


# Procedure file

Basic information		
CNS - Consultation procedure Directive	<a href="#">1998/0087(CNS)</a>	Procedure completed
Common system of taxation applicable to interest and royalty payments made between associated companies of different Member States. Tax package		
Amended by <a href="#">2004/0076(CNS)</a>		
Subject 3.45.04 Company taxation		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>ECON</b> Economic and Monetary Affairs, Industrial Policy		16/04/1998
		PPE <a href="#">SECCHI Carlo</a>	
	Committee for opinion	Rapporteur for opinion	Appointed
	<b>JURI</b> Legal Affairs, Citizens' Rights		15/04/1998
		PSE <a href="#">ODDY Christine Margaret</a>	
Council of the European Union	Council configuration	Meeting	Date
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">2513</a>	03/06/2003
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">2497</a>	19/03/2003
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">2493</a>	07/03/2003
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">2312</a>	27/11/2000
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">2297</a>	17/10/2000
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">2225</a>	29/11/1999
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">2212</a>	08/11/1999
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">2181</a>	25/05/1999
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">2072</a>	09/03/1998

Key events			
04/03/1998	Legislative proposal published	COM(1998)0067	Summary
09/03/1998	Debate in Council	<a href="#">2072</a>	
27/05/1998	Committee referral announced in Parliament		
03/09/1998	Vote in committee		Summary

03/09/1998	Committee report tabled for plenary, 1st reading/single reading	<a href="#">A4-0299/1998</a>	
16/09/1998	Debate in Parliament		
17/09/1998	Decision by Parliament	T4-0498/1998	Summary
25/05/1999	Debate in Council	<a href="#">2181</a>	
08/11/1999	Debate in Council	<a href="#">2212</a>	
29/11/1999	Debate in Council	<a href="#">2225</a>	
17/10/2000	Debate in Council	<a href="#">2297</a>	Summary
27/11/2000	Resolution/conclusions adopted by Council		
07/03/2003	Debate in Council	<a href="#">2493</a>	
19/03/2003	Debate in Council	<a href="#">2497</a>	Summary
03/06/2003	Act adopted by Council after consultation of Parliament		Summary
03/06/2003	End of procedure in Parliament		
26/06/2003	Final act published in Official Journal		

#### Technical information

Procedure reference	1998/0087(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Directive
	Amended by <a href="#">2004/0076(CNS)</a>
Legal basis	EC Treaty (after Amsterdam) EC 094; Rules of Procedure EP 050
Stage reached in procedure	Procedure completed
Committee dossier	ECON/4/09972

#### Documentation gateway

Legislative proposal	<a href="#">COM(1998)0067</a> <a href="#">OJ C 123 22.04.1998, p. 0009</a>	04/03/1998	EC	Summary
Economic and Social Committee: opinion, report	<a href="#">CES0969/1998</a> <a href="#">OJ C 284 14.09.1998, p. 0050</a>	01/07/1998	ESC	
Committee report tabled for plenary, 1st reading/single reading	<a href="#">A4-0299/1998</a> <a href="#">OJ C 313 12.10.1998, p. 0008</a>	03/09/1998	EP	
Text adopted by Parliament, 1st reading/single reading	T4-0498/1998 <a href="#">OJ C 313 12.10.1998, p. 0125-0152</a>	17/09/1998	EP	Summary

#### Additional information

European Commission	<a href="#">EUR-Lex</a>
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## Common system of taxation applicable to interest and royalty payments made between associated companies of different Member States. Tax package

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**OBJECTIVE:** to abolish the deductions at source on interest and royalty payments between associated companies. **SUBSTANCE:** the proposal for a directive forms part of the tax programme adopted by the Ecofin Council in December 1997 alongside the code of conduct on business taxation and the proposal for a directive being prepared on taxation on savings income. The aim of the directive in the field of savings will be to eliminate non-taxation of income while this proposal is aimed at eliminating the distortions which arise through double taxation. It seeks in particular to establish the principle that the Member States should not impose taxes on interest and royalties arising in their territory but beneficially owned by non-resident companies, in order to ensure that such income is taxed only once in the Member State in which the beneficial owner is established. Initially it is only proposed that the taxes collected at source or by assessment on interest and royalty payments made between associated companies, including the permanent establishments of such companies, should be abolished. Subsequently, as part of the further development of the Single Market, it is proposed that this measure should be extended to taxes of this type levied on interest and royalty payments made between companies which are not associated. This Directive does not preclude Member States from taking steps to combat fraud and abuse. It provides that the Commission will report on the operation of the directive three years after its entry into force, in particular with a view to an extension of its scope. ?

## Common system of taxation applicable to interest and royalty payments made between associated companies of different Member States. Tax package

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The Committee has approved a proposal for a directive seeking to eliminate double taxation of cross-border interest and royalty payments between associated companies - a key component of the Commission's package of measures to tackle harmful tax competition between Member States. While the proposal allows Member States to take steps to prevent the rules being used for tax evasion or tax avoidance, the committee adopted amendments tabled by the rapporteur, Mr Carlo SECCHI (EPP, I), seeking to limit this right to cases where a transaction has tax evasion or tax avoidance as its sole objective. Other amendments seek to gradually phase out the various exceptions to the general ban on double taxation of royalty and interest payments. Finally, the committee adopted an amendment calling upon the Member States not to use the "package approach" as a tool for delaying approval of the various parts thereof, i.e. by demanding simultaneous approval of all its constituent parts. ?

## Common system of taxation applicable to interest and royalty payments made between associated companies of different Member States. Tax package

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Adopting the report by Mr Carlo SECCHI (PPE, I), the European Parliament amended the proposal for a Directive seeking to eliminate double taxation of cross-border interest and royalty payments between associated companies. While the Commission proposal allows Member States to take steps to prevent these rules from being used for tax evasion or tax avoidance, the European Parliament intends to limit this right to cases where a transaction has tax evasion or tax avoidance as its sole objective. Parliament considers that the provisions of the Directive need to be extended to taxes levied on interest and royalty payments made between companies which are not associated as part of the further development of the Single Market. Other amendments seek to gradually phase out the various exceptions to the general ban on double taxation of royalty and interest payments. Parliament also adopted an amendment calling upon the Member States not to use the "package approach" adopted as a tool for delaying approval of the various elements of the package, i.e. by demanding simultaneous approval of all its constituent parts. Finally, Parliament asked the Member States to undertake to re-examine their existing laws and established practices in line with the principles set out in the Council Resolution of 1 December 1997 on the Code of Conduct for business taxation in order to guarantee a wide application of the provisions of the Directive by the time it enters into force.?

## Common system of taxation applicable to interest and royalty payments made between associated companies of different Member States. Tax package

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The Council reviewed the progress made on the three strands of the tax package: savings taxation, interest and royalties and the code of conduct (business taxation). With regard to savings taxation, further to the conclusions of the Feira European Council, the Working Party on Tax Questions was to deal with all of the questions relating to the basic substances of the Directive, on which agreement should be reached by the end of the year. The Working Party has studied all of these questions, with the exception of the rate of withholding tax. On most of the subjects discussed a majority agreement was emerging, in particular as regards the scope of the Directive (definition of interest), revenue sharing and the paying agent mechanism. Further technical work still needed to be done on these three matters: the nature of information to be transmitted on the basis for assessment of the withholding tax as regards coupon washing, zero-rate coupons and capitalisation funds; - the treatment of bodies such as partnerships, trusts, etc; - the procedure for identifying the beneficial owner and the type of information to be provided on that owner. The Council has instructed the Working Party on Tax Questions to pursue its work with determination in order to be able to submit the terms of an overall compromise in time for the Council meeting on 27 November. With regard to the Directive on interest and royalties, the Working Party on Tax Questions should endeavour to resolve the outstanding issues, in particular on non-application of the Directive in certain specific cases and on the transitional period for Greece, Spain and Portugal, at the same time as the other two strands of

the tax package. Lastly, the Council has confirmed the code of conduct Group's mandate to continue its proceedings with determination on a framework for freezing and dismantling national measures held to be damaging to competition, and to report to the Council on the progress achieved at its meeting on 27 November.?

## Common system of taxation applicable to interest and royalty payments made between associated companies of different Member States. Tax package

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Following a deep debate at the Council, it seems that all delegations but one agree the present draft Directive provided that Spain, Portugal and Greece may continue to apply their present withholding tax rates until the application by the Member States of the savings directive and that the transitional periods granted in article 6 take effect from that date. These periods shall be eight years for Portugal and Greece and six years for Spain. All delegations but one and the Commission agree that the benefits of the Interest and Royalty Directive should not accrue to companies that are exempt from tax on income covered by that Directive. All delegations but one invite the Commission to propose any necessary amendments to this Directive in due time.?

## Common system of taxation applicable to interest and royalty payments made between associated companies of different Member States. Tax package

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The Council adopted the "Tax Package". In doing so, the Council adopted the Council Directive on taxation of savings income in the form of interest payments and the Council Directive on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States. It also agreed to the Resolution of the Council and of the representatives of the governments of the Member States, meeting within the Council on taxation of savings income in the form of interest payments. Lastly, it took note of the following statements for the Council minutes. With regard to the directive on taxation of savings: The Council reaffirms that the exchange of information, on as wide a basis as possible, is to be the ultimate objective of the European Union in line with international developments. It assesses that sufficient reassurances have been obtained with regard to the application of the same measures applying the same procedures as the 12 Member States or as Austria, Belgium and Luxembourg, in all relevant dependent or associated territories (the Channel Islands, Isle of Man, and the dependent or associated territories in the Caribbean) and asks the Member States concerned to ensure that all relevant dependent or associated territories will apply those measures from the date of implementation of the Directive, it being understood that, if and when Austria, Belgium and Luxembourg will implement automatic exchange of information, any territory applying the withholding tax will also implement automatic exchange of information from the same date as those Member States. The Council also states that chapter III with the exception of Articles 14 and 15 of the Directive shall not be granted to the new Member States. The Council calls on the Commission to continue negotiations, in close conjunction with the Presidency of the Council, with the Swiss Confederation, the Principality of Liechtenstein, the Republic of San Marino, the Principality of Monaco, the Principality of Andorra and the United States of America, in order to press for the exchange of information as the ultimate objective of the European Community, and to report back to the Council by 31 December 2006 on the progress of those negotiations. The Commission is also called upon, during the transitional period referred to in Article 10 of the Directive, to enter into discussions with other important financial centres with a view to providing the adoption by those jurisdictions of measures equivalent to those to be applied within the Community. As regards the Directive on interest/royalties: The Council and the Commission agree that the benefits of the Interest and Royalty Directive should not accrue to companies that are exempt from tax on income covered by that Directive. The Council invites the Commission to propose any necessary amendments to this Directive in due time.?

## Common system of taxation applicable to interest and royalty payments made between associated companies of different Member States. Tax package

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PUTPOSE : to ensure effective taxation of savings income in the form of interest payments within the Community. COMMUNITY MEASURE : Council Directive 2003/48/EC on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States. CONTENT : the Council adopted this Directive on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States. The Decision stipulates that interest or royalty payments arising in a Member State shall be exempt from any taxes imposed on those payments in that State, whether by deduction at source or by assessment, provided that the beneficial owner of the interest or royalties is a company of another Member State or a permanent establishment situated in another Member State of a company of a Member State. A payment made by a company of a Member State or by a permanent establishment situated in another Member State shall be deemed to arise in that Member State, hereafter referred to as the "source State". A permanent establishment shall be treated as the payer of interest or royalties only insofar as those payments represent a tax-deductible expense for the permanent establishment in the Member State in which it is situated. A company of a Member State shall be treated as the beneficial owner of interest or royalties only if it receives those payments for its own benefit and not as an intermediary, such as an agent, trustee or authorised signatory, for some other person. Concerning the exclusion of payments as interest or royalties, the Directive states that the source State shall not be obliged to ensure the benefits of this Directive in the following cases: a) payments which are treated as a distribution of profits or as a repayment of capital under the law of the source State; b) payments from debt-claims which carry a right to participate in the debtor's profits; c) payments from debt-claims which entitle the creditor to exchange his right to interest for a right to participate in the debtor's profits; d) payments from debt-claims which contain no provision for repayment of the principal amount or where the repayment is due more than 50 years after the date of issue. This Directive includes transitional rules for Greece, Spain and Portugal. Greece and Portugal shall be authorised not to apply the provisions until the date of application referred to in Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments. During a transitional period of 8 years starting on the aforementioned date, the rate of tax on payments of interest or royalties made to an associated company of another Member State or to a permanent establishment situated in another Member State of an associated company of a Member State must not exceed 10 % during the first four years and 5 % during the final four years. Spain shall be authorised, for royalty payments only, not to apply the provisions until the date of application referred to in Article 17(2) and (3) of Directive 2003/48/EC. During a transitional period of 6 years the rate of tax on payments of royalties made to an associated company of another Member State or to a permanent establishment situated in another Member State of an

associated company of a Member State must not exceed 10 %. By 31 December 2006, the Commission shall report to the Council on the operation of this Directive, in particular with a view to extending its coverage to other companies or undertakings. Lastly, it is important to note that that there is a delimitation clause included in this Directive, this Directive shall not affect the application of domestic or agreement-based provisions which go beyond the provisions of this Directive and are designed to eliminate or mitigate the double taxation of interest and royalties. TRANSPOSITION : 1 January 2004. ENTRY INTO FORCE : 26 June 2003.?