



Brussels, 29 June 2007

**Reply to the European Commission's questionnaire  
on the review of the operation of the Council Directive  
2003/48/EC on taxation of income from savings**

**Preliminary remarks**

As life insurances are not saving products, even if there are elements of savings in most insurance, it is appropriate to make some remarks about the nature of insurances:

Insurances are highly formalized contracts, following the insurance directives, and not financial instruments, even if there are some similarities. Insurances are divided into two groups – life and non-life insurances – which in turn are divided into insurance classes.

One of those classes (unit-linked) puts the investment risk with the customer, but the policyholder never owns the capital invested, no matter the type of insurance.

To protect the customer's rights, there are, among other things, a set of rules defining the capital needs of the insurer (the solvency regime).

In the ongoing work on the Solvency II Project it is made clear that the capital needs should be set in a risk-based manner, i.e. the capital needed is depending on the actual insurance risk held by the insurer. Any definition in the directive regarding which contracts to be included (see Q 18) has to be in accordance with that position.

In unit linked insurance, the insurer invests the premium in assets selected by the customer. (In some jurisdictions these assets have to be put into UCITS but in other jurisdictions the customer is given the possibility to chose non-UCITS type of mutual funds.)

The policyholder's rights follow the value of the assets linked to his or her contract. The insurance company collects fees for operating expenses in the same manner as in other insurance. Death benefits are paid as additional fund units and likewise premiums for death cover are deducted as fund units.

An adequate insurance practice requires that the insurance company identifies the natural or legal person entering into the insurance contract (even on top of the obligation of the AMLD). An insurer needs to identify its customers, as an adequate insurance practice requires that the insurance company knows the customer and his/her financial situation or his/her business and its extent, in order to manage the risk taken by the insurer. This should be done when the insurance is taken out. If the person cannot be identified reliably, the insurance company shall not grant insurance.

(Insurers that lack good client due diligence will “suffer” according to the Solvency II rules, as the capital needed should reflect the real risks of the company including management risks and operational risks.)

When taxed the amount paid from an insurance often is treated as income of labour, not capital.

## **Responses to the questionnaire**

Q1: For interest payments made to legal entities, located in or outside the EU, would it be possible to refer, where appropriate, to the individual beneficial ownership as established for the purposes of the Third anti-money laundering Directive (“AMLD”), for establishing beneficial ownership also for the purposes of the savings directive?

The purpose of the Savings tax directive is to ensure that the resident’s member state is able to tax capital income, i.e. to prohibit tax avoidance and tax fraud, and the purpose of the Anti-money laundering directive (AMLD) is, as the name says, to prevent that capital earned by criminal activities (organized or not) is allowed to enter the normal economy or, in other words, to stop black money from becoming white. These two directives are accordingly very close as they both deal with black money.

It is also practical and more cost effective to make one and the same test for anti-money laundering and taxation purposes. We are in favour of such a solution. (This may be more true for the insurance industry than for the banking sector as the insurance companies for the time being are not included in the Savings Tax Directive, see also A17 and A18.) Furthermore, money laundering and tax avoidance (tax fraud) often are connected.

Where the administrators/paying agents are required to comply with the provisions of the AMLD then references to the AMLD for beneficial ownership purposes would be possible. Where, however, paying agents are not subject otherwise to the AMLD, this may represent a significant additional compliance burden.

Therefore, we would welcome any proposal, which would leave it up to Member States to decide whether one, or two different yet adjacent systems are necessary. This opinion is in line with the result orientation of a directive. It would also be in line with the Better Regulation initiative not to add unnecessary burdens to the insurance sector.

Q2: Would it be wise or practicable to make the above procedure conditional on the absence of any evidence (to be provided e.g., before the end of the fiscal year of the interest payment) that the legal entity is subject to yearly taxation on its income (including interest income) in its country of establishment under the local general arrangements for taxation of such kind of legal entities?

For practical reasons the customer due diligence must take place only when the contract is initiated and not yearly, as the latter would be a too heavy burden on the insurer/financial institute. The customer due diligence could

however include that the client should prove that the intermediate legal entity (the policyholder) is actually subject to taxation. This is already an obligation under AMLD especially when additional premiums are paid or for other reasons. If these requirements are amended, it would place additional burdens on administrators/paying agents to obtain and retain evidence in respect of legal entities who may be acting as distributors (as opposed to investors).

However, the possibility, proving that the legal entity is subject to yearly taxation on its income (including interest income), should also be open for the customer during the time of the contract, i.e. if the intermediate legal entity becomes subject for taxation at a later time; this should not be ignored.

In all the above, the materiality principle should continue to be respected as is the case today under the AMLD.

A3: No comment. We are not familiar with discretionary trust or other similar legal arrangements.

A4: Yes, see A1.

A5: To determine where a natural person has his fiscal residence is a more complex matter than establishing whether this person is “clean” according to the money laundry directive. That burden could not be put on the financial institute. Most practical is that this burden is put on the member states and the customers by some kind of certificate showing where the natural person and the intermediate legal entity have the fiscal residence and whether they are subject to taxation.

A6: Yes, that will ease the burdens of the financial institute. However we take for granted that the member states in their tax regimes offers the possibility to use the actual distribution made.

A7: See A5.

A8: See A5.

A9: No comment. We have no experience of the Savings Tax Directive.

A10 and A11: We have no experience of the Savings Tax Directive and can consequently only give a general answer. It would be practical to have a list to follow and a “positive” list is the easiest to use. See also A5.

A12: No comment. We have no experience of the Savings Tax Directive.

A13: No comment. We are not familiar with discretionary trust or other similar legal arrangements.

A14 and 15: No comment. We have no experience of the Savings Tax Directive.

A16: No comment, see also A17.

Question 17: Does the current exclusion from the scope of the Savings Tax Directive of all benefits from pensions and insurance contracts lead to distortions in financial markets? To what extent is the competition between UCITS and life-insurance driven by the Savings Tax Directive and not by other economic, commercial, legal or tax factors? How many individuals with an account in another Member State do put their savings in life insurance contracts rather than in UCITS just to avoid the Savings Tax Directive obligations? Which amount of assets under management does this represent in the EU?

We agree with CEA that there are material differences between life insurance and other savings products (see CEA reply on 8 May, annex 1 to MU7087).

We would like to add the following:

The savings tax directive purpose is to enable savings income in the form of an interest payment made in one Member State to individuals resident in another Member State to be made subject to effective taxation in accordance with rules of country of residence.

In order to answer the first question of Q17 positively or negatively, we first would need to know the answer to sub question 3.

This question refers to individuals with a savings account in another MS buying life insurance in that other Member State and closing their savings account because of the reporting obligation installed in the STD.

In order to be able to answer this question, we would need to understand

- the amount of life insurance sold cross-border
  - the amount of which is retail life insurance sold cross-border,
    - the amount of which is unit-linked life insurance sold cross-border,
      - the amount of which is unit-linked life insurance where the assets are uniquely invested in one or more UCITS
        - of which contracts concluded to avoid the obligations of the savings tax directive.

We do not have this data. Our hypothesis is that this is not material. Certainly, there is life insurance sold cross-border but even that amount is negligible in the whole European market. This implies that the subset of this amount, which might have been representing life insurance bought au lieu of savings accounts, is not material.

As a consequence, we cannot conclude that the competition is distorted because of the savings tax directive, as it is not driven by the STD. There are other factors, which are more important levers.

Q18: Depending on your reply to the different elements of question 17, would it be desirable to amend the Savings Directive in order to include in its scope part or all of the benefits from revocable life-insurance, pension or annuity products when the underlying prevailing investment is directly or indirectly made of interest generating financial products?

We do not advocate an amendment of the Savings Tax Directive but realize that some may want such an amendment.

If an extension is considered, it is of utmost importance that such a change does not lead to a weakening of the protection given by life insurance contracts and pension products. This is especially important given the greying of the population and the increased role pension insurance products will play.

We also want to stress that the fact that a life insurance contract is revocable is neither sufficient nor necessary to conclude that such a contract should be treated as a savings product.

If the Savings Tax Directive were extended, the text should clearly define which contracts would be included and how the payments should be classified, as they are not equivalent to interest payments.

A19, 20 and 21: No comment, see also A17.

A22 – 26: No comment. We have no experience of the Savings Directive, see also A18.

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