



The Virgin Islands International Tax Authority

Reporting under the EU Savings Directive, 2003:
Guidance notes on submitting information under the
Automatic Exchange of Information arrangement

Created: 18th June, 2013

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Overview

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In 2005, the Government of the Virgin Islands entered into Bilateral Agreements with each of the EU Member States in relation to reporting Savings Income information. Initially, the Virgin Islands opted to go through a transitional period, in which they would withhold a percentage from savings income and report it to the respective EU Members annually.

However, with the 2011 amendment of the Mutual Legal Assistance (Tax Matters) Act, 2003 (“the Act”), the Virgin Islands has changed the way it complies with the EU Savings Directive. Effective from 1st January, 2012, the withholding of taxes on interest payments is no longer effective. According to the Mutual Legal Assistance (Tax Matters) (Automatic Exchange Of Information) Order 2011, withholding tax would be applied for the tax year ending 31st December, 2011. With effect from the 1st January, 2012, the EU Savings Directive is now complied with through automatic exchange of information.

This means that all paying agents are now required to report to the Competent Authority of the Virgin Islands in the manner outlined in Article 17 of the Act (see amendment Mutual Legal Assistance (Tax Matters) (Amendment) Act, 2005 (No. 16 of 2005).

In accordance with section 13(1) of the Act, the Financial Secretary has designated the International Tax Authority to perform the functions of the Competent Authority under the Act and the Directive of the Council of the European Union, known as Council Directive 2003/48/EC of 3 June, 2003 (the “Directive”) on taxation of savings income in the form of interest payments.

Introduction

These notes are designed to assist the paying agent in reporting to the International Tax Authority the necessary information required to be submitted to the relative EU Member States. (Reference should be made to the Mutual Legal Assistance (Tax Matters) Act, 2003, Article 17.)

These notes for reporting under the EU Savings Directive may be found at www.finance.gov.vg

Completion of Report

IDENTITY AND RESIDENCE OF BENEFICIAL OWNERS

The Paying agent must identify, in all cases, the account number of the Beneficial Owner. If there is no account number then the Paying agent must identify the debt claim giving rise to the interest. Additionally, the Paying agent must provide additional information according to when the contractual relationship was established.

For contractual relations entered into before 1st July, 2005 the paying agent shall provide the following:

- **Name**
Enter the name of the beneficial owner (Where more than one individual shares entitlement to the payment or receipt each individual should be entered onto the form).
- **Address**
Enter the permanent address of the beneficial owner
- **Residence of the Beneficial Owner**
The address of the beneficial owner shall be established by using the information that is held pursuant to the Anti-Money laundering Code of Practice, 1999 and any other enactment in force in the Virgin Islands.

For contractual relations entered into force on or after 1st July, 2005 the paying agent shall provide the following:

- **Name**
Enter the name of the beneficial owner (Where more than one individual share entitlement to the payment or receipt each individual should be entered onto the form).
- **Address**
Enter the permanent address of the beneficial owner.
- **Residence of Beneficial Owner**
The paying agent shall establish residency on the basis of a passport, an official identity card or, if necessary any other documentary proof of identity presented by the beneficial owner.

Additionally, if there is a tax identification number this should be provided as well. (See article 7 of Schedule 3 of the Mutual Legal Assistance (Tax Matters) Act, 2003 in relation to Residence of Beneficial Owner)
- **Date of Birth**
Enter the date of birth of the beneficial owner.
- **Place of Birth**
Enter the place of birth of the beneficial owner.

PAYMENT INFORMATION

- **Name of Agent**
Enter the name of the Paying Agent.
- **Address of Agent**
Enter the business address of the Agent.
- **Account number of the beneficial owner**
Provide the account number of the beneficial owner or where there is none, he identification of the debt claim giving rise to the interest.
- **Category of interest payment**
Enter the Category of the payment (See **Definitions in the Directive**).
- **Interest Payment amount and currency code**
Enter the amount of the interest payment. (See **definitions in the Directive** on the definition of interest payment).

The currency code should be reported according to the SWIFT standard to show the currency in which the report is made.

➤ **Reporting Period**

Enter the reporting period in respect of which the report is being made.

Reporting periods are annual and end on 30th June of each year.

➤ **Submission Date**

Enter the date of when the information was submitted to the International Tax Authority.

SUBMISSION OF REPORTS

Mode of Completion

Reports should be completed electronically using the standard form which accompany these notes and which are available at www.finance.gov.vg and submitted to BVIITA@gov.vg.

Multiple reports?

Where more than one payment is made from a single account, either an individual transaction or an aggregate figure relating to all transactions should be reported separately.

If the payment is made to an individual, separate forms for each individual should be used even when a number of individuals receive the income from the same account. For example, for a joint account, a separate form will be required for each individual who is reportable.

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EU Savings Directive Definitions

Beneficial Owner (Article 2 of the Directive):

1. Any individual who receives an interest payment or any individual for whom an interest payment is secured, unless he provides evidence that it was not received or secured for his own benefit, that is to say that:
 - (a) he acts as a paying agent within the meaning of Article 4(1) of the Directive; or
 - (b) he acts on behalf of a legal person, an entity which is taxed on its profits under the general arrangements for business taxation, an UCITS authorised in accordance with Directive 85/611/EEC or an entity referred to in Article 4(2) of the Directive and, in the last mentioned case, discloses the name and address of that entity to the economic operator making the interest payment and the latter communicates such information to the competent authority of its Member State of establishment, or
 - (c) he acts on behalf of another individual who is the beneficial owner and discloses to the paying agent the identity of that beneficial owner in accordance with Article 3(2) of the Directive.

Where a paying agent has information suggesting that the individual who receives an interest payment or for whom an interest payment is secured may not be the beneficial owner, and where neither paragraph 1(a) nor 1(b) applies to that individual, it shall take reasonable steps to establish the identity of the beneficial owner in accordance with Article 3(2) of the Directive. If the paying agent is unable to identify the beneficial owner, it shall treat the individual in question as the beneficial owner.

Interest Payment (Article 6):

1. (a) Interest paid, or credited to an account, relating to 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 government 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 payments;

b) Interest accrued or capitalized at the sale, refund or redemption of the debt claims referred to in sub-section (a);

(c) income deriving from interest payments either directly or through an entity referred to in Article 8 (2) of the relevant agreement, distributed by:

(i) an UCITS authorised in accordance with Directive 85/611/EEC,
(ii) entities which qualify for the option under Article 4(3) of the Directive,
(iii) undertakings for collective investment established outside the territory referred to in Article 7 of the Directive;

(d) income realised upon the sale, refund or redemption of shares or units in the following undertakings and entities, if they invest directly or indirectly, via other undertakings for collective investment or entities referred to below, more than 40 % of their assets in debt claims as referred to in (a):

(i) an UCITS authorised in accordance with Directive 85/611/EEC,
(ii) entities which qualify for the option under Article 4(3) of the Directive,
(iii) undertakings for collective investment established outside the territory referred to in Article 7 of the Directive.

However, Member States shall have the option of including income mentioned under (d) in the definition of interest only to the extent that such income corresponds to gains directly or indirectly deriving from interest payments within the meaning of (a) and (b).

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4. When interest, as defined in paragraph 1, is paid to or credited to an account held by an entity referred to in Article 4(2) of the Directive, such entity not having qualified for the option under Article 4(3) of the Directive, it shall be considered an interest payment by such entity.

Paying Agent (Article 4):

1. Any economic operator who pays interest to or secures the payment of interest for the immediate benefit of the beneficial owner, whether the operator is the debtor of the debt claim which produces the interest or the operator charged by the debtor or the

beneficial owner with paying interest or securing the payment of interest.

2. Any entity established in a Member State to which interest is paid or for which interest is secured for the benefit of the beneficial owner shall also be considered a paying agent upon such payment or securing of such payment. This provision shall not apply if the economic operator has reason to believe, on the basis of official evidence produced by that entity, that:

(a) it is a legal person, with the exception of those legal persons referred to in Article 4, paragraph 5 of the Directive; or

(b) its profits are taxed under the general arrangements for business taxation; or

(c) it is an UCITS recognised in accordance with Directive 85/611/EEC.

An economic operator paying interest to, or securing interest for, such an entity established in another Member State which is considered a paying agent under this paragraph shall communicate the name and address of the entity and the total amount of interest paid to, or secured for, the entity to the competent authority of its Member State of establishment, which shall pass this information on to the competent authority of the Member State where the entity is established.

3. The entity referred to in paragraph 2 above shall, however, have the option of being treated for the purposes of this Directive as an UCITS as referred to in 2(c) above. The exercise of this option shall require a certificate to be issued by the Member State in which the entity is established and presented to the economic operator by that entity.

Member States shall lay down the detailed rules for this option for entities established in their territory.

4. Where the economic operator and the entity referred to in paragraph 2 above are established in the same Member State, that Member State shall take the necessary measures to ensure that the entity complies with the provisions of this Directive when it acts as a paying agent.

Categories of interest:

Pursuant to Section 17(3) of the Mutual Legal Assistance (Tax Matters) Act, 2003, reports of information concerning interest payments shall distinguish between the following categories of interest and indicate:

- a) In the case of an interest payment within the meaning of Article 6 (1)(a) of the Directive (please see these details outlined on Page 4 under the heading Interest Payments), the amount of interest paid or credited (interest on debt-claims or credited to accounts);
- b) In the case of an interest payment within the meaning of Article 6(1)(b) or (d) of the Directive, either the amount of interest or income referred to in those paragraphs or the full amount of the proceeds from the sale, redemption or refund (interest accrued or capitalized at sale, refund or redemption of debt-claims);
- c) In the case of an interest payment within the meaning of Article 6(1)(c) of the Directive, either the amount of income referred to in that paragraph or the full amount of the distribution (income deriving from interest payments by certain unit trust and collective investment funds that have invested more than 15% of their investments in debt-claims);
and
- d) In the case of interest payment within the meaning of Article 6(4) of the Directive, the amount of interest attributable to each of the members of the entity referred to in Article 4(2) of the Directive who meet the conditions of Articles 1(1) and 2(1) of the Directive (income realised upon sale or redemption in certain collective investment funds that have invested more than 40% of their investments in debt-claims).