



Second Draft of the Guidelines for the EU Savings Tax (EU Retention and Exchange of Information)

Foreword to the second draft:

Since the publication of the first draft, work has continued to go on. The aim is to co-ordinate the implementation stipulations with those of various EU member states and discuss with EU commission.

Although the work is not yet completed, some important issues have been able to be resolved. However, certain individual sections of these guidelines must remain provisional. This applies in particular to those areas of regulation that are the subject to varying interpretations of the Savings Tax guidelines within the EU and which, indirectly, are significant for the interpretation of the Savings Tax Agreement between Switzerland and the EU. These sections are shaded in grey. Those sections not shaded are considered to be final as of this time.

The second draft was drawn up in many consecutive working stages therefore highlighting the changes in the document would only result in unclarity. The structure and layout of the first draft has been retained on the whole with a few minor adjustments. However, the numbering differs slightly from that of the first draft. In reading the chapter and topic titles of this second draft, the changes are easily recognisable. Furthermore, the substance of the stipulations in the first draft has been retained to a great extent; the most significant change perhaps is the provisionally foreseen pro rata system for periodic interest in the transition phase, which takes into account planned regulations in individual EU member states to this effect.

The Central Office for Direct Federal Taxation aims to publish the final version of these guidelines as soon as possible. However, this will only be possible when important EU member states and dependent and associated countries have provided a final version of their own implementation stipulations.

These draft guidelines are subject to the EU Savings Tax Agreement between Switzerland and the EU coming into force and that it be declared applicable to Swiss paying agents with effect from July 1st 2005

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A. Contents

B. Abbreviations**C. Terms****I. Introduction**

Clause no.

Purpose	1
Scope of Application	2
Applicable Time Frame	3 – 4a
Applicable Law	5

II. Paying Agents

Definition	6 - 15
Registration	16 - 23
Accounting	24 - 25
Duties	26 - 27

III. Relevant Payees

Beneficial Owner Receiving an Interest Payment	28 - 29
Differentiating between Individuals and Legal Entities	30 - 31
Residency in an EU Member State	32
<i>EU Member states ("EU Area")</i>	33
<i>Non-Member States</i>	34
Identity and Residency	
<i>Principles</i>	35 - 39
<i>Certificate of Residency</i>	40 - 47a
<i>Special Cases</i>	48 - 56
Beneficial Ownership: Contracting Party is an Individual	
<i>Principle</i>	57 - 59
<i>Exception: Contracting Party Becomes Active</i>	60 - 61
<i>Exception: Paying agent is obliged to Act</i>	62 - 63
<u>Missing Identity between the Contracting Party and the Economic Owner</u>	64 - 71
<i>Usufructuary Rights</i>	72 - 73
<i>Fiduciary Relationship</i>	74 - 75
Beneficial Ownership: Contracting Party is a Legal Entity	76 - 78
Special Regulations for Trusts (Trustee as Contracting Party)	79 - 82
Over the Counter Trade	83 - 85

IV. Interest

Principle: Interest	86 - 87
<i>Direct Interest</i>	88 - 89
<i>Indirect Interest</i>	90 - 91
Delimitation: No Interest	92
Exemptions According to the Agreement	93
<i>Swiss Debtors</i>	94 - 95
<i>Private Loans</i>	96
<i>Grandfathering</i>	97 - 106
<i>Interest on Arrears</i>	107
<i>Swiss Investment Funds without Bank Declaration ("Affidavit")</i>	108
<i>Investment Funds: "De minimis" Rule</i>	109
Foreign Withholding Taxes Levied at Source and Other Retentions	110 – 111
Investment Funds	
<i>Categories</i>	112 - 116
<i>EU Investment funds</i>	117 - 121
<i>Swiss Investment Funds</i>	121 - 125
<i>Investment funds in Third Countries</i>	126
<i>Exemptions</i>	127
<i>"De Minimis" Rule</i>	128 - 130
<u>Investment Policy</u>	131 - 132
<u>Asset Test</u>	133 - 139
<u>Special Regulations for the Introductory Period</u>	139a
Newly Issued Investment funds	140 - 141
<i>Accounting-specific requirements</i>	142 - 148
Assessment Basis for Direct Interest	
<i>Principles</i>	149 – 150a
<i>Interest Credited to or Paid into an Account</i>	151 - 153
<i>Accrued Interest on Periodic Interest</i>	154 - 155
<i>Accrued or Capitalised Interest on Pure Discount Bonds</i>	156 - 158
<i>Accrued or Capitalised Interest on Combined Discount Bonds</i>	159 – 161
<i>Re-structuring and exchange</i>	162
Assessment Basis for Indirect Interest (Investment Funds)	
<i>Distributions</i>	163 - 165a
<i>Proceeds from Sale or Redemption</i>	166 – 168a
Treatment of Derivatives and Combined resp. Structured Financial Instruments	169 - 171
<i>Products with Capital Protection</i>	
<u>Options and Convertible Bonds</u>	172
<u>Derivatives with Capital Protection</u>	173 - 176
<i>Certificates</i>	177
<u>Certificates on Share Price Indices or Share Baskets</u>	178
<u>Certificates on Bond Indices or Baskets</u>	179
<u>Certificates on Investment Fund Indices and Fund Baskets</u>	180
<u>Certificates on Metals, Commodities and the like</u>	181
<i>Reverse Convertibles</i>	182 - 184
<i>Structured Credit and Damage Derivatives</i>	185 - 186
<i>Low Exercise Price Options (LEPO)</i>	
<u>In General</u>	187
<u>LEPOs on Bonds</u>	188
<i>Securities Lending</i>	189

<i>Repo-Transactions</i>	190 - 191
<i>Swaps</i>	192
Operational Aspects	
<i>Stock Keeping</i>	193 - 194
<i>Delivery without Payment</i>	195 - 196
<i>Evidence of the Purchase Price Date or Purchase Price</i>	197
Product Classification – Responsibility	198 - 203
V. Retention	204 - 220
VI. Exchange of Information	221 - 234

Appendix A: Information Exchange Form

B Abbreviations

Art.	Article
BBl.	Bundesblatt (Official organ for publishing Swiss Federal documents)
cf.	please compare to
cl.	Clause
DBG	Bundesgesetz über die direkte Bundessteuer vom 14. Dezember 1990, SR 642.11(Federal Savings Tax Law)
DVS	Hauptabteilung Direkte Bundessteuer, Verrechnungssteuer, Stempelabgaben der Eidgenössischen Steuerverwaltung, Bern (Central Office for Direct Federal Taxation, Stamp duties of the Federal Taxation Administration, Berne)
e.g.	for example
EG	Europäische Gemeinschaft (European Community)
EU	Europäische Union (European Union)
EWG	Europäische Wirtschaftsgemeinschaft (European Economic Community)
ff.	following
i.e.	That is to say
Para.	paragraph
No.	number
re	concerning
Resp.	respectively
SFA	Swiss Funds Association
SR	Systematische Sammlung des Bundesrechts (Systematic Summary of Swiss Federal Law)
UCITS	Units for Collective Investment in Transferable Securities Guideline 85/611 EU

C Terms**Agreement**

The Agreement dated October 26, 2004 between the European Community and the Swiss Federation on the EU Savings Tax, which is the equivalent of the stipulations set out in the Council Directive 2003/48/EG of June 3, 2003 with regard to the taxation of interest. (BBl. 2004 6541; SR 0.642.026.81)

Relevant Payee (beneficial owner of an interest payment)

An EU resident individual who receives an interest payment that is within the scope of the EU Savings Tax from a paying agent established in Switzerland.

EU Savings Tax

This is the global term for the system agreed upon between Switzerland and the EU for cross border securing of interest payments to individuals with residency in a European member state. This term not only includes EU withholding tax ("retention") but also voluntary exchange of information ("notification").

Law

The federal law on the Savings Tax Agreement with the European Community (Federal Savings Tax Law, FSTL; BBl. 2004 7186, SR 642.16).

The law serves to regulate the implementation of the Agreement and, together with the Agreement, contains the relevant stipulations for paying agents in Switzerland.

Exchange of Information

The voluntary exchange of information with express authorisation of the relevant payee.

Retention

The deduction levied on interest payments made to individuals resident in the EU by paying agents resident or established in Switzerland.

Interest

An interest payment within the scope of the Agreement.

I Introduction

Purpose

1. These guidelines give the paying agents in Switzerland an overview of their duties resulting from the Agreement. It does not purport to be complete and will be amended with further stipulations as and when necessary.

Scope of Application

2. Switzerland is introducing a system to the benefit of the EU member states, which provides for the taxation of interest payments to individuals with residency in the EU, in as much as these interest payments go through paying agents in Switzerland. Retention or voluntary disclosure is to serve this purpose. Also included is interest paid by debtors with residency outside the EU area.

The Agreement covers three main areas. These are:

- the tax securing procedures with regard to cross border interest payments to individuals with tax residency in an European member state,
- the exchange of information on request (administrative assistance) in the case of tax fraud or the like, as well as
- the cessation of taxation at source on cross-border dividend payments, interest and licence fees between related companies.

These guidelines are restricted to tax securing procedures.

Applicable Time Frame

3. The EU Savings Tax becomes effective on July 1st 2005 for an indefinite period of time
4. EU retention tax rates are regulated as follows:

For interest payments from July 1st 2005 until June 30th 2008: 15%

For interest payments from July 1st 2008 until June 30th 2011: 20%

For interest payments from July 1st 2011: 35%.

- 4a Interest due before July 1st 2005 is not subject to the EU Savings Tax even if it may be credited or paid out after this date. Disposals that take place before this date are also beyond the scope of the Savings tax even when the accounting i.e. the crediting of the revenue from the sale takes place after this date.

Applicable Law

5. Upon the Agreement entering into force, every term that is not defined in the Agreement or in the law will be interpreted according to Swiss law, except where those authorities responsible for the Agreement have agreed on a common interpretation which differs from that law. Any queries concerning the interpretation of the terms in the Agreement should be addressed to: The Federal Tax Authority, Hauptabteilung DVS, Sektion Inspektorat Finanzgesellschaften, or to the Department for International Tax Law and Double Taxation matters.

II The Paying Agent

Definition

The Agreement defines the following as Swiss paying agents:

6. Banks as defined by the Federal Law of November 8, 1934 on banks and savings institutions ("banks"),
7. Securities dealers as defined by the Federal Law on the Stock Exchange and Trading in Stocks of March 24, 1995 ("securities dealers").
8. Individuals and legal entities, partnerships and permanent establishments of foreign companies, who in the course of their activities regularly or occasionally hold, invest or transfer interest from third parties or only pay interest ("other paying agents"). "Other paying agents" are in particular investment fund management companies, insurance institutions, asset managers, fiduciary companies, lawyers and notaries as well as companies and permanent establishments belonging to foreign companies, which in the course of their business activities, regularly or also only occasionally, hold interest bearing assets or pay interest on money debt titles, without themselves being debtors.
9. Whoever trades privately but not on a commercial basis does not qualify as "other paying agents".
10. Should an interest payment be carried out through several intermediaries, who have been instructed to pay or collect interest by the debtor or the relevant payee, then only the ultimate intermediary who pays out interest to the relevant payee or collects interest on their behalf is considered as a paying agent.
11. In asset management, the ultimate paying agent is the entity that handles the technical management (deposit business) in as far as the relevant payee is a contracting party of the paying agent. Otherwise, the entity that carries out the administration of the assets is the ultimate paying agent. This entity can designate a third party (e.g. the preceding paying agents) to undertake the actual retention (cl. 204 ff) or the exchange of information (cl. 221 ff), however in this case too, remains responsible for the correct application of the EU Savings Tax towards the Federal Taxation Administration.
12. Where the contracting partner of the paying agent is a financial intermediary (bank, securities dealer, asset management, insurance institution, investment institution or investment fund management company), which is subject to appropriate controls as well as to appropriate regulation with regard to the prevention of money-laundering, so the paying agents, irrespective of residency or legal status of the financial intermediary, have no obligations to fulfil as paying agents, as defined in the Agreement. There are no additional duties of clarification or documentation.
13. Should a contracting party of a paying agent, without meeting the requirements of clause 12, believably claim to be paying agents themselves, then the paying agents are allowed to treat the contracting party as a paying agent, when the contracting party is resident in the extended EU area (cl. 14) and accepts to undertake the function of paying agent in writing. If the contracting party is resident in Switzerland, then the registration number (cl. 20) must be notified.
14. The extended EU area includes, apart from the 25 European member states, also Switzerland and the third countries, Andorra, Liechtenstein, Monaco and San Marino; as well as further dependent and associated areas of the European member states, Britain and the Netherlands; (Jersey, Guernsey and the Isle of Man; Anguilla, Cayman Islands, Montserrat, Turks and Caicos as well the British Virgin Islands; the Dutch Antilles and Aruba).

15. Contracting parties outside the extended EU area, which do not fulfil the requirements of clause 12 cannot be considered as paying agents, with the exception of trustees (cf. cl. 81) further the purposes of the Agreement. In this case, the paying agents must proceed in accordance with the requirements for relevant payee (Cl. 28ff.)

Registration

16. Whoever is a paying agent has to register themselves without being requested to do so, with the Federal Tax Authority, Hauptabteilung DVS, Sektion Inspektorat Finanzgesellschaften, Eigerstrasse 65, CH-3003 Berne.
17. The name (of the company) and the domicile or residence of the paying agents or, if it is a legal entity or an entity without corporate status with statutory domicile abroad or a sole proprietorship with residence abroad, the name (of the company) and the location of the Head Office and the address of the local executive body, the type of activity and the date company operations began are to be stated in the registration.
18. Banks and securities dealers, as defined in clauses 6 and 7 are considered as registered by the Federal Tax Authority, so long as they began operations before July 1st 2005. After this date, there will be an obligation to register before beginning operations.
19. Other Swiss paying agents will become obligated to register at the end of that quarter in which they transfer or have retained interest payments to the relevant payee.
20. The Federal Tax Authority advises the register number to the paying agents.
21. Whoever wants to cease business activities or sees their status as Swiss paying agents as no longer being fulfilled, must report this to the Federal Tax Authorities immediately.
22. The Federal Tax Authority decides the on the basis of this report or by force of its own authority, whether and at which point in time the duties of Swiss paying agents are ended and when the removal from the paying agents register takes place.
23. A Swiss paying agent, as defined in clause 13, must advise the preceding paying agents accordingly, before a removal from the paying agents register can take place.

Accounting

24. Swiss Paying agents must set up and conduct their accounting in such a way as to allow those facts which are relevant for the levying and calculation of retention to be easily and reliably ascertained and verified without any great effort.
25. Where data is processed electronically, the complete and correct processing of the relevant business activities and figures must be ensured, from the client credit advice note to the overall total of the retention delivered or reported. If the details and data are stored in electronic form, the Federal Tax Authority must be able to check the data at any time either on screen or on paper.

Duties

26. Swiss Paying agents are in particular responsible for:
 - the identification and documentation of the relevant payee,
 - assessing whether there is an interest payment being made,
 - levying and delivery of the retention, or
 - notification

27. The circumstances relevant to EU Savings Tax, such as status or change of domicile, are effective from that time which they come into force. The paying agents have no duty to clarify. Delayed notification, which is to the disadvantage of the relevant payee, comes into force upon its receipt by the paying agents (no retroactivity). However, it is at the discretion of the paying agents whether to accept retroactivity.

III. Relevant Payee

Beneficial Owners Receiving an Interest Payment

28. To qualify as a relevant payee, the 4 following conditions must be met cumulatively:
- person must be an individual
 - person must be resident in one of the European member states, and
 - receive an interest payment, and
 - must have beneficial ownership of it
29. Interest payments to legal entities are beyond the scope of the Agreement (but cf. cl. 78).

Differentiating between Individuals or Legal Entities

30. A legal entity is a corporate body, which by right of its legal recognition, has a legal capacity, i.e. has rights and duties in its own right. Legal entities have legal capacity. However, without their executive body, which acts on their behalf, they are incapable of acting. The executive body acts in name of the legal entity and not as an agent for them.
31. The following list contains some of the important forms of legal entities. It is not conclusive.
- Switzerland: Aktiengesellschaft (stock company), Gesellschaft mit beschränkter Haftung (company with limited liability), Kommandit-Aktiengesellschaft (limited partnership stock company), Genossenschaft (co-operatives), Stiftung (foundations), Verein (associations); "Anstalten", and other "Institute des öffentlichen Rechts" (public law institutions)
 - Belgium: Société anonyme (SA) (stock company), Société privée à responsabilité limitée (limited company)
 - Germany: Aktiengesellschaft (stock company), Gesellschaft mit beschränkter Haftung (company with limited liability); Kommanditgesellschaft auf Aktien (limited partnership stock company)
 - France: Société anonyme (SA) (stock company), Société privée à responsabilité limitée (SARL) (company with limited liability)
 - Britain: Company
 - Italy: Società per azioni (stock company), Società a responsabilità limitata (company with limited liability)
 - Canada: Corporation
 - Liechtenstein: Aktiengesellschaft (stock company), Stiftung (foundation), „Anstalt“, Trust reg.
 - Austria: Aktiengesellschaft (stock company), Gesellschaft mit beschränkter Haftung (company with limited liability)
 - USA: Corporation, limited liability corporation
 - Singapore: Limited company
 - Panama: Sociedad Anonima (stock company), Fundación (foundation)
 - Bahamas: Company, Foundation
 - British Virgin Islands: Company
 - Cayman Islands: Company.

Residency in a European Member State

32. To be a relevant payee, the individual must be resident in a European member state.

Member States of the EU ("EU Area")

33. Member states of the EU are: Belgium, Denmark (excluding Greenland and the Faros), Germany, Estonia, Finland, France (incl. the overseas territories: Guadeloupe, French-Guyana, Martinique as well as Reunion), Greece, Great Britain (incl. Gibraltar), Ireland, Italy, Latvia, Lithuania, Luxemburg, Malta, The Netherlands, Austria, Poland, Portugal (incl. Madeira and the Azores), Slovakia, Slovenia, Spain (incl. the Canary Islands), Sweden, the Czech Republic, Hungary and Cyprus (only the Greek part).

Non-member states

34. All other countries and territories are not affected by the EU Savings Tax with regard to the residency of individuals. This applies in particular also to Switzerland as well as third countries as set out in the resolution of Santa Maria de Feira of June 20. /21 2000 (Andorra, Liechtenstein, Monaco and San Marino) as well as the dependent and associated territories of the European member states of Britain and the Netherlands (Jersey, Guernsey and the Isle of Man; Anguilla, the Cayman Islands, Montserrat, Turks and Caicos as well as the British Virgin Islands; the Dutch Antilles and Aruba), which have been integrated by the EU in guaranteeing the taxation of cross-border interest payments to individuals.

Identity and Residency

Principles

35. To establish the identity and residence of the beneficial owner, the paying agents register the surname, first name and residency address, according to Swiss legal requirements for the prevention of money-laundering (The anti-money-laundering law of October 10, 1997).
36. It is the duty of the Swiss paying agents to identify the contracting party at the time their contractual relationship begins. The identification must be carried out based upon verifiable documents (passport or identity card). For paying agents under special legal supervision, the respective stipulations apply (e.g. "Agreement on the Swiss banks' code of conduct with regard to the exercise of due diligence").
37. Where the beneficial owner is resident in an EU member state but is not subject to tax on all elements of income, the EU Savings Tax still applies. However, should the paying agents prove that the recipient of the interest in an EU member state is generally exempted from income tax or that the interest paid is not subject to tax there as it is not remitted to the country of residence (remittance), then the EU Savings tax does not apply.
38. A mailing address that differs from the residence address is immaterial. The stipulations set out in clauses 35 and 36 apply.
39. For foreign members of the diplomatic or consular corps, the establishment of residency does not depend on the country of accreditation or domicile, but upon the state that the diplomat represents. If the state the diplomat represents is not a European member state, then the EU Savings Tax does not apply. If the state the diplomat represents is a European member state then the EU Savings Tax applies.

Certificate of residence

40. For contractual relationships or for transactions in the absence of a contractual relationship which was or will be entered into or carried out on or after January 1, 2004¹, residency must be proved with an official certificate of residence when an individual proves their identity with a passport or an identity card issued by a European member state and claims not to have residency in a European member state.
41. Residency in Switzerland absolves from the necessity of proving residency.
42. On principle, the certificate of residence must be issued by the tax authority of the state where the individual claims to be a resident.
43. Should the state of residency not have a tax authority, or if it is against the general practice of the tax authority of a state to issue certificates of residence, then an official certificate issued by another authority of that state suffices.
44. With the Agreement of the Federal Tax Authority, other documents can be accepted as proof of residency.
45. Where there is no certificate of residence, the member state which issued the passport or personal identity card is regarded as the state of residency and the paying agents must either carry out retention or notification.
46. In the question of whether an individual is to be identified by means of a certificate of residence, the date of the first contractual relationship is the deciding factor. Should this date be before January 1, 2004², there is no obligation for a certificate of residence.
47. Should an individual change their nationality after the entering into a contractual relationship with a paying agent and becomes an EU citizen, then there is no obligation to provide a certificate of residence.

Special Cases

48. The sole proprietorship is a company of which the sole owner is a single individual. The sole proprietorship is to be treated in the same way as an individual.
49. In the case of collective partnerships, only all the co-owners can have authority over the account or deposit ("and/and") collectively, whereas with joint accounts (compte-joint; ("and/or") every co-owner has unrestricted and individual authority over the deposited securities and available capital.
50. As long as at least one of the contracting partners is a relevant payee, then in principal the contractual relationship lies entirely within the scope of the EU Savings Tax. However, it is at the discretion of the paying agents whether to limit the EU Savings Tax to beneficial owners. In this case, the splitting of interest payments is to be carried out according to the number of contractual partners (head count) and the accounting set out accordingly, unless the paying agents has been informed of, and appropriately documented with, a different proportion quota.

¹ Comment on Clauses 40 and 46. The stipulations set out here are based upon the text of the Agreement. In as far as the German Federal Ministry of Finance upholds their implementation stipulations as set out in the implementation brochure on the Interest Information regulation of January 6, 2005, the Swiss Federal Tax Administration reserves the right to adapt the above-named clause to the German regulation (i.e. the obligation on the part of the paying agents to obtain a certificate of residence only for contractual relationships / transactions from July 1, 2005 instead of January 1, 2004).

²cf footnote 1

51. For a community of heirs the last known residency of the bequeather is relevant for EU Savings Tax purposes. This remains unchanged until the final proceedings of estate distribution have been completed and the paying agents have been informed of the results. From then on, the stipulations for a collective relationship apply (clauses 49 and 50).
52. If the winding up of the estate does not take place with the intention of avoiding the heirs being affected by the EU Savings Tax, the Federal Tax Authority can rule that the residency of the heirs counts as being applicable for tax purposes.
53. For the purposes of these guidelines, sole proprietorship, collective partnership and limited partnership stock companies are referred to as a partnership.
54. A business partnership is a company, which is a business in trade, manufacture or another form of enterprise, operating along commercial lines or otherwise takes active part in business (like for example a lawyer's practice, doctors' group practice). For the purposes of the EU Savings Tax, business partnerships are on a par with legal entities.
55. Non-business partnerships follow the stipulations for general partnerships (clauses 49 and 50).
56. Flat owners' groups are on a par with legal entities for the purposes of the EU Savings Tax.

Beneficial Ownership: Contracting Party is an Individual

Principle

57. Beneficial owners are individuals, who receive interest for themselves or for whom the interest is accrued, unless the receiver can prove that they have not received the interest for their own benefit.
58. In practice, the term "economic owner" according to the terms of the Anti-Money Laundering law and the "beneficial owner" according to the terms of the Agreement with regard to individuals are largely the same.
59. Paying agents can assume that the contracting party is identical with the beneficial owner. There is no duty on the part of the paying agent to actively gather information on the question as to whether the contracting party is also the beneficiary e.g. that they request a declaration from all contracting parties on their beneficial ownership as defined in the Agreement.

Exception: Contracting Party Becomes Active

60. Should the contracting party not agree with the assumption that he is the beneficial owner, then the contracting party is obliged to disclose the beneficial owner(s) or to provide evidence that he is a paying agent.
61. A declaration, which is received by the paying agents at a later date, becomes effective upon receipt by the paying agents or with the registration in the paying agents system (no retroactivity). However, it is at the discretion of the paying agents whether they wish to accept retroactivity out of goodwill for the contracting party.

Exception: Paying Agents are obliged to Act

62. Should the paying agents have information, which indicates that the individual, for whom interest is secured, is not the beneficial owner, then they are to take reasonable steps to establish the identity of the beneficial owner (Duty to Clarify).
63. This duty to clarify applies in the following cases:

- where the identity of the contracting party (individual) differs from the identity of the "economic owner" ("wirtschaftlich Berechtigte" or "ayant droit économique") and this documented (in particular on form A),
- where there is a written documented usufructuary relationship,
- where there is a written documented fiduciary relationship.

Missing identity between the Contracting Party and the Economic Owner

64. Should the contracting party be an individual and should it be found that upon establishing the identity of the economic owner, in terms of the Anti-money laundering law, that another individual with residency in an EU member state is the economic owner, then the paying agents must establish who is the beneficial owner as defined by the Agreement.
65. For general and group relationships as well as for non-business partnerships as the contracting party, the stipulations as in clause 64 apply.
66. Should the paying agents find that there is a need for clarification with regard to the beneficial owner in terms of the Agreement, they clarify the beneficial ownership of the contracting party and document the result appropriately.
67. Simple written evidence suffices; actual documents are not required.
68. If the paying agents are unable to immediately clarify the beneficial ownership (e.g. hold mail account, account opening by correspondence) then the paying agents may assume that the contracting party is the beneficial owner in terms of the Agreement, until such time as they should receive a declaration to the contrary.
69. A declaration, which is received by the paying agents at a later date, becomes effective upon receipt by the paying agents or with the registration in the paying agents system (no retroactivity). However, it is at the discretion of the paying agents whether they wish to accept retroactivity out of goodwill for the contracting party.
70. Should a declaration not be available, then the paying agents must record in writing what steps they have taken to obtain a declaration. A single written request to the contracting party suffices.
71. Should there be no information obtainable from the contracting party, then the contracting party is regarded as the beneficial owner.

Usufructuary rights

72. The usufructuary rights are characterised in that the assets that are the property of one or several people is encumbered by a right to enjoy to the benefit of one or several people. Right-to-enjoy relationships are only those with documented relationships. Cases in which interest payments are credited to another account only on the basis of a respective instruction from the customer, do not qualify as usufructuary rights.
73. For the purposes of the EU Savings Tax, it applies to the owner of the usufructuary rights and not to the simple property owner.

Fiduciary relationship

74. The fiduciary relationship is characterised in that one person, the transferee of fiduciary property obtains as property objects, securities or money debts and contractually undertakes in the interests and for a fee and at the risk of one or several people (transferor of fiduciary property) to hold, administrate and to use according to their instructions.
75. For the purposes of the EU Savings Tax the transferor of fiduciary property is the beneficial owner and not the transferee of fiduciary property.

Beneficial Owner: Contracting Party is a Legal Entity

76. Legal entities are on principle not beneficial owners in terms of the Agreement.

77. The owners (company, shareholders etc.) of a legal entity are not relevant in connection with the EU Savings Tax, also where they are individuals. This also applies when the identification or the establishment of the economic owner in terms of the Anti-money laundering law (e.g. Form A for banks) is available.
78. Should the paying agents have written fiduciary relationship contract or written evidence of an agreement on usufructuary rights, then the conditions in clause 64 apply i.e. that the paying agents have an obligation to clarify if necessary apply the stipulations of the EU Savings Tax. However, the paying agents are under no general obligation to clarify whether a fiduciary relationship or usufructuary rights exists.

Special Regulations for Trusts (Trustee is Contracting Party)

79. A trust is a fiduciary-like relationship between the settlor and the trustee. The settlor sets up the trust in that they give power of attorney to the property to the trustee. The trustee (if applicable several trustees as so-called Co-Trustees) takes over and holds the property «on trust» for the beneficiaries, to which also the settlor or the trustee can belong. Rights and duties of the participating parties are set out in a special document («Trust Instrument», «Trust Deed» or «Declaration of Trust»).
80. In the case of a trust relationship, the trustee is considered as the beneficial owner in terms of the Agreement.
81. The Trustees are the paying agent when they are obliged to pass on the earnings from the trust assets directly to the authorised person as such. This applies in particular to trusts of the “fixed interest trust”, “life interest trust”, “interest in possession trust” and “bare trust” type.
82. In all other cases, in principle, the trustee is considered the beneficial owner in terms of the Agreement. Should individuals and legal entities share the function of a trustee and where one or more of the individuals are relevant payees, the stipulations set out under clause 49 and 50 apply for the preceding paying agents. However, should the trustee declare in writing to the paying agents that a third party is the beneficial owner and makes the identity known, then this third party is considered the beneficial owner. Trust payments, with the exception of the circumstances outlined in clause 81, do not represent interest payments.

Counter Trade (Over-the-Counter Trade)

83. Should an interest payment be made over the counter by one of the paying agents from the cash, without the necessity to establish the identity of the contracting party, in accordance with the terms of the relevant law, then the paying agents may rely upon the details given by the contracting party. An address given in a European member state always results in retention.
84. Must the identity of the contracting party be established, or the interest payments transacted through an account, then the general conditions apply.
85. The assessment basis is set out in the general stipulations (cl. 149ff).

³ The inclusion of the over-the-counter trade in the EU Savings Tax system is based on the interpretation of Art. 6 para. 1 point a of the Agreement by the EU Commission departments responsible and assumes that the EU member states will follow this interpretation uniformly. The wording of the published German version of the 2003/48/EG Guideline of the Council and the German version of the Agreement excludes over-the-counter trade at this time; it is probable that this point will be corrected later in the German language version and published.

IV Interest

Principle: Interest

86. The term interest in the Agreement is broadly based and includes not only interest earned directly in connection with money debts (*direct Interest*) but also interest earned indirectly, through investments in certain collective funds (Investment funds) (*indirect Interest*).
87. The domicile of the debtor is irrelevant. Sole exception: Swiss debtors (clauses 94 and 95).

Direct Interest

88. As interest is considered interest which is **paid** or credited to an account relating to money debts of every type. In particular, interest on fiduciary deposits, income from government bonds, loans and bonds including any premiums⁴ and profits⁵.
89. Accrued and capitalised interest on the disposal or redemption of money debts are also subject to the EU retention. In particular, the discount component (or agio) on discount bonds (e.g. zero bonds), the difference between the issue price and redemption price where the redemption price of the bond is higher than 100% as well as the accrued interest on the coupons upon a disposal, fall under this category.

Indirect Interest

90. Distributions from investment funds qualify as interest so long as the investment fund invests more than 15% **directly** in investments that generate interest as defined in the Agreement.
91. Thereafter, the earnings realised upon the sale or redemption of units in an investment fund fall under the scope of the EU Savings in as much as the investment fund **directly or indirectly** invests more than 40% (from January 1st, 2011: 25%) of its assets in funds which generate interest as defined under the terms of the Agreement.

Delimitation: No Interest

92. Not considered as interest are those payments on shares (dividends), payments from insurance policies, pensions from pension funds as well as further payments which are not based on any loan relationship.

⁴ For definition cf. Pfund, Walter Robert: The Swiss Federal Withholding Tax, Part 1 Introduction and comments on Art., 1 to 20 of the law, Basle 1971(cited: Pfund, Withholding Tax No.2. 18ff

⁵ For definition cf. Pfund, Withholding Tax, Art. 4, No. 2.3

Exemptions According to the Agreement

93. Although technically interest, the following payments are beyond the scope of the EU Savings Tax in accordance with specific stipulations to this effect in the Agreement:
- interest from debtors with residency in Switzerland
 - interest on private loans
 - interest on "grandfathering" bonds
 - interest on arrears
 - distributions and interest that is gained through the sale or redemption of certain investment funds.

Swiss Debtors

94. Interest that is based upon money debts in favour of debtors with residency in Switzerland, or corresponds to Swiss permanent establishments of non-Swiss residents, is also beyond the scope of the EU Savings Tax. This applies in particular to interest on loans from Swiss businesses through their companies.
95. This exception in particular includes interest on credit balances (e.g. on saving accounts, premium deposits and rental deposits) as well on medium-term bonds and bonds.

Private Loans

96. Interest based on loan relationships between individuals who are not acting in a commercial capacity, is also beyond the scope of the EU Savings Tax. This applies, irrespective of the residency of the interest debtor as well as the interest creditor.

Grandfathering

97. Grandfathering bonds that are dated prior to March 1st, 2001 are beyond the scope of the Agreement during the transition period. During the transition period, these bonds do not count as money debts under the terms of the Agreement.
98. On principle, the transition period ends on December 31st, 2010.
99. The grandfathering of bonds applies to all transferable money debt securities, which were issued for the first time before March 1st 2001 or for which the accompanying share issue prospectus was approved before this date. In general, for transferable money debt titles that were issued on or after March 1st 2001, grandfathering does not apply, unless the original prospectus was approved before this date.
100. Non-transferable money debt securities are customer credit balances; fiduciary deposits as well as medium-term bonds.
101. Grandfathering depends upon whether on or after March 1st 2001; further bonds are issued of the bonds concerned.
102. Should no further bonds be issued, then grandfathering applies.
103. Should the transferable money debt securities of a government (also outside a EU member state), or an institution related to it, be issued and takes place on or after March 1st, 2002, then the whole

issue i.e. the first and all further issues are not included in the grandfathering clause and therefore lies within the scope of the EU Savings Tax.

104. The term "related institution" refers to public bodies that are authorised by a government to issue government bonds, not however, companies in public ownership that issues money debt titles. The appendix to the Agreement is the relevant and conclusive authority on this point.
105. Should the transferable money debt security be issued by another body (not a government) then the following criteria must be applied:
- Should the further issue take place before March 1st, 2002, then the first and all further issues up to this time, fall under the scope of the grandfathering clause.
 - All further issues at a later date fall under the scope of the EU Savings Tax. The first issue (before March 1st 2001) or further issues between March 1st, 2001 and February 28th, 2002 however, are not affected.
106. For certain money debt securities, an extension of the transition period beyond December 31st, 2010 is possible. The Federal Tax Authority will inform the paying agents by June 30th 2010 if and when, which titles come under this regulation.

Interest on Arrears

107. Interest on arrears does not lie within the scope of the EU -Savings Tax

Swiss Investment Funds without a bank declaration (Affidavit)

108. Income from Swiss sources are those earnings from Swiss investment funds which cannot give a bank declaration (Affidavit) in terms of the withholding tax law, because more than 20% of the fund earnings are from Swiss sources. Accordingly, these funds are beyond the scope of the EU Saving Tax.

Investment funds: "De minimis" rule

109. The conditions determining the "de minimis" rule for investment funds are set out in clause 128ff.

Foreign withholding taxes levied at source and other retentions

110. Where an interest payment or retention is subject to a foreign withholding tax levied at source (e.g. the additional withholding tax levied on Canadian source of income under the Canada Swiss treaty) can be offset against the EU retention. If the EU retention is higher than the withholding tax already paid then the EU retention will apply only to the difference.
111. For the exchange of information, it is at the discretion of the paying agent whether it is notified with or without taking the withholding tax into account.

Investment Funds

Categories

112. The Agreement recognises three categories of investment funds:
- Bodies and institutions in a European member state for collective investments (EU investment funds)
 - Swiss investment funds, and
 - Investment funds which are domiciled outside the EU and domiciled outside Switzerland (Investment funds in third countries).
113. The general principles concerning the definition of the term interest und the corresponding exemptions (clause 86ff.) also apply to investment funds that make investments under the terms of the Agreement.
114. The term "investment funds" is used, irrespective of the legal structure of the investment fund, whether in the form of a contract or in a corporate body.
115. The name and description are irrelevant as far as the classification is concerned.
116. The term "Unit" (which is the rights of participation in a fund which is based on a contractual agreement) and also includes the shares (which represent the share in the capital of a corporate investment fund).

EU Investment Funds

117. The term "investment fund with domicile in the EU" is defined in the Agreement. Included are exclusively units for collective investment in transferable securities (UCITS) as according to Guideline 85/611 EU.
118. Certain EU resident institutions can opt⁶ to be handled as a UCITS.
119. Swiss paying agents may take on the classification and interest calculation for EU investment funds, as the investment fund would do in its country, of or without further clarification, This determining on "home country rule" applies independently of whether the investment fund is permitted to operate in Switzerland or not.
120. Irrespective of the conditions set out in clause 119, paying agents in Switzerland may take the rules set out in the Agreement for investment funds set up in the EU into consideration (e.g. the exemption for Swiss debtors). This is with the pre-requisite that the investment fund administration identifies the relevant data and makes this available to the paying agent.
121. Investment funds in the dependent and associated territories of the EU member states Great Britain and the Netherlands (Jersey, Guernsey and the Isle of Man; Anguilla, the Cayman Islands, Montserrat, Turks and Caicos as well as the British Virgin Islands; Dutch Antilles and Aruba as well as Andorra, Liechtenstein, Monaco and San Marino) are treated on equal terms with EU investment funds in as far as the EU or Switzerland recognises the local authorities as equals. Recognition by the EU is taken as given when, in contracts between the EU or its member states and the named territories, such recognition is intended⁷.

⁶The Agreement refers to the EU Directive 2003/48/EG dated June 3, 2003 concerning the taxation of interest payments. Funds that do not fulfil all the criteria of the UCITS directive may under certain circumstances opt to be treated in the same way as an EU investment fund (Art. 6. Para. 1 lit.c.ii of the directive).

⁷ The EU norm equivalent regulations apply according to the relevant Agreements on EU Savings Tax for Investment Funds in the following territories: Jersey, Guernsey, the Isle of Man, the Cayman Islands, Montserrat, Turks and Caicos as well as the British Virgin Islands. There is no such recognition contained in the respective Agreements with Anguilla, Aruba and Dutch Antilles.

Swiss Investment Funds

122. Swiss investment funds are domestic investment funds as well as fund-like special assets approved by the Federal Banking Commission.
123. Only Swiss investment funds which are not subject to Swiss withholding tax on their payments to the relevant payee come under the scope of the EU Savings Tax. Should an investment funds fulfil the requirements under which in exchange for a bank declaration (Affidavit) no withholding tax on earnings from investment fund units may be levied (Art. 11 para. 2. of the Withholding Tax Law; Bank Declaration Note (Affidavit) of April 30th, 1998), then it falls within the scope of the EU Savings Tax, irrespective of whether the withholding tax is actually levied or not.
124. Investment fund-like and bank-internal special assets fall under the scope of the EU Savings Tax, where the paying agent has a bank declaration (Affidavit).
125. Swiss property funds in general are exempted

Investment funds in a third country

126. Investment funds with their domicile in a third country are regarded as coming under the scope of the EU Savings Tax where the investment product:
- serves as a collective capital investment and,
 - is subject to legal stipulations for investment funds or similar special legal stipulations in the country of domicile and
 - there is an undertaking on the part of the issuing party, when requested by the investor, to redeem the units a minimum of four times a year at net inventory value.

Exemptions

127. Distributions from Swiss and foreign investment funds which entirely follow a capital-earning investment policy and which fulfil the requirements set out by the Federal Tax Authority (see SFA circular No. 40/98 of November 10th, 1998), are beyond the scope of the EU Savings Tax.

"De minimis" rule

128. The Agreement recognises two "de minimis" rules for all relevant investment funds:
- investment funds, which directly invest to a maximum of 15% of their assets in money debts, whose earnings are subject to the EU Savings Tax, are generally exempted, that is to say, that neither distributions nor earnings that are incurred on sale or redemption, are subject to EU Savings Tax.
 - investment funds, which directly or indirectly, invest to a maximum of 40% of their assets in money debts, whose earnings are subject to the EU Savings Tax, are also exempt, only the distributions fall under the scope of the EU Savings Tax but not the earnings in the case of sale or redemption of this fund share. The limit of 40% will be reduced to 25% from January 1st 2011.
129. The investment policy, as set out in the investment fund prospectus or in the fund deed, or, in the absence of such documentation, the actual composition of the capital (asset test) of the respective investment fund, form the authoritative basis for the determination of the limit of 15% (or 40% respectively).
130. In many countries the fund regulations authorize the umbrella investment funds. Umbrella Investment funds are made up of many sub-funds, which can follow completely different

investment policies. Regarding investment policy and asset test, each of the individual sub-funds must be evaluated.

Investment policy

131. If it should become evident from the investment policy that the investment fund may invest up to a maximum of 15% or 40% resp. in affected interest products, then the actual composition of the assets is irrelevant.
132. Any change in the investment policy is relevant for the paying agents from that time they receive notification of the change.

Asset test

133. Should it not be possible to ascertain any definite details from the investment policy in order to establish the „de minimis“ limit, then the evaluation must be carried out based on the actual composition of the capital (asset test).
134. The asset test is based on two closings of the investment fund, the audited year-end closing and the half-year closing that immediately precedes the year-end closing. Should there be no half-year closing, then the two previous year-end closings are taken as the basis for calculation.
135. From these two closings, the debt claims subject to the EU Savings Tax are to be ascertained and to be placed in relationship to the total shares and then the mathematical average should be calculated from the two percentages.
136. The result of this procedure is valid for a period of 12 months, beginning on the first day of the fifth month after the year-end closing of the investment funds.

Example: For this investment fund, the financial year and the calendar year are the same.

<i>Asset test as of 31.12.2005 (Year-end closing)</i>	<i>30%</i>
<i>Asset test as of 30.6.2004 (Half-year closing)</i>	<i>40%</i>
<i>Average</i>	<i>35%</i>

This investment fund is for the period between 1.5.2006 and 30. 4. 2007

- for distributions not exempted*
- for sale/redemption proceeds exempted*

137. According to the terms of the Agreement, there are different criteria for the asset test to ascertain the 15% and the 40% limit. Whereas for the 15% limit, only direct money debts are to be taken into consideration, for the calculation of the 40% limit, both the money debts held directly and indirectly count.
138. Investments made by an investment fund in funds as defined in clauses 125, and 127 as well as in funds with directly no more than 15% of their assets in money debt securities (Clause 128 point 1), whose earnings are subject to EU Savings Tax, are not considered as money debt securities which are subject to EU Savings Tax for the purposes of the calculation of the asset test.
139. Otherwise, the interest products concerned are to be taken into consideration according to the proportion of the effective amount of the holding.

Example 1: The assets of investment fund A are composed as follows:

• Swiss bonds	20%
• Grandfathered Bonds	30%
• Commercial papers	14%
• Investment fund B	36%

For ascertaining the direct investment, only the commercial papers are taken into account: The investment fund is exempted from the EU Savings Tax in general. Neither the distribution nor the earnings gained on the sale or redemption of the unit falls within the scope of the EU Savings Tax.

Example 2: The assets of investment fund A are composed as follows:

• Swiss bonds	20%
• Grandfathered Bonds	30%
• Commercial papers	20%
• Investment fund B	30%

The direct investment in the form of commercial papers is 20%. The portion of distribution related to commercial papers is subject to EU Savings Tax.

For ascertaining the distribution limit of 40%, Investment fund B must also be taken into account: This is considered as an investment fund according to the terms of the Agreement and has been invested as follows:

• Commercial papers	90%
• Grandfathered Bonds	10%

The indirect investment of Investment fund A in Investment fund B results in a share of 27% in non-exempted money debt. Together with the directly held commercial papers of 20%, this gives a total quota 47%. Earnings from the sale and redemption of fund units fall within the scope of the EU Savings Tax.

Special regulations for the introductory period

139a. For investment funds that are issued before July 1, 2005 the Federal Tax Authority can specify a date for the asset test, which lies between March 1, 2005 and May 31, 2005. The date specified is to be applied uniformly and bindingly to all funds under the same investment fund management.

Newly-issued investment funds

140. For investment funds that are issued after July 1, 2005, then on principle the investment policy applies.

141. Should this not be definitive, then this investment fund is not exempted from EU Savings Tax until that time, when the first half-year or year-end closing is available and an evaluation, according to the respective criteria, is possible.

Accounting-specific requirements

142. To ascertain the interest share in the case of distributions, or for sale or redemption of investment fund units, the investment fund accounting is the authoritative basis.

142a. Distributions which are made after July 1, 2005 but which relate to the period before July 1, 2005

(the official closing date of the investment fund) are beyond the scope of the EU Savings Tax. However, the pre-requisite is a relevant confirmation by the investment fund management to the paying agents.

143. To allow the paying agents to show the interest element for distributions or for sale and redemptions separately, the investment fund is obliged to keep daily records of the interest they have collected or accrued from direct or indirect investments and to advise the paying agents.
144. In determining the earnings which are gained from sale or redemption of fund units, the interest from investments in target funds are to be taken into consideration when those target funds are affected by the Agreement. However, only that interest which stems from funds subject to the EU Savings Tax is relevant.
145. Should the target fund pay interest, then that part of the interest which is earned by the target fund during the period of time the unit was held, is to be taken into account.
146. In this case, the accrued and capitalised interest from the target fund is to be registered at every calculation of interest carried out by the investment fund.
147. Passive interest and the operating costs can be proportionately deducted by the investment fund from the interest earnings. The deductible portion corresponds to that portion of the interest from the total earnings from all investments in the investment fund.
148. The computation of the interest should proportionally take into account the interest upon the acquisition or the issue of the units in the fund and upon the redemption or the disposal of the units in the fund.

Assessment Basis for Direct Interest

Principles

149. The retention on the interest is to be proportionally made for the time period during which the money debt is held. Contrary to the Swiss withholding tax due date principle, pro rata taxation takes place. This also means, in particular, that the accrued interest collected on the sale of a money debt, is subject to retention.
- 149a Interest for interest periods that begin before July 1, 2005 and end after this date are recorded pro rata temporis.
150. Should the paying agent not be able to establish the period of time that the money debt was held, and then the paying agent treats the beneficial owner as if they held the money debt for the whole interest period. For periodical interest and accrued interest on periodical interest, the date of the last interest payment counts as the date of purchase.
- 150a To ascertain the interest on discount components that are subject to retention, for pure and combined discount bonds, the earliest purchase date of July 1, 2005 applies. Should a higher purchase price be established prior to this date, then this is considered the purchase price.

Interest paid into or credited to an account

151. To calculate the interest, the usual calculation methods may be used which are normally used for this type of money debt titles.

152. Interest paid into or credited to an account is subject to the retention tax at the time of paying into or crediting the account. The deduction is made proportionally to the period of time during which the money debt was held.

Example: A bond has an annual due date for interest coupons on 30.6. On 31.3. 2006 a disposal of bonds takes place. The purchaser holding the bond on 30.6.2006 is subject to the retention for a 3 month pro rata portion of the interest.

153. In the case of early redemption of a money debt title, a redemption agio⁸ is subject to retention at the time of the redemption; however, the redemption premium⁹ is not regarded as an interest payment but as compensation that is not subject to retention.

Accrued interest on periodical interest

154. Interest that is paid upon changing hands by the purchaser of the bond to the seller, i.e. which is not credited by the bond issuer, is regarded as accrued interest.
155. For sales, the incurred accrued interest is calculated on the holding period of the bond (linear method).

Example: A bond has an annually due date interest coupon on 30.6. On 30.9.2005 A sells the bond to B. The accrued interest that B pays to A for the 3 months is subject to retention. B on his part sells the bond on 31.3.2006 to C. As a result of this transaction, B collects an accrued interest for the period between 30.6.2005 and 31.3.2006 (9 months) from C. However, the retention only applies to accrued interest for the effective holding period of 6 months.

Accrued or capitalised for pure discount bonds

156. Pure discount bonds are bonds with a fixed in advance emission and redemption price.
157. In contrast to the regulation under the Direct Federal Tax (Paragraph. 20, sub-paragraph 1 let. b), which refers to ascertaining the taxable earnings on the difference between the purchase and selling price (the so-called "Differenzbesteuerung"), the analytical method is used to ascertain the retention on the interest share due during the holding period. The calculation is carried out according the so-called discounted cash flow method.
158. For discount bonds with a variable redemption price, for the calculation of the portion of interest during this period, the guaranteed redemption price is relevant. The difference between this and the higher redemption price is recorded upon the date of redemption.

Accrued and capitalised interest for combined discount bonds

159. The discount component and the periodically paid interest are ascertained according to the current rules regarding these earnings (see clause 151ff.). A discount component to a maximum of up to ¼% a year term, maximum 2.5%, need not be taken into consideration.

160. For further issues, the limit is not applicable in accordance with clause 159, as long as the discount serves the sole purpose of establishing fungibles of the conditions to the emission already being traded on the market.

⁸ Re Definition cf.. Pfund, Withholding Tax, Art 4, No.2.34

⁹ Re Definition cf. Pfund, Withholding Tax, Art, 4, No.2.33

161. For options and convertible bonds cf. clause 172.

Re-structuring and exchange

162. Accrued interest on the re-structuring or exchange of money debt securities comes under the scope of the EU retention at the time of the exchange. This applies to both compulsory and discretionary exchanges.

Assessment Basis for Indirect Interest (Investment Funds).

Distributions

163. For the distributions of investment funds, that part of the distribution is subject to retention that is drawn from the interest collected by the investment fund from direct investments in money debt titles. If the interest component of the distribution is not separately set out, the entire distribution is subject to retention. Distributions in the form of new unit shares are treated in the same way as cash distributions.

164. The tax is levied proportionally for the time period in which the beneficial owner holds the unit. For practical reasons, the relevant interest is ascertained by means of a pro rata temporis method, disregarding the effective interest collected by the investment fund in the time period concerned.

165. Should the paying agents be unable to establish the time period for which the unit was held, then the beneficial owners should be treated as if they held the unit for the entire interest period. The earliest purchase date is taken as the date of the last distribution.

165a. If the date of the last distribution falls before July 1, 2005 the date from which the unit is held is considered to be July 1, 2005 (Special regulations for the introductory period).

Proceeds from Sale or Redemption

166. Under the terms of the Agreement, the positive difference between the purchase and selling price on sale, repayment or redemption of a unit is regarded as interest (the so-called "reine Differenzbesteuerung"). If it is possible to ascertain to what extent the increase in value is due to direct or indirect interest collected by the investment fund, then only these components are regarded as interest.

167. Should the purchase price not be ascertainable, then the entire sale or repayment earnings are regarded as interest.

168. Retained interest as defined in clause 86ff, which is collected by a fund during a period of time in which, due to the "de minimis" rule, it is generally exempted from EU Savings Tax, is added to the taxable interest payment if the sale or redemption of the fund happens at a time when it is not exempted from EU Savings Tax.

168a. The earliest purchase date is July 1, 2005. Should a higher purchase price be proven before this date, then this is regarded as the purchase price.

Treatment of Derivatives and Structured Financial Products

169. Under a narrower definition, the term derivative includes options, forwards, futures and swaps. In the broader terms, however it includes all products whose value increase is partially or entirely due to the increase in value of an underlying.

170. Derivatives do not generate interest under the terms of the Agreement.
171. The combined or structured financial instruments are divided into two groups:
- Products with capital protection
 - Products without capital protection

Products with capital protection

Options and convertible bonds

172. Applies only to any periodical interest or emission agio or redemption agio on the entire product.

Derivatives with capital protection

173. Derivatives with capital protection are structured financial instruments. Normally, they are made up of a combination of a money investment and a derivative. The investor is guaranteed a minimum price upon redemption. The value of the financial product, resp. any distribution from the product, depends predominantly on the performance and the ratio of the underlying of the derivative.
174. On principle, derivatives with capital protection are regarded integrally as derivatives. As defined in the Agreement, they do not generate interest.
175. Should distributions be made by separate coupons for derivatives with capital protection, then the amounts that were fixed and guaranteed in advance are regarded as interest. Any difference between the guaranteed redemption price and a lower emission price (original discount) of the entire product is also considered as interest.
176. Bonds with variable interest (e.g. inflation linked bonds, floating rate notes, etc.) are not regarded as derivatives with capital protection. The variable interest is subject to EU Savings Tax.

Certificates

177. Certificates are derivatives, whose increase in value directly depends upon the increase in value of an underlying value (without leverage). They do not have capital protection. Basket certificates, where the composition of which can be changed during the term (managed certificates), are also considered as certificates.

Certificates on share price indices and share baskets

178. Indices and share basket certificates are regarded as derivatives and do not generate any interest as defined in the Agreement.

Certificates on bonds indices or baskets

179. Bond indices certificates are regarded as derivatives and do not generate any interest as defined in the Agreement. The basket must be made up of a minimum of five different bonds. Otherwise the certificates are not considered as derivatives, but are subject to the stipulations for affected investment funds.

Certificates on investment funds

180. Investment fund certificates are regarded as derivatives and do generate interest as defined in the Agreement. The basket must be made up of a minimum of five different funds. Otherwise the

certificates are not considered as derivatives, but are subject to the stipulations for affected investment funds.

Certificates on Metals, Commodities and the like

181. Certificates on metals, commodities and the like are considered as derivatives and do not generate interest as defined in the Agreement.

Reverse Convertibles

182. Reverse Convertibles are derivatives whose settlement is either made in cash or by the physically delivering of an underlying. A cash settlement is made when the price of the underlying is greater than the price agreed upon to be paid out at the end of the term. A physical delivery is made when the price of the underlying is less than the price agreed upon to be paid out.
183. Reverse convertibles with a term of more than a year are considered as bonds. The credited interest as well as the option premium are both considered as interest as defined in the Agreement. Should these interest components not be set out separately, then the entire compensation is considered as interest.
184. Reverse convertibles with a term of up to one year do not generate interest as defined in the Agreement, as long as no payment is made by separate coupons.

Structured credit and damage derivatives

185. Structured damage derivatives without capital protection are treated in the same way as reverse convertibles (clause 182ff.).
186. For structured credit derivatives (credit linked notes), the risk premium is synonymous with the credit risk. All compensation is considered as interest as defined in the Agreement.

Low Exercise Price Options (LEPO)

In General

187. For call options with a very low strike price (like normal options), the interest component that is included in the premium (option price) is not set out separately.

LEPOs on bonds and investment fund units

188. LEPOs on a bonds and investment fund units are treated according to the stipulations for certificates on bond and fund indices or resp. bond and fund baskets.

Securities Lending

189. Manufactured payments in Securities Lending with money debt securities related to interest are not considered as interest as defined in the Agreement.

Repo-Transactions

190. The actual repo-interest, which is paid to the seller by the purchaser of the securities, is considered as interest as defined in the Agreement.
191. Interest earned on securities given as collateral for the term of the repo trades, must be replaced according to the contractual undertaking of the counterparty. These manufactured payments do not represent interest as defined in the Agreement.

Swaps

192. Payments made between the swap parties are not considered as interest as defined in the Agreement, even though they may be based on interest, for example on Interest Rate Swap.

Operational Aspects

Stock keeping

193. If securities are disposed of, then the method used to ascertain the purchase price and the holding period should be on principle be the „first in – first out“(FIFO) method i.e. if the total securities of a particular stock be made up of two or more purchases, then it is always those securities which were held the longest which are considered as disposed of.
194. Other recognised methods like” last in - first out" (LIFO), "highest in - first out" (HIFO) or average price ("Average") may also be used, as long as the chosen method is sustained and consistently applied to all beneficial owners uniformly.

Delivery Without Payment (DWP)

195. The delivery in of securities does not constitute a purchase in as defined in the Agreement.
196. The delivery out of securities does not constitute a sale in as defined in the Agreement.

Evidence of the purchase price date or purchase price

197. If the paying agent is unable to establish the purchase price or date of purchase from the information available to them, (e.g. on the delivery of the securities or by a change of residence of an individual within the EU area) a client's purchase note or similar document issued by another bank can be accepted as evidence.

Product Classification – Duties

198. The responsibility for classifying products lies entirely with the paying agent.
199. The Federal Tax Administration may permit the paying agent, under conditions to be determined by them, (e.g. access to data, evaluation criteria, documentation) to have the securities evaluated by a central securities data administrator (authorised data supplier) with regard to the domestic application of the EU Savings Tax. **For foreign security dealers please refer to clause 203.**
200. Should a paying agent use information on securities from an authorised data supplier, who has classified the information according to clause 204, then the paying agent may rely upon this information.

201. The responsibility of the authorised data supplier is limited to the procedural responsibilities accepted in the regulation with the Federal Tax Authority. There are no financial obligations arising from the regulation in the sense of a liability for any incorrect security classification. Incorrect classifications should be reported immediately once they are known to the authorised data supplier and the paying agent is to be duly informed. Such corrections are effective five working days after such notification has been received; there is no retrospective application of the EU Savings Tax for such cases.
202. A commission made up of representatives of the Swiss Bankers Association, the Swiss Investment Fund Association and the Federal Tax Authority supports the authorised data suppliers in an appropriate way in the evaluation and identification of the securities, whereby the Federal Tax Authority has a supervisory function.
203. The Federal Tax Administration can recognise the qualification of foreign financial information providers as an authorised data supplier when the foreign financial information provider can prove that in the process of classifying securities and the procurement of the relevant data for the purposes of EU Savings Tax, it is subject to the controls of an official body in a EU member state and ensures that the differences between the Agreement and the Guideline 2003/48/EG are taken into account.

V Retention

204. The paying agents levy the retention on the interest payments according the stipulations of the Agreement and law.
205. On principle, the relevant payee is debited with the retention, however there is no duty to pass on the tax to the relevant payee.
206. The retention is calculated in Swiss Francs.
207. Interest payments in foreign currencies are to be converted at the rate of exchange valid on the date of the client credit advice note.
208. Should no particular rate of exchange have been agreed between the parties, then the conversion is to be based on the average between the selling and buying exchange rate on the last working day before the date of the client credit advice note or on the day of the credit advice note.
209. The paying agents are allowed to apply programmed general rounding-up rules. Should there not be such a programme, then the figure is to be to the value of two after the point and the second number to be set at zero.
210. As a minimum requirement, the paying agents must maintain an accounts payable account either per EU member state or only one accounts payable account and set out the figures divided into countries in an appropriate way. The retention that stems from the client credit advice note must be easily traceable in the afore-mentioned collective account, without any difficulty. In this way, the individual client credit advice note is booked in the accounts payable account with identification or the daily turnover is documented by means of an auxiliary ledgers for the individual customer accounts.
211. The retention is credited to that EU member state in which the relevant payee is resident on the date of the client credit advice note.
212. The paying agents transfer the withheld retention sums annually by March 31 at the latest, in the year following the interest payment to the Federal Tax Authority. The paying agent also submits the relevant declaration form, with the payment, which shows how the payment is to be allocated to the individual EU member states.
213. The relevant payee has a right to a client credit advice note that clearly shows the retention and any taxation levied at source as well as any other withholding taxes. This client credit advice note must allow the relevant payee to make use of the right to reimbursement or credits in the country of residence.
214. The paying agents can decide if statements of account which satisfy the stipulations in clause 213 are to be provided in general or only upon request. The statement of account is to be described accordingly.
215. If the retention charges a service in foreign currency, then this is to be stated on the client credit advice note in the original currency and also converted to Swiss Francs.
216. For collective relationships and joint accounts the retention is levied in accordance with the stipulations in clause 50 uniformly according to the paying agent's discretion and passed on to the relevant EU countries in accordance with the applicable allocation key.
217. If the relevant payee terminates their residence in the EU area, the retention comes to an end from the date of the relevant notification to the paying agents. The retained monies are to be delivered

according to the due process of law. The rights and requirements regarding the certificate of residence (clause 40ff.) remain reserved.

218. If an individual takes up residency in an EU member state and in doing so becomes a relevant payee, then the conditions according to clause 149ff applies for ascertaining the interest payments affected, while for the period before the move, no varying conditions apply. The retention is to be calculated on the assumption that the contracting party was a relevant payee before the move.
219. The duty to deliver the tax retention lapses five years after the calendar year in which the retention was due to be delivered.
220. The paying agents can correct a retention that was erroneously levied within five years, providing that it can be guaranteed that neither a claim for deduction nor a reimbursement of the relevant interest payment in the country of residence has been or can be made in the future.

VI Exchange of Information

221. If explicitly authorised by the relevant payee, the paying agent notifies the interest payment as defined in the terms of Agreement, to the Federal Tax Authority. The retention is not applicable.
222. A single authorisation remains valid for the paying agents until such time as an express revocation is received from the relevant payee or their legal successor. The validity of the revocation presupposes that the relevant payee, or their legal successor, guarantees the retention owed instead of notification to the paying agents.
223. In principle, one notification per relevant payee must be made. Should the same contracting party have several relationships with the paying agents (e.g. different branches, several databases, etc.) then it is at the discretion of the paying agents whether they wish to make several notifications for the same contracting party.
224. The paying agents notify the Federal Tax Authority annually by March 31 of the year following the interest payment at the latest.
225. The paying agents may withdraw a notification that has already been made until May 31 of the year in which the notification was made, at the latest. In as far as retention must be levied in these cases, the paying agent must deliver the retention without delay to the Federal Tax Authority.
226. The notification is divided into two parts and includes the address details and the actual interest notification. In order to guarantee accurate processing of the notifications, the Federal Tax Authority guidelines are to be followed (Appendix A).
227. The address field must include the following details:
- for the relevant payee: first name, surname, exact address, postcode, town, country and account or deposit number.
 - For the paying agents: the name of the company, exact address, postcode, other details where necessary, which could be helpful for follow-up questions (choice of the paying agents).
228. The interest notification is limited to the details of one single amount that covers all affected interest. Where applicable, a single reference currency must be ascertained. The choice of the currency for the notification lies with the paying agents; however, the currency must be given.
229. The relevant payee's residency at the end of the calendar year is operative in deciding to which of the EU member states the notification is made. A change of residency within the EU area is immaterial.
230. For collective relationships and joint accounts (clauses 49 and 50) for which according to a decision by the paying agents no dividing up has taken place, the notification is made uniformly according to the paying agents decision, also when several EU countries are involved.
231. Should however, a dividing up according to relevant payees have taken place, then the delivery of the notification must also take place according to this division.
232. If the relevant payee terminates their residence in the EU area before the year-end, the notification comes to an end. The rights and requirements regarding the certificate of residence (clause 40ff.) remain reserved.
233. If an individual takes up residency in an European member state and in doing so becomes a relevant payee, then the conditions according to clause 149ff applies for the calculation of the interest payments, while for the period before the move, no varying conditions apply. The retention

is to be calculated on the assumption that the contracting party was a relevant payee before the move.

234. The duty to notify lapses five years after the calendar year in which the notification was due to be made.