

A practical guideline on the amended savings tax

THE
EU SAVINGS TAX
EXPANDED DEFINITION
OF
INTEREST

*How funds, capital
guaranteed
products and
insurance are
affected*

An indispensable primer for the wealth
management and insurance industry on the
expanded definition of interest



1. Summary

The narrow definition of interest in the EU savings allows opportunities to circumvent the directive by substitution or rearrangement of fixed income investments to be out of scope. Consequently, the revised directive expands the definition of interest to cover 3 categories of investments:-



i. Collective Investments

The only collective investments currently within scope are Undertakings for Collective Investment in Transferable Securities (UCITS). The directive will now include any collective investment fund or scheme established inside or outside the EU directive territory. This applies irrespective of the legal form of a fund or scheme and irrespective of any restriction to a limited group of investors of the purchase, sale or redemption of its shares or units e.g. hedge funds and Caribbean non-UCITS equivalent.



ii. Capital guarantee interest substitutes

Securities of any kind that promise at least 95% of the capital returned or if income is linked with at least 95% debt claims. This is clearly aimed primarily at **capital guaranteed structured products**. However, this will also include derivatives linked to interest such as interest rate swaps, caps and floors, short dated options and LEPOS on bonds if the gains are linked to interest or gains, bond baskets, bond certificates, mixed certificates and reverse convertibles.



iii. Insurance benefits

Payments exceeding subscriptions for policies issued by a life insurance company, whose actual performance contains at least 25% interest or provides a guaranteed income, are in scope. Annuities with a specific term of more than five years are exempt. An insurance pension is only exempt the policy contains a condition that repayments will be over a term of more than five years.



Gross roll up and early recall bonds exemption

These bonds are exempt from the EU savings tax as long as the withholding transitional period continues.

2. Collective Investments

2.1 The non-UCITS loopholes

UCITS directives are a set of European Union laws that aim to allow collective investment schemes to be marketed freely throughout the EU on the basis of a single authorisation from one member state. The primary aim is to remove barriers to the cross-border marketing of units of collective investment funds, subject to the same regulation in every Member state. Consequently, the savings tax directive currently includes funds which are only classed as Undertakings of Collective Investments in Transferable Securities (UCITS) because it was felt that these were the only collective investments sold to cross-border EU residents. While monitoring the application of the savings tax directive, the EU Commission noted how some countries were simply circumventing the narrow scope of UCITS by substituting with funds that are non-UCITS.



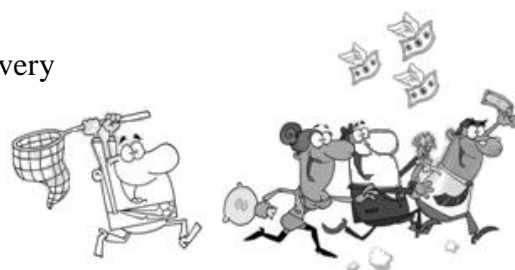
2.1.1 Non UCITS substitute: Swiss banks moved billions into Luxembourg fixed income non-UCITS to avoid the savings tax directive. To further exacerbate the situation, these funds are brazenly marketed as “Savings Tax Optimised”.

2.1.2 “Non UCITS equivalent”: Prior to the directive, the Caymans categorised their funds as “UCITS equivalent” so that they could be marketed by banks in Europe. Shortly before the EU savings tax directive commenced the Cayman financial authority reclassified all their funds as “non UCITS equivalent” by simply requiring reporting be annually instead of quarterly. This was done purely to avoid the EU savings tax directive exclusive focus on UCITS. Other Caribbean countries soon followed suit.

2.1.3 Home rules: In conjunction with the *non-UCITS equivalent* tactic, some countries such as Switzerland adopted a *home rules* policy where a Swiss-based paying agent, when attempting to determine whether a fund, based in say the Cayman islands, is within the scope of the savings tax directive, is entitled to look to the laws of the fund’s “home country”. Accordingly, if the fund would be considered to be outside to scope of the directive for the purposes of the laws of the jurisdiction in which the fund is based, a Swiss-based paying agent is entitled to treat the fund as outside the directive’s scope.

2.2 All undertakings of collective investments included

The amended directive will capture virtually every collective investment fund or scheme. This could range from an esoteric hedge fund or a private offshore investment scheme by friends.



Amendment legislative clause

Within the EU Savings tax territory: Undertakings for collective investment or other collective investment funds or schemes that either are:-

- registered as such in accordance with the law of any of the countries party to the directive, or
- have fund rules or instruments of incorporation governed by the law relating to collective investment funds or schemes of one of these States or countries.

This **applies irrespective of the legal form** of such undertakings, funds or schemes **and irrespective of any restriction** to a limited group of investors of the purchase, sale or redemption of their shares or units

Paying Agents Upon Receipt opt out: Entities similar to an undertaking for collective investments may exercise an option to be treated as a UCITS. These will not be Paying Agents Upon Receipt

Outside the EU savings tax territory: Any collective investment fund or scheme established outside the directive's territory. This applies **irrespective of the legal form** of that fund or scheme and **irrespective of any restriction** to a limited group of investors of the purchase, sale or redemption of its shares or units.

All collective funds included cont...



This encompasses virtually all collective investments, no matter the legal form or restriction. This is aimed at non-UCITS funds, such as:-

- Luxembourg SICAV II, SICAR, SIF-SICAV
- Ireland UCITS-III collective investments
- Investment Company with Variable Capital / OEICs
- Professional investors funds
- Qualifying investors funds
- Caribbean *non-UCITS equivalent* funds
- Hedge funds
- Private equity funds
- Income trusts
- Managed Futures Accounts which act like a mutual fund for more than one investor
- Micro finance funds
- Pooled private investment clubs
- Mutual funds
- Closed end funds
- Unit trusts
- Fonds commun de placement
- Beleggingsvennootschap met vast kapitaal / PRIVAK
- Exchange Traded Funds (ETF)
- Real Estate Investment Trusts (REIT)
- Listed investment company
- Etc.

2.3 Exempted interest for distributed income if less than 15% debt assets:

- 2.3.1 For income distributed by a fund, a Member State has the option to exempt from the definition of interest if the percentage of assets in that collective investment is less than 15% in debt claims:



2.4 Excluded debt claim assets

If a fund is required to hold as collateral under the terms of their agreements in order to enable them to meet their investment objectives, and to which the investor is not a party and has no legal rights, these are not regarded as debt claims.

3. Securities with capital guarantee or linked to interest



There were two reasons that the amendments expanded the definition of interest to include financial instruments that have the same low risk characteristics of debt claims:-

- Some complex financial products such as structured notes combined fixed income investments with derivatives, and yet classified the entire return of the product as a derivative, avoiding the scope of the directive,
- Some products offer virtually the same return and risk as fixed income and yet are not direct debt claims. This allows investors to substitute interest to avoid the savings tax, e.g. interest swap funds, bond baskets and certificates on bonds, floored and floaters.

Amendment legislative clause

Any income paid or realised, or credited to an account, relating to **securities** of any kind, and where:

- i. the conditions of a return of capital defined at the issuing date include a commitment towards the investor that he receives, at the end of the term, at least 95% of the capital invested, or
- ii. the conditions defined at the issuing date provide for a link of at least 95% of the income from the security to interest or income.
- iii. Income shall be considered to be an interest payment only to the extent to which the securities producing that income were first issued on or after **1 July 2010**

The savings tax amendment includes financial products that have similar characteristics of debt claims. To determine if product does generate interest according to the savings tax directive, one must study the term “*securities*”, which is defined as a:

- ♦ fungible [*one unit easily exchanged for another unit of the same commodity*]
- ♦ negotiable instrument [*a transferable contract that promises to pay the bearer a sum of money at a future date or on demand*]
- ♦ representing financial value.

Securities are broadly categorized into:

- i. Debt securities (such as bonds and debentures)
- ii. Equity securities (such as shares)
- iii. Derivative **contracts** (such as options, futures, swaps and forwards)



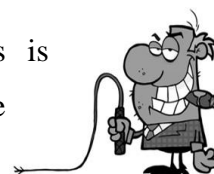
3.1 Capital Protected structured products

Several countries excluded capital protected notes from the definition of interest because they claimed performance is based on an underlying such as a stock market index and is therefore a derivative. This is intentionally misleading as only the performance above the capital guarantee is based on an underlying performance. The capital guarantee portion comprises entirely of debt claims and is indeed interest.

Critical



Harsh treatment: The amendment affecting structured products is perhaps unfair compared to collective investments because the entire product's gains realised (income) will be defined as interest, i.e. the fixed income returns plus equity growth plus dividends plus derivative gains.



3.2 Derivatives:

Marketable over-the-counter derivative contracts linked to at least 95% interest will be in scope, e.g. :-

- ♦ Interest rate swaps
- ♦ interest rate caps and floors
- ♦ short dated options and LEPOS on bonds if the gains are linked to interest (viz LEPOS on zero coupon bonds)
- ♦ bond baskets, bond certificates and mixed certificates
- ♦ reverse convertibles
- ♦ futures linked to interest such as bond futures



3.3 Hybrid Capital

Products which are a form of debt, even though they generally have equity component or characteristics will now be in scope. Examples are preference shares, convertible bonds, payment in kind loans (PIK), tax liens, perpetual loans, mandatory convertibles and other debt plus equity products established through Special Purpose Vehicles.

3.4 Islamic Banking:

Sharia deposits with no risk of loss will also be included as a product offering similar guarantees although not classified as interest bearing as such. Sukuk bonds may be out of scope if loss is possible.

3.5 Exemptions

3.5.1 **Grandfathering:** Interest payments are in scope only to the extent to which the securities producing that income were first issued on or after 1 July 2010.

3.5.2 **Contracts between two parties:** E.g. equity swaps, which are not marketable are not securities and would not be within scope

4. Life Insurance Benefits

A life insurance policy is a contract between a policy owner and an insurer where the insurer agrees to pay a beneficiary a sum of money upon the insured individual's death.



Amendment legislative pertaining to life insurance

For the purposes of this Directive, 'interest payment' means benefits from a life insurance contract, if:-

- ♦ the contract contains a guarantee of income return, or
- ♦ the actual performance of the contract is more than 25% linked to **interest**

Exemptions: A benefit from a life insurance contract which:-

- ♦ solely provides for pension or a fixed annuity,
- ♦ paid for at least 5 years

shall be considered as such only if:-

- ✎ it is a **repayment** (*i.e. paid to the individual who subscribed for the policy*), or
- ✎ an assignment to a 3rd party that is made before the end of the 5 year period (*i.e. will be in scope if assigned after 5 years payments has already been made*).

An amount paid out solely in respect of death, disability or illness shall not be considered to be a benefit from a life insurance contract.

Definition of benefit: The excess of any repayment or partial repayment made by the life insurer before the maturity of the life insurance contract as well as the excess of any amount paid out by the life insurer over the sum of the payments made to the life insurer under the same life insurance contract, shall be considered to be a benefit from a life insurance contract.

In the case of assignment, in whole or in part, of a life insurance to a third party, the excess of the value of the contract conferred over the sum of all the payments made to the life insurer shall also be considered to be a benefit from a life insurance contract.

What does “actual performance of the contract is more than 25% linked to interest” mean?

It means if the payment excess over cost contains at least 25% interest from:-

- a) Income earned on debt claims
- b) Interest from funds redeemed
- c) Interest distributed from funds
- d) Income from securities that provide a capital guarantee , eg structured products, interest derivatives, etc.

The definition of interest threshold for insurance policies differs significantly from the debt threshold for collective investments. This is because the composition of an insurance policy’s asset classes could change significantly during the policy term.



Difference between Collective investment and insurance policy 25% debt threshold:

	Life Insurance	Collective investments
Debt claim assets held until redemption	Irrelevant	Average 25%
Debt claim assets if income distributed	Irrelevant	Average 15%
Actual interest earned upon payment	At least 25%	Irrelevant

Note: A Member State shall have the option of including in the definition of interest payment benefits regardless of the composition of performance, if paid by or obtained from a life insurer established within that State.



4.1 Investment type policies

These are within scope if the actual performance of the contract is linked to more than 25% interest:

1.1 Unit linked insurance policies

With this investment type of life insurance policy, the policyholder bears the entire investment risk. The payout value is linked to a unitised insurance fund. Policies whose performance contains more than 25% interest will be in scope.

1.2 Endowment policies

Under a typical endowment product, a basic guarantee is provided, known as the sum assured, payable at maturity or earlier death. The sum assured generally carries a prudent guaranteed return on the premiums paid and forms the basic guaranteed benefit around which the other benefits are built. As the policy contains a guaranteed income or return, it is in scope.

1.3 “With profits” policies

An insurance policy issued by a life insurer which has a basic sum assured to which regular bonuses are credited to the policy’s value. The basic sum assured is the minimum amount of life assurance payable on death or upon maturity, whichever comes first. The regular bonuses are linked to the profits of the with-profits fund. The policy will be in scope for two reasons (i) if the profits of the fund contains more than 25% interest, or (ii) contains a guaranteed return.



4.2 Income type policies

An annuity is a regular income paid by a life insurance company to a policyholder, known as an annuitant. The amendment excludes fixed annuities paid over at least 5 years. There are several types of annuities:-

- 4.2.1 **Fixed Annuities** - is a constant regular payment from a life insurer commencing on a specified date for the rest of the annuitant's life. The insurer incurs longevity risk but no mortality risk. The EU savings tax amendment exempts fixed annuities paid for at least 5 years. As no fixed annuity contract contains a guarantee of payments over five years, all fixed annuities are in scope.
- 4.2.2 **Temporary Annuities** - are regular constant payments for either a fixed period, or the annuitant's lifetime, whichever is shorter. The insurer incurs longevity risk. If the annuitant survives the fixed period, the annuity ceases, as it does if he dies during that period. Temporary annuities, with a term longer than 5 years, will be exempted.
- 4.2.3 **Annuities Certain** - The annuitant is guaranteed by the insurance company to receive those payments for the agreed upon time period without exception or contingency. If the annuitant dies before the time period expires, the annuity payments are then made to the annuitant's designated beneficiaries. The insurance company incurs neither longevity nor mortality risk. The EU Commission deems annuities certain as deposits with the payments as "pure income". Therefore annuities certain are in scope.
- 4.2.4 **Variable Annuities** - The insurer will make future payments to an annuitant, the amount of which is linked to the performance an underlying investment. As payments are dependent on performance of investments, this type of policy is in scope.



4.3 Other types of insurance policies

4.3.1 **Capital Redemption Bond** - One or more fixed sums are paid to an insurer under a contract pursuant to which one or more specified amounts are paid out at some later time or times, on the basis of an actuarial calculation. A life insurer promises the policyholder a *certain* redemption value upon maturity. The beneficiary may surrender early for a *variable* value based on the underlying investment performance held by the policy. A capital redemption bond is therefore a hybrid of two types of annuities:-

- ♦ **Variable Annuity** without life cover if it is surrendered early by the policyholder, or
- ♦ An **annuity Certain** if kept until maturity.

These policies have no mortality insures may incur a financial risk for the insurer due to its *certain maturity value*. This is therefore more like a deposit. Typically the contracts take the form of an annuity certain, where a capital sum is used to buy an annuity for a fixed term not contingent on life, or a sinking fund where regular sums are paid in to secure a capital sum at some later date, for example against the need to find a premium payment to renew a lease. Capital Redemption Bonds should therefore come under the definition of deposits. Capital Redemption Bonds are excluded from the definition of insurances for VAT purposes.

A Capital Redemption Bond is a risky method to avoid the savings tax directive

- If it is deemed as a annuity certain, i.e. an annuity without mortality or longevity risk, then it is deemed a deposit and would be in scope.
- As supported by the EU Commission's paper on VAT for financial services, if the Member State deems the product is not an insurance policy, then it would be defined as a deposit and hence in scope. Furthermore, the insurer's guarantee of capital returns brings it within scope.
- The EU Commission is aware of this product and it requires one word amendment in the directive to bring it in scope, i.e. instead of Art 6(1)(e) focusing on "life insurance policies" it could change to "Policies issued by life insurance companies".

4.3.2 **Non-life unit-linked policies**: Insurance policies whose performance is linked to investments but do not have any component of life cover, are not life insurance policies and are not within scope, such as health unit linked policies.

4.3.3 Pensions

Technically, an insurance pension policy is identical to a standard unit-linked investment type policy. This type of policy usually pays out a single lump sum upon maturity. The policyholder *usually* has a minimum surrender age to qualify for fiscal benefits but early surrender is possible, albeit with a penalty. Some Member States may mandate that some of the lump sum payout be used to purchase a fixed annuity. A benefit from a life insurance contract which solely provides for pension is out of scope if paid over at least five years. **This means a pension policy will be in scope if it provides a single lump sum payment at maturity.**

4.4 Who is Paying Agent for life insurance policies?

4.4.1 A life insurance company is the Paying Agent responsible for applying the savings tax provisions if:-


- It is established within the savings tax territory, and
- it makes payments directly to:-
 - a beneficial owner, or
 - an untaxed entity / legal arrangement managed outside the savings tax territory.

4.4.2 If benefits are made to an untaxed entity / legal arrangement managed within the savings tax territory, then the entity / legal arrangement becomes the Paying Agent Upon Receipt. This will occur, for instance, if the policy is held in trust.

4.4.3 If benefits are received from life insurers outside the territory, the bank securing the payment on behalf of the beneficial owner is the Paying Agent. Note that if the external insurer does not enumerate the interest proportion or the cost of the policy, then the entire insurance payment is deemed as interest.

4.5 Reporting Payments to Paying Agents Upon Receipt

An insurance company, must report on payments made to any entity / legal arrangement not subject to effective tax and is effectively managed from another savings tax territory, viz. the name, legal form, place of management and amount of interest. This entity / legal arrangement becomes the Paying Agent Upon Receipt.


 **Important:** During the transitional period, those insurers established in a territory which withholds savings tax (e.g. Luxembourg, Liechtenstein, Jersey, etc), if the entity / legal arrangement does not agree to have its information reported, the insurance company must withhold 35% tax on the benefit (or entire payment if not delineated), irrespective of the eventual identity of the beneficial owner.

4.6 Mutual administrative cooperation directive

Pensions and life insurance policies not included in the savings tax is scheduled to be included in the Directive on administrative cooperation in the field of taxation as from 2015.

4.7 Payments to Paying Agents Upon Receipt

An insurance company, as Paying Agent, must report on payments made to any entity / legal arrangement not subject to effective tax and is effectively managed from within the savings tax territory, viz. the name, legal form, place of management and amount of interest.

 **Important:** During the transitional period, those insurers established in a territory which withholds savings tax (e.g. Luxembourg, Liechtenstein, Jersey, etc), if the entity / legal arrangement does not agree to have its information reported, the insurance company must withhold 35% tax on the entire interest payment, irrespective of the identity of the beneficial owner.

4.8 Mutual administrative cooperation directive

Pensions and life insurance policies not included in the savings tax is scheduled to be included in the Directive on administrative cooperation in the field of taxation as from 2015.




5. Information to be provided by Paying Agents

In jurisdictions that are mandated or have elected automatic *exchange of information*, the Paying (or Paying Agent Upon Receipt) must provide the following minimum amount of information to the competent authority:

5.1 the identity and residence of the beneficial owner established

5.2 the name and address of the paying agent;

* Critical  5.3 the **account number** of the beneficial owner or, where there is none:-

5.3.1 identification of the debt claim giving rise to the interest payment or of the life insurance contract, security, share or unit giving rise to that payment;

5.4 the total amount of its interest payments received, secured or deemed to accrue to its beneficial owners. The information provided must distinguish and show separately for:-

5.4.1 **Debt claims** - the amount of interest paid or credited

5.4.2 **Securities with capital guarantee or linked to interest**-- either the amount of any income paid, realised or credited or the total amount of the payment

5.4.3 **Accrued or capitalised debt** - either the amount of interest or income referred to or the total amount of the proceeds from the sale, redemption or refund;

5.4.4 **Interest distributed by funds** - either the amount of interest referred to or the total amount of the distribution

5.4.5 **Annualised interest** - where a Member State exercises the option to annualise interest, on the amount of annualised interest or other relevant income;

5.4.6 **Life insurance** - either the benefit calculated in accordance with that provision or the total amount of the payment. If, in the case of assignment to a third party, the paying agent has no information about the value conferred: the sum of the payments made to the life insurer under the life insurance contract



5.5 Notwithstanding the previous Member States may allow Paying Agents (or Paying Agents Upon Receipt) to report only the following:

- 5.5.1 in the case of interest payments within the meaning of (i) debt claims, (ii) capital guaranteed securities, and (iii) income distributed from funds - the total amount of interest or income;
- 5.5.2 in the case of interest payments within the meaning of (i) accrued and capitalised debt claims, and (ii) accrued and capitalised funds - the total amount of the proceeds from the sale, redemption or refund related to such payments;
- 5.5.3 in the case of interest payments from life insurance policies - either the benefits about which the competent authority of the Member State of residence of the beneficial owner has not otherwise been informed, by the paying agent, either directly or via its fiscal representative or the competent authority of another Member State, pursuant to any legislative provision different from those necessary to implement this Directive, or the total amount paid out under life insurance contracts generating such payments.

5.6 The Paying Agent (or Paying Agent Upon Receipt) shall inform whether it reports the total amounts according to each of the previous three categories.

5.7 **Paying Agent Upon Receipt:**

- 5.7.1 The Paying Agent Upon Receipt shall inform the competent authority of the Member State where it has its place of effective management
- 5.7.2 In the case of shared beneficial ownership, a Paying Agent Upon Receipt shall inform where it has its place of effective management; whether the amount reported for each beneficial owner is the full amount attributable to the beneficial owners collectively; the actual share pertaining to the beneficial owner concerned or an equal share.

6. Withholding Tax

In those jurisdictions which allow withholding tax as an equivalent measure to exchange of information, the Paying Agent (or Paying Agent

Upon Receipt) shall levy a withholding tax at a rate of 35 % on:

- 6.1 **Debt claims** - interest paid or credited on debt claims of any kind;
- 6.2 **Securities with capital guarantee or linked to interest**- amount of any income paid, realised or credited on securities of any kind with a capital guarantee or linked to interest
- 6.3 **Accrued or capitalised debt or collective investments** - interest at the sale, refund or redemption of the debt or fund; either on the amount of interest or by a levy of equivalent effect on the full amount of the proceeds from the sale, redemption or refund
- 6.4 **Distributed income from collective investments** – on the amount of interest
- 6.5 **Annualised interest** - where a Member State exercises the option to annualise interest, : on the amount of annualised interest or other relevant income;
- 6.6 **Life insurance** - on the benefit calculated in accordance with that provision. Member States may allow paying agents to levy withholding tax only on the benefits about which the competent authority of the Member State of residence of the beneficial owner has not yet been informed, by the paying agent or its fiscal representatives pursuant to any legislative provision different from those necessary to implement this Directive.
- 6.7 **During the transitional period**, Member States levying withholding tax may provide that an economic operator making an interest payment to, or securing such a payment for, an entity or a legal arrangement referred to in Article 4(2), which has its place of effective management in another Member State, shall be considered to be the paying agent in place of the entity or legal arrangement and shall levy the withholding tax on that interest, unless the entity or legal arrangement has formally agreed to its name if any, its legal form, its place of effective management and the total amount of interest paid to it or secured for it being communicated in accordance with the fourth subparagraph of Article 4(2).



7. Exempted: gross-up and early recall bonds

Although the EU savings tax directive exemption of gross-up /early recall Negotiable Debt Securities - is unchanged, it is worth noting that the transitional period for withholding tax allowed by Luxembourg / Austria is extended beyond the 2010 deadline. This means the grandfathered bonds exemption will be extended for bonds which have specific clauses dealing with both gross roll-up and early recall.



Amendment legislative clause

[Article 15(1) of COUNCIL DIRECTIVE 2003/48/EC]

...should the transitional beyond extend 2010, the provisions of this Article [grandfather exemption of bonds] 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 in a Member State applying the 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 another Member State.*

7.1 Reason for extending grandfather exemption

In the case of bond issues, a "grandfathering clause" is included in the savings tax directive to avoid market disruption. Many existing issues of domestic and international bonds and other negotiable debt securities contain so called "gross-up" clauses. A gross-up clause commits the issuer to compensate the investor (i.e. to "gross-up") for any tax withheld by the issuer's state of establishment. However, an early redemption clause usually allows the issuer the alternative of redeeming (or "calling") the whole bond issue at par value. Such early redemption would take place at par value and not at the current market value of the bonds and this could entail financial losses for the bondholders depending on market conditions.



7.2 Luxembourg / Austrian Paying Agent exempted

There is a risk that the imposition of a withholding tax by Austria or Luxembourg during the permitted transitional period could trigger the application of such gross-up clauses. The grandfathering clause would therefore ensure the exemption of bonds and other negotiable debt securities issued before March 2001 from the scope of the Directive for the duration of the transitional period.

7.3 All Paying Agents – Withholding or exchange of information

In order to avoid competitive distortions between paying agents in different Member States, this exemption or "grandfathering clause" would apply irrespective of whether the paying agents were established in Member States which levied a withholding tax or exchanged information.

7.4 Grandfather exemption extension

Provision is also made in the proposal for special 'grandfathering' treatment where there were further issues of bonds on exactly the same conditions as an existing bond issue (i.e. where a "tap" occurred on an existing bond issue) after 1 March 2002.

In summary, all EU bonds that have a gross-up and early recall will be exempt from the EU savings tax whilst the Luxembourg / Austria transitional period to withhold tax continues.

APPENDIX

EU SAVINGS TAX AMENDMENTS SUMMARY

Clause	Par	
Beneficial Owner	2.1	Individual
	2.2	On behalf of someone else
	2.3	Entity or legal arrangement outside territory for the benefit whose identity shall be according to Art 7 and 8(1)(b) of 2005/60/EC
	2.4	Paying Agent Upon Receipt shall determine beneficial owner as:-
	a	Individual entitled to receive
	b	Individual who directly or indirectly contributed assets
	c	Individual who later becomes entitled within 10 years - Paying Agent Upon Distribution
Paying Agent	4.1	Economic operator
	a	to another another economic operator outside territory
	b	and knows it is for a beneficial owner
4.2	Paying Agent Upon Receipt - an untaxed entity or legal arrangement within the territory	
8	Exclude collective funds, pension or insurance services, exclusive public charitable purposes, paying agent knows all shared beneficial owners	
4.3	Paying Agent upon receipt entity opt out to be treated as an undertaking for collective investments	
Interest	6.1	a interest Paid on debt claims of any kind
	aa	any income paid, realised or credited on securities of any kind with 95% guarantee or 95% linked to interest
	b	interest accrued or capitalised at the sale, refund or redemption of the debt claims
	c	income distributed by undertakings for collective investments within territory, entities in 4(3), collective investment outside territory
	d	income realised upon the sale, refund or redemption of shares in funds in territory, entities 4(3), funds outside territory if > 25% asserts in debt claims
	e	benefits (excess over payments) from life insurance if contains a guarantee of income return or performance linked to > 25% interest
	6.2	1 - 3 For 6(1)(aa), 6(1)(b), 6(1)(c) & 6(1)(d) if no info on amount of income, then total payment is interest
	4	For 6(1)(e) if no info is avail on the amount is a benefit, then whole payment is interest
	6.3	For 6(1)(d) if no info on % assets, then assume more than 25%
		For 6(1)(e) if no info on % of performance linked to insurance, then assume > 25%
	6.4	If interest paid to entity or legal arrangement as per 4(2) the deemed interest to accrue to person as in 2(4) a - c
	6.5	For 6(1)(b) & 6(1)(d) MS shall have option requiring Paying Agents annualise interest & deem payments annually, even if no sale / redemption
	6.6	If Member States apply either par 1 or par 2, then shall be binding on other Member States
	1	For 6(1)(c) & 6(1)(d) Member States option exclude from interest income distributed whose investments in 6(1)(a) & 6(1)(aa) < 15% of assets
2	For 6(4) Member States option exclude from interest when entities & arrangements in 4(2) whose investments in 6(1)a & 6(1)(aa) < 15% of assets	
6.7	Debt threshold for 6(1)(d) and 6(1)(e) is reduced from 40% to 25% as from 1 January 2011	
6.8	How debt threshold is calculated for 6(1)(d) and 6(6)	
a	Fund rules or instrument of incorporation	
b	Agreement, contract or legal document made avail to economic operator	
c	Prospectus avail to investors	
2	If no documentation, then actual composition	
6.9	For 6(1)(aa)- debt claims : capital guarantee - only if issued after 1 July 2010. If before, exclude from 6(1)(d)	
6.10	For 6(1)(e) - insurance benefits - only if subscribed on or after 1 July 2010	
6.11	Member States shall have the option regarding income for 6(1)(d) which are not UCITS authorised, to regard interest accrued on ly after 1 July 2010	
Identity and residence of beneficial owner	3.1	Each Member State must adopt procedures to identify beneficiaries for the purpose of Articles 8 - 12 in 2003/48/EC
	3.2	a If contract before 1 Jan 2004 then name, address according to state regulation and 2005/60/EC
	b	If no contractual relations or after 1 Jan 2004, name, address, date & place birth, tax identification number per passport / ID card
		If before 1 Jul 2011 date & place birth only if no tax identification number
3.3	Country residence as per tax residence certificate, else permanent address	
a	If before 1 Jan 2004 address as per state regulations and 2005/60/EC	
b	If no contractual relation or after 1 Jan 2004, address per 3(2)(b) and updated	
	Tax residence certificate takes precedence over passport for address	
3.4	Each M.S. issuing tax identification no. must notify Commission of structure and format as well as which official documentation has the no.	
Information reporting by Paying Agent	8.1	1 Where the beneficial owner is resident in a MS other than that in which the paying agent is established, the minimum amount of information:
	8.1	a ID and residence of beneficial owner
	b	Name and address of Paying Agent
	c	Account number of beneficial owner, if none then identification of debt claim or insurance policy or security or share
	d	Information concerning the interest payment as per 8(2)
	2(i)	the total amount of its interest payments received or secured that shall be deemed to accrue to its beneficial owner
	2(ii)	for a beneficial owner according 2(4)(c) the amount that shall be deemed to accrue to that individual and date of accrual
	8.2	a for 6(1)(a) the amount of interest paid or credited;
	aa	for 6(1)(aa): either the amount of any income paid, realised or credited or the total amount of the payment
	b	for 6(1)(b) or 6(1)(d): either the amount of interest or income or the total amount of the proceeds from the sale, redemption or refund
	c	for 6(1)(c): either the amount of income referred to in that point or the total amount of the distribution
	d	for 6(4): the amount of interest attributable to each of the beneficial owners who fall within
	e	where a Member State exercises the option under 6(5): the amount of annualised interest or other relevant income
	f	for 6(1)(e): the benefit or total payment. If assignment 3rd party and no info on the value conferred: the sum of the payments made to the life insure
8.3	If shared b.o, place of effective management, whether amount reported for each b.o. is full amount attributable to b.os collectively, actual share pertaining to b.o. concerned or an equal share.	
8.4	Member States may allow paying agents to report only : The paying agent shall inform whether it reports the total amounts according to a,b,c	
a	the total amount of interest or income for 6(1)(a), 6(1)(aa) and 6(1)(c):	
b	the total amount of the proceeds from the sale, redemption or refund related to such payments for 6(1)(b) and 6(1)(d)	
c	for 6(1)(e) either the benefit or total payment:	
Withholding tax	11.1	Where the beneficial owner is resident in a MS other than the paying agent is established, where P.A according to 4(2) is established: 35% Withholding tax
	11.2	The paying agent shall levy withholding tax as follows:
	a	for 6(1)(a) on the amount of interest paid or credited
	aa	for 6(1)(aa) on the amount of any income paid, realised or credited
	b	for 6(1)(b) or 6(1)(d) on amount of interest or by a levy of equivalent effect on the full amount of the proceeds from the sale, redemption or refund
	c	for 6(1)(c): on the amount of income referred to in that point
	d	for 6(4): amount of interest attributable to each of the beneficial owners who fall within 1(1)
e	for 6(5): on the amount of annualised interest or other relevant income	
f	for 6(1)(e) on benefit. MS may tax only benefits the authority M.S. of residence has not yet been informed pursuant to legislative provision different from those necessary to implement this Directive	