



**COUNCIL OF  
THE EUROPEAN UNION**

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**NOTE**

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from: Presidency  
to: High Level Working Party (Taxation)  
Subject: Proposal for a Council Directive amending Directive 2003/48/EC on taxation of savings income in the form of interest payments

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1. Subsequent to an orientation debate in the ECOFIN Council on 15 February 2011 the Presidency intends to continue the work in the HLWP on 18 March 2011. **DELETED**.

**DELETED**

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Proposal for a  
**COUNCIL DIRECTIVE**

**amending Directive 2003/48/EC on taxation of savings income in the form of interest  
payments**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 115 thereof,

Having regard to the proposal from the Commission<sup>1</sup>,

Having regard to the opinion of the European Parliament<sup>2</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>3</sup>,

Whereas:

- (1) Council Directive 2003/48/EC<sup>4</sup> has been applied in the Member States since 1 July 2005 and has proven effective during its first three years of application, within the limits set by its scope. However, it appears from the first Commission report<sup>5</sup> on its application that it does not fully measure up to the ambitions expressed in the conclusions adopted unanimously by the Council in its meeting of 26 and 27 November 2000. In particular, certain financial instruments which are equivalent to interest-bearing securities and certain indirect means of holding interest-bearing securities are not covered.

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<sup>1</sup> OJ C XXX, XX.XX.2008, p.XX

<sup>2</sup> OJ C XXX, XX.XX.2008, p.XX

<sup>3</sup> OJ C XXX, XX.XX.2008, p.XX

<sup>4</sup> OJ L 157, 26.6.2003, p. 38.

<sup>5</sup> COM(2008) 552.

- (2) In order better to achieve the aim of Directive 2003/48/EC, it is necessary first to improve the quality of information used to establish the identity and residence of beneficial owners. Therefore the paying agent shall use both date and place of birth and the tax identification numbers or equivalent allocated by Member States, if any. The Directive does not impose an obligation on Member States to introduce tax identification numbers. Information with respect to joint accounts and other cases of shared beneficial ownership should also be improved.
- (3) Directive 2003/48/EC applies only to interest payments made for the immediate benefit of individuals resident in the European Union. These individuals may thus circumvent Directive 2003/48/EC by using an interposed entity or legal arrangement, especially one established in a jurisdiction where taxation of income paid to this entity or arrangement is not ensured. Having regard also to the anti-money laundering measures laid down in Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing<sup>6</sup>, it is therefore appropriate to require paying agents to apply a "look-through approach" to payments made to certain entities or legal arrangements established or having their place of effective management in certain countries or territories where the Directive or measures to the same or equivalent effect do not apply. They should use the information already available to them about the actual beneficial owner(s) of such entities or legal arrangements to ensure that the provisions of Directive 2003/48/EC are applied when the beneficial owner so identified is an individual resident in a Member State other than the one where the paying agent is established. In order to reduce the administrative burden on paying agents, an indicative list of entities and legal arrangements in third country jurisdictions concerned by this measure should be drawn up.

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<sup>6</sup> OJ L 309, 25.11.2005, p. 15.

- (4) Circumvention of Directive 2003/48/EC through artificial channelling of an interest payment via an economic operator established outside the European Union should also be avoided. It is therefore necessary to specify the responsibilities of economic operators when they are aware that an interest payment made to an operator established outside the territorial scope of Directive 2003/48/EC is made for the benefit of an individual, known by them to be a resident of another Member State and who can be considered to be their customer. In such circumstances, those economic operators should be considered to be acting as paying agents. This would also in particular help to prevent a possible misuse of the international network of financial institutions (branches, subsidiaries, associated or holding companies) to circumvent Directive 2003/48/EC.
- (5) Experience has shown that greater clarity is necessary regarding the obligation to act as a paying agent upon receipt of an interest payment. In particular, the intermediate structures which are subject to that obligation should be identified clearly. Entities and legal arrangements which are not subject to effective taxation should apply the provisions of Directive 2003/48/EC upon receipt by them of any interest payment from any upstream economic operator. An indicative list of such entities and legal arrangements in each Member State will facilitate the implementation of the new provisions.
- (6) It appears from the first report on the application of Directive 2003/48/EC that it may be circumvented by the use of financial instruments which, having regard to the level of risk, flexibility and agreed return, are equivalent to debt claims. It is therefore necessary to ensure that it covers not only interest but other substantially equivalent income.
- (7) Similarly, life insurance contracts containing a guarantee of income return or the performance of which is at more than 40% linked to income from debt claims or equivalent income covered by Directive 2003/48/EC should be included in the scope of this Directive.

- (8) As regards investment funds established in the European Union, Directive 2003/48/EC at present covers only income obtained through undertakings for collective investment in transferable securities authorised in accordance with Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)<sup>7</sup>. Equivalent income from non-UCITS falls within the scope of Directive 2003/48/EC only when non-UCITS are entities without legal personality and therefore act as paying agents on receipt of interest payments. In order to ensure the application of the same rules to all investment funds or schemes independently of their legal form, the reference in Directive 2003/48/EC to Directive 85/611/EEC should be replaced with a reference to their registration in accordance with the law of a Member State or their fund rules or instruments of incorporation being governed by the law of one of the Member States. Furthermore, equal treatment should be ensured taking into account the Treaty on the European Economic Area.
- (9) As regards investment funds not established in a Member State of the European Union or of the European Economic Area, it is necessary to make clear that the Directive encompasses interest and equivalent income from all those funds, irrespective of their legal form and of how they are placed with investors.
- (10) The definition of interest payment should be clarified to ensure that not only direct investments in debt claims but also indirect investments are taken into account in the calculation of the percentage of the assets invested in such instruments. Furthermore, in order to facilitate the application by paying agents of Directive 2003/48/EC to income arising from undertakings for collective investment established in other countries, it should be made clear that the calculation of the composition of the assets for the treatment of certain income of such undertakings is governed by the rules laid down in the Member State of the European Union or of the European Economic Area in which they are established.

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<sup>7</sup> OJ L 375, 31.12.1985, p. 3.

- (11) Both the "certificate" procedure allowing beneficial owners resident for tax purposes in one Member State to avoid the imposition of a withholding tax on interest payments received in another Member State listed in Article 10(1) of Directive 2003/48/EC and the alternative procedure of voluntary disclosure to the State of residence of the beneficial owner have merits. Nevertheless the procedure of voluntary disclosure is less burdensome for the beneficial owner and it is therefore appropriate to give the choice of procedure to the beneficial owners.
- (12) Member States should provide relevant statistics on the application of Directive 2003/48/EC in order to improve the quality of information held by the Commission for the preparation of the report on the application of that Directive that is presented to the Council every three years.
- (13) Since the measures necessary for the implementation of Directive 2003/48/EC are measures of general scope within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission,<sup>8</sup> they should be adopted by use of the regulatory procedure provided for in Article 5 of that Decision.
- (14) Since the objectives of this Directive cannot be sufficiently achieved by the Member States and can therefore be better achieved at the level of the European Union, the latter may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,
- (15) In accordance with point 34 of the Interinstitutional Agreement on better law-making, Member States are encouraged to draw up, for themselves and in the interest of the European Union, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.

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<sup>8</sup> OJ L 184, 17.7.1999, p. 23.

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

Directive 2003/48/EC is amended as follows:

(1) Article 1 is amended as follows:

(a) Paragraph 2 is replaced by the following:

“2. Member States shall take the necessary measures to ensure that the tasks necessary for the implementation of this Directive are carried out by paying agents and other economic operators established or, where relevant, having their place of effective management within their territory, irrespective of the place of establishment of the debtor of the claim, producing the interest payment.”

(2) The following Article 1a is inserted:

*“Article 1a*

**Definitions of certain terms**

For the purposes of this Directive:

(a) ‘economic operator’ shall mean a credit or financial institution, or any other legal or natural person, who on a regular basis or occasionally makes or secures an interest payment within the meaning of this Directive while acting in the exercise of its professional activity.

- (b) ‘place of effective management’ of an entity, with or without legal personality, shall mean the address where key management decisions are taken that are necessary for the conduct of the entity’s activity as a whole. Where key management decisions are taken in more than one country or jurisdiction, the place of effective management shall be considered to be at the address where most of the key management decisions are taken relating to the assets producing interest payments within the meaning of this Directive;
- (c) ‘place of effective management’ of a trust or other legal arrangement shall mean:
- (i) the permanent address of the natural person who has the principal responsibility for the key management decisions relating to the assets of the legal arrangement, in the case of a trust the trustee. Where more than one natural person has such principal responsibility, the place of effective management shall be considered to be at the permanent address of the person who has the principal responsibility for most of the key management decisions relating to the assets producing interest payments within the meaning of this Directive, or
  - (ii) the address where the legal person, who has the principal responsibility to manage the assets of the legal arrangement, in the case of a trust the trustee, takes the key management decisions relating to these assets. Where key management decisions are taken in more than one country or jurisdiction, the place of effective management shall be considered to be at the address where most of the key management decisions are taken relating to the assets producing interest payments within the meaning of this Directive;

- (d) ‘subject to effective taxation’ shall mean that an entity or a legal arrangement is liable to tax on all its income, or on the part of its income attributable to its non-resident participants, including on any interest payment.”

- (3) Article 2 is replaced by the following:

*“Article 2*

**Definition of beneficial owner**

1. For the purposes of this Directive, and without prejudice to the following paragraphs, ‘beneficial owner’ means any individual who receives an interest payment or any individual for whom such a payment is secured, unless he provides evidence that it was not received or secured for his own benefit, that is to say that:
  - (a) he acts as a paying agent within the meaning of Article 4(1); or
  - (b) he acts on behalf of an entity, with or without legal personality, and discloses to the economic operator making or securing the interest payment the name, the legal form, the address of the place of establishment of the entity, and, if it is in a different country or jurisdiction, the address of the place of effective management of the entity; or
  - (bb) he acts on behalf of a legal arrangement and discloses to the economic operator making or securing the interest payment the name if any, the legal form, the address of the place of effective management of the legal arrangement and the name of the legal or natural person referred to in point (c) of Article 1a; or

- (c) he acts on behalf of another individual who is the beneficial owner and discloses to the paying agent the identity of that beneficial owner in accordance with Article 3(2).
2. Where a paying agent has information suggesting that the individual who receives an interest payment or for whom an interest payment is secured may not be the beneficial owner, and where neither point (a), (b) nor (bb) of paragraph 1 applies to that individual, it shall take reasonable steps to establish the identity of the beneficial owner in accordance with Article 3(2). If the paying agent is unable to identify the beneficial owner, it shall treat the individual in question as the beneficial owner.
3. Where an economic operator who is also within the scope of Article 2 of Directive 2005/60/EC of the European Parliament and of the Council<sup>9</sup>, makes an interest payment to, or secures such a payment for, an entity or a legal arrangement, which is not subject to effective taxation and which is established or has its place of effective management in a country or jurisdiction outside the territory referred to in Article 7 and outside the territorial scope of agreements and arrangements providing for the same or equivalent measures to those of the Directive, the following subparagraphs shall apply.

The payment shall be regarded as having been made to, or secured for, the immediate benefit of any individual, who is resident in a Member State other than that of the economic operator and is defined in Article 3(6) of Directive 2005/60/EC as the beneficial owner of the entity or legal arrangement. The identity of that individual shall be established in accordance with the customer due diligence measures provided for in Articles 7 and 8(1)(b) of that Directive. That individual shall also be regarded as the beneficial owner for the purposes of this Directive.

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<sup>9</sup> OJ L 309, 25.11.2005, p. 15.

For the purposes of the first subparagraph, the categories of entities and legal arrangements referred to in the indicative list of Annex I shall be considered to be not subject to effective taxation.

The economic operator referred to in the first subparagraph shall establish the legal form and the place of establishment or, where relevant, the place of effective management of the entity or legal arrangement, by using the information disclosed by any individual acting on behalf of the entity or legal arrangement notably in accordance with points (b) and (bb) of paragraph 1, unless the economic operator has more reliable information available indicating that the received information is incorrect or not complete for the purposes of the application of this paragraph.

Where an entity or a legal arrangement does not fall within the categories referred to in Annex I or where it falls within those categories but claims to be subject to effective taxation, the economic operator referred to in the first subparagraph shall establish whether it is subject to effective taxation on the basis of facts that are generally acknowledged or on the basis of official documents presented by the entity or legal arrangement or available through customer due diligence measures taken in accordance with Directive 2005/60/EC.

4. Where an entity or a legal arrangement is considered to be a paying agent upon receipt of an interest payment or upon securing of such payment in accordance with Article 4(2), the interest payment, shall be deemed to accrue to the following individuals, who shall be regarded as beneficial owners for the purposes of this Directive:
  - (a) any individual who is entitled to receive the income arising from the assets producing such payment, or who is entitled to receive other assets representing such payment when the entity or legal arrangement receives the payment or when the payment is secured on its behalf, in proportion to his entitlement to that income;

- (b) for any part of the income arising from the assets producing such payment, or of the other assets representing such payment, to which no individuals as referred to in point (a) are entitled when the entity or legal arrangement receives the payment or when the payment is secured on its behalf, any individual who has directly or indirectly contributed to the assets of the entity or legal arrangement concerned, regardless of whether this individual is entitled to the assets or income of the entity or legal arrangement;
- (c) if there are no individuals referred to in points (a) or (b) who are collectively or severally entitled to all of the income arising from the assets producing such payment, or to all the other assets representing such payment, at the time of receipt or securing of the interest payment, any individual, in proportion to his entitlement to that income, who, at a later date, becomes entitled to all or part of the assets producing the interest payment or to other assets representing such interest payment. The total amount that shall be deemed to accrue to such individual, shall not exceed the amount of the interest payment received by or secured for the entity or legal arrangement, after deduction of any part that has been attributed in accordance with this paragraph to an individual referred to in points (a) or (b).

(4) Articles 3 and 4 are replaced by the following:

*"Article 3*

**Identity and residence of beneficial owners**

1. Each Member State shall, within its territory, adopt and ensure the application of the procedures necessary to allow the paying agent to identify the beneficial owners and their residence for the purposes of Articles 8 to 12.

Such procedures shall comply with the minimum standards established in paragraphs 2 and 3.

2. The paying agent shall establish the identity of the beneficial owner on the basis of minimum standards which vary according to when relations between the paying agent and the beneficial owner are entered into, as follows:
  - (a) for contractual relations entered into before 1 January 2004, the paying agent shall establish the identity of the beneficial owner, consisting of the name and address, by using the information at its disposal, in particular pursuant to the regulations in force in its State of establishment and to Directive 2005/60/EC;
  - (b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1 January 2004, the paying agent shall establish the identity of the beneficial owner, consisting of the name, address, date and place of birth and, in accordance with the list referred to in paragraph 4, the tax identification number or equivalent allocated by the Member State where the beneficial owner is resident for tax purposes. For contractual relations entered into, or transactions carried out in the absence of contractual relations, before 1 July 2011 information about date and place of birth is only required where no such tax identification number or equivalent is available.

The details referred to in point (b) shall be established on the basis of a passport or an official identity card or any other official identity document, where applicable as specified in the list referred to in paragraph 4, presented by the beneficial owner. Any such details which do not appear on these documents shall be established on the basis of any other documentary proof of identity presented by the beneficial owner.

3. Where the beneficial owner voluntarily presents a tax residence certificate issued by the competent authority of a country within the last three years before the payment date or a later date when the payment is deemed to accrue to a beneficial owner, his residence shall be considered to be situated in that country. Failing this, his residence shall be considered to be situated in the country where he has his permanent address. The paying agent shall establish the permanent address of the beneficial owner on the basis of the following minimum standards:

- (a) for contractual relations entered into before 1 January 2004, the paying agent shall establish the current permanent address of the beneficial owner by using the best information at its disposal, in particular pursuant to the regulations in force in its State of establishment and to Directive 2005/60/EC;
- (b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1 January 2004, the paying agent shall establish the current permanent address of the beneficial owner on the basis of the address resulting from the identification procedures set out in point (b) of paragraph 2 to be updated on the basis of the most recent documentation that is available to the paying agent.

In the situation referred to in point (b), where beneficial owners present a passport or an official identity card or any other official identity document issued by a Member State and declare themselves to be resident in a third country, residence shall be established by means of a tax residence certificate issued within the last three years before the payment date or a later date when the payment is deemed to accrue to a beneficial owner by the competent authority of the third country in which the beneficial owner claims to be resident. Failing the presentation of such a certificate, the Member State which issued the passport, or official identity card or other official identity document shall be considered to be the country of residence. For beneficial owners about whom the paying agent has official documentation at its disposal proving that they have their residence for tax purposes in a country different from that of their permanent address because of the privileges linked to their diplomatic status or to other internationally agreed rules, residence shall be established by means of such official documentation available to the paying agent.

4. Each Member State allocating tax identification numbers or equivalent shall, at the latest by 1 January 2011, inform the Commission about the structure and format of these numbers as well as of the official documentation containing information on allocated identification numbers. Each Member State shall also inform the Commission if any changes in this respect occur. The Commission shall publish in the *Official Journal of the European Union* a compiled list of the information received.

#### *Article 4*

#### **Paying agents**

1. An economic operator established in a Member State who makes an interest payment to, or secures such a payment for, the immediate benefit of the beneficial owner shall be considered to be a paying agent for the purposes of this Directive.

For the purposes of this paragraph, it is irrelevant whether the economic operator concerned is the debtor or issuer of the claim or security which produces the income or the economic operator charged by the debtor or issuer or by the beneficial owner with paying the income or securing the payment of the income.

An economic operator established in a Member State shall also be considered to be a paying agent for the purposes of this Directive where the following conditions are met:

- (a) it makes an interest payment to, or secures such a payment for, another economic operator, including a permanent establishment or a subsidiary of the first economic operator, established outside the territory referred to in Article 7 and outside the territorial scope of agreements and arrangements providing for the same or equivalent measures to those of the Directive, and

- (b) the first economic operator has reasons to believe, on the basis of available information, that the second economic operator will pay the income to, or secure such a payment for the immediate benefit of a beneficial owner who is an individual known by the first economic operator to be a resident of another Member State, having regard to Article 3.

Where the conditions referred to in points (a) and (b) are met, the payment made or secured by the first economic operator shall be regarded as having been made to, or secured for, the immediate benefit of the beneficial owner referred to in point (b).

2. An entity or a legal arrangement which has its place of effective management within a Member State and which is not subject to effective taxation under the general rules for direct taxation applicable either in that Member State, or in the Member State where it is established, or in any country or jurisdiction where it is otherwise resident for tax purposes, shall be considered to be a paying agent upon receipt of an interest payment or upon securing of such payment.

For the purposes of this paragraph, the categories of entities and legal arrangements referred to in the indicative list of Annex III shall be considered to be not subject to effective taxation.

Where an entity or a legal arrangement does not belong to any of the categories referred to in the indicative list of Annex III or where it is covered by that annex but claims to be subject to effective taxation, the economic operator shall establish whether it is subject to effective taxation on the basis of facts that are generally acknowledged or on the basis of official documents presented by the entity or legal arrangement or available through customer due diligence measures taken in accordance with Directive 2005/60/EC.

Any economic operator established in a Member State who makes an interest payment to, or secures such a payment for, an entity or a legal arrangement referred to in this paragraph and which has its place of effective management in a Member State other than the State where the economic operator is established, shall inform the competent authority of its Member State of establishment of the following, using the information indicated in the fourth subparagraph of Article 2(3) or other information available:

- (i) the name, if any, of the entity or legal arrangement;
- (ii) its legal form;
- (iii) its place of effective management;
- (iv) the total amount of the interest payment, specified in accordance with Article 8, made to, or secured for, the entity or legal arrangement;
- (v) the date of the latest interest payment.

The individuals who shall be regarded as the beneficial owners of the interest payment made to or secured for the entities or legal arrangements referred to in the first subparagraph shall be determined in accordance with the rules provided for in Article 2(4). Where point (c) of that article applies, the entity or legal arrangement shall, whenever an individual at a later date becomes entitled to the assets producing such interest payment or to other assets representing the interest payment, provide the competent authority of the Member State where it has its place of effective management with the information specified in the second subparagraph of Article 8(1). The entity or legal arrangement shall also inform its competent authority of any change to its place of effective management.

The obligations referred to in the previous subparagraph shall remain for 10 years from the date of the last interest payment received or secured by the entity or legal arrangement or the last date that an individual became entitled to the assets producing such interest payment or to other assets representing the interest payment, whichever date is the later.

If an entity or a legal arrangement, in a case where point (c) of Article 2(4) applies, has changed its place of effective management to another Member State, the competent authority of the first Member State shall report the following information to the competent authority of the new Member State:

- (i) the amount of interest payment received by or secured for the entity or legal arrangement that is still not covered by past entitlements to the relevant assets;
- (ii) the date of the last interest payment received by or secured for the entity or legal arrangement or the last date that an individual became entitled to all or part of the assets producing such interest payment or to other assets representing the interest payment, whichever date is the later.

This paragraph shall not apply if the entity or legal arrangement provides evidence to the effect that it falls into one of the following cases:

- (a) it is an undertaking for collective investment or other collective investment fund or scheme as defined in (i) or (iii) of points (c) and (d) of Article 6(1);
- (b) it is an institution providing pension or insurance services or an undertaking mandated by such an institution to manage its assets;
- (c) it is acknowledged under the procedures applicable in the Member State where it is resident for tax purposes or has its place of effective management that it shall be exempt from effective taxation under the general rules for direct taxation because it serves exclusively charitable purposes for the public benefit;

- (d) it constitutes a shared beneficial ownership for which the economic operator making or securing the payment has established the identity and residence of all the beneficial owners in accordance with Article 3 and the economic operator therefore is the paying agent in accordance with paragraph 1 of this Article.
3. An entity referred to in paragraph 2 which is similar to an undertaking for collective investment or collective investment fund or scheme referred to in point (a) of paragraph 2 shall have the option of being treated for the purposes of this Directive as such an undertaking, investment fund or scheme.

Where an entity exercises that option, the Member State in which it has its place of effective management shall issue a certificate to that effect. The entity shall present that certificate to the economic operator making or securing the interest payment. The economic operator shall in that case be exempted from the obligations set in the fourth subparagraph of paragraph 2.

Member States shall lay down the detailed rules concerning this option for entities which have their place of effective management in their territory, with a view to ensure the effective application of this Directive.

- (5) Article 6 is replaced by the following:

*“Article 6*

**Definition of interest payment**

1. For the purposes of this Directive, ‘interest payment’ means

- (a) interest paid or credited to an account, relating to debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and, in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures; penalty charges for late payments shall not be regarded as interest payments;
- (aa) any income paid or realised, or credited to an account, relating to securities of any kind, except where the income is directly considered to be an interest payment in accordance with points (a), (b), (c) or (d), and where
  - (i) the conditions of a return of capital defined at the issuing date include a commitment towards the investor that he receives, at the end of the term, at least 95% of the capital invested, or
  - (ii) the conditions defined at the issuing date provide for a link of at least 95% of the income from the security to interest or income of the kinds referred to in points (a), (b), (c) or (d);
- (b) interest accrued or capitalised at the sale, refund or redemption of the debt claims referred to in point (a) and any income accrued or capitalised at the sale, refund or redemption of the securities referred to in point (aa);
- (c) income deriving from payments referred to in points (a), (aa) or (b) either directly or indirectly, including via an entity or a legal arrangement referred to in Article 4(2), if distributed by any of the following:

- (i) undertakings for collective investment or other collective investment funds or schemes, that either are registered as such in accordance with the law of any of the Member States or of the countries of the European Economic Area which do not belong to the Community, or have fund rules or instruments of incorporation governed by the law relating to collective investment funds or schemes of one of these States or countries. This applies irrespective of the legal form of such undertakings, funds or schemes and irrespective of any restriction to a limited group of investors of the purchase, sale or redemption of their shares or units;
  - (ii) entities having exercised the option under Article 4(3);
  - (iii) any collective investment fund or scheme established outside the territory referred to in Article 7 and outside the European Economic Area. This applies irrespective of the legal form of that fund or scheme and irrespective of any restriction to a limited group of investors of the purchase, sale or redemption of its shares or units;
- (d) income realised upon the sale, refund or redemption of shares or units in the following undertakings, entities, investment funds or schemes, if they invest, directly or indirectly via other such undertakings, funds or schemes, or via entities or legal arrangements referred to in Article 4(2), more than 40% of their assets in debt claims as referred to in point (a) or in securities as referred to in point (aa):

- (i) undertakings for collective investment or other collective investment funds or schemes that either are registered as such in accordance with the law of any of the Member States or of the countries of the European Economic Area which do not belong to the Community, or have fund rules or instruments of incorporation governed by the law relating to collective investment funds or schemes of one of these States or countries. This applies irrespective of the legal form of such undertakings, funds or schemes and irrespective of any restriction to a limited group of investors of the purchase, sale or redemption of their shares or units;
- (ii) entities having exercised the option under Article 4(3);
- (iii) any collective investment fund or scheme established outside the territory referred to in Article 7 and outside the European Economic Area. This applies irrespective of the legal form of that fund or scheme and irrespective of any restriction to a limited group of investors of the purchase, sale or redemption of its shares or units.

For the purpose of this point, assets which the undertakings or entities or investment funds or schemes are required to hold as collateral under the terms of their agreements, contracts or other legal documentation in order to enable them to meet their investment objectives, and to which the investor is not a party and has no legal rights, are not regarded as debt claims as referred to in point (a) or as securities as referred to in point (aa);

- (e) benefits from a life insurance contract, if
  - (i) the contract contains a guarantee of income return, or
  - (ii) the actual performance of the contract is at more than 40% linked to interest or income referred to in points (a), (aa), (b) (c) and (d).

For the purpose of this point the excess of any repayment or partial repayment made by the life insurer before the maturity of the life insurance contract as well as the excess of any amount paid out by the life insurer over the sum of the payments made to the life insurer under the same life insurance contract, shall be considered to be a benefit from a life insurance contract. In the case of assignment, in whole or in part, of a life insurance to a third party, the excess of the value of the contract conferred over the sum of all the payments made to the life insurer shall also be considered to be a benefit from a life insurance contract. A benefit from a life insurance contract which solely provides for a pension, or a fixed annuity, paid for at least 5 years, shall be considered as such only if it is a repayment or an assignment to a third party that is made before the end of the 5 year period. An amount paid out solely in respect of death, disability or illness shall not be considered to be a benefit from a life insurance contract.

However, Member States shall have the option of including income mentioned under point (d) in the definition of interest payment, for undertakings for collective investment or other collective investment funds or schemes, that either are registered in accordance with their rules or have fund rules or instruments of incorporation governed by their law, only to the extent that such income corresponds to gains directly or indirectly deriving from interest payments within the meaning of points (a), (aa) or (b).

As regards point (e) (ii), a Member State shall have the option of including in the definition of interest payment benefits regardless of the composition of performance, if paid by or obtained from a life insurer established within that State.

Where a Member State exercises one or both of the options referred to in the second and third subparagraphs, it shall notify the Commission thereof. The Commission shall publish in the Official Journal of the European Union the fact that the option has been exercised and, with effect from the date of such publication, the exercise of the option shall be binding on the other Member States.

2. As regards point (aa) of paragraph 1, where a paying agent has no information concerning the amount of the income that is paid, realised or credited, the total amount of the payment shall be considered to be an interest payment.

As regards point (b) of paragraph 1, where a paying agent has no information concerning the amount of the interest or income that is accrued or capitalised at the sale, refund or redemption, the total amount of the payment shall be considered to be an interest payment.

As regards points (c) and (d) of paragraph 1, where a paying agent has no information concerning the proportion of the income which derives from interest payments within the meaning of points (a), (aa) or (b), the total amount of the income shall be considered to be an interest payment.

As regards point (e) of paragraph 1, where a paying agent has no information concerning the amount of the benefit from a life insurance contract, the total amount of the payment shall be considered to be an interest payment.

3. As regards point (d) of paragraph 1, where a paying agent has no information concerning the percentage of the assets invested in debt claims or the relevant securities, or in shares or units as defined in that point, that percentage shall be considered to be above 40%. Where he cannot determine the amount of income realised by the beneficial owner, the income shall be deemed to correspond to the proceeds of the sale, refund or redemption of the shares or units.

As regards point (e) (ii) of paragraph 1, when the paying agent has no information concerning the percentage of performance that is linked to interest payments within the meaning of points (a), (aa), (b) (c) or (d), that percentage shall be considered to be above 40%.

4. Where an interest payment as defined in paragraph 1 is made to an entity or a legal arrangement referred to in Article 4(2) or credited to an account held by such entity or legal arrangement, it shall be deemed to accrue to an individual referred to in Article 2(4). In the case of an entity, this applies only if the entity has not exercised the option provided for under Article 4(3).
5. As regards points (b) and (d) of paragraph 1, Member States shall have the option of requiring paying agents in their territory to annualise the interest or other relevant income over a period of time which may not exceed one year, and of treating such annualised interest or other relevant income as an interest payment even if no sale, redemption or refund occurs during that period.
6. By way of derogation from points (c) and (d) of paragraph 1, Member States shall have the option of excluding from the definition of interest payment any income referred to in those provisions distributed by undertakings or entities or investment funds or schemes having fund rules or instruments of incorporation governed by their law where the direct or indirect investment of such undertakings, entities, funds or schemes in debt claims referred to in point (a) of paragraph 1 or in securities referred to in point (aa) of paragraph 1 has not exceeded 15% of their assets.

By way of derogation from paragraph 4, Member States shall have the option of excluding from the definition of interest payment in paragraph 1 those interest payments which are made or credited to an account of an entity or a legal arrangement, which is referred to in Article 4(2) and which has its place of effective management within their territory, where the direct or indirect investment of such an entity or a legal arrangement in debt claims referred to in point (a) of paragraph 1 or in securities referred to in point (aa) of paragraph 1 has not exceeded 15% of its assets. In the case of an entity, this applies only if the entity has not exercised the option provided for under Article 4(3).

Where a Member State exercises one or both of the options referred to in the first and second subparagraphs, it shall notify the Commission thereof. The Commission shall publish in the Official Journal of the European Union the fact that the option has been exercised and, with effect from the date of such publication, the exercise of the option shall be binding on the other Member States.

7. The 40% thresholds referred to in points (d) and (e) (ii) of paragraph 1 and in paragraph 3 shall from 1 January 2011 be 25%.
8. The percentages referred to in point (d) of paragraph 1 and in paragraph 6 shall be determined by reference to the investment policy, or by reference to the investment strategy and objectives, laid down in documentation which governs the operation of the undertakings or entities or investment funds or schemes concerned.

For the purpose of this paragraph, documentation includes:

- (a) the fund rules or instruments of incorporation of the undertakings or entities or investment funds or schemes concerned;
- (b) any agreement, contract or other legal documentation entered into by the undertakings or entities or investment funds or schemes concerned which is made available to an economic operator; and
- (c) any prospectus or similar document issued by or on behalf of the undertakings or entities or investment funds or schemes concerned which is made available to its investors.

Where the documentation does not define an investment policy or investment strategy and objectives, those percentages shall be determined by reference to the actual composition of the assets of the undertakings or entities or investment funds or schemes concerned, as resulting from the average of assets at the beginning, or at the date of their first semi-annual report, and at the end of their last accounting period before the date when the interest payment is made or secured by the paying agent to the beneficial owner. For newly constituted undertakings or entities or investment funds or schemes, such actual composition shall result from the average of assets at the starting date and at the date of the first evaluation of assets as set out in the documentation that governs the operation of the undertakings, entities, funds or schemes concerned.

The composition of the assets shall be measured in accordance with the rules applicable in the Member State or in a country of the European Economic Area which does not belong to the Community, in which an undertaking for collective investment or other collective investment fund or scheme is registered as such or under the law of which its rules or instruments of incorporation are governed. The composition measured as such shall be binding on other Member States.

9. Income referred to in point (aa) of paragraph 1 shall be considered to be an interest payment only to the extent to which the securities producing that income were first issued on or after 1 July 2010. The securities issued before that date shall not be taken into account for the percentages referred to in point (d) of paragraph 1 and in paragraph 6.
10. Benefits from a life insurance contract shall be considered to be an interest payment in accordance with point (e) of paragraph 1 only to the extent that life insurance contract giving rise to such benefits was first subscribed on or after 1 July 2010.

11. Member States shall have the option to consider income referred to in point (d) (i) of paragraph 1, realised upon the sale, refund or redemption of shares or units in incorporated undertakings for collective investment which are not UCITS authorised in accordance with Directive 85/611/EEC, to be an interest payment only to the extent to which it accrued to those undertakings on or after 1 July 2010.”

(6) Article 8 is replaced by the following:

*“Article 8*

**Information reporting by the paying agent**

1. Where the beneficial owner is resident in a Member State other than that in which the paying agent is established, the minimum amount of information to be reported by the paying agent to the competent authority of its Member State of establishment shall consist of:
  - (a) the identity and residence of the beneficial owner established in accordance with Article 3 or, in cases of shared beneficial ownership, the identity and residence of all beneficial owners who fall within the scope of Article 1(1);
  - (b) the name and address of the paying agent;
  - (c) the account number of the beneficial owner or, where there is none, identification of the debt claim giving rise to the interest payment or of the life insurance contract, security or share or unit giving rise to that payment;
  - (d) information concerning the interest payment in accordance with paragraph 2.

Where the beneficial owner is resident in a Member State other than that where the paying agent according to Article 4(2) has its place of effective management, such a paying agent shall provide the competent authority of the Member State where it has its place of effective management, with the information specified in points (a) to (d) of the previous subparagraph. In addition, such a paying agent shall report the following:

- (i) the total amount of its interest payments received or secured that shall be deemed to accrue to its beneficial owners;
  - (ii) where an individual becomes a beneficial owner according to point (c) of Article 2(4), the amount that shall be deemed to accrue to that individual and the date of such deemed accrual.
2. The minimum amount of information concerning interest payment to be reported by the paying agent shall distinguish between the following categories of the interest payment and indicate:
- (a) in the case of an interest payment within the meaning of point (a) of Article 6(1): the amount of interest paid or credited;
  - (aa) in the case of an interest payment within the meaning of point (aa) of Article 6(1): either the amount of any income paid, realised or credited or the total amount of the payment;
  - (b) in the case of an interest payment within the meaning of points (b) or (d) of Article 6(1): either the amount of interest or income referred to in those points or the total amount of the proceeds from the sale, redemption or refund;
  - (c) in the case of an interest payment within the meaning of point (c) of Article 6(1): either the amount of income referred to in that point or the total amount of the distribution;

- (d) in the case of an interest payment within the meaning of Article 6(4): the amount of interest attributable to each of the beneficial owners who fall within the scope of Article 1(1);
- (e) where a Member State exercises the option under Article 6(5): the amount of annualised interest or other relevant income;
- (f) in the case of an interest payment within the meaning of point (e) of Article 6(1): either the benefit calculated in accordance with that provision or the total amount of the payment. If, in the case of assignment to a third party, the paying agent has no information about the value conferred: the sum of the payments made to the life insurer under the life insurance contract.

The paying agent shall inform the competent authority of the Member State where it is established or, in the case of a paying agent referred to in Article 4(2), it shall inform the competent authority of the Member State where it has its place of effective management when it reports the total amounts according to points (aa), (b), (c) and (f).

3. In the case of shared beneficial ownership, the paying agent shall inform the competent authority of its Member State of establishment or, in the case of a paying agent referred to in Article 4(2), it shall inform the competent authority of the Member State where it has its place of effective management whether the amount reported for each beneficial owner is the full amount attributable to the beneficial owners collectively, the actual share pertaining to the beneficial owner concerned or an equal share.
4. Notwithstanding paragraph 2, Member States may allow paying agents to report only the following:
  - (a) in the case of interest payments within the meaning of points (a), (aa) or (c) of Article 6(1): the total amount of interest or income;

- (b) in the case of interest payments within the meaning of points (b) or (d) of Article 6(1): the total amount of the proceeds from the sale, redemption or refund related to such payments;
- (c) in the case of interest payments within the meaning of point (e) of Article 6(1): either the benefits about which the competent authority of the Member State of residence of the beneficial owner has not yet been informed, by the paying agent or its fiscal representative pursuant to any legislative provision different from those necessary to implement this Directive, or the total amount paid out under life insurance contracts generating such payments.

The paying agent shall inform whether it reports the total amounts according to points (a), (b) and (c).”

(7) Article 9 is amended as follows:

(a) The following paragraphs 1a and 1b are added:

- “1a. The competent authority of the Member State where the economic operator is established shall communicate the information referred to in the fourth subparagraph of Article 4(2) to the competent authority of another Member State where the entity or legal arrangement has its place of effective management.
- 1b. Where a paying agent within the meaning of Article 4(2) has changed its place of effective management to another Member State, the competent authority of the first Member State shall communicate the information referred to in the seventh subparagraph of Article 4(2), to the competent authority of the new Member State.”

(b) Paragraph 2 is replaced by the following:

“2. The communication of information shall be automatic and shall take place at least once a year, within six months following the end of the tax year of the Member State of the paying agent or economic operator, and shall cover the following events that have taken place during that year:

(i) all interest payments;

(ii) all occasions when individuals have become beneficial owners according to Article 2(4);

(iii) all changes of place of effective management of a paying agent referred to in Article 4(2).”

(8) Articles 10 and 11 are amended as follows:

(a) Article 10 paragraphs 1 and 3 and are replaced by the following:

“1. During a transitional period starting on the date referred to in Article 17(2) and (3) and subject to Article 13(1), Luxembourg and Austria shall not be required to apply the provisions of Chapter II.

They shall, however, receive information from the other Member State in accordance with Chapter II.

During the transitional period, the aim of this Directive shall be to ensure minimum effective taxation of savings 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”.

“3. At the end of the transitional period, Luxembourg and Austria shall be required to apply the provisions of Chapter II and they shall cease to apply the withholding tax and the revenue sharing provided for in Articles 11 and 12. If, during the transitional period, Luxembourg or Austria elect to apply the provisions of Chapter II, it shall no longer apply the withholding tax and the revenue sharing provided for in Articles 11 and 12.

(b) Article 11 paragraphs 1 and 2 are replaced by the following:

“1. During the transitional period referred to in Article 10, where the beneficial owner is resident in a Member State other than that in which the paying agent is established, or, in the case of a paying agent referred to in Article 4(2), where such a paying agent has its place of effective management, Luxembourg and Austria shall levy a withholding tax at a rate of 15 % during the first three years of the transitional period, 20 % for the subsequent three years and 35 % thereafter.

2. The paying agent shall levy withholding tax as follows:

- (a) in the case of an interest payment within the meaning of point (a) of Article 6(1): on the amount of interest paid or credited;
- (aa) in the case of an interest payment within the meaning of point (aa) of Article 6(1): on the amount of any income paid, realised or credited;
- (b) in the case of an interest payment within the meaning of point (b) or (d) of Article 6(1): either on the amount of interest or income referred to in those points or by a levy of equivalent effect to be borne by the beneficial owner on the full amount of the proceeds from the sale, redemption or refund;
- (c) in the case of an interest payment within the meaning of point (c) of Article 6(1): on the amount of income referred to in that point;

- (d) in the case of an interest payment within the meaning of Article 6(4): on the amount of interest attributable to each of the beneficial owners who fall within the scope of Article 1(1). The total amount on which tax is levied shall not exceed the amount of the interest payment received or secured by the entity or legal arrangement;
- (e) where a Member State exercises the option under Article 6(5): on the amount of annualised interest or other relevant income;
- (f) in the case of an interest payment within the meaning of point (e) of Article 6(1): on the benefit calculated in accordance with that provision. Member States may allow paying agents to levy withholding tax only on the benefits about which the competent authority of the Member State of residence of the beneficial owner has not yet been informed, by the paying agent or its fiscal representatives pursuant to any legislative provision different from those necessary to implement this Directive.

When transferring the revenue of the withholding tax to the competent authority, the paying agent shall inform it of the number of beneficial owners concerned by the levying of the withholding tax classified according to their respective Member States of residence.”

- (c) In paragraph 3 the reference "(aa)," is added after the words "points (a)".

(d) Paragraph 5 is replaced by the following:

“5. During the transitional period, Member States levying withholding tax may provide that an economic operator making an interest payment to, or securing such a payment for, an entity or a legal arrangement referred to in Article 4(2), which has its place of effective management in another Member State, shall be considered to be the paying agent in place of the entity or legal arrangement and shall levy the withholding tax on that interest, unless the entity or legal arrangement has formally agreed to its name if any, its legal form, its place of effective management and the total amount of interest paid to it or secured for it being communicated in accordance with the fourth subparagraph of Article 4(2).”

(9) Article 13 is replaced by the following:

*“Article 13*

**Exception to the withholding tax procedure**

1. Member States levying withholding tax in accordance with Article 11 shall provide for the following procedures in order to ensure that a beneficial owner may request that no tax be withheld:
  - (a) a procedure which allows the beneficial owner expressly to authorise the paying agent to report information in accordance with Chapter II, such authorisation covering all interest payments attributable to the beneficial owner by that paying agent; in such a case, Article 9 shall apply.
  - (b) a procedure which ensures that withholding tax shall not be levied where the beneficial owner presents to his paying agent a certificate drawn up in his name by the competent authority of his Member State of residence for tax purposes in accordance with paragraph 2.

2. At the request of the beneficial owner, the competent authority of his Member State of residence for tax purposes shall issue a certificate indicating:
  - (a) the name, address, tax identification number or equivalent and the date and place of birth of the beneficial owner;
  - (b) the name and address of the paying agent;
  - (c) the account number of the beneficial owner or, where there is none, the identification of the security.

Such certificate shall be valid for a period not exceeding three years. It shall be issued to any beneficial owner who requests it, within two months following such request. ”

(10) Article 14 is amended as follows:

- (a) in paragraph 2, the first sentence is replaced by the following:

“If an interest payment attributed to a beneficial owner has been subject to withholding tax in the Member State of the paying agent, the Member State of residence for tax purposes of the beneficial owner shall grant him a tax credit equal to the amount of the tax withheld in accordance with its national law.”

- (b) paragraph 3 is replaced by the following:

- “3. If, in addition to the withholding tax referred to in Article 11, an interest payment attributed to a beneficial owner has been subject to any other type of withholding tax and the Member State of residence for tax purposes of the beneficial owner grants a tax credit for such withholding tax in accordance with its national law or double taxation conventions, such other withholding tax shall be credited before the procedure in paragraph 2 is applied.”

(11) In the second subparagraph of Article 15(1), “the Annex” is replaced by “Annex IV”.

(12) The first sentence of Article 18 is replaced by the following:

“The Commission shall report to the Council every three years on the operation of this Directive on the basis of the statistics listed in Annex V, which shall be provided by each Member State to the Commission.”

(13) The following Articles 18a and 18b are inserted:

*“Article 18a*

**Implementing measures**

1. The Commission may, acting in accordance with the procedure referred to in Article 18b(2), adopt measures for the following purposes:
  - (a) specifying the data providers which may be used by paying agents for obtaining the information necessary for the proper treatment, for the purposes of points (aa), (c) and (d) of Article 6(1);
  - (b) establishing common formats and practical arrangements necessary for the electronic exchange of information referred to in Article 9;
  - (c) establishing common forms for certificates and other documents that facilitate the application of this Directive, in particular for the documents issued in Member States levying withholding tax, which are used for the purposes of Article 14 by the Member State of residence for tax purposes of the beneficial owner.
2. The Commission shall update the list in Annex IV at the request of the Member States directly concerned.

*Article 18b*

**Committee**

1. The Commission shall be assisted by the Committee on Administrative Cooperation for Taxation, hereinafter referred to as “the Committee”.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 99/468/EC shall apply.

The period laid down in Article 5(6) of Decision 99/468/EC shall be set at three months.

- (14) The Annex is amended in accordance with the Annex to this Directive.

*Article 2*

1. Member States shall adopt and publish, by 1 January 2011 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from the first day of the third calendar year following the calendar year in which this Directive enters into force.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 3*

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

*Article 4*

This Directive is addressed to the Member States.

Done at Brussels,

*For the Council*

## ANNEX

The Annex to Directive 2003/48/EC is amended as follows:

- (1) The Annex becomes Annex IV.
- (2) Annexes I and III are inserted as follows:

### “ANNEX I

Indicative list of categories of entities and legal arrangements which are considered to be not subject to effective taxation, for the purposes of Article 2(3).

1. Entities and legal arrangements whose place of establishment or place of effective management is in a country or jurisdiction outside the territorial scope of the Directive as defined in Article 7 and which is different from those listed in Article 17(2):

<b>Countries and jurisdictions</b>	<b>Categories of entities and legal arrangements</b>
Antigua and Barbuda	<i>International business company</i>
Anjouan (Comores)	Trust, governed by local or foreign law <i>International business company</i>
The Bahamas	Trust, governed by local or foreign law <i>Foundation</i> <i>International business company</i>
Bahrain	Financial trust, governed by local or foreign law
Barbados	Trust, governed by local or foreign law <i>International business company</i> <i>International Society with Restricted Liability</i>
Belize	Trust, governed by local or foreign law <i>International business company</i>
Bermuda	Trust, governed by local or foreign law Exempt company

Brunei	Trust, governed by local or foreign law <i>International business company</i> <i>International trust</i> <i>International Limited Partnership</i>
Cook Islands	Trust, governed by local or foreign law <i>International trust</i> <i>International company</i> <i>International partnership</i>
Costa Rica	Trust, governed by local or foreign law Company
Djibouti	Exempt company Trust, governed by foreign law
Dominica	Trust, governed by local or foreign law <i>International business company</i>
Fiji	Trust, governed by local or foreign law
French Polynesia	<i>Société</i> (Company) <i>Société de personnes</i> (Partnership) <i>Société en participation</i> (Joint venture) Trust, governed by foreign law
Grenada	<i>International business company</i> Trust, governed by local or foreign law
Guam	<i>Company</i> Sole proprietorship <i>Partnership</i> Trust, governed by foreign law
Guatemala	Trust, governed by local or foreign law <i>Fundación</i> (Foundation)
Hong Kong	Trust, governed by local or foreign law Private Limited Company

Kiribati	Trust, governed by local or foreign law
Labuan (Malaysia)	<i>Offshore company</i> <i>Malaysian offshore bank,</i> <i>Offshore limited partnership</i> <i>Offshore trust</i>
Lebanon	Companies benefiting from the Offshore company regime Trust, governed by foreign law
Liberia	Non-resident company Trust, governed by local or foreign law
Macao	Trust, governed by local or foreign law <i>Fundação</i> (Foundation)
Maldives	Company Partnership Trust, governed by foreign law
Northern Marianas Islands	<i>Foreign sales corporation</i> <i>Offshore banking corporation</i> Trust, governed by foreign law
Marshall Islands	Trust, governed by local or foreign law <i>International business company</i>
Mauritius	Trust, governed by local or foreign law <i>Global business company cat. 1 and 2</i>
Micronesia	<i>Company</i> <i>Partnership</i> Trust, governed by foreign law

Nauru	<i>Trust/nominee company</i> <i>Company</i> <i>Partnership</i> Sole proprietorship Foreign will Foreign estate Other form of business negotiated with the Government
New Caledonia	<i>Société (Company)</i> <i>Société civile (Civil company)</i> <i>Société de personnes (Partnership)</i> Joint venture Estate of deceased person Trust, governed by foreign law
New Zealand	Trust, governed by foreign law
Niue	Trust, governed by local or foreign law <i>International business company</i>
Panama	<i>Fideicomiso (Trust, governed by local law)</i> and trust governed by foreign law <i>Fundación de interés privado (Foundation)</i> <i>International business company</i>
Palau	<i>Company</i> <i>Partnership</i> Sole proprietorship Representative office <i>Credit union (financial cooperative)</i> <i>Cooperative</i> Trust, governed by foreign law
Philippines	Trust, governed by local or foreign law

Puerto Rico	<i>Estate</i> Trust, governed by local or foreign law <i>International banking entity</i>
Saint Kitts and Nevis	Trust, governed by local or foreign law <i>Foundation</i> Exempt company Exempt Limited Partnership
Saint Lucia	Trust, governed by local or foreign law <i>International business company</i>
Saint Vincent and the Grenadine	Trust, governed by local or foreign law <i>International business company</i>
Sao Tomé e Príncipe	<i>International business company</i> Trust, governed by foreign law
Samoa	Trust, governed by local or foreign law <i>International trust</i> <i>International company</i> <i>Offshore bank</i> <i>Offshore insurance company</i> <i>International partnership</i> <i>Limited partnership</i>
Seychelles	Trust, governed by local or foreign law <i>International business company</i>
Singapore	Trust, governed by local or foreign law
Solomon Islands	<i>Company</i> <i>Partnership</i> Trust, governed by local or foreign law
South Africa	Trust, governed by local or foreign law
Tonga	Trust, governed by local or foreign law
Tuvalu	Trust, governed by local or foreign law <i>Provident fund</i>

United Arab Emirates	Trust, governed by local or foreign law <i>Offshore company</i>
State of Delaware (USA)	Limited Liability Company
State of Wyoming (USA)	Limited Liability Company
US Virgin Islands	Trust, governed by local or foreign law Exempt company
Uruguay	Trust, governed by local or foreign law <i>Sociedad Anónima Financiera de Inversión</i>
Vanuatu	Trust, governed by local or foreign law Exempt company <i>International company</i>

2. Entities and legal arrangements whose place of establishment or place of effective management is in a country or jurisdiction listed in Article 17(2), to which Article 2(3) applies pending the adoption by the country or jurisdiction concerned of provisions equivalent to those of Article 4(2):

<b>Countries and jurisdictions</b>	<b>Categories of entities and legal arrangements</b>
Andorra	Trust, governed by foreign law
Anguilla	Trust, governed by local or foreign law <i>International business company</i>
Aruba	Stichting Particulier Fonds
British Virgin Islands	Trust, governed by local or foreign law Company

Cayman Islands	Trust, governed by local or foreign law Exempt company
Guernsey	Trust, governed by local or foreign law Company Foundation
Isle of Man	Trust, governed by local or foreign law Company
Jersey	Trust, governed by local or foreign law Company Foundation
Liechtenstein	<i>Anstalt</i> (Trust, governed by local law) and trust governed by foreign law <i>Stiftung</i> (Foundation)
Monaco	Trust, governed by foreign law <i>Fondation</i> (Foundation)
Montserrat	Trust, governed by local or foreign law <i>International business company</i>
Netherlands Antilles	Trust, governed by local or foreign law Stichting Particulier Fonds
San Marino	Trust, governed by local or foreign law <i>Fondazione</i> (Foundation)
Switzerland	Trust, governed by foreign law Foundation
Turks and Caicos	Exempted company <i>Limited partnership</i> Trust, governed by local or foreign law

**ANNEX III**

Indicative list of categories of entities and legal arrangements which are considered to be not subject to effective taxation, for the purposes of Article 4(2).

<b>Countries</b>	<b>Categories of entities and legal arrangements</b>	<b>Comments</b>
All EU Member States	European Economic Interest Grouping (EEIG)	
Belgium	<ul style="list-style-type: none"> <li>- <i>Société de droit commun / maatschap</i> (Civil law or commercial company without any legal status)</li> <li>- <i>Société momentanée / tijdelijke handelsvennootschap</i> (Company without any legal status whose purpose is to deal with one or several specific commercial operations.)</li> <li>- <i>Société interne / stille handelsvennootschap</i> (Company without any legal status through which one or more persons has (have) an interest in operations that one or more other persons manage(s) on their behalf.)</li> <li>- ‘Trust’ or other similar legal arrangement, governed by foreign law</li> </ul>	<p>Included only if the upstream economic operator making the interest payment to it, or securing the payment for it, hasn’t established the identity and residence of all its beneficial owners, otherwise it falls in point (d) of Article 4(2).</p> <p>These ‘companies’ (the name of which is given in French and Dutch) do not have legal status, and from the point of view of taxation, a look-through approach is applicable.</p>

Bulgaria	<ul style="list-style-type: none"> <li>- Druzhestvo sas spetsialna investitsionna tsel (Special-purpose investment company)</li> <li>- <i>Investitsionno druzhestvo</i> (Investment company, not covered by Article 6)</li> <li>- ‘Trust’ or other similar legal arrangement, governed by foreign law</li> </ul>	<p>Entity exempt from corporate income tax</p> <p>Unless the trustee can prove that the trust is actually subject to Bulgarian income taxation</p>
Czech Republic	<ul style="list-style-type: none"> <li>- <i>Veřejná obchodní společnost (ver. obch. spol. or V.O.S.)</i> (Partnership)</li> <li>- <i>Sdružení</i> (Association)</li> <li>- Komanditní společnost</li> <li>- ‘Trust’ or other similar legal arrangement, governed by foreign law</li> </ul>	
Denmark	<ul style="list-style-type: none"> <li>- <i>Interessentskab</i> (General partnership)</li> <li>- <i>Kommanditselskab</i> (Limited partnership)</li> <li>- <i>Kommanditaktieselskab (Partnerselskab)</i></li> <li>- Partrederi</li> <li>- ‘Trust’ or other similar legal arrangement, governed by foreign law</li> </ul>	

Germany	<ul style="list-style-type: none"> <li>- <i>Gesellschaft bürgerlichen Rechts</i> (Civil law company)</li> <li>- <i>Kommanditgesellschaft</i> — <i>KG, offene</i></li> <li><i>Handelsgesellschaft</i> — <i>OHG</i> (Commercial partnership)</li> <li>- ‘Trust’ or other similar legal arrangement, governed by foreign law</li> </ul>	
Estonia	<ul style="list-style-type: none"> <li>- <i>Seltsing</i> (Partnership)</li> <li>- ‘Trust’ or other similar legal arrangement, governed by foreign law</li> </ul>	
Ireland	<ul style="list-style-type: none"> <li>- Partnership and investment club</li> </ul>	Irish resident trustee is generally taxable on income arising to the trust. However, where the beneficiary or trustee is non-Irish resident, only Irish source income arising to such cases is taxable.
Greece	<ul style="list-style-type: none"> <li>- <i>Omorrythmos Eteria (OE)</i> (General partnership)</li> <li>- <i>Eterorythmos Eteria (EE)</i> (Limited partnership)</li> <li>- ‘Trust’ or other similar legal arrangement, governed by foreign law</li> </ul>	Partnerships are subject to corporate income tax. However, up to 50% of the profits of partnerships is taxed in the hands of the individual partners at their personal tax rate.

Spain	<p>Entities subject to the system for taxing attribution of profits:</p> <ul style="list-style-type: none"> <li>- <i>Sociedad civil con o sin personalidad jurídica</i> (Civil law partnership with or without legal personality),</li> <li>- <i>Herencias yacentes</i> (Estate of a deceased person),</li> <li>- <i>Comunidad de bienes</i> (Joint ownership).</li> <li>- Other entities without legal personality that constitute a separate economic unit or a separate group of assets (Article 35(4) of the <i>Ley General Tributaria</i>).</li> <li>- ‘Trust’ or other similar legal arrangement, governed by foreign law</li> </ul>	
France	<ul style="list-style-type: none"> <li>- <i>Société en participation</i> (Joint venture company)</li> <li>- <i>Société ou association de fait</i> (De facto company)</li> <li>- <i>Indivision</i> (Joint ownership)</li> <li>- <i>Fiducie</i></li> <li>- ‘Trust’ or other similar legal arrangement, governed by foreign law</li> </ul>	

Italy	<ul style="list-style-type: none"> <li>- All Civil law partnerships and assimilated entities-</li>   <li>- Companies with a limited number of shareholders opting for fiscal transparency</li>   <li>- ‘Trust’ or other similar legal arrangement, governed by foreign law</li> </ul>	<p>The category of Civil law partnerships includes: ‘<i>società in accomandita semplice</i>’, ‘<i>società semplici</i>’, <i>associazioni</i> (associations) among artists or professional persons for the practice of their art or profession, without legal personality ‘<i>società in nome collettivo</i>’, ‘<i>società di fatto</i>’ (irregular or ‘de facto’ partnerships) and ‘<i>società di armamento</i>’</p> <p>The ‘tax transparency’ regime may be adopted by limited liability companies or cooperative societies whose members are individuals (article 116 of TUIR).</p> <p>Unless the trustee can provide documentation proving that the trust is fiscally resident and subject to effective corporate taxation in Italy.</p>
Cyprus	<ul style="list-style-type: none"> <li>- <i>Syneterismos</i> (Partnership)</li> <li>- <i>syndesmos</i> or <i>somatia</i> (Association)</li> <li>- <i>Synergatikes</i> (Cooperative)</li> <li>- ‘Trust’ or other similar legal arrangement, governed by local or foreign law</li> </ul>	<p>Only transactions with members.</p> <p>Trusts created under Cypriot jurisdiction are considered transparent entities under national law.</p>

Latvia	<ul style="list-style-type: none"> <li>- <i>Pilnsabiedrība</i> (General partnership)</li> <li>- <i>Komandītsabiedrība</i> (Limited partnership)</li> <li>- <i>Biedrība un nodibinājums</i> (Association and foundation);</li> <li>- <i>Lauksaimniecības kooperatīvs</i> (Agriculture cooperative)</li> <li>- ‘Trust’ or other similar legal arrangement, governed by foreign law</li> </ul>	
Lithuania	<ul style="list-style-type: none"> <li>- ‘Trust’ or other similar legal arrangement, governed by foreign law</li> </ul>	
Luxembourg	<ul style="list-style-type: none"> <li>- ‘Trust’ or other similar legal arrangement, governed by foreign law</li> </ul>	
Hungary	<ul style="list-style-type: none"> <li>- ‘Trust’ or other similar legal arrangement, governed by foreign law</li> </ul>	Hungary recognises trusts as ‘entities’ under national rules
Malta	<ul style="list-style-type: none"> <li>- <i>Soċjetà in akomonditia</i> (Partnership “<i>en commandite</i>”), the capital of which is not divided into shares</li> <li>- <i>Arrangement in participation</i> (Association “<i>en participation</i>”)</li> <li>- <i>Soċjetà Kooperattiva</i> (Cooperative society)</li> </ul>	Partnerships “ <i>en commandite</i> ” the capital of which is divided into shares are subject to general CIT.

The Netherlands	<ul style="list-style-type: none"> <li>- <i>Vennootschap onder firma</i> (General partnership)</li> <li>- <i>Commanditaire vennootschap</i> (Closed limited partnership)</li> <li>- <i>Vereniging</i> (Association)</li> <li>- <i>Stichting</i> (Foundation)</li> <li>- ‘Trust’ or other similar legal arrangement, governed by foreign law</li> </ul>	<p>General partnerships, closed partnerships and EEIGs are transparent for tax purposes.</p> <p><i>Verenigingen</i> (Associations) and <i>stichtingen</i> (foundations) are tax exempt unless they carry on a trade or business.</p>
Austria	<ul style="list-style-type: none"> <li>- <i>Offene Gesellschaft</i> (OG) (general partnership)</li> <li>- <i>Offene Handelsgesellschaft</i> (OHG) (commercial partnership)</li> <li>- <i>Kommanditgesellschaft</i> (KG) (limited partnership)</li> <li>- <i>Gesellschaft nach bürgerlichem Recht</i> (civil law partnership)</li> <li>- ‘Trust’ or other similar legal arrangement, governed by foreign law</li> </ul>	

Poland	<ul style="list-style-type: none"> <li>- <i>Spółka jawna (Sp. j.)</i> (General partnership)</li> <li>- <i>Spółka komandytowa (Sp. k.)</i> (Limited partnership)</li> <li>- <i>Spółka komandytowo-akcyjna (S.K.A.)</i> (Limited joint-stock partnership)</li> <li>- <i>Spółka partnerska (Sp. p.)</i> (Professional partnership)</li> <li>- <i>Spółka cywilna (s.c.)</i> (civil law company)</li> <li>- ‘Trust’ or other similar legal arrangement, governed by foreign law</li> </ul>	
Portugal	<ul style="list-style-type: none"> <li>- Civil law partnerships not incorporated in a commercial form</li> <li>- Incorporated firms engaged in listed professional activities in which all partners are individuals qualified in the same profession</li> <li>- Companies merely holding assets which are either controlled by a family group or fully owned by no more than five persons;</li> <li>- Companies licensed to operate on the International Business Centre of Madeira eligible for exemption from IRC (article 33 of the EBF)</li> </ul>	<p>Civil law partnerships not incorporated in a commercial form, incorporated firms engaged in listed professional activities in which all partners are individuals qualified in the same profession; companies merely holding assets which are either controlled by a family group or fully owned by no more than five persons;</p> <p>Article 33 of EBF, applicable to companies licensed until 31 December 2000, provides for an exemption from corporate income tax until 31 December 2011</p>

	<ul style="list-style-type: none"> <li>- Unincorporated associations</li> <li>- ‘Trust’ or other similar legal arrangement, governed by foreign law</li> </ul>	The only trusts admitted under Portuguese law are those set up under foreign law by legal persons in the International Business Centre of Madeira.
Romania	<ul style="list-style-type: none"> <li>- Association (partnership)</li> <li>- <i>Cooperativa</i> (Cooperative)</li> <li>- ‘Trust’ or other similar legal arrangement, governed by foreign law</li> </ul>	
Slovenia	<ul style="list-style-type: none"> <li>- ‘Trust’ or other similar legal arrangement, governed by foreign law</li> </ul>	
Slovak Republic	<ul style="list-style-type: none"> <li>- <i>Verejná obchodná spoločnosť</i> (General partnership)</li> <li>- <i>Komanditná spoločnosť</i> (Limited partnership)</li> <li>- <i>Združenie</i> (Association)</li> <li>- ‘Trust’ or other similar legal arrangement, governed by foreign law</li> </ul>	
Finland	<ul style="list-style-type: none"> <li>- <i>avoin yhtiö / öppet bolag</i> (Partnership)</li> <li>- <i>kommandiittiyhtiö / kommanditbolag</i> (Limited partnership)</li> <li>- ‘Trust’ or other similar legal arrangement, governed by foreign law</li> </ul>	
Sweden	<ul style="list-style-type: none"> <li>- <i>handelsbolag</i> (General partnership)</li> <li>- <i>kommanditbolag</i> (Limited partnership)</li> </ul>	

	<ul style="list-style-type: none"> <li>- <i>enkelt bolag</i> (Simple partnership)</li> <li>- ‘Trust’ or other similar legal arrangement, governed by foreign law</li> </ul>	
United Kingdom	<ul style="list-style-type: none"> <li>- General partnership</li> <li>- Limited partnership</li> <li>- Limited liability partnership</li> <li>- Investment club (where members are entitled to a specific share of assets)</li> </ul>	General partnerships, limited partnerships; limited liability partnerships are transparent for tax purposes.
Gibraltar <sup>10</sup>	<ul style="list-style-type: none"> <li>- ‘Trust’ or other similar legal arrangement, governed by local or foreign law</li> </ul>	<p>Trust income is exempt from tax under the Income Tax Rules 1992 if:</p> <ul style="list-style-type: none"> <li>(a) the trust is created by or on behalf of a non-resident person; and</li> <li>(b) the income <ul style="list-style-type: none"> <li>- is accrued or derived outside Gibraltar, or</li> <li>- is received by a trust and if it had been received directly by the beneficiary, it would not be liable to tax under the Income Tax Ordinance.</li> </ul> </li> </ul> <p>This does not apply if the trust is created before 1.7.1983 and the terms of the trust expressly exclude residents of Gibraltar as beneficiaries.</p>

<sup>10</sup> The United Kingdom is the Member State responsible for the external relations of Gibraltar, under the terms of Article 355(3) of the Treaty on the Functioning of the European Union.

(3) Annex V is added as follows:

**"ANNEX V**

List of items for statistical purposes to be provided annually  
by Member States to the Commission

**1. Economic items**

1.1. Withholding tax:

For Austria and Luxembourg (as long as they apply the transitional provisions set out in Chapter III), the total annual amount of tax revenue shared from the withholding tax, split by Member State of residence of the beneficial owners.

For Austria and Luxembourg (as long as they apply the transitional provisions set out in Chapter III), the total annual amount of tax revenue shared with the other Member States from the withholding tax levied under Article 11(5).

Data on the total amounts collected from the withholding tax, split by Member State of residence of the beneficial owners, should also be sent to the national institution in charge of compiling balance of payments statistics.

1.2. Amount of interest payments/sales proceeds:

For the Member States exchanging information or having opted for the voluntary disclosure provision under Article 13, the amount of interest payments within their territory which is subject to exchange of information under Article 9, split by Member State or Dependant and Associated Territory of residence of the beneficial owners.

For the Member States exchanging information or having opted for the voluntary disclosure provision under Article 13, the amount of sales proceeds within their territory which is subject to exchange of information under Article 9, split by Member State or Dependant and Associated Territory of residence of the beneficial owners.

For Member States exchanging information or having opted for the voluntary disclosure mechanism, the amount of interest payments subject to exchange of information, split by type of interest payments according to the categories set out in Article 8(2).

The data related to the total amounts of interest payments and sales proceeds, split by Member State of residence of the beneficial owners, should be communicated also to the national institution in charge of the compilation of Balance of Payments statistics.

#### 1.3. Beneficial owner:

For all Member States, the number of beneficial owners resident in other Member States and Dependent and Associated Territories, split by Member State or Dependant and Associated Territory of residence.

#### 1.4. Paying agents:

For all Member States, the number of paying agents (per sending Member State) involved in exchange of information or withholding tax for the purposes of the Directive.

#### 1.5. Paying agents upon receipt:

For all Member States, the number of paying agents upon receipt having received interest payments within the meaning of Article 6(4). This concerns both sending Member States, in which interest payments have been made to paying agents upon receipt whose effective place of management is in other Member States, and receiving Member States, who have such entities or legal arrangements on their territory.

## 2. Technical items

### 2.1. Records:

For the Member States exchanging information or having opted for the voluntary disclosure provision of Article 13, the number of records sent and received. One record means one payment for one beneficial owner.

### 2.2. Treated/corrected records:

Number and percentage of syntactically invalid records that can be processed;

Number and percentage of syntactically invalid records that cannot be processed;

Number and percentage of non-treated records;

Number and percentage of records corrected upon request;

Number and percentage of records corrected spontaneously;

Number and percentage of records treated successfully.

### 3. Optional items:

3.1 - For the Member States, the amount of interest payments to entities or legal arrangements which is made subject to exchange of information under Article 4(2), split by Member State of the entity's place of effective management.

3.2 - For the Member States, the amount of sales proceeds to entities or legal arrangements which is made subject to exchange of information under Article 4(2), split by Member State of establishment of the entity.

3.3 - The respective shares of total annual tax collected from resident taxpayers on interest payments made to them by domestic paying agents and by foreign paying agents. "

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**DRAFT STATEMENT CONCERNING ARTICLE 18 B  
TO BE ENTERED IN THE MINUTES OF THE COUNCIL  
AT WHICH THE DIRECTIVE WILL BE FORMALLY ADOPTED**

Ireland supports the application of the comitology procedure for the implementation of purely technical matters under this Directive, in accordance with rules laid down in Decision 1999/468/EC of 28 June 1999.

However our agreement to the limited use of comitology in this instance is an exceptional measure and should in no way be seen as setting a precedent for the use of comitology in the field of taxation.

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