

Taxation of savings income in the form of interest payments

2008/0215(CNS) - 24/04/2009 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 351 votes to 27 with 20 abstentions a legislative resolution amending, under the consultation procedure, the proposal for a Council directive amending Directive 2003/48/EC on taxation of savings income in the form of interest payments.

The main amendments are as follows:

Aim: the amended text states that the Directive aims to:

- enable savings income in the form of interest payments made in one Member State to beneficial owners who are individuals resident for tax purposes in another Member State to be made subject to effective taxation in accordance with the laws of the latter Member State;
- ensure a minimum of effective taxation of savings income in the form of interest payments made in one Member State to beneficial owners who are individuals resident for tax purposes in another Member State.

The purpose of the Directive is redefined in the light of the option given to Member States to choose the exchange of information or withholding tax for the payment of interest.

Both economic operators and paying agents have obligations under the Directive.

Definition of beneficial owner: this is slightly amended in the new text.

Definition of interest payment: the general principle under this Directive is that "interest payment" means any revenue arising from the investment of capital where the return is fixed ex ante and the substance of the return arising from a transaction is similar to any interest income. In order to ensure a consistent interpretation of this provision throughout the Member States, it shall be complemented by a list of the financial products concerned. The Commission shall adopt this list in accordance with the regulatory procedure.

Further amendments are made to the provision on interest payment, particularly with regard to insurance contracts structured products and dividends.

Transitional periods: the transition period shall end no later than **1 July 2014** or at the end of the first full fiscal year following the later of the dates given below, provided that this is earlier than 1 July 2014:

- the date of entry into force of the latest agreement between the EC, following a unanimous decision of the Council, and Switzerland, Liechtenstein, San Marino, Monaco and Andorra, providing for the exchange of information upon request as defined in the OECD Model Agreement' with respect to interest payments, as defined in this Directive, made by paying agents established within their respective territories to beneficial owners resident in the territory to which the Directive applies, in addition to the simultaneous application by those same countries of a withholding tax on such payments;
- the date on which the Council agrees by unanimity that the United States of America is committed to exchange of information upon request as defined in the OECD Model Agreement with respect to interest payments, as defined in this Directive;

- the date on which the Council agrees by unanimity that Hong Kong, Singapore and other countries and territories listed under Annex I are committed to exchanging information upon request as defined in the OECD Model Agreement with respect to interest payments, as above.

Parliament also noted that so long as Hong Kong, Singapore and other countries and territories listed in Annex I do not all apply measures identical or equivalent to those provided for in this Directive, capital flight towards those countries and territories could imperil the attainment of the objectives of the Directive. It is therefore necessary for the Community to take appropriate action in order to ensure that an agreement is reached with those countries and territories under which they will apply such measures

Revenue sharing: Member States levying withholding tax shall retain 10% of their revenue and transfer 90% of the revenue to the Member State of residence of the beneficial owner of the interest.

Review: by 31st of December 2010, the Commission shall present a comparative study analysing advantages and weaknesses of both the systems of exchange of information and of the withholding tax so as to assess the objective of effective suppression of fiscal fraud and evasion. That comparative study should take into consideration, in particular, aspects of transparency, respect of fiscal sovereignty of the Member States, fiscal justice and administrative burden attached to any of the two systems.

The Commission shall examine, in particular, the appropriateness of extending the scope to all sources of financial income, including dividends and capital gains, as well as to payments made to all legal persons

Annex I: Parliament extended both the list of jurisdictions concerned as well as that of the legal entities and arrangements. Annex I contains the list of legal forms of entities and legal arrangements to which Article 2(3) applies because of the presence within the territory of specific countries or jurisdictions of their place of effective management.