Council Directive (EU) 2015/2060 of 10 November 2015 repealing Directive 2003/48/EC on taxation of savings income in the form of interest payments

COUNCIL DIRECTIVE (EU) 2015/2060

of 10 November 2015

repealing 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 on the Functioning of the European Union, and in particular Article 115 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the European Economic and Social Committee,

Acting in accordance with a special legislative procedure,

Whereas:

(1) Building on the consensus reached at the European Council of 20 June 2000 that relevant information should be exchanged for tax purposes on as wide a basis as possible, Council Directive 2003/48/EC[(1)] has been applied in the Member States since 1 July 2005 with the aim of enabling 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, thus eliminating distortions in capital movements between Member States, which would be incompatible with the internal market.

(2) The worldwide aspect of the challenges posed by cross-border tax fraud and evasion is a major concern at a global level and within the Union. Unreported and untaxed income considerably reduces national tax revenues. On 22 May 2013, the European Council welcomed ongoing efforts made in the G8, G20 and the Organisation for Economic Cooperation and Development (OECD) to develop a global standard.

(3) Council Directive 2011/16/EU[(2)] provides for the mandatory automatic exchange of certain information between Member States. It also provides for the step-by-step extension of its scope into new categories of income and capital, for the purpose of combating cross-border tax fraud and evasion.

(4) On 9 December 2014, the Council adopted Directive 2014/107/EU[(3)] which amended Directive 2011/16/EU to extend the mandatory automatic exchange of information to a wider range of income in accordance with the Global Standard released by the OECD Council in July 2014 and ensured a coherent, consistent and comprehensive Union-wide

approach to the automatic exchange of financial account information in the internal market.

(5) Directive 2014/107/EU is generally broader in scope than Directive 2003/48/EC and provides that in cases of overlap of scope, Directive 2014/107/EU is to prevail. There are still residual cases in which only Directive 2003/48/EC applies. Those residual cases are the consequence of slight differences in approach between the two Directives and of different specific exemptions. In those limited instances, the application of Directive 2003/48/EC would result in dual reporting standards within the Union. The minor benefits of retaining such dual reporting would be outweighed by the costs.

(6) On 21 March 2014, the European Council invited the Council to ensure that relevant Union law is fully aligned with the new single Global Standard of automatic exchange of information developed by the OECD. In addition, when adopting Directive 2014/107/EU, the Council invited the Commission to present a proposal to repeal Directive 2003/48/EC and to coordinate the repeal of that Directive with the date of application set down in Directive 2014/107/EU, having regard to the derogation provided therein for Austria. Therefore, Directive 2003/48/EC should continue to apply to Austria for an additional one-year period. In the light of the position taken by the Council, the repeal of Directive 2003/48/EC is needed in order to avoid dual reporting obligations and to save costs both for tax authorities and economic operators.

(7) Under Council Directive 2014/48/EU[(4)], Member States are to adopt and publish, by 1 January 2016, the laws, regulations and administrative provisions necessary to comply with that Directive. Member States are to apply those provisions as of 1 January 2017. With the repeal of Directive 2003/48/EC, Directive 2014/48/EU would no longer have to be transposed.

(8) To ensure the seamless continuation of automatic reporting of financial account information, the repeal of Directive 2003/48/EC should apply on the same day as the date of application of the measures set down in Directive 2014/107/EU.

(9) Notwithstanding the repeal of Directive 2003/48/EC, information gathered by paying agents, economic operators and by Member States before the date of the repeal should be processed and transferred as originally envisaged, and obligations arising before that date should be met.

(10) In relation to withholding tax levied under the transitional period referred to in Directive 2003/48/EC, in order to protect the acquired rights of beneficial owners, Member States should continue to give credit or refunds as originally envisaged and should issue certificates on request to enable beneficial owners to ensure that withholding tax is not levied.

(11) Account should be taken of the fact that, in view of structural differences, Austria has been allowed a derogation under Directive 2014/107/EU which allows it to delay the application of that Directive by one year until 1 January 2017. However, on the adoption of Directive 2014/107/EU, Austria announced that it would not make full use of the derogation. Instead, Austria is to exchange information by September 2017, albeit on a limited set of accounts, while retaining the derogation in other cases. Therefore, specific

provision should be made to ensure that Austria, and the paying agents and economic operators established therein, continue to apply the provisions of Directive 2003/48/EC during the period of derogation, except for those accounts to which Directive 2014/107/EU applies.

(12) This Directive respects the fundamental rights and observes the principles which are recognised in particular by the Charter of Fundamental Rights of the European Union, including the right to the protection of personal data, and nothing in this Directive shall reduce or eliminate those rights.

(13) Since the objective of this Directive, namely the repeal of Directive 2003/48/EC with the temporary exceptions necessary to protect the acquired rights and to take account of the derogation allowed to Austria under Directive 2014/107/EU, cannot be sufficiently achieved by the Member States but can rather, by reason of the uniformity and effectiveness required, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. 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.

(14) Directive 2003/48/EC should therefore be repealed,

HAS ADOPTED THIS DIRECTIVE:

(**1**) Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments (OJ L 157, 26.6.2003, p. 38).

(**2**) Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ L 64, 11.3.2011, p. 1).

(**3**) Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (OJ L 359, 16.12.2014, p. 1).

(**4**) Council Directive 2014/48/EU of 24 March 2014 amending Directive 2003/48/EC on taxation of savings income in the form of interest payments (OJ L 111, 15.4.2014, p. 50).