

**No. 16 of 2005**

**VIRGIN ISLANDS**

**MUTUAL LEGAL ASSISTANCE (TAX MATTERS)  
(AMENDMENT) ACT, 2005**

**ARRANGEMENT OF SECTIONS**

*Section*

1. Short title and commencement.
2. Interpretation.
3. Long title amended.
4. Heading inserted.
5. Section 2 amended.
6. Section 3 amended.
7. Sections 2 to 10 amended.
8. Part II inserted.
9. Schedule amended.
10. Schedule 2 inserted.

**No. 16 of 2005      Mutual Legal Assistance (Tax Matters)  
(Amendment) Act, 2005**

**Virgin  
Islands**

**I Assent**

**THOMAS MACAN  
Governor  
27<sup>th</sup> May, 2005**

**VIRGIN ISLANDS**

**No. 16 of 2005**

An Act to amend the Mutual Legal Assistance (Tax Matters) Act, 2003 (No. 18 of 2003).

[Gazetted 16<sup>th</sup> June, 2005]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and  
commencement.

**1.** This Act may be cited as the Mutual Legal Assistance (Tax Matters) (Amendment) Act, 2005 and shall come into force on 1<sup>st</sup> July, 2005.

Interpretation.  
No. 18 of 2003

**2.** In this Act, “the principal Act” means the Mutual Legal Assistance (Tax Matters) Act, 2003.

Long title  
amended.

**3.** The long title to the principal Act is amended by inserting after the words “a party,”, the words “for giving effect to the Directive of the Council of the European Union on taxation of savings income in the form of interest payments,”.

Heading inserted.

**4.** The principal Act is amended by inserting after section 1, the following heading:

**“PART I  
TAX INFORMATION EXCHANGE: GENERAL”.**

- 5.** Section 2 of the principal Act is amended Section 2 amended.
- (a) in the marginal note, by inserting after the word “Interpretation”, the words “for Part I”; and
- (b) in subsection (1),
- (i) by deleting the words “the Schedule” occurring in the definition of “USA Agreement” and substituting the words “Schedule 1”; and
- (ii) by deleting the word “Schedule” occurring in the margin and substituting the words “Schedule 1”.
- 6.** Section 3(2) of the principal Act is amended by deleting the words “the Schedule” and substituting the words “Schedule 1”. Section 3 amended.
- 7.** Sections 2 to 10 of the principal Act are amended by deleting the words “this Act” and “This Act” wherever they occur and substituting the words “this Part” and “This Part” respectively. Sections 2 to 10 amended.
- 8.** The principal Act is amended by inserting after section 10, the following Part: Part II inserted.

**“PART II  
EUROPEAN UNION TAXATION OF SAVINGS INCOME**

- Interpretation for Part II. **11.** (1) In this Part, unless the context otherwise requires,
- “Article” means an Article of the Directive;
- “Directive” means the Directive of the Council of the European Union known as Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments, as set out in Schedule 2;
- Schedule 2 **“Member State”** means a country that is a member of the European Union and includes the Virgin Islands;
- “Minister”** means the Minister to whom responsibility for finance is assigned;

“residence”, in relation to a beneficial owner, means the country or territory where his permanent address is located, subject to section 15;

“UCITS” means an undertaking for collective investment in transferable securities that is recognised in accordance with the Directive of the Council of the European Union known as Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities;

(2) Unless the context otherwise requires or this Part expressly provides to the contrary,

- (a) an expression that is defined in the Directive shall have the same meaning in this Part as that given to it in the Directive;
- (b) where the Directive provides for the construction of an expression therein, that expression shall be construed in accordance with those provisions for the purposes of this Part.

(3) Notwithstanding Article 5, a reference to “competent authority” in this Part or in the Directive shall, unless the context otherwise requires, be construed as a reference to the Financial Secretary or any person or authority designated by him under section 13.

(4) A reference in the Directive to an economic operator shall be construed in accordance with such rules, regulations or guidelines as may be made by the Minister and any such rules, regulations or guidelines made shall be published in the *Gazette*.

(5) For the purposes of the definition of “interest payment” in Article 6,

- (a) “interest” includes income mentioned in Article 6(1)(d) only to the extent that such income corresponds to gains directly or indirectly deriving from interest payments defined in Article 6(1)(a) and (b);

- (b) “interest payment” as defined in Article 6(1)(c) and (d) does not include income referred to therein from an undertaking for collective investment established within the Virgin Islands that is equivalent to an UCITS where the investment in debt claims referred to in Article 6(1)(a) of such undertaking has not exceeded fifteen per cent of its assets;
- (c) interest paid or credited to an account of an entity referred to in Article 4(2) which has not qualified for the option under Article 4(3) and is established within the Virgin Islands shall not be considered as an interest payment under Article 6(4) where the investment of such an entity in debt claims referred to in Article 6(1)(a) has not exceeded fifteen per cent of its assets.

Implementation  
of the Directive.

**12.** (1) This Part shall apply for the purpose of giving effect to the Directive.

(2) Where any provision of this Part is inconsistent with a provision of the Directive, this Part shall prevail.

(3) Where the Directive is amended by the Council of the European Union and the amendment is adopted by the Government of the United Kingdom, the Minister may, where he considers it necessary in the public interest to do so, by Order subject to an affirmative resolution of the Legislative Council, make provisions to give effect to the amendment, including such modifications to this Part or Schedule 2 as are specified in the Order.

Schedule 2

Competent  
authority.

**13.** (1) The Financial Secretary may, in writing and after the approval of the Minister, designate any person or authority to perform the functions of the competent authority under this Part and the Directive.

(2) The Financial Secretary shall cause the designation of a person or authority under subsection (1) to be notified in the *Gazette* as soon as practicable thereafter.

Identity of  
beneficial  
owner.

**14.** (1) A paying agent shall establish the identity of a beneficial owner in accordance with this section.

S.I. 1999  
No. 48

(2) Where the paying agent and the recipient of the interest entered into contractual relations before the coming into force of this Part, the paying agent shall establish the name and address of the beneficial owner by using the information at its disposal, in particular information held pursuant to the Anti-money Laundering Code of Practice, 1999 and any other enactment in force in the Virgin Islands which provides for the prevention of the use of the financial system for the purpose of money laundering.

(3) Where the paying agent and the recipient of the interest enter into contractual relations, or carry out any transaction in the absence of contractual relations, on or after the coming into force of this Part, the paying agent shall establish the name and address of the beneficial owner and, if any, the tax identification number allocated to the beneficial owner by his Member State of residence for tax purposes.

(4) Subject to subsection (5), a paying agent shall establish the details specified in subsection (3) on the basis of the passport or the official identity card presented by the beneficial owner.

(5) Where the address or the tax identification number of a beneficial owner does not appear on his passport or official identity card, the paying agent shall establish the address or the tax identification number, as the case may be, on the basis of any other documentary proof of identity presented by the beneficial owner.

(6) Where the tax identification number of a beneficial owner does not appear on his passport, his official identity card or any other documentary proof presented by him, the paying agent shall establish the date and place of birth of the beneficial owner on the basis of the passport or the official identity card presented by the beneficial owner.

Residence of  
beneficial  
owner.

**15.** (1) A paying agent shall establish the residence of a beneficial owner in accordance with this section.

S.I. 1999  
No. 48

(2) Where the paying agent and the recipient of the interest entered into contractual relations before the coming into force of this Part, the paying agent shall establish the residence of the beneficial owner by using the information at its disposal, in particular information held pursuant to the Anti-money Laundering Code of Practice, 1999 and any other enactment in force in the Virgin Islands which provides for the prevention of the use of the financial system for the purpose of money laundering.

(3) Subject to subsection (4), where the paying agent and the recipient of the interest enter into contractual relations, or carry out any transaction in the absence of contractual relations, on or after the coming into force of this Part, the paying agent shall establish the residence of the beneficial owner on the basis of the passport, the official identity card or, if necessary, any other documentary proof of identity presented by the beneficial owner.

(4) Where a beneficial owner presents a passport or official identity card issued by a Member State and declares himself to be resident in a third country, the paying agent shall establish the residence of the beneficial owner on the basis of a tax residence certificate issued by a competent tax authority of the third country in which the beneficial owner claims to be resident, and if the beneficial owner fails to present such a certificate, the paying agent shall treat the Member State which issued the passport or other official identity document as the residence of the beneficial owner.

(5) Where a question arises as to whether or not a tax residence certificate or other equivalent document issued by a competent tax authority of a third country is valid, the decision of the competent authority shall be conclusive on the subject.

Withholding  
tax.

**16.** (1) Subject to this section, a paying agent established in the Virgin Islands shall levy a withholding tax on interest payments made by that paying agent to beneficial owners who are individuals resident for tax purposes in another Member State.

(2) The rate of withholding tax to be levied under subsection (1) shall be as follows:

- (a) from 1<sup>st</sup> July, 2005 to 31<sup>st</sup> December, 2007, fifteen per cent;
- (b) from 1<sup>st</sup> January, 2008 to 31<sup>st</sup> December, 2010, twenty per cent; and
- (c) from 1<sup>st</sup> January, 2011, thirty-five per cent.

(3) A paying agent shall levy withholding tax as follows:

- (a) in the case of an interest payment within the meaning of Article 6(1)(a), on the amount of interest paid or credited;

- (b) in the case of an interest payment within the meaning of Article 6(1)(b) or (d), on the amount of interest or income referred to in those paragraphs or by a levy of equivalent effect to be borne by the recipient on the full amount of the proceeds of the sale, redemption or refund;
- (c) in the case of an interest payment within the meaning of Article 6(1)(c), on the amount of income referred to in that paragraph;
- (d) in the case of an interest payment within the meaning of Article 6(4), on the amount of interest attributable to each of the members of the entity referred to in Article 4(2) who meet the conditions of Articles 1(1) and 2(1).

(4) For the purposes of subsection (3)(a) and (b), withholding tax shall be levied pro rata to the period of holding of the debt claim by the beneficial owner and where the paying agent is unable to determine the period of holding on the basis of information in its possession, it shall treat the beneficial owner as having held the debt claim throughout its period of existence unless he provides evidence of the date of acquisition.

(5) An economic operator paying interest to, or securing interest for, an entity referred to in Article 4(2) established in a Member State, other than the Virgin Islands, shall for the purposes of this section, be considered the paying agent in place of the entity and shall levy the withholding tax on that interest, unless the entity has formally agreed to its name, address and the total amount of interest paid to it or secured for it being communicated to the competent authority of the Member State where the entity is established.

(6) Where an entity referred to in subsection (5) has entered into a formal agreement referred to in that subsection, the economic operator paying interest to, or securing interest for, the entity 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 that information on to the competent authority of the Member State where the entity is established.



(7) A paying agent shall not levy withholding tax under this section in any case where a beneficial owner expressly authorises the paying agent, in writing, to report information in accordance with section 17, and in any such case, the paying agent and the competent authority shall report information in respect of that beneficial owner in accordance with that section as if that section were in force.

(8) A paying agent shall pay the withholding tax levied by it to the competent authority.

(9) The Government of the Virgin Islands shall retain twenty-five per cent of the withholding tax collected by it for its own use and shall transfer the remaining seventy-five per cent

- (a) in the case of withholding tax levied under subsection (1), to the Member State that is the residence of the beneficial owner of the interest on which the withholding tax was levied; and
- (b) in the case of withholding tax levied under subsection (5), to the other Member States proportionate to the transfers carried out pursuant to paragraph (a).

(10) Transfers of withholding tax levied shall,

- (a) in the case of transfers under subsection (9)(a), be made within a period of six months following the end of the tax year of the Virgin Islands; and
- (b) in the case of transfers under subsection (9)(b), be made within a period of six months following the end of the tax year of the Member State where the relevant economic operator is established.

(11) This section shall cease to have effect upon the coming into force of section 17.

Exchange of  
information.

**17. (1)** This section shall come into force on such date as the Minister may, by Order published in the *Gazette*, appoint.

(2) Where the beneficial owner of interest is resident in a Member State other than the Virgin Islands, the paying agent shall report to the competent authority

- (a) the identity and residence of the beneficial owner established in accordance with sections 14 and 15;
- (b) the name and address of the paying agent;
- (c) the account number of the beneficial owner or, where there is none, identification of the debt claim giving rise to the interest; and
- (d) information concerning the interest payment in accordance with subsection (3).

(3) 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), the amount of interest paid or credited;
- (b) in the case of an interest payment within the meaning of Article 6(1)(b) or (d), 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;
- (c) in the case of an interest payment within the meaning of Article 6(1)(c), either the amount of income referred to in that paragraph or the full amount of the distribution;
- (d) in the case of an interest payment within the meaning of Article 6(4), the amount of interest attributable to each of the members of the entity referred to in Article 4(2) who

meet the conditions of Articles 1(1) and 2(1).

(4) The competent authority shall,

- (a) at least once a year and within six months following the end of each tax year of the Virgin Islands, and
- (b) without requiring a request to do so,

communicate to the competent authority of the Member State that is the residence of the beneficial owner, the information reported under subsections (2) and (3) in respect of that beneficial owner.

Confidentiality.

**18.** (1) Information established or reported by a paying agent in accordance with this Part shall be treated as confidential, and no person shall disclose any such information except in accordance with this Part.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding two years, or both.

Application of agreement with Member State.

**19.** (1) Where, pursuant to the Directive, the Government of the Virgin Islands enters into an agreement with the Government of a Member State to implement the provisions of the Directive, the provisions of this Part shall be applied in accordance with that agreement, notwithstanding any inconsistency with a provision of the Directive or this Part.

Schedule 3

(2) An agreement referred to in subsection (1) may be in the form set out in Schedule 3.

Use of information.

**20.** (1) Any information transmitted by or to a Member State shall be used only for the purpose for which it was provided.

(2) The Government of the Virgin Islands may unilaterally suspend the operation of an agreement referred to in section 19 on the grounds that information transmitted pursuant to the agreement has been used for a purpose other than that for which it was provided.”.

**9.** The Schedule to the principal Act is amended by deleting the title “**SCHEDULE**” and substituting the title “**SCHEDULE 1**”.

Schedule amended.

**10.** The principal Act is amended by inserting after Schedule 1 as re-entitled, the following Schedule:

**“SCHEDULE 2**

[Section 11(1)]

**COUNCIL DIRECTIVE 2003/48/EC  
of 3 June 2003**

**on taxation of savings income in the form of interest payments**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 94 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

Whereas:

1. Articles 56 to 60 of the Treaty guarantee the free movement of capital.
2. Savings income in the form of interest payments from debt claims constitutes taxable income for residents of all Member States.
3. By virtue of Article 58(1) of the Treaty Member States have the right to apply the relevant provisions of their tax law which distinguish between taxpayers who are not in the same situation with regard to their place of residence or with regard to the place where their capital is invested, and to take all requisite measures to prevent infringements of national law and regulations, in particular in the field of taxation.
4. In accordance with Article 58(3) of the Treaty, the provisions of Member States' tax law designed to counter abuse or fraud should not constitute a means of arbitrary discrimination or a disguised restriction on the free movement of capital and payments as established by Article 56 of the Treaty.
5. In the absence of any coordination of national tax systems for taxation of savings income in the form of interest payments, particularly as far as the treatment of interest received by non-residents is concerned, residents of Member States are currently often able to avoid any form of taxation in

their Member State of residence on interest they receive in another Member State.

6. This situation is creating distortions in the capital movements between Member States, which are incompatible with the internal market.
7. This Directive builds on the consensus reached at the Santa Maria da Feira European Council of 19 and 20 June 2000 and the subsequent Ecofin Council meetings of 26 and 27 November 2000, 13 December 2001 and 21 January 2003.
8. The ultimate aim of this Directive is to enable savings income in the form of interest payments made in one Member State to beneficial owners who are individuals resident in another Member State to be made subject to effective taxation in accordance with the laws of the latter Member State.
9. The aim of this Directive can best be achieved by targeting interest payments made or secured by economic operators established in the Member States to or for the benefit of beneficial owners who are individuals resident in another Member State.
10. Since the objective of this Directive cannot be sufficiently achieved by the Member States, because of the lack of any coordination of national systems for the taxation of savings income, and can therefore be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.
11. The paying agent is the economic operator who pays interest to or secures the payment of interest for the immediate benefit of the beneficial owner.
12. In defining the notion of interest payment and the paying agent mechanism, reference should be made, where appropriate, to Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS).
13. The scope of this Directive should be limited to taxation of savings income in the form of interest payments on debt claims, to the exclusion, *inter alia*, of the issues relating to the taxation of pension and insurance benefits.

14. The ultimate aim of bringing about effective taxation of interest payments in the beneficial owner's Member State of residence for tax purposes can be achieved through the exchange of information concerning interest payments between Member States.
15. Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct and indirect taxation already provides a basis for Member States to exchange information for tax purposes on the income covered by this Directive. It should continue to apply to such exchanges of information in addition to this Directive insofar as this Directive does not derogate from it.
16. The automatic exchange of information between Member States concerning interest payments covered by this Directive makes possible the effective taxation of those payments in the beneficial owner's Member State of residence for tax purposes in accordance with the national laws of that State. It is therefore necessary to stipulate that Member States which exchange information pursuant to this Directive should not be permitted to rely on the limits to the exchange of information as set out in Article 8 of Directive 77/799/EEC.
17. In view of structural differences, Austria, Belgium and Luxembourg cannot apply the automatic exchange of information at the same time as the other Member States. During a transitional period, given that a withholding tax can ensure a minimum level of effective taxation, especially at a rate increasing progressively to 35 %, these three Member States should apply a withholding tax to the savings income covered by this Directive.
18. In order to avoid differences in treatment, Austria, Belgium and Luxembourg should not be obliged to apply automatic exchange of information before the Swiss Confederation, the Principality of Andorra, the Principality of Liechtenstein, the Principality of Monaco and the Republic of San Marino ensure effective exchange of information on request concerning payments of interest.
19. Those Member States should transfer the greater part of their revenue of this withholding tax to the Member State of residence of the beneficial owner of the interest.
20. Those Member States should provide for a procedure allowing beneficial owners resident for tax purposes in other Member States to avoid the imposition of this withholding tax by authorising their paying agent to

report the interest payments or by presenting a certificate issued by the competent authority of their Member State of residence for tax purposes.

21. The Member State of residence for tax purposes of the beneficial owner should ensure the elimination of any double taxation of the interest payments which might result from the imposition of this withholding tax in accordance with the procedures laid down in this Directive. It should do so by crediting this withholding tax up to the amount of tax due in its territory and by reimbursing to the beneficial owner any excess amount of tax withheld. It may, however, instead of applying this tax credit mechanism, grant a refund of the withholding tax.
22. In order to avoid market disruption, this Directive should, during the transitional period, not apply to interest payments on certain negotiable debt securities.
23. This Directive should not preclude Member States from levying other types of withholding tax than that referred to in this Directive on interest arising in their territories.
24. So long as the United States of America, Switzerland, Andorra, Liechtenstein, Monaco, San Marino and the relevant dependent or associated territories of the Member States do not all apply measures equivalent to, or the same as, those provided for by this Directive, capital flight towards these countries and territories could imperil the attainment of its objectives. Therefore, it is necessary for the Directive to apply from the same date as that on which all these countries and territories apply such measures.
25. The Commission should report every three years on the operation of this Directive and propose to the Council any amendments that prove necessary in order better to ensure effective taxation of savings income and to remove undesirable distortions of competition.
26. This Directive respects the fundamental rights and principles which are recognised, in particular, by the Charter of Fundamental Rights of the European Union,

HAS ADOPTED THIS DIRECTIVE:

## CHAPTER I

### INTRODUCTORY PROVISIONS

#### Article 1

##### **Aim**

1. The ultimate aim of the Directive is to enable savings income in the form of interest payments made in one Member State to beneficial owners who are individuals resident for tax purposes in another Member State to be made subject to effective taxation in accordance with the laws of the latter Member State.
2. Member States shall take the necessary measures to ensure that the tasks necessary for the implementation of this Directive are carried out by paying agents established within their territory, irrespective of the place of establishment of the debtor of the debt claim producing the interest.

#### Article 2

##### **Definition of beneficial owner**

1. For the purposes of this Directive, 'beneficial owner' means 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); 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 this 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).



2. 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). If the paying agent is unable to identify the beneficial owner, it shall treat the individual in question as the beneficial owner.

### Article 3

#### **Identity and residence of beneficial owners**

1. Each Member State shall, within its territory, adopt and ensure the application of the procedures necessary to allow the paying agent to identify the beneficial owners and their residence for the purposes of Articles 8 to 12.

Such procedures shall comply with the minimum standards established in paragraphs 2 and 3.

2. The paying agent shall establish the identity of the beneficial owner on the basis of minimum standards which vary according to when relations between the paying agent and the recipient of the interest are entered into, as follows:

(a) for contractual relations entered into before 1 January 2004, the paying agent shall establish the identity of the beneficial owner, consisting of his name and address, by using the information at its disposal, in particular pursuant to the regulations in force in its State of establishment and to Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering;

(b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1 January 2004, the paying agent shall establish the identity of the beneficial owner, consisting of the name, address and, if there is one, the tax identification number allocated by the Member State of residence for tax purposes. These details shall be established on the basis of the passport or of the official identity card presented by the beneficial owner. If it does not appear on that passport or on that official identity card, the address shall be established on the basis of any other documentary proof of identity presented by the beneficial owner. If the tax identification number is not mentioned on the passport, on the official identity card or any other documentary proof of identity, including, possibly, the certificate of residence for tax purposes, presented by the beneficial owner, the identity shall be supplemented by a reference

to the latter's date and place of birth established on the basis of his passport or official identification card.

3. The paying agent shall establish the residence of the beneficial owner on the basis of minimum standards which vary according to when relations between the paying agent and the recipient of the interest are entered into. Subject to the conditions set out below, residence shall be considered to be situated in the country where the beneficial owner has his permanent address:

(a) for contractual relations entered into before 1 January 2004, the paying agent shall establish the residence of the beneficial owner by using the information at its disposal, in particular pursuant to the regulations in force in its State of establishment and to Directive 91/308/EEC;

(b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1 January 2004, the paying agent shall establish the residence of the beneficial owner on the basis of the address mentioned on the passport, on the official identity card or, if necessary, on the basis of any documentary proof of identity presented by the beneficial owner and according to the following procedure: for individuals presenting a passport or official identity card issued by a Member State who declare themselves to be resident in a third country, residence shall be established by means of a tax residence certificate issued by the competent authority of the third country in which the individual claims to be resident. Failing the presentation of such a certificate, the Member State which issued the passport or other official identity document shall be considered to be the country of residence.

#### Article 4

##### **Definition of paying agent**

1. For the purposes of this Directive, 'paying agent' means 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 paragraph 5; 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 shall, however, have the option of being treated for the purposes of this Directive as an UCITS as referred to in 2(c). 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 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.

5. The legal persons exempted from paragraph 2(a) are:

(a) in Finland: avoin yhtiö (Ay) and kommandiittiyhtiö (Ky)/öppet bolag and kommanditbolag;

(b) in Sweden: handelsbolag (HB) and kommanditbolag (KB).

## Article 5

### **Definition of competent authority**

For the purposes of this Directive, 'competent authority' means:

(a) for Member States, any of the authorities notified by the Member States to the Commission;

(b) for third countries, the competent authority for the purposes of bilateral or multilateral tax conventions or, failing that, such other authority as is competent to issue certificates of residence for tax purposes.

## Article 6

### **Definition of interest payment**

1. For the purposes of this Directive, 'interest payment' means:

(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 payments shall not be regarded as interest payments;

(b) interest accrued or capitalised at the sale, refund or redemption of the debt claims referred to in (a);

(c) income deriving from interest payments either directly or through an entity referred to in Article 4(2), distributed by:

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

(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),  
(iii) undertakings for collective investment established outside the territory referred to in Article 7.

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).

2. As regards paragraph 1(c) and (d), when a paying agent has no information concerning the proportion of the income which derives from interest payments, the total amount of the income shall be considered an interest payment.
3. As regards paragraph 1(d), when a paying agent has no information concerning the percentage of the assets invested in debt claims or in shares or units as defined in that paragraph, that percentage shall be considered to be above 40 %. Where he cannot determine the amount of income realised by the beneficial owner, the income shall be deemed to correspond to the proceeds of the sale, refund or redemption of the shares or units.
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), such entity not having qualified for the option under Article 4(3), it shall be considered an interest payment by such entity.
5. As regards paragraph 1(b) and (d), Member States shall have the option of requiring paying agents in their territory to annualise the interest over a period of time which may not exceed one year, and treating such annualised interest as an interest payment even if no sale, redemption or refund occurs during that period.
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. Likewise, by way of derogation from paragraph 4, Member States shall have the option of excluding from the definition of interest payment in paragraph 1 interest paid or credited to an account of an entity referred to in Article 4(2) which has not qualified for the option under Article 4(3) and is established within their territory, where the investment of such an entity in debt claims referred to in paragraph 1(a) has not exceeded 15 % of its assets.

The exercise of such option by a Member State shall be binding on other Member States.

7. The percentage referred to in paragraph 1(d) and paragraph 3 shall from 1 January 2011 be 25 %.
8. The percentages referred to in paragraph 1(d) and in paragraph 6 shall be determined by reference to the investment policy as laid down in the fund rules or instruments of incorporation of the undertakings or entities concerned and, failing which, by reference to the actual composition of the assets of the undertakings or entities concerned.

## Article 7

### **Territorial scope**

This Directive shall apply to interest paid by a paying agent established within the territory to which the Treaty applies by virtue of Article 299 thereof.

## CHAPTER II

### **EXCHANGE OF INFORMATION**

## Article 8

### **Information reporting by the paying agent**

1. Where the beneficial owner is resident in a Member State other than that in which the paying agent is established, the minimum amount of information to be reported by the paying agent to the competent authority of its Member State of establishment shall consist of:
  - (a) the identity and residence of the beneficial owner established in accordance with Article 3;
  - (b) the name and address of the paying agent;
  - (c) the account number of the beneficial owner or, where there is none, identification of the debt claim giving rise to the interest;
  - (d) information concerning the interest payment in accordance with paragraph 2.
2. The minimum amount of information concerning interest payment to be reported by the paying agent 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): the amount of interest paid or credited;
  - (b) in the case of an interest payment within the meaning of Article 6(1)(b) or (d): 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;
  - (c) in the case of an interest payment within the meaning of Article 6(1)(c): either the amount of income referred to in that paragraph or the full amount of the distribution;

(d) in the case of an interest payment within the meaning of Article 6(4): the amount of interest attributable to each of the members of the entity referred to in Article 4(2) who meet the conditions of Articles 1(1) and 2(1);

(e) where a Member State exercises the option under Article 6(5): the amount of annualised interest.

However, Member States may restrict the minimum amount of information concerning interest payment to be reported by the paying agent to the total amount of interest or income and to the total amount of the proceeds from sale, redemption or refund.

## Article 9

### **Automatic exchange of information**

1. The competent authority of the Member State of the paying agent shall communicate the information referred to in Article 8 to the competent authority of the Member State of residence of the beneficial owner.
2. The communication of information shall be automatic and shall take place at least once a year, within six months following the end of the tax year of the Member State of the paying agent, for all interest payments made during that year.
3. The provisions of Directive 77/799/EEC shall apply to the exchange of information under this Directive, provided that the provisions of this Directive do not derogate therefrom. However, Article 8 of Directive 77/799/EEC shall not apply to the information to be provided pursuant to this chapter.

## CHAPTER III

### **TRANSITIONAL PROVISIONS**

## Article 10

### **Transitional period**

1. During a transitional period starting on the date referred to in Article 17(2) and (3) and subject to Article 13(1), Belgium, Luxembourg and Austria shall not be required to apply the provisions of Chapter II.

They shall, however, receive information from the other Member States in accordance with Chapter II.

During the transitional period, the aim of this Directive shall be to ensure minimum effective taxation of savings in the form of interest payments made in one Member State to beneficial owners who are individuals resident for tax purposes in another Member State.

2. The transitional period shall end at the end of the first full fiscal year following the later of the following dates:

- the date of entry into force of an agreement between the European Community, following a unanimous decision of the Council, and the last of the Swiss Confederation, the Principality of Liechtenstein, the Republic of San Marino, the Principality of Monaco and the Principality of Andorra, providing for the exchange of information upon request as defined in the OECD Model Agreement on Exchange of Information on Tax Matters released on 18 April 2002 (hereinafter the 'OECD Model Agreement') with respect to interest payments, as defined in this Directive, made by paying agents established within their respective territories to beneficial owners resident in the territory to which the Directive applies, in addition to the simultaneous application by those same countries of a withholding tax on such payments at the rate defined for the corresponding periods referred to in Article 11(1),

- the date on which the Council agrees by unanimity that the United States of America is committed to exchange of information upon request as defined in the OECD Model Agreement with respect to interest payments, as defined in this directive, made by paying agents established within its territory to beneficial owners resident in the territory to which the Directive applies.

3. At the end of the transitional period, Belgium, Luxembourg and Austria shall be required to apply the provisions of Chapter II and they shall cease to apply the withholding tax and the revenue sharing provided for in Articles 11 and 12. If, during the transitional period, Belgium, Luxembourg or Austria elects to apply the provisions of Chapter II, it shall no longer apply the withholding tax and the revenue sharing provided for in Articles 11 and 12.

## Article 11

### **Withholding tax**

1. During the transitional period referred to in Article 10, where the beneficial owner is resident in a Member State other than that in which the



paying agent is established, Belgium, Luxembourg and Austria shall levy a withholding tax at a rate of 15 % during the first three years of the transitional period, 20 % for the subsequent three years and 35 % thereafter.

2. The paying agent shall levy withholding tax as follows:
  - (a) in the case of an interest payment within the meaning of Article 6(1)(a): on the amount of interest paid or credited;
  - (b) in the case of an interest payment within the meaning of Article 6(1)(b) or (d): on the amount of interest or income referred to in those paragraphs or by a levy of equivalent effect to be borne by the recipient on the full amount of the proceeds of the sale, redemption or refund;
  - (c) in the case of an interest payment within the meaning of Article 6(1)(c): on the amount of income referred to in that paragraph;
  - (d) in the case of an interest payment within the meaning of Article 6(4): on the amount of interest attributable to each of the members of the entity referred to in Article 4(2) who meet the conditions of Articles 1(1) and 2(1);
  - (e) where a Member State exercises the option under Article 6(5): on the amount of annualised interest.
3. For the purposes of points (a) and (b) of paragraph 2, withholding tax shall be levied pro rata to the period of holding of the debt claim by the beneficial owner. When the paying agent is unable to determine the period of holding on the basis of information in its possession, it shall treat the beneficial owner as having held the debt claim throughout its period of existence unless he provides evidence of the date of acquisition.
4. The imposition of withholding tax by the Member State of the paying agent shall not preclude the Member State of residence for tax purposes of the beneficial owner from taxing the income in accordance with its national law, subject to compliance with the Treaty.
5. During the transitional period, Member States levying withholding tax may provide that an economic operator paying interest to, or securing interest for, an entity referred to in Article 4(2) established in another Member State shall be considered the paying agent in place of the entity and shall levy the withholding tax on that interest, unless the entity has formally agreed to its name, address and the total amount of interest paid

to it or secured for it being communicated in accordance with the last subparagraph of Article 4(2).

## Article 12

### **Revenue sharing**

1. Member States levying withholding tax in accordance with Article 11(1) shall retain 25 % of their revenue and transfer 75 % of the revenue to the Member State of residence of the beneficial owner of the interest.
2. Member States levying withholding tax in accordance with Article 11(5) shall retain 25 % of the revenue and transfer 75 % to the other Member States proportionate to the transfers carried out pursuant to paragraph 1 of this Article.
3. Such transfers shall take place at the latest within a period of six months following the end of the tax year of the Member State of the paying agent in the case of paragraph 1, or that of the Member State of the economic operator in the case of paragraph 2.
4. Member States levying withholding tax shall take the necessary measures to ensure the proper functioning of the revenue-sharing system.

## Article 13

### **Exceptions to the withholding tax procedure**

1. Member States levying withholding tax in accordance with Article 11 shall provide for one or both of the following procedures in order to ensure that the beneficial owners may request that no tax be withheld:
  - (a) a procedure which allows the beneficial owner expressly to authorise the paying agent to report information in accordance with Chapter II, such authorisation covering all interest paid to the beneficial owner by that paying agent; in such cases, the provisions of Article 9 shall apply;
  - (b) a procedure which ensures that withholding tax shall not be levied where the beneficial owner presents to his paying agent a certificate drawn up in his name by the competent authority of his Member State of residence for tax purposes in accordance with paragraph 2.
2. At the request of the beneficial owner, the competent authority of his Member State of residence for tax purposes shall issue a certificate indicating:

(a) the name, address and tax or other identification number or, failing such, the date and place of birth of the beneficial owner;

(b) the name and address of the paying agent;

(c) the account number of the beneficial owner or, where there is none, the identification of the security.

Such certificate shall be valid for a period not exceeding three years. It shall be issued to any beneficial owner who requests it, within two months following such request.

## Article 14

### **Elimination of double taxation**

1. The Member State of residence for tax purposes of the beneficial owner shall ensure the elimination of any double taxation which might result from the imposition of the withholding tax referred to in Article 11, in accordance with the provisions of paragraphs 2 and 3.
2. If interest received by a beneficial owner has been subject to withholding tax in the Member State of the paying agent, the Member State of residence for tax purposes of the beneficial owner shall grant him a tax credit equal to the amount of the tax withheld in accordance with its national law. Where this amount exceeds the amount of tax due in accordance with its national law, the Member State of residence for tax purposes shall repay the excess amount of tax withheld to the beneficial owner.
3. If, in addition to the withholding tax referred to in Article 11, interest received by a beneficial owner has been subject to any other type of withholding tax and the Member State of residence for tax purposes grants a tax credit for such withholding tax in accordance with its national law or double taxation conventions, such other withholding tax shall be credited before the procedure in paragraph 2 is applied.
4. The Member State of residence for tax purposes of the beneficial owner may replace the tax credit mechanism referred to in paragraphs 2 and 3 by a refund of the withholding tax referred to in Article 11.

## Article 15

### **Negotiable debt securities**

1. During the transitional period referred to in Article 10, but until 31 December 2010 at the latest, domestic and international bonds and other negotiable debt securities which have been first issued before 1 March 2001 or for which the original issuing prospectuses have been approved before that date by the competent authorities within the meaning of Council Directive 80/390/EEC or by the responsible authorities in third countries shall not be considered as debt claims within the meaning of Article 6(1)(a), provided that no further issues of such negotiable debt securities are made on or after 1 March 2002. However, should the transitional period referred to in Article 10 continue beyond 31 December 2010, the provisions of this Article shall only continue to apply in respect of such negotiable debt securities:

- which contain gross-up and early redemption clauses and
- where the paying agent as defined in Article 4 is established in a Member State applying the withholding tax referred to in Article 11 and that paying agent pays interest to, or secures the payment of interest for the immediate benefit of, a beneficial owner resident in another Member State.

If a further issue is made on or after 1 March 2002 of an aforementioned negotiable debt security issued by a Government or a related entity acting as a public authority or whose role is recognised by an international treaty, as defined in the Annex, the entire issue of such security, consisting of the original issue and any further issue, shall be considered a debt claim within the meaning of Article 6(1)(a).

If a further issue is made on or after 1 March 2002 of an aforementioned negotiable debt security issued by any other issuer not covered by the second subparagraph, such further issue shall be considered a debt claim within the meaning of Article 6(1)(a).

2. Nothing in this Article shall prevent Member States from taxing the income from the negotiable debt securities referred to in paragraph 1 in accordance with their national laws.

## CHAPTER IV

### MISCELLANEOUS AND FINAL PROVISIONS

#### Article 16

##### **Other withholding taxes**

This Directive shall not preclude Member States from levying other types of withholding tax than that referred to in Article 11 in accordance with their national laws or double-taxation conventions.

#### Article 17

##### **Transposition**

1. Before 1 January 2004 Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.
2. Member States shall apply these provisions from 1 January 2005 provided that:
  - (i) the Swiss Confederation, the Principality of Liechtenstein, the Republic of San Marino, the Principality of Monaco and the Principality of Andorra apply from that same date measures equivalent to those contained in this Directive, in accordance with agreements entered into by them with the European Community, following unanimous decisions of the Council;
  - (ii) all agreements or other arrangements are in place, which provide that all the relevant dependent or associated territories (the Channel Islands, the Isle of Man and the dependent or associated territories in the Caribbean) apply from that same date automatic exchange of information in the same manner as is provided for in Chapter II of this Directive, (or, during the transitional period defined in Article 10, apply a withholding tax on the same terms as are contained in Articles 11 and 12).
3. The Council shall decide, by unanimity, at least six months before 1 January 2005, whether the condition set out in paragraph 2 will be met, having regard to the dates of entry into force of the relevant measures in the third countries and dependent or associated territories concerned. If the Council does not decide that the condition will be met, it shall, acting

unanimously on a proposal by the Commission, adopt a new date for the purposes of paragraph 2.

4. When Member States adopt the provisions necessary to comply with this Directive, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
5. Member States shall forthwith inform the Commission thereof and communicate to the Commission the main provisions of national law which they adopt in the field covered by this Directive and a correlation table between this Directive and the national provisions adopted.

#### Article 18

##### **Review**

The Commission shall report to the Council every three years on the operation of this Directive. On the basis of these reports, the Commission shall, where appropriate, propose to the Council any amendments to the Directive that prove necessary in order better to ensure effective taxation of savings income and to remove undesirable distortions of competition.

#### Article 19

##### **Entry into force**

This Directive shall enter into force on the 20th day following that of its publication in the Official Journal of the European Union.

#### Article 20

##### **Addressees**

This Directive is addressed to the Member States.

Done at Luxembourg, 3 June 2003.

For the Council  
The President  
N. CHRISTODOULAKIS

## ANNEX

### LIST OF RELATED ENTITIES REFERRED TO IN ARTICLE 15

For the purposes of Article 15, the following entities will be considered to be a 'related entity acting as a public authority or whose role is recognised by an international treaty':

- entities within the European Union:

|         |   |
|---------|---|
| Belgium | Vlaams Gewest (Flemish Region)  |
|         | Région wallonne (Walloon Region)  |
|         | Région bruxelloise/Brussels Gewest (Brussels Region)  |
|         | Communauté française (French Community)   |
|         | Vlaamse Gemeenschap (Flemish Community)   |
|         | Deutschsprachige Gemeinschaft (German-speaking Community)   |
| Spain   | Xunta de Galicia (Regional Executive of Galicia)  |
|         | Junta de Andalucía (Regional Executive of Andalusia)  |
|         | Junta de Extremadura (Regional Executive of Extremadura)  |
|         | Junta de Castilla-La Mancha (Regional Executive of Castilla-La Mancha)  |
|         | Junta de Castilla-León (Regional Executive of Castilla-León)  |
|         | Gobierno Foral de Navarra (Regional Government of Navarre)  |
|         | Govern de les Illes Balears (Government of the Balearic Islands)  |
|         | Generalitat de Catalunya (Autonomous Government of Catalonia)   |
|         | Generalitat de Valencia (Autonomous Government of Valencia)   |
|         | Diputación General de Aragón (Regional Council of Aragon)   |
|         | Gobierno de las Islas Canarias (Government of the Canary Islands)   |
|         | Gobierno de Murcia (Government of Murcia)   |
|         | Gobierno de Madrid (Government of Madrid)   |
|         | Gobierno de la Comunidad Autónoma del País Vasco/Euzkadi (Government of the Autonomous Community of the Basque Country) |
|         | Diputación Foral de Guipúzcoa (Regional Council of Guipúzcoa)   |
|         | Diputación Foral de Vizcaya/Bizkaia (Regional Council of Vizcaya)   |
|         | Diputación Foral de Alava (Regional Council of Alava)   |
|         | Ayuntamiento de Madrid (City Council of Madrid)   |
|         | Ayuntamiento de Barcelona (City Council of Barcelona)   |
|         | Cabildo Insular de Gran Canaria (Island Council of Gran Canaria)  |

|          |   |
|----------|---|
|          | Cabildo Insular de Tenerife (Island Council of Tenerife)<br>Instituto de Crédito Oficial (Public Credit Institution)<br>Instituto Catalán de Finanzas (Finance Institution of Catalonia)<br>Instituto Valenciano de Finanzas (Finance Institution of Valencia)  |
| Greece   | National Telecommunications Organisation<br>National Railways Organisation<br>Public Electricity Company  |
| France   | La Caisse d'amortissement de la dette sociale (CADES)(Social Debt Redemption Fund)<br>L'Agence française de développement (AFD) (French Development Agency)<br>Réseau Ferré de France (RFF) (French Rail Network)<br>Caisse Nationale des Autoroutes (CNA) (National Motorways Fund)<br>Assistance publique Hôpitaux de Paris (APHP) (Paris Hospitals Public Assistance)<br>Charbonnages de France (CDF) (French Coal Board)<br>Entreprise minière et chimique (EMC) (Mining and Chemicals Company) |
| Italy    | Regions<br>Provinces<br>Municipalities<br>Cassa Depositi e Prestiti (Deposits and Loans Fund)   |
| Portugal | Região Autónoma da Madeira (Autonomous Region of Madeira)<br>Região Autónoma dos Açores (Autonomous Region of Azores)<br>Municipalities   |

- international entities:

European Bank for Reconstruction and Development  
European Investment Bank  
Asian Development Bank  
African Development Bank  
World Bank/IBRD/IMF  
International Finance Corporation  
Inter-American Development Bank  
Council of Europe Soc. Dev. Fund



Euratom  
European Community  
Corporación Andina de Fomento (CAF) (Andean Development Corporation)  
Eurofima  
European Coal & Steel Community  
Nordic Investment Bank  
Caribbean Development Bank

The provisions of Article 15 are without prejudice to any international obligations that Member States may have entered into with respect to the abovementioned international entities.

- entities in third countries:

Those entities that meet the following criteria:

1. the entity is clearly considered to be a public entity according to the national criteria;
2. such public entity is a non-market producer which administers and finances a group of activities, principally providing non-market goods and services, intended for the benefit of the community and which are effectively controlled by general government;
3. such public entity is a large and regular issuer of debt;
4. the State concerned is able to guarantee that such public entity will not exercise early redemption in the event of gross-up clauses.

### **SCHEDULE 3**

[Section 19(2)]

#### **AGREEMENT ON THE TAXATION OF SAVINGS INCOME BETWEEN THE GOVERNMENT OF THE BRITISH VIRGIN ISLANDS AND [EU MEMBER STATE THAT IS TO APPLY AUTOMATIC EXCHANGE OF INFORMATION]**

##### **WHEREAS:**

1. Article 17 of Directive 2003/48/EC (hereinafter referred to as “the Directive”) of the Council of the European Union (hereinafter referred to as “the Council”) on taxation of savings income provides that before 1 January, 2004 Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with the Directive with effect from 1<sup>st</sup> July, 2005 provided that
  - “(i) the Swiss Confederation, the Principality of Liechtenstein, the Republic of San Marino, the Principality of Monaco and the Principality of Andorra apply from that same date measures equivalent to those contained in this Directive, in accordance with agreements entered into by them with the European Community, following unanimous decisions of the Council;
  - (ii) all agreements or other arrangements are in place, which provide that all the relevant dependent or associated territories apply from that same date automatic exchange of information in the same manner as is provided for in Chapter II of this Directive, (or, during the transitional period defined in Article 10, apply a withholding tax on the same terms as are contained in Articles 11 and 12)”;
2. The British Virgin Islands (“BVI”) is not a member of the European Union and not within the European Union fiscal territory, but the Government of the United Kingdom has requested the Government of the BVI to voluntarily apply the provisions of the Directive;
3. The BVI notes that, while it is the ultimate aim of the EU Member States to bring about effective taxation of interest payments in the beneficial owner’s Member State of residence for tax purposes through the exchange of information concerning interest payments between themselves, three Member States, namely Austria, Belgium and Luxembourg, during a transitional period, shall not be required to exchange information but shall apply a withholding tax to the savings income covered by the Directive;

4. The BVI has agreed to apply a withholding tax with effect from 1<sup>st</sup> July, 2005, provided the European Union Member States have adopted the laws, regulations, and administrative provisions necessary to comply with the Directive, and the requirements of Article 17 of the Directive and Article 18(2) of this Agreement have generally been met;
5. The BVI has agreed to apply automatic exchange of information in the same manner as is provided for in Chapter II of the Directive from the end of the transitional period as defined in Article 10(2) of the Directive;
6. The BVI has legislation relating to undertakings for collective investment that is deemed to be equivalent in its effect to the EC legislation referred to in Articles 2 and 6 of the Directive.

**NOW THEREFORE, the Government of the BVI and the Government of [the Member State] (hereinafter referred to as a “contracting party” or the “contracting parties” as the context requires), have agreed to conclude this agreement which contains obligations on the part of the contracting parties only and provides for**

- (a) the automatic exchange of information by the competent authority of [the Member State] to the competent authority of the BVI in the same manner as to the competent authority of a Member State;
- (b) the application by the BVI, during the transitional period defined in Article 10 of the Directive, of a withholding tax from the same date and on the same terms as are contained in Articles 11 and 12 of that Directive;
- (c) the automatic exchange of information by the competent authority of the BVI to the competent authority of [the Member State] in accordance with Article 13 of the Directive;
- (d) the transfer by the competent authority of the BVI to the competent authority of [the Member State] of 75% of the revenue of the withholding tax in respect of interest payments made by a paying agent established in the BVI to an individual resident in [the Member State].

## **Article 1 Definitions**

For the purposes of this Agreement, the term:

- (a) “competent authority”, when applied to the contracting parties means,
  - (i) in the case of the BVI, the Financial Secretary; and

- (ii) in the case of [**the Member State**], \_\_\_\_\_;
- (b) “[**the Member State**]” means \_\_\_\_\_;
- (c) “residence”, in relation to a beneficial owner, means the country or territory where his permanent address is located, subject to the conditions set out in Article 7(3) of this Agreement;
- (d) “UCITS” means an undertaking for collective investment in transferable securities that is recognised in accordance with the Directive of the Council of the European Union known as Council Directive 85/611/EEC of 20<sup>th</sup> December, 1985 on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities.

## **Article 2 Withholding of Tax by Paying Agents**

Interest payments as defined in Article 9 of this Agreement which are made by a paying agent established in the BVI to beneficial owners within the meaning of Article 6 of this Agreement who are residents of [**the Member State**] shall, subject to Article 4 of this Agreement, be subject to a withholding tax from the amount of interest payment during the transitional period referred to in Article 15 of this Agreement starting at the date referred to in Article 16 of this Agreement. The rate of withholding tax shall be 15% during the first three years of the transitional period, 20% for the subsequent three years and 35% thereafter.

## **Article 3 Reporting of Information by Paying Agents**

- (1) Where interest payments, as defined in Article 9 of this Agreement, are made by a paying agent established in [**the Member State**] to beneficial owners, as defined in Article 6 of this Agreement, who are residents of the BVI, or where the provisions of Article 4(1)(a) of this Agreement apply, the paying agent shall report to its competent authority
  - (a) the identity and residence of the beneficial owner established in accordance with Article 7 of this Agreement,
  - (b) the name and address of the paying agent,
  - (c) the account number of the beneficial owner or, where there is none, identification of the debt claim giving rise to the interests, and
  - (d) information concerning the interest payment specified in Article 5(1) of this Agreement. However, each contracting party may restrict the minimum amount of information concerning interest payment to be

reported by the paying agent to the total amount of interest or income and to the total amount of the proceeds from sale, redemption or refund paid to the beneficial owner within the tax year,

and [the Member State] shall comply with paragraph (2) of this Article.

- (2) Within six months following the end of their tax year, the competent authority of [the Member State] shall communicate to the competent authority of the BVI, automatically, the information referred to in paragraph 1 (a) – (d) of this Article, for all interest payments made during that year.

#### **Article 4 Exceptions to the Withholding Tax Procedure**

- (1) The BVI when levying a withholding tax in accordance with Article 2 of this Agreement shall provide for one or both of the following procedures in order to ensure that the beneficial owners may request that no tax be retained:
  - (a) a procedure which allows the beneficial owner as defined in Article 6 of this Agreement to avoid the withholding tax specified in Article 2 of this Agreement by expressly authorising his paying agent to report the interest payments to the competent authority of the contracting party in which the paying agent is established. Such authorisation shall cover all interest payments made to the beneficial owner by that paying agent;
  - (b) a procedure which ensures that withholding tax shall not be levied where the beneficial owner presents to his paying agent a certificate drawn up in his name by the competent authority of the contracting party of residence for tax purposes in accordance with paragraph 2 of this Article.
- (2) At the request of the beneficial owner, the competent authority of the contracting party of the country of residence for tax purposes shall issue a certificate indicating
  - (i) the name, address and tax or other identification number or, failing such, the date and place of birth of the beneficial owner;
  - (ii) the name and address of the paying agent; and
  - (iii) the account number of the beneficial owner or, where there is none, the identification of the security.

Such certificate shall be valid for a period not exceeding three years. It shall be issued to any beneficial owner who requests it, within two months

following such request, shall bear the date of request as well as the date of issue and shall be applicable in relation to payments made after that date of request.

- (3) Where paragraph (1)(a) of this Article applies, the competent authority of the BVI in which the paying agent is established shall communicate the information referred to in Article 3(1) of this Agreement to the competent authority of **[the Member State]** as the country of residence of the beneficial owner. Such communications shall be automatic and shall take place at least once a year, within six months following the end of the tax year established by the laws of a contracting party, for all interest payments made during that year.

## **Article 5     Basis of assessment for withholding tax**

- (1) A paying agent established in the BVI shall levy withholding tax in accordance with Article 2 of this Agreement as follows:
  - (a) in the case of an interest payment within the meaning of Article 9(1)(a) of this Agreement: on the amount of interest paid or credited;
  - (b) in the case of an interest payment within the meaning of Article 9(1)(b) or (d) of this Agreement: on the amount of interest or income referred to in (b) or (d) of that sub-paragraph or by a levy of equivalent effect to be borne by the recipient on the full amount of the proceeds of the sale, redemption or refund as certified by the paying agent to its competent authority;
  - (c) in the case of an interest payment within the meaning of Article 9(1)(c) of this Agreement: on the amount of interest referred to in that sub-paragraph;
  - (d) in the case of an interest payment within the meaning of Article 9(4) of this Agreement: on the amount of interest attributable to each of the members of the entity referred to in Article 8(2) of this Agreement who meet the conditions of Article 6(1) of this Agreement; and
  - (e) where the BVI exercises the option under Article 9(5) of this Agreement: on the amount of annualised interest.
- (2) For the purposes of sub-paragraphs (a) and (b) of paragraph 1 of this Article, the withholding tax shall be deducted on a pro rata basis to the period during which the beneficial owner held the debt-claim. If the paying agent is unable to determine the period of holding on the basis of the information made available to him, the paying agent shall treat the beneficial owner as

having been in possession of the debt-claim for the entire period of its existence, unless the latter provides evidence of the date of the acquisition.

- (3) The imposition of withholding tax by the BVI shall not preclude **[the Member State]** from taxing income in accordance with its national law.
- (4) During the transitional period, the BVI may provide that an economic operator paying interest to, or securing interest for, an entity referred to in Article 8(2) of this Agreement in the other contracting party shall be considered the paying agent in place of the entity and shall levy the withholding tax on that interest, unless the entity has formally agreed to its name, address and the total amount of the interest paid to it or secured for it being communicated in accordance with the last paragraph of Article 8(2) of this Agreement.

#### **Article 6    Definition of “beneficial owner”**

- (1) For the purposes of this Agreement, “beneficial owner” means an individual who receives an interest payment or any individual for whom an interest payment is secured, unless such individual can provide evidence that the interest payment was not received or secured for his own benefit. An individual is not the beneficial owner when he
  - (a) acts as a paying agent within the meaning of Article 8(1) of this Agreement;
  - (b) 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 equivalent undertaking for collective investment established in the BVI, or an entity referred to in Article 8(2) of this Agreement 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 contracting party of establishment; or
  - (c) acts on behalf of another individual who is the beneficial owner and discloses to the paying agent the identity of that beneficial owner.
- (2) 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) of this Article applies, it shall take reasonable steps to establish the identity of the beneficial owner. If the paying agent is unable to identify the beneficial owner, it shall treat the individual in question as the beneficial owner.

## **Article 7    Identity and residence of beneficial owners**

- (1) Each Party shall, within its territory, adopt and ensure the application of the procedures necessary to allow the paying agent to identify the beneficial owners and their residence for the purposes of this Agreement. Such procedures shall comply with the minimum standards established in paragraphs (2) and (3);
- (2) The paying agent shall establish the identity of the beneficial owner on the basis of minimum standards which vary according to when relations between the paying agent and the recipient of the interest are entered into, as follows:
  - (a) for contractual relations entered into before 1<sup>st</sup> July, 2005, the paying agent shall establish the identity of the beneficial owner, consisting of his name and address, by using the information at its disposal, in particular pursuant to the regulations in force in its country of establishment and to Council Directive 91/308/EEC of 10<sup>th</sup> June, 1991 in the case of **[the Member State]** or equivalent legislation in the case of the BVI on prevention of the use of the financial system for the purpose of money laundering;
  - (b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1<sup>st</sup> July, 2005 the paying agent shall establish the identity of the beneficial owner, consisting of the name, address and, if there is one, the tax identification number allocated by the Member State of residence for tax purposes. These details should be established on the basis of the passport or of the official identity card presented by the beneficial owner. If it does not appear on that passport or official identity card, the address shall be established on the basis of any other documentary proof of identity presented by the beneficial owner. If the tax identification number is not mentioned on the passport, on the official identity card or any other documentary proof of identity, including, possibly the certificate of residence for tax purposes, presented by the beneficial owner, the identity shall be supplemented by a reference to the latter's date and place of birth established on the basis of his passport or official identification card.
- (3) The paying agent shall establish the residence of the beneficial owner on the basis of minimum standards which vary according to when relations between the paying agent and the recipient of the interest are entered into. Subject to the conditions set out below, residence shall be considered to be situated in the country where the beneficial owner has his permanent address:



- (a) for contractual relations entered into before 1<sup>st</sup> July, 2005 the paying agent shall establish the residence of the beneficial owner by using the information at its disposal, in particular pursuant to the regulations in force in its country of establishment and to Directive 91/308/EEC in the case of [**the Member State**], or equivalent legislation in the case of the BVI;
- (b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1<sup>st</sup> July, 2005, the paying agent shall establish the residence of the beneficial owner on the basis of the address mentioned on the passport, on the official identity card or, if necessary, on the basis of any documentary proof of identity presented by the beneficial owner and according to the following procedure: for individuals presenting a passport or official identity card issued by a Member State who declare themselves to be resident in a third country, residence shall be established by means of a tax residence certificate issued by the competent authority of the third country in which the individual claims to be resident. Failing the presentation of such a certificate, the Member State which issued the passport or other official identity document shall be considered to be the country of residence.

#### **Article 8    Definition of “paying agent”**

- (1) For the purposes of this Agreement, “paying agent” means 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 contracting party 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 paragraph 5 of this Article;
  - (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 of the Council or an equivalent undertaking for collective investment established in the BVI.

An economic operator paying interest to, or securing interest for, such an entity established in the other contracting party 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 contracting party of establishment, which shall pass this information on to the competent authority of the contracting party where the entity is established.

- (3) The entity referred to in paragraph (2) of this Article shall, however, have the option of being treated for the purposes of this Agreement as an UCITS or equivalent undertaking as referred to in sub-paragraph (c) of paragraph (2). The exercise of this option shall require a certificate to be issued by the contracting party in which the entity is established and presented to the economic operator by that entity. A contracting party 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) of this Article are established in the same contracting party, that contracting party shall take the necessary measures to ensure that the entity complies with the provisions of this Agreement when it acts as a paying agent.
- (5) The legal persons exempted from sub- paragraph (a) of paragraph (2) of this Article are,
  - (a) in Finland: avoin yhtiö (Ay) and kommandiittiyhtiö (Ky)/opett bolag and kommanditbolag;
  - (b) in Sweden: handelsbolag (HB) and kommanditbolag (KB).

## **Article 9 Definition of “interest payment”**

- (1) For the purposes of this Agreement, “interest payment” means
  - (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 payment;

- (b) interest accrued or capitalised at the sale, refund or redemption of the debt claims referred to in sub-paragraph (a);
- (c) income deriving from interest payments either directly or through an entity referred to in Article 8(2) of this Agreement, distributed by
  - (i) an UCITS authorised in accordance with EC Directive 85/611/EEC of the Council;
  - (ii) an equivalent undertaking for collective investment established in the BVI;
  - (iii) entities which qualify for the option under Article 8(3) of this Agreement; or
  - (iv) undertakings for collective investment established outside the territory to which the Treaty establishing the European Community applies by virtue of Article 299 thereof and outside the BVI; and
- (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 sub-paragraph (a):
  - (i) an UCITS authorised in accordance with Directive 85/611/EEC;
  - (ii) an equivalent undertaking for collective investment established in the BVI;
  - (iii) entities which qualify for the option under Article 8(3) of this Agreement; or
  - (iv) undertakings for collective investment established outside the territory to which the Treaty establishing the European Community applies by virtue of Article 299 thereof and outside the BVI.

However, the contracting parties shall have the option of including income mentioned under paragraph (1)(d) of this Article 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 paragraph (1)(a) and (b) of this Article.

- (2) As regards paragraph (1)(c) and (d) of this Article, when a paying agent has no information concerning the proportion of the income which derives from interest payments, the total amount of the income shall be considered an interest payment.
- (3) As regards paragraph (1)(d) of this Article, when a paying agent has no information concerning the percentage of the assets invested in debt claims or in shares or units as defined in that paragraph, that percentage shall be considered to be above 40%. Where he cannot determine the amount of income realised by the beneficial owner, the income shall be deemed to correspond to the proceeds of the sale, refund or redemption of the shares or units.
- (4) When interest, as defined in paragraph (1) of this Article, is paid to or credited to an account held by an entity referred to in Article 8(2) of this Agreement, such entity not having qualified for the option under Article 8(3) of this Agreement, such interest shall be considered an interest payment by such entity.
- (5) As regards paragraph (1)(b) and (d) of this Article, a contracting party shall have the option of requiring paying agents in its territory to annualise the interest over a period of time which may not exceed one year, and treating such annualised interest as an interest payment even if no sale, redemption or refund occurs during that period.
- (6) By way of derogation from paragraph (1)(c) and (d) of this Article, a contracting party 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 its territory where the investment in debt claims referred to in paragraph 1(a) of this Article of such entities has not exceeded 15% of their assets. Likewise, by way of derogation from paragraph 4 of this Article, a contracting party shall have the option of excluding from the definition of interest payment in paragraph 1 of this Article interest paid or credited to an account of an entity referred to in Article 8(2) of this Agreement which has not qualified for the option under Article 8(3) of this Agreement and is established within its territory, where the investment of such an entity in debt claims referred to in paragraph 1(a) of this Article has not exceeded 15% of its assets.

The exercise of such option by one contracting party shall be binding on the other contracting party.

- (7) The percentage referred to in paragraph 1(d) of this Article and paragraph 3 of this Article shall from 1<sup>st</sup> January, 2011 be 25%.

- (8) The percentages referred to in paragraph 1(d) of this Article and in paragraph 6 of this Article shall be determined by reference to the investment policy as laid down in the fund rules or instruments of incorporation of the undertakings or entities concerned or, failing which, by reference to the actual composition of the assets of the undertakings or entities concerned.

#### **Article 10 Withholding Tax Revenue sharing**

- (1) The BVI shall retain 25% of the withholding tax deducted under this Agreement and transfer the remaining 75% of the revenue to **[the Member State]**.
- (2) The BVI levying withholding tax in accordance with Article 5(4) of this Agreement shall retain 25% of the revenue and transfer 75% to **[the Member State]** proportionate to the transfers carried out pursuant to paragraph (1) of this Article.
- (3) Such transfers shall take place for each year in one instalment at the latest within a period of six months following the end of the tax year established by the laws of the BVI.
- (4) The BVI levying withholding tax shall take the necessary measures to ensure the proper functioning of the revenue sharing system.

#### **Article 11 Elimination of double taxation**

- (1) A contracting party in which the beneficial owner is resident for tax purposes shall ensure the elimination of any double taxation which might result from the imposition by the BVI of the withholding tax to which this Agreement refers in accordance with the following provisions;
- (a) if interest received by a beneficial owner has been subject to withholding tax in the BVI, **[the Member State]** shall grant a tax credit equal to the amount of the tax retained in accordance with its national law. Where this amount exceeds the amount of tax due in accordance with its national law, **[the Member State]** shall repay the excess amount of tax withheld to the beneficial owner;
- (b) if, in addition to the withholding tax referred to in Article 5 of this Agreement, interest received by a beneficial owner has been subject to any other type of withholding tax and the contracting party of residence for tax purposes grants a tax credit for such withholding tax in accordance with its national law or double taxation conventions, such other withholding tax shall be credited before the procedure in sub-paragraph (a) of this Article is applied.

- (2) The contracting party which is the country of residence for tax purposes of the beneficial owner may replace the tax credit mechanism referred to in paragraph (1) of this Article by a refund of the withholding tax referred to in Article 5 of this Agreement.

## **Article 12 Transitional provisions for negotiable debt securities**

- (1) During the transitional period referred to in Article 15 of this Agreement, but until 31<sup>st</sup> December, 2010 at the latest, domestic and international bonds and other negotiable debt securities which have been first issued before 1<sup>st</sup> March, 2001 or for which the original issuing prospectuses have been approved before that date by the competent authorities within the meaning of Council Directive 80/390/EEC or by the responsible authorities in third countries shall not be considered as debt claims within the meaning of Article 9(1)(a) of this Agreement, provided that no further issues of such negotiable debt securities are made on or after 1<sup>st</sup> March, 2002. However, should the transitional period continue beyond 31<sup>st</sup> December, 2010, the provisions of this Article shall only continue to apply in respect of such negotiable debt securities

- (a) which contain gross up and early redemption clauses; and
- (b) where the paying agent as defined in Article 8 of this Agreement is established in a contracting party applying withholding tax and that paying agent pays interest to, or secures the payment of interest for the immediate benefit of a beneficial owner resident in the other contracting party.

If a further issue is made on or after 1<sup>st</sup> March, 2002 of an aforementioned negotiable debt security issued by a Government or a related entity acting as a public authority or whose role is recognised by an international treaty, as defined in the Annex to this Agreement, the entire issue of such security, consisting of the original issue and any further issue, shall be considered a debt claim within the meaning of Article 9(1)(a) of this Agreement.

If a further issue is made on or after 1<sup>st</sup> March, 2002 of an aforementioned negotiable debt security issued by any other issuer not covered by the second sub-paragraph, such further issue shall be considered a debt claim within the meaning of Article 9(1)(a) of this Agreement.

- (2) Nothing in this Article shall prevent the contracting parties from taxing the income from the negotiable debt securities referred to in paragraph (1) in accordance with their national laws.

### **Article 13 Mutual agreement procedure**

Where difficulties or doubts arise between the parties regarding the implementation or interpretation of this Agreement, the contracting parties shall use their best endeavours to resolve the matter by mutual agreement.

### **Article 14 Confidentiality**

- (1) All information provided and received by the competent authority of a contracting party shall be kept confidential.
- (2) Information provided to the competent authority of a contracting party shall not be used for any purpose, other than for the purposes of direct taxation, without the prior written consent of the other contracting party.
- (3) Information provided shall be disclosed only to persons or authorities concerned with the purposes of direct taxation, and used by such persons or authorities only for such purposes or for oversight purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial proceedings.
- (4) Where a competent authority of a contracting party considers that information which it has received from the competent authority of the other contracting party is likely to be useful to the competent authority of another Member State, it may transmit it to the latter competent authority with the agreement of the competent authority which supplied the information.

### **Article 15 Transitional Period**

At the end of the transitional period as defined in Article 10(2) of the Directive the BVI shall cease to apply the withholding tax and revenue sharing provided for in this Agreement and shall apply in respect of **[the Member State]** the automatic exchange of information provisions in the same manner as is provided for in Chapter II of the Directive. Without prejudice to Article 4 of this Agreement, if during the transitional period the BVI elects to apply the automatic exchange of information provisions in the same manner as is provided for in Chapter II of the Directive it shall no longer apply the withholding tax and the revenue sharing provided for in Article 10 of this Agreement.

### **Article 16 Entry into force**

This Agreement shall enter into force on the thirtieth day after the latter of the dates on which the respective Governments have notified each other in writing that the formalities constitutionally required have been complied with, and its

provisions shall have effect from the date from which the Directive is applicable according to paragraphs 2 and 3 of Article 17 of the Directive.

#### **Article 17 Termination**

- (1) This Agreement shall remain in force until terminated by either contracting party.
- (2) Either contracting party may terminate this Agreement by giving notice of termination in writing to the other contracting party, such notice to specify the circumstances leading to the giving of such notice. In such a case, this Agreement shall cease to have effect 12 months after the serving of notice.

#### **Article 18 Application and suspension of application**

- (1) The application of this Agreement shall be conditional on the adoption and implementation by all the Member States of the European Union, by the United States of America, Switzerland, Andorra, Liechtenstein, Monaco and San Marino, and by all the relevant dependent and associated territories of the Member States of the European Community, respectively, of measures which conform with or are equivalent to those contained in the Directive or in this Agreement, and providing for the same dates of implementation.
- (2) Subject to the mutual agreement procedure provided for in Article 13 of this Agreement, the application of this Agreement or parts thereof may be suspended by either contracting party with immediate effect through notification to the other specifying the circumstances leading to such notification should the Directive cease to be applicable either temporarily or permanently in accordance with European Community law or in the event that a Member State should suspend the application of its implementing legislation. Application of the Agreement shall resume as soon as the circumstances leading to the suspension no longer apply.
- (3) Subject to the mutual agreement procedure provided for in Article 13 of this Agreement, either contracting party may suspend the application of this Agreement through notification to the other specifying the circumstances leading to such notification in the event that one of the third countries or territories referred to in paragraph (1) should subsequently cease to apply the measures referred to in that paragraph. Suspension of application shall take place no earlier than two months after notification. Application of the Agreement shall resume as soon as the measures are reinstated by the third country or territory in question.



ENTERED into this                      day of                      , 2005

For the Government of the British                      .....  
Virgin Islands

For the Government of                      .....

## **ANNEX**

### **LIST OF RELATED ENTITIES REFERRED TO IN ARTICLE 12**

For the purposes of Article 12, the following entities will be considered to be a  
“*related entity acting as a public authority or whose role is recognised by an  
international treaty*”:

#### **ENTITIES WITHIN THE EUROPEAN UNION:**

##### **Belgium**

- Vlaams Gewest (Flemish Region)
- Région wallonne (Walloon Region)
- Région bruxelloise/Brussels Gewest (Brussels Region)
- Communauté française (French Community)
- Vlaamse Gemeenschap (Flemish Community)
- Deutschsprachige Gemeinschaft (German-speaking Community)

##### **Spain**

- Xunta de Galicia (Regional Executive of Galicia)
- Junta de Andalucía (Regional Executive of Andalusia)
- Junta de Extremadura (Regional Executive of Extremadura)
- Junta de Castilla- La Mancha (Regional Executive of Castilla- La Mancha)
- Junta de Castilla- León (Regional Executive of Castilla- León)
- Gobierno Foral de Navarra (Regional Government of Navarra)

- Govern de les Illes Balears (Government of the Balearic Islands)
- Generalitat de Catalunya (Autonomous Government of Catalonia)
- Generalitat de Valencia (Autonomous Government of Valencia)
- Diputación General de Aragón (Regional Council of Aragon)
- Gobierno de las Islas Canarias (Government of the Canary Islands)
- Gobierno de Murcia (Government of Murcia)
- Gobierno de Madrid (Government of Madrid)
- Gobierno de la Comunidad Autónoma del País Vasco/Euzkadi (Government of the Autonomous Community of the Basque Country)
- Diputación Foral de Guipúzcoa (Regional Council of Guipúzcoa)
- Diputación Foral de Vizcaya/Bizkaia (Regional Council of Vizcaya)
- Diputación Foral de Alava (Regional Council of Alava)
- Ayuntamiento de Madrid (City Council of Madrid)
- Ayuntamiento de Barcelona (City Council of Barcelona)
- Cabildo Insular de Gran Canaria (Island Council of Gran Canaria)
- Cabildo Insular de Tenerife (Island Council of Tenerife)
- Instituto de Crédito Oficial (Public Credit Institution)
- Instituto Catalán de Finanzas (Finance Institution of Catalonia)
- Instituto Valenciano de Finanzas (Finance Institution of Valencia)

## **Greece**

- $\mu$  (National Telecommunications Organisation)
- $\mu$   $\mu$  (National Railways Organisation)
- $\mu$   $\mu$  (Public Electricity Company)

## **France**

- La Caisse d'amortissement de la dette sociale (CADES) (Social Debt Redemption Fund)
- L'Agence française de développement (AFD) (French Development Agency)
- Réseau Ferré de France (RFF)(French Rail Network)
- Caisse Nationale des Autoroutes (CNA) (National Motorways Fund)
- Assistance publique Hôpitaux de Paris (APHP) (Paris Hospitals Public Assistance)
- Charbonnages de France (CDF) (French Coal Board)
- Entreprise minière et chimique (EMC)(Mining and Chemicals Company)

## **Italy**

- Regions
- Provinces
- Municipalities
- Cassa Depositi e Prestiti (Deposits and Loans Fund)

## **Latvia**

- Pašvaldības (Local governments)

## **Poland**

- gminy (communes)
- powiaty (districts)
- województwa (provinces)
- związki gmin (associations of communes)
- powiatów (association of districts)
- województw (association of provinces)
- miasto stołeczne Warszawa (capital city of Warsaw)

- Agencja Restrukturyzacji i Modernizacji Rolnictwa (Agency for Restructuring and Modernisation of Agriculture)
- Agencja Nieruchomości Rolnych (Agricultural Property Agency)

### **Portugal**

- Região Autónoma da Madeira (Autonomous Region of Madeira)
- Região Autónoma dos Açores (Autonomous Region of Azores)
- Municipalities

### **Slovakia**

- mestá a obce (municipalities)
- Železnice Slovenskej republiky (Slovak Railway Company)
- Štátny fond cestného hospodárstva (State Road Management Fund)
- Slovenské elektrárne (Slovak Power Plants)
- Vodohospodárska výstavba (Water Economy Building Company)

### **INTERNATIONAL ENTITIES:**

- European Bank for Reconstruction and Development
- European Investment Bank
- Asian Development Bank
- African Development Bank
- World Bank / IBRD / IMF
- International Finance Corporation
- Inter-American Development Bank
- Council of Europe Social Development Fund
- EURATOM
- European Community
- Corporación Andina de Fomento (CAF) (Andean Development Corporation)

- Eurofima
- European Coal & Steel Community
- Nordic Investment Bank
- Caribbean Development Bank

The provisions of Article 11 are without prejudice to any international obligations that the Contracting Parties may have entered into with respect to the above mentioned international entities.

**ENTITIES IN THIRD COUNTRIES :**

The entities that meet the following criteria :

- 1) The entity is clearly considered to be a public entity according to the national criteria.
- 2) Such public entity is a non-market producer which administers and finances a group of activities, principally providing non-market goods and services, intended for the benefit of the community and which are effectively controlled by general government.
- 3) Such public entity is a large and regular issuer of debt.
- 4) The State concerned is able to guarantee that such public entity will not exercise early redemption in the event of gross-up clauses.

**AGREEMENT ON THE TAXATION OF SAVINGS INCOME  
BETWEEN THE GOVERNMENT OF THE BRITISH VIRGIN ISLANDS  
AND [EU MEMBER STATE THAT IS TO APPLY THE  
WITHHOLDING TAX IN THE TRANSITIONAL PERIOD]**

**WHEREAS**

1. Article 17 of Directive 2003/48/EC (hereinafter referred to as “the Directive”) of the Council of the European Union (hereinafter referred to as “the Council”) on taxation of savings income provides that before 1 January, 2004 Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with the Directive with effect from 1<sup>st</sup> July, 2005 provided that
  - “(i) the Swiss Confederation, the Principality of Liechtenstein, the Republic of San Marino, the Principality of Monaco and the Principality of Andorra apply from that same date measures equivalent to those contained in this Directive, in accordance with agreements entered into by them with the European Community, following unanimous decisions of the Council;
  - (ii) all agreements or other arrangements are in place, which provide that all the relevant dependent or associated territories apply from that same date automatic exchange of information in the same manner as is provided for in Chapter II of this Directive, (or, during the transitional period defined in Article 10, apply a withholding tax on the same terms as are contained in Articles 11 and 12)”;
2. The British Virgin Islands (“BVI”) is not a member of the European Union and not within the European Union fiscal territory, but the Government of the United Kingdom has requested the Government of the BVI to voluntarily apply the provisions of the Directive;
3. The BVI notes that, while it is the ultimate aim of the EU Member States to bring about effective taxation of interest payments in the beneficial owner’s Member State of residence for tax purposes through the exchange of information concerning interest payments between themselves, three Member States, namely Austria, Belgium and Luxembourg, during a transitional period, shall not be required to exchange information but shall apply a withholding tax to the savings income covered by the Directive;
4. The BVI has agreed to apply a withholding tax with effect from 1<sup>st</sup> July, 2005, provided the European Union Member States have adopted the laws, regulations, and administrative provisions necessary to comply with the

Directive, and the requirements of Article 17 of the Directive and Article 18(2) of this Agreement have generally been met;

5. The BVI has agreed to apply automatic exchange of information in the same manner as is provided for in Chapter II of the Directive from the end of the transitional period as defined in Article 10 of the Directive;
6. The BVI has legislation relating to undertakings for collective investment that is deemed to be equivalent in its effect to the EC legislation referred to in Articles 2 and 6 of the Directive.

**NOW THEREFORE, the Government of the BVI and the Government of [the Member State] (hereinafter referred to as a “contracting party” or the “contracting parties” as the context requires), have agreed to conclude this agreement which contains obligations on the part of the contracting parties only and provides for**

- (a) the application by the contracting parties, during the transitional period defined in Article 10 of the Directive, of a withholding tax from the same date and on the same terms as are contained in Articles 11 and 12 of that Directive,
- (b) the exchange of information between the contracting parties acting in accordance with the provisions of Article 13 of the Directive, and
- (c) the payment by one contracting party to the other contracting party of 75% of the revenue from the withholding tax levied under this Agreement,

in respect of interest payments made by a paying agent established in a contracting party to an individual resident in the other contracting party.

## **Article 1 Definitions**

For the purposes of this Agreement, the term

- (a) “competent authority”, when applied to the contracting parties means,
  - (i) in the case of the BVI, the Financial Secretary; and
  - (ii) in the case of [the Member State], \_\_\_\_\_;
- (b) “[the Member State]” means \_\_\_\_\_;
- (c) “residence”, in relation to a beneficial owner, means the country or territory where his permanent address is located, subject to the conditions set out in Article 7(3) of this Agreement;

- (d) “UCITS” means an undertaking for collective investment in transferable securities that is recognised in accordance with the Directive of the Council of the European Union known as Council Directive 85/611/EEC of 20<sup>th</sup> December, 1985 on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities.

## **Article 2 Withholding Tax by Paying Agents**

Interest payments as defined in Article 9 of this Agreement which are made by a paying agent established in the jurisdiction of a contracting party to beneficial owners within the meaning of Article 6 of this Agreement who are residents of the other contracting party shall, subject to Article 4 of this Agreement, be subject to a withholding tax from the amount of interest payment during the transitional period referred to in Article 15 of this Agreement starting at the date referred to in Article 16 of this Agreement . The rate of withholding tax shall be 15% during the first three years of the transitional period, 20% for the subsequent three years and 35% thereafter.

## **Article 3 Reporting of Information by Paying Agents**

Where the provisions of Article 4(1)(a) of this Agreement apply, the paying agent shall report to its competent authority

- (a) the identity and residence of the beneficial owner established in accordance with Article 7 of this Agreement;
- (b) the name and address of the paying agent;
- (c) the account number of the beneficial owner or, where there is none, identification of the debt claim giving rise to the interest;
- (d) information concerning the interest payment specified in Article 5(1) of this Agreement. However, each contracting party may restrict the minimum amount of information concerning interest payment to be reported by the paying agent to the total amount of interest or income and the total amount of the proceeds from sale, redemption or refund paid to the beneficial owner within the tax year.



#### **Article 4     Exceptions to the Withholding Tax Procedure**

- (1) A contracting party when levying a withholding tax in accordance with Article 2 of this Agreement shall provide for one or both of the following procedures in order to ensure that the beneficial owners may request that no tax be withheld:
  - (a) a procedure which allows the beneficial owner as defined in Article 6 of this Agreement to avoid the withholding tax specified in Article 2 of this Agreement by expressly authorising his paying agent to report the interest payments to the competent authority of the contracting party in which the paying agent is established. Such authorisation shall cover all interest payments made to the beneficial owner by that paying agent;
  - (b) a procedure which ensures that withholding tax shall not be levied where the beneficial owner presents to his paying agent a certificate drawn up in his name by the competent authority of the contracting party of residence for tax purposes in accordance with paragraph 2 of this Article.
- (2) At the request of the beneficial owner, the competent authority of the contracting party of the country of residence for tax purposes shall issue a certificate indicating
  - (a) the name, address and tax or other identification number or, failing such, the date and place of birth of the beneficial owner; and
  - (b) the name and address of the paying agent; and
  - (c) the account number of the beneficial owner or, where there is none, the identification of the security.

Such certificate shall be valid for a period not exceeding three years. It shall be issued to any beneficial owner who requests it, within two months following such request, shall bear the date of the request as well as the date of issue and shall be applicable in relation to payments made after that date of request.

- (3) Where paragraph (1)(a) of this Article applies, the competent authority of the contracting party in which the paying agent is established shall communicate the information referred to in Article 3 of this Agreement to the competent authority of the contracting party of the country of residence of the beneficial owner. Such communication shall be automatic and shall take place at least once a year, within six months following the end of the

tax year established by the laws of a contracting party, for all interest payments made during that year.

## **Article 5 Basis of assessment for withholding tax**

- (1) A paying agent established in a contracting party shall levy withholding tax in accordance with Article 2 of this Agreement as follows:
  - (a) in the case of an interest payment within the meaning of Article 9(1)(a) of this Agreement: on the amount of interest paid or credited;
  - (b) in the case of an interest payment within the meaning of Article 9(1)(b) or (d) of this Agreement: on the amount of interest or income referred to in (b) or (d) of that sub-paragraph or by a levy of equivalent effect to be borne by the recipient on the full amount of the proceeds of the sale, redemption or refund as certified by the paying agent to its competent authority;
  - (c) in the case of an interest payment within the meaning of Article 9(1)(c) of this Agreement: on the amount of interest referred to in that sub-paragraph;
  - (d) in the case of an interest payment within the meaning of Article 9(4) of this Agreement: on the amount of interest attributable to each of the members of the entity referred to in Article 8(2) of this Agreement who meet the conditions of Article 6(1) of this Agreement; and
  - (e) where a contracting party exercises the option under Article 9(5) of this Agreement: on the amount of annualised interest.
- (2) For the purposes of sub-paragraphs (a) and (b) of paragraph 1 of this Article, the withholding tax shall be deducted on a pro rata basis to the period during which the beneficial owner held the debt-claim. If the paying agent is unable to determine the period of holding on the basis of the information made available to him, the paying agent shall treat the beneficial owner as having been in possession of the debt-claim for the entire period of its existence, unless the latter provides evidence of the date of the acquisition.
- (3) The imposition of withholding tax by the contracting party of the paying agent shall not preclude the other contracting party of residence for tax purposes of the beneficial owner from taxing income in accordance with its national law.
- (4) During the transitional period, the contracting party levying withholding tax may provide that an economic operator paying interest to, or securing interest for, an entity referred to in Article 8(2) of this Agreement in the

other contracting party shall be considered the paying agent in place of the entity and shall levy the withholding tax on that interest, unless the entity has formally agreed to its name, address and the total amount of the interest paid to it or secured for it being communicated in accordance with the last paragraph of Article 8(2) of this Agreement.

#### **Article 6     Definition of “beneficial owner”**

- (1) For the purposes of this Agreement, “beneficial owner” means an individual who receives an interest payment or any individual for whom an interest payment is secured, unless such individual can provide evidence that the interest payment was not received or secured for his own benefit. An individual is not the beneficial owner when he
  - (a) acts as a paying agent within the meaning of Article 8(1) of this Agreement;
  - (b) 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 equivalent undertaking for collective investment established in the BVI, or an entity referred to in Article 8(2) of this Agreement 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 contracting party of establishment; or
  - (c) acts on behalf of another individual who is the beneficial owner and discloses to the paying agent the identity of that beneficial owner.
- (2) 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) of this Article applies, it shall take reasonable steps to establish the identity of the beneficial owner. If the paying agent is unable to identify the beneficial owner, it shall treat the individual in question as the beneficial owner.

#### **Article 7     Identity and residence of beneficial owners**

- (1) Each Party shall, within its territory, adopt and ensure the application of the procedures necessary to allow the paying agent to identify the beneficial owners and their residence for the purposes of this Agreement. Such procedures shall comply with the minimum standards established in paragraphs 2 and 3;

- (2) The paying agent shall establish the identity of the beneficial owner on the basis of minimum standards which vary according to when relations between the paying agent and the recipient of the interest are entered into, as follows:
- (a) for contractual relations entered into before 1<sup>st</sup> July, 2005, the paying agent shall establish the identity of the beneficial owner, consisting of his name and address, by using the information at its disposal, in particular pursuant to the regulations in force in its country of establishment and to Council Directive 91/308/EEC of 10<sup>th</sup> June, 1991 in the case of [**the Member State**] or equivalent legislation in the case of the BVI on prevention of the use of the financial system for the purpose of money laundering;
  - (b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1<sup>st</sup> July, 2005, the paying agent shall establish the identity of the beneficial owner, consisting of the name, address and, if there is one, the tax identification number allocated by the Member State of residence for tax purposes. These details should be established on the basis of the passport or of the official identity card presented by the beneficial owner. If it does not appear on that passport or official identity card, the address shall be established on the basis of any other documentary proof of identity presented by the beneficial owner. If the tax identification number is not mentioned on the passport, on the official identity card or any other documentary proof of identity, including, possibly the certificate of residence for tax purposes, presented by the beneficial owner, the identity shall be supplemented by a reference to the latter's date and place of birth established on the basis of his passport or official identification card.
- (3) The paying agent shall establish the residence of the beneficial owner on the basis of minimum standards which vary according to when relations between the paying agent and the recipient of the interest are entered into. Subject to the conditions set out below, residence shall be considered to be situated in the country where the beneficial owner has his permanent address:
- (a) for contractual relations entered into before 1<sup>st</sup> July, 2005, the paying agent shall establish the residence of the beneficial owner by using the information at its disposal, in particular pursuant to the regulations in force in its country of establishment and to Directive 91/308/EEC in the case of [**the Member State**] or equivalent legislation in the case of the BVI; and

- (b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1<sup>st</sup> July, 2005, the paying agent shall establish the residence of the beneficial owner on the basis of the address mentioned on the passport, on the official identity card or, if necessary, on the basis of any documentary proof of identity presented by the beneficial owner and according to the following procedure: for individuals presenting a passport or official identity card issued by a Member State who declare themselves to be resident in a third country, residence shall be established by means of a tax residence certificate issued by the competent authority of the third country in which the individual claims to be resident. Failing the presentation of such a certificate, the Member State which issued the passport or other official document shall be considered to be the country of residence.

#### **Article 8     Definition of “paying agent”**

- (1) For the purposes of this Agreement, “paying agent” means 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 contracting party 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 paragraph 5 of this Article;
  - (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 of the Council or an equivalent undertaking for collective investment established in the BVI.

An economic operator paying interest to, or securing interest for, such an entity established in the other contracting party 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 contracting party of establishment,

which shall pass this information on to the competent authority of the contracting party where the entity is established.

- (3) The entity referred to in paragraph (2) of this Article shall, however, have the option of being treated for the purposes of this Agreement as an UCITS or equivalent undertaking as referred to in sub-paragraph (c) of paragraph (2). The exercise of this option shall require a certificate to be issued by the contracting party in which the entity is established and presented to the economic operator by that entity. A contracting party 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) of this Article are established in the same contracting party, that contracting party shall take the necessary measures to ensure that the entity complies with the provisions of this Agreement when it acts as a paying agent.
- (5) The legal persons exempted from sub- paragraph (a) of paragraph (2) of this Article are,
  - (a) in Finland: avoin yhtio (Ay) and kommandiittiyhtio (Ky)/opet bolag and kommanditbolag;
  - (b) in Sweden: handelsbolag (HB) and kommanditbolag (KB).

#### **Article 9 Definition of “interest payment”**

- (1) For the purposes of this Agreement, “interest payment” means
  - (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 payment;
  - (b) interest accrued or capitalised at the sale, refund or redemption of the debt claims referred to in sub-paragraph (a);
  - (c) income deriving from interest payments either directly or through an entity referred to in Article 8(2) of this Agreement, distributed by
    - (i) an UCITS authorised in accordance with EC Directive 85/611/EEC of the Council;

- (ii) an equivalent undertaking for collective investment established in the BVI;
  - (iii) entities which qualify for the option under Article 8(3) of this Agreement; or
  - (iv) undertakings for collective investment established outside the territory to which the Treaty establishing the European Community applies by virtue of Article 299 thereof and outside the BVI; and
- (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 sub-paragraph (a):
- (i) an UCITS authorised in accordance with Directive 85/611/EEC; or
  - (ii) an equivalent undertaking for collective investment established in the BVI.
  - (iii) entities which qualify for the option under Article 8(3) of this Agreement; or
  - (iv) undertakings for collective investment established outside the territory to which the Treaty establishing the European Community applies by virtue of Article 299 thereof and outside the BVI.

However, the contracting parties shall have the option of including income mentioned under paragraph (1)(d) of this Article 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 paragraph (1) (a) and (b) of this Article.

- (2) As regards paragraph 1(c) and (d) of this Article, when a paying agent has no information concerning the proportion of the income which derives from interest payments, the total amount of the income shall be considered an interest payment.
- (3) As regards paragraph 1(d) of this Article, when a paying agent has no information concerning the percentage of the assets invested in debt claims or in shares or units as defined in that paragraph, that percentage shall be considered to be above 40%. Where he cannot determine the amount of

income realised by the beneficial owner, the income shall be deemed to correspond to the proceeds of the sale, refund or redemption of the shares or units.

- (4) When interest, as defined in paragraph 1 of this Article, is paid to or credited to an account held by an entity referred to in Article 8(2) of this Agreement, such entity not having qualified for the option under Article 8(3) of this Agreement, such interest shall be considered an interest payment by such entity.
- (5) As regards paragraph 1(b) and (d) of this Article, a contracting party shall have the option of requiring paying agents in its territory to annualise the interest over a period of time which may not exceed one year, and treating such annualised interest as an interest payment even if no sale, redemption or refund occurs during that period.
- (6) By way of derogation from paragraph 1(c) and (d) of this Article, a contracting party 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 its territory where the investment in debt claims referred to in paragraph 1(a) of this Article of such entities has not exceeded 15% of their assets. Likewise, by way of derogation from paragraph 4 of this Article, a contracting party shall have the option of excluding from the definition of interest payment in paragraph 1 of this Article interest paid or credited to an account of an entity referred to in Article 8(2) of this Agreement which has not qualified for the option under Article 8(3) of this Agreement and is established within its territory, where the investment of such an entity in debt claims referred to in paragraph 1(a) of this Article has not exceeded 15% of its assets.

The exercise of such option by one contracting party shall be binding on the other contracting party.

- (7) The percentage referred to in paragraph 1(d) of this Article and paragraph 3 of this Article shall from 1<sup>st</sup> January, 2011 be 25%.
- (8) The percentages referred to in paragraph 1(d) of this Article and in paragraph 6 of this Article shall be determined by reference to the investment policy as laid down in the fund rules or instruments of incorporation of the undertakings or entities concerned or, failing which, by reference to the actual composition of the assets of the undertakings or entities concerned.



## **Article 10      Withholding Tax Revenue sharing**

- (1) A contracting party which applies withholding tax shall retain 25% of the withholding tax deducted under this Agreement and transfer the remaining 75% of the revenue to the other contracting party.
- (2) A contracting party levying withholding tax in accordance with Article 5(4) of this Agreement shall retain 25% of the revenue and transfer 75% to the other contracting party.
- (3) Such transfers shall take place for each year in one instalment at the latest within a period of six months following the end of the tax year established by the laws of a contracting party.
- (4) A contracting party levying withholding tax shall take the necessary measures to ensure the proper functioning of the revenue sharing system.

## **Article 11      Elimination of double taxation**

- (1) A contracting party in which the beneficial owner is resident for tax purposes shall ensure the elimination of any double taxation which might result from the imposition by a contracting party of the withholding tax to which this Agreement refers in accordance with the following provisions:
  - (a) if interest received by a beneficial owner has been subject to withholding tax in a contracting party, the other contracting party shall grant a tax credit equal to the amount of the tax retained in accordance with its national law. Where this amount exceeds the amount of tax due in accordance with its national law, the other contracting party shall repay the excess amount of tax retained to the beneficial owner;
  - (b) if, in addition to the withholding tax referred to in Article 5 of this Agreement, interest received by a beneficial owner has been subject to any other type of withholding tax and the contracting party of residence for tax purposes grants a tax credit for such withholding tax in accordance with its national law or double taxation conventions, such other withholding tax shall be credited before the procedure in sub-paragraph (a) of this Article is applied.
- (2) The contracting party which is the country of residence for tax purposes of the beneficial owner may replace the tax credit mechanism referred to in paragraph 1 of this Article by a refund of the withholding tax referred to in Article 5 of this Agreement.

## **Article 12 Transitional provisions for negotiable debt securities**

- (1) During the transitional period referred to in Article 15 of this Agreement, but until 31<sup>st</sup> December, 2010 at the latest, domestic and international bonds and other negotiable debt securities which have been first issued before 1<sup>st</sup> March, 2001 or for which the original issuing prospectuses have been approved before that date by the competent authorities within the meaning of Council Directive 80/390/EEC or by the responsible authorities in third countries shall not be considered as debt claims within the meaning of Article 9(1)(a) of this Agreement, provided that no further issues of such negotiable debt securities are made on or after 1<sup>st</sup> March, 2002. However, should the transitional period continue beyond 31<sup>st</sup> December, 2010, the provisions of this Article shall only continue to apply in respect of such negotiable debt securities
- (a) which contain gross up and early redemption clauses; and
- (b) where the paying agent as defined in Article 8 of this Agreement is established in a contracting party applying withholding tax and that paying agent pays interest to, or secures the payment of interest for the immediate benefit of a beneficial owner resident in the other contracting party.

If a further issue is made on or after 1<sup>st</sup> March, 2002 of an aforementioned negotiable debt security issued by a Government or a related entity acting as a public authority or whose role is recognised by an international treaty, as defined in the Annex to this Agreement, the entire issue of such security, consisting of the original issue and any further issue, shall be considered a debt claim within the meaning of Article 9(1)(a) of this Agreement.

If a further issue is made on or after 1<sup>st</sup> March, 2002 of an aforementioned negotiable debt security issued by any other issuer not covered by the second sub-paragraph, such further issue shall be considered a debt claim within the meaning of Article 9(1)(a) of this Agreement.

- (2) Nothing in this Article shall prevent the contracting parties from taxing the income from the negotiable debt securities referred to in paragraph (1) in accordance with their national laws.

## **Article 13 Mutual agreement procedure**

Where difficulties or doubts arise between the parties regarding the implementation or interpretation of this Agreement, the contracting parties shall use their best endeavours to resolve the matter by mutual agreement.

## **Article 14 Confidentiality**

- (1) All information provided and received by the competent authority of a contracting party shall be kept confidential.
- (2) Information provided to the competent authority of a contracting party shall not be used for any purpose, other than for the purposes of direct taxation, without the prior written consent of the other contracting party.
- (3) Information provided shall be disclosed only to persons or authorities concerned with the purposes of direct taxation, and used by such persons or authorities only for such purposes or for oversight purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial proceedings.
- (4) Where a competent authority of a contracting party considers that information which it has received from the competent authority of the other contracting party is likely to be useful to the competent authority of another Member State, it may transmit it to the latter competent authority with the agreement of the competent authority which supplied the information.

## **Article 15 Transitional Period**

– At the end of the transitional period as defined in Article 10(2) of the Directive the contracting parties shall cease to apply the withholding tax and revenue sharing provided for in this Agreement and shall apply in respect of the other contracting party the automatic exchange of information provisions in the same manner as is provided for in Chapter II of the Directive. Without prejudice to Article 4 of this Agreement, if during the transitional period either of the contracting parties elects to apply the automatic exchange of information provisions in the same manner as is provided for in Chapter II of the Directive, it shall no longer apply the withholding tax and the revenue sharing provided for in Article 10 of this Agreement.

## **Article 16 Entry into force**

This Agreement shall enter into force on the thirtieth day after the latter of the dates on which the respective Governments have notified each other in writing that the formalities constitutionally required have been complied with, and its provisions shall have effect from the date from which the Directive is applicable according to paragraphs 2 and 3 of Article 17 of the Directive.

## **Article 17 Termination**

- (1) This Agreement shall remain in force until terminated by either contracting party.

- (2) Either contracting party may terminate this Agreement by giving notice of termination in writing to the other contracting party, such notice to specify the circumstances leading to the giving of such notice. In such a case, this Agreement shall cease to have effect 12 months after the serving of notice.

## **Article 18 Application and suspension of application**

- (1) The application of this Agreement shall be conditional on the adoption and implementation by all the Member States of the European Union, by the United States of America, Switzerland, Andorra, Liechtenstein, Monaco and San Marino, and by all the relevant dependent and associated territories of the Member States of the European Community, respectively, of measures which conform with or are equivalent to those contained in the Directive or in this Agreement, and providing for the same dates of implementation.
- (2) Subject to the mutual agreement procedure provided for in Article 13 of this Agreement, the application of this Agreement or parts thereof may be suspended by either contracting party with immediate effect through notification to the other specifying the circumstances leading to such notification should the Directive cease to be applicable either temporarily or permanently in accordance with European Community law or in the event that a Member State, should suspend the application of its implementing legislation. Application of the Agreement shall resume as soon as the circumstances leading to the suspension no longer apply.
- (3) Subject to the mutual agreement procedure provided for in Article 13 of this Agreement, either contracting party may suspend the application of this Agreement through notification to the other specifying the circumstances leading to such notification in the event that one of the third countries or territories referred to in paragraph (1) should subsequently cease to apply the measures referred to in that paragraph. Suspension of application shall take place no earlier than two months after notification. Application of the Agreement shall resume as soon as the measures are reinstated by the third country or territory in question.

ENTERED into this                      day of                      , 2005.

For the Government of the                      .....  
British Virgin Islands

For the Government of                      .....

# **ANNEX**

## **LIST OF RELATED ENTITIES REFERRED TO IN ARTICLE 12**

For the purposes of Article 12, the following entities will be considered to be a “*related entity acting as a public authority or whose role is recognised by an international treaty*”:

### **ENTITIES WITHIN THE EUROPEAN UNION:**

#### **Belgium**

- Vlaams Gewest (Flemish Region)
- Région wallonne (Walloon Region)
- Région bruxelloise/Brussels Gewest (Brussels Region)
- Communauté française (French Community)
- Vlaamse Gemeenschap (Flemish Community)
- Deutschsprachige Gemeinschaft (German-speaking Community)

#### **Spain**

- Xunta de Galicia (Regional Executive of Galicia)
- Junta de Andalucía (Regional Executive of Andalusia)
- Junta de Extremadura (Regional Executive of Extremadura)
- Junta de Castilla- La Mancha (Regional Executive of Castilla- La Mancha)
- Junta de Castilla- León (Regional Executive of Castilla- León)
- Gobierno Foral de Navarra (Regional Government of Navarra)
- Govern de les Illes Balears (Government of the Balearic Islands)
- Generalitat de Catalunya (Autonomous Government of Catalonia)
- Generalitat de Valencia (Autonomous Government of Valencia)
- Diputación General de Aragón (Regional Council of Aragon)

- Gobierno de las Islas Canarias (Government of the Canary Islands)
- Gobierno de Murcia (Government of Murcia)
- Gobierno de Madrid (Government of Madrid)
- Gobierno de la Comunidad Autónoma del País Vasco/Euzkadi (Government of the Autonomous Community of the Basque Country)
- Diputación Foral de Guipúzcoa (Regional Council of Guipúzcoa)
- Diputación Foral de Vizcaya/Bizkaia (Regional Council of Vizcaya)
- Diputación Foral de Alava (Regional Council of Alava)
- Ayuntamiento de Madrid (City Council of Madrid)
- Ayuntamiento de Barcelona (City Council of Barcelona)
- Cabildo Insular de Gran Canaria (Island Council of Gran Canaria)
- Cabildo Insular de Tenerife (Island Council of Tenerife)
- Instituto de Crédito Oficial (Public Credit Institution)
- Instituto Catalán de Finanzas (Finance Institution of Catalonia)
- Instituto Valenciano de Finanzas (Finance Institution of Valencia)

## **Greece**

- $\mu$  (National Telecommunications Organisation)
- $\mu$   $\mu$  (National Railways Organisation)
- $\mu$   $\mu$  (Public Electricity Company)

## **France**

- La Caisse d'amortissement de la dette sociale (CADES) (Social Debt Redemption Fund)
- L'Agence française de développement (AFD) (French Development Agency)
- Réseau Ferré de France (RFF)(French Rail Network)
- Caisse Nationale des Autoroutes (CNA) (National Motorways Fund)

- Assistance publique Hôpitaux de Paris (APHP) (Paris Hospitals Public Assistance)
- Charbonnages de France (CDF) (French Coal Board)
- Entreprise minière et chimique (EMC)(Mining and Chemicals Company)

### **Italy**

- Regions
- Provinces
- Municipalities
- Cassa Depositi e Prestiti (Deposits and Loans Fund)

### **Latvia**

- Pašvaldības (Local governments)

### **Poland**

- gminy (communes)
- powiaty (districts)
- województwa (provinces)
- związki gmin (associations of communes)
- powiatów (association of districts)
- województw (association of provinces)
- miasto stołeczne Warszawa (capital city of Warsaw)
- Agencja Restrukturyzacji i Modernizacji Rolnictwa (Agency for Restructuring and Modernisation of Agriculture)
- Agencja Nieruchomości Rolnych (Agricultural Property Agency)

### **Portugal**

- Região Autónoma da Madeira (Autonomous Region of Madeira)
- Região Autónoma dos Açores (Autonomous Region of Azores)
- Municipalities

**Slovakia**

- mestá a obce (municipalities)
- Železnice Slovenskej republiky (Slovak Railway Company)
- Štátny fond cestného hospodárstva (State Road Management Fund)
- Slovenské elektrárne (Slovak Power Plants)
- Vodohospodárska výstavba (Water Economy Building Company)

**INTERNATIONAL ENTITIES:**

- European Bank for Reconstruction and Development
- European Investment Bank
- Asian Development Bank
- African Development Bank
- World Bank / IBRD / IMF
- International Finance Corporation
- Inter-American Development Bank
- Council of Europe Social Development Fund
- EURATOM
- European Community
- Corporación Andina de Fomento (CAF) (Andean Development Corporation)
- Eurofima
- European Coal & Steel Community
- Nordic Investment Bank
- Caribbean Development Bank

The provisions of Article 11 are without prejudice to any international obligations that the Contracting Parties may have entered into with respect to the above mentioned international entities.



**ENTITIES IN THIRD COUNTRIES :**

The entities that meet the following criteria :

- 1) The entity is clearly considered to be a public entity according to the national criteria.
- 2) Such public entity is a non-market producer which administers and finances a group of activities, principally providing non-market goods and services, intended for the benefit of the community and which are effectively controlled by general government.
- 3) Such public entity is a large and regular issuer of debt.

The State concerned is able to guarantee that such public entity will not exercise early redemption in the event of gross-up clauses.

Passed by the Legislative Council this 26<sup>th</sup> day of May, 2005.

V. INEZ ARCHIBALD,  
Speaker.

ALVA MC CALL,  
Ag. Clerk of the Legislative Council.