EU SAVINGS TAX RULES AND SAVINGS AGREEMENTS WITH THIRD COUNTRIES: frequently asked questions

Why is an EU approach to tackling evasion in the area of savings taxation important?

A strong unified stance is essential in tackling tax evasion when part of a Single Market. It ensures:

- Clear consensus within the EU on the approach to be taken in ensuring Member States can collect the revenues they are due, and good cooperation between national authorities
- "Strength in numbers" when dealing with non-EU countries, to the benefit of all Member States
- Helps to avoid a patchwork of national approaches which can leave large areas uncovered, thus opening the way for tax planning schemes.

Given the importance of Member States being able to collect all the taxes they are due, particularly in these difficult times, the Commission believes that a coordinated approach to tax evasion is the most effective way forward, and must remain a political priority.

What EU provisions are currently in place for savings taxation?

EU Savings Directive

At EU level, the Savings Tax Directive applies to all Member States. The aim of this Directive is to tackle cross-border tax evasion by creating an information exchange system for tax authorities to help identify individuals that receive savings income in a Member State other than their own. The core of the Savings Directive is the principle of automatic exchange of information. This means that Member States collect data on the savings of non-resident individuals, and automatically provide this data to the authorities where the individual resides.

Currently, 25 Member States apply the automatic exchange of information. Two Member States – Austria and Luxembourg – are allowed, for a transitional period, to apply a withholding tax instead of engaging in the automatic exchange of information. Currently, the rate of this withholding tax is 35%.

Clear terms for the end of this transitional period were unanimously agreed in Council in 2003 and are set down in the Directive; e.g. it will end when Switzerland, Andorra, San Marino, Monaco and Lichtenstein, as well as the USA, meet certain international information exchange standards in this area, with the 5 European third countries in question also continuing to apply a withholding tax.

Once the transitional period comes to an end, Austria and Luxembourg must move to the automatic exchange of information.
Savings Tax Agreements with Third Countries

In parallel to the Savings Directive which applies within the EU, the EU has savings tax agreements with 5 neighbouring third countries: Switzerland, Andorra, Monaco, Lichtenstein and San Marino. The aim of these agreements is to assist Member States in recovering tax revenue they may be due from citizens who have savings accounts in these countries. The agreements also seek to create a more level playing-field between Member States and their non-EU neighbours, by getting these countries to apply measures which are equivalent to those laid down in the EU Savings Directive.

Under the current EU-Swiss Agreement, Switzerland applies a 35% withholding tax when payments are made to EU citizens' earning interest on savings there. From an EU point-of-view, the purpose of this withholding tax is to deter tax evasion and encourage account-holders to voluntarily disclose the savings that they have in Switzerland. If EU citizens do disclose this information to their tax authorities, they can be refunded the difference between this high level of withholding tax and the (usually lower) national tax rate. The high level of withholding tax therefore acts as an incentive to be tax compliant. This is a punitive tax for evaders, while the refund system rewards those who honestly disclose their income.

The current EU-Swiss Savings agreement also provides for information exchange on request, within a limited scope (e.g. in cases of fraud). When an EU Member State suspects that one of its citizens is using a Swiss bank account for fraud or money-laundering purposes, it can ask the Swiss authorities to provide information on a specific account.

What has the Commission proposed to change?

In 2008, the Commission proposed a revision of the EU Savings Directive, in order to close loopholes in the legislation that were being exploited by tax evaders (see IP/08/1697, see MEMO/08/407). For example, the proposal foresees extending the scope of the Directive to cover investment funds, pensions and innovative financial instruments. It will also capture payments made through structures such as trusts and foundations. This will help prevent tax evaders from escaping the provisions of the Savings Directive by channelling their money through structures outside its scope.

The EU agreements with Switzerland and the other 4 countries are meant to largely reflect the measures applied internally within the EU. Therefore, any change to the EU Savings Directive should also be accompanied by an adjustment of the savings agreements with these countries. For that reason, in July 2011, the Commission asked the Council for a mandate to open negotiations with the 5 countries, in order to extend the scope of the existing agreements in line with the proposed revision of the Savings Directive (see MEMO/11/493). In re-negotiating these agreements, the aim is to make them stronger and more effective in fighting tax evasion.

The negotiating mandate is now on the table at ECOFIN for agreement. At the European Council in March 2012, EU leaders called clearly and unanimously for a rapid adoption of the mandate to negotiate with Switzerland, as part of the effort to step up the fight against tax evasion and find new revenues. The political pressure to revise the EU-Swiss agreement and therefore comes from the highest level.

What is the scope of the negotiating mandates that Member States are discussing in ECOFIN?

The main purpose of re-negotiating the EU savings tax agreements with Switzerland, Andorra, San Marino, Monaco and Lichtenstein is to ensure continued equivalence
of the measures applied by these countries with those applied internally within the EU. The Commission proposal merely asks for a mandate to negotiate and does not prejudge the outcome of the negotiations. Essentially, the aim is to explore with these countries how much they are willing to agree to in terms of strengthening these agreements. The wider the scope of the negotiating mandate, the greater the chance of securing broader and more effective savings tax agreements for the future. And the stronger these agreements are, the higher the revenues that they deliver to Member States will be. Therefore, the Commission is looking for the green light to enter into talks with these 5 countries, with a view to being ambitious in its negotiations.

It should be underlined that the proposal is only for a mandate to negotiate. Any eventual agreement reached would have to be unanimously adopted by all 27 Member States before it could enter into force.

How much could Member States gain financially from a new savings tax agreement with Switzerland?

In 2010, Switzerland sent €330,136,640 to Member States in withholding tax, in line with the provisions set out in the EU-Swiss savings agreement.

However, it is expected that a revised EU-Swiss agreement, with a broader scope and stronger provisions, could deliver a substantially higher figure. It is difficult to estimate a precise figure at this point, given the intransparent nature of tax evasion, but Member States would certainly benefit from considerable new revenue.

Some Member States have either signed or are negotiating bilateral savings tax agreements with Switzerland. What is the difference between these and the EU-Swiss savings tax agreement?

Member States are free to negotiate bilateral agreements with third countries, so long as they respect EU rules. This means such bilateral agreements cannot include any provisions which overlap with or contradict EU legislation, or which impinge on areas of exclusive EU competence. In this respect, Member States are free to sign bilateral tax deals with Switzerland so long as they leave out income already covered by the EU-Swiss savings agreement. Put simply, this means that income from savings cannot be included in a bilateral deal between a Member State and Switzerland. However, these agreements can cover any areas that do not fall under EU law and competence e.g. the regularisation of past liabilities (tax amnesties), or the taxation of capital gains and dividends.

The Commission had expressed some concerns about the bilateral agreements that Germany, the UK and Austria signed with Switzerland. What is the state of play in this situation?

When Germany and the UK first signed their bilateral agreements with Switzerland, they included the area of savings taxation, amongst other things. As outlined above, bilateral agreements between Member States and third countries cannot overlap with areas already covered by EU law – in this case, the EU Savings Directive and EU-Swiss savings agreement.

Following intense and constructive discussions between the Commission and these two Member States, the UK and Germany subsequently amended their agreements with Switzerland to bring them into line with EU law. This meant removing from the agreements all areas already covered by EU Savings Tax legislation, as well as making some further technical adjustments, including provisions to pull back from areas that could be covered by EU savings measures in the future. The bilateral
agreements could still cover areas outside EU competence, such as taxing undeclared past income or determining taxing rights over non-savings income and immovable property. In April 2012, Commissioner Šemeta announced that the Commission was now satisfied that the German and UK agreements were compliant with EU law.

With regard to the Austrian agreement with Switzerland, the Commission is still analysing it and discussing certain aspects with the Austrian authorities, to determine whether or not it is in line with EU rules.

If the mandate is given to the Commission to negotiate a new EU-Swiss savings agreement, can other Member States still sign bilateral deals with CH?

On 5 March, Commissioner Šemeta sent a letter to all Finance Ministers, clearly setting out the boundaries for such bilateral agreements. Member States are therefore all aware of the legal limitation surrounding such agreements. They should refrain from negotiating, signing or ratifying bilateral agreements which touch upon areas regulated at EU level. As long as such agreements do not interfere with the EU acquis, Member States are free to enter into them. If requested, the Commission is ready to work with any Member State in finding solutions which could deliver revenues without impinging on EU legislation or areas of EU competence. For example, Member States can enter into agreements with 3rd countries to cover historic situations of undeclared income, or income outside the scope of the EU-Swiss savings agreement (e.g. capital gains, dividends, pensions).

What initiatives has the Commission planned in areas other than Savings to improve the fight against tax evasion in the EU?

Over the past few years, the EU has pursued a very active policy on good governance at EU level, and internationally. But given that an estimated £1 trillion euro is still being lost from public finances due to tax evasion and avoidance, more must be done to protect Member States' revenues. Therefore, the Commission has undertaken a comprehensive review of the measures currently in place, to see how they can be improved and intensified. The aim is to create a stronger, more coordinated approach to tackling tax evasion, aggressive financial and tax jurisdictions, and unfair tax competition.

At the European Council in June, the Commission will present a road-map of concrete actions that can be taken to more effectively fight against tax evasion as a Union.

Before the end of the year, Commissioner Šemeta will bring forward a Communication on tax havens and aggressive tax planning. This will aim to:

- Improve action to protect Member States' tax revenues against the challenges of aggressive financial and tax jurisdictions and unfair competition deriving from aggressive tax planning.
- Reduce opportunities for harmful tax practices including exploitation of mismatches between tax systems and better ensure that good governance in the tax area is, in coherence with other EU policies, efficiently addressed on as broad a geographical basis as possible.
- Achieve a coordinated approach at EU level in terms of incentives and sanctions towards cooperative and uncooperative jurisdictions, to add leverage in convincing third countries to enhance good governance.
- Improve coordination of the EU MS' position in international fora dealing with non-cooperative jurisdictions.
In addition, the public consultation on double non-taxation will close at the end of May. The Commission will use the feedback from this consultation to decide the most appropriate measures to take in tackling this problem, which is frequently exploited by aggressive tax planners and tax avoiders.

On the VAT side, the new VAT Strategy presented last December looks specifically at how to tackle VAT fraud in better way and follow up action will be taken on this basis both in 2012 and 2013.

FISCUS programme for 2014-20 aims at making national tax administrations more efficient when dealing with cross-border transactions. This will make them more effective in fighting tax fraud, amongst other things.

Last year’s Communication “Towards an EU Criminal Policy” emphasized the importance of using EU criminal law to effectively implement EU policies. Within this framework, measures to tackle fraud – particularly cross-border fraud – could be strengthened.

Any Member State that needs support will get it, in strengthening its tax system against evasion, and improving collection. In Greece, for example, Commission services are actively engaged in helping build a more robust tax system to deliver quality revenues, and positive results are already beginning to emerge.