

Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments (repealed)

COUNCIL DIRECTIVE 2003/48/EC

of 3 June 2003

on taxation of savings income in the form of interest payments (repealed)

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>(1)</sup>,

Having regard to the opinion of the European Parliament<sup>(2)</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>(3)</sup>,

Whereas:

- (1) Articles 56 to 60 of the Treaty guarantee the free movement of capital.
- (2) Savings income in the form of interest payments from debt claims constitutes taxable income for residents of all Member States.
- (3) By virtue of Article 58(1) of the Treaty Member States have the right to apply the relevant provisions of their tax law which distinguish between taxpayers who are not in the same situation with regard to their place of residence or with regard to the place where their capital is invested, and to take all requisite measures to prevent infringements of national law and regulations, in particular in the field of taxation.
- (4) In accordance with Article 58(3) of the Treaty, the provisions of Member States' tax law designed to counter abuse or fraud should not constitute a means of arbitrary discrimination or a disguised restriction on the free movement of capital and payments as established by Article 56 of the Treaty.
- (5) In the absence of any coordination of national tax systems for taxation of savings income in the form of interest payments, particularly as far as the treatment of interest received by non-residents is concerned, residents of Member States are currently often able to avoid any form of taxation in their Member State of residence on interest they receive in another Member State.
- (6) This situation is creating distortions in the capital movements between Member States, which are incompatible with the internal market.
- (7) This Directive builds on the consensus reached at the Santa Maria da Feira European Council of 19 and 20 June 2000 and the subsequent Ecofin Council meetings of 26 and 27 November 2000, 13 December 2001 and 21 January 2003.

- (8) The ultimate aim of this Directive is to enable savings income in the form of interest payments made in one Member State to beneficial owners who are individuals resident in another Member State to be made subject to effective taxation in accordance with the laws of the latter Member State.
- (9) The aim of this Directive can best be achieved by targeting interest payments made or secured by economic operators established in the Member States to or for the benefit of beneficial owners who are individuals resident in another Member State.
- (10) Since the objective of this Directive cannot be sufficiently achieved by the Member States, because of the lack of any coordination of national systems for the taxation of savings income, 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 confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.
- (11) The paying agent is the economic operator who pays interest to or secures the payment of interest for the immediate benefit of the beneficial owner.
- (12) In defining the notion of interest payment and the paying agent mechanism, reference should be made, where appropriate, to 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>(4)</sup>.
- (13) The scope of this Directive should be limited to taxation of savings income in the form of interest payments on debt claims, to the exclusion, *inter alia*, of the issues relating to the taxation of pension and insurance benefits.
- (14) The ultimate aim of bringing about effective taxation of interest payments in the beneficial owner's Member State of residence for tax purposes can be achieved through the exchange of information concerning interest payments between Member States.
- (15) Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct and indirect taxation<sup>(5)</sup> already provides a basis for Member States to exchange information for tax purposes on the income covered by this Directive. It should continue to apply to such exchanges of information in addition to this Directive insofar as this Directive does not derogate from it.
- (16) The automatic exchange of information between Member States concerning interest payments covered by this Directive makes possible the effective taxation of those payments in the beneficial owner's Member State of residence for tax purposes in accordance with the national laws of that State. It is therefore necessary to stipulate that Member States which exchange information pursuant to this Directive should not be permitted to rely on the limits to the exchange of information as set out in Article 8 of Directive 77/799/EEC.
- (17) In view of structural differences, Austria, Belgium and Luxembourg cannot apply the automatic exchange of information at the same time as the other Member States. During

a transitional period, given that a withholding tax can ensure a minimum level of effective taxation, especially at a rate increasing progressively to 35 %, these three Member States should apply a withholding tax to the savings income covered by this Directive.

- (18) In order to avoid differences in treatment, Austria, Belgium and Luxembourg should not be obliged to apply automatic exchange of information before the Swiss Confederation, the Principality of Andorra, the Principality of Liechtenstein, the Principality of Monaco and the Republic of San Marino ensure effective exchange of information on request concerning payments of interest.
- (19) Those Member States should transfer the greater part of their revenue of this withholding tax to the Member State of residence of the beneficial owner of the interest.
- (20) Those Member States should provide for a procedure allowing beneficial owners resident for tax purposes in other Member States to avoid the imposition of this withholding tax by authorising their paying agent to report the interest payments or by presenting a certificate issued by the competent authority of their Member State of residence for tax purposes.
- (21) The Member State of residence for tax purposes of the beneficial owner should ensure the elimination of any double taxation of the interest payments which might result from the imposition of this withholding tax in accordance with the procedures laid down in this Directive. It should do so by crediting this withholding tax up to the amount of tax due in its territory and by reimbursing to the beneficial owner any excess amount of tax withheld. It may, however, instead of applying this tax credit mechanism, grant a refund of the withholding tax.
- (22) In order to avoid market disruption, this Directive should, during the transitional period, not apply to interest payments on certain negotiable debt securities.
- (23) This Directive should not preclude Member States from levying other types of withholding tax than that referred to in this Directive on interest arising in their territories.
- (24) So long as the United States of America, Switzerland, Andorra, Liechtenstein, Monaco, San Marino and the relevant dependent or associated territories of the Member States do not all apply measures equivalent to, or the same as, those provided for by this Directive, capital flight towards these countries and territories could imperil the attainment of its objectives. Therefore, it is necessary for the Directive to apply from the same date as that on which all these countries and territories apply such measures.
- (25) The Commission should report every three years on the operation of this Directive and propose to the Council any amendments that prove necessary in order better to ensure effective taxation of savings income and to remove undesirable distortions of competition.
- (26) This Directive respects the fundamental rights and principles which are recognised, in particular, by the Charter of Fundamental Rights of the European Union,

HAS ADOPTED THIS DIRECTIVE:

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**Status:** This is the original version (as it was originally adopted).

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- (1) [OJ C 270 E, 25.9.2001, p. 259.](#)
- (2) [OJ C 47 E, 27.2.2003, p. 553.](#)
- (3) [OJ C 48, 21.2.2002, p. 55.](#)
- (4) [OJ L 375, 31.12.1985, p. 3.](#) Directive as last amended by Directive 2001/108/EC of the European Parliament and of the Council ([OJ L 41, 13.2.2002, p. 35](#)).
- (5) [OJ L 336, 27.12.1977, p. 15.](#) Directive as last amended by the 1994 Act of Accession.