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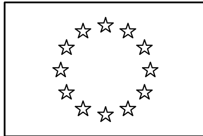

EUROPEAN COMMISSION
DIRECTORATE-GENERAL TAXATION AND CUSTOMS UNION
ANALYSIS AND TAX POLICIES
Direct tax legislation

Brussels, 18 March 2008
Taxud-E2 –

GT4\2007\070626\followup\commentsfromMS\20080401 Answers-Member States (draft 2)

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UPDATED PROVISIONAL VERSION
SUBJECT TO SCRUTINY BY THE DELEGATIONS

WORKING PARTY IV – DIRECT TAXATION

Draft summary of the comments from Member States on the questions raised in the document "Review of the operation of the Council Directive 2003/48/EC on taxation of income from savings" of 14 March 2007 (Draft n°2 including Luxemburg's written comments in yellow in comparison with the previous draft)

Meeting of 1 april 2008

GENERAL REMARKS

Answers to the "Review of the operation of the Council Directive 2003/48/EC on taxation of income from savings" of 14 March 2007

The Commission services received written contributions from 16 countries (BG, CZ, DK, EE, ES, FI, FR, IE, IT, LU, MT, NL, PL, SK, SL and UK). This summary document also includes some oral comments made by other countries during the WP IV meeting of 26 June 2007.

EXECUTIVE SUMMARY

Questions 1, 2 and 3 – Beneficial ownership and identification rules – possible link with the third anti-money laundering Directive (AMLD)

Some Member States (MS) give full support to the Commission services approach, because they think the reference to the individual ownership established for AMLD purposes could indeed help to improve the Savings Directive's effectiveness in the case of "instrumental" or "screen" companies.

A majority of MS, however, have expressed reservations to the approach adopted by the Commission because:

- They think it would be premature to align the Savings Directive with the AMLD until the latter has been operational for some time and any operational difficulties have been overcome.
- They consider that the identification of the beneficial owner according to the AMLD will not necessarily satisfy the purposes of the Savings Directive.
- They consider that, even if the proposed look-through approach is made conditional on the recipient being "subject to yearly taxation", the proposed look-through approach may be difficult to administer in practice, particularly when the paying agent is in a withholding tax jurisdiction, but also in the case of exchange of information, when the chain of holdings (number of intermediaries) is long and where the interest takes a number of years to eventually reach the beneficial owner.

Some MS are clearly against the proposition, because:

- It would extend the Savings Directive into the sphere of company taxation.
- The objectives of the Savings Directive and of the AMLD are different (the definition of the beneficial owner is different in each Directive).

● According to them, it would be very difficult to align both Directives in relation to discretionary trusts. They insist that what is being paid out of a trust is trust fund asset and not interest income.

● They add that this proposition would increase the administrative burden for the paying agents and create legal uncertainty.

Questions 4 and 5 - Alignment of the identifications rules provided by Article 3 of the SAVINGS DIRECTIVE with the Customer due diligence requirements to be observed under the AMLD

In regard to introducing a clarification in the Savings Directive in order to refer systematically to the identity and permanent address resulting from the Customer Due Diligence performed under the requirements of the AMLD, many countries agree that it would be important to use the most relevant and reliable data on the beneficial owner available to the paying agent. Some MS fear that the reference made in the AMLD to "documents, data or information obtained from a reliable and independent source" is too vague and could lead to uncertainties and interpretation problems. Some MS think it is not possible to fully align the two Directives (notably because it is necessary that all income is covered and not only income exceeding a specific amount) and insist it is useful to have TIN or date and place of birth of an individual reported for tax purposes.

Question 6 - Joint accounts

On joint accounts, the vast majority of MS agree with the propositions of the Commission. However, some MS do not think it is absolutely necessary to introduce specific rules in the Directive providing for proportional attribution of interest payments or, in the absence of such information, the presumption of equal shares. Malta thinks this could mean an extra burden for paying agents since they do not currently hold this information and that a simple proportional or equal share attribution of interest to all the holders in a joint account would still not ensure that the information exchanged is accurate. It is of the opinion that it would be better if the paying agents identify (perhaps by a specifically designated code) whether the amount reported is the full amount of interest, the actual amount due to the beneficial owner or an equal share.

Questions 7 and 8 - Proof of tax residence

On Q 7 (reference by paying agents to those official documentary proofs of tax residence of the beneficial owner which are already in their possession), many MS would welcome a positive answer from paying agents. Some MS recommend the systematic use of tax certificates, while others think the procedure suggested in Q 8 (additional task of systematically requesting an official documentary proof of tax residence for particular cases) would be burdensome and unnecessary.

Questions 9 to 12 - Definition of paying agent – Article 4 (2) of the Directive – transparent entities.

Some MS do not see any objections against amending Art. 4(2) of the Directive in order to cover all transparent entities by this provision. They generally recommend establishing a positive list of the categories of transparent entities for which this provision would apply. Nevertheless, some MS fear that the administrative burden put on paying agents would be too high, and some would like to know if MS have a common method of determining whether en entity is tax transparent or not. Identically on Q 12 (application of provisions of article 4 (2) only if the look-through approach has not produced results in order to establish beneficial ownership), some MS find the idea interesting but probably quite complex to implement. One MS does not think that the proposed approach is the appropriate one, as art 4(2) does not work in practice and is not applied by third countries.

Question 13 - Discretionary trusts (and other arrangements) and the "paying agent on receipt" provisions.

Some MS support a modification of article 4 (2) that would extend the scope of this article to all trusts and similar arrangements where the income is not taxed on a yearly basis in its Member State of establishment. Others find the purpose of the proposition unclear, notably because trusts are used for many purposes and it would be inappropriate to treat them in general as savings vehicles, and also simply because sometimes it is not possible for a trust to hold an account in its own name. They think that having to establish whether an entity is taxable on its annual income would place an additional burden on the paying agents and MS concerned. One MS firmly expressed the view that the proposed solution is not the appropriate one, as art 4(2) does not work in practice.

Questions 14 and 15 - Preventing the deliberate routing of interest payments through branches of the paying agents located outside the territorial scope of the Savings Directive

On this point most MS support the concerns of the Commission. They feel deliberate routing could undermine the objective of the Savings Directive and think specific anti-abuse provisions should be included within the Directive for this purpose (one MS noted that its own administrative provisions already provide for such an anti-abuse rule). But some also think a more thorough legal analysis needs to be made before imposing such an obligation (bank secrecy issues).

Question 16 - Definition of interest payment. Exclusion of innovative financial products from the scope of the Savings Directive.

Some MS support the idea that the omission of innovative financial products causes distortion of competition in financial markets and agree it would be useful to consider the principle that "the substance over form principle" should prevail. Some of these MS think an amendment of the Directive is needed to achieve this objective. Some other MS have reservations about moving in that proposed direction, because they think they are not able to evaluate the impact of the current exclusion of innovative financial products and because the "substance over form principle" will require paying agents to make difficult judgements.

Questions 17 and 18 - Revocable Life-insurance, pension or annuity products

Some MS express the opinion that distortions are inevitable and that enlarging the scope of implementation of the Directive to the above mentioned financial products would be desirable. Many MS are cautious and would like more information on possible distortions before taking a position. Their answer will depend on the outcome of the discussions with the Expert Group. One MS think that revocable life insurance, pension and annuity products should remain outside the scope of the Directive.

Questions 19-20-21 - Interest income obtained through non-UCITS. Definition of undertakings for collective investment established outside the territory to which the treaty applies – definition of collective investment funds.

A broad majority of MS supports the idea that income from non-UCITS funds should be brought within the scope of the Directive, which requires a workable definition to be found. They also agree that the definition of undertakings for collective investment established outside the territory should be clarified and insist that the definition of collective investment funds should encompass all different investment funds. They insist in finding a solution to these problems, and that it is important to aim for consistency of treatment. One MS would, nevertheless, like to see the report of the Expert Group, as well as some statistical evidence that the markets are being distorted, before making its judgement. One MS is against the inclusion of income from non-UCITS in the scope of the Directive.

Questions 22-23 - Annualisation

MS who answered these questions were not aware of any distortion arising from the annualisation provision contained in the Savings Directive.

Question 24 - Home country rule

Nearly all MS having answered support the "home country rule" and some of them are ready to give further consideration to the suggestion that a change in the text of article 6 (8) could help in this respect.

Question 25 – Time reference for exchange of information

A majority of MS think it would probably be burdensome for paying agents to be requested to specify the quarter of the tax year during which the interest payment is made. They therefore do not really support the idea, even if this measure could increase the quality of the information.

Question 26 - Exceptions to the withholding tax procedure

MS are not aware of particular problems in respect of the application of article 13(1)(b) of the Directive.

ARTICLE 2 AND 3 – BENEFICIAL OWNERSHIP AND IDENTIFICATION RULES

Q1: For interest payments made to legal entities, located in or outside the EU, would it be possible to refer, when appropriate, to the individual beneficial ownership as established for the purposes of the Third anti-money laundering Directive (AMLD), for establishing beneficial ownership also for the purposes of the Savings Directive?

Q2: Would it be wise and practicable to make the above procedure conditional on the absence of any evidence (to be provided e.g. before the end of the fiscal year of the interest payment) that the legal entity is subject to yearly taxation on its income (including interest income) in its country of establishment under the local general arrangements for taxation of such kind of legal entities?

Q3: Could the Savings Directive be clarified in order to refer to concepts of the Third anti-money laundering Directive for establishing the individual beneficial owners of a discretionary trust or other similar legal arrangement, so as to consider the interest payment as made to those beneficial owners, notably in cases such as the one where no evidence is provided within a reasonable time (e.g. before the end of the fiscal year of the interest payment) that the income arising to the trust or other similar legal arrangement (including interest income) is taxed on a yearly basis?

YES: DE, DK, ES, FR, PL

DK: If the paying agent knows that the recipient of a payment is a legal entity, and that this entity acts on behalf of the true beneficial owner who is an individual and whose identity is known to the entity, then the Savings Directive ought to oblige the paying agent to apply a look-through approach. It would appear that the individual beneficial ownership as established under the AMLD could also be applied under the Savings Directive.

ES: In the case of "instrumental" or "screen" companies, the focus on the effective beneficiary, which is also advocated by the OECD, should be transposed into the Savings Directive.

DE: Oral support for the Commission services approach expressed in the meeting of 26 June 2007.

FR: full support to the Commission services approach. The reference to the individual ownership established for AMLD purposes could indeed help to improve the Savings Directive effectiveness, while taking into account that this would impose an additional burden on paying agents. On trusts, France agrees with the Commission's analysis and supports any attempts to determine the effective beneficial owner of interest payments in situations where the trust or other similar arrangement does not pass interest payments directly to a beneficiary. In that area, the reference to concepts of the AMLD could be helpful.

<u>NO</u>: IE, CZ, LU, NL, UK

IE: thinks it would be premature to align the Savings Directive with the AMLD until the later has become operational for some time and any operational difficulties have been overcome. In relation to discretionary trusts, Ireland considers that it would be very difficult to align both Directives. The ultimate aim of the Savings Directive is to ensure effective taxation of cross border payments of savings income. In the case of interest arising to a discretionary trust, none of the potential beneficiaries of the trust has an ownership interest until it is actually paid over. At that stage, what is being paid is trust funds and not interest income. In regard to taxing the settlor of the trust in relation to the income of the trust, there is no provision in Irish law. Therefore Ireland does not regard the proposal to report the settlor of the trust as being any benefit to the recipient MS. An annual update of certificates would impose additional burden on both the paying agents and the tax authorities.

IE wants the Commission to clarify:

- how the paying agent is to establish the beneficial owner of savings income from this “class of persons” (Article 3(6) (b) (ii) of the AMLD, which deals with discretionary trusts, states that the beneficial owner shall at least include "the class of persons in whose main interest the legal arrangement or entity is set up or operates").
- what the paying agent should report in cases where some of the “class of persons” are based in the same Member State as the paying agent and some are in other MS, and
- what action would be expected from MS to which the income is reported?

LU: the reference to the AMLD, even under the condition proposed in Q2, will not necessarily be appropriate, because the objectives of the two directives are different, and because this solution would put an additional burden on paying agents. On Q3, LU would like to highlight the ECOFIN conclusions of 27 November 2000 ("Similar income…… going through structures used as substitutes for CIU (trusts, partnerships, etc…) will also be covered by the Directive"), but thinks the solution proposed in Q3 would not achieve the desired result.

NL: the objectives of both Directives are different (the definition of the beneficial owner is at present different in each Directive), and this particular solution would put an additional burden on paying agents. NL is not against an extension of the scope of the Directive, but would prefer, for example, the solution of a systematic exchange of information on <u>all</u> interest payments (including payments to entities), without asking paying agents to perform the role of "controller"

UK: look-through approach would extend the Savings Directive into the sphere of company taxation, which is expressly excluded from its scope at present; introduction of the requirements to provide evidence would seem impracticable and are likely to be a burden on paying agents. In the case of discretionary trusts, beneficiaries are not the owners of the income while it remains in the trust.

<u>RESERVED POSITION</u>: BG, EE, IT, LV, MT, SK, AND SL

BG: wait and see position: we have to see how the new AMLD will be implemented and how it will work in practice.

EE: Considering the fact that Customer Due Diligence will be performed depending on the risk of money laundering and terrorist financing, it could be concluded that the identification of the beneficial owner will not necessarily satisfy the purposes of the Savings Directive (lack of pertinent data). In the situation where the beneficial owner of interest payment made to a legal person has been established with sufficient precision, it could in principle also be used for the purposes of the Savings Directive, provided that it would still be possible to prove the real beneficial owner of the payment.
If the look-through approach is applied then it should be conditional on the absence of evidence that the legal person itself is in fact taxable (whether on a yearly basis or otherwise). Furthermore, it cannot be presumed that the payment of interest to a legal person is just a means of avoiding the application of the Savings Directive, regardless of the tax regime of the legal person.
We are not convinced that establishing the settlor or possible beneficiaries of the trust as beneficial owners for the purposes of the Savings Directive would in fact produce an adequate result. The Directive is aimed at effective taxation in the residence state of savings income in the form of interest payments made to individuals, but the income paid from the trust (except the so-called bare trusts and alike) to the beneficiaries is not necessarily savings income. In this case it might not be appropriate to refer to taxation or non-taxation of the trust as a condition for applying the look-through approach.

IT: wonders if the use of the AMLD is sufficient for discretionary trusts. More generally, the reference made to the absence of annual taxation could limit the effectiveness of the measure.

LV: at present LV cannot give an affirmative answer to Q1: It should be examined what real possibilities there are to apply the look-through approach in order to establish the beneficial ownership of legal entities established outside the EU? What are the possibilities of a paying agent to fulfil his possible obligation to establish the beneficial owners of legal entities located outside the EU? If it will be decided to apply the look–through approach, it would be appropriate to apply it only under certain conditions that may include the situation where no evidence is available in the taxation regime of the legal entity receiving the savings income. In general LV supports the idea of clarification of the Savings Directive for establishing the individual beneficial owners of a discretionary trust or other similar legal arrangements. However, it seems that the criteria for beneficial ownership under the AMLD are better suited to determine the settlor of the trust rather than the beneficial owner.

MT: Malta is of the opinion that the proposed look-through approach may be difficult to administer in practice in the case where:

- the paying agent is in a withholding tax jurisdiction: the withholding tax is deducted and 75% thereof is presumably transferred to the jurisdiction where the beneficial owner is resident. However, such a beneficial owner (in accordance with the provisions

of the AMLD) will not have the interest as a source of income, therefore there will be a problem for the purpose of the elimination of double taxation under Article 14 of the Savings Directive;

- the paying agent exchanges information: it may be a problem for beneficial owners to produce conclusive evidence as to whether their income in fact includes interest or not, particularly where there are a large number of intermediaries in the payment chain and where the interest takes a number of years to eventually reach the beneficial owner.

Malta is of the opinion that even if the proposed look-through approach is made conditional on the "subject to yearly taxation" there may be difficulties in practice, particularly where there are a large number of intermediaries. When a payment is made by a paying agent to a legal entity which is not subject to yearly taxation, which in turn is owned by other legal entities, should the paying agent follow the whole chain of holdings up to the natural person(s) that are the beneficial owners in accordance with the AMLD, in order to determine whether along this chain there is an entity that is charged on a yearly basis? If not, there could be double taxation, particularly where the paying agent is situated in a withholding tax jurisdiction.

Malta feels that the concept of beneficial ownership through ownership or control does not go hand in hand with the concept of beneficiaries of a trust. The latter do not own the assets that are settled in the trust and do not control the assets. Legal ownership and control is in the hands of the trustee. Furthermore, Malta considers that the proposal of adopting the AMLD parameters would not work for discretionary trusts when applied to the Savings Directive. The latter deals with income, while the former deals with property (assets). Furthermore, the assumption that a natural person who is the beneficiary of at least 25% of the trust property is in fact the beneficiary of the interest accruing to the trustee could produce very misleading exchanges of information (or unjustified withholding tax).

SK: We recommend analysing in detail whether "beneficial owner" for the purposes of the AMLD is identical with the definition of "beneficial owner" for the purposes of the Savings Directive and whether this approach would meet goals of the Savings Directive in any case.

SL: further examination is needed.

Q4: Should the Savings Directive be amended in order to refer systematically to the identity and permanent address resulting from the Customer Due Diligence performed under the requirements of the Third anti-money laundering Directive and its possible future modifications, with the only exception of those cases where there are no such requirements (e.g. transactions not exceeding €15000 carried out in the absence of contractual relations)?
Q5: If yes, how could the additional requirements set by Article 3 of the Savings Directive for contractual relations, or single transactions entered on or after 1 January 2004 (supplementing the identity with a reference to the date and place of birth, or to the tax identification number, when available; presumption of residence in the EU of those individuals presenting a passport or official identity card issued by an EU Member State) be maintained and satisfied?

YES: DK (with reservations)**, EE** (with reservations), **FR** (conditions), **LU, MT** (worth considering), **NL, PL** (worth considering), **SK, SL** (worth examining) and the **UK** (worth exploring it further)

DK: For the purposes of the Savings Directive, the permanent address of the beneficial owner should generally continue to be established from a passport or an official identity card presented by the beneficial owner (as is the case today), unless the paying agent is in possession of information positively contradicting the information in the passport or official identity card (including another passport or official identity card issued at a later date.) We agree, however, with the purpose of the amendments suggested.

EE: As regards the rules for identification of the beneficial owner and his permanent address, it is important for the purposes of the Savings Directive to use the most relevant and reliable data on the beneficial owner available to the paying agent. If the data resulting from the Customer Due Diligence is accurate and suitable for that purpose and the identification thus performed is not more burdensome for the paying agents, then unifying requirements arising under the two Directives could be considered.

FR: if it is not more burdensome for the paying agents, then the unification of requirements arising under the two Directives could be considered. For the purposes of the Savings Directive, tax authorities need specific information, and some additional rules for the beneficial owner's identification will be needed (for example on the basis of all "documents, data or information obtained from a reliable and independent source", art 8 of the AMLD).

LU: if it is acceptable for paying agents then this solution seems advisable

MT: Malta feels that the Commission's analysis is correct, however, it doubts that its proposed solution would be successful if implemented. Paying agents currently have some form of objective criteria to work on. The proposal (in terms of the AMLD) refers to any "documents, data or information obtained from a reliable and independent source". If these criteria need to be used, tax administrations would still need to determine what the criteria objectively means (i.e. what constitutes a "reliable and independent source"). Furthermore, Malta considers that there should not be a different set of criteria for transactions under Euro 15,000.

NL: the right approach is indeed, when possible, to link the determination of identity and residence to info already in the possession of the paying agent.

PL: since transactions not exceeding €15000 are not covered by the requirements of Customer Due Diligence under the AMLD, the paying agent would be obliged to apply two different regimes under the Savings Directive and the AMLD. It would be important to ascertain the opinion of market operators. It is also worth mentioning that according to the requirements of the AMLD, Customer Due Diligence can be based on "documents, data or information obtained from reliable and independent source". Every Member State can have a different understanding of "reliable and independent source"; also domestic laws implementing the AMLD can vary considerably, which could cause interpretation problems. TIN should always be the main identification measure for tax purposes. When it is not available, reference to the date and place of birth should be made.

NO: IE, CZ, LV

IE: wonders whether it is possible to fully align both Directives. For example, it is necessary that the Savings Directive continues to apply to all income rather than just to income exceeding a specified amount, otherwise it would be possible to circumvent the requirements of the Directive. It is also useful to have the TIN or date and place of birth of an individual in order to identify that individual for tax purposes. The AMLD is not suitable to use for either of these purposes. This suggests that it would be necessary that paying agents continue to have two systems in place at the account opening stage, which would reduce, if not eliminate, the benefits for paying agents of aligning both Directives.

LV: the current provisions of the Savings Directive on identification of the beneficial owner and the determination of permanent address of the beneficial owner are satisfactory. Amendments to the Savings Directive are not necessary.

RESERVED POSITION: BG, IT, ES

BG: For the purposes of the Savings Directive, the tax authorities need specific information. If the Savings Directive would be amended in order to refer to Customer Due Diligence requirements, some additional rules for the beneficial owner's identification will be needed.

ES: the intention of the Commission must be valued positively, but Spain is not prepared to allow more flexibility than that already provided in Article 3 of the Savings Directive.

IT: present rules would be better improved by also introducing an obligation to refer to the "most recent situation".

Q6: Would you agree that it is desirable to introduce in the Savings Directive (preferably in its Article 2) explicit common rules providing for a proportional attribution of interest payments to all the holders of joint accounts, or other jointly owned assets, according to their actual proportion of beneficial ownerships, or in equal shares in the absence of such information?

YES: BG, DK, EE, FI, FR, CZ, IT, LU, NL, PL, SK, SL, UK

EE: Yes unless this issue can be settled by a common interpretation approved by all MS

FI, FR: proposition in line with the current practice in Finland and France

LU: would agree to apply specific common rules, if it is necessary and advisable.

NO: LV, MT

LV: it is not necessary to introduce common rules providing for the proportional attribution of interest payments or, in the absence of such information, the presumption of equal shares.

MT: Malta feels that this proposal would mean that paying agents would need to establish this information for all their joint accounts. This could mean an extra burden for paying agents since they do not currently hold this information. Furthermore, a simple proportional or equal share attribution of interest to all the holders in a joint account would still not ensure that the information exchanged is accurate. Malta is of the opinion that it would be better if the paying agents identify (perhaps by a specifically designated code) whether the amount reported is the full amount of interest, the actual amount due to the beneficial owner or an equal share.

RESERVED POSITION: IE

IE: currently attributes the entire payment to each account holder in the absence of other information and has no objection to introducing any other system, if it is demonstrated that there is a demand for it.

Q7: Would it be acceptable for paying agents to make reference to those official documentary proofs of tax residence of the beneficial owner which are already in their possession, rather than to his permanent address, for establishing residence for the purposes of the Savings Directive?

Q8: If yes, would paying agents accept the additional task of systematically requesting an official documentary proof of tax residence to all beneficial owners whose own professional activity or personal status, as known by the paying agent and corresponding to an indicative list of possible cases to be joined to the Savings Directive, can imply a difference between the State of the permanent address and the State of tax residence?

YES: CZ (only to **Q7), DE** (oral support on **Q7**), **DK, EE, ES** (but it is not necessary to change the Directive)**, FI, FR** (questions to be addressed to paying agents)**, IT (**only to **Q7), LV (**only to **Q7), LU** (only to **Q7), NL (**only to **Q8), MT, PL (**subject to the conditions mentioned below**), SL, UK (**only to **Q7).**

DK: an affirmative answer from the Expert Group to Q8 would be constructive; the working document has not been consulted with the representative of Danish paying agents.

LU: proposition made in Q7 is acceptable, but not Q8 because it would increase the administrative burden on paying agents.

LV: An indicative list of possible cases when the professional activity or personal status of a beneficial owner shows that the Member State of his permanent address is not the same of his tax residence would be appropriate to assist paying agents. An alternative solution could be the possibility to amend the Directive in a way to oblige the MS of the permanent address of the individual to transfer the information to the Member State of the individual's tax residence. This could reduce the administrative burden on paying agents in situations when they do not have the above mentioned documentary proof of tax residence at their disposal.

NL: in NL no particular rules are applied to determine the identity and the residence of diplomatic personnel and the personnel of international institutions. NL agrees that it is a problem and suggests modifying art. 3(3) (b) to solve this problem (the use of a certificate of tax residence).

PL: Review of the current rules of the Savings Directive would be desirable as a reference to permanent address for the purpose of establishing tax residence can cause some difficulties. However, the amendment proposed in point 2.2.2 would not improve the present rules. Only certificates of tax residence can prove tax residence. In PL's opinion, the goal could be achieved only by obliging all paying agents to request a certificate of tax residence from all their customers. It seems not to be too burdensome to ask the tax authority for a certificate of residence, especially when the customer wants to exercise the benefits of a bilateral convention against double taxation. Documents other than certificates of tax residence (like consular certificates) cannot be regarded as a reliable evidence for tax residence.

SL: suggestions in line with the ultimate aim of the Directive. However, due to its complexity, the administrative burden of paying agents could increase significantly.

NO (to both questions): IE

IE: it appears burdensome and unnecessary; even if current practice can lead to double non-taxation, until the Commission produces evidence of the extent of this, IE would not be in favour of an amendment.

RESERVED POSITION: BG

BG: it is impossible to answers Q7 and Q 8 on behalf of the paying agents.

ARTICLE 4: "DEFINITION OF PAYING AGENT"

Q9: What would be the impact on economic operators making interest payments of an amendment to Article 4(2) of the Savings Directive, according to which all such payments made to a transparent entity (with the only exclusion of UCITS) established in another Member State would have to be submitted to the simplified reporting of the last phrase of Article 4(2), or to withholding tax under Article 11(5) of the same Directive?

Q10: Would the establishment of a "positive" list of the categories of transparent entities for which such provisions would apply, help make such an amendment acceptable?

Q11: Could the establishment of a "negative" list of the categories of entities certainly excluded from the "paying agent on receipt" provisions be considered a valid alternative to the "positive" list described in question 10, if such "negative" list is coupled with the establishment of a common model of certificate to be issued by the tax administrations in favour of those individual entities which does not belong to the categories included in such a "negative list", but are nevertheless actually taxed on their own income, including interest income, on a yearly basis?

Q12: If the "look-through" approach for establishment of beneficial ownership described in §2.1.1 is adopted, would upstream economic operators making interest payments be able to apply the provisions of Article 4(2) of the Directive only to those payments for which an individual beneficial owner cannot be identified at their level?

YES: CZ, DK, PL, ES, SK

CZ: recommends a 'positive' list; a 'negative' list could be an alternative. The solutions referred to in Q10 and Q1 are preferred as regards the look-through approach. It is necessary to analyze whether the current wording of the Savings Directive covers all required interest income and all needed areas.

DK: recommends a 'negative' list; a 'positive' list would be less practicable.

ES: no problem in extending the scope of Article 4.2. to transparent entities regardless of their legal form; recommends that a 'positive' list is regularly updated. Trusts have to be included as residual paying agents within the scope of the Directive.

PL: does not see any objections against amending Art. 4(2) of the Directive in order to cover all transparent entities with this provision. However, it is worth mentioning that Art. 4(2) of the Directive in the wording proposed by the Commission Services would cover not only transparent entities but also these non-transparent entities which have legal personality and are subject to strict supervision but are also exempt from taxation. The question arises whether this is necessary or not. PL recommends a 'positive list'. Establishment of a negative list and a special kind of certificate seems to be too burdensome.

SK: If this amendment is accepted, establishment of a "positive" list of the categories of transparent entities would be helpful. Establishment of a "negative" list could be a valid alternative to the "positive" list, but it is necessary to analyse which approach is less burdensome for individual entities, paying agents and tax administrations as well.

NO: LU

LU: concludes that art. 4(2) does not work because cases where the provision of that article applies to trusts are very rare. Moreover that mechanism does not apply to third countries, therefore LU does not see the usefulness of the proposition.

RESERVED POSITION: BG, EE, FR, IE, IT, LV, MT, SL, UK, NL

EE: As regards transparent entities, both a "positive" list and a "negative" list of the categories of transparent entities could be considered, while it is important to avoid as far as possible increasing the administrative burden on paying agents.

FR: the administrative burden of paying agents could increase significantly. France recommends the establishment of a positive list (to be regularly adapted). A negative list would be less practical. On Q 12, the approach proposed by the Commission would indeed be an ideal solution but seems quite complex to implement.

IE: no objection in principle, but the answers depends on the outcome of the discussion with the Expert Group. Points to be clarified by the Commission:

- How will transparent entities be defined?
- Is it intended to cover entities that are transparent for tax purposes in all MS?
- Do MS have a common method of determining whether an entity is tax transparent or not?
- How is a paying agent to know whether an entity is tax transparent?
- Who will compile and keep such lists up to date?
- Is the Commission of the opinion that discretionary trusts, which are not tax transparent, fit within this proposal?

The proposal may replace one uncertainty with another. Instead of requiring paying agents to establish whether an entity is residual or not, they would have to establish whether the entity is tax transparent.

IT: partnerships whose income is taxed under general rules for business taxation should be kept out of the scope of the Directive.

LV: if the scope of Article 4(2) is extended, a "positive" list of categories of entities would be helpful in order to ensure the correct application of the new requirements. The "negative" list could be an alternative. However, in both cases there will still remain additional work for the upstream economic operators if the scope of Article 4(2) is extended. If extended, the approach that is less burdensome for upstream economic operators should be adopted. In the case of an introduction of the look–through approach, it would be appropriate to apply the provisions of Article 4 (2) only in cases where an individual beneficial owner of the savings income has not been determined under the look through approach.

MT: Although Malta would have no problem with the idea of reporting payments made to transparent entities (not being UCITS) it has some doubt as to the practical aspect of this idea, particularly since Malta is not in favour of the setting-up of lists (whether positive or negative). Without prejudice to the doubts that Malta has on the idea of the adoption of a "look-through" approach, in the case of the adoption of the said "look-through", Malta would answer in the affirmative to question 12.

SL: the administrative burden of paying agents could increase significantly. With regard to lists and a link to the look-through approach, the issues are questionable, due to their complexity.

UK is rather sceptical about introducing either a 'positive' or a 'negative' list of transparent entities and needs further information about particular entities that might be relevant to such a list. It is against the proposal to extend the provisions of paying agent on receipt to discretionary trusts which are not subject to annual taxation.

NL: the question of the application of article 4(2) should indeed be clarified, but transparent entities whose income is taxed under the general rules for business taxation should be kept out of the scope; on Q10 and 11, NL thinks a negative list is more practical, because it would be easier to realise by tax administrations of MS. (on Q12 NL does not support the look-through approach).

Q13: What would be the impact for both the upstream economic operators and the professional trustees of possible amendments to Article 4(2) of the Savings Directive aiming at extending the "paying agent on receipt" provisions to the interest payments made to those discretionary trusts (or other legal arrangements) whose income (including interest income) is not taxed on a yearly basis in its Member State of establishment, whenever the Anti-money laundering provisions cannot be used by the upstream economic operator to identify the beneficial owner? Would it be possible to prepare a "negative" list, by Member State of establishment of the trust, of those categories of trusts or similar legal arrangements whose income (including interest income) is always subject to yearly taxation in their Member State of establishment?

YES: FR, IT, LV, NL, PL

FR: A modification of article 4 (2) would extend the scope of this article to all trusts and similar arrangements (which is not the case now because of the juridical concepts used in some MS). In France, only some "fiducies" are "arrangements similar to trusts"

LV: explicit extension of "paying agent on receipt" provisions to discretionary trusts, and other similar arrangements whose income is not taxed on a yearly basis in its MS of establishment is desirable in order to clarify the scope of Article 4(2)

NL: would provisionally support the idea (trustee = residual entity, unless it is taxed on its own income)

PL: Extension "paying agent on receipt" provisions to trusts seem to be reasonable. Setting up a "negative" list of trusts would be helpful; however, such institutions do not exist in Polish law, so it is crucial to know the positions of those MS where it is possible to establish trusts.

NO: IE, LU, UK

IE: purpose of proposal is unclear; an Irish discretionary trust would no longer be reportable, since they are taxed annually; establishing proof of annual taxation would seem to place an additional burden on the paying agents and MS concerned.

LU: Discretionary trusts should already be in the scope of the Directive. Article 4 (2) does not work and the proposed approach is not the right one.

UK: trusts are used for many purposes and it would be inappropriate to treat them in general as savings vehicles. We believe that the key to effective taxation of trusts (or income from trusts) is through appropriate domestic arrangements.

RESERVED POSITION: CZ, DK, ES, MT, SK

DK: as trust or similar arrangements cannot be set up under Danish law, DK is reluctant to volunteer an opinion as to whether or not it would be possible to set up a 'negative' list.

MT: The Commission's analysis deals with the particular issue of trusts holding accounts in their own name. In Malta, it is not possible for a trust to hold an account in its own name. Malta suggests that one should consider how rare this phenomenon is before actually embarking on the proposed exercise.

Q14: Would it be legally and practically feasible to impose an obligation on the head offices established within the EU to report (or to withhold) on interest payments made through non-EU branches, provided that such head offices have access to the information about the beneficial owner and the interest payment?

Q15: Can the above objective be achieved by a common broad interpretation of Article 1(2) of the Savings Directive or should the Directive provide specific rules for cases of EU paying agents deliberately routing interest payments through their non-EU branches?

YES: CZ, DK, EE, ES, FR, LU, MT, SL, SK, UK, PL

CZ: there should be a specific rule in the Savings Directive to cover deliberate routing of interest payments through non-EU branches.

DK: the objective could be obtained through a common interpretation of Article 1 (2).

EE: in situations where an interest payment made by the EU head office is artificially routed through branches situated in third countries, it could be advisable to impose the legal obligations related to such payments on the head office, as they do not constitute separate legal persons.

ES: any payment of interest made from a branch is subject to the rules and information requirements that apply to the head office in its state of establishment, therefore the Savings Directive does not need to be amended to cover these types of abuses of the law

FR: supports the proposition, but the Directive does need to be amended to achieve this objective.

LU: guidelines in Luxembourg already provide an anti-abuse rule.

LV: the imposition of an obligation on the head offices established within the EU to report on interest payments made through non-EU branches is a feasible solution, provided that such head offices have access to the necessary information. At the same time, the possibilities to withhold the savings tax by the head office from the payments of savings income made by the branch outside EU will be evaluated. It is advisable to clarify the Savings Directive by providing specific rules.

MT: Malta feels that where the Head Office has made the relevant arrangements, an obligation should be placed on Head Office to report the information (or withhold tax). Malta feels that specific anti-abuse provisions should be included within the Savings Directive for this purpose.

PL: The Savings Directive should provide specific rules in the case of EU paying agents deliberately routing interest payments through their non-EU branches. Imposing obligations should not be done by broad interpretation of the provisions but ought to be explicitly specified. Such a revision would lead to the necessity of introducing sanctions in the domestic laws (on the basis of art. 1(2) of the Directive) if the head office does not comply with these rules, otherwise the provisions of the Directive could be ineffective. It should be emphasised that a potential revision of the Directive would necessitate changing the agreements concluded between the European Union and the respective countries providing for measures equivalent to those laid down in the Savings Directive as well as the relevant bilateral agreements.

SL: Yes, specific rules to be introduced in the Directive

SK: Yes, specific rules to be introduced in the Directive.

UK: deliberate routing of interest payments could undermine the objective of the Savings Directive therefore the UK is open to exploring possible solutions, provided they do not impose a disproportionate burden on paying agents.

NO: IE

IE would require evidence that there is a problem before agreeing to any such proposal. They are not sure at this stage whether a common broad interpretation of Article 1(2) would provide a solution. If a solution is necessary, then a legal solution would be the only answer; there may be legal difficulties with the proposal and IE would like to have a legal opinion from the legal services of the Commission before considering this issue further.

RESERVED POSITION: BG, NL

BG: A wider legal analysis should be made before imposing such an obligation. In this regard, an explicit amendment to the Directive is needed.

NL would like more clarity about what the Commission means by deliberately routing payments, before taking a definitive position. They ask if a legal analysis of the proposition has been done by the Commission, because they fear that the bank secrecy provisions in some non-EU countries would stop branches from revealing client specific information.

ARTICLE 6: "DEFINITION OF INTEREST PAYMENT"

Q16: Does the current general exclusion of innovative financial products from the scope of the Savings Directive lead to distortion in financial markets? If so, can experts provide examples or demonstrations? Which kind of structured or derivative financial products could be considered as generating interest payments under a substance over form approach? Would it be desirable to slightly amend the Savings Directive in order to confirm that such an approach applies?

YES: DK, EE, ES, FR, IT, PL

DK: it is not necessary to amend the Directive in order to establish that in the case of derivative financial products the principle of substance over form is applied to establish whether or not any product is covered by the Savings Directive. Any examples or demonstrations provided by the Expert Group are awaited with much interest.

EE : the Savings Directive in its current wording does not preclude the substance over form approach, as it refers to interest relating to debt claims of every kind in article 6(1) (a).

ES: enlarging the scope of implementation of the Directive to the above mentioned financial products would be desirable to avoid outstanding distortions.

FR: It is necessary to amend the Directive to implement the principle of substance over form, to prevent any risks of the use of derivative products to avoid the application of the Directive.

PL does not have any data which could indicate that a general exclusion of innovate financial products from the scope of the Savings Directive leads to distortions in financial markets. No analysis has been made in this field. However, it would be desirable to amend the Directive in order to indicate that “substance over form approach” applies, provided that it would be explicitly specified what it means. MS would have to stipulate in what circumstances it is considered that substance prevails over form (establish clear criteria, e.g. the percentage share of underlying products generating interest income in the whole structured product). It would be also relevant to ascertain the views of market operators on this point.

NO: CZ, IE, LV, UK

CZ: this kind of payments should not fall under the Savings Directive.

IE: no evidence has been produced that the exclusion of these products has caused any distortion in the market; 'substance over form' should not bring a financial instrument within the scope if it is not already included. How does the paying agent determine the substance of a financial instrument? If MS consider that such products should be included in the scope of the Directive then an amendment will be necessary.

LV: is not able to evaluate the impact of the current exclusion; believes that the Savings Directive applies to income generated by derivative products only if the particular income

wholly or partly qualifies as interest income within the meaning of Article 6(1) (a) and (b).

UK: has some reservations about moving in the proposed direction. In so far as derivative products may resemble savings products then it may be reasonable to regard the resulting income as savings income. However, it is difficult to see how such income could be brought within the reporting requirements of the Directive without requiring paying agents to make difficult judgements about which income should be treated as savings income and which not. This uncertainty over defining and applying the substance over form approach suggests that it might not be workable in practice.

RESERVED POSITION: LU, MT, SK, NL

LU: the answer depends on the outcome of the discussion with the Expert group.

MT: Malta has no evidence concerning distortions in financial markets in relation to such financial products. Malta does not exclude such products (except perhaps swaps) from the scope of the Savings Directive as the substance over form approach is favoured. Malta supports the proposal for a clearer text on the Savings Directive which would confirm this approach.

NL: unable to really comment as to the extent of distortion, if any, created by innovative products. NL supports the Commission's approach that substance should prevail over form. A case by case analysis would be done in each Member State for each derivative and structured product. Due to the multitude of such products, it does not seem possible to give an overview or general guidelines.

Q17: Does the current exclusion from the scope of the Savings Directive of all benefits from pensions and insurance contracts lead to distortions in financial markets? To what extent is the competition between UCITS and life-insurance driven by the Savings Directive and not by other economic, commercial, legal, tax, etc. factors? How many individuals, with an account in another Member State, put their savings in life insurance contracts rather than in UCITS just to avoid the Savings Directive obligations? Which amount of assets under management does this represent in the EU?

Q18: Depending on your reply to the different elements of question 17, would it be desirable to amend the Savings Directive in order to include in its scope part or all of the benefits from revocable life-insurance, pension or annuity products when the underlying prevailing investment is directly or indirectly made of interest generating financial products?

YES: ES, FR, SL

ES: enlarging the scope of implementation of the Directive to the above mentioned financial products would be desirable to avoid outstanding distortions.

FR: Distortions are inevitable, but more information and expertise is needed before proposing any amendment to the Directive.

SL: Yes, but competition is driven mainly by other etc. tax, legal factors. No detailed data at our disposal. Amending the Directive would increase the complexity of the text.

NO: CZ, NL, UK

CZ: there are no distortions in financial markets.

NL: refers to preamble 13 of the Directive. It does not consider that the scope of the Savings Directive should be extended to include insurance and pension benefits.

UK: not sure whether wrapper products create a distortion effect. It seems likely that consumers would not buy such products primarily for savings purposes, although there may be exceptions. Unless there is evidence to the contrary, we would take the view that revocable life insurance, pension or annuity products, should remain outside the scope of the Directive.

RESERVED POSITION: DK, IE, LU, LV, MT, PL, SK

DK: To include life-insurance, pension and annuity products, whether fully or partly, in the scope of the Savings Directive would in our opinion be a wide and radical extension of the scope of the Directive and should not be recommended without extensive research and deliberation. As an outset for such deliberation, the Expert Group's answer to Question 17 could be of great interest.

IE: answers depend on the outcome of the discussion with the Expert Group. No evidence has been produced that the exclusion has caused any distortion in the market or that individuals are switching from UCITS to life insurance contracts to avoid the Savings Directive.

LU: the answer depends on the outcome of the discussion with the Expert group.

LV: is not able to evaluate the impact of the current exclusion.

MT: Malta has no evidence concerning distortions in financial markets in relation to the exclusion of benefits from pensions and insurance contracts. Malta supports the inclusion of benefits from pensions and insurance contracts for the purposes of the Savings Directive.

PL: answer to this question should be given by market operators then further discussions between MS could be made. Poland does not have any information on possible distortions in financial markets due to the exclusion of all benefits from pension and insurance contracts from the scope of the Savings Directive.

Q19: If an extension of the "paying agent on receipt" to all transparent entities (see above §3.1 and question 9) turned out not to be feasible, should interest income obtained through non-UCITS established within the EU be included within the scope of Article 6 of the Savings Directive in order to avoid distortions? To what extent is the competition within the EU between UCITS and non-UCITS driven by the Savings Directive and not by other economic, commercial, legal, tax, etc. factors? How many individuals, with an account in another Member State, put their savings in non-UCITS rather than in UCITS just to avoid EUSD obligations? How much assets under management does this represent in EU?

Q20: Should the definition of "undertakings for collective investment established outside the territory [to which the Treaty applies]" be improved/clarified in the Savings Directive in order to avoid market distortions or tax evasion?

Q21: What are the views of the Expert Group on the definition of collective investment funds or schemes provided by the 2002 OECD Model Agreement? Do the Experts see any definition which encompass all different investment funds (irrespective or their legal type, their distribution mode, their clients, their domicile) paying interest to their beneficial owner? Which definition of investment funds, either established inside or outside the EU, would the Experts suggest for the purposes of the Savings Directive?

<u>**YES**</u>**: CZ, DK, EE, ES, FR, IT, LV, MT, NL, PL, SK (**only on **Q20), SL, UK, DE** (oral support)

CZ: definition of the payments included in the scope of the Savings Directive should be clarified. The definition of the term "collective investment fund or scheme" provided by the <u>2002 OECD Model</u> Agreement seems to cover all possible types of collective investment vehicles.

DK: We agree that the application to non-EU investment funds of the definition of "undertakings for collective investment…" could in some cases narrow the scope of the Savings Directive in ways that were not foreseen and are not desirable. In our opinion it is desirable to use, rather than the definition in the Swiss guidelines, the definition in Article 4 (1) (h) of the <u>OECD Model</u> Agreement of "collective investment fund or scheme". Thus, a clarification of the Savings Directive on this point would appear desirable.

EE: As regards the investment funds, in our view distinguishing UCITS and non-UCITS investment funds in applying the Savings Directive is not relevant and is likely to cause market distortions. We are, however, currently not able to evaluate the occurrence or extent of such distortions.

ES: considers it logical to have an enlargement of the scope of Article 6. However, it is not worthwhile to clarify the concept of collective investment undertaking, since it can be derived from the financial directive or the laws of MS

FR: supports the idea to include all interest income obtained through non-UCITS within the scope of article 6 of the Savings Directive. On Q20 the definition should indeed be clarified

and the definition of collective investment funds should encompass all different investment funds.

LV: cannot provide information on the scale of distortion of competition between UCITS and non-UCITS funds driven by the Savings Directive. In general, LV believes that different reporting obligations of the savings income could have an impact on competition between UCITS and non-UCITS funds. This could result in structuring investments through non-UCITS to avoid reporting of savings income under the Savings Directive. The clarification of the term "undertakings for collective investment established outside the territory [to which the Treaty applies]" would facilitate more uniform application of the Savings Directive within EU MS. Therefore, the clarification of the term would be desirable. At present we cannot suggest a more comprehensive definition than that provided by the 2002 OECD Model Agreement.

MT: Malta supports the inclusion of interest income obtained through non-UCITS for the purposes of the Savings Directive. Malta supports the proposal to improve / clarify the definition of "undertakings for collective investment established outside the territory [to which the Treaty applies]". It would support the definition of the 2002 OECD Model Agreement. Malta feels that investment funds whose units are sold through a private placement should also be included for the purposes of the Savings Directive.

NL: supports the idea to include all interest income obtained through non-UCITS within the scope of article 6 of the Savings Directive. NL also supports the idea of using the OECD definition to find an appropriate definition of "undertakings for collective investments" that would include all different investment funds regulated at national levels.

PL: it would be desirable to wait for the replies of market operators after which further discussion on this issue could be held. Any proposal which could contribute to the improvement of the current operation of the Directive is worth considering. The definition of collective investment funds or schemes provided by the 2002 OECD Model Agreement seems to be comprehensive.

SL: Yes, distortions should be avoided. Currently there are no non-UCITS in Slovenia.

UK: income from non-UCITS funds should be brought within the scope of the Directive which requires a workable definition to be found. There is a direct parallel with the problem concerning non-EU. It is not appropriate to follow the Swiss approach. UK would prefer an approach based on the characteristics of a fund and are ready to explore this further. In finding a solution to both these problems it is important to aim for consistency of treatment, both within the EU and between EU and non-EU funds.

NO: LU

RESERVED POSITION: BG, IE

BG: At this stage we do not have such information at our disposal and we cannot comment on Q19. A Clear definition of "undertakings for collective investment established outside the territory/to which the Treaty applies/" is a reasonable solution.

IE: would like to see the report of the Expert Group, as well as some statistical evidence that the markets are being distorted.

Q22: Does the current text of the provision on annualisation of the Savings Directive lead to distortion in financial markets?

Q23: Should annualisation be compulsory for those Member States that already apply the same method on interest payments made to their resident customers for domestic tax purposes?

YES: ES (Q23)

ES: it seems reasonable not to fall into discriminatory treatment. The treatment should be the same regardless of the residence of the holder

NO: CZ, LV, LU, PL, UK

CZ: does not apply annualisation in domestic tax law and is therefore not able to answer Q22 and is not in favour of establishing an obligation as referred to in Q23.

LV: the current text of the provision on annualisation of interest payments may have a minor impact on financial markets; annualisation may not be made compulsory for the MS that already apply the same method to their resident customers according to their domestic law.

PL: Poland does not have any information on the possible distortions caused by provisions on annualisation. Poland did not implement the option to annualise interest. Making annualisation compulsory for the MS that already apply the same method to their resident customers according to their domestic law seems to be too burdensome.

UK: is not aware of any problems with the current arrangements and would not wish to make annualisation compulsory.

LU: its answer to Q22 is "no" and therefore LU is not in favour of establishing an obligation as referred to in Q23.

RESERVED POSITION: BG, DK, IE, IT, NL, SK

BG: We have not chosen the option of Article 6(5) of the Directive, however, application of this method would enhance compliance cost.

DK: does not apply annualisation in domestic tax law and would not volunteer any opinion on either of these questions.

IE: no evidence of distortion so it is difficult to comment

NL: does not apply annualisation in domestic tax law.

Q24: How could the current text of Article 6(8) and of the last sub-paragraph of Article 6 (1) be better detailed, in order to convince all Member States to accept the "home country rule", at least for investment funds established within the EU?

YES: DK, ES, IT, LU, MT, NL, PL, UK

DK is in agreement with the present application of the "home country rule", has no objection to the present wording of the Savings Directive and would not oppose a clarification as proposed by the Commission.

ES: supports the introduction of a coherent and logical rule.

LU: supports the home country rule

MT: Malta supports the home country rules.

NL: would support any solution that could convince all MS to accept the "home country rule"

PL: "Home country rule" is commonly recognised rule in international law. It ensures coherent application of the Directive. It would be desirable to consider explicit implementation of this rule into art. 6 of the Directive by specifying that paying agents shall rely on information produced by the fund or any agent appointed by the fund, according to the rules in the Member State in which the fund is established.

UK: supports the principle of "home country rule" and will give further consideration to the suggestion that a change in the text of Article 6(8) could help in this respect.

RESERVED POSITION: IE, LV

IE: in order to answer, it would be necessary to have an analysis of the problem – which MS have a difficulty with the rule and a description of the difficulty.

LV: at present we cannot suggest text; assumes that the "home country rule" will be based on the classification for tax purposes in the Member State in which the fund or similar entity is established.

ARTICLE 8: "INFORMATION REPORTING BY THE PAYING AGENT"

Q25: Would paying agents find it burdensome to be requested to specify the quarter of the tax year during which the interest payment is made?

YES: ES, LV, NL

ES: in a system of massive data management it is good to increase the quality of the information received.

LV: does not find it too burdensome to request paying agents to specify the quarter of the tax year in which the interest payment is made. However, in this case the necessary clarifications will be incorporated in the Directive.

NL: would have no objection to the amendment.

NO: BG, LU, UK

BG: It would be burdensome for both paying agents and administration

LU: unnecessary and not possible

UK: is aware that paying agents would find it unreasonably burdensome to have to specify the quarter of the year in which an interest payment is made.

RESERVED POSITION: DK, IE, IT, MT, PL, SL

DK cannot recommend the said specification, in any case, if requested paying agents may find it easier to state the actual date.

IE: this is a question for paying agents then the answer will depend on the report of the Experts Group; no objection to an amendment.

MT: Malta does not feel that this suggestion would improve the effectiveness of the Savings Directive in any significant way.

PL: It is not problematic issue from a tax administration point of view. However, the position of market operators should be crucial here. Every amendment means that paying agents' IT systems have to be revised, so it is important to consider whether the goal of such an amendment is worth the burden which would be imposed on paying agents.

SL: the administrative burden for paying agents could increase.

ARTICLE 13: "EXCEPTIONS TO THE WITHOLDING TAX PROCEDURE"

Q26: Does the procedure of Article 13(1) (b) function effectively? Do paying agents established in Austria, Belgium and Luxembourg face difficulties to get the related fiscal certificates from specific categories of beneficial owners (expatriates, diplomats or personnel of international institutions)? If yes, are there improvements which could be proposed (e.g.: obliging Member States to involve their consulates in the issuing of certificates, provided that their tax authority is made aware of the information contained in the certificate) ?

YES (to the first question, and therefore NO to the following ones): DK, ES, IE, IT, LU, LV, NL, PL, UK

DK: no problems have been brought to DK notice.

ES: is not aware of any problems in this respect. Spain does not believe that consulates and embassies should be responsible for administering certificates for tax residence purposes for diplomats and similar staff.

IE: not aware of any difficulties encountered by individuals requiring a tax residence certificate. Not in favour of involving consulates in issuing fiscal certificates; would like to see the report of the Expert Group before commenting further.

LU: not aware of any difficulties in this area

LV: a uniform certificate for non-deduction of withholding tax has been approved by the Cabinet of Ministers to enable residents of Latvia to apply the exception from the withholding tax procedure as provided for in Article 13 of the Directive. This certificate upon request will be issued to any individual resident of Latvia, including individuals employed abroad by the government of Latvia.

NL: no problems have been brought to NL notice, so there is no particular need for improvement

PL: can be issued only by tax authorities. The improvement which could be considered is the possibility of submitting applications for certificates in consulates of the respective MS. Consulates would send these applications to the competent tax authorities in the Member State of residence of the beneficial owner. Such a provision exists in Polish law.

UK is not aware of any problems. The UK has issued over 800 exemption certificates.