legal arrangements established in countries outside the EU, it is clarified that a payment made or secured for the immediate benefit of an entity or legal arrangement listed in Annex I shall be deemed to be made or secured for the immediate benefit of the beneficial owner, as defined in the Anti- Money Laundering provisions, of the entity or legal arrangement.

The concept of ‘paying agent upon receipt’, contained in the original paragraphs 2 to 5, seems to have generated uncertainty and needs to be developed further.

As explained in relation to the proposed amendments to Art. 2, an extension of the ‘look-through’ approach to all the entities established in the EU MS seems to be disproportionate. However, the lack of alternative mechanisms covering payments to untaxed intermediate structures within the EU could encourage individuals to make extensive use of intermediate

structures to circumvent the EUSD. Recent cases show that, where the ‘paying agent upon receipt’ concept is not consistently implemented, room is left for abuse and distortions. Investment funds regulated at EU level, whose income is relevant for the purpose of the EUSD, could face unfair competition from other intermediate investment structures, which are ‘de facto’ excluded from the main definition of paying agent in Art. 4(1) since payments made by them, even if generated by investment in debt claims, do not legally qualify as interest payments.

Rather than abandoning the ‘paying agent upon receipt’ concept, the concept has to be clarified to ensure consistent application. The proposed amendment aims at moving from the present approach, where the main focus is on the upstream economic operator paying interest to the entities concerned, to an approach based on a ‘positive’ definition of the intermediate structures obliged to act as a ‘paying agent upon receipt’.

This would mean that the EUSD shall be applied by these structures — including legal arrangements such as certain kinds of trusts and partnerships — upon receipt of interest payments from any upstream economic operator, regardless of where this operator is established (inside or outside the EU), as long as the beneficial owner is an individual resident in another EU MS.

In order to avoid market distortions, the new definition of the structures acting as ‘paying agent upon receipt’ is based on substantive elements rather than on their legal form. The proposed amendment favours a definition including all entities and legal arrangements which are not taxed, at least on that part of their income arising to their non-resident participants, under the general rules for direct taxation applicable in the MS where the entity or legal arrangement has its place of effective management and can be considered to be established/resident. Only the following entities and legal arrangements are excluded:

- (a) Investment funds covered by Art. 6 of the EUSD;
- (b) Pension funds and assets relating to life insurance contracts;
- (c) Entities and arrangements set up exclusively for charitable purposes;
- (d) Cases of shared beneficial ownership to which interest payments are made by an economic operator that has identified all the beneficial owners.

A ‘positive’ list, including entities and arrangements to be considered as ‘paying agents upon receipt’ in each MS, is introduced as Annex III. The proposed new Art. 18b provides a procedure for amending the Annex.

The option in Art. 4(3) of the EUSD, of being treated as an investment fund under Art. 6, is maintained only for those entities and legal arrangements to whose assets or income no beneficial owner is immediately entitled at the moment of receipt of the payment. If they do not exercise this option, they will be obliged to act as ‘paying agent upon receipt’ and to consider as beneficial owners those individuals who contributed to their assets.

The current obligations on ‘upstream’ economic operators under Art. 4(2), last sentence (and Art. 11(5)), of the EUSD is maintained only for interest payments made to those entities and legal arrangements in other MS that, having regard to the MS where the place of effective management is situated (which, for legal arrangements, will be the State of the permanent

address of the person who primarily holds legal title and primarily manages their property and income), are listed in the proposed Annex III. However, the list is not exhaustive for the MS. MS should take the necessary measures to ensure that all entities and legal arrangements other than those listed under (a), (b), (c) and (d) above, which are not taxed under the general rules for direct taxation and have the place of effective management on their territory act as ‘paying agent upon receipt’, regardless of whether these entities and legal arrangements are included in the list of Annex III or of the information actually received from foreign upstream economic operators.

#### *Proposed amendments to Art. 6 of the EUSD*

The EUSD is essentially aimed at ensuring taxation of savings income in the form of interest, which is taxable according to fairly similar criteria in all MS. Through the adoption of the Council conclusions of 26 and 27 November 2000 on the essential content of the EUSD, it was nevertheless acknowledged that sticking to a formal definition of interest would not be effective and could lead to undesirable distortions of competition between direct and indirect investment in debt claims. Therefore it was decided to include in the definition not only income from debt claims (as in Art. 11 of the OECD Model Tax Convention on income and capital), but also interest income obtained through certain investment vehicles.

The original decision to exclude all innovative financial products from the scope of the EUSD (Council conclusions of 25 May 1999 and 26-27 November 2000) was for the same reasons accompanied by an express statement that the issue should be re-examined during the first review of the EUSD.

At present, the EUSD can be circumvented by rearranging financial affairs in such a way that income, whilst benefiting from limitations of risk, flexibility and an agreed return on investment equivalent to debt claims, remains outside the formal definition of interest. Therefore, as explained above in relation to Articles 1 and 2, it is proposed to redefine the scope of the EUSD to cover interest and substantially equivalent income deriving from securities that, from an investor’s viewpoint, can be regarded as equivalent to debt claims, because the risk is known and is not higher than that of debt claims.

In order to allow paying agents to identify instruments falling within this scope, leaving aside sophisticated solutions based on particulars frequently not known by the paying agents (such as the composition of the instrument or the link between its performance and income from debt claims), the proposed new point (aa) in Art. 6 extends the scope of the EUSD to those securities which are equivalent to debt claims because the investor receives a return on capital whose conditions are defined at the issuing date, and also receives, at the end of the term of the securities, at least 95% of the capital invested, regardless of whether the underlying assets behind those securities include debt claims.

At the same time, other refinements are proposed in relation to investment funds.

As regards investment funds established in the EU, Art. 6 at present only covers income obtained through undertakings for collective investment in transferable securities authorised in accordance with Directive 85/611/EEC (‘UCITS’), whose parts can be marketed in MS other than that of establishment. However, income obtained through undertakings and other collective investment funds or schemes lacking this authorisation (‘non-UCITS’) are in principle beyond the scope of the Directive, even if the non-UCITS have to be registered with and are subject to monitoring by the authorities of a MS. This income becomes relevant only

when non-UCITS are entities without legal personality and therefore are ‘paying agents upon receipt’. In practice most of these non-UCITS without legal personality opt to be treated as UCITS. Their income then falls under Art. 6, unlike income from non-UCITS with legal personality.

The result is an asymmetry in treatment among ‘non-UCITS’. This is neither in the interest of the internal market, nor was it intended under the Council conclusions of November 2000. Therefore, it appears necessary to amend Art. 6(1)(c) and (d), replacing the reference to Directive 85/611/EEC with a reference to the registration of the undertaking or investment fund or scheme in accordance with the rules of any of the MS. This would result in the application of the same rules not only to all UCITS, but also to all non-UCITS, irrespective of their legal form.

As regards funds established outside the EU, it is at present not clear whether the term ‘undertakings for collective investment established outside the territory’ encompasses all investment funds irrespective of the regulation applicable and of how they are marketed to investors. Therefore, the EUSD should be amended to refine this definition according to the existing OECD definition of ‘collective investment fund or scheme’. This definition can be shared with countries outside the EU and can ensure that interest income channelled through these vehicles is treated appropriately.

It is also proposed to supplement Art. 6(6) in order to clarify that both direct and indirect investment made by collective vehicles in debt claims and in securities must be considered when calculating the percentage mentioned in other paragraphs of this Article, in line with the Council conclusions of 12 April 2005.

In relation to the current EUSD definition of interest payment, some MS have called for a radical extension to cover any kind of investment income, but those views are currently not widely shared. As explained in the review report, the EUSD may not be the most suitable framework for improving cooperation between tax authorities on dividends or on capital gains from speculative financial instruments which do not provide substantial capital protection. Solutions based exclusively on exchange of information would also seem more appropriate for ensuring that neither double taxation nor avoidance of any taxation arise in relation to life insurance contracts and pensions, given the existing differences in the national tax regimes of contributions made to these instruments and of benefits arising from them. However, until such purely information-exchange-based solutions become fully operational under Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the MS in the field of direct taxation<sup>1</sup>, it seems necessary to extend the scope of the EUSD to benefits from those life insurance contracts which can be directly compared to undertakings for collective investment, since their actual positive performance from which the benefits arise is fully linked to income from debt claims or equivalent income under the EUSD and since they provide no significant biometric risk coverage (lower than 5% of capital invested, expressed as an average over the duration of the contract).

Furthermore, the second subparagraph of Art. 6(1) and Art. 6(8) are amended to create conditions for reliable application of the *home country rule*. This is necessary to allow paying agents to correctly apply the EUSD to income arising from undertakings for collective investment established in other countries. Any options exercised by a given MS for its

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<sup>1</sup> OJ L 336, 27.12.1977, p. 15.



undertakings, together with the calculation of the percentages referred to in paragraphs 1(d) and 6 according to the implementing rules of that MS, are made binding on all the other MS.

The new paragraphs 9 and 10 of Art. 6 provide for ‘grandfathering’ provisions in two cases: First, income under Art. 6(1)(aa) will be included provided that the securities were first issued on or after the 1 December 2008. Second, benefits from life insurance contracts under Art. 6(1)(e) will be included provided that the contract were first subscribed on or after the same date. These provisions are needed to ensure that the securities and insurance contracts concerned are appropriately tracked by their issuers and by the insurance companies for correct treatment by the downstream paying agents.

#### *Proposed amendments to Art. 8 of the EUSD*

A number of amendments are introduced in Art. 8 to improve the quality of the information reported.

First, in order to solve current uncertainties concerning the treatment of income from joint accounts and other cases of shared beneficial ownership, the paying agents would be explicitly requested to provide not only the identity and residence of all the beneficial owners concerned, but also details on whether the amount reported for each beneficial owner is the full amount, the actual share due to the beneficial owner, or an equal share.

A second amendment is aimed at reducing the administrative burden of the State of residence of the beneficial owner by overcoming the current limits of Art. 8(2), which do not ask the paying agent and the reporting MS to distinguish between amounts referring to the interest component of a payment and those referring to the full proceeds from a sale, redemption or refund of a security. It will also make it easier to measure the effectiveness of the EUSD.

Finally, the information to be provided by paying agents is adapted in accordance with the proposed amendments to Art. 2 and 6 of the EUSD.

#### *Proposed amendments to Art. 11 of the EUSD*

The procedures for applying withholding tax during the transitional period are amended in accordance with the proposed amendments to Articles 4, 6, and 8 of the EUSD.

#### *Proposed amendments to Art. 13 of the EUSD*

Art. 13 currently provides for two procedures for exception to the withholding tax: certificate and voluntary disclosure. The procedure allowing the beneficial owner to submit a certificate does not provide any directly usable detail to the State of residence of the beneficial owner and is less practical for him/her than the voluntary disclosure procedure. The additional burden put on the tax administration of the State of the paying agent by the application of the voluntary disclosure procedure is offset by the reduced burden on the State of residence of the beneficial owner. Moreover, the application of the certificate procedure can raise questions of compatibility with the free movement of capital, e.g. because it makes it difficult for an EU citizen who is tax resident outside the EU to avoid a withholding tax for which he cannot obtain a credit or reimbursement. It is therefore proposed to amend Art. 13 to only allow only the voluntary disclosure procedure.

### *Proposed amendment to Art. 15 of the EUSD*

The reference to the Annex with the list of related entities acting as a public authority or whose role is recognised by an international treaty has to be changed because of the introduction of new annexes.

### *Proposed amendments to Art. 18 of the EUSD*

The competent authorities of the MS are invited to provide the Commission with relevant statistics on the application of the EUSD, in order to improve the quality of the information for the Commission report to be presented to the Council every three years.

### *Proposed new Articles 18a and 18b of the EUSD*

New Articles 18a and 18b are introduced to provide for procedures to adapt the lists included in the Annexes with the assistance of a committee. This committee on administrative cooperation for taxation will also assist in establishing the information to be contained in any central register of the identity and residence of beneficial owners which may be maintained by a paying agent having activities in different Member States (the possibility of having such register has been requested by some categories of market operators), lists of documents identifying the beneficial owners and a list of agreed data providers of the information necessary for appropriate treatment by paying agents of income deriving from collective investment vehicles or specific securities. Common formats and procedures for the exchange of information and common forms for certificates and other documents useful for the application of the Directive may also be established with the assistance of the committee. Reference is made in Art. 18b to the Council Decision of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission with the assistance of the committee.

### *Proposed amendments relating to Annexes to the EUSD*

The Annex in the current Directive becomes Annex IV and the following new Annexes have been introduced mainly in order to provide clarity to paying agents and to limit their administrative burden (Annex V is a list of statistics that will have to be made available by MS to the Commission in line with Council conclusions adopted on 26 May 2008):

- (a) Annex I: ‘List of legal forms of entities and legal arrangements to which Article 2(3) applies if they are resident, because of the presence there of their place of effective management, within the territory of specific countries or jurisdictions’;
- (b) Annex II: ‘List of Member States attributing a tax identification number, at least on request, to any of the individuals who are resident for tax purposes within their territory, regardless of his or her nationality’;
- (c) Annex III: ‘Indicative list of ‘paying agents on receipt’ under the provisions of Article 4(2)’, and
- (d) Annex V: ‘List of items for statistical purposes’.

## **2.2. Article 2 of this proposal**

This Article lays down the timetable and the requirements for transposing the amending Directive into national law. The amendments will have to be applied within Member States' territory from the first day of the third calendar year following the calendar year in which the Directive enters into force. National implementing rules should be adopted and published sufficiently in advance to allow paying agents and the other market operators concerned to adapt their procedures by the date of entry into application of the amendments.

Proposal for a

## **COUNCIL DIRECTIVE**

### **amending Directive 2003/48/EC on taxation of savings income in the form of interest payments**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 94 thereof,

Having regard to the proposal from the Commission<sup>2</sup>,

Having regard to the opinion of the European Parliament<sup>3</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>4</sup>,

Whereas:

- (1) Council Directive 2003/48/EC<sup>5</sup> has been applied in the Member States since 1 July 2005 and has proven effective during its first three years of application, within the limits set by its scope. However, it appears from the first report<sup>6</sup> on the application of Directive 2003/48/EC that that Directive does not fully measure up to the ambitions expressed in the unanimous ECOFIN Council conclusions of 26 and 27 November 2000<sup>7</sup>. In particular, certain financial instruments which are equivalent to interest-bearing securities and certain indirect means of holding interest-bearing securities are not covered.
- (2) Directive 2003/48/EC applies only to interest payments made for the immediate benefit of individuals. Individuals resident in the Community may thus circumvent Directive 2003/48/EC by using an interposed legal entity or arrangement, especially one established in a jurisdiction where taxation of income paid to this entity or arrangement is not ensured. Having regard also to the anti-money laundering measures laid down in Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing<sup>8</sup>, it is therefore appropriate to require paying agents to apply a "look-through approach" to payments made to certain kinds of legal

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<sup>2</sup> OJ C XXX, XX.XX.2008, p.XX

<sup>3</sup> OJ C XXX, XX.XX.2008, p.XX

<sup>4</sup> OJ C XXX, XX.XX.2008, p.XX

<sup>5</sup> OJ L 157, 26.6.2003, p. 38.

<sup>6</sup> COM(2008) 552, Council Document 13124/08 FISC 117.

<sup>7</sup> Council document nr. 13898/00 adopting with changes Council document nr. 13555/00.

<sup>8</sup> OJ L 309, 25.11.2005, p. 15.

entities or arrangements established outside the Community, and to use the information already available to them about the actual beneficial owner(s) of the entity or arrangement in order to apply Directive 2003/48/EC when the beneficial owner so identified is an individual resident in a Member State other than the one where the paying agent is established. In order to reduce uncertainties and the administrative burden on paying agents, a list of entities and arrangements in third country jurisdictions concerned by this measure should be set out in an annex to Directive 2003/48/EC.

- (3) In order better to achieve the aim of Directive 2003/48/EC, the quality of information used to establish the identity and residence of beneficial owners should be improved, whilst minimising any additional administrative burden for paying agents. Paying agents should use the best information available to them, including documents proving that the residence for tax purposes of an individual is in a country other than that of his permanent address. In particular, recourse by paying agents to the tax identification numbers of beneficial owners should be facilitated by means of an annex providing information on such numbers. Paying agents having activities in different Member States should be permitted to maintain a central register of the identity and residence of beneficial owners, and common rules should be established governing the information to be contained in such a register.
- (4) In order to avoid the circumvention of Directive 2003/48/EC through the artificial channelling of an income payment via an economic operator established outside the Community, it should be made clear what are the responsibilities of Community economic operators when they are aware that an interest payment made to an operator established outside the territorial scope of Directive 2003/48/EC is made for the benefit of an individual, known by them to be a resident of another Member State and who can be considered their customer. In such circumstances, those economic operators should be considered to be acting as paying agents. This would also in particular help to prevent a possible misuse of the international network of financial institutions (branches, subsidiaries, associated or holding companies) to circumvent Directive 2003/48/EC.
- (5) Experience has shown that greater clarity is necessary regarding the obligation to act as a paying agent upon receipt of an interest payment. In particular, the intermediate structures which are subject to that obligation should be identified clearly. Entities and legal arrangements which, under the general rules for direct taxation applicable in the Member State where they have their place of effective management, are not taxed on their income or on the part of their income arising to non-resident beneficiaries, including savings interest or substantially equivalent income, should apply the provisions of Directive 2003/48/EC upon receipt by them of any interest payment from any upstream economic operator. A list of such entities and legal arrangements in each Member State should be included in an annex.
- (6) It appears from the first report on the application of Directive 2003/48/EC that Directive 2003/48/EC may be circumvented by the use of financial instruments which, having regard to the level of risk, flexibility and agreed return, are equivalent to debt claims. It is therefore necessary to ensure that Directive 2003/48/EC covers not only interest but other substantially equivalent income.

- (7) Similarly, certain categories of life insurance contracts providing very limited biometric risk coverage and whose performance is fully linked to income from debt claims or equivalent income covered by Directive 2003/48/EC are generally regarded as substitute retail investment products to undertakings for collective investment. The scope of Directive 2003/48/EC should therefore be extended to benefits paid under such contracts.
- (8) As regards investment funds established in the Community, Directive 2003/48/EC at present covers only income obtained through undertakings for collective investment in transferable securities authorised in accordance with Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)<sup>9</sup>. Equivalent income from non-UCITS falls within the scope of Directive 2003/48/EC only when non-UCITS are entities without legal personality and therefore act as paying agents on receipt of interest payments. In order to ensure the application of the same rules to all UCITS and non-UCITS independently of their legal form, the reference in Directive 2003/48/EC to Directive 85/611/EEC should be replaced with a reference to the registration of the undertaking or investment fund or scheme in accordance with the rules of any of the Member States.
- (9) As regards funds established outside the Community, it is necessary to make clear that the Directive encompasses interest and equivalent income from all investment funds, irrespective of their legal form and of how they are placed with investors.
- (10) The definition of interest payment should be clarified to ensure that not only direct investments in debt claims but also indirect investments are taken into account in the calculation of the percentage of the assets invested in such instruments. Furthermore, in order to facilitate the application by paying agents of Directive 2003/48/EC to income arising from undertakings for collective investment established in other countries, it should be made clear that the treatment of certain income of such undertakings is governed by the rules laid down in the Member State in which they are established.
- (11) Information reporting by paying agents should be improved to increase the value of the information for the State of residence of beneficial owners, particularly in regard to income from joint accounts and other cases of shared beneficial ownership.
- (12) The "certificate" procedure allowing beneficial owners resident for tax purposes in one Member State to avoid the imposition of a withholding tax on interest received in another Member State listed in Article 10(1) of Directive 2003/48/EC should be abandoned, as less information is obtained from that procedure than from the alternative procedure of voluntary disclosure to the State of residence of the beneficial owner and as it is more cumbersome for beneficial owners.
- (13) Member States should provide relevant statistics on the application of Directive 2003/48/EC in order to improve the quality of information held by the Commission for the preparation of the report on the application of that Directive that is presented to the Council every three years.

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<sup>9</sup> OJ L 375, 31.12.1985, p. 3.

- (14) Since the measures necessary for the implementation of Directive 2003/48/EC are measures of general scope within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission,<sup>10</sup> they should be adopted by use of the regulatory procedure provided for in Article 5 of that Decision.
- (15) Since the objectives of this Directive cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

Directive 2003/48/EC is amended as follows:

- (1) Article 1(2) is replaced by the following:

“2. Member States shall take the necessary measures to ensure that the tasks necessary for the implementation of this Directive are carried out by paying agents established within their territory, irrespective of the place of establishment of the debtor of the debt claim, or the issuer of the security, producing the interest payment.”

- (2) Article 2 is amended as follows:

- (a) Paragraph 1 is amended as follows:

- (i) The introductory phrase is replaced by the following:

“For the purposes of this Directive, and without prejudice to Article 4(2), ‘beneficial owner’ means any individual who receives an interest payment or any individual for whom such a payment is secured, unless he provides evidence that it was not received or secured for his own benefit, that is to say that:”

- (ii) Point (b) is replaced by the following:

“(b) he acts on behalf of an entity or a legal arrangement and discloses the name, the legal form and the address of the place of effective management of the entity or, in the case of a legal arrangement, the name and the permanent address of the person who primarily holds legal title and primarily manages its property and income, to the economic operator making or securing the interest payment, or”

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<sup>10</sup> OJ L 184, 17.7.1999, p. 23.

- (b) The following paragraph 3 is added:

“3. Where an economic operator within the scope of Article 2 of Directive 2005/60/EC of the European Parliament and of the Council<sup>11</sup> makes an interest payment to, or secures such a payment for, an entity or a legal arrangement corresponding to those set out in Annex I, the definition in paragraph 1 of this Article shall include the beneficial owner, as defined in Article 3(6) of Directive 2005/60/EC, of such entity or legal arrangement.”

- (3) Articles 3 and 4 are replaced by the following:

*"Article 3*

**Identity and residence of beneficial owners**

1. Each Member State shall, within its territory, adopt and ensure the application of the procedures necessary to allow the paying agent to identify the beneficial owners and their residence for the purposes of Articles 8 to 12.

Such procedures shall comply with the minimum standards established in paragraphs 2 and 3.

2. The paying agent shall establish the identity of the beneficial owner on the basis of minimum standards which vary according to when relations between the paying agent and the recipient of the interest payment are entered into, as follows:

- (a) for contractual relations entered into before 1 January 2004, the paying agent shall establish the identity of the beneficial owner, consisting of his name and address, by using the information at its disposal, in particular pursuant to the regulations in force in its State of establishment and to Directive 2005/60/EC;
- (b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1 January 2004, the paying agent shall establish the identity of the beneficial owner, consisting of the name, address, date and place of birth and, if the beneficial owner has his address or otherwise proves to be resident for tax purposes in a Member State listed in Annex II, the tax identification number or equivalent allocated by that Member State.

The details referred to in point (b) of the first subparagraph shall be established on the basis of the passport or of the official identity card or other official document listed in Annex II presented by the beneficial owner. Any such details which do not appear on that passport or on that official identity card or official document shall be established on the basis of any other official documentary proof of identity presented by the beneficial owner and issued by a public authority of the country where he has his address or otherwise proves to be resident for tax purposes.

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<sup>11</sup> OJ L 309, 25.11.2005, p. 15.



3. Where the beneficial owner voluntarily presents a tax residence certificate issued by the competent authority of a country within the last three years before the payment date, his residence shall be considered to be situated in that country. Failing this, his residence shall be considered to be situated in the country where he has his permanent address. The paying agent shall establish the permanent address of the beneficial owner on the basis of the following minimum standards:
  - (a) for contractual relations entered into before 1 January 2004, the paying agent shall establish the current permanent address of the beneficial owner by using the best information at its disposal at a payment date, in particular pursuant to the regulations in force in its State of establishment and to Directive 2005/60/EC;
  - (b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1 January 2004, the paying agent shall establish the current permanent address of the beneficial owner on the basis of the address resulting from the identification procedures set out in point (b) of paragraph 2 to be updated on the basis of the most recent documentation that is available to the paying agent. This information shall be updated at the latest when the passport or official identity card or other official documentary proof of identity presented by the beneficial owner expires.

For contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1 January 2004, by individuals presenting a passport or official identity card or other official documentary proof of identity issued by a Member State who declare themselves to be resident in a third country, residence shall be established by means of a tax residence certificate issued within the last three years before the payment date by the competent authority of the third country in which the individual claims to be resident. Failing the presentation of such a certificate, the Member State which issued the passport or other official identity document shall be considered to be the country of residence. For individuals about whom the paying agent has official documentation at its disposal proving that they have their residence for tax purposes in a country different from that of their permanent address because of the privileges linked to their diplomatic status or to other internationally agreed rules, residence shall be established by means of such official documentation available to the paying agent.

#### *Article 4*

#### **Paying agents**

1. An economic operator who makes an interest payment as defined in Article 6(1) to, or secures such a payment for, the immediate benefit of the beneficial owner shall be considered to be a paying agent for the purposes of this Directive. A payment made or secured for the immediate benefit of an entity or legal arrangement listed in Annex I shall be deemed to be made or secured for the immediate benefit of the beneficial owner, as defined in Article 3(6) of Directive 2005/60/EC, of the entity or legal arrangement.

For the purposes of this paragraph, it is irrelevant whether the economic operator concerned is the debtor or issuer of the debt claim or security which produces the income or the economic operator charged by the debtor or issuer or by the beneficial owner with paying the income or securing the payment of the income.

Member States shall take appropriate measures to ensure that there is no overlap of paying agent responsibilities in respect of the same interest payment.

An economic operator established in a Member State shall also be considered to be a paying agent for the purposes of this Directive where the following conditions are met:

- (a) it makes an interest payment as defined in Article 6(1) to, or secures such a payment for, another economic operator established outside the territory referred to in Article 7 and outside the territorial scope of application of the agreements and arrangements referred to in Article 17(2), and
- (b) the first economic operator has evidence that the second economic operator will pay the income to, or secure such a payment for the immediate benefit of, a beneficial owner who is an individual known by the first economic operator to be a resident of another Member State, having regard to Article 3.

Where the conditions referred to in points (a) and (b) are met, a payment made or secured by the first economic operator for the immediate benefit of the second economic operator shall be deemed to be made or secured by the first economic operator for the immediate benefit of the beneficial owner referred to in point (b).

2. An entity or legal arrangement which is not taxed on its income or on the part of its income arising to its non-resident participants, including on any interest payment, under the general rules for direct taxation applicable in the Member State in which the entity or legal arrangement has its place of effective management, shall be considered a paying agent upon receipt of an interest payment or upon securing of such payment.

For the purpose of the first subparagraph a legal arrangement shall be considered to have its place of effective management in the country where the person who primarily holds legal title and primarily manages its property and income has his or its permanent address.

The payment received or secured by the entity or legal arrangement shall be regarded as having been made directly to, or secured for the immediate benefit of, any individual who is legally entitled to the assets or the income of the entity or legal arrangement, or, in the absence of any such individual, as having been made directly to, or secured for the immediate benefit of, any individual known by the persons in charge of administering the entity or legal arrangement as having directly or indirectly contributed to the assets of the entity or legal arrangement concerned.

Those individuals shall then be treated as beneficial owners of the payment in accordance with Articles 2 and 3.

This paragraph shall not apply if the entity or legal arrangement falls into one of the following cases:

- (a) it is an undertaking for collective investment or other collective investment fund or scheme whose income is covered by points (c) and (d) of Article 6(1);
- (b) it serves the management of the assets of a pension fund or an insurance business;
- (c) it is acknowledged under the procedures applicable in the Member State where it is resident as serving exclusively charitable purposes;
- (d) it constitutes a shared beneficial ownership for which the economic operator making or securing the payment has established the identity and residence of all the beneficial owners in accordance with Article 3 and therefore acts itself as paying agent in accordance with paragraph 1 of this Article.

The categories of entities and legal arrangements which, depending on the Member State where they have their place of effective management, shall in all cases other than those referred to in points (a) to (d) be considered a paying agent upon making an interest payment, or upon securing of such payment, are set out in Annex III.

Any economic operator making an interest payment to, or securing an interest payment for, an entity or legal arrangement included in the list set out in Annex III shall communicate to the competent authority of its Member State of establishment the name and place of effective management of the entity, or in the case of a legal arrangement, the name and the permanent address of the person who primarily holds legal title and primarily manages the property and income of the legal arrangement, and the total amount of interest paid to, or secured for, the entity or legal arrangement. Where the place of effective management of the entity or legal arrangement is located in another Member State, the competent authority shall pass this information on to the competent authority of that other Member State.

3. Those entities and legal arrangements referred to in paragraph 2 to whose assets or income no beneficial owner is immediately entitled at the moment of receipt of an interest payment shall have the option of being treated for the purposes of this Directive as an undertaking for collective investment or other collective investment fund or scheme as referred to in point (a) of paragraph 2.

Where an entity or legal arrangement exercises that option, the Member State in which it has its place of effective management shall issue a certificate to that effect. The entity or legal arrangement shall present that certificate to the economic operator making or securing the interest payment.

Member States shall lay down the detailed rules concerning this option for entities and legal arrangements which have their place of effective management in their territory and shall ensure that the entity or legal arrangement having exercised this option acts as paying agent in accordance with paragraph 1, up to the total amount of the interest payments received, on each occasion that a beneficial owner becomes immediately entitled to its assets or income.”

- (4) Article 6 is replaced by the following:

*“Article 6*

**Definition of interest payment**

1. For the purposes of this Directive, ‘interest payment’ means:
  - (a) interest paid or credited to an account, relating to debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and, in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures; penalty charges for late payments shall not be regarded as interest payments;
  - (aa) any income paid, or credited to an account, relating to securities of any kind under which the investor receives
    - (i) a return on capital whose conditions are defined at the issuing date, and
    - (ii) at the end of their term, at least 95% of the capital invested;
  - (b) interest accrued or capitalised at the sale, refund or redemption of the debt claims referred to in point (a) and any income accrued or capitalised at the sale, refund or redemption of the securities referred to in point (aa);
  - (c) income deriving from payments referred to in points (a), (aa) or (b) either directly or through an entity or legal arrangement referred to in Article 4(2), distributed by any of the following:
    - (i) undertakings for collective investment or other collective investment funds or schemes registered in accordance with the rules of any of the Member States;
    - (ii) entities or legal arrangements having exercised the option under Article 4(3);
    - (iii) any collective investment fund or scheme established outside the territory referred to in Article 7, irrespective of the legal form of that fund or scheme and of any restriction to a limited group of investors of the purchase, sale or redemption of its shares or units;

- (d) income realised upon the sale, refund or redemption of shares or units in the following undertakings, entities, legal arrangements, investment funds or schemes, if they invest, directly or indirectly via other such undertakings or entities or legal arrangements or investment funds or schemes, more than 40% of their assets in debt claims as referred to in point (a) or in securities as referred to in point (aa):
  - (i) undertakings for collective investment or other collective investment funds or schemes registered in accordance with the rules of any of the Member States;
  - (ii) entities or legal arrangements having exercised the option under Article 4(3);
  - (iii) any collective investment fund or scheme established outside the territory referred to in Article 7, irrespective of the legal form of that fund or scheme and of any restriction to a limited group of investors of the purchase, sale or redemption of its shares or units;
- (e) benefits from a life insurance contract where the contract provides for a biometric risk coverage which, expressed as an average over the duration of the contract, is lower than 5 % of the capital insured and its actual performance is fully linked to interest or income of the kinds referred to in points (a), (aa), (b), (c) and (d); for this purpose any difference between the amounts paid out pursuant to a life insurance contract and the sum of all the payments made to the life insurer under the same life insurance contract shall be considered benefits from life insurance contracts.

However, Member States shall have the option of including income mentioned under point (d) in the definition of interest only to the extent that such income corresponds to gains directly or indirectly deriving from interest payments within the meaning of points (a), (aa) and (b). Where a Member State exercises that option, it shall notify the Commission. The Commission shall publish in the *Official Journal of the European Union* the fact that the option has been exercised and, with effect from the date of such publication, the exercise of the option shall be binding on the other Member States.

2. As regards points (c) and (d) of paragraph 1, where a paying agent has no information concerning the proportion of the income which derives from interest payments within the meaning of points (a), (aa) or (b), the total amount of the income shall be considered an interest payment.
3. As regards point (d) of paragraph 1, where a paying agent has no information concerning the percentage of the assets invested in debt claims or the relevant securities, or in shares or units as defined in that point, that percentage shall be considered to be above 40 %. Where he cannot determine the amount of income realised by the beneficial owner, the income shall be deemed to correspond to the proceeds of the sale, refund or redemption of the shares or units.

4. Where an interest payment as defined in paragraph 1 is made to an entity or legal arrangement referred to in Article 4(2) or credited to an account held by such an entity or legal arrangement, it shall be considered an interest payment by such entity or legal arrangement as long as that entity or legal arrangement has not exercised the option provided under Article 4(3).
5. As regards points (b) and (d) of paragraph 1, Member States shall have the option of requiring paying agents in their territory to annualise the interest or other relevant income over a period of time which may not exceed one year, and of treating such annualised interest or other relevant income as an interest payment even if no sale, redemption or refund occurs during that period.
6. By way of derogation from point (c) of paragraph 1, Member States shall have the option of excluding from the definition of interest payment any income referred to in that provision distributed by undertakings or entities or legal arrangements established within their territory where the direct or indirect investment of such entities or legal arrangements in debt claims referred to in point (a) of paragraph 1 or in securities referred to in point (aa) of paragraph 1 has not exceeded 15% of their assets.

By way of derogation from paragraph 4, Member States shall have the option of excluding from the definition of interest payment in paragraph 1 interest paid or credited to an account of an entity or legal arrangement referred to in Article 4(2) which has not exercised the option under Article 4(3) and is resident within their territory, where the direct or indirect investment of such an entity or legal arrangement in debt claims referred to in point (a) of paragraph 1 or in securities referred to in point (aa) of paragraph 1 has not exceeded 15% of its assets.

Where a Member State exercises one or both of the options referred to in the first and second subparagraphs, it shall notify the Commission thereof.

The Commission shall publish in the *Official Journal of the European Union* the fact that the option has been exercised and, with effect from the date of such publication, the exercise of the option shall be binding on the other Member States.

7. The percentage referred to in point (d) of paragraph 1 and paragraph 3 shall from 1 January 2011 be 25 %.
8. The percentages referred to in point (d) of paragraph 1 and in paragraph 6 shall be determined by reference to the investment policy laid down in the fund rules or instruments of incorporation of the undertakings or entities or legal arrangements or investment funds or schemes concerned.

Where those rules or instruments do not define an investment policy, those percentages shall be determined by reference to the actual composition of the assets of the undertakings or entities or legal arrangements or investment funds or schemes concerned, as resulting from the average of assets at the beginning and the end of their last accounting period before the date when the interest payment is made or secured by the paying agent to the beneficial owner. For

newly constituted undertakings or entities or legal arrangements or investment funds, or schemes, such actual composition shall result from the average of assets at the beginning of the current accounting period and at the end of the last month preceding the date on which the interest payment is made or secured by the paying agent to the beneficial owner.

The composition of the assets, measured in accordance with the rules applicable in the Member State where an undertaking for collective investment or other collective investment fund or scheme is registered, shall be binding on the other Member States.

9. Income referred to in point (aa) of paragraph 1 shall be considered to be an interest payment only to the extent to which the securities producing that income were first issued on or after 1 December 2008.
10. Benefits from life insurance contracts shall be considered to be an interest payment in accordance with point (e) of paragraph 1 only to the extent to which the life insurance contracts giving rise to such benefits were first subscribed on or after 1 December 2008.”

(5) Article 8 is replaced by the following:

*“Article 8*

**Information reporting by the paying agent**

1. Where the beneficial owner is resident in a Member State other than that in which the paying agent is established, the minimum amount of information to be reported by the paying agent to the competent authority of its Member State of establishment shall consist of:
  - (a) the identity and residence of the beneficial owner established in accordance with Article 3 or, in cases of shared beneficial ownership, the identity and residence of all beneficial owners who fall within the scope of Article 1(1);
  - (b) the name and address of the paying agent;
  - (c) the account number of the beneficial owner or, where there is none, identification of the debt claim giving rise to the interest payment or of the life insurance contract, security or share or unit giving rise to that payment;
  - (d) information concerning the interest payment in accordance with paragraph 2.
2. The minimum amount of information concerning interest payment to be reported by the paying agent shall distinguish between the following categories of the interest payment and indicate:
  - (a) in the case of an interest payment within the meaning of point (a) of Article 6(1): the amount of interest paid or credited;

- (aa) in the case of an interest payment within the meaning of point (aa) of Article 6(1): the amount of any income paid or credited;
  - (b) in the case of an interest payment within the meaning of points (b) or (d) of Article 6(1): either the amount of interest or income referred to in those points or the full amount of the proceeds from the sale, redemption or refund; the paying agent shall inform the competent authority of its Member State of establishment when it reports the full amount of the proceeds from the sale, redemption or refund;
  - (c) in the case of an interest payment within the meaning of point (c) of Article 6(1): either the amount of income referred to in that point or the full amount of the distribution; the paying agent shall specifically inform the competent authority of its Member State of establishment when it reports the full amount of the distribution;
  - (d) in the case of an interest payment within the meaning of Article 6(4): the amount of income attributable to each of the beneficial owners who fall within the scope of Article 1(1);
  - (e) where a Member State exercises the option under Article 6(5): the amount of annualised interest or other relevant income;
  - (f) in the case of an interest payment within the meaning of point (e) of Article 6(1): the benefit calculated in accordance with that provision.
3. In cases of shared beneficial ownership, the paying agent shall inform the competent authority of its Member State of establishment whether the amount reported for each beneficial owner is the full amount paid to the beneficial owners collectively, the actual share pertaining to the beneficial owner concerned or an equal share.
  4. Notwithstanding paragraph 2, Member States may allow paying agents to report only the following:
    - (a) in the case of interest payments within the meaning of points (a), (aa) and (c) of Article 6(1), the total amount of interest or income;
    - (b) in the case of interest payments within the meaning of points (b) and (d) of Article 6(1), the total amount of the proceeds from sale, redemption or refund related to such payments;
    - (c) in the case of interest payments within the meaning of point (e) of Article 6(1), the total amount paid out under a life insurance contracts generating such payments.

The paying agent shall state whether the amount reported is an amount of interest or income or a total amount of the proceeds from sale, redemption or refund or a total amount paid out under life insurance contracts.”

- (6) Article 11 is amended as follows:



(a) Paragraph 2 is replaced by the following:

“2. The paying agent shall levy withholding tax as follows:

- (a) in the case of an interest payment within the meaning of point (a) of Article 6(1): on the amount of interest paid or credited;
- (aa) in the case of an interest payment within the meaning of point (aa) of Article 6(1): the amount of any income paid or credited;
- (b) in the case of an interest payment within the meaning of point (b) or (d) of Article 6(1) on the amount of interest or income referred to in those points or by a levy of equivalent effect to be borne by the recipient on the full amount of the proceeds of the sale, redemption or refund;
- (c) in the case of an interest payment within the meaning of point (c) of Article 6(1): on the amount of income referred to in that point;
- (d) in the case of an interest payment within the meaning of Article 6(4): on the amount of income attributable to each of the beneficial owners who fall within the scope of Article 1(1);
- (e) where a Member State exercises the option under Article 6(5): on the amount of annualised interest or other relevant income;
- (f) in the case of an interest payment within the meaning of point (e) of Article 6(1): the benefit calculated in accordance with that provision.

When transferring the revenue of the withholding tax to the competent authorities of its Member State of establishment, the paying agent shall inform them of the number of beneficial owners concerned by the levying of the withholding tax classified according to their respective Member States of residence.”

(b) Paragraph 5 is replaced by the following:

“5. During the transitional period, Member States levying withholding tax may provide that an economic operator making an interest payment to, or securing such a payment for, an entity or legal arrangement referred to in Article 4(2) which has its place of effective management in another Member State and which is of a type listed in Annex III for that Member State, shall be considered the paying agent in place of the entity or legal arrangement and shall levy the withholding tax on that income, unless the entity or legal arrangement has formally agreed to its name, address and the total amount of income paid to it or secured for it being communicated in accordance with the seventh subparagraph of Article 4(2). In the case of legal arrangements the name and address to be communicated shall be those of the person who primarily holds legal title and primarily manages their property and income.”

- (7) Article 13 is replaced by the following:

*“Article 13*

**Exception to the withholding tax procedure**

Member States levying withholding tax in accordance with Article 11 shall ensure that a beneficial owner may request that no tax be withheld when he expressly authorises the paying agent to report information in accordance with Chapter II, such authorisation covering all interest payments made to the beneficial owner by that paying agent.

In such a case, Article 9 shall apply. ”

- (8) Article 14 is amended as follows:

- (a) in paragraph 2, the first sentence is replaced by the following:

“If an interest payment received by a beneficial owner has been subject to withholding tax in the Member State of the paying agent, the Member State of residence for tax purposes of the beneficial owner shall grant him a tax credit equal to the amount of the tax withheld in accordance with its national law.”

- (b) paragraph 3 is replaced by the following:

“3. If, in addition to the withholding tax referred to in Article 11, an interest payment received by a beneficial owner has been subject to any other type of withholding tax and the Member State of residence for tax purposes grants a tax credit for such withholding tax in accordance with its national law or double taxation conventions, such other withholding tax shall be credited before the procedure in paragraph 2 is applied.”

- (9) In the second subparagraph of Article 15(1), “the Annex” is replaced by “Annex IV”.

- (10) The first sentence of Article 18 is replaced by the following:

“The Commission shall report to the Council every three years on the operation of this Directive on the basis of the statistics listed in Annex V, which shall be provided by each Member State to the Commission.”

- (11) The following Articles 18a and 18b are inserted:

*“Article 18a*

**Implementing measures**

The Commission may, acting in accordance with the procedure referred to in Article 18b(2), adopt measures for the following purposes:

- (1) updating and supplementing the Annexes;
- (2) determining the kind of information to be contained in any central register of the identity and residence of beneficial owners which may be

maintained by a paying agent having activities in different Member States;

- (3) determining the documents which may be used, for the purposes of Article 3, by the paying agent for establishing the identity and residence of beneficial owners;
- (4) specifying the data providers which may be used by paying agents for obtaining the information necessary for the proper treatment, for the purposes of Article 6, of income deriving from undertakings for collective investment or other collective investment funds or schemes or specific securities;
- (5) establishing common formats and operational procedures for the exchange of information referred to in Article 9;
- (6) establishing common forms for the certificates and other documents which are needed for, or facilitate, the correct application of this Directive, in particular the certificate referred to in the second subparagraph of Article 4(3) and the documents issued in Member States levying withholding tax, which are used for the purposes of Article 14 by the Member State of residence for tax purposes of the beneficial owner.

#### *Article 18b*

#### **Committee**

1. The Commission shall be assisted by the Committee on Administrative Cooperation for Taxation, hereinafter referred to as “the Committee”.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 99/468/EC shall apply.

The period laid down in Article 5(6) of Decision 99/468/EC shall be set at three months.

3. The Committee may, in addition to its tasks under paragraph 1, examine the matters raised by its chairman, either on his own initiative or at the request of the representative of a Member State, concerning the application of this Directive.”
- (12) The Annex is amended in accordance with the Annex to this Directive.

#### *Article 2*

1. Member States shall adopt and publish, by [...] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from [the first day of the third calendar year following the calendar year in which this Directive enters into force].

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

#### *Article 3*

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

#### *Article 4*

This Directive is addressed to the Member States.

Done at Brussels,

*For the Council*

## ANNEX

The Annex to Directive 2003/48/EC is amended as follows:

- (1) The Annex becomes Annex IV.
- (2) Annexes I, II and III are inserted as follows:

### “ANNEX I

List of legal forms of entities and legal arrangements to which Article 2(3) applies because of the presence within the territory of specific countries or jurisdictions of their place of effective management

1. Entities and legal arrangements whose place of effective management is in a country or jurisdiction outside the territorial scope of the Directive as defined in Article 7 and which is different from those listed in Article 17(2):

|                     |  |
|---------------------|--|
| Antigua and Barbuda | <i>International business company</i>  |
| The Bahamas         | Trust<br><i>Foundation</i><br><i>International business company</i>  |
| Bahrain             | Financial trust  |
| Barbados            | Trust  |
| Belize              | Trust<br><i>International business company</i>   |
| Bermuda             | Trust  |
| Brunei              | Trust<br><i>International business company</i><br><i>International trust</i><br><i>International Limited Partnership</i> |
| Cook Islands        | Trust<br><i>International trust</i><br><i>International company</i><br><i>International partnership</i>                  |
| Costa Rica          | Trust  |
| Djibouti            | Exempt company<br>(Foreign) trust  |
| Dominica            | Trust<br><i>International business company</i>   |

|                           |   |
|---------------------------|---|
| Fiji                      | Trust   |
| French Polynesia          | <i>Société</i> (Company)<br><i>Société de personnes</i> (Partnership)<br><i>Société en participation</i> (Joint venture)<br>(Foreign) trust |
| Guam                      | <i>Company</i><br>Sole proprietorship<br><i>Partnership</i><br>(Foreign) trust  |
| Guatemala                 | Trust<br><i>Fundación</i> (Foundation)  |
| Hong Kong                 | Trust   |
| Kiribati                  | Trust   |
| Labuan (Malaysia)         | <i>Offshore company</i><br><i>Malaysian offshore bank,</i><br><i>Offshore limited partnership</i><br><i>Offshore trust</i>                  |
| Lebanon                   | Companies benefiting from the Offshore company regime   |
| Macao                     | Trust<br><i>Fundação</i> (Foundation)   |
| Maldives                  | All the companies, partnership and Foreign trust  |
| Northern Marianas Islands | <i>Foreign sales corporation</i><br><i>Offshore banking corporation</i><br>(Foreign) trust  |
| Marshall Islands          | Trust   |
| Mauritius                 | Trust<br><i>Global business company cat. 1 and 2</i>  |

|                                 |   |
|---------------------------------|---|
| Micronesia                      | <i>Company</i><br><i>Partnership</i><br>(Foreign) trust   |
| Nauru                           | <i>Trusts/nominee company</i><br><i>Company</i><br><i>Partnership</i><br>Sole proprietorship<br>Foreign will<br>Foreign estate<br>Other form of business negotiated with the Government |
| New Caledonia                   | <i>Société</i> (Company)<br><i>Société civile</i> (Civil company)<br><i>Société de personnes</i> (Partnership)<br>Joint venture<br>Estate of deceased person<br>(Foreign) trust         |
| Niue                            | Trust<br><i>International business company</i>  |
| Panama                          | <i>Fideicomiso</i> (Trust)<br><i>Fundación de interés privado</i> (Foundation)  |
| Palau                           | <i>Company</i><br><i>Partnership</i><br>Sole proprietorship<br>Representative office<br><i>Credit union</i> (financial cooperative)<br><i>Cooperative</i><br>(Foreign) trust            |
| Philippines                     | Trust   |
| Puerto Rico                     | <i>Estate</i><br>Trust<br><i>International banking entity</i>   |
| Saint Kitts and Nevis           | Trust<br><i>Foundation</i><br>Exempt company  |
| Saint Lucia                     | Trust   |
| Saint Vincent and the Grenadine | Trust   |
| Samoa                           | Trust<br><i>International trust</i><br><i>International company</i>   |

|                      |   |
|----------------------|---|
|                      | <i>Offshore bank</i><br><i>Offshore insurance company</i><br><i>International partnership</i><br><i>Limited partnership</i> |
| Seychelles           | Trust<br><i>International business company</i>  |
| Singapore            | Trust   |
| Solomon Islands      | <i>Company</i><br><i>Partnership</i><br>Trust   |
| South Africa         | Trust   |
| Tonga                | Trust   |
| Tuvalu               | Trust<br><i>Provident fund</i>  |
| United Arab Emirates | Trust   |
| US Virgin Islands    | Trust<br>Exempt company   |
| Uruguay              | Trust   |
| Vanuatu              | Trust<br>Exempt company<br><i>International company</i>   |

2. Entities and legal arrangements whose place of effective management is in a country or jurisdiction listed in Article 17(2), to which Article 2(3) applies pending the adoption by the country or jurisdiction concerned of provisions equivalent to those of Article 4 (2):

|          |  |
|----------|--|
| Andorra  | Trust  |
| Anguilla | Trust  |
| Aruba    | <i>Stichting</i> (Foundation)<br>Companies benefiting from the offshore company regime |



|                        |   |
|------------------------|---|
| British Virgin Islands | Trust<br><i>International business company</i>          |
| Cayman Islands         | Trust<br>Exempt company                                 |
| Guernsey               | Trust<br>Zero tax company                               |
| Isle of Man            | Trust   |
| Jersey                 | Trust   |
| Liechtenstein          | <i>Anstalt</i> (Trust)<br><i>Stiftung</i> (Foundation)  |
| Monaco                 | Trust<br><i>Fondation</i> (Foundation)                  |
| Montserrat             | Trust   |
| Netherlands Antilles   | Trust<br><i>Stichting</i> (Foundation)                  |
| San Marino             | Trust<br><i>Fondazione</i> (Foundation)                 |
| Switzerland            | Trust<br>Foundation                                     |
| Turks and Caicos       | Exempted company<br><i>Limited partnership</i><br>Trust |

## ANNEX II

List of Member States attributing a tax identification number, at least on request, to any individual who is resident for tax purposes within their territory, regardless of his or her nationality

| <b>MEMBER STATE</b> | <b>STRUCTURE</b>       | <b>FORMAT</b>  | <b>AVAILABILITY of TIN in official documentation</b> |
|---------------------|------------------------|--|--|
| BE - Belgium        | YYMMDD XXX XX          | 1 block of 11 digits. The first 6 denote the date of birth, the following 3 are an order number and the last 2 are a control key.                | National ID card<br>Passport                         |
| BG - Bulgaria       | 9999999999             | 1 block of 10 digits. The last is a scheduled figure.<br><br>Known as the 'Unified Civil Number'   | National ID card<br>Passport                         |
| CZ - Czech Republic | 999999999<br>999999999 | 1 block of 9 or 10 digits. The sixth and seventh digits may be separated by a slash.   | National ID card<br>Passport<br>Driving licence      |
| DK - Denmark        | DDMMYY-9999            | 1 block of 10 digits, with a dash between the sixth and the seventh digits.  | Passport   |
| DE-Germany          | 999999999999           | 1 block of maximum 12 digits. The digits may be separated by slashes.  | N <sup>12</sup>                                      |
| EE - Estonia        | 99999999999            | 1 block of 11 digits.  | National ID card<br>Passport<br>Driving licence      |
| IE - Ireland        | 9999999L(W)            | 7 digits followed by either 1 or 2 letters. If there are 2 letters, the second is a 'W'. The first is a check letter calculated by an algorithm. | Document from the Office of Revenue Commissioners    |

<sup>12</sup> TIN may change if a person changes domicile.

|             |  |  |   |
|-------------|--|--|---|
|             |  |  | Document from the Office of Social and Family Affairs |
| EL Greece   | 999999999  | 1 block of 9 digits, 8 'normal' and 1 'check digit'.   | N   |
| ES - Spain  | <p>1) 99999999A</p> <p>2) X9999999A</p> <p>M0000001A</p> <p>L0000001A</p> <p>K0000001A</p> <p>3) E99999999</p> <p>G99999999</p> <p>H99999999</p> | <p>1) The standard TIN belonging to Spanish nationals is composed of 9 characters :</p> <ul style="list-style-type: none"> <li>- 8 digits</li> <li>- one check letter</li> </ul> <p>2) Other TINs belonging to specific types of individuals and to foreign citizens with a Spanish identity card are composed of a string of 9 characters:</p> <ul style="list-style-type: none"> <li>- 1 letter describing the type of individual</li> <li>- 7 digits</li> <li>- 1 check letter.</li> </ul> <p>3) For residual entities, the TIN is composed of:</p> <ul style="list-style-type: none"> <li>- 1 letter: E, G or H.</li> <li>- 7 digits</li> <li>- 1 final check digit</li> </ul> | National ID card<br>Passport                          |
| IT - Italy  | LLLLLL99L99L999L   | The tax number for individuals is an alphanumeric block of 16 characters.  | Health card<br>Tax code card                          |
| CY - Cyprus | 99999999L  | 1 block of 8 digits and 1 letter. The letter at the end is calculated as a check letter.   | N   |
| LV - Latvia | DDMMYY99999<br>"9"9999999999   | <p>1 block of 11 digits (DDMMYY: date of birth)</p> <p>1 block of 11 digits (the first digit is always '9')<br/>Granted to natural persons, who do not have TIN 'DDMMYY99999'.</p>   | Passport<br>Driving licence                           |

|                   |                                |   |   |
|-------------------|--------------------------------|---|---|
| LT<br>Lithuania   | - 9999999999<br><br>9999999999 | 1 block of 11 digits.<br><br>The 10-digit TIN is for individuals, who don't have the 11-digit TIN.  | National ID card<br><br>Passport                        |
| HU<br>Hungary     | - 99999999                     | The TIN for individuals is 1 block of 10 digits.<br><br>The company code is a block of 8 digits.  | N   |
| MT - Malta        | 999L<br><br>9999999999         | The TIN is the individual's identity card number. Between 3 and 7 digits + letter (M, G, A, P, L, H, B or Z).<br><br>Persons with no Maltese identity card will be issued a TIN by the Inland Revenue Department. This is a 9-digit number with the last 2 digits being check digits. Such persons may apply for an ID card with the respective authority. Once it is issued, it will be used as the TIN, as it is for Maltese residents. | National ID card<br><br>Passport <sup>13</sup>          |
| NL<br>Netherlands | - 9999999999                   | 1 block of 8 or 9 digits. If the TIN consists of 8 digits, you must place a "0" in front of it.   | National ID card<br><br>Passport<br><br>Driving Licence |
| AT - Austria      | 999999999 <sup>14</sup>        | 1 block of 9 digits with the last as check digit.   | N <sup>15</sup>   |
| PL - Poland       | 9999999999                     | 1 block of 10 digits with the last calculated using an algorithm, as a check digit.   | N   |
| PT - Portugal     | 9999999999                     | 1 block of 9 digits with the last calculated using an algorithm,  | N   |

<sup>13</sup> In MT, non-residents receive an ID number, which is stated on bank statements.

<sup>14</sup> '9' denotes a digit;  
'L' denotes a letter;

'DDMMYY' denotes a date (day, month, year)

<sup>15</sup> TIN can change when a person changes its domicile.

|                     |  |   |   |
|---------------------|--|---|---|
|                     |  | as a check digit.   |   |
| RO - Romania        | 99999999999999   | 1 block of 13 digits. The check digit is calculated using an algorithm.   | National ID card<br>Passport                                  |
| SI - Slovenia       | 99999999   | 1 block of a random 8-digit number (first digit cannot be 0). The eighth digit is a control number.   | N   |
| SK - Slovakia       | 9999999999   | 1 block of 10 digits  | N   |
| FI - Finland        | DDMMYY(+,-,A) 999 (L/9)<br><br>9999999-9                 | 1 block of 11 characters as follows:<br>Date of birth DDMMYY<br>Character (+, -, A)<br>Individual number 999<br>Checking character L/9<br><br>The company code is a block of 7 digits, and 1 check letter (9999999-L) where 9999999 is the serial number and L is the check letter. | National ID card<br>Passport<br>Driving licence <sup>16</sup> |
| SE - Sweden         | YYMMDD-NNNX  | YYMMDD is the date of birth; NNN is a birth number; X is a check digit. The birth number is odd for men and even for women. The check digit is calculated automatically on the basis of the date of birth and the birth number.   | National ID card<br>Passport<br>Driving licence               |
| UK - United Kingdom | UTR: 99999 99999<br><br>NINO:<br>LL999999(A/B/C/D/space) | The UK has no TIN but 2 <i>quasi</i> TINs as follows:<br><br>1. The UTR (Unique Taxpayer Reference) whose usual format is 11 characters in the format 1-5 numeric, 6 space, 7-11 numeric.<br><br>2. The NINO (National  | Passport  |

<sup>16</sup> TIN in National ID Card and Passport is quite cryptic, but it clearly appears in the driving license. Self-employed people may have a second TIN.

|  |  |   |  |
|--|--|---|--|
|  |  | Insurance Number) whose usual format is 9 characters: position 1&2 are letters (but not D, F, I, O, Q, U or V or the combinations FY, GB, NK or TN) 3 to 8 numbers, and a final character A, B, C, D, or a space. |  |
|--|--|---|--|

### ANNEX III

#### List of "paying agents on receipt" under Article 4(2)

#### INTRODUCTORY NOTE

Trusts and similar legal arrangements are listed for those Member States that do not have a domestic fiscal regime for the taxation of income received on behalf of such legal arrangements by the person who primarily holds legal title and primarily manages its property and income, and is resident on their territory. This list refers to trusts and similar legal arrangements whose place of effective management of their movable assets is in these countries (residence of the main trustee or other administrator responsible for movable assets), irrespective of the laws under which these trusts and similar legal arrangements have been set up.

| <b>Countries</b> | <b>List of entities and arrangements</b>   | <b>Comments</b>   |
|------------------|--|---|
| Belgium          | <ul style="list-style-type: none"><li>- <i>Société de droit commun / maatschap</i> (Civil law or commercial company without any legal status)</li><br/><li>- <i>Société momentanée / tijdelijke handelsvennootschap</i> (Company without any legal status whose purpose is to deal with one or several specific commercial operations)</li><br/><li>- <i>Société interne / stille handelsvennootschap</i> (Company without any legal status through which one or more persons has (have) an interest in operations that one or more other persons manage(s) on their behalf)</li><br/><li>- 'Trust' or other similar legal arrangement</li></ul> | <p>See Articles 46, 47 and 48 of the Belgian Company Code.</p> <p>These 'companies' (the name of which is given in French and Dutch) do not have legal status, and from the point of view of taxation, a look-through approach is applicable.</p> |
| Bulgaria         | <ul style="list-style-type: none"><li>- <i>Drujestvo sys specialna investicionna cel</i> (Special-purpose investment company)</li></ul>  | Entity exempt from corporate income tax   |

|                |  |   |
|----------------|--|---|
|                | <ul style="list-style-type: none"> <li>- <i>Investicionno drujestvo</i><br/>(Investment company, not covered by Article 6)</li> <li>- 'Trust' or other similar legal arrangement</li> </ul>  | Trusts are allowed for public offering in Bulgaria and are exempt from corporate income tax |
| Czech Republic | <ul style="list-style-type: none"> <li>- <i>Veřejná obchodní společnost (ver. obch. spol. or V.O.S.)</i><br/>(Partnership)</li> <li>- <i>Sdružení</i> (Association)</li> <li>- <i>Družstvo</i> (Cooperative)</li> <li>- <i>Evropské hospodářské zájmové sdružení (EHZS)</i><br/>(European Economic Interest Grouping (EEIG ))</li> <li>- 'Trust' or other similar legal arrangement</li> </ul> |   |
| Denmark        | <ul style="list-style-type: none"> <li>- <i>Interessentskaber</i> (General partnership)</li> <li>- <i>Kommanditselskaber</i> (Limited partnership)</li> <li>- <i>Partnerselskaber</i> (Partner company)</li> <li>- <i>Europæisk økonomisk firmagrupper (EØFG)</i><br/>(European Economic Interest Grouping (EEIG))</li> <li>- 'Trust' or other similar legal arrangement</li> </ul>            |   |
| Germany        | <ul style="list-style-type: none"> <li>- <i>Gesellschaft bürgerlichen Rechts</i> (Civil law company)</li> <li>- <i>Kommanditgesellschaft — KG,</i></li> </ul>  |   |



|         |  |   |
|---------|--|---|
|         | <p><i>offene Handelsgesellschaft — OHG</i> (Commercial partnership)</p> <p>- <i>Europäische Wirtschaftliche Interessenvereinigung</i> (European Economic Interest Grouping (EEIG))</p> |   |
| Estonia | <p>- <i>Täisühing- TÜ</i> (General partnership)</p> <p>- <i>Usaldusühing-UÜ</i> (Limited partnership)</p> <p>- 'Trust' or other similar legal arrangement</p>                          | General and limited partnerships are taxed as separate taxable entities, any distributions by which are deemed to be dividends (subject to distribution tax)                    |
| Ireland | <p>- Partnership and investment club</p> <p>- European economic interest grouping (EEIG)</p>   | Irish resident trustee taxable on income arising to the trust.  |
| Greece  | <p>- <i>Omorrythmos Eteria (OE)</i> (General partnership)</p> <p>- <i>Eterorythmos Eteria (EE)</i> (Limited partnership)</p> <p>- 'Trust' or other similar legal arrangement</p>       | Partnerships are subject to corporate income tax. However, up to 50% of the profits of partnerships is taxed in the hands of the individual partners at their personal tax rate |
| Spain   | <p>Entities subject to the system for taxing attribution of profits:</p> <p>- <i>Sociedad civil con o sin personalidad jurídica</i> (Civil law partnership with or without legal</p>   |   |

|        |  |  |
|--------|--|--|
|        | <p>personality),</p> <ul style="list-style-type: none"> <li>- <i>Agrupación europea de interés económico (AEIE)</i> (European Economic Interest Grouping (EEIG)),</li> <li>- <i>Herencias yacentes</i> (Estate of a deceased person),</li> <li>- <i>Comunidad de bienes</i> (Joint ownership).</li> </ul> <p>- Other entities without legal personality that constitute a separate economic unit or a separate group of assets (Article 35(4) of the <i>Ley General Tributaria</i>).</p> <p>- ‘Trust’ or other similar legal arrangement</p> |  |
| France | <ul style="list-style-type: none"> <li>- <i>Société en participation</i> (Joint venture company)</li> <li>- <i>Société ou association de fait</i> (De facto company)</li> <li>- <i>Indivision</i> (Joint ownership)</li> <li>- ‘Trust’ or other similar legal arrangement</li> </ul>   |  |

|        |  |   |
|--------|--|---|
| Italy  | <ul style="list-style-type: none"> <li>- <i>Società semplice</i> (Civil law partnership and assimilated entity)</li> <br/> <li>- Non-commercial entity without legal personality</li> <br/> <li>- ‘Trust’ or other similar legal arrangement</li> </ul>  | <p>The category of entities treated as ‘<i>società semplici</i>’ includes: ‘<i>società di fatto</i>’ (irregular or ‘de facto’ partnerships), which do not have commercial activities as their purpose, and ‘<i>associazioni</i>’ (associations) organised by artists or professional persons for the practice of their art or profession in associative forms with no legal personality</p> <p>The category of non-commercial entities without legal personality is wide, and may include various types of organisations: associations, syndicates, committees, non-profit organisations and others</p> |
| Cyprus | <ul style="list-style-type: none"> <li>- <i>Syneterismos</i> (Partnership)</li> <li>- <i>syndesmos</i> or <i>somatia</i> (Association)</li> <li>- <i>Synergatikes</i> (Cooperative)</li> <li>- ‘Trust’ or other similar legal arrangement</li> <br/> <li>- <i>Ekswxwria Eteria</i> (Offshore company)</li> </ul>   | <p>Trusts created under Cypriot jurisdiction are considered transparent entities under national law.</p>  |
| Latvia | <ul style="list-style-type: none"> <li>- <i>Pilnsabiedrība</i> (General partnership)</li> <li>- <i>Komandītsabiedrība</i> (Limited partnership)</li> <li>- <i>Eiropas Ekonomisko interešu grupām (EEIG)</i> (European Economic Interest Grouping (EEIG))</li> <li>- <i>Biedrības un nodibinājumi</i> (Association and foundation);</li> <li>- <i>Lauksaimniecības kooperatīvi</i> (Agriculture cooperative)</li> <li>- ‘Trust’ or other similar legal arrangement</li> </ul> |   |

|                 |  |   |
|-----------------|--|---|
| Lithuania       | <ul style="list-style-type: none"> <li>- <i>Europos ekonominių interesų grupės</i> (European Economic Interest Grouping (EEIG))</li> <li>- <i>Asociacija</i> (Association)</li> <li>- ‘Trust’ or other similar legal arrangement</li> </ul>  | Interests and capital gains on shares or bonds derived by associations are exempt from corporate income tax.  |
| Luxembourg      | <ul style="list-style-type: none"> <li>- <i>Société en nom collectif</i> (General partnership)</li> <li>- <i>Société en commandite simple</i> (Limited partnership)</li> <li>- ‘Trust’ or other similar legal arrangement</li> </ul>   |   |
| Hungary         | <ul style="list-style-type: none"> <li>- ‘Trust’ or other similar legal arrangement</li> </ul>   | Hungary recognises trusts as ‘entities’ under national rules  |
| Malta           | <ul style="list-style-type: none"> <li>- <i>Socjeta in akomonditia</i> (Partnership “<i>en commandite</i>”), the capital of which is not divided into shares</li> <li>- <i>Arrangement in participation</i> (Association “<i>en participation</i>”)</li> <li>- Investment club</li> <li>- <i>Socjeta Kooperattiva</i> (Cooperative society)</li> </ul> | Partnerships “ <i>en commandite</i> ” the capital of which is divided into shares are subject to general CIT. |
| The Netherlands | <ul style="list-style-type: none"> <li>- <i>Vennootschap onder firma</i> (General partnership)</li> <li>- <i>Commanditaire vennootschap</i> (Closed limited partnership)</li> <li>- <i>Europese economische samenwerkingsverbanden (EESV)</i> (European Economic Interest Grouping (EEIG))</li> </ul>  | General partnerships, closed partnerships and EEIGs are transparent for tax purposes.                         |

|         |  |   |
|---------|--|---|
|         | <ul style="list-style-type: none"> <li>- <i>Vereniging</i> (Association)</li> <li>- <i>Stichting</i> (Foundation)</li> <li>- 'Trust' or other similar legal arrangement</li> </ul>   | <p><i>Verenigingen</i> (Associations) and <i>stichtingen</i> (foundations) are tax exempt unless they carry on a trade or business.</p>   |
| Austria | <ul style="list-style-type: none"> <li>- <i>Personengesellschaft</i> (Partnership)</li> <li>- <i>Offene Personengesellschaft</i> (General commercial partnership)</li> <li>- <i>Kommanditgesellschaft, KG</i> (Limited partnership)</li> <li>- <i>Gesellschaft nach bürgerlichem Recht, GesBR</i> (Civil law partnership)</li> <li>- <i>Offene Erwerbsgesellschaft (OEG)</i> (Professional general partnership)</li> <li>- <i>Kommandit-Erwerbsgesellschaft</i> (Professional limited partnership)</li> <li>- <i>Stille Gesellschaft</i> (Silent partnership)</li> <li>- <i>Einzelfirma</i> (Sole partnership)</li> <li>- <i>Wirtschaftliche Interessenvereinigung</i> (European Economic Interest Grouping (EEIG))</li> <li>- <i>Privatstiftung</i> (Private foundation)</li> <li>- 'Trust' or other similar legal arrangement</li> </ul> | <p>Partnership is considered transparent, even if viewed as an entity for the purpose of profit computation.</p> <p>Treated like a normal 'partnership'</p> <p>Taxed as a company, interest income taxed at a reduced rate of 12.5%</p> |
| Poland  | <ul style="list-style-type: none"> <li>- <i>Spółka jawna (Sp. j.)</i> (General partnership)</li> </ul>   |   |

|          |   |   |
|----------|---|---|
|          | <ul style="list-style-type: none"> <li>- <i>Spółka komandytowa (Sp. k.)</i> (Limited partnership)</li> <li>- <i>Spółka komandytowo-akcyjna (S.K.A.)</i> (Limited joint-stock partnership)</li> <li>- <i>Spółka partnerska (Sp. p.)</i> (Professional partnership)</li> <li>- <i>Europejskie ugrupowanie interesów gospodarczych (EUIG)</i> (European Economic Interest Grouping (EEIG))</li> <li>- 'Trust' or other similar legal arrangement</li> </ul>  |   |
| Portugal | <ul style="list-style-type: none"> <li>- <i>Sociedade civil</i> (Civil law partnership) which is not incorporated in a commercial form</li> <li>- Incorporated firms engaged in listed professional activities in which all partners are individuals qualified in the same profession</li> <li>- <i>Agrupamento de Interesse Económico (AIE)</i> (domestic economic interest grouping )</li> <li>- <i>Agrupamento Europeu de Interesse Económico (AEIE)</i> (European Economic Interest Grouping (EEIG))</li> <li>- <i>Sociedade gestora de participacoes sociais (SGPS)</i> (Holding companies which are either controlled by a family group or fully owned by five</li> </ul> | <p>Civil law partnerships not incorporated in a commercial form, incorporated firms engaged in listed professional activities, ACE (type of incorporated joint venture), EEIGs and companies holding assets which are either controlled by a family group or fully owned by five members or less are fiscally transparent.</p> <p>Other incorporated partnerships are treated as companies and taxed under the general IRC rules.</p> |

|                 |   |  |
|-----------------|---|--|
|                 | <p>members or less)</p> <ul style="list-style-type: none"> <li>- <i>Herança jacente</i> (namely estate of a deceased person)</li> <li>- Unincorporated association</li> <li>- Offshore company operating in free-trade zones in Madeira or in Azores island of Santa Maria</li> <li>- 'Trust' or other similar legal arrangement</li> </ul> | <p>Offshore companies operating in free-trade zones in Madeira or in Azores island of Santa Maria are exempted from CIT and WHT on dividends, interest, royalties and similar payments made to the foreign parent.</p> <p>The only trusts admitted under Portuguese law are those set up under foreign law by legal persons in the International Business Centre of Madeira and trust assets constitute an autonomous part of the patrimony of the legal person acting as trustee.</p> |
| Romania         | <ul style="list-style-type: none"> <li>- Association (partnership)</li> <li>- <i>Cooperativa</i> (Cooperative)</li> <li>- 'Trust' or other similar legal arrangement</li> </ul>   |  |
| Slovenia        | <ul style="list-style-type: none"> <li>- <i>Samostojni podjetnik</i> (Proprietorship)</li> <li>- 'Trust' or other similar legal arrangement</li> </ul>  |  |
| Slovak Republic | <ul style="list-style-type: none"> <li>- <i>Verejná obchodná spoločnosť</i> (General partnership)</li> <li>- <i>Európske združenie hospodárskych záujmov</i> (European Economic interest grouping (EEIG))</li> <li>- <i>Komanditná spoločnosť</i> (Limited partnership) re income attributed to a general partner</li> </ul>                | <p>The taxable base is first computed for the limited partnership as a whole and then allocated to the general partners and limited partners. The profit shares received by the general</p>  |

|         |   |  |
|---------|---|--|
|         | <p>- <i>Združenie</i> (Association)</p> <p>- Entities that are not set up for the purpose of conducting business: chambers of professionals, voluntary civic associations, <i>Nadácia</i> (foundations)</p> <p>- ‘Trust’ or other similar legal arrangement</p>   | <p>partners of a limited partnership are taxed at the level of general partners. The remainder income of the limited partners is taxed initially at partnership level according to the rules for companies.</p> <p>Tax-exempt income includes income derived from activities that are the purpose of the establishment of the organisation, except income subject to the WHT regime.</p> |
| Finland | <p>- <i>yksityisliike</i> (Unregistered firm)</p> <p>- <i>avoin yhtiö / öppet bolag</i> (Partnership)</p> <p>- <i>kommandiittiyhtiö / kommanditbolag</i> (Limited partnership)</p> <p>- <i>kuolinpesä / dödsbo</i> (Estate of a deceased person)</p> <p>- <i>eurooppalaisesta taloudellisesta etuyhtymästä (ETEY) / europeiska ekonomiska intressegrupperingar</i> (European Economic interest grouping (EEIG))</p> <p>- ‘Trust’ or other similar legal arrangement</p> |  |



|        |  |  |
|--------|--|--|
| Sweden | <ul style="list-style-type: none"> <li>- <i>handelsbolag</i> (General partnership)</li> <li>- <i>kommanditbolag</i> (Limited partnership)</li> <li>- <i>enkelt bolag</i> (Simple partnership)</li> <li>- 'Trust' or other similar legal arrangement</li> </ul> |  |
| UK     | <ul style="list-style-type: none"> <li>- General partnership</li> <li>- Limited partnership</li> <li>- Limited liability partnership</li> <li>- EEIG</li> <li>- Investment club (where members are entitled to a specific share of assets)</li> </ul>          | General partnerships, limited partnerships; limited liability partnerships and EEIGs are transparent for tax purposes. |

(3) Annex V is added as follows:

**"ANNEX V**

List of items for statistical purposes to be yearly provided  
by Member States to the Commission

1. Economic items

1.1. Withholding tax:

For Austria, Belgium and Luxembourg (as long as they apply the transitional provisions set out in Chapter III), the total annual amount of tax revenue shared from the withholding tax, split by Member State of residence of the beneficial owners.

For Austria, Belgium and Luxembourg (as long as they apply the transitional provisions set out in Chapter III), the total annual amount of tax revenue shared with the other Member States from the withholding tax levied under Article 11(5).

Data on the total amounts collected from the withholding tax, split by Member State of residence of the beneficial owners, should also be sent to the national institution in charge of compiling balance of payments statistics.

1.2. Amount of interest payments/sales proceeds:

For the Member States exchanging information or having opted for the voluntary disclosure provision under Article 13, the amount of interest payments within their territory which is subject to exchange of information under Article 9, split by Member State or Dependant and Associated Territory of residence of the beneficial owners.

For the Member States exchanging information or having opted for the voluntary disclosure provision under Article 13, the amount of sales proceeds within their territory which is subject to exchange of information under Article 9, split by Member State or Dependant and Associated Territory of residence of the beneficial owners.

For Member States exchanging information or having opted for the voluntary disclosure mechanism, the amount of interest payments subject to exchange of information, split by type of interest payments according to the categories set out in Article 8(2).

The data related to the total amounts of interest payments and sales proceeds, split by Member State of residence of the beneficial owners, should be communicated also to the national institution in charge of the compilation of Balance of Payments statistics.

1.3. Beneficial owner:

For all Member States, the number of beneficial owners resident in other Member States and Dependent and Associated Territories, split by Member State or Dependant and Associated Territory of residence.

#### 1.4. Paying agents:

For all Member States, the number of paying agents (per sending Member State) involved in exchange of information or withholding tax for the purposes of the Directive.

#### 1.5. Paying agents upon receipt:

For all Member States, the number of paying agents upon receipt having received interest payments within the meaning of Article 6(4). This concerns both sending Member States, in which interest payments have been made to paying agents upon receipt whose effective place of management is in other Member States, **and** receiving Member States, who have such entities or legal arrangements on their territory.

### 2. Technical items

#### 2.1. Records:

For the Member States exchanging information or having opted for the voluntary disclosure provision of Article 13, the number of records sent and received. One record means one payment for one beneficial owner.

#### 2.2. Treated/corrected records:

Number and percentage of syntactically invalid records that can be processed;

Number and percentage of syntactically invalid records that cannot be processed;

Number and percentage of non-treated records;

Number and percentage of records corrected upon request;

Number and percentage of records corrected spontaneously;

Number and percentage of records treated successfully.

#### 3. Optional items:

3.1 - For the Member States, the amount of interest payments to entities or legal arrangements which is made subject to exchange of information under Article 4(2), split by Member State of the entity's place of effective management.

3.2 - For the Member States, the amount of sales proceeds to entities or legal arrangements which is made subject to exchange of information under Article 4(2) split by Member State of establishment of the entity.

3.3 - The respective shares of total annual tax collected from resident taxpayers on interest payments made to them by domestic paying agents and by foreign paying agents. "