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Enhancement of the EU Savings Directive Adoption by the Council

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Savings Taxation Directive (2003/48/EC of 03.06.2003) - aim

- *Ultimate **aim** of the Directive:*
  - *Ensure all MS have sufficient info to tax interest payments to their residents, in accordance with their rules, even if these payments are received abroad*
- *Does not prevent MS from applying withholding taxes to interest payments to non-residents if this is provided for under national law or double taxation treaties*

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Savings Taxation Directive-functioning

- *Paying agents report certain information to the tax authorities of their MS of establishment (Art. 8), followed by* ***automatic exchange of this information*** *between tax authorities (Art. 9)*
- ***Exception****: special withholding tax (now 35%) during transitional period in AT and LU (Art. 11). Originally valid also for BE, but since 1 January 2010, BE applies automatic exchange of info. LU committed to doing so from 1 January 2015*

Savings Taxation Directive – territorial scope

- *The Directive applies within the EU and is extended by:*

- *Bilateral agreements between individual MSs and the UK's and NL's dependent or associated territories;*
- *EU agreements providing equivalent measures with 5 European third countries (Switzerland, Liechtenstein, Andorra, San Marino and Monaco)*

2008 Review and Amending Proposal

- *Need for certain amendments in order to close loopholes:*

- Beneficial ownership

- Paying agent mechanism

- Financial instruments equivalent to debt claims

- *Amending Proposal presented by COM on 13.11.2008*

Beneficial ownership and payments to entities/arrangements outside the EU

Problem: *Individuals can circumvent the Directive by using an interposed legal person (e.g. foundation) or arrangement (e.g. trust) situated in a non-EU country which does not tax it*

Solution: *Look-through approach based on 'customer due diligence' carried out for other purposes:*

- *EU paying agents to use the information available to them under the anti-money laundering provisions about the actual beneficial owner(s);*
- *Indicative list of certain types of entities and arrangements (Annex I) established or managed in jurisdictions outside the EU which do not apply effective taxation*

Definition of paying agent inside the EU

Problem: *Individuals can also, under certain conditions, circumvent the Directive by using an interposed legal person (e.g. foundation) or arrangement (e.g. trust) situated in an EU Member State*

Solution:

- *Clearer definition of the structures (including trusts, transparent entities…) which have to apply the Directive (i.e. act as "paying agent upon receipt" of the income) in cases where upstream economic operators can't identify beneficial owners;*
- *Indicative list of entities/arrangements that may be concerned when situated and effectively managed in Member States (Annex III);*
- *Obligation for paying agents upon receipt, in cases where there is no immediately identifiable beneficial owner (e.g. discretionary trusts), to apply the Directive at a later stage, whenever the identification of the beneficial owner(s) becomes possible*

Definition of savings income

Problem: *The Directive can be circumvented by using financial products that have similar characteristics to debt claims, but are not legally classified as such*

Solution: *Extending the scope to income from similar products:*

- *Securities which are equivalent to debt claims, because virtually all (95%) of the capital invested is protected, or because the conditions of return on capital, as defined at the issuing date, provide for a link of at least 95% to income otherwise covered by the Directive;*
- *Life insurance contracts including a guarantee of income return or whose performance is for more than 25% linked to income from debt claims or equivalent income covered by the Savings Directive (unless they are long-term pension-like products)*

Level playing field for investment funds

Problem:

- The Directive directly covers only relevant income obtained through undertakings for collective investment in transferable securities authorised in accordance with Directive 85/611/EEC ("UCITS");

- Income through other EU investment funds ("non-UCITS") is mostly not taken into account

Solution:

- *Inclusion in the scope of relevant income distributed/capitalised by all CIVs, regardless of legal form and technical qualification;*
- *Relevant income from all non-EU investment funds is also covered*

2011 Review – main findings

- *Widespread use of offshore jurisdictions for intermediary entities;*

- *Growth in key markets that provide products comparable to debt claims;*

- *Both findings supported the need for urgent adoption of the proposed amendments*

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Latest developments

- **14 May 2013**: ECOFIN Council authorised COM to start negotiations with the 5 third countries (CH, LI, AR, SM and MC) to revise existing Savings agreements, in line with developments at EU and international level
- **20 December 2013:** European Council concluded that revised Savings Directive will be adopted by March 2014
- **11 March 2014:** Given that assessment of conditions for the adoption of the revised Savings Directive was to be on the agenda of 20 March European Council, COM presented at ECOFIN Council (encouraging) report on progress in negotiations with the 5 third countries

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State of play negotiations with third countries

- CH, LI, AR, SM and MC authorities have all obtained a formal mandate to negotiate with EU
- By end February, two rounds of formal negotiations and a number of other technical meetings had taken place with each of the five third countries
- All five third countries appreciate the benefits of working towards alignment with the EU. This would be based on the widest automatic exchange of information, which we envisage for ourselves, in line with the OECD Global Standard
- COM's aim is to reach agreement with all five third countries and present the text of these agreements to the Council before the end of the year

International developments
FATCA

- *FATCA (Foreign Account Tax Compliance Act) - enacted in 2010 by US Congress to target non-compliance by U.S. taxpayers using foreign accounts.*

- *FATCA as originally designed would have required foreign financial institutions (FFIs) to report directly, and automatically, to the IRS information on accounts held by their US clients.*

- *Due to objections both from FFIs and from foreign tax administrations, notably in EU Member States, the US Treasury has developed 2 Model Agreements ("IGAs") for implementing FATCA instead through government-to-government automatic information exchange.*

- *US Treasury engaged in negotiations with several jurisdictions around the world to sign FATCA – 24 IGAs already signed (including with 11 EU MSs).*

From FATCA to Global Standard

- *FATCA agreements have led to calls from tax administrations around the world for automatic information exchange on financial account information (AEOI) to be applied between all countries and not just bilaterally with the US – **"G5" initiative***
- ***18-19 April 2013**: G20 Finance Ministers in Washington asked the OECD to develop a global standard based on AEOI*
- ***12 June 2013:** COM adopted legislative proposal to further enhance AEOI in the EU, in line with international developments*
- ***17 January 2014:** OECD Committee on Fiscal Affairs (CFA) approved the core elements of a Global Standard for AEOI, consisting of a Model Competent Authority Agreement (MCAA) & Common Due-Diligence and Reporting Standards (CRS) (published 13 February)*
- ***22-23 February 2014:** G20 Finance Ministers in Sydney endorsed the MCAA & CRS*

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Global Standard – next international steps

- *May 2014: OECD Ministerial*
- *June 2014: OECD Committee on Fiscal Affairs (CFA)*
  - *Approval of Commentary on MCAA & CRS + technical IT arrangements for exchanging information*
- *Summer 2014: OECD Council - Formal adoption of Global Standard*
- *September 2014: G20 Finance Ministers - Endorsement of Global Standard*
- *End 2015: G20 members expect to begin to exchange information automatically among themselves*
- *OECD Global Forum to monitor/review implementation of standard by jurisdictions*
- *44 jurisdictions have already committed to be "early adopters" of the Standard*

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Next steps within EU

- National rules for transposing revised Savings Directive to be adopted by MSs by **January 2016**
- By that time, consistency with the OECD Global Standard will be ensured
- Practical implementation from **2017**
- Commission proposal of 12 June 2013 expanding the existing Directive on Administrative Cooperation is under discussion in Council – aim is to incorporate global standard and apply in accordance with international timetable

Automatic exchange of information

	Instrument	Status	Next step
EU	Dir Admin Coop (DAC)	Adopted	In force 01/2015
EU	Revised DAC	In Council	To be adopted
EU	Revised Savings Dir	Adopted Today	In force 2017
EU	Savings Agreements	Mandate given	Negotiations ongoing
Global	Global Standard for AEOI	Discussion OECD	G20 09/2014