

Common system of taxation applicable to interest and royalty payments made between associated companies of different Member States. Tax package

1998/0087(CNS) - 03/06/2003 - Final act

PUTPOSE : to ensure effective taxation of savings income in the form of interest payments within the Community. **COMMUNITY MEASURE** : Council Directive 2003/48/EC on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States. **CONTENT** : the Council adopted this Directive on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States. The Decision stipulates that interest or royalty payments arising in a Member State shall be exempt from any taxes imposed on those payments in that State, whether by deduction at source or by assessment, provided that the beneficial owner of the interest or royalties is a company of another Member State or a permanent establishment situated in another Member State of a company of a Member State. A payment made by a company of a Member State or by a permanent establishment situated in another Member State shall be deemed to arise in that Member State, hereafter referred to as the "source State". A permanent establishment shall be treated as the payer of interest or royalties only insofar as those payments represent a tax-deductible expense for the permanent establishment in the Member State in which it is situated. A company of a Member State shall be treated as the beneficial owner of interest or royalties only if it receives those payments for its own benefit and not as an intermediary, such as an agent, trustee or authorised signatory, for some other person. Concerning the exclusion of payments as interest or royalties, the Directive states that the source State shall not be obliged to ensure the benefits of this Directive in the following cases: a) payments which are treated as a distribution of profits or as a repayment of capital under the law of the source State; b) payments from debt-claims which carry a right to participate in the debtor's profits; c) payments from debt-claims which entitle the creditor to exchange his right to interest for a right to participate in the debtor's profits; d) payments from debt-claims which contain no provision for repayment of the principal amount or where the repayment is due more than 50 years after the date of issue. This Directive includes transitional rules for Greece, Spain and Portugal. Greece and Portugal shall be authorised not to apply the provisions until the date of application referred to in Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments. During a transitional period of 8 years starting on the aforementioned date, the rate of tax on payments of interest or royalties made to an associated company of another Member State or to a permanent establishment situated in another Member State of an associated company of a Member State must not exceed 10 % during the first four years and 5 % during the final four years. Spain shall be authorised, for royalty payments only, not to apply the provisions until the date of application referred to in Article 17(2) and (3) of Directive 2003/48/EC. During a transitional period of 6 years the rate of tax on payments of royalties made to an associated company of another Member State or to a permanent establishment situated in another Member State of an associated company of a Member State must not exceed 10 %. By 31 December 2006, the Commission shall report to the Council on the operation of this Directive, in particular with a view to extending its coverage to other companies or undertakings. Lastly, it is important to note that there is a delimitation clause included in this Directive, this Directive shall not affect the application of domestic or agreement-based provisions which go beyond the provisions of this Directive and are designed to eliminate or mitigate the double taxation of interest and royalties. **TRANSPOSITION** : 1 January 2004. **ENTRY INTO FORCE** : 26 June 2003.