

Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments (repealed)

CHAPTER III

TRANSITIONAL PROVISIONS

Article 10

Transitional period

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

They shall, however, receive information from the other Member States 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.

2 The transitional period shall end at the end of the first full fiscal year following the later of the following dates:

- the date of entry into force of an agreement between the European Community, following a unanimous decision of the Council, and the last of the Swiss Confederation, the Principality of Liechtenstein, the Republic of San Marino, the Principality of Monaco and the Principality of Andorra, providing for the exchange of information upon request as defined in the OECD Model Agreement on Exchange of Information on Tax Matters released on 18 April 2002 (hereinafter the ‘OECD Model Agreement’) with respect to interest payments, as defined in this Directive, made by paying agents established within their respective territories to beneficial owners resident in the territory to which the Directive applies, in addition to the simultaneous application by those same countries of a withholding tax on such payments at the rate defined for the corresponding periods referred to in Article 11(1),
- the date on which the Council agrees by unanimity that the United States of America is committed to exchange of information upon request as defined in the OECD Model Agreement with respect to interest payments, as defined in this directive, made by paying agents established within its territory to beneficial owners resident in the territory to which the Directive applies.

3 At the end of the transitional period, Belgium, 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, Belgium, Luxembourg or Austria elects 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.

Article 11

Withholding tax

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, Belgium, 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 Article 6(1)(a): on the amount of interest paid or credited;
- b in the case of an interest payment within the meaning of Article 6(1)(b) or (d): on the amount of interest or income referred to in those paragraphs or by a levy of equivalent effect to be borne by the recipient on the full amount of the proceeds of the sale, redemption or refund;
- c in the case of an interest payment within the meaning of Article 6(1)(c): on the amount of income referred to in that paragraph;
- 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 members of the entity referred to in Article 4(2) who meet the conditions of Articles 1(1) and 2(1);
- e where a Member State exercises the option under Article 6(5): on the amount of annualised interest.

3 For the purposes of points (a) and (b) of paragraph 2, withholding tax shall be levied pro rata to the period of holding of the debt claim by the beneficial owner. When the paying agent is unable to determine the period of holding on the basis of information in its possession, it shall treat the beneficial owner as having held the debt claim throughout its period of existence unless he provides evidence of the date of acquisition.

4 The imposition of withholding tax by the Member State of the paying agent shall not preclude the Member State of residence for tax purposes of the beneficial owner from taxing the income in accordance with its national law, subject to compliance with the Treaty.

5 During the transitional period, Member States levying withholding tax may provide that an economic operator paying interest to, or securing interest for, an entity referred to in Article 4(2) established in another Member State shall be considered the paying agent in place of the entity and shall levy the withholding tax on that interest, unless the entity has formally agreed to its name, address and the total amount of interest paid to it or secured for it being communicated in accordance with the last subparagraph of Article 4(2).

Article 12

Revenue sharing

1 Member States levying withholding tax in accordance with Article 11(1) shall retain 25 % of their revenue and transfer 75 % of the revenue to the Member State of residence of the beneficial owner of the interest.

2 Member States levying withholding tax in accordance with Article 11(5) shall retain 25 % of the revenue and transfer 75 % to the other Member States proportionate to the transfers carried out pursuant to paragraph 1 of this Article.

3 Such transfers shall take place at the latest within a period of six months following the end of the tax year of the Member State of the paying agent in the case of paragraph 1, or that of the Member State of the economic operator in the case of paragraph 2.

4 Member States levying withholding tax shall take the necessary measures to ensure the proper functioning of the revenue-sharing system.

Article 13

Exceptions to the withholding tax procedure

1 Member States levying withholding tax in accordance with Article 11 shall provide for one or both of the following procedures in order to ensure that the beneficial owners 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 paid to the beneficial owner by that paying agent; in such cases, the provisions of 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 and tax or other identification number or, failing such, 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.

Article 14

Elimination of double taxation

1 The Member State of residence for tax purposes of the beneficial owner shall ensure the elimination of any double taxation which might result from the imposition of the withholding tax referred to in Article 11, in accordance with the provisions of paragraphs 2 and 3.

2 If interest received by 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. Where this amount exceeds the amount of tax due in accordance with its national law, the Member State of residence for tax purposes shall repay the excess amount of tax withheld to the beneficial owner.

3 If, in addition to the withholding tax referred to in Article 11, interest received by a beneficial owner has been subject to any other type of withholding tax and the Member State of residence for tax purposes 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.

4 The Member State of residence for tax purposes of the beneficial owner may replace the tax credit mechanism referred to in paragraphs 2 and 3 by a refund of the withholding tax referred to in Article 11.

Article 15

Negotiable debt securities

1 During the transitional period referred to in Article 10, but until 31 December 2010 at the latest, domestic and international bonds and other negotiable debt securities which have been first issued before 1 March 2001 or for which the original issuing prospectuses have been approved before that date by the competent authorities within the meaning of Council Directive 80/390/EEC⁽¹⁾ or by the responsible authorities in third countries shall not be considered as debt claims within the meaning of Article 6(1)(a), provided that no further issues of such negotiable debt securities are made on or after 1 March 2002. However, should the transitional period referred to in Article 10 continue beyond 31 December 2010, the provisions of this Article shall only continue to apply in respect of such negotiable debt securities:

- which contain gross-up and early redemption clauses and
- where the paying agent as defined in Article 4 is established in a Member State applying the withholding tax referred to in Article 11 and that paying agent pays interest to, or secures the payment of interest for the immediate benefit of, a beneficial owner resident in another Member State.

If a further issue is made on or after 1 March 2002 of an aforementioned negotiable debt security issued by a Government or a related entity acting as a public authority or whose role is recognised by an international treaty, as defined in the Annex, the entire issue of such security, consisting of the original issue and any further issue, shall be considered a debt claim within the meaning of Article 6(1)(a).

If a further issue is made on or after 1 March 2002 of an aforementioned negotiable debt security issued by any other issuer not covered by the second subparagraph, such further issue shall be considered a debt claim within the meaning of Article 6(1)(a).

2 Nothing in this Article shall prevent Member States from taxing the income from the negotiable debt securities referred to in paragraph 1 in accordance with their national laws.

Status: This is the original version (as it was originally adopted).

- (1) [OJ L 100, 17.4.1980, p. 1](#). Directive repealed by Directive 2001/34/EC of the European Parliament and of the Council ([OJ L 184, 6.7.2001, p. 1](#)).