Date

13 March 2008

Le Président

Fédération des Experts Comptables Européens AISBL

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Mr. Germano Mirabile
DG Taxation and Customs Union
European Commission
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By email: taxud-savingsdirective_review@ec.europa.eu

Dear Mr. Mirabile,

Re: Expert Group on Taxation of Savings
Review of the operation of the Council Directive 2003/48/EC
on taxation of savings income in the form of interest payments

1. FeE (Fédération des Experts Comptables Européens – Federation of European Accountants)[1] represents 43 professional institutes of accountants and auditors from 32 European countries, including all of the 27 EU Member States. With a combined membership of more than 500.000 professional accountants, FeE works in the public interest to contribute to a more efficient, transparent, and sustainable European economy.

2. FeE has considered the Working Document dated 14 March 2007[2] prepared for the meeting of the Expert Group on Taxation of Savings on 22 March 2007 and the questions raised therein. FeE has also considered the personal contribution of our Vice-President Mr. Stefano Marchese,[3] member of the Expert Group on Taxation of Savings, which we generally support.

A. General remarks on the project

3. FeE welcomes the initiative to review the Savings Directive[4] in order to better ensure effective taxation of savings income and to remove undesirable distortions of competition.[5]

4. In this respect, we refer to the previous FeE position letters,[6] where FeE already pointed out that:

- Distortions in the internal financial market may arise from tax evasion on revenues from financial investments and from merely tax driven decisions on the allocation of resources. Such distortions should be eliminated.

- An effective system of exchange of information could help to remove distortions in the internal financial market and counteract tax evasion produced by a lack of

1 www.fee.be
2 000701\workingdoc\en-05-08
3 Letter dated 5 May 2007.
4 Council Directive 2003/48/EC on taxation of savings income in the form of interest payments.
5 As foreseen in Article 18 of the Savings Directive.
6 Dated 30 March 1999 and 26 June 2002.

coordination among national tax systems. However, such a system has to include features able to counteract techniques for its avoidance.

- The exchange of information system has to be as simple as possible in order to keep compliance costs for paying agents at a minimum level.

- A risk of avoidance results from the definition of interest, in particular with regard to the invention of innovative financial products such as derivatives, which are not comprised by the definition.

5. From our point of view, any amendment of the Savings Directive should be inspired by the following principles:

- Enhancement of effective taxation of savings income in line with the aim[7] of the Savings Directive, the EC Treaty and the ECJ case law.

- Prevention of any substantial increase of compliance costs for paying agents and their clients. Any solution to enhance the taxation of savings income should be kept as simple and implementable as possible.

- Prevention of the influence of subjective judgements of paying agents. Paying agents should be able to identify whether an interest payment is relevant for the purpose of the Savings Directive or not by using a short checklist based on easily certifiable, objective and factual elements.

- Avoidance of any measure that could result in a loss of competitiveness of the European financial sector inside and outside of Europe.

- Consideration of the risk of a significant outflow of capital outside Europe[8] and prevention of such a risk via enlargement of the network of agreements with non-EU jurisdictions, e. g. via bi-lateral agreements based on the "OECD model agreement on exchange of information on tax matters".

B. Questionnaire

Q 1: 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, for establishing beneficial ownership also for the purposes of the Savings Directive? Q 2: 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?

6. FeE in principle agrees that the approach suggested in question 1 and 2 could help to prevent the avoidance of the Savings Directive. Nevertheless, we feel that it would be inappropriate to entirely extend the powers of the authorities under the Third anti-money laundering Directive (AMLD)[9] to the Savings Directive bearing in mind the different objectives of the Directives.

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7 As stated in Article 1 of the Savings Directive.

8 Member States, their independent or associated territories as well as European non-Member States.

9 Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

7. However, FeE would like to point out that the look-through approach for EU resident entities is not in line with the main provisions of the EC Treaty, namely with the free movement of capital. Furthermore, it is not appropriate for EEA resident companies.

8. Therefore the amendment of the Savings Directive should be limited to non-EU and non-EEA resident companies.

9. FeE has drafted a suggestion – outlined below - for an amendment of the Savings Directive considering these points.

Look-through approach for EU resident entities

10. Interest payments made for the benefit of a legal entity are presently excluded from the scope of the Savings Directive. The Savings Directive aims at interest payments to beneficial owners who are individuals.[10] A general extension of the scope of the Savings Directive to interest payments made to legal entities is not appropriate.

11. Individuals with sufficient knowledge and financial power may avoid the consequences of the Savings Directive by establishing a legal entity as an investment vehicle (base company) in another country, e.g. in a low tax country, which does not exchange information with other countries. In this case, neither corporate income tax for the legal entity arises in the low tax country nor withholding tax or income tax for the individual shareholder is withheld or assessed in his country of residence due to a lack of information exchange.

12. A counteracting measure is suggested in question 1 and 2 above. The beneficial ownership defined in article 2 of the Savings Directive shall refer to the beneficial ownership of the Third AMLD. According to the Third AMLD,[11] beneficial owner of a corporate entity is the individual who ultimately owns or controls the legal entity, having at least 25 % plus one share (look-through approach).

13. However, such an amendment of the Savings Directive is not in line with the provisions of the EC Treaty, which prohibits any restriction of the free movement of capital[12] unless it is an exceptionally allowed unequal treatment within the Member States and no arbitrary discrimination.[13]

14. From our point of view, the suggested counteracting measure restricts the free movement of capital. An EU resident base company that makes financial investments at domestic level is not subject to the look-through approach. In contrast, a company resident in another Member State making the same financial investment would be subject to the look-through approach, unless it provides evidence to the paying agent that it is subject to tax on a yearly basis. From the financial institution perspective, its services would be less competitive for cross-border customers compared to those provided to domestic customers due to the additional documentation burden. Such unequal treatment may discourage companies from opening bank accounts or making financial investments in other Member States and from establishing a branch with a bank relationship in other Member States.

15. Furthermore, the restriction is not an exceptionally and only under strict circumstances allowed unequal treatment. Following case law, unequal treatment can in principle be justified by overriding reasons in the general interest, such as the need to safeguard the cohesion of the tax system, the fight against tax avoidance and the effectiveness of fiscal

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10 Article 1 Savings Directive.
11 Article 3 para. 6 Third AMLD.
12 Article 56 EC Treaty.
13 According to article 58 (1) in conjunction with article 58 (3) Treaty.

supervision but must not go beyond what is necessary in order to attain the objective of the legislation.[14]

16. We assume that the counteracting measure as suggested above is in principle meant to fight against tax avoidance. However, a general presumption of tax avoidance or tax evasion cannot justify a fiscal measure, which compromises the objectives of the EC Treaty. Following settled case law, the prevention of tax avoidance can be accepted as justification only if the legislation is aimed at wholly artificial arrangements the objective of which is to circumvent the tax laws.[15] According to case law, an arrangement is wholly artificial when it is created with a view to escaping the tax normally due on the profits generated by activities carried out and which does not reflect economic reality.[16]

17. However, the creation and use of a legal entity in another Member State as investment vehicle is not necessarily a wholly artificial arrangement aiming at tax avoidance. The fact that an individual or a small group of individuals – for instance a family – uses a legal entity as an investment vehicle can have various reasons, e.g. asset protection, use of sophisticated investments technique and financial instruments like derivatives that are not always available to individuals, saving of cost when the investments belonging to family members are made in pooling, etc. Tax optimisation may in these cases be a – very welcome – consequence but not the initial purpose.

18. Therefore, an amendment of the Savings Directive as mentioned above is not in line with the provisions of the EC Treaty as it can restrict the free movement of capital.

19. The counteracting measure could only be justified if it would be definitely restricted to wholly artificial arrangements created to avoid the consequences of the Savings Directive. However, in practice such facts and aims would have to be investigated. The paying agents would certainly not be able to carry out this task, which would excess their resources of personnel, finance and knowledge.

20. Furthermore, an exchange of information mechanism for tax purposes is already in place among Member States in the framework of community legislation. Such exchange of information would be effective if an EU resident company makes financial investments in other EU Member States.

Look-through approach for EEA resident entities

21. The look-through approach is not appropriate for EEA resident companies provided that the relevant state of residency accepts to exchange information with EU Member States. The EC Treaty prohibits any restriction of the free movement of capital between Member States and third countries.[17] The EEA Agreement also refers to the free movement of capital. The principles for EU resident companies as indicated above should insofar be applied analogous.

Look-through approach for non-EU and non-EEA resident entities

22. FeE suggests that the look-through approach is limited to non-EU and non-EEA resident companies beneficially owned by EU resident individuals.[18]

23. From our point of view, such an amendment of the Savings Directive could be in line with the provisions of the EC Treaty. Although the EC Treaty prohibits any restriction of the free

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14 See ECJ in Lenz, C-315/02, par. 27 with further references.

15 See ECJ in Elisa, C-451/05, par. 91 with further references.

16 See ECJ in Test Claimants in the Thin Cap Group Litigation, C-524/04, par. 74 with further references.

17 Article 56 EC Treaty.

18 For EEA companies provided that the EEA jurisdiction participate to the exchange of information framework.

movement of capital between Member States and third countries,[19] the counteracting measure can be justified, since the strict requirements as between Member States like mentioned above are not valid in the relation to third countries.[20]

24. In this context it has to be noted that the above proposal is in line with other legislation outside the EU. In the United States, a draft bill aimed at counteracting tax haven abuse is under discussion at the Senate.[21] According to this draft bill, any US individual controlling any offshore entity is deemed to be its beneficial owner.

Draft amendment of the Savings Directive

25. Hence, a third paragraph to article 2 of the Savings Directive could say that:

In case interest is paid in a Member State

- *to any "person" other than an individual and other than a company listed on a regulated market and*
- *this "person" is not resident for tax purposes in any Member State[22] and*
- *at least one of its beneficial owners, as defined by the anti-money laundering legislation in force, is resident in another Member State,*

for the purposes of this Directive the interest is deemed to be paid directly to the beneficial owners, unless this person provides evidence to the paying agent that

- *it is subject to yearly income tax in its country of residence without benefiting from general or partial regime of exoneration of interest from the taxable base or*
- *the interest payment is subject to tax in any other jurisdiction of establishment of such person or of its shareholders, participants or beneficial owners. Such evidence will have to be provided by a certificate issued by the competent tax authority to be filed with the paying agent before the end of the calendar year of the interest payment.*

Evidence of the tax residence of a person in a Member State shall be collected by the paying agent in the framework of the customer due diligence provided for by the anti-money laundering legislation in force.

26. Furthermore, the savings Directive should be amended in order to provide a definition of "person" and of "residence in a (Member) State". In this respect, similar definitions as provided by the OECD Model Convention could be adopted:

- *"Person" includes any individual and any company, in particular incorporated or unincorporated entity, partnership, association, foundation, legal arrangement, trust, estate or body of persons.*
- *"Resident of a State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision*

19 Article 56 EC Treaty.

20 Article 57 EC Treaty; Art. 58 EC Treaty is only applicable for Member States.

21 See US Senate, Permanent Subcommittee on Investigations, Tax Haven Abuses: the Enablers, the Tools and Secrecy, Washington, 2006 and the Senator Levin's project of bill filed on February 17, 2007, To restrict the use of offshore tax havens and abusive tax shelters to inappropriately avoid Federal taxation, and for other purposes.

22 There are some "political" issues in defining those EEA countries that do not co-operate in the exchange of information.

or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

27. In case of withholding tax regime according to article 11 of the Savings Directive, a special provision should be added in order to ensure that the customer maintains enough funds in the account held by the paying agent to allow it to be able to withheld and to pay the tax in case such a certificate will not be provided by year end.

Q 3: 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, or 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 (including interest income) is taxed on a yearly basis?

28. Depending on the legislation in the EU Member States, various types of trusts can in principle be established, in particular fixed trusts and discretionary trusts.

29. Taking into account these differences and the very special legal area concerned, it is difficult to provide a general and overall recommendation, which may have consequences in various jurisdictions. From our point of view the issue needs to be addressed in more detail and before taking any final decision, an assessment on a country-by-country basis should be made.

30. FeE would like to contribute to the discussion with the considerations below. However, we would like to stress, that the issue requires further investigation, comparison and impact assessment with regard to the differences in the Member States. In particular, a risk of double taxation might arise and should be considered in detail.

31. For fixed trusts, where beneficiaries are identified and entitled to receive the trust income on a regular basis and national tax systems generally provide for a transparency regime according to which the trust income is attributed and taxed directly in the hands of beneficiaries, it might be appropriate to refer to concepts of the Third AMLD.

32. Since question 3 refers to discretionary trusts and similar legal arrangements only, we concentrate our comments on this type of trusts.

33. From our point of view, a reference to concepts of the Third AMLD for establishing the individual beneficial owners of discretionary trusts and similar arrangements is in principle not appropriate due to the extremely different domestic tax treatment of such trusts in the Member States.

34. In some Member States discretionary trusts are treated as “entities” for tax purposes, being subject to income or corporate tax. In other countries the income may be attributed to the settlor, namely when the trust is revocable. Furthermore, the rules on trust residence vary broadly between the Member States and may refer to the place of management of the trust, the residence of the settlor and/or the beneficiaries or the location of the trust assets. Therefore, the taxation of a discretionary trust with trans-national income (like interests included in the scope of the Savings Directive) depends upon the domestic tax law of the various Member States involved and the provisions of double taxation conventions, if any.

35. Referring to “beneficiaries in whose main interest the trust is created” would imply the risk to attribute for tax purpose (exchange of information or withholding tax) the interest income to persons that may have no actual link with the income and no ability to pay.

36. Therefore, the possible alternative solution could be either to qualify the trustee as paying agent on receipt in the meaning of article 4 para. 2 of the Savings Directive or to adopt the principles above indicated with regards to companies. Insofar, a two step approach seems to be appropriate:

37. In case the trust income is subject to tax in any Member State in the name of the trust, the settlor or any of the beneficiaries and the trustee provides the paying agent with the evidence of such taxation (typically a certificate of the competent tax authority), the trustee should not have any additional obligation.

38. In case such evidence of taxation is not provided, the trustee could be regarded as "paying agent on receipt" and has the subsequent obligation of providing information to the tax authority on the payment of interest to any beneficiaries or to withhold the relevant tax, whenever an income will be paid to a beneficiary.

39. For this purpose, it could be appropriate to add a provision in the Savings Directive stating that in case of accumulation of the income and a later distribution of any amount of money, the nature of such distribution will be deemed to be an income distribution up to the amounts of the trust interest income that has been accumulated in the past.

40. Such solution appears to be preferable, the diversity of provisions and regimes regarding trusts (included trust deeds and/or the applicable law) make a "one size fits all" approach inappropriate.

41. In case the above considerations are not taken into account and the Savings Directive is amended according to the suggestion in question 3, we would like to stress again that

- the issue requires further investigation, comparison and impact assessment with regard to the differences in the Member States and
- a risk of double taxation might arise and should be considered in detail.

Q 4: 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)?

Q 5: 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?

Q 6: 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?
Q 7: Would it be acceptable for paying agents to have 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?

Q 8: 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?

42. In general FeE supports these proposals of the Commission.

43. In more detail, an alignment of the procedures for identifying the beneficial ownership provided for by the Third AMLD would be welcomed in the framework of the Savings Directive. Similarly, the proposal for identifying the tax residence of the client based on documents already in possession of the paying agent would have positive effects. Finally, the introduction of explicit common rules providing for a proportional attribution of interest payments would clarify the issue.

44. However, such amendments of the Savings Directive should be subject to the condition that no increase of administrative costs will take place for paying agents. In this respect, the contribution of ideas from the experts belonging to the financial sector will be very valuable.

Q 9: 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?

Q 10: 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?

Q 11: 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 do not belong to the categories included in such “negative list”, but are nevertheless actually taxed on their own income, including interest income, on a yearly basis?

45. FeE is in principle in favour of such an amendment.

46. However, the following issues have to be taken into account:

- The definition of transparent entities varies broadly within Europe. Therefore, a clear and unmistakable definition of transparent entities would have to be provided in amending the Savings Directive.

- The definition of residence of a transparent entity also varies within Europe. Therefore, the amendment of the Savings Directive would have to provide also a definition of residence rather then the notion of “entity established in a Member State”, that creates uncertainties in its interpretation.

- The administrative burden and compliance cost both for paying agents and for “paying agents on receipt” have to be kept at a minimum level and the influence of subjective judgements of them has to be avoided. Paying agents should be able to identify whether an interest payment is relevant for the purpose of the Savings Directive or not by using a short checklist based on easily certifiable, objective and factual elements.

A positive list could in principle help to provide legal certainty, however, might as well lead to interpretation difficulties and would have to be maintained continuously.

Q 12: If the "look-through" approach for establishment of beneficial ownership described in para. 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?

47. FeE assumes that it should be feasible. However, we would like to stress again that administrative burden and compliance costs for paying agents should be kept at a minimum level. Increased compliance costs could result in a loss of competitiveness of the European financial industry.

Q 13: 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?

48. Please see the answer to question 3. A negative list in this respect could be very useful for economic operators and professional trustees.

Q 14: 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? Q 15: 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?

49. It seems very likely that the reporting or withholding on interest payments through non-EU branches could affect the competitiveness of the EU financial sector and lead to an outflow of capital outside the EU:

- Taxpayers could open a bank account with a bank resident outside the EU and therefore easily avoid the consequences of the amended Savings Directive and contribute to an outflow of capital outside the EU.

- EU resident banks could feel encouraged to establish subsidiaries in non-EU countries or to transform their non-EU branches into subsidiaries in order to remain attractive for investors. Such a practice would also contribute to an outflow of capital outside the EU.

50. Furthermore, the differences within Europe and outside the EU in legislation and ethics of banks regarding the provision of data have to be taken into account.

51. In some EU Member States, banks have to provide data in case they dispose of a branch in the respective country even if the customer concluded the contract with a non-EU branch of the bank. Banks with residence or branch in such countries would suffer competitive disadvantage in comparison with banks resident in other European and non-EU countries without such legislation.

52. As a consequence, the negotiation of equivalent measures with countries outside the scope of the Savings Directive remains essential. After all, we doubt that the suggested obligation on EU head offices is practically and legally feasible.

Q 16: 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?

53. It seems very likely that the unequal treatment of interest payments from conventional financial products and earnings from innovative financial products leads to distortions since investors can avoid the consequences of the Savings Directive by choosing innovative financial products. Therefore, earnings from innovative financial products should in principle be included in the scope of the Savings Directive by amending the definition of interest payment in Article 6 of the Savings Directive.

54. As there are various terms used for earnings from innovative financial products, a possible wording for a broader definition of interest payment could be "*any revenue arising from the investment of capital where the return is fixed ex ante and the substance of the return arising from transaction is similar to any interest income.*"

55. Such provision should introduce a "substance over form approach", that seems to be the only way to address the issue of innovative financial products that are presently a way to escape from the Savings Directive.

56. The substance over form approach could be accompanied by a positive list of innovative financial products attached to the Savings Directive. The positive list would have to be maintained and updated, in order to take the changes in the growing market of innovative financial products into account. The pros and cons using the Comitology procedure in this regard could be considered.

57. Without such positive list, the use of a pure substance over form principle could produce a number of negative consequences, namely

- Increased compliance costs for the financial industry, in particular regarding continuous legal advice for the qualification of the innovative financial products,
- Difficulties in interpretation leading to legal uncertainty and increased litigation
- Different interpretation within the Member States leading to tax competition ("tax shopping").

Q 17: 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? Q 18: 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?

58. It seems to be possible that pension or insurance contracts may serve as substitute for other kinds of investment for individuals who want to avoid the consequences of the Savings Directive. We assume that there are kinds of pension or insurance products where the name refers to insurance but the aim of the product is related to a purely financial investment.

59. This kind of insurance products should be included in the scope of the Savings Directive in cases where:

- There are no risks to be covered and the insurer does not undertake any risk.
- The calculation of the insurance premium does not include any probability element.
- The provisions to be posted in the Financial Statements of the insurer do not imply any actuarial or statistic calculation.

60. However, the pros and cons of a grandfather clause – if any – should be considered.

Q 19: If an extension of the "paying agent on receipt" to all transparent entities (see above Par. 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 do 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?

61. It seems to be possible that the Savings Directive drives the competition within the EU between UCITS and non-UCITS.

62. However, we doubt that an extension of the Savings Directive to interest income obtained through non-UCITS established within the EU would be easier feasible than an extension to transparent entities. Insofar, we refer to our answers to Q 9.

Q 20: 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?

63. FeE believes that any legislation should be as clear as possible and therefore in principle welcomes suggestions for improvement and clarification of the Savings Directive.

Q 21: 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 of 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?

64. FeE supports the use of the definition included in the OECD Model Tax Convention, also for reason of consistency between the Savings Directive and the application of double tax treaties.

Q 22: Does the current text of the provision on annualisation of the Savings Directive lead to distortion in financial markets?

65. FeE is not aware of any distortion arising from the annualisation provision contained in the Savings Directive.

Q 23: 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?

66. FeE is not aware of any positive aspects of annualisation to be compulsory.

Q 24: 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?

Q 25: Would paying agents found it burdensome to be requested to specify the quarter of the tax year in which the interest payment is made?

Q 26: 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)?

67. FeE is not in a position to comment on this issue.

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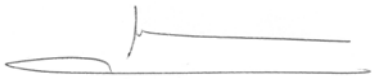
We would be pleased to discuss any aspect of this letter you may wish to raise with us.

Yours sincerely,



Jacques Potdevin
President