

# European Union Savings Directive

## Summary notes on the text of the Directive

### Article 1 - aim

Article 1 states that the aim of the Directive is ensure individuals resident in the EU are taxed on their savings income in the form of interest payments in accordance with domestic law. Member States are required to take the necessary measures to implement the Directive.

### Article 2 - definition of beneficial owner

**Article 2(1)** defines the beneficial owner for the purposes of the Directive. **Article 2(2)** states that where a paying agent has information suggesting that the recipient of the interest payment may not be the beneficial owner, it should take reasonable steps to establish the identity of the true beneficial owner.

### Article 3 - identity and residence of beneficial owner

Article 3 provides the rules by which paying agents are to identify beneficial owners. Article 3(2) sets out the minimum requirements for establishing the identity of the beneficial owner. Different rules apply where the beneficial owner has a contractual relationship with the paying agent before 1 January 2004. Article 3(3) sets out the minimum requirements for establishing the residence of the beneficial owner. Again, different rules apply for individuals with contractual relationships existing before 1 January 2004.

### Article 4 - definition of paying agent

**Article 4(1)** defines the paying agent as the economic operator who actually pays the interest to, or secures the interest for, the beneficial owner. Article 4(2) identifies certain entities which are reportable under the Directive and sets out a simplified reporting procedure for them. If an economic operator believes, on the basis of official evidence presented by the entity, that it is reportable and the entity is established in another Member State, it must report details of the entity's name and address, plus the interest paid, to their tax authority. This information is then passed on to the tax authority where the entity is established. These reportable entities are deemed to be paying agents on receipt of interest payments. Article 4(3) allows these entities the option to be treated as UCITS (Undertaking for Collective Investment in Transferable Securities) for the purposes of the Directive. **Article 4(4)** requires Member States to provide rules to ensure that entities, deemed to be paying agents on receipt of interest, receiving payments from economic operators based in the same country also properly fulfil any obligations they may have as deemed paying agents. **Article 4(5)** provides that two types of Finnish and Swedish legal person are to be treated as deemed paying agents on receipt.

### Article 5 - definition of competent authority

Article 5 defines the competent authority for the purposes of this Directive. This definition is necessary for interpreting Article 3, 9, and 13.

## **Article 6 - definition of interest payment**

**Article 6(1)(a)-(d)** defines the four types of interest payment for the purposes of the Directive. **Article 6(2) and 6(3)** provide rules to help paying agents identify what amount to report if they do not have the detailed information to allow them to identify the precise amount of interest involved. Article 6(4) extends the definition of interest payment to include interest received by an entity that is considered to be a paying agent on receipt of the interest. Article 6(5) gives Member States the option of requiring paying agents in their territory to annualise the interest over annual periods, for the purposes of reporting. Article 6(6) gives Member States the possibility of excluding undertakings that invest predominantly in assets other than debt. Article 6(7) changes the debt-equity ratio used to define a reportable fund from 1 January 2011. **Article 6(8)** specifies how the debt-equity ratio is to be determined.

## **Article 7 - territorial scope**

Article 7 sets out the territorial scope of the Directive.

## **Exchange of Information**

### **Article 8 - information reporting**

**Article 8(1)** sets out the information the paying agent must report. **Article 8(2)** sets out the details to be reported by the paying agent concerning the different categories of interest payment.

### **Article 9 - exchange of information**

**Article 9(1)** sets out the procedures and **Article 9(2)** the timetable for the exchange of the reported information between competent authorities. Article 9(3) states that all the provisions (including the confidentiality provisions) of the Mutual Assistance Directive apply to the exchange of information under this Directive, except for Article 8 of the Mutual Assistance Directive which only allows the provision of information on a reciprocal basis.

## **Transitional arrangements**

### **Article 10 - transitional period**

**Article 10(1)** allows Belgium, Luxembourg and Austria a transitional period, during which they are not obliged to exchange information but are entitled to receive information from other Member States. **Article 10(2)** explains that the transitional period will end at the end of the first full fiscal year following the later of (a) the date of entry into force of appropriate agreements from certain third countries to exchange information as defined in the OECD Model Agreement on Exchange of Information on Tax Matters, and (b) the date on which the Council agrees that the USA is

committed to exchange of information as defined by the OECD Model. **Article 10(3)** states that at the end of the transitional period, Belgium, Luxembourg and Austria will be required to exchange information as set out in the Directive. It also states that any of the 3 countries may elect to exchange information, instead of withholding tax, during the transitional period.

## **Article 11 - withholding tax**

**Article 11(1)** states that during the transitional period, Belgium, Luxembourg and Austria will levy a withholding tax on interest payments, at a rate of 15% for the first 3 years of the transitional period, at 20% for the subsequent 3 years and at 35% thereafter. **Article 11(2)** sets out how the paying agent should levy this withholding tax. Article 11(3) ensures that the withholding tax is only levied on the amount of interest which corresponds to the beneficial owner's period of holding. **Article 11(4)** allows the Member State where the beneficial owner is resident fully to tax the income received by the beneficial owner in accordance with its domestic laws, even if a withholding tax has already been levied. Member States are obliged to eliminate any double taxation which might result from this. Article 11(5) allows Austria, Belgium and Luxembourg to levy a withholding tax on reportable entities, unless the entity has agreed to have information about it reported.

## **Article 12 - revenue sharing**

Article 12 states that 75% of the withholding tax levied must be transferred to the Member State of residence of the beneficial owner and the timetable for this transfer.

## **Article 13 - exceptions to withholding tax procedures**

**Article 13(1)** states that Belgium, Luxembourg and Austria must set up procedures to allow beneficial owners to opt not to pay a withholding tax either by authorising the paying agent to report information or by providing a tax certificate drawn up by their competent authority. **Article 13(2)** sets out what a valid certificate from the competent authority of the Member State of the beneficial owner should contain.

## **Article 14 - elimination of double taxation**

**Article 14(1)** imposes a general obligation on the Member States of residence of the beneficial owner to eliminate any double taxation which may result from the imposition of this withholding tax. **Article 14(2)** stipulates the method of eliminating this double taxation. Article 14(3) specifies the order of granting relief if, in addition to the withholding tax, the interest has been subject to other taxation. **Article 14(4)** allows Member States to refund the withholding tax rather than using a tax credit mechanism.

## **Article 15 - negotiable debt securities**

**Article 15(1)** provides that certain negotiable debt securities shall not be considered as debt-claims within the meaning of Article 6(1)(a) for the transitional period or until 31 December 2010, whichever is earlier. From this point the provisions of Article 15(1) are further restricted. There are

different rules for government, and government-related entity, bonds. **Article 15(2)** explains that the exemption does not prevent Member States from taxing the negotiable debt securities in accordance with domestic laws.

## **Miscellaneous & final provisions**

**Article 16** allows Member States to continue to levy other types of withholding tax in accordance with their domestic laws or double tax conventions.

### **Article 17**

**Article 17(1)** states that Member States should have in place the necessary legislation to comply with the Directive by 1 January 2004.

**Article 17(2)** states that the Directive will come into effect on 1 July 2005 provided that agreements are in place for certain third countries to apply equivalent measures from that same date and that agreements are in place for all the relevant dependent or associated territories to apply the same measures, also from that same date.

**Article 17(3)** states that the Council will decide at least 6 months before 1 January 2005 whether the conditions in Article 17(2) have been met, and will propose a new date if not.

**Article 17(4) and (5)** set out the mechanics for implementing the Directive.

**Article 18** provides for a review by the Commission of the operation of the Directive every three years.

**Article 19** states when the Directive will come into force.

**Article 20** addresses the Directive to the Member States.

Source: HMRC