



BANKING & FINANCE

Revision of the EU Savings Directive

An update on the EU Commission's proposed amendments

TAX

Agenda

- ◆ **Background**
- ◆ **Economic Analysis**
- ◆ **Proposal of the Commission**
- ◆ **Conclusion**

Background

Background

- ◆ The current directive foresees a revision after 3 years

- ◆ 15 September 2008: First formal report from the Commission that evaluated the economic effects.
 - Commission concludes that the Directive has proven effective within limits set by its scope

 - The revision also concludes that its scope needs to be extended in order to close possible loopholes

- ◆ On the basis of that report, a draft proposal was presented by the Commission on 31 October 2008.

Economic Analysis

Economic Analysis

Interest payments under EOI reporting

<i>Country</i>		<i>2005 (6 months)</i>	<i>2006</i>	<i>2007</i>
Germany		661	1392	942
France		568	2020	N/A
Ireland		259	771	1901
UK		9132	N/A	N/A
Luxembourg		1120	4189	N/A

(million €)

Economic Analysis






Withholding tax revenue shared

<i>EU</i>		<i>2005 (6 months)</i>	<i>2006</i>	<i>2007</i>
•Luxembourg		36	125	153
•Austria		9	44	N/A
•Belgium		8	19	26
<i>Territories</i>				
•Jersey		13	32	N/A
•Isle of Man		13	20	N/A
•Guernsey		5	16	N/A

(million €)

Economic Analysis

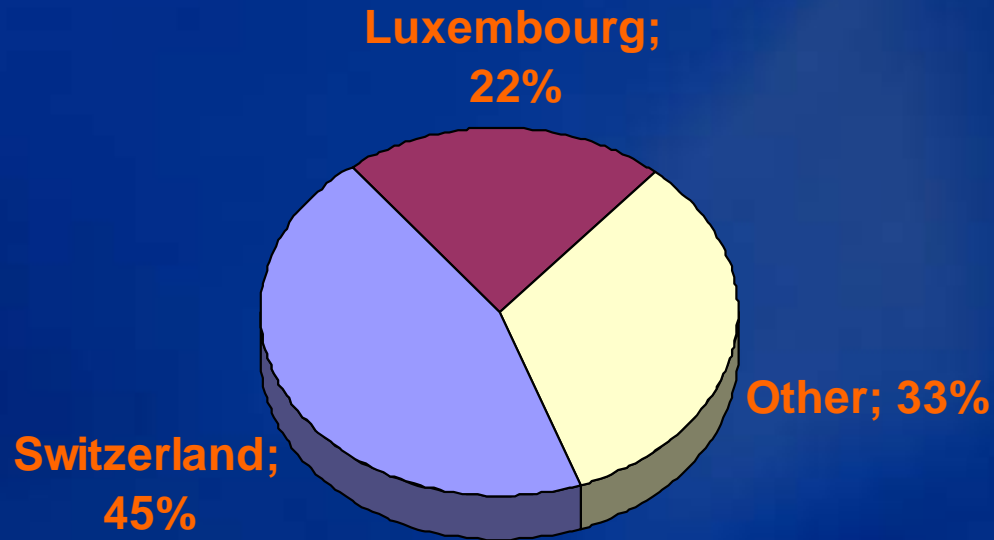
Withholding tax revenue shared

<i>Non-EU</i>		<i>2005 (6 months)</i>	<i>2006</i>
•Switzerland		77	256
•Andorra		4	13
•Monaco		4	12
•Liechtenstein		2	7
•San Marino		1	7

(million €)

Economic Analysis

Main withholding tax collectors (2005 and 2006)



Economic Analysis

Beneficiaries of withholding tax

◆ Largest beneficiaries (2005 and 2006):

– Germany	193	
– Italy	112	
– UK	105	
– Belgium	71	
– France	63	

(million €)

Proposal of the Commission

Proposal of the Commission

Overview

- ◆ Amendments in relation to:
 - Beneficial ownership
 - Definition of « paying agent »
 - Definition of « interest payment»
 - Procedural aspects

Proposal of the Commission

Beneficial ownership

- ◆ **Use of anti-money laundering (“AML”) documentation:**
 - Available information
 - Directive 2005/60/EC
- ◆ **Look-through approach (Annex I):**
 - List of entities and legal arrangements,
 - resident in non-EU jurisdictions, and
 - no appropriate and effective taxation of income obtained by such entities and arrangements.



Proposal of the Commission

Beneficial ownership

◆ Identification

- **Post 2004 customers:** TIN mandatory
- **Annex II:** 25 Member States attributing a TIN (Luxembourg and France?)

◆ Residence address

- **Pre 2004:**
 - Best information at its disposal
- **Post 2004:**
 - Update on the basis of most recent documents, or
 - at least when the passport or ID or other documentary proof expires
- **A tax residence certificate** voluntarily presented by the beneficial owner to be taken into account (<3 years)
- **Third country resident EU citizens:** tax residence certificate < 3 years before payment date
- **Diplomats:** tax residence ≠ permanent residence



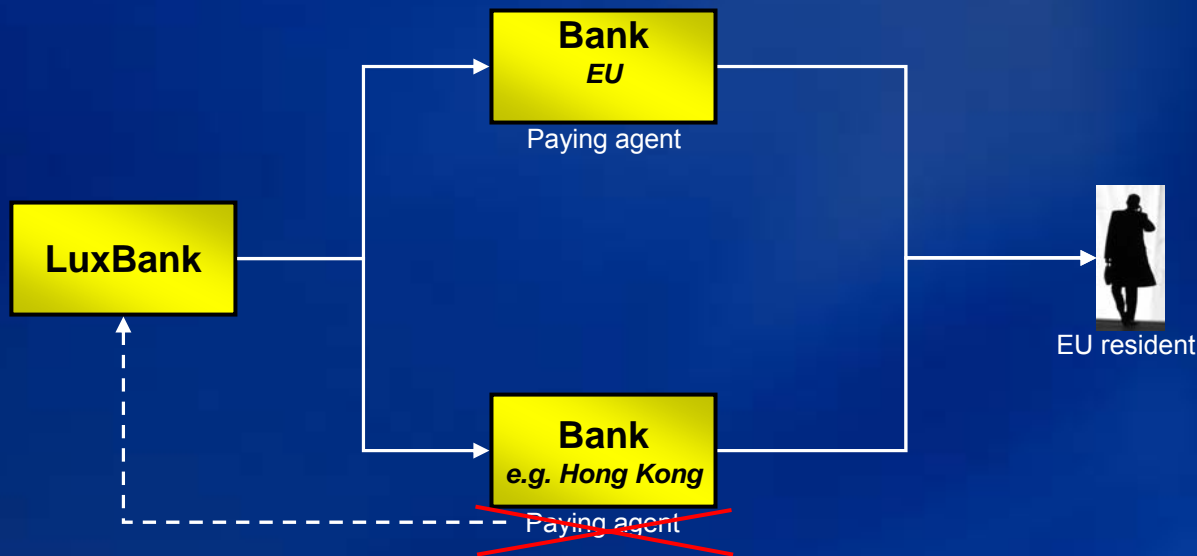
Proposal of the Commission

Definition of “paying agent”

If:

- a Luxembourg economic operator is paying interest income to a EU beneficial owner through another economic operator (e.g.: financial institution, bank,..) situated outside the Savings Tax network, and
- has evidence that the payment is made for the ultimate benefit of an EU beneficial owner

then the Luxembourg economic operator would qualify as the paying agent



Proposal of the Commission

Definition of “paying agent”

- ◆ Clarification of anti-avoidance concept “*paying agent upon receipt*”
- ◆ “Positive” definition of intermediate structures (“*Residual entities*”):
 - Including trusts, transparent entities...
 - Based on substantial elements rather than on legal form.
 - Concept of “place of effective management”.
- ◆ Annex III:
 - A ‘positive’ list, including entities and arrangements
 - A new Article 18b allows a procedure for updating this Annex.
- ◆ Not covered:
 - UCITS, pension fund or insurance business, charities and joint accounts

Proposal of the Commission

Definition of “paying agent”

- ◆ Potential residual entity shall have the option of being treated as a UCITS if:
 - No beneficial owner is immediately entitled to its assets or income at the moment of receipt of an interest payment
- ◆ Exercise of the option:
 - Member States shall issue a certificate to that effect
 - Entity shall present that certificate to the economic operator
 - Entity shall act as « paying agent » on each occasion that a beneficial owner becomes immediately entitled to its assets or income

Proposal of the Commission

Definition of “interest”

- ◆ **Income from products that are comparable to debt claims**
 - Innovative products:
 - “a return on capital whose conditions are defined at the issuing date, and
 - at the end of their term, at least 95% of the capital invested”
 - *First issued on or after 1 December 2008*
 - Life insurance contracts
 - Biometric risk < 5% of the capital insured, and
 - performance fully linked to interest income
 - *Subscribed on or after 1 December 2008*

Proposal of the Commission

Definition of “interest”

◆ Currently:

	SICAV	FCP
UCITS	IN	IN
Non-UCITS	OUT	IN

◆ New:

- “UCITS or other collective investment funds or schemes registered in accordance with the rules of any of the Member States”
- “Any collective investment fund or scheme established outside the territory referred to in Article 7, irrespective of the legal form of that fund or scheme and of any restriction to a limited group of investors of the purchase, sale or redemption of its shares or units”

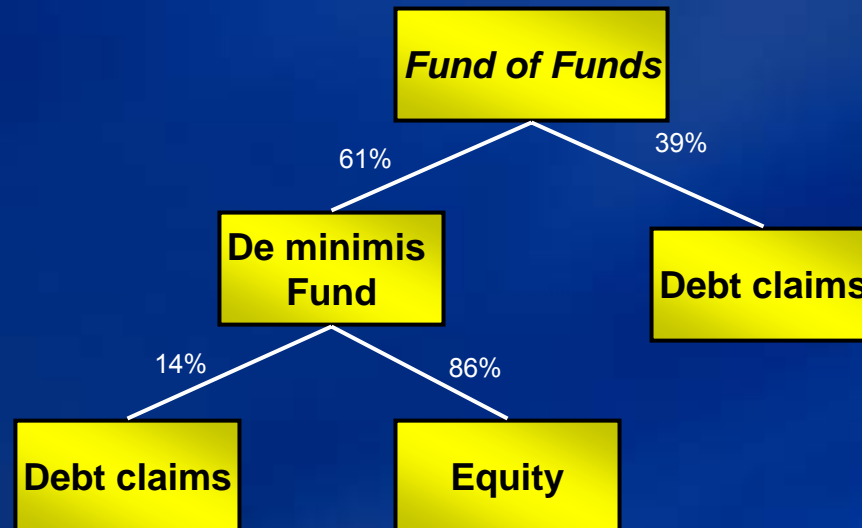
◆ Result:

- All UCITS and all non-UCITS are in scope
- Registered? SICAR, SIF, Part II, Securitization funds

Proposal of the Commission

Definition of “interest”

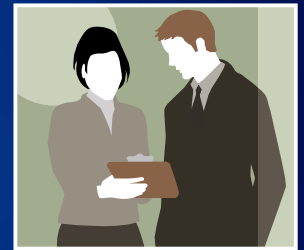
- ◆ **New Article 6 n°6:** “By way of derogation from point (c) of paragraph 1, MS shall have the option of excluding from the definition of interest payment any income referred to in that provision distributed by undertakings or entities or legal arrangements established within their territory where the direct or indirect investment of such entities or legal arrangements in debt claims referred to in point (a) of paragraph 1 or in securities referred to in point (aa) of paragraph 1 has not exceeded 15% of their assets.”
- ◆ **Old Article 6 n°6:** “By way of derogation from paragraphs 1(c) and (d), Member States shall have the option of excluding from the definition of interest payment any income referred to in those provisions from undertakings or entities established within their territory where the investment in debt claims referred to in paragraph 1(a) of such entities has not exceeded 15 % of their assets.”
- ◆ *It is debatable whether this changes anything in the following example:*



Proposal of the Commission

Procedural aspects

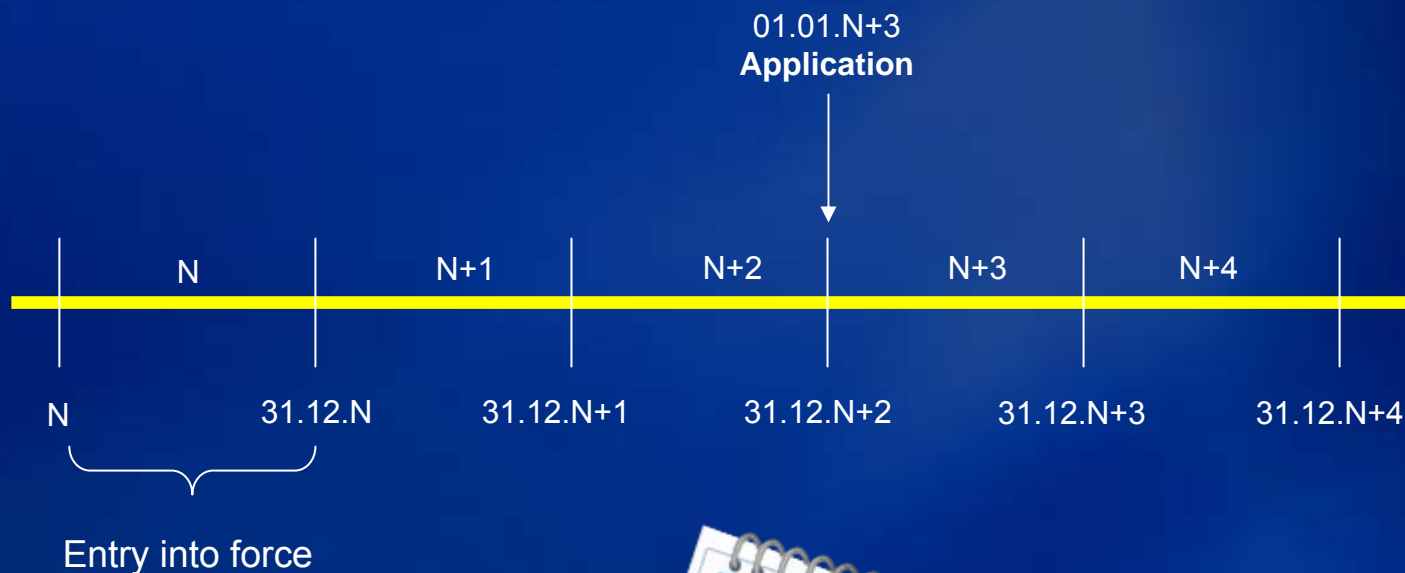
- ◆ Report the number of beneficial owners per Member State subject to withholding tax
- ◆ Home country rule for investment funds
 - Scope and TIS
- ◆ Joint accounts
 - Additional information for exchange of information
- ◆ Abolition of “tax exemption certificate” and only allow the “voluntary disclosure” procedure
- ◆ Official data providers



Proposal of the Commission

Timetable

« The amendments will have to be applied within Member States' territory from the first day of the third year following the calendar year in which the Directive enters into force »



Conclusion

Conclusion

◆ Beneficial ownership and paying agents

- Use of anti-money laundering (“AML”) documentation
- Huge impact on information systems
- Unclear concept of *“place of effective management”*
- Increased administrative burden

◆ Definition of « interest payment»

- Extension to SICAV Part II
- Major impacts on Luxembourg fund industry
- Concerns with regard to the issue of the level playing field
- Concerns about retroactivity

◆ Procedural aspects

- The Directive, in its current state, is not sufficiently precise and still needs to be refined

Thank you
Discussion
Q&A
Wrap Up



Contact details

Georges Bock

Partner

KPMG Tax Luxembourg

+352 225151-5522

georges.bock@kpmg.lu

www.kpmg.lu

G rard Laures

Partner

KPMG Tax Luxembourg

+352 225151-5549

gerard.laures@kpmg.lu

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