



European Commission /
Taxation and Customs Union

Report from the Commission to the Council

**in accordance with Article 18 of Council Directive
2003/48 on taxation of savings**

Brussels, 15 September 2008



The Directive and the first report

- Council Directive 2003/48 of 3 June 2003 has been applied since 1 July 2005. Through automatic exchange of information, the Directive enables Member States to apply their own existing taxation rules to interest payments which their residents receive from paying agents in other Member States. During a transitional period, Belgium, Luxembourg and Austria are not required to apply the automatic exchange of information but have to levy a withholding tax at a progressively increasing rate (currently 20%, it will be 35% in 2011). Most of the revenue of this tax is transferred to the State of residence of the investor.
- Art. 18 of the Directive states that "The Commission shall report to the Council every three years on the operation of this Directive. On the basis of these reports the Commission shall, where appropriate, propose to the Council any amendments to the Directive that prove necessary in order better to ensure effective taxation of savings income and to remove undesirable distortions of competition."
- The ECOFIN Council of May requested the Commission to present the first report on the functioning of the Directive before end September 2008



Structure of the report adopted today

The report covers 3 main issues:

- Transposition and implementation of the Directive by Member States : no particular problem
- First evaluation (an accompanying Commission staff Working Document presents an economic evaluation of the effects of the Directive)
- Possible improvements arising from consultations undertaken with Member states and experts.



First economic evaluation of the Directive

- Report accompanied by Commission Staff Working Document that provides a 1st evaluation of economic effects of 2003 Directive.
- Evaluation based on available data: macroeconomic data, structure of savings, MS data on withholding taxes and information exchanged, evolution of bank deposits, etc.
- Evaluation shows a stable situation compared to period prior to the entry into force of the Directive:
 - No significant change in patterns of investment or structure of savings
 - No perceived abandonment of products covered



First economic evaluation of the Directive (II)

Table (2): Interest payments and sales proceeds reported by countries using information exchange*

EU Member States	2nd half 2005	2006
Cyprus	n.a.	n.a.
Czech Republic	n.a.	17.81
Germany	660.73	1392.06
Denmark	n.a.	1.16
Estonia	n.a.	4.40
Spain	n.a.	n.a.
Finland	n.a.	7.19
France	568.14	1512.54
Greece	6.85	23.11
Hungary	n.a.	n.a.
Ireland	258.87	770.72
Italy	n.a.	n.a.
Lithuania	n.a.	0.09
Latvia	0.18	0.65
Malta	1.02	2.10
Netherlands	n.a.	795.69
Poland	0.07	0.61
Portugal	n.a.	0.56
Sweden	n.a.	n.a.
Slovenia	n.a.	1.35
Slovakia	1.87	4.76
United Kingdom	9132.49	n.a.
Dependent and Associated Territories		
Anguilla	n.a.	n.a.
Aruba	0.01	0.09
Cayman Islands	8.81	18.02
Montserrat	n.a.	n.a.

in million Euro

*Amount of interest payments and sales proceeds under Art. 9 subject to exchange of information/ voluntary disclosure, (Beneficial owners and residual entities)



First economic evaluation of the Directive (III)

Table (4): Tax revenue shared by countries with withholding tax regime

EU Member States	2nd half 2005	2006
Austria	9.48	44.32
Belgium	7.51	25.92
Luxembourg	35.90	124.59
Third Countries		
Andorra	3.50	12.77
Liechtenstein	1.94	7.08
Monaco	3.75	11.70
San Marino	1.13	7.47
Switzerland	77.23	255.92
Dependent and Associated Territories		
British Virgin Islands	0.00	n.a.
Turks and Caicos	0.01	0.02
Guernsey	4.93	16.83
Jersey	13.26	32.15
Isle of Man	13.26	20.35
Netherlands Antilles	n.a.	n.a.

in million Euro



Possible improvements

Analysis shows that the Directive has proven effective within the limits set by its scope.

The evaluation made with Member States and EU operators nevertheless reveals the need for certain amendments in order to close possible loopholes and to limit the administrative burden on paying agents, in relation to:

- Beneficial ownership
- Definition of paying agent
- Treatment of financial instruments equivalent to those explicitly covered
- Procedural aspects



1. Beneficial ownership and payments to entities and arrangements established outside the EU

- **Problem:** the Directive deals only with interest payments made for the immediate profit of individuals resident in the EU. These individuals have opportunities to circumvent the Directive by using an interposed legal person or arrangement situated in a non-EU country which doesn't tax it.

- **Solution suggested :**
 - Asking paying agents to use, in selected cases, the information already available to them under the anti-money laundering provisions about the actual beneficial owner(s) of a payment made to a legal person or an arrangement (Look-through approach, customer due diligence measures).

 - This look-through approach could be limited to payments to selected types of entities and arrangements established in low-tax jurisdictions outside the EU.



2. Definition of paying agent inside the EU

- **Problem:** under the Directive, as an anti-avoidance measure, some entities are obliged to apply the directive when they receive an interest payment, by acting as paying agent. This concept of “paying agent upon receipt” seems to have generated uncertainty. It has not produced all the results expected by Member States.
- **Solution suggested :**
 - To pass to an approach based on a “positive” definition of the intermediate structures (including trusts, transparent entities...) to be charged with obligations to act as a “paying agent upon receipt”. This “positive ” definition would be based on substantial elements rather than on their legal form. The Commission suggests a definition establishing a positive list of all entities and arrangements which are not taxed on their income under the general rules for taxation applicable in the MS in which the entity or arrangement is resident.



3. Income included in the scope (I)

- **Problem :**

at present, the Directive 2003/48/EC can be circumvented by rearranging one's financial affairs in such a way that income which is equivalent to interest from debt-claims remains outside the formal definition of interest payment.

- **Solutions suggested:**

Extending the scope of the 2003 Directive to income from

- securities which are equivalent to debt claims, because virtually all of the capital invested is protected at the end of the duration of the contract, and because the return on capital is defined at the issuing date;

- life insurance contracts whose performance are strictly linked to income from debt claims or equivalent income, when they provide for very low biometric risk coverage in relation to the capital insured.



3. Income included in the scope (II)

Other proposed refinements to the current definition of interest payment

- **Problem :**

- As regards investment funds established in the EU, Article 6 of Council Directive 2003/48/EC at present only covers income obtained through undertakings for collective investment in transferable securities authorised in accordance with Directive 85/611/EEC ("UCITS"),

- income obtained through the other EU investment funds ("non-UCITS") is taken into account only if these funds do not have legal personality

- **Solution suggested :**

- 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. The result would be the application of the same rules not only to all UCITS, but also to all non-UCITS (independently of their legal form).



4. Other proposed refinements

According to consultations with MS and operators, some other improvements to the Directive would be desirable for the sake of clarity and effectiveness. These improvements relate to :

- the identification of beneficial owners and the establishment of their residence;
- some procedural elements of the definition of interest payment (home country rule to facilitate the activity of paying agents (art 6));
- the information reporting by the paying agent (e.g. additional information on the features of payments to joint accounts);
- facilitating the access of beneficial owners to the exceptions to the withholding tax procedure (art 13).



4. Other proposed refinements ***Exceptions to withholding tax procedure (Art. 13)***

The Commission would suggest to the Council to examine if the procedure for exception to the withholding tax on the basis of a certificate submitted by the beneficial owner could be abolished. This procedure provides less detail to the State of residence of the beneficial owner and is less practical for the latter than the alternative procedure of voluntary disclosure and exchange of information.



Conclusion

- The first formal report on the Directive has now been prepared and adopted by the Commission.
- Analysis shows that the Directive has proven effective within the limits set by its scope.
- The evaluation made with Member States and EU operators nevertheless reveals the need for certain amendments, with a view to close possible loopholes whilst limiting the administrative burden on paying agents.
- On the basis of the report, the Commission services have started working on an amending Proposal to be submitted to the Council as soon as possible.



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http://europa.eu.int/comm/taxation_customs