EUROPEAN COMMISSION

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2011/0314 (CNS)

Proposal for a

COUNCIL DIRECTIVE

on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States

(recast)
{SEC(2011) 1332 final}
{SEC(2011) 1333 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Council Directive 2003/49/EC[1] ('the Directive') regulates the common system of taxation applicable to interest and royalty payments between associated companies of different Member States. Since it has been amended several times, this proposal recasts it in the interests of clarity. The explanatory memorandum states the reasons for each proposed substantive amendment and specifies which provisions of the earlier act remain unchanged.

The problems addressed by the Directive arise from the existence of particular corporate tax obstacles to the functioning of the internal market: cross-border interest and royalty payments are subject to heavier taxation than domestic transactions. In the case of purely domestic operations, the recipient of the payment is subject to corporate tax as a resident taxpayer in the Member State where it is resident for tax purposes. In case of international payments, they may be also subject to withholding taxes in the source Member State. The purpose of the Directive is to put cross-border interest and royalty payments on an equal footing with domestic payments, by eliminating juridical double taxation, burdensome administrative formalities and cash-flow problems for the companies concerned.

The Commission and international tax stakeholders have always been convinced of the need for an EU instrument in this area, as neither unilateral measures taken by Member States nor bilateral tax agreements have provided a satisfactory solution that fully meets the requirements of the internal market. Bilateral tax treaties do not cover all bilateral relations between Member States, they do not completely abolish double taxation and, in particular, they never provide a uniform solution for triangular and multilateral relations between Member States.

In its Communication of 5 November 1997 entitled 'A package to tackle harmful tax competition in the European Union'[2] the Commission stressed the need for coordinated action at European level to tackle harmful tax competition in order to help achieve certain objectives such as reducing the continuing distortions in the internal market, preventing excessive losses of tax revenue and encouraging tax structures to develop in a more employment-friendly way. The Ecofin Council meeting of 1 December 1997 held a wide-ranging debate on the basis of that Communication and decided, among other initiatives, to ask the Commission to present a proposal to harmonise the taxation of cross-border interest and royalty payments[3]. On 4 March 1998, the Commission adopted a proposal for a Council Directive on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States, COM(1998) 67 final. On 3 June 2003 the Ecofin Council adopted the Directive. In order to alleviate its budgetary impact for those Member States which were net importers of capital and technology and for which these taxes on such payments represented an appreciable source of revenue, a gradual approach seemed appropriate as far as the scope of the Directive was concerned.

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1 Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (OJ L 157, 26.6.2003, p. 49).

2 COM (1997) 564 final of 5.11.1997.

3 OJ C 2, 6.1.1998.

The Directive was first amended in 2004 by Directives 2004/66[4] and 2004/76[5] due to the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia. The former introduced in the text of the Directive the taxes and companies from these new Member States to which it applies. The latter amended the text of Article 6 of the Directive to introduce transitional arrangements for the Czech Republic, Latvia, Lithuania, Poland and Slovakia.

Later, Council Directive 2006/98/EC[6] included the reference to the taxes and companies from Bulgaria and Romania to which the Directive applies. Annexes IV.6 and VII.7 to the Act of Accession of Bulgaria and Romania included temporary derogations[7].

Article 8 of the Directive required the Commission to report to the Council on the operation of the Directive, in particular with a view to extending its coverage to companies or undertakings other than those under its scope. In order to obtain the information required to draft the report, DG TAXUD asked the International Bureau of Fiscal Documentation to carry out a survey of the implementation of the Directive. The Commission's report on the functioning of the Directive was presented on 23 April 2009[8]. It indicates that overall implementation of the Directive has been satisfactory and refers to possible amendments in order to extend its coverage.

This recast tries to solve some of the problems resulting from the limited scope of the Directive. There are cross-border payments outside its scope that face withholding taxes at source. Thus, it proposes to extend the list of companies to which the Directive applies and to reduce the shareholding requirements to be met for companies to qualify as associated. In addition, it adds a new requirement for the tax exemption: the recipient has to be subject to corporate tax in the Member State of its establishment on the income derived from the interest or royalty payment. This condition seeks to ensure that the tax relief is not granted when the corresponding income is not subject to tax and thus close a loophole that could be used by tax evaders. Finally, a technical amendment is proposed to avoid situations where payments made

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4 Council Directive 2004/66/EC of 26 April 2004 adapting Directives 1999/45/EC, 2002/83/EC, 2003/37/EC and 2003/59/EC of the European Parliament and of the Council and Council Directives 77/388/EEC, 91/414/EEC, 96/26/EC, 2003/48/EC and 2003/49/EC, in the fields of free movement of goods, freedom to provide services, agriculture, transport policy and taxation, by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (OJ L 168, 1.5.2004, p. 35).

5 Council Directive 2004/76/ECof 29.4.2004 amending Directive 2003/49/EC as regards the possibility for certain Member States to apply transitional periods for the application of a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (OJ L 157, 30.4.2004, p. 106).

6 Council Directive 2006/98/EC of 20 November 2006 adapting certain Directives in the field of taxation, by reason of the accession of Bulgaria and Romania (OJ L 363, 20.12.2006, p. 129).

7 Treaty between the Kingdom of Belgium, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland (Member States of the European Union) and the Republic of Bulgaria and Romania, concerning the accession of the Republic of Bulgaria and Romania to the European Union (OJ L 157, 21.6.2005, p. 278 and p. 311).

8 COM (2009) 179 final.

by a permanent establishment and deriving from its activities are denied the exemption on the grounds that they do not constitute a tax-deductible expense.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

A public consultation on possible amendments to the Directive ran from 24 August until 31 October 2010 on the 'Your Voice in Europe' web portal and DG TAXUD' website. 71 responses were received from various stakeholders, including multinationals (25 replies), large firms (3 replies), business and industry associations (18 replies), tax practitioners (16 replies), professional associations (8 replies) and one civil servant from a Member State. The first conclusion from the replies received confirms the interest in the initiatives raised by the Commission. There is a clear tendency in support of the need to take action and amend the Directive. Only 7 % of the replies do not consider it necessary to update the list of entities covered by the Directive and 4 % do not agree with the change in the shareholding threshold for entities to be considered as associated. The majority of respondents also showed preference for the alignment of the personal scope of the Directive with that of the Parent-Subsidiary Directive (supported by 9 0% of responses); amending the Directive to allow the computation of indirect holdings to establish that companies are associated was favourably received by 9 1% of the contributors; lowering the threshold requirement to consider companies as associated from a 25% holding to 10% was viewed positively by 87 % of the replies.

The Commission's impact assessment referred to the problems deriving from withholding taxes on cross-border interest and royalty payments: economic distortions in business behaviour; compliance costs due to paperwork and delays in making tax relief effective; and the risk of double taxation. Several alternatives were considered. Not taking any policy action was rejected since the difficulties identified would continue distorting the process of cross-border allocation of resources. Extending the Directive's benefits to all payments between unrelated undertakings would be effective in reducing the negative consequences described but would be less efficient and inconsistent with other aims to improve the functioning of the Directive: the different taxation of dividends, interest and royalties would continue so that the corresponding economic distortions would remain; it would also involve steeper reductions in Member States' tax revenues; and its implementation would be more difficult since there is no experience in harmonising cross-border payments between non-associated companies. Another alternative would be aligning the Directive's requirements with those of the Parent-Subsidiary Directive[9] on dividend taxation. This is the option chosen by this recast since it offers a more balanced result: it is more effective in reducing economic distortions and does not diminish Member States' tax revenue as much as the previous option, an important fact in the current context of public finances. Concerning interest payments, the loss should not exceed €200 to €300 million and would affect the 13 EU Member States that still apply withholding taxes to outgoing interest payments – Belgium, Bulgaria, the Czech Republic, Greece, Hungary, Ireland, Italy, Latvia, Poland, Portugal, Romania, Slovenia and United Kingdom -; concerning royalty payments, the loss should not exceed €100 to €200 million

[9] Council Directive 90/435/CEE on the common tax regime applicable in the case of parent companies and subsidiaries of different Member States OJ L 225, 20.8.1990, p. 6, as amended by Council Directive 2003/123/EC of 22 December 2003 amending Directive 90/435/EEC on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, OJ L 7, 13.1.2004, p. 41.

and would affect the seven countries with the largest negative royalty balances as a share of GDP - Bulgaria, the Czech Republic, Greece, Poland, Portugal, Romania and Slovakia As mentioned, it is the option preferred by stakeholders responding to the public consultation.

Excluding payments from the Directive's benefits when the income is not subject to taxation by the Member State of the recipient as well as the technical amendment to avoid situations where payments made by a permanent establishment and deriving from its activities are denied the exemption on the grounds that they do not constitute a tax-deductible expense, are measures of a purely technical nature whose impact cannot be measured.

3. LEGAL ELEMENTS OF THE PROPOSAL

Subsidiarity principle

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the European Union. The objectives of the proposal cannot be sufficiently achieved by the Member States. Withholding rates are fixed by each Member State in its national law according to its corresponding tax policy options. These charges may be reduced or waived under bilateral double taxation conventions. However, each particular convention fixes it own rate as a result of the trade-off between the two States agreeing it. The outcome is that withholding taxes vary according to each bilateral relationship between the Member States and there will not be spontaneous coordinated action by the Member States.

The second aspect to be considered is whether and how the objectives could be better achieved by action on the part of the EU. The rationale for European action stems from the cross-border nature of the problem. Clearly, action at EU level will guarantee harmonised and coordinated tax policies in this particular area of taxation. Member States would be bound by the exemption of withholding taxes to the same extent.

Proportionality principle

The amendments proposed in this recast should be proportionate. On the basis of the problems detected, they should offer solutions likely to meet the objectives fixed. The main cause of economic distortions, compliance costs and the risk of excessive or double taxation is the existence of taxes levied at source; also, the disparities in taxation of the different types of cross-border capital flows distort business behaviour. The amendments proposed in this recast aim to extend the Directive's scope and apply the tax exemption in a wider number of cases. This solution will contribute to achieving tax neutrality, reducing compliance costs and eliminating the risk of double taxation in a larger number of cases so that economic operators can allocate resources more efficiently. The initiative does not go beyond what is necessary to achieve these objectives and leaves Member States scope for national decisions since it limits its effects to EU cross-border payments.

The proposal therefore complies with the proportionality principle.

Simplification

As mentioned above, the rules establishing the tax regime for cross-border interest and royalty payments are laid down in the four Directives and two annexes to the Act of Accession of Bulgaria and Romania; there is no consolidated text. This situation results in legal complexity for those needing to consult the legislation in force. Gathering existing legislation in a single

act will simplify, clarify and facilitate the application of harmonised law by businesses and professionals dealing with these matters.

The assessment of source taxation and the refund procedures to implement the tax relief provided for in domestic laws or in double taxation conventions result in high compliance costs. Paperwork is required to attest the right to apply the relief from double taxation or to credit the amount of foreign tax paid and reduce accordingly the corporate tax charged in the State of residence. In addition, firms are required to withhold taxes and are subsequently reimbursed if the tax administration deems that they qualify for the treaty exemption or reduction. Also, when withholding tax rates are matched by tax credits in the home country, the withholding is levied on the payment while its reduction in the residence State is only possible later when the tax return is submitted. The result is that businesses incur liquidity costs. According to the impact assessment, the initiatives contained in this recast proposal to eliminate withholding taxes in a larger number of cases would entail compliance cost savings estimated at between € 38,4 and € 58,8 million.

Commentary on the Articles

- Tax exemption

Article 1 (1) is amended. Its purpose is to exempt payments of interest and royalties from any taxation at source. The 'Statements for entry in the minutes of the Council', when the Directive was adopted, contained the following passage: 'The Council and the Commission agree that the benefits of the Interest and Royalty Directive should not accrue to companies that are exempt from tax on income covered by this Directive. The Council invites the Commission to propose any necessary amendments to this Directive in due time'. The recitals to the Directive state that 'it is necessary to ensure that interest and royalty payments are subject to tax once in a Member State'[10]. The Commission shares the Council's view that there should be no loopholes in the Directive allowing the taxation of interest and royalty payments to be circumvented. To this end, it adopted a proposal in 2003[11] which was close to an agreement in the Ecofin Council. The Commission withdrew that proposal because it was due to put forward this recast of the Directive, as planned in Annex II to the Commission's Work Programme 2010[12]. Thus, the recast amends Article 1 (1) in order to make it clear that Member States have to grant the benefits of the Directive only where the interest or royalty payment concerned is not exempt from corporate taxation in the hands of the beneficial owner in the Member State where it is established. In particular this addresses the situation of a company or a permanent establishment paying income tax but benefiting from a special tax scheme exempting foreign interest or royalty payments received. The source State would not be obliged to exempt it from withholding tax under the Directive in such cases.

- Definition of source State

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10 Recital 3 of the Directive.

11 Proposal for a Council Directive on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States, COM (2003) 841.

12 Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Commission Work Programme 2010 - Time to act, COM (2010) 135 final.

Article 1 (2) which identifies the source State as the Member State from where the payments are made remains unchanged.

For the purposes of this definition, Article 1 (3) clarifies that a permanent establishment is considered to be making a payment when it represents a tax-deductible expense. The Commission's report on the Directive mentioned that it is clear from the context that the purpose of the 'tax-deductibility' requirement is to ensure that the benefits of the Directive accrue only in respect of those payments that represent expenses which are attributable to the permanent establishment. However, in its current wording the provision would also apply to cases where deduction is denied on other grounds. The recast amends this paragraph to make it clear that the Directive applies when the payment is linked to the activities carried out by the permanent establishment.

- Definition of beneficial owner

The beneficial owner is identified in paragraphs 4 and 5 of Article 1, which are not amended.

- Payments made or received by permanent establishments

Article 1 (6), governing the cases where payments are made or received through permanent establishments, is not amended.

- Requirement of association

Paragraphs 7 and 10 of Article 1, which refer to the conditions of association between the companies involved in the transaction giving rise to the payment, are not amended.

- Territorial scope

Article 1 (8), providing that the Directive only applies to intra-EU payments, remains unchanged.

- Taxation in the Member State of the recipient

Article 1 (9), referring to the taxing rights of the Member State of the recipient, is not amended.

- Attestation procedure

Paragraphs 11, 12, 13 and 14 of Article 1, on the procedure to attest the right to the exemption are not amended.

- Refund procedure

Paragraphs 15 and 16 of Article 1 which set out the procedure to refund the tax withheld when the company has the right to the exemption, are not amended.

- Definition of interest and royalties

The definitions of interest and royalties set out in Article 2 remain invariable. This Article is merged with Article 3 which also contained definitions relevant for the application of the Directive.

- Definition of company

In accordance with Article 3 (a), now Article 2 (c), the Directive covers companies of a Member State that take one of the forms listed in Annex I, are resident in a Member State and are subject to one of the types of income tax listed in the Directive. The list of entities to which it applies is made by reference to national company laws and is included in Annex I.

This recast modifies the personal coverage of the Directive with a view to extending it to the largest possible number of entities. To that end, two criteria have been followed.

In the first place, the list of entities to which the Directive applies is currently narrower than the list annexed to the Parent-Subsidiary Directive. This latter Directive applies to profit distributions and pursues the same aim as the Directive, namely to eliminate withholding taxes and the risk of double taxation in the case of cross-border capital flows: the Directive covers interest and royalty payments and the Parent-Subsidiary Directive relates to dividend payments. The amendment to the Directive extends its list with a view to bringing it into line with that of the Parent-Subsidiary Directive. This solution will help make taxation more neutral.

One of the results of this amendment will be the inclusion of the European Company (SE) and of the European Cooperative Society (SCE) in the list of companies covered by the Directive. The aims pursued with these two European legal types - creation and management of companies with a European dimension, free from the obstacles arising from the disparity and the limited territorial application of national law – will be furthered[13]. Thus, the SE will give companies operating in more than one Member State the option of being established as a single company under EU law and thus being able to operate throughout the EU with one set of company law rules and a unified management and reporting systems. While there are no provisions in the SE Statute directed specifically at taxation, nevertheless, the instrument does require the SE to be subject to 'the provisions of Member States' law which would apply to a public-limited company formed in accordance with the law of the Member State in which the SE has its registered office'[14]. Such public-limited companies, which are listed in the annex to the SE Statute, are also included in the list of companies Annex to the Directive. So, in practice the SE already enjoys the benefits of the Directive because the Member State where it has its registered office is required to grant the same benefits as those which apply to the respective national type of public-limited company. However, both for the purposes of clarification and to underpin the importance that the Commission attaches to it, the Commission proposes that the SE be specifically mentioned in the list of companies annexed to the Directive[15].

Similarly, the SCE Statue does not have specific provisions on taxation[16], so that the tax laws of the Member States and of the EU apply. The Commission considers it essential to support

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13 Council Regulation (EC) N° 2157/2001 of 8 October 2001 on the Statute for a European company – see paragraph 7 of the explanatory memorandum – (OJ L 294, 10.11.2001, p. 1) and Council Regulation (EC) N° 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society – see paragraph 6 of the explanatory memorandum – (OJ L 207, 18.8.2003, p. 1).

14 Article 9 1. (c) II of the Council Regulation EC) n° 2157/2001 of 8 October 2001.

15 The same approach is followed in the proposals to amend the Parent-Subsidiary Directive (90/434/EEC) and the Merger Directive 90/435/EEC, where the European Company is explicitly included in the list of companies covered by the Directives.

16 Recital 16 of the SCE Statute.

this new type of company and to provide the framework to allow businesses to make the best use of this legal form. The SCE will receive the same treatment as cooperatives in the Member State of their registered office and therefore, indirectly, the benefits of the Directive provided for those national types already covered by it. While some of them are already included in the list annexed to the Directive, it is proposed that more of such cooperatives be included the new Annex. In these circumstances the Commission proposes that the SCE be also included in the list of companies. Although, as in the case of the SE, the inclusion is seen more as a signal underlining the importance that the Commission assigns to the SCE, and to avoid any uncertainty or doubt, this measure ensures that the SCE will enjoy the full benefits of the Directive.

In the second place, there are some national entries in the list annexed to the Directive which are broader than those included in the Parent-Subsidiary Directive. This is the case of entries corresponding to the Czech Republic, Cyprus, Slovenia and Slovakia. For these cases, the list is not amended since it is considered that those legal types already enjoying the benefits of the Directive should not be deprived of the harmonised tax regime. Otherwise, their legitimate expectation would be breached and they would face the tax obstacles to the internal market whose elimination is sought in the TFEU and in the Directive.

There are also some entries that are not amended since they are identical to those included in the Parent-Subsidiary Directive. This is the case of the Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Finish and UK entities.

On the other hand, the list has to be updated and there are two entities that should be removed since they do no longer exist. These are the German 'bergrechtliche Gewerkschaft' and of the Hungarian 'közhasznú társaság'.

This recast will also replace the list of taxes to which the companies have to be subject, currently included in Article 3 (a) (iii) which will be inserted as Annex I Part B.

- Definition of associated company

According to Article 3 (b), an association is currently deemed to exist when one of the companies has a direct minimum holding of 25 % in the capital of the other company, or a third company has a direct minimum holding of 25 % in the capital of both the payer and the recipient companies. Member States can if they so wish provide for a level of holding lower than 25 % in order to determine whether a company exercises sufficient control over another. Furthermore, they can replace the criterion of a minimum capital holding by the criterion of a minimum holding in the voting rights.

This shareholding threshold is higher than that provided for in the Parent-Subsidiary Directive, which only requires a 10 % direct or indirect holding. The recast amends this provision to align the association requirements of the Directive with those established in the Parent-Subsidiary Directive. Thus, the direct 25 % shareholding threshold is reduced to a direct or indirect 10 % shareholding threshold. This new threshold should avoid some economic distortions arising from the different scope of the two Directives. This provision is renumbered as Article 2 (d).

- Definition of permanent establishment

Article 2 (c), containing the definition of permanent establishment is renumbers as Article 2 (e) but its content remains unchanged.

- Exclusion of payments as interest and royalties

Article 4, renumbered as Article 3, excluding from the interest and royalties definition payments deriving from transactions of a hybrid nature, is not amended.

- Fraud an abuse

Article 5, renumbered as Article 4, which contains anti-abuse provisions, is not modified by this recast.

- Transitional arrangements

Article 6, renumbered as Article 5, is not amended in substance, but its wording is adjusted to take account of the transitional arrangements provided for Bulgaria in the corresponding Act of Accession and to delete the reference to Slovakia, which ceased to enjoy the transitional derogation from 1 May 2006.

- Review

Article 8 required the Commission to report to the Council on the operation of the Directive and its report was presented in April 2009. This provision is renumbered as Article 7, updated and establishes a new deadline for reviewing the impact of the Directive and verifying how its objectives are fulfilled. Four years after its implementation, the Commission is to report to the Ecofin Council and to the European Parliament on the impact of this recast.

- Delimitation clause

Article 8 is a standard tax harmonisation provision. The Directive establishes the minimum obligations concerning the taxation of cross-border interest and royalty payments but does not rule out other more beneficial regimes provided for in national laws or in double taxation treaties.

- Implementation, repeal, entry into force and addressees

Articles 6, 9, 10 and 11 are standard provisions used especially for the purpose of recasting. Article 12 is a standard provision stating that the Directive is addressed to the Member States.

4. BUDGETARY IMPLICATION

This recast does not have any budgetary implications for the EU.

↓ 2003/49/EC (adapted)

2011/0314 (CNS)

Proposal for a

COUNCIL DIRECTIVE

on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States

(recast)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty ~~establishing~~ ⌦ on the Functioning of ⌫ the European ~~Community~~ ⌦ Union ⌫, and in particular Article ~~94~~ ⌦ 115 ⌫ thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Parliament[17],

Having regard to the opinion of the European Economic and Social Committee[18],

Acting in accordance with a special legislative procedure,

Whereas:

⇩ new

(1) Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States[19] has been amended several times. Since further amendments are to be made, it should be recast in the interests of clarity.

↓ 2003/49/EC Recital 1 (adapted)

(2) In ~~a Single~~ ⌦ an internal ⌫ market having the characteristics of a domestic market, transactions between companies of different Member States should not be subject to

[17] OJ C , , p. .

[18] OJ C , , p. .

[19] OJ L 157, 26.6.2003, p. 49.

less favourable tax conditions than those applicable to the same transactions carried out between companies of the same Member State.

↓ 2003/49/EC Recital 2

(3) This requirement is not currently met as regards interest and royalty payments; national tax laws coupled, where applicable, with bilateral or multilateral agreements may not always ensure that double taxation is eliminated, and their application often entails burdensome administrative formalities and cash-flow problems for the companies concerned.

↓ 2003/49/EC Recital 4

(4) The abolition of taxation on interest and royalty payments in the Member State where they arise, whether collected by deduction at source or by assessment, is the most appropriate means of eliminating the aforementioned formalities and problems and of ensuring the equality of tax treatment as between national and cross-border transactions; it is particularly necessary to abolish such taxes in respect of such payments made between associated companies of different Member States as well as between permanent establishments of such companies.

↓ 2003/49/EC Recital 3
⇨ new

(5) It is necessary to ensure that interest and royalty payments are subject to tax once in a Member State ⇨ and that the benefits of the Directive should only be applicable when the income derived from the payment is effectively subject to tax in the Member State of the receiving company or in the Member State where the recipient permanent establishment is situated. ⇦

⇩ new

(6) This Directive should only be applicable to the companies taking one of the legal forms listed in the Annex I, Part A and the aim should be to extend this list to cover as many corporate taxpayers as possible.

(7) For the purpose of broadening the list of entities to which this Directive should apply, two criteria can be followed. In the first place, it can be observed that many of the entries in this list are narrower than those included in the Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States[20]; it is important to align both lists and extend the one annexed to this Directive.

(8) In the second place, there are some entries in the list annexed to this Directive that are identical to or broader than those included Directive 90/435/EEC and should not be amended, so that such entities continue enjoying the benefits of this Directive.

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[20] OJ L 225, 20.8.1990, p. 6.

(9) The definition of associated companies of this Directive requires a minimum direct holding of 25 % while Directive 90/435/EEC provides for the exemption of profits distributions in the case of direct or indirect holdings of 10 %. The harmonised tax regime for interest and royalty payments should be coordinated with that of Directive 90/435/EEC and the holding requirements of this Directive should be reduced to direct or indirect holdings of 10 %.

(10) The tax exemption provided for in this Directive in the case of payments made by permanent establishments requires that these represent a tax deductible expense for the permanent establishment in the Member State in which it is situated in a manner that could result in denial of the benefits of this Directive if deduction was refused even in case where the payments are related to its activities. It is important to clarify that the exemption is applicable in cases where the payment represents an expense incurred for the purposes of the permanent establishment's activity.

↓ 2003/49/EC Recital 5

(11) The arrangements should only apply to the amount, if any, of interest or royalty payments which would have been agreed by the payer and the beneficial owner in the absence of a special relationship.

↓ 2003/49/EC Recital 6

(12) It is moreover necessary not to preclude Member States from taking appropriate measures to combat fraud or abuse.

↓ 2003/49/EC Recital 7 (adapted)

(13) ⌦ Bulgaria ⌫ , Greece and Portugal should, for budgetary reasons, be allowed a transitional period in order that they can gradually decrease the taxes, whether collected by deduction at source or by assessment, on interest and royalty payments, until they are able to apply the provisions of Article 1.

↓2003/49/EC Recital 8

(14) Spain, which has launched a plan for boosting the Spanish technological potential, for budgetary reasons should be allowed during a transitional period not to apply the provisions of Article 1 on royalty payments.

↓ 2004/76/EC Recitals 2 and 3 (adapted)

(15) The application of ⌦ this ⌫ Directive ~~2003/49/EC~~ is liable to cause budgetary difficulties for the Czech Republic, Latvia, Lithuania~~,~~ ⌦ and ⌫ Poland ~~and Slovakia~~ given the rates of withholding tax applied under national law and on the basis of tax conventions on income and capital and the revenue thus collected.

(16) Those ~~Acceding~~ ⌦ Member ⌫ States should therefore be permitted, on a temporary basis, until the date of application referred to in Article 17(2) and (3) of Council

Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments[21] not to apply ~~certain~~ provisions ⌦ of Article 1 of this ⌫ Directive ~~2003/49/EC~~ concerning, in the case of Latvia and Lithuania, interest and royalty payments, and in the case of the Czech Republic ⌦ and ⌫ Poland ~~and Slovakia~~, royalty payments only.

↓ 2003/49/EC Recital 9 (adapted)
⇨ new

(17) It is necessary for the Commission to report to the Council ⇨and to the European Parliament on the impact ⇦ ~~operation~~ of ⌦ this ⌫ Directive three years after the date by which it must be transposed ⇨in order to verify how the objectives pursued are achieved ⇦~~, in particular with a view to extending its coverage to other companies or undertakings and reviewing the scope of the definition of interest and royalties in pursuance of the necessary convergence of the provisions dealing with interest and royalties in national legislation and in bilateral or multilateral double-taxation treaties~~

↓ 2003/49/EC Recital 10 (adapted)

(18) Since the objective of the proposed action, namely setting up a common system of taxation applicable to interest and royalty payments of associated companies of different Member States cannot be sufficiently achieved by the Member States and can therefore be better achieved at ~~Community~~ ⌦ Union ⌫ level, the ~~Community~~ ⌦ Union ⌫ may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty ⌦ on the European Union ⌫ . In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

⇩ new

(19) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with the earlier Directives. The obligation to transpose the provisions which are unchanged arises under the earlier Directives.

(20) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives set out in Annex II, Part B,

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[21] OJ L 157, 26.6.2003, p. 38.

↓ 2003/49/EC (adapted)
⇨ new

HAS ADOPTED THIS DIRECTIVE:

Article 1

Scope and procedure

1. Interest or royalty payments arising in a Member State shall be exempt from any taxes imposed on those payments in that ⌦ Member ⌫ State, whether by deduction at source or by assessment, provided that the beneficial owner of the interest or royalties is a company of another Member State or a permanent establishment situated in another Member State of a company of a Member State ⇨ and is effectively subject to tax on the income deriving from those payments in that other Member State ⇦.

2. A payment made by a company of a Member State or by a permanent establishment situated in another Member State shall be deemed to arise in that Member State, hereinafter referred to as the 'source State'.

↓ 2003/49/EC (adapted)
⇨ new

3. A permanent establishment shall be treated as the payer of interest or royalties only insofar as those payments represent ⌦ an ⌫~~a tax-deductible~~ expense ⇨incurred ⇦ for ⇨ the purposes of the activity of ⇦ the permanent establishment ~~in the Member State in which it is situated~~.

↓ 2003/49/EC

4. A company of a Member State shall be treated as the beneficial owner of interest or royalties only if it receives those payments for its own benefit and not as an intermediary, such as an agent, trustee or authorised signatory, for some other person.

↓ 2003/49/EC (adapted)

5. A permanent establishment shall be treated as the beneficial owner of interest or royalties:

(a) if the debt-claim, right or use of information in respect of which interest or royalty payments arise is effectively connected with that permanent establishment; and

(b) if the interest or royalty payments represent income in respect of which that permanent establishment is subject in the Member State in which it is situated to one of the taxes mentioned in ~~Article 3(a)(iii)~~ ⌦ Annex I, Part B ⌫ or in the case of Belgium to the 'impôt des non-résidents/belasting der niet-verblijfhouders' or in the case of Spain to the 'Impuesto sobre la Renta de no Residentes' or to a tax which is identical or substantially similar and which is imposed after the date of entry into force of this Directive in addition to, or in place of, those existing taxes.

↓ 2003/49/EC

6. Where a permanent establishment of a company of a Member State is treated as the payer, or as the beneficial owner, of interest or royalties, no other part of the company shall be treated as the payer, or as the beneficial owner, of that interest or those royalties for the purposes of this Article.

7. This Article shall apply only if the company which is the payer, or the company whose permanent establishment is treated as the payer, of interest or royalties is an associated company of the company which is the beneficial owner, or whose permanent establishment is treated as the beneficial owner, of that interest or those royalties.

8. This Article shall not apply where interest or royalties are paid by or to a permanent establishment situated in a third State of a company of a Member State and the business of the company is wholly or partly carried on through that permanent establishment.

9. Nothing in this Article shall prevent a Member State from taking interest or royalties received by its companies, by permanent establishments of its companies or by permanent establishments situated in that State into account when applying its tax law.

↓ 2003/49/EC (adapted)

10. A Member State shall have the option of not applying this Directive to a company of another Member State or to a permanent establishment of a company of another Member State in circumstances where the conditions set out in Article ~~3(b)~~ ⌦ 2(d) ⌫ have not been maintained for an uninterrupted period of at least two years.

11. The source State may require that fulfilment of the requirements laid down in this Article and in Article ~~3~~ ⌦ 2 ⌫ be substantiated at the time of payment of the interest or royalties by an attestation. If fulfilment of the requirements laid down in this Article has not been attested at the time of payment, the Member State shall be free to require deduction of tax at source.

12. The source State may make it a condition for exemption under this Directive that it has issued a decision currently granting the exemption following an attestation certifying the fulfilment of the requirements laid down in this Article and in Article ~~3~~ ⌦ 2 ⌫ . A decision on exemption shall be given within three months at most after the attestation and such supporting information as the source State may reasonably ask for have been provided, and shall be valid for a period of at least one year after it has been issued.

13. For the purposes of paragraphs 11 and 12, the attestation to be given shall, in respect of each contract for the payment, be valid for at least one year but for not more than three years from the date of issue and shall contain the following information:

(a) proof of the receiving company's residence for tax purposes and, where necessary, the existence of a permanent establishment certified by the tax authority of the Member State in which the receiving company is resident for tax purposes or in which the permanent establishment is situated;

(b) beneficial ownership by the receiving company in accordance with paragraph 4 or the existence of conditions in accordance with paragraph 5 where a permanent establishment is the recipient of the payment;

(c) fulfilment of the requirements in accordance with Article ~~3(a)(iii)~~ ⌦ 2(c)(iii) ⌫ in the case of the receiving company;

(d) a minimum holding or the criterion of a minimum holding of voting rights in accordance with Article ~~3(b)~~ ⌦ 2(d) ⌫ ;

(e) the period for which the holding referred to in point (d) has existed.

Member States may request in addition the legal justification for the payments under the contract (e.g. loan agreement or licensing contract).

↓ 2003/49/EC

14. If the requirements for exemption cease to be fulfilled, the receiving company or permanent establishment shall immediately inform the paying company or permanent establishment and, if the source State so requires, the competent authority of that State.

15. If the paying company or permanent establishment has withheld tax at source to be exempted under this Article, a claim may be made for repayment of that tax at source. The Member State may require the information specified in paragraph 13. The application for repayment must be submitted within the period laid down. That period shall last for at least two years from the date when the interest or royalties are paid.

16. The source State shall repay the excess tax withheld at source within one year following due receipt of the application and such supporting information as it may reasonably ask for. If the tax withheld at source has not been refunded within that period, the receiving company or permanent establishment shall be entitled on expiry of the year in question to interest on the tax which is refunded at a rate corresponding to the national interest rate to be applied in comparable cases under the domestic law of the source State.

↓ 2003/49/EC (adapted)

Article 2

Definition⌦s ⌫

For the purposes of this Directive ⌦, the following definitions apply ⌫ :

(a) ‘interest’ means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor’s profits, and in particular, income from securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures; penalty charges for late payment shall not be regarded as interest;

(b) ‘royalties’ means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including

cinematograph films and software, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience; payments for the use of, or the right to use, industrial, commercial or scientific equipment shall be regarded as royalties;

↓ 2003/49/EC (adapted)

(c) 'company of a Member State' means any company:

(i) taking one of the forms listed in ~~the~~ Annex I, Part A ~~hereto~~; and

(ii) which in accordance with the tax laws of a Member State is considered to be resident in that Member State and is not, within the meaning of a Double Taxation Convention on Income concluded with a third state, considered to be resident for tax purposes outside the ⌦ Union ⌫ ~~Community~~ ; and

(iii) which is subject to one of the ~~following~~ taxes ⌦ listed in Annex I, Part B, ⌫ without being exempt, or to a tax which is identical or substantially similar and which is imposed after the date of entry into force of this Directive in addition to, or in place of, those existing taxes~~:~~;

↓ 2003/49/EC

- ~~impôt des sociétés/vennootschapsbelasting in Belgium,~~
- ~~selskabsskat in Denmark,~~
- ~~Körperschaftsteuer in Germany,~~
- ~~Φόρος εισοδήματος νομικών προσώπων in Greece,~~
- ~~impuesto sobre sociedades in Spain,~~
- ~~impôt sur les sociétés in France,~~
- ~~corporation tax in Ireland,~~
- ~~imposta sul reddito delle persone giuridiche in Italy,~~
- ~~impôt sur le revenu des collectivités in Luxembourg,~~
- ~~vennootschapsbelasting in the Netherlands,~~
- ~~Körperschaftsteuer in Austria,~~
- ~~imposto sobre o rendimento da pessoas colectivas in Portugal,~~
- ~~yhteisöjen tulovero/inkomstskatten för samfund in Finland,~~
- ~~statlig inkomstskatt in Sweden,~~
- ~~corporation tax in the United Kingdom,~~

↓ 2004/66/EC Art. 1 and Annex

– ~~Daň z příjmů právnických osob in the Czech Republic,~~

– ~~Tulumaks in Estonia,~~

– ~~φόρος εισοδήματος in Cyprus,~~

– ~~Uzņēmumu ienākuma nodoklis in Latvia,~~

– ~~Pelno mokestis in Lithuania,~~

– ~~Társasági adó in Hungary,~~

– ~~Taxxa fuq l-income in Malta,~~

– ~~Podatek dochodowy od osób prawnych in Poland,~~

– ~~Davek od dobička pravnih oseb in Slovenia,~~

– ~~Daň z príjmov právnických osôb in Slovakia,~~

↓ 2006/98/EC Art. 1 and Annex point 9(a)

– ~~корпоративен данък in Bulgaria,~~

– ~~impozit pe profit, impozitul pe veniturile obținute din România de nerezidenți in Romania;~~

↓ 2003/49/EC (adapted)
⇨ new

(d) a company is an 'associated company' of a second company if, at least:

(i) the first company has a ~~direct~~ minimum holding of ~~25~~ ⇨ 10 ⇦ % in the capital of the second company, or

(ii) the second company has a ~~direct~~ minimum holding of ~~25~~ ⇨ 10 ⇦ % in the capital of the first company, or

(iii) a third company has a ~~direct~~ minimum holding of ~~25~~ ⇨ 10 ⇦ % both in the capital of the first company and in the capital of the second company.

Holdings must involve only companies resident in ~~Community~~ ⌦ Union ⌫ territory.

However, Member States shall have the option of replacing the criterion of a minimum holding in the capital with that of a minimum holding of voting rights;

(e) ‘permanent establishment’ means a fixed place of business situated in a Member State through which the business of a company of another Member State is wholly or partly carried on.

↓ 2003/49/EC

Article 3

Exclusion of payments as interest or royalties

1. The source State shall not be obliged to ensure the benefits of this Directive in the following cases:

(a) payments which are treated as a distribution of profits or as a repayment of capital under the law of the source State;

(b) payments from debt-claims which carry a right to participate in the debtor’s profits;

(c) payments from debt-claims which entitle the creditor to exchange his right to interest for a right to participate in the debtor’s profits;

(d) payments from debt-claims which contain no provision for repayment of the principal amount or where the repayment is due more than 50 years after the date of issue.

2. Where, by reason of a special relationship between the payer and the beneficial owner of interest or royalties, or between one of them and some other person, the amount of the interest or royalties exceeds the amount which would have been agreed by the payer and the beneficial owner in the absence of such a relationship, the provisions of this Directive shall apply only to the latter amount, if any.

Article 4

Fraud and abuse

1. This Directive shall not preclude the application of domestic or agreement-based provisions required for the prevention of fraud or abuse.

2. Member States may, in the case of transactions for which the principal motive or one of the principal motives is tax evasion, tax avoidance or abuse, withdraw the benefits of this Directive or refuse to apply this Directive.

↓ 2003/49/EC (adapted)
→1 2004/76/EC Art. 1(1)

Article 5

Transitional rules for ⌦ Bulgaria ⌫ , →1 the Czech Republic ← , Greece, Spain, →1 Latvia, Lithuania, Poland ← ~~,~~ and Portugal ~~and Slovakia~~

↓ 2003/49/EC (adapted)
→1 2004/76/EC Art. 1(1)

1. Greece, →1 Latvia, Poland ← and Portugal shall be authorised not to apply the provisions of Article 1 ⌦ of this Directive ⌫ until the date of application referred to in Article 17(2) and (3) of Directive 2003/48/EC ~~of 3 June 2003 on taxation of savings income in the form of interest payments~~. During a transitional period of eight years starting on the aforementioned date, the rate of tax on payments of interest or royalties made to an associated company of another Member State or to a permanent establishment situated in another Member State of an associated company of a Member State must not exceed 10 % during the first four years and 5 % during the final four years.

↓ 2004/76/EC Art. 1(1) (adapted)

Lithuania shall be authorised not to apply the provisions of Article 1 ⌦ of this Directive ⌫ until the date of application referred to in Article 17(2) and (3) of Directive 2003/48/EC. During a transitional period of six years starting on the aforementioned date, the rate of tax on payments of royalties made to an associated company of another Member State or to a permanent establishment situated in another Member State of an associated company of a Member State must not exceed 10 %. During the first four years of the six-year transitional period, the rate of tax on payments of interest made to an associated company of another Member State or to a permanent establishment situated in another Member State must not exceed 10 %; and for the following two years, the rate of tax on such payments of interest must not exceed 5 %.

↓ 2003/49/EC (adapted)
→1 2004/76/EC Art. 1(1) (adapted)

→1 The Czech Republic and ← Spain shall be authorised, for royalty payments only, not to apply the provisions of Article 1 ⌦ of this Directive ⌫ until the date of application referred to in Article 17(2) and (3) of Directive 2003/48/EC. During a transitional period of six years starting on the aforementioned date, the rate of tax on payments of royalties made to an associated company of another Member State or to a permanent establishment situated in another Member State of an associated company of a Member State must not exceed 10 %. ~~Slovakia shall be authorised, for royalty payments only, not to apply the provisions of Article 1 during a transitional period of two years starting on 1 May 2004.~~

↓ 2003/49/EC (adapted)
→1 2004/76/EC Art. 1(1) (adapted)

⌦ Bulgaria shall be authorised not to apply the provisions of Article 1 until 31 December 2014. During this transitional period, the rate of tax on payments of interest or royalties made to an associated company of another Member State or to a permanent establishment situated in another Member State of an associated company of a Member State must not exceed 10% until 31 December 2010 and must not exceed 5% for the following years until 31 December 2014. ⌫

These transitional rules shall, however, remain subject to the continued application of any rate of tax lower than those referred to in the first, second and third subparagraphs provided by bilateral agreements concluded between ⌦Bulgaria, ⌫ →1 the Czech Republic ← , Greece, Spain, →1 Latvia, Lithuania, Poland ← ⌦ or ⌫ Portugal ~~or Slovakia~~ and other Member States. Before the end of any of the transitional periods mentioned in this paragraph the Council may decide unanimously, on a proposal from the Commission, on a possible extension of the said transitional periods.

↓ 2003/49/EC (adapted)
→1 2004/76/EC Art. 1(1)

2. Where a company of a Member State, or a permanent establishment situated in that Member State of a company of a Member State:

– receives interest or royalties from an associated company of ⌦ Bulgaria, ⌫Greece, →1 Latvia, Lithuania, Poland ← or Portugal,

↓ 2003/49/EC
→1 2004/76/EC Art. 1(1) (adapted)

– receives royalties from an associated company of →1 the Czech Republic or ←Spain ~~or Slovakia~~,

↓ 2003/49/EC (adapted)
→1 2004/76/EC Art. 1(1)

– receives interest or royalties from a permanent establishment situated in ⌦ Bulgaria, ⌫Greece, →1 Latvia, Lithuania, Poland ← or Portugal, of an associated company of a Member State,

or

↓ 2003/49/EC (adapted)
→1 2004/76/EC Art. 1(1) (adapted)

– receives royalties from a permanent establishment situated in →1 the Czech Republic ← ⌧ or ⌫ Spain ~~or Slovakia~~, of an associated company of a Member State,

the first Member State shall allow an amount equal to the tax paid in ⌧ Bulgaria, ⌫ →1 the Czech Republic ← , Greece, Spain, →1 Latvia, Lithuania, Poland ← or Portugal~~, or Slovakia~~ in accordance with paragraph 1 on that income as a deduction from the tax on the income of the company or permanent establishment which received that income.

↓ 2003/49/EC (adapted)
→1 2004/76/EC Art. 1(1) (adapted)

3. The deduction provided for in paragraph 2 need not exceed the lower of:

(a) the tax payable in ⌧Bulgaria, ⌫ →1 the Czech Republic ← , Greece, Spain, →1 Latvia, Lithuania, Poland ← or Portugal ~~or Slovakia~~, on such income on the basis of paragraph 1,

↓ 2003/49/EC

or

(b) that part of the tax on the income of the company or permanent establishment which received the interest or royalties, as computed before the deduction is given, which is attributable to those payments under the domestic law of the Member State of which it is a company or in which the permanent establishment is situated.

↓ 2003/49/EC (adapted)

Article 6

~~Implementation~~ ⌧ Transposition ⌫

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with ~~this Directive~~ ⌧ Article 1(1) and (3), Article 2(c) and (d), and Annex I, Part A ⌫ ~~not later than~~ ⌧ by ⌫ 1 January ~~2004~~ ⌧ 2012 at the latest ⌫. They shall forthwith ~~inform~~ ⌧ communicate to ⌫ the Commission ~~thereof~~ ⌧ the text of those provisions and a correlation table between those provisions and this Directive ⌫.

When Member States adopt ~~these measures~~ ⌧ those provisions ⌫ , they shall contain a reference to this Directive or ~~shall~~ be accompanied by such reference on the occasion of their official publication. ~~The methods of making such a reference shall be laid down by the Member States.~~ ⌧ They shall also include a statement that references in existing laws, regulations and administrative provisions to the directives repealed by this Directive shall be

construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated. ⌫

↓ 2003/49/EC

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive, together with a table showing how the provisions of this Directive correspond to the national provisions adopted.

↓ 2003/49/EC (adapted)
⇨ new

Article 7

Review

~~By 31 December 2006,~~ ⇨ By 31 December 2016 ⇦ , the Commission shall report to the Council on the ⇨ economic impact ⇦ ~~operation~~of this Directive~~, in particular with a view to extending its coverage to companies or undertakings other than those referred to in Article 3 and the Annex~~.

↓ 2003/49/EC

Article 8

Delimitation clause

This Directive shall not affect the application of domestic or agreement-based provisions which go beyond the provisions of this Directive and are designed to eliminate or mitigate the double taxation of interest and royalties.

⇩ new

Article 9

Repeal

Directive 2003/49/EC, as amended by the acts listed in Annex II, Part A, is repealed with effect from 1 January 2013, without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives set out in Annex II, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex III.

↓ 2003/49/EC (adapted)

Article 10

Entry into force

This Directive shall enter into force on the ⌦ twentieth ⌫ day ⌦ following that ⌫ of its publication in the *Official Journal of the European Union*.

⇩ new

Article 1(1) and (3), Article 2(c) and (d) and Annex I, Part A shall apply from 1 January 2013.

↓ 2003/49/EC

Article 11

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

↓ 2003/49/EC (adapted)

ANNEX I

PART A

LIST OF COMPANIES COVERED BY ARTICLE 2(c) ~~of the Directive~~

⇩ new

(1) ⇨ The European company or Societas Europaea (SE), as established Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE)[22] and Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees;[23] ⇦

⇩ new

(2) ⇨ the European Cooperative Society (SCE), as established in Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE)[24] and Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees[25]; ⇦

↓ 2003/49/EC
⇨ new

(3~~a~~) companies under Belgian law known as: 'naamloze vennootschap/société anonyme, commanditaire vennootschap op aandelen/société en commandite par actions, besloten vennootschap met beperkte aansprakelijkheid/société privée à responsabilité limitée' ⇨ 'coöperatieve vennootschap met beperkte aansprakelijkheid'/'société coopérative à responsabilité limitée', 'coöperatieve vennootschap met onbeperkte aansprakelijkheid'/'société coopérative à responsabilité illimitée', 'vennootschap onder firma'/'société en nom collectif', 'gewone commanditaire vennootschap'/'société en commandite simple', public undertakings which have adopted one of the abovementioned legal forms and other companies constituted under Belgian law subject to Belgian corporate tax ⇦ ~~and those public law bodies that operate under private law~~;

[22] OJ L 294, 10.11.2001,p.1.
[23] OJ L 294, 10.11.2001, p. 22.
[24] OJ L 207, 18.8.2003, p. 1.
[25] OJ L 18.8.2003, p. 25.

↓ 2006/98/EC Art. 1 and Annex point 9(b)
⇨ new

(4~~aa~~) companies under Bulgarian law known as: ‘събирателното дружество’, ‘командитното дружество’, ‘дружеството с ограничена отговорност’, ‘акционерното дружество’, ‘командитното дружество с акции’, ⇨ ‘неперсонифицирано дружество’, ⇦ ‘кооперации’, ‘кооперативни съюзи’, ‘държавни предприятия’ constituted under Bulgarian law and carrying on commercial activities;

↓ 2004/66/EC Art. 1 and Annex

(5~~p~~) companies under Czech law known as: ‘akciová společnost’, ‘společnost s ručením omezeným’, ‘veřejná obchodní společnost’, ‘komanditní společnost’, ‘družstvo’;

↓ 2003/49/EC
⇨ new

(6~~b~~) companies under Danish law known as: ‘aktieselskab’ and ‘anpartsselskab’ ⇨ and other companies subject to tax under the Corporation Tax Act, insofar as their taxable income is calculated and taxed in accordance with the general tax legislation rules applicable to ‘aktieselskaber’ ⇦ ;

(7~~c~~) companies under German law known as: ‘Aktiengesellschaft, Kommanditgesellschaft auf Aktien, Gesellschaft mit beschränkter Haftung’, ~~and ‘bergrechtliche Gewerkschaft’~~ ⇨ Versicherungsverein auf Gegenseitigkeit’, ‘Erwerbs- und Wirtschaftsgenossenschaft’, ‘Betriebe gewerblicher Art von juristischen Personen des öffentlichen Rechts’, and other companies constituted under German law subject to German corporate tax ⇦ ;

↓ 2004/66/EC Art. 1 and Annex

(8~~d~~) companies under Estonian law known as: ‘täisühing’, ‘usaldusühing’, ‘osaühing’, ‘aktsiaselts’, ‘tulundusühistu’;

↓ 2003/49/EC (adapted)
⇨ new

(9~~gh~~) companies ~~in~~ ⇨ incorporated or existing under ⇦ Irish law ~~known as public companies limited by shares or by guarantee, private companies limited by shares or by guarantee~~, bodies registered under the Industrial and Provident Societies Act, building societies incorporated under the Building Societies Acts ⇨ and trustee savings banks within the meaning of the Trustee Savings Banks Act, 1989 ⇦;

↓ 2003/49/EC
⇨ new

(10~~d~~) companies under Greek law known as: 'ανώνυμη εταιρία', ⇨ 'εταιρεία περιορισμένης ευθύνης (Ε.Π.Ε.)'·and other companies constituted under Greek law subject to Greek corporate tax ⇦;

(11~~e~~) companies under Spanish law known as: 'sociedad anónima, sociedad comanditaria por acciones, sociedad de responsabilidad limitada', those public law bodies which operate under private law ⇨and other entities constituted under Spanish law subject to Spanish corporate tax ('Impuesto sobre Sociedades') ⇦;

(~~f~~12) companies under French law known as: 'société anonyme, société en commandite par actions, société à responsabilité limitée' ⇨'sociétés par actions simplifiées', 'sociétés d'assurances mutuelles', 'caisses d'épargne et de prévoyance', 'sociétés civiles' which are automatically subject to corporation tax, 'coopératives', 'unions de coopératives', ⇦ industrial and commercial public establishments and undertakings, ⇨and other companies constituted under French law subject to French corporate tax ⇦ ;

(13~~h~~) companies under Italian law known as: 'società per azioni, società in accomandita per azioni, società a responsabilità limitata' ⇨, 'società cooperative', 'società di mutua assicurazione' ⇦ and public and private entities carrying on industrial and commercial activities;

↓ 2004/66/EC Art. 1 and Annex

(14~~i~~) companies under Cypriot law known as: companies in accordance with the Company's Law, Public Corporate Bodies as well as any other Body which is considered as a company in accordance with the Income tax Laws;

(~~s~~15) companies under Latvian law known as: 'akciju sabiedrība', 'sabiedrība ar ierobežotu atbildību';

(~~l~~16) companies incorporated under the law of Lithuania;

↓ 2003/49/EC (adapted)
⇨ new

(~~i~~17) companies under Luxembourg law known as: 'société anonyme, société en commandite par actions, ~~and~~ société à responsabilité limitée', ⇨'société coopérative', 'société coopérative organisée comme une société anonyme', 'association d'assurances mutuelles', 'association d'épargne-pension', 'entreprise de nature commerciale, industrielle ou minière de l'Etat, des communes, des syndicats de communes, des établissements publics et des autres personnes morales de droit public', and other companies constituted under Luxembourg law subject to Luxembourg corporate tax ⇦;

↓ 2004/66/EC Art. 1 and Annex

(~~tt~~18) companies under Hungarian law known as: 'közkereseti társaság', 'betéti társaság', 'közös vállalat', 'korlátolt felelősségű társaság', 'részvénytársaság', 'egyesülés', ~~'közhasznú társaság'~~, 'szövetkezet';

(~~v~~19) companies under Maltese law known as: 'Kumpaniji ta' Responsabilita' Limitata', 'Soċjetajiet in akkomandita li l-kapital tagħhom maqsum f'azzjonijiet';

↓ 2003/49/EC (adapted)
⇨ new

(~~i~~20) companies under Dutch law known as: 'naamloze vennootschap', ~~and~~ 'besloten vennootschap met beperkte aansprakelijkheid' ⇨, 'open commanditaire vennootschap', 'Coöperatie', 'onderlinge waarborgmaatschappij', 'fonds voor gemene rekening', 'vereniging op coöperatieve grondslag', 'vereniging welke op onderlinge grondslag als verzekeraar of kredietinstelling optreedt', and other companies constituted under Dutch law subject to Dutch corporate tax ⇦;

(~~k~~21) companies under Austrian law known as: 'Aktiengesellschaft', ~~and~~ 'Gesellschaft mit beschränkter Haftung', ⇨ 'Versicherungsvereine auf Gegenseitigkeit', 'Erwerbs- und Wirtschaftsgenossenschaften', 'Betriebe gewerblicher Art von Körperschaften des öffentlichen Rechts', 'Sparkassen' and other companies constituted under Austrian law subject to Austrian corporate tax; ⇦

↓ 2004/66/EC Art. 1 and Annex
⇨ new

(~~w~~22) companies under Polish law known as: 'spółka akcyjna', 'spółka z ograniczoną odpowiedzialnością' ⇨ 'spółdzielnia', 'przedsiębiorstwo państwowe' ⇦;

↓ 2003/49/EC

(~~l~~23) commercial companies or civil law companies having a commercial form, cooperatives and public undertakings incorporated in accordance with Portuguese law;

↓ 2006/98/EC Art. 1 and Annex point 9(b)

(~~ab~~24) companies under Romanian law known as: 'societăți pe acțiuni', 'societăți în comandită pe acțiuni', 'societăți cu răspundere limitată';

↓ 2004/66/EC Art. 1 and Annex

(25) companies under Slovenian law known as: 'delniška družba', 'komanditna delniška družba', 'komanditna družba', 'družba z omejeno odgovornostjo', 'družba z neomejeno odgovornostjo';

(26) companies under Slovak law known as: ‘akciová spoločnosť’, ‘spoločnosť s ručením obmedzeným’, ‘komanditná spoločnosť’, ‘verejná obchodná spoločnosť’, ‘družstvo’;

↓ 2003/49/EC

(~~m~~27) companies under Finnish law known as: ‘osakeyhtiö/aktiebolag, osuuskunta/andelslag, säästöpankki/sparbank’ and ‘vakuutusyhtiö/försäkringsbolag’;

↓ 2003/49/EC (adapted)
⇨ new

(~~n~~28) companies under Swedish law known as: ‘aktiebolag’, ~~and~~ ‘försäkringsaktiebolag’, ⇨ekonomiska föreningar’, ‘sparbanker’, ‘ömsesidiga försäkringsbolag’ ⇦;

↓ 2003/49/EC

(~~o~~29) companies incorporated under the law of the United Kingdom.

↓ 2003/49/EC (adapted)

⌦ PART B

LIST OF TAXES REFERRED TO IN ARTICLE 2(c) ⌫

↓ 2003/49/EC

– Impôt des sociétés/vennootschapsbelasting in Belgium,

↓ 2006/98/EC Art. 1 and Annex point 9(a)

– корпоративен данък in Bulgaria

↓ 2004/66/EC Art. 1 and Annex

– Daň z příjmů právnických osob in the Czech Republic,

↓ 2003/49/EC

– selskabsskat in Denmark,

– Körperschaftsteuer in Germany,

↓ 2004/66/EC Art. 1 and Annex

– Tulumaks in Estonia,

↓ 2003/49/EC

– corporation tax in Ireland,

– Φόρος εισοδήματος νομικών προσώπων in Greece,

– impuesto sobre sociedades in Spain,

– impôt sur les sociétés in France,

– imposta sul reddito delle persone giuridiche in Italy,

↓ 2004/66/EC Art. 1 and Annex

– φόρος εισοδήματος in Cyprus,

– Uzņēmumu ienākuma nodoklis in Latvia,

– Pelno mokestis in Lithuania,

↓ 2003/49/EC

– impôt sur le revenu des collectivités in Luxembourg,

↓ 2004/66/EC Art. 1 and Annex

– Társasági adó in Hungary,

– Taxxa fuq l-income in Malta,

↓ 2003/49/EC

– vennootschapsbelasting in the Netherlands,

– Körperschaftsteuer in Austria,

↓ 2004/66/EC Art. 1 and Annex

– Podatek dochodowy od osób prawnych in Poland,

↓ 2003/49/EC

– imposto sobre o rendimento da pessoas colectivas in Portugal,

↓ 2006/98/EC Art. 1 and Annex point 9(a)

– impozit pe profit, impozitul pe veniturile obţinute din România de nerezidenţi in Romania;

↓ 2004/66/EC Art. 1 and Annex

– Davek od dobička pravnih oseb in Slovenia,

– Daň z príjmov právnických osôb in Slovakia,

↓ 2003/49/EC

– yhteisöjen tulovero/inkomstskatten för samfund in Finland,

– statlig inkomstskatt in Sweden,

– corporation tax in the United Kingdom.

↑

ANNEX II

PART A

Repealed Directive with list of its successive amendments

(referred to in Article 9)

Council Directive 2003/49/EC	
(OJ L 157, 26.6.2003, p. 49)	
Council Directive 2004/66/EC	only point V(3) of the Annex
(OJ L 168, 1.5.2004, p. 35)	
Council Directive 2004/76/EC	
(OJ L 157, 30.4.2004, p. 106)	
Council Directive 2006/98/EC	only point 9 of the Annex
(OJ L 363, 20.12.2006, p. 129)	

PART B

List of time-limits for transposition into national law

(referred to in Article 10)

Directive	Time-limit for transposition	Date of application
2003/49/EC	1 January 2004	1 July 2011 (1) (2) 1 July 2013 (3) 1 January 2015 (4)
2004/66/EC	1 May 2004	–
2004/76/EC	1 May 2004	–
2006/98/EC	1 January 2007	–

(1) Applicable to Lithuania, as regards the provisions of Article 1.

(2) Applicable to the Czech Republic and Spain, as regards the provisions of Article 1 in the case of royalty payments.

(3) Applicable to Greece, Latvia, Poland and Portugal, as regards the provisions of Article 1.

(4) Applicable to Bulgaria, as regards the provisions of Article 1.

ANNEX III

Correlation table

Directive 2003/49/E	This Directive
Articles 1	Article 1
Article 2	Article 2(a) and (b)
Article 3(a)	Article 2(c) and Annex I, Part B
Article 3(b) and (c)	Article 2(d) and (e)
Article 4,	Article 3
Article 5	Article 4
Article 6	Article 5
Article 7	Article 6
Article 8	Article 7
Article 9	Article 8
–	Article 9
Article 10	Article 10
Article 11	Article 11
Annex	Annex I, Part A
–	Annex II
–	Annex III
–	