

Outcome of the meeting of the Council Working Party on Tax Questions on 31 October 2008

Member States widely shared the views of the Commission on the evaluation of the functioning of the Directive expressed in the Report. Only LU complained about the unavailability of a complete picture of the information provided by Member States under the Directive, whilst this picture exists for the revenue of the withholding tax transferred

DE, UK, NL, IE, EL expressed the opinion that problems had rightly been identified by the Commission; they stressed their readiness to move to the discussions on remedies.

LU underlined that their Minister will be insisting on a discussions on how the Directive functions based on a full picture of the information exchanged (and possibly also of the use made of it by the receiving Member States), before a discussion on the amending Proposal takes place. There is at present no proof that exchange of information is an effective tool, whilst nobody can deny that the withholding tax has given tax revenue. LU made therefore a general reservation on the discussion on possible improvements to the Directive.

AT was happy of the Report's statement that the Directive functions well within the limits of its scope and announced that it was not in agreement with some of the suggestions made in the Report.

I. PRODUCTS COVERED BY THE DIRECTIVE

Most Member States were of the opinion that income coverage should be extended (DE, UK, ES, PL, IT, EL, LT, MT, NL, DK, LV, IE, SE, AT, FI, PT, BE, CZ, BG, HU, SK, ET), although some of them (DE, SE) favoured inclusion into the scope of all capital gains. UK, NL, IE and CZ expressed some reservations on the partial extension of the scope to some insurance contracts, duplication of tasks for this sector should be avoided. CY and RO strictly opposed any changes and SL reserved its opinion because it has a new Government. LU made a reservation until first discussions take place at the ECOFIN meeting, but expressed some openings to discuss the limits of the present treatment of non-UCITS whilst saying at the same time that for extending the scope to any insurance contract it would be better to wait other three years (next review).

II. THE CONCEPT OF BENEFICIAL OWNER

Many Member States supported the Commission ideas of applying a limited look through approach (AT, DE, PL, EL, IT, ET, LV, HU, RO, MT, SE, IE, FI, LT). Some were of the opinion that the best solution would be application of a general look through approach (ES, NL, DK). Some strictly opposed the idea (CY).

III. THE CONCEPT OF PAYING AGENT

A general conclusion was that the Commission's approach towards the establishment of a positive list and the extension of the mechanism of paying agent on receipt to certain trusts and foundation should be accepted. DE, RO, IT and LU (within its general reservation on any change) expressed support to the Commission's suggestion.

IV. EOI vs. WT

It was a general agreement that the WP on Tax Question is not a right forum at this stage to discuss the matter, which is more of a political nature. There are nevertheless some MS (DK,

UK, ES, DE, IT) which would like to open a debate on the issue of putting an end to the transitional period during which information exchange is not compulsory for everybody.

V. GEOGRAPHICAL EXTENSION

There was a signal that any significant amendments approved at the EU level should be extended on third parties.