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**COUNCIL DIRECTIVE 2004/76/EC**  
**of 29.4.2004**

amending Directive 2003/49/EC as regards the possibility for certain Member States  
to apply transitional periods for the application of a common system of taxation  
applicable to interest and royalty payments made between associated companies  
of different Member States

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 94 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>,

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<sup>1</sup> OJ C  
<sup>2</sup> OJ C  
<sup>3</sup> OJ C

Whereas:

- (1) Council Directive 2003/49/EC of 3 June 2003 on the common system of taxation applicable to interest and royalty payments made between associated companies of different Member States<sup>1</sup> provides for the abolition of taxation on those payments in the Member State where they arise, but also ensures that these payments are subject to tax once in a Member State.
- (2) The application of Directive 2003/49/EC is liable to cause budgetary difficulties for the Czech Republic, Latvia, Lithuania, Poland and Slovakia given the rates of withholding tax applied under national law and on the basis of tax conventions on income and capital and the revenue thus collected.
- (3) Those Acceding States should therefore be permitted, on a temporary basis, until the date of application referred to in Article 17(2) and (3) of Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments<sup>2</sup> not to apply certain provisions of Directive 2003/49/EC concerning, in the case of Latvia and Lithuania, interest and royalty payments, and in the case of the Czech Republic, Poland and Slovakia, royalty payments only.
- (4) The measure provided for in this Directive is not an adaptation within the meaning of Article 57 of the 2003 Act of Accession.

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<sup>1</sup> OJ L 157, 26.6.2003, p. 49.

<sup>2</sup> OJ L 157, 26.6.2003, p. 38.

- (5) Since the Member States are required to grant credit for tax deducted from interest and royalty payments, it is necessary to ensure that this Directive is transposed by the date of entry into force of the 2003 Act of Accession.
- (6) The provisions in this Directive must apply from the date of accession of the new Member States. The urgency of the matter justifies an exception to the six-week period provided for in point I.3. of the Protocol on the role of national parliaments in the European Union,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Article 6 of Directive 2003/49/EC is hereby amended as follows:

- 1) The title shall be replaced by the following:

"Transitional rules for the Czech Republic, Greece, Spain, Latvia, Lithuania,  
Poland, Portugal and Slovakia"

2) Paragraphs 1, 2 and 3 shall be replaced by the following:

"1. Greece, Latvia, Poland and Portugal shall be authorised not to apply the provisions of Article 1 until the date of application referred to in Article 17(2) and (3) of Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments\*. During a transitional period of eight years starting on the aforementioned date, the rate of tax on payments of interest or royalties made to an associated company of another Member State or to a permanent establishment situated in another Member State of an associated company of a Member State must not exceed 10% during the first four years and 5% during the final four years.

Lithuania shall be authorised not to apply the provisions of Article 1 until the date of application referred to in Article 17(2) and (3) of Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments\*\*. During a transitional period of six years starting on the aforementioned date, the rate of tax on payments of royalties made to an associated company of another Member State or to a permanent establishment situated in another Member State of an associated company of a Member State must not exceed 10%. During the first four years of the six-year transitional period, the rate of tax on payments of interest made to an associated company of another Member State or to a permanent establishment situated in another Member State must not exceed 10%; and for the following two years, the rate of tax on such payments of interest must not exceed 5%.

Spain and the Czech Republic shall be authorised, for royalty payments only, not to apply the provisions of Article 1 until the date of application referred to in Article 17(2) and (3) of Directive 2003/48/EC. During a transitional period of six years starting on the aforementioned date, the rate of tax on payments of royalties made to an associated company of another Member State or to a permanent establishment situated in another Member State of an associated company of a Member State must not exceed 10%. Slovakia shall be authorised, for royalty payments only, not to apply the provisions of Article 1 during a transitional period of two years starting on 1 May 2004.

These transitional rules shall, however, remain subject to the continued application of any rate of tax lower than those referred to in the first, second and third subparagraphs provided by bilateral agreements concluded between the Czech Republic, Greece, Spain, Latvia, Lithuania, Poland, Portugal or Slovakia and other Member States. Before the end of any of the transitional periods mentioned in this paragraph the Council may decide unanimously, on a proposal from the Commission, on a possible extension of the said transitional periods.

2. Where a company of a Member State, or a permanent establishment situated in that Member State of a company of a Member State:
  - receives interest or royalties from an associated company of Greece, Latvia, Lithuania, Poland or Portugal,
  - receives royalties from an associated company of the Czech Republic, Spain or Slovakia,

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- receives interest or royalties from a permanent establishment situated in Greece, Latvia, Lithuania, Poland or Portugal, of an associated company of a Member State, or
  - receives royalties from a permanent establishment situated in the Czech Republic, Spain or Slovakia, of an associated company of a Member State,

the first Member State shall allow an amount equal to the tax paid in the Czech Republic, Greece, Spain, Latvia, Lithuania, Poland, Portugal, or Slovakia in accordance with paragraph 1 on that income as a deduction from the tax on the income of the company or permanent establishment which received that income.

3. The deduction provided for in paragraph 2 need not exceed the lower of:
  - (a) the tax payable in the Czech Republic, Greece, Spain, Latvia, Lithuania, Poland, Portugal or Slovakia, on such income on the basis of paragraph 1, or
  - (b) that part of the tax on the income of the company or permanent establishment which received the interest or royalties, as computed before the deduction is given, which is attributable to those payments under the domestic law of the Member State of which it is a company or in which the permanent establishment is situated.

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\* L 157, 26.6.2003, p. 38.

\*\* L 157, 26.6.2003, p. 38".

### Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive from the date of its entry into force. They shall immediately forward to the Commission the text of these measures, together with a correlation table between such measures and this Directive.

When Member States adopt such measures, 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 subject to, and as on the date of, the entry into force of the Treaty of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia.

Article 4

This Directive is addressed to the Member States.

Done at Luxembourg, 29.4.2004.

For the Council  
The President  
M. McDOWELL

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