

Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States

COUNCIL DIRECTIVE 2003/49/EC

of 3 June 2003

on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States

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) In a Single Market having the characteristics of a domestic market, transactions between companies of different Member States should not be subject to less favourable tax conditions than those applicable to the same transactions carried out between companies of the same Member State.
- (2) This requirement is not currently met as regards interest and royalty payments; national tax laws coupled, where applicable, with bilateral or multilateral agreements may not always ensure that double taxation is eliminated, and their application often entails burdensome administrative formalities and cash-flow problems for the companies concerned.
- (3) It is necessary to ensure that interest and royalty payments are subject to tax once in a Member State.
- (4) The abolition of taxation on interest and royalty payments in the Member State where they arise, whether collected by deduction at source or by assessment, is the most appropriate means of eliminating the aforementioned formalities and problems and of ensuring the equality of tax treatment as between national and cross-border transactions; it is particularly necessary to abolish such taxes in respect of such payments made between associated companies of different Member States as well as between permanent establishments of such companies.
- (5) The arrangements should only apply to the amount, if any, of interest or royalty payments which would have been agreed by the payer and the beneficial owner in the absence of a special relationship.

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- (6) It is moreover necessary not to preclude Member States from taking appropriate measures to combat fraud or abuse.
- (7) Greece and Portugal should, for budgetary reasons, be allowed a transitional period in order that they can gradually decrease the taxes, whether collected by deduction at source or by assessment, on interest and royalty payments, until they are able to apply the provisions of Article 1.
- (8) Spain, which has launched a plan for boosting the Spanish technological potential, for budgetary reasons should be allowed during a transitional period not to apply the provisions of Article 1 on royalty payments.
- (9) It is necessary for the Commission to report to the Council on the operation of the Directive three years after the date by which it must be transposed, in particular with a view to extending its coverage to other companies or undertakings and reviewing the scope of the definition of interest and royalties in pursuance of the necessary convergence of the provisions dealing with interest and royalties in national legislation and in bilateral or multilateral double-taxation treaties.
- (10) Since the objective of the proposed action, namely setting up a common system of taxation applicable to interest and royalty payments of associated companies of different Member States 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 that objective,

HAS ADOPTED THIS DIRECTIVE:

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- (1) [OJ C 123, 22.4.1998, p. 9.](#)
- (2) [OJ C 313, 12.10.1998, p. 151.](#)
- (3) [OJ C 284, 14.9.1998, p. 50.](#)