

(WORKING PARTY IV – DIRECT TAXATION, 26 APRIL 2004)

**TECHNICAL PROBLEMS AND QUESTIONS IN RELATION TO THE IMPLEMENTATION OF COUNCIL DIRECTIVE 2003/48/EC ON TAXATION OF SAVINGS INCOME IN THE FORM OF INTEREST PAYMENTS**

The Chairman introduced the point. At the meeting of Working Party IV on 27 November 2003, notes were submitted by France and the Netherlands concerning practical issues in relation to the implementation of the Directive on taxation of savings income. The Commission services also distributed a draft working paper by the European Banking Federation (FBE) on customers' identification requirements for the purposes of the Directive. On 10 March 2004, the Commission services distributed an updated version of this draft paper, together with a provisional list of residual entities within the meaning of Article 4 (2) of the Directive established by the FBE, and a letter setting out some of the FBE's concerns as regards the implementation of the Directive. Due to lack of time, there was no substantive discussion of these practical issues at the meeting in November. The working document summarises these issues and, where appropriate, includes the Commission's interpretation of the relevant provisions of the Directive.

Before proceeding with a point by point discussion of the working document the Chairman asked whether delegates wished to raise any other practical issues. This was not the case.

The Chairman observed that written comments had been received from **EL** and **LU**. The comments from EL focused on the FBE paper on identification requirements. EL had no objection to its comments being passed on to the FBE. EL noted that there was no TIN in Greece but that identity card numbers played an important role in identifying customers. A brief discussion on the FBE document on customers' identification requirements ensued.

**BE** considered the FBE document useful. The information on Belgium was, however, not entirely correct. Belgium does not have a TIN and the federal registration number is not used for tax purposes. The text would therefore have to be re-examined.

The **UK** also felt that the FBE document could be a useful tool for paying agents. The document should be kept under constant review and it should remain an industry document. As regards the information on the UK, they noted that while the UK does not have a formal TIN it does have numbers which are used to identify taxpayers.

**ES** welcomed the FBE paper as a useful piece of guidance for paying agents. They had presented a similar initiative during their Presidency. They confirmed that the information on Spain was largely up-to-date. Although Spanish passports currently do not include the individual's complete address, the Spanish tax administration is able to obtain and communicate this information.

The Chairman invited all delegates to examine the FBE text in relation to their respective Member State and to submit written comments within a period of 3 weeks. He promised to send an email to delegates to confirm the arrangements.

The Working Party then briefly looked at the issues raised by France. **F** confirmed that even though they had now implemented the Directive they were still very interested to learn how other Member States had dealt with the issues raised in their note. They had received interesting information from some Member States following the meeting on 27 November which had been extremely useful for preparing the debate in parliament.

As the French note also referred to the state of play of the (draft) implementing legislation in other Member States, the Chairman proposed a brief discussion of this issue. He noted that formal notifications of implementation had been received from 8 Member States and invited delegates to comment on the state of play of the implementing legislation in their respective Member States. **DK** noted that its draft implementing legislation had been adopted on 31 March 2004 and that this would be notified to the Commission shortly. **B** informed the Working Party that its draft implementing legislation had been adopted by the Chamber the week before and that the draft bill of law was now with the Senate. **B** expected the legislation to be adopted before the end of May. **IE** noted that, following its initial notification, the implementing rules had now been put into primary legislation and that this would also be notified to the Commission.

The Working Party then focused on the issues raised by the Netherlands. The Netherlands confirmed that they were still keen to discuss these issues, in particular questions 3 (identification requirements in case of internet banking) and 4 (calculation of the 40% threshold):

**1. Articles 2 (1) (b) and 4 (2) of the Directive: "entity which is taxed on its profits under the general arrangements for business taxation".**

The Chairman explained that it is the Commission's understanding that it is sufficient for the entity to be subject to tax on its profits under the general arrangements for business taxation, i.e. neither the entity nor its profits should be exempted from such general arrangements. **BE, EL, ES, LU** and **FR** all agreed with the Commission's interpretation of Articles 2(1)(b) and 4(2).

**2. (a) Is the Commission prepared to establish lists of legal persons, entities which are taxed on their profits under the general arrangements for business taxation, authorised UCITS, residual entities, entities which have exercised the option of Article 4 (3), and "grandfathered" negotiable debt securities within the meaning of Article 15?**

**BE, ES, IT** and **LU** pointed out that there were inconsistencies in the provisional list of residual entities established by the FBE, as similar entities were included for some Member States but not for others (e.g. partnerships). The Chairman noted that the draft list was very much a first stab and that it seemed worth supporting these efforts and to

encourage the FBE to continue this work. He invited delegates to submit written comments.

2. **(b) Is the Member State of the economic operator obliged to accept the qualification by the Member State in which the entity is established as to whether it meets any of the tests of Article 4 (2)?**

This issue was not discussed.

3. **Article 3 (2) b) provides that the identity of the beneficial owner (including a TIN where available) will be established on the basis of the passport or official identity card presented by the beneficial owner. These requirements appear to be more severe than those of the Money Laundering Directive. Is this intended? Should the beneficial owner e.g. be identified in person?**

The Chairman noted that the Directive stipulates that the beneficial owner should present a passport or official identity card to the paying agent, but that it does not specify that the beneficial owner should appear in person to do so. For instance, in the case of internet banking there may be other means by which the beneficial owner can present his paying agent with the necessary information, e.g. by sending him a certified copy of his passport. **IE, PT, LU, FR** all agreed with the Commission's interpretation. In **EL** individuals opening a bank account will have to present a specific tax residence certificate. In **BE** individuals must always appear in person to open a bank account, in accordance with the Belgian banking industry's code of practice. If the individual refuses to present proper identification, the transaction will not be carried out. Similar rules apply in **DK**. In **NL** a non-certified copy of the passport is sufficient to open an internet account. In **ES** the individual must either appear in person and present an ID or he must send a certified copy. There are severe penalties for financial institutions that fail to make proper identity checks. The Chairman concluded that practice in Member States varies, but that the important thing is to ensure that sufficient safeguards are in place.

4. **In case of so-called "funds of funds", should a Dutch paying agent only be obliged to take into account direct or indirect investments held by Dutch UCITS? Or should all indirect investments in debt-claims be taken into account, even when these are held by foreign UCITS?**

The Chairman explained that in the Commission's view the 40% test must be applied to the total of the debt-claims held by all relevant funds, irrespective of whether or not they are established in the Member State of the paying agent. **LU, IT, ES and FR** all agreed with this interpretation.

5. **The Netherlands would like to know whether the other Member States share its opinion that the 15% de minimis threshold (of Article 6 (6)) concerns both direct investments in debt-claims and indirect investments via other similar undertakings for collective investment**

The Chairman noted that the Commission shares the opinion of the Netherlands that the *de minimis* threshold should also apply to debt-claims held indirectly via other UCITS. Although the provision makes no explicit reference to whether the investments should be held directly or indirectly, it is clear that if one looked exclusively at direct investments it would be relatively easy to avoid the application of the Directive. **LU** and **IE** did not share the Commission's opinion. **LU** noted that the text clearly referred to debt-claims and not to indirect investments via UCITS, and that this was intended to simplify the task of paying agents. **IE** felt that it was difficult to reconcile the Commission's interpretation of Article 6 (6) with the text of Article 6 (1) (d). **DK, IT, ES, BE, FR, DE** and **AT**, on the contrary, all strongly supported the Commission's interpretation.

**6. How will Member States determine the percentages referred to in Article 6 (1) d and in Article 6 (6)? When the percentages are determined by reference to the actual composition of the assets, will they look at the composition of the assets at the time of the interest payment or will they use pre-determined reference dates?**

The Chairman explained that the Directive does not specify how the actual composition of the assets should be determined. There was some discussion in Council during the discussions on the proposal for a Directive on including a specific calculation method, but in the end it was decided that this was best left to Member States. **DK** noted that it had decided to exchange information on all UCITS thus avoiding the problem of having to determine these percentages. **PT, ES** and **BE** all look at the composition of the assets in previous year(s). **FR** will assess the composition for all funds on 1 January 2005, and thereafter re-examine this every 6 months, and then look at the individual's period of detention of the shares in such funds. **NL** has not yet adopted a firm position. They are concerned that using a specific reference date could give rise to manipulation.

The Chairman concluded the point by indicating that the CCN/CSI issue would be taken up with the **UK** first, given that it was the only Member State that had expressed fundamental reservations. He also affirmed that he would write to delegates to remind them of the deadline for commenting on the draft FBE document on customers' identification requirements and the provisional list of residual entities.