COUNCIL OF
THE EUROPEAN UNION

Brussels, 13 September 2000 (18.09)
(OR. fr)

11323/00

LIMITE

FISC 119

PRESIDENCY NOTE

for :	Working Party on Tax Questions (Direct Taxation)
on :	18 and 19 September 2000
Subject :	Taxation of savings - Revenue sharing

Delegations will find attached a Presidency note on revenue sharing.

1. Introduction

The principle of revenue sharing was established in the conclusions of the European Council held in Feira on 19 and 20 June 2000.

The Danish, Netherlands and Swedish delegations had previously presented three documents (11517/98 FISC 144, 5972/99 FISC 35 and 8087/99 FISC 113) on revenue sharing.

In FISC 35 in particular, those delegations proposed a new wording of Article 8 of the draft Directive to show how revenue sharing could be integrated.

In the Presidency's opinion, these three documents form an excellent working basis, inasmuch as they tackle the essential questions and the possible options for such a system (FISC 144 more particularly).

But it is now necessary to review the revenue sharing system in the light of the conclusions of the European Council held in Feira on 19 and 20 June 2000 relating to the taxation of savings, since the documents of the Danish, Netherlands and Swedish delegations could naturally contemplate that question only with respect to the draft Directive presented by the Commission (COM (1998) 295 final).

The context is no longer the same: insofar as the withholding tax system is only a transitional system, the revenue sharing mechanism will only be transitional as well.

In the Presidency's view, two issues need to be tackled.

2. Definition of "appropriate share"

The ECOFIN Council's report to the European Council on the tax package (Annexe IV to the European Council's conclusions in Santa Maria da Feira), approved by the European Council, provides in point 2(b) that "Member States which operate a withholding tax agree to transfer an appropriate share of their revenue to the investor's State of residence".

It is not therefore the total amount, contrary to what was proposed in FISC 35. The quantum of the share transferred ("appropriate share") still has to be determined.

2.1. Treatment of withholding taxes of the "debtor" type during the transitional period

As mentioned in documents FISC 144 and FISC 35, some tax conventions or domestic rules provide for withholding tax to be charged on interest. They are withholding taxes of the "debtor" type, as opposed to the withholding tax provided for in the Directive, which is a withholding tax of the "paying agent" type.

As stated in the introduction, the revenue sharing system is only needed for a transitional period at the end of which all States will be in an information exchange system.

It should therefore be ensured that the transitional period does not create too many disruptions in relation to the final regime situation.

In the final regime (information exchange system) and in relations between information exchange States during the transitional period, these withholding taxes of the "debtor" type will be maintained, where appropriate carrying a tax credit set off in the State of residence.

The Presidency is therefore of the opinion that these withholding taxes of the "debtor" type should not be abolished in the transitional period, contrary to what is proposed in the current draft (Article 8(1)).

Question : Do Member States share this point of view?

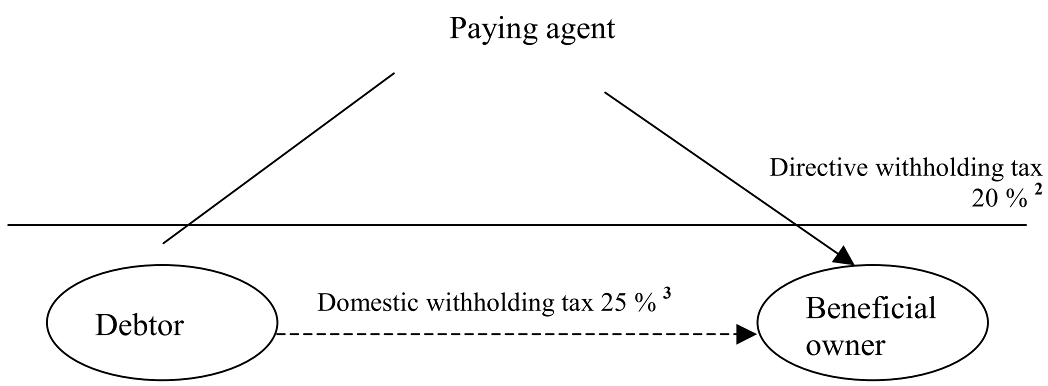
2.2. <u>Treatment of withholding taxes of the "debtor" type with respect to revenue sharing</u>

If Member States agree with the Presidency's point of view on the previous point, the question is then one of the linkage between the two types of withholding tax in the revenue sharing system.

Three cases may arise, even if in practice they will not be very frequent (see Annex [1]).

(a) <u>The debtor and the beneficial owner are in the same State, the paying agent being in another State</u>

The situation is one in which the State of the debtor operates a withholding tax on payments made to its residents.



This case appears only theoretic: the location of the paying agent in a different State seems to prevent application of the withholding tax of the debtor's State; the Directive withholding tax will therefore replace it.

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[1] The Annex has been prepared by the Presidency. Member States are invited to correct it where appropriate.

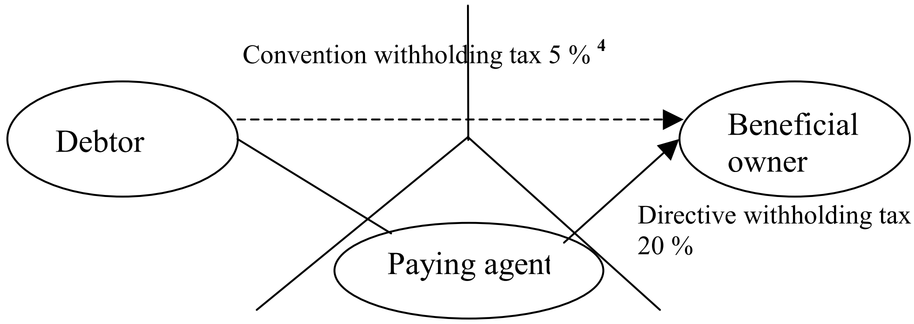
[2] Withholding tax rate hypothesis as provided for in the proposal for a Directive presented by the Commission (COM (1998) 295 final) which does not prejudge subsequent discussions on this issue.

[3] Hypothesis.

If this analysis is correct, it does not seem necessary to provide for clauses in the Directive.

Question : Do the delegations agree with this analysis?

(b) <u>The debtor, the paying agent and the beneficial owner are in three different States</u>



In this case, the Presidency sees no reason why there should be any interference between the two withholding taxes, which accrue to two different States.

The convention withholding tax will be set off against the tax due in the State of residence in accordance with the provisions of the tax convention if the beneficial owner files his tax return there.

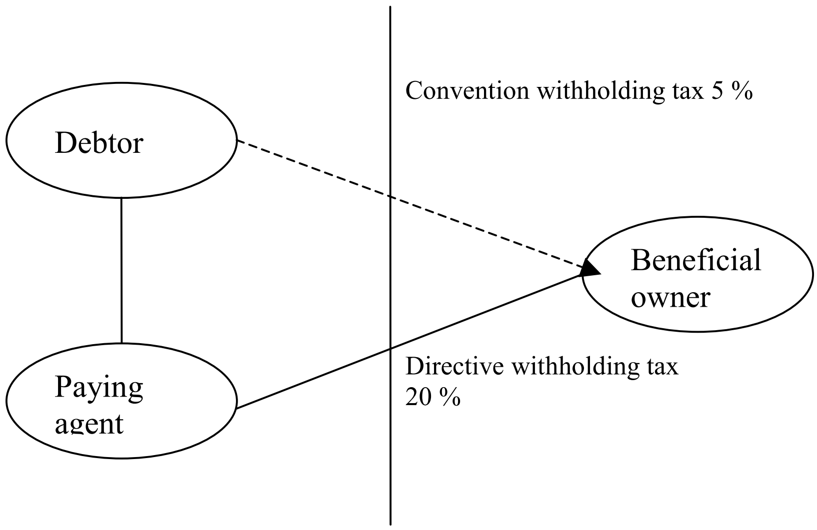
Thus, in this situation, the withholding tax operated in accordance with the tax convention would not fall within the scope of the revenue sharing system.

If, on the other hand, the convention withholding tax were to be incorporated in the revenue sharing system, this would result in a complex administrative burden which the Presidency does not consider necessary, in view of the transitional nature of the system and the aim of reducing the administrative burden of paying agents as far as possible.

Question : Do Member States share this point of view?

4 Hypothetical rate of withholding tax provided for by bilateral tax conventions.

(c) <u>The debtor and the paying agent are in the same State, the beneficial owner in another State</u>



The convention withholding tax could be regarded as being set off against the Directive withholding tax; the part of the Directive withholding tax to be shared would then have to be reduced by the amount of the convention withholding tax.

The two withholding taxes could, on the other hand, be regarded as additional to one another, the convention withholding tax being set off against the tax paid in the State of residence; in this case, part of the amount of the Directive withholding tax would be shared, the convention withholding tax not falling within the scope of revenue sharing.

The Presidency supports the second option, insofar as there is no reason to create a distortion in relation to the previous case.

Moreover, if paying agents had to manage two different types of revenue sharing system, according to the debtor's location, it would create too much of an administrative burden, especially for a transitional system.

Question : Do Member States share the Presidency's point of view?

2.3. Determining the shared quantum

In the Presidency's opinion, the purpose of the revenue sharing system is not to share taxation. That purpose is generally achieved by bilateral conventions for the avoidance of double taxation which settle double taxation cases between the debtor's State and the beneficial owner's State; in this case, the withholding tax is operated by the paying agent's State.

In this conception of things, the paying agent's State has no authority to keep the amount of tax levied.

However, such State might be regarded as entitled to recover part of the cost of collecting the withholding tax.

The Presidency therefore considers that, in order to determine the quantum to be shared in connection with the Directive on the taxation of savings, reference could be made to the criterion for traditional own resources (in the case of customs, 10% of the levy is kept to cover collection costs).

Thus, with respect to the Directive, 90% of the withholding tax would be transferred to the beneficial owner's State of residence.

Question : Do Member States agree to this proposal?

3. <u>Transfer procedures</u>

3.1. <u>Break-down of the revenue</u>

With respect to the break-down of the revenue, two schemes are conceivable: a break-down based on actual revenue, according to what the paying agents have levied, or a break-down based on an established criterion (macroeconomic criterion for instance).

The Presidency considers that the break-down should be based on actual revenue: the paying agent’s State transfers to the beneficial owner’s State of residence the part of the revenue accruing to it.

Insofar as the paying agent only needs to know the residence for tax purposes of the recipient of interest (without communication of his identity), this solution does not involve any lifting of banking secrecy and does not result in a heavy administrative burden.

The paying agent has in any case to check whether the payment is made to a resident of another Member State or of a third State. In so doing he learns, without the need for a further request, which Member State it is. Moreover, such checks are the same as those which will have to be made by the paying agents of the States which use information exchange and the paying agents of all States under the final regime.

The procedures put in place to operate the withholding tax are thus adequate to ensure the proper functioning of the revenue sharing system.

Question : Do the delegations share the Presidency’s point of view on the break-down of the revenue collected?

3.2. <u>A simple procedure</u>

As mentioned in FISC 144, there are several possible ways of incorporating the revenue sharing system in the draft Directive: from the most general (stipulation of the principle of introducing a revenue sharing system, leaving the implementation to bilateral agreements) to the most precise (establishing all aspects of the system).

FISC 35 opts for an intermediate solution, establishing some aspects of the system (frequency of transfer) and leaving the procedural rules up to individual States (date and mode of settlement of the withholding tax).

It could thus be provided, as indicated in FISC 35, that "within six months after the end of each calendar year, (90%) of the tax withheld in a Member State from beneficial owners resident in another Member State shall be transferred to the competent authorities of that other Member State. The Member States which [apply] the withholding tax system shall take the necessary measures to ensure the application of these provisions".

The Presidency likewise considers that, since the revenue sharing system is merely transitional, it should be as simple as possible. In such a context, the Directive should not provide for all the details of the system.

With respect to monitoring procedures, the Presidency considers that they are the responsibility of each Member State and that there is no reason to provide for a specific one in the Directive.

<u>Question</u>: Do delegations agree to set in the Directive only the amount and the frequency of revenue sharing and leave it up to the withholding tax States to determine the procedural and monitoring rules?

UNREVISED TRANSLATION

ANNEX TO THE ANNEX

Withholding tax on interest on debts, whether or not in the form of bonds, paid to natural persons resident in another EU State

Rate under the domestic law of the source State and rate actually levied under tax conventions

Source State / Beneficiary State	Type of interest	Rate under domestic law	Ger.	Aust.	Belg.	DK	Spain	Finl.	FR	GR	Irl.	Italy	Lux.	NL	Port.	UK	Sweden
Germany	Deposit([1]) GB (2) PSB (3)	0 (4) 0 (4) 0 (4)	-	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Austria	(5)	0	0	-	0	0	0	0	0	0	0	0	0	0	0	0	0
Belgium	In general (6)	15 0	15 0	15 0	- -	15 0	15 0	10 0	15 0	10 0	15 0	15 0	15 0	10 0	15 0	15 0	10 0
Denmark	All interest	0	0	0	0	-	0	0	0	0	0	0	0	0	0 (*)	0	0
Spain	(7)	0	0	0	0	0	-	0	0	0 (*)	0	0	0	0	0	0	0

Source State / Beneficiary State	Type of interest	Rate under domestic law	Ger.	Aust.	Belg.	DK	Spain	Finl.	France	GR	Irl.	Italy	Lux.	NL	Port.	UK	Sweden
Finland	(8)	0	0	0	0	0	0	-	0	0	0	0	0	0	0	0	0
France	GB + PSB (2) (3)	0	0	0	0	0	0	0	-	0	0	0	0	0	0	0	0
	Deposit(9)	0 to 35	0	0	0 to 15	0	0 to 10	0 to 10	-	0	0	0 to 10	0 to 10	0 to 10	0 to 12	0	0
Greece	Deposit(1)	0 or 15	0 or 10	0 or 10(10)	0 or 15	0 or 8		0 or 10	0 or 10			0 or 10	0 or 8	0 or 10			0 or 10
	GB (2)	0	0	0	0	0	Greek domestic law	0	0	-	Greek domestic law	0	0	0	Greek domestic law	0	0
	PSB (2)	0 or 40	0 or 10	0 or 10(10)	0 or 15	0 or 8		0 or 10	0 or 10			0 or 10	0 or 8	0 or 10			0 or 10
Ireland	Deposit (1)	0															
	GB (2)	22	0	0	15	0	0	0	0	Irish domestic law	-	10	0	0	15	0	0
	PSB (3)	22															
Italy	Deposit (1)	(11)	0	0	0	0	0	0	0	0	0	-	0	0	0	0	0
	GB (2)	0 to 12,5	0	0	0	0	0	0	0	0	0	-	0	0	0	0	0
	PSB (3)	0 to 30	0 to 10	0 to 10	0 to 15	0 to 15	0 to 12	0 to 15	0 to 10	0 to 10	0 to 10		0 to 10	0 to 10	0 to 15	0 to 10	0 to 15
Luxembourg	All interest	0	0	0	0	0	0	0	0	0	0	0	-	0	0(*)	0	0
Netherlands	All interest	0	0	0	0	0	0	0	0	0	0	0	0	-	0(*)	0	0
Portugal	Deposit(3)	(12)									0 to 15	0 to 15					
	GB (4)	20	0 to 15	0 to 10	0 to 15	Port. domestic law	0 to 15	0 to 15	0 to 12	Port. domestic law	0	0	Port. domestic law	Port. domestic law	-	0 to 10	Port. domestic law
	PSB (5)	20 to 25									15	15					

Source State / Beneficiary State	Type of interest	Rate under domestic law	Ger.	Aust.	Belg.	DK	Spain.	Finl.	France	GR	Irl.	Italy	Lux.	NL	Port.	UK	Sweden
United Kingdom	In general	20	0	0	15	0	12	0	0	0	0	10	0	0	10	-	0
	(13)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	-	0
Sweden	All interest	0	0	0	0	0	0	0	0	0	0	0	0	0	0 (*)	0	-

(1) Deposit: interest on deposit accounts and the like.

(2) GB: government bonds.

(3) PSB: private-sector bonds (non-participating and not convertible into shares).

(4) <u>Germany</u>: If the creditor can prove that he is resident in another State. If not, 36,92% withholding tax in discharge.

(5) <u>Austria:</u> Exemption applicable to all debts, whether or not in the form of bonds. Bonds convertible into shares or participating bonds come under the dividend arrangements (25% withholding tax). They are not therefore covered in the table.

(6) <u>Belgium</u>: Exemption applicable to interest on debts, registered, whether or not in the form of bonds, issued by a Belgian public entity or a Belgian financial institution. Same regime for interest on bank deposits. Certificate of non-residence in Belgium in all cases.

(7) <u>Spain</u>: Exemption under domestic law applies to all debts, whether or not in the form of bonds. However, 25% withholding tax is applicable where the beneficiary of the interest is resident in a tax haven. In the European Union, this concerns only Luxembourg holdings under the 1929 law. As the table relates only to natural persons, this exception is not mentioned. Justification by means of certificate of residence issued by the other State.

(8) <u>Finland</u>: Exemption under domestic law applicable to interest on (non-participating) bonds and bank accounts.

(9) <u>France</u>: The term "deposit" covers interest on debts not in the form of bonds.
Withholding tax rates vary considerably: Treasury bonds in paper form (Bons du Trésor sur formules) and cash certificates: from 15% to 35%; capitalisation bonds or contracts: 7,5% to 35%; Treasury bonds held in current accounts (Bons du Trésor en compte courant), commercial papers, certificates of deposit and the like, deposits with credit institutions: 0% (outside anonymity regimes, overall rate of 72%).

(10) <u>Greece</u>: 10% if the creditor holds more than 50% of the debtor's capital.

(11) <u>Italy</u>: Very varied rates of withholding tax:

. Deposit accounts and bank or post office accounts:	27% or 0% (**)
. Certificates of deposit issued as of 20.6.1996 by private companies:	27% or 0% (**)
. Certificates of deposit issued by the Treasury:	12,5% or 0%
. Certificates of deposit issued by banks:	0%

(12) Portugal:

- Interest on bank deposits, current accounts and loans other than bank loans: 20%
- Interest on inter-bank loans and bank investments made in foreign currency by foreign financial institutions: 0%
- Interest on Treasury bonds subscribed by non-residents (outside tax havens), issued as from 23.6.1994 and maturing between December 1995 and July 2004: 0%

(13) United Kingdom: Exemption with regard to interest on bank deposits (with certificate of non-residence), on bearer Euro-bonds (automatic exemption if clearing system, or exemption on request if not) and on certain government bonds where the terms of issue so provide.

(*) Exemption under domestic law (no convention).
(**) If there is a tax convention with an exchange of information clause.