



# **Intra-Community Information Exchange The EU experience**

**International Conference on FATCA  
Rome, 1 February 2013**

**Bert Zuijndorp - Head of Unit  
Direct Tax Policy & Cooperation (Unit D2)  
Taxation and Customs Union Directorate General**

## Overview

- *The Savings Directive (2003/48/EC of 03.06.2003)*
- *The Directive on Administrative Cooperation (2011/16/EU of 15.02.2011)*
- *FATCA & EU*

## Savings Taxation Directive - Aim

- *Ultimate **aim** of the Directive:*  
*“...is to enable **savings income** in the form of **interest payments** made in one MS to beneficial owners who are individuals **resident** for tax purposes in another MS to be made subject to effective taxation in accordance with the national laws of the latter MS” (Art. 1)*
- *Like FATCA: residence country reporting*

# Savings Taxation Directive - Functioning

- *This aim is achieved by requiring paying agents to report certain information to the tax authorities of their MS of establishment (Art. 8), followed by **automatic exchange of this information** between tax authorities (Art. 9) – like under FATCA Model 1 IGA*
- **Exceptions:** *special withholding tax (now 35%) during transitional period in AT and LU (Art. 11). Originally valid also for BE - since 1 January 2010, BE applies automatic exchange of info*

# Savings Taxation Directive – Territorial Scope & IT issues

- *Directive applies within the EU + UK and NL dependent or associated territories (Jersey and two islands in the NL Antilles still in form of withholding tax); equivalent withholding tax measures in 5 European countries*
- *Information between tax authorities is exchanged via **standardised format** (FISC 153 XML) and communication channels (CCN network)*

# 2008 and 2012 Reports - Amending Proposal

## *2008 report*

- *Need for certain amendments in order to close possible loopholes*

## *2012 report*

- *Widespread use of offshore jurisdictions for intermediary entities and growth in key markets that provide products comparable to debt claims*

***Amending Proposal*** presented by COM on 13.11.2008  
– *still under discussion at the Council*

## Statistics on Savings Directive

Year	Records exchanged	Amount €	Transfers from AT, BE, LU
2005	3.704.054	5.531.350.194	55.785.265
2006	5.403.057	12.647.120.702	182.435.888
2007	4.997.644	39.585.534.835	227.016.265
2008	4.203.880	18.401.397.688	278.736.881
2009	3.911.403	12.110.594.515	203.442.615
2010	3.742.325	11.655.112.777	135.618.909

## Directive on Admin. Cooperation - Aim and Scope

- *Cooperation between MSs with a view to exchanging information that is foreseeably relevant to the administration and the enforcement of the domestic law of the MSs concerning the taxes covered by the Directive (Art. 1)*
- *All taxes of any kind except for VAT, customs duties, excise duties, compulsory social security contributions*
- *Repeals Directive 77/799/EEC (as of 1.1.2013)*



## Directive on Admin. Cooperation – Main Principles

- *Rules on disclosure of information and documents (Art. 16)*
- *Limits: principle of equivalence; principle of reciprocity; principle of secrecy (Art. 17)*
- *Obligations: 1) exclusion of domestic interest; 2) repeal of bank secrecy (Art. 18)*
- *MFN clause – extension of wider cooperation provided to a third country (Art. 19)*

## Directive on Admin. Cooperation – Types of Exchanges

- *Three different types of information exchange:*
  - 1) *on request* (Art. 5-7);
  - 2) *automatic* (Art. 8) and
  - 3) *spontaneous* (Art. 9-10)

# Directive on Admin. Cooperation – Automatic Exchange of Information

- *Mandatory automatic exchange of available information for 5 categories of income (as of 1.1.2015)*
- *Dynamic mechanism allowing COM to withdraw the condition of availability of information and to expand the categories of income which are subject to automatic exchange to include **dividends, capital gains and royalties***
- *Compulsory use of IT formats based on FISC 153*

## Directive on Admin. Cooperation – Information Exchange on Request and Spontaneous

- *Based on a request. Requested MS is obliged to communicate any information that it has in its possession or that it obtains as a result of administrative enquires*
- *Obligation to send information in certain cases (e.g. supposition of loss of tax in the other MS) and possibility to send any information of which MSs are aware and which may be useful to others*
- *Exchange of information to take place using standard forms adopted by COM*

# Statistics on Mutual Assistance Directive

Year	Individual Requests	Spontaneous Exchange	Automatic Exchange
2005	2.960	26.274	No data
2006	2.718	18.182	No data
2007	3.250	14.030	No data
2008	4.017	19.349	1.833.422
2009	4.246	26.645	4.368.227
2010	4.502	25.040	3.345.719

## FATCA & EU

- *Model 1 IGA including reciprocity is in line with EU and international standards on information exchange*
- *Model 1 IGA provide some safeguards with respect to data protection – Model 2 still under consideration*
- *MFN clause (Art. 19): "where a MS provides a wider cooperation to a third country than that provided for under this Directive, that MS may not refuse to provide such wider cooperation to any other MS wishing to enter into such mutual wider cooperation with that MS"*

## FATCA & EU

- *MFN clause is likely to oblige MSs that sign FATCA agreements with the US to provide the same level of cooperation to other requesting MSs that are willing to reciprocate/already reciprocate*
- *Efficiency gains if format to exchange information under FATCA (under development) is aligned, to the extent possible, with FISC 153 XML*
- *EU experience on info exchange relevant for common future Model for Residence Country Reporting under discussion at the OECD*



***Thank you for your  
attention!***