

FEE Warns that the Interest and Royalties Directive May Conflict with other Tax Rules

A Survey by European Accountants finds that if the Directive is correctly implemented, more work is needed

Wednesday 18 April 2007 – BRUSSELS - The European Federation of Accountants (FEE) publishes today the results of a survey it undertook examining taxation rules of interest and royalties in EU Member States. The objective of the Paper, *FEE Survey on the Interest and Royalties Directive and its Implementation*, is to analyse the implementation of the Directive and its interaction with other rules existing at national and international level.

According to the Survey there does not appear to be significant divergences from the text of the Directive in the implementation of the Directive by Member States. However, FEE draws attention to potential conflicts of the Directive provisions with:

- domestic thin capitalisation rules;
- the Parent-Subsidiary Directive;
- the European Court of Justice case-law;
- the OECD Model Convention on income and capital taxes.

In particular, in case of re-characterisation of interests as dividends according to domestic anti-avoidance provisions, FEE warns that double taxation could still occur if the Member State of the payer, characterising the payment as dividend, does not allow deduction of interests paid, while the Member State of the beneficial owner still taxes the amount received as interest, as it does not automatically recognise thin capitalisation rules of the Member State of the payer.

FEE Vice-President Stefano Marchese highlights: *"to avoid double taxation, the classification of a payment of interests as dividends in the Member State of the payee should be automatically accepted as such in the Member State where payments are received"*.

FEE also recommends that the interpretation of Article 5 of the Directive is consistent with ECJ case law. According to the Directive, Member States can refuse to apply the benefits granted by it in the case of transactions for the sole attainment of a purely fiscal advantage with no valid commercial reasons. However, there should not be an automatic exclusion of certain transactions from the tax advantages provided for by the Directive without ascertaining whether or not there actually is tax evasion or avoidance.

A specialist of the European Court of Justice case law, Mr. Marchese notes that "*it does not yet provide a clear picture of abusive anti-avoidance provisions*". FEE therefore calls the European Commission to provide Guidelines, perhaps in the form of a Recommendation, on a European definition of abusive anti-avoidance provisions.

FEE President, Jacques Potdevin concludes: "*more work needs to be done to reduce tax barriers to the Internal Market, if we want European SMEs to take full advantage of our 490 million consumers market*".

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Notes for Editors:

1. The Fédération des Experts Comptables Européens (FEE) is the representative organisation for the accountancy profession in Europe. FEE's membership consists of 44 professional institutes of accountants from 32 countries. FEE member bodies are present in all 27 member states of the European Union and three member countries of EFTA. FEE member bodies represent more than 500,000 accountants in Europe.
2. The *FEE Survey on the Interest and Royalties Directive and its Implementation* can be downloaded free-of-charge from the FEE website: http://www.fee.be/publications/default.asp?library_ref=4&content_ref=668
3. The Directive can be viewed at: http://ec.europa.eu/taxation_customs/taxation/company_tax/interests_royalties/index_en.htm