

Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States

Article 1

Scope and procedure

1 Interest or royalty payments arising in a Member State shall be exempt from any taxes imposed on those payments in that State, whether by deduction at source or by assessment, provided that the beneficial owner of the interest or royalties is a company of another Member State or a permanent establishment situated in another Member State of a company of a Member State.

2 A payment made by a company of a Member State or by a permanent establishment situated in another Member State shall be deemed to arise in that Member State, hereafter referred to as the 'source State'.

3 A permanent establishment shall be treated as the payer of interest or royalties only insofar as those payments represent a tax-deductible expense for the permanent establishment in the Member State in which it is situated.

4 A company of a Member State shall be treated as the beneficial owner of interest or royalties only if it receives those payments for its own benefit and not as an intermediary, such as an agent, trustee or authorised signatory, for some other person.

5 A permanent establishment shall be treated as the beneficial owner of interest or royalties:

- a if the debt-claim, right or use of information in respect of which interest or royalty payments arise is effectively connected with that permanent establishment; and
- b if the interest or royalty payments represent income in respect of which that permanent establishment is subject in the Member State in which it is situated to one of the taxes mentioned in Article 3(a)(iii) or in the case of Belgium to the 'impôt des non-résidents/belasting der niet-verblijfhouders' or in the case of Spain to the 'Impuesto sobre la Renta de no Residentes' or to a tax which is identical or substantially similar and which is imposed after the date of entry into force of this Directive in addition to, or in place of, those existing taxes.

6 Where a permanent establishment of a company of a Member State is treated as the payer, or as the beneficial owner, of interest or royalties, no other part of the company shall be treated as the payer, or as the beneficial owner, of that interest or those royalties for the purposes of this Article.

7 This Article shall apply only if the company which is the payer, or the company whose permanent establishment is treated as the payer, of interest or royalties is an associated company of the company which is the beneficial owner, or whose permanent establishment is treated as the beneficial owner, of that interest or those royalties.

8 This Article shall not apply where interest or royalties are paid by or to a permanent establishment situated in a third State of a company of a Member State and the business of the company is wholly or partly carried on through that permanent establishment.

9 Nothing in this Article shall prevent a Member State from taking interest or royalties received by its companies, by permanent establishments of its companies or by permanent establishments situated in that State into account when applying its tax law.

10 A Member State shall have the option of not applying this Directive to a company of another Member State or to a permanent establishment of a company of another Member State in circumstances where the conditions set out in Article 3(b) have not been maintained for an uninterrupted period of at least two years.

11 The source State may require that fulfilment of the requirements laid down in this Article and in Article 3 be substantiated at the time of payment of the interest or royalties by an attestation. If fulfilment of the requirements laid down in this Article has not been attested at the time of payment, the Member State shall be free to require deduction of tax at source.

12 The source State may make it a condition for exemption under this Directive that it has issued a decision currently granting the exemption following an attestation certifying the fulfilment of the requirements laid down in this Article and in Article 3. A decision on exemption shall be given within three months at most after the attestation and such supporting information as the source State may reasonably ask for have been provided, and shall be valid for a period of at least one year after it has been issued.

13 For the purposes of paragraphs 11 and 12, the attestation to be given shall, in respect of each contract for the payment, be valid for at least one year but for not more than three years from the date of issue and shall contain the following information:

- a proof of the receiving company's residence for tax purposes and, where necessary, the existence of a permanent establishment certified by the tax authority of the Member State in which the receiving company is resident for tax purposes or in which the permanent establishment is situated;
- b beneficial ownership by the receiving company in accordance with paragraph 4 or the existence of conditions in accordance with paragraph 5 where a permanent establishment is the recipient of the payment;
- c fulfilment of the requirements in accordance with Article 3(a)(iii) in the case of the receiving company;
- d a minimum holding or the criterion of a minimum holding of voting rights in accordance with Article 3(b);
- e the period for which the holding referred to in (d) has existed.

Member States may request in addition the legal justification for the payments under the contract (e.g. loan agreement or licensing contract).

14 If the requirements for exemption cease to be fulfilled, the receiving company or permanent establishment shall immediately inform the paying company or permanent establishment and, if the source State so requires, the competent authority of that State.

15 If the paying company or permanent establishment has withheld tax at source to be exempted under this Article, a claim may be made for repayment of that tax at source. The Member State may require the information specified in paragraph 13. The application for repayment must be submitted within the period laid down. That period shall last for at least two years from the date when the interest or royalties are paid.

16 The source State shall repay the excess tax withheld at source within one year following due receipt of the application and such supporting information as it may reasonably ask for. If the tax withheld at source has not been refunded within that period, the receiving company or permanent establishment shall be entitled on expiry of the year in question to interest

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on the tax which is refunded at a rate corresponding to the national interest rate to be applied in comparable cases under the domestic law of the source State.