

Expanded European Savings Directive

On April 15, 2014, the Council Directive 2014/48/EU of 24 March 2014, amending Directive 2003/48/EC on taxation of savings income in the form of interest payments was published in the Official Journal of the European Union.

Please find below the most important changes made to the European Savings Directive

1. Income from securities

The income from securities, of any kind, will be subject to the mandatory and automatic exchange of information that is foreseen by the Directive.

However, the income may not be directly considered as an interest payment relating to a debt claim, or relating to ventures for collective investment or other collective investment funds or schemes (located within the European Economic Area and that are registered as such, or not located within the European Economic Area), nor may it be directly considered as income that have been received at the sale, refund or redemption of the debt claims or the parts from these ventures for collective investment or other collective investment funds or schemes (*e.g.* interest accrued or capitalized).

In other words, this stipulation refers to structured products, that combine multiple investment instruments.

Furthermore, the information on this revenue may only be divulged if the conditions of a return of capital are defined at the issuing date, include a guarantee towards the investor that he receives, at the end of the term, at least 95 % of the capital invested, or if the conditions defined at the issuing date provide for a link of at least 95 % of the income from the security to interest payments.

2. Income from collective investment funds

The revenue from ventures for collective investment or other collective investment funds or schemes (located within the European Economic Area and that are registered as such, or not located within the European Economic Area), will also be subject to the automatic exchange of information.

The modified Directive no longer solely refers to the income from ventures for collective investment or other collective investment funds or schemes with an European passport, the Directive now refers to a broader notion that also includes the ventures for collective investment or other collective investment funds or schemes, that are only recognized by a state located within the European Economic Area.

3. Income from life-insurances (Branch 21 and 23)

The income from life-insurances will also be subject to the mandatory and automatic exchange of information that is foreseen by the Directive.

This concerns only the income from life-insurance policies that have been subscribed as of July 1st, 2014. The income of life-insurance policies contracted before this date will not be subject of the automatic exchange of information. Furthermore, the income of life-insurances will only be

disclosed when the s life-insurance policy provides a guaranteed income return (Branch 21-life insurances), or the actual performance of the life-insurance policy is more than 40 % linked to interest payments (Branch 23-life insurances). From 1 January 2016, this percentage will be lowered to 25 %.

However, our national legislation is still determining whether the income should be considered as taxable.

4. Interest payments made to an entity or a legal construction

Interest payments made by an economic operator located in the European Economic Area (*e.g.* a credit or financial institution) to an entity or a legal construction which is not subject to effective taxation and which is established or has its place of effective management not in a member state of the European Economic Area, and whose ultimate beneficiary are resident in a third State, will also be subject to the mandatory and automatic exchange of information as provided for by the Directive. These entities or legal arrangements are from now on considered transparent for the application of the Directive. The identity of the beneficial owner must be examined by the paying economic operator and must be disclosed, if possible.

The interest payments received by entities and legal arrangements, which are established or have their effective management in a member state of the European Economic Area and which are considered not subject to effective taxation, are also subject to the automatic exchange of information.

Directive 2014/48/EU has as enclosures I and II, the lists of the entities and legal arrangements that are considered not subject to effective taxation (see the lists enclosed). These lists are merely indicative. It is possible to refute this assumption.

However, our national legislation is still determining whether the income should be considered as taxable.

5. Entry in force

The member states have until 1 January 2016 to adopt and publish the necessary laws and regulations to implement this Directive. The automatic exchange of information concerning income from securities and life insurances, and concerning the interest payments to entities and legal arrangements will be effective as of 1 January 2017.

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