



European Commission /  
Taxation and Customs Union

**Commission Staff Working Document SEC (2008) 559  
on refining the present coverage of Council Directive  
2003/48/EC on taxation of income from savings**

Brussels, 13 May 2008



## ***Background (I)***

- March ECOFIN Council requested Commissioner Kovács to report informally on the functioning of the Taxation of Savings Directive at the May ECOFIN
- The Commission services have prepared a Commission staff working document (SEC (2008) 559 = Council document 8985/08 FISC 47) to facilitate the discussions
- The document is to be seen as an interim step towards the formal report under Article 18 of the Directive



## ***Background (II)***

- The document highlights identified loopholes and examines possible solutions
- The document does not carry out an evaluation of the Directive that will be made after statistical data will be provided by Member States
- The document is intended to raise a number of issues of a policy/political nature on which it would be important to collect the views of the ministers in order to prepare the report under Article 18 of the Directive



## ***Challenges and constraints***

- Challenge: To ensure consistent treatment for comparable situations in view of the aim of the Directive
- Constraints:
  - Lisbon Strategy and better regulation initiatives which involve reducing administrative burdens on and unnecessary costs for businesses
  - Time (planned increase in the rate of the transitional withholding tax)
  - Limited territorial coverage



## ***Problems identified and possible solutions (I)***

There is anecdotal evidence that the Directive can be circumvented by EU resident individual investors by:

— making use of **intermediate investment vehicles** leaving them outside the current definition of beneficial owner and/or

—selecting for their **portfolio** financial/investment products which, whilst being substantially equivalent to interest generating products, do not fall within the scope of the Directive, such as, for instance, products whose income remains outside the definition of interest payment



## ***Problems identified and possible solutions (II)***

The analysis of the Commission focuses on the 3 main elements of the Directive:

- Definition of beneficial owner (individuals vs legal entities)
- Definition and obligations of the paying agent
- Definition of income covered



## ***Definition of beneficial owner (individuals vs legal entities)***

- Extension of the Directive to all legal persons, entities and arrangements (companies, foundations, trusts, ...)?
- Identification of beneficiaries by applying Anti-money Laundering Provisions (Look-through approach) ?
- Limiting this look-through approach to payments to entities and arrangements established outside the EU, when beneficial owner is a EU resident individual?



## ***Definition and obligations of the paying agent***

- Transparent entities and arrangements (partnerships, ...) and the « paying agent on receipt » provision: positive list ?
- Non-transparent entities (private foundations, ...), discretionary trusts and other similar arrangements
  - Positive list ?
  - Possible extension of « paying agent on receipt » provisions ?
  - Alternatively, paying agent when income is distributed ?



## ***Definition of income covered***

Should the Directive cover the following type of income?:

- All financial products that are equivalent to debt claims in terms of risk, flexibility and agreed return on investment (“substance over form” principle)?;
  - Non-UCITS?;
  - Other different types of investment income: dividends, capital gains and “out payments” from life insurance contracts and pension schemes, notably where the mortality or longevity risk covered is not merely ancillary?;
- Appropriate legal instrument: Savings Directive or Mutual Assistance Directive ?



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