



Ministry of Finance
*Government of the
Virgin Islands
Central Administration
Building*

BVI GUIDE TO THE EUROPEAN UNION SAVINGS TAX DIRECTIVE

1. FREQUENTLY ASKED QUESTIONS

A. What is the rationale for the European Union Savings Tax Directive?

The EU Savings Tax Directive is one of three tax measures known as the EU tax package that comprises:

1. A Code of Conduct for Business Taxation.
2. A proposal for a Community Directive on the taxation of interest and royalty payments.
3. The EU Savings Tax Directive.

The rationale for the EU Savings Tax Directive is for European Union Member States to automatically exchange information with each other concerning individuals who earn savings income in one EU Member State but reside in another EU Member State. This is referred to as the “automatic exchange of information option”. Exchange of information is the objective of the EU Savings Tax Directive. However, Austria, Belgium and Luxembourg have opted to apply a withholding tax, known as the “withholding tax option”. During a transitional period those three EU Member States will deduct a withholding tax at source from income earned by EU resident individuals on savings in other EU Member States.

The EU Savings Tax Directive was originally aimed at EU Member States only but was extended to include their overseas territories like the British Virgin Islands (“BVI”) and third countries due to a concern from a number of EU Member States that implementation of the EU Savings Tax Directive would lead to mass capital flight to those overseas territories and third countries. Accordingly, dependent and overseas territories such as the BVI are required to implement the same measures and third countries are required to implement equivalent measures.

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B. The British Virgin Islands has opted to give EU resident individuals the choice between the withholding tax option or the automatic exchange of information option.

The bilateral agreements that have been entered into between the BVI and the 25 Member States of the European Union provide for the alternative procedures as referred to in paragraphs C and D.

Banks and other paying agents in the BVI will be given the option to offer EU resident individuals deduction of withholding tax or exchange of information. EU resident individuals should clarify the position with individual banks and paying agents.

C. What is the withholding tax option and how will it work in the BVI?

Under the withholding tax option, banks and other paying agents will automatically deduct tax from interest and other savings income earned. For the purposes of implementation of the EU Savings Tax Directive in the BVI, paying agents will pay the withholding tax to the Competent Authority, the Commissioner of Inland Revenue as designated by the Financial Secretary.

75% of the withholding tax levied will be remitted to the tax authorities in the receiving EU Member States and the Commissioner of Inland Revenue will keep 25%. The withholding tax rates will be:

1. 15% from 1 July 2005.
2. 20% from 1 January 2008.
3. 35% from 1 January 2011.

Withholding tax will be transferred to receiving EU Member States at specific periods but receiving EU Member States will not receive information relating to EU resident individuals.

D. What is the automatic exchange of information option and how will it work?

Under the automatic exchange of information option, the EU Savings Tax Directive requires the following information:

1. The identity and residence of the beneficial owner.
2. The name and address of the paying agent.
3. The account number of the beneficial owner.
4. Information concerning the savings income.

This information will be reported by the paying agent to the competent authority in the country where the account is held and forwarded to the competent authority of the country where the EU resident individual resides.

E. Why are the preconditions of the EU Savings Tax Directive important to the BVI?

It is important to note that implementation of the EU Savings Tax Directive is subject to certain preconditions being met by 1 July 2005 that are critical to ensuring that a level playing field is established for the countries and territories required to adhere to the requirements of the EU Savings Tax Directive.

The preconditions of the EU Savings Tax Directive are noted in Article 17 of the EU Savings Tax Directive and require all Member States and associated and dependent territories to adopt and publish the laws, regulations and administrative provisions necessary to comply with the Directive provided that:

- “(i) the Swiss Confederation, the Principality of Liechtenstein, the Republic of San Marino, the Principality of Monaco and the Principality of Andorra apply from that same date measures equivalent to those contained in this Directive, in accordance with agreements entered into by them with the European Community, following unanimous decisions of the Council;
- (ii) all agreements or other arrangements are in place, which provide that all the relevant dependent or associated territories apply from that same date automatic exchange of information in the same manner as is provided for in Chapter II of the Directive, (or, during the transitional period defined in Article 10, apply a withholding tax on the same terms as are contained in Articles 11 and 12)”;

As noted above, during a transitional period, three European Union Member States, Austria, Belgium and Luxembourg, will apply a withholding tax instead of exchanging information. The same option was extended to non-EU jurisdictions¹, including the BVI. The withholding tax collected will be split with 75% of the withholding tax being paid by the collecting jurisdiction to the State of residence of the person receiving the interest payment. The EU Savings Tax Directive requires that any jurisdiction levying the withholding tax will provide for one or both of the following procedures to ensure that EU resident individuals may request that no tax be withheld:

1. A procedure that allows the beneficial owner to authorise the paying agent to report information to his Member State of residence; and/or
2. A procedure which ensures that withholding tax shall not be levied where the beneficial owner presents to his paying agent a certificate drawn up in his name by the competent authority of his Member State of residence.

¹ Third countries, the UK Crown Dependencies, the UK Overseas Territories and the Dependent Territories of the Netherlands.

F. What is the effective date for the EU Savings Tax Directive?

It is expected that the requirements for the exchange of information or deduction of withholding tax will come into force on 1 July 2005.

G. Which countries and territories are affected by the EU Savings Tax Directive?

The EU Savings Tax Directive will apply to all EU Member States, which include: Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

The implementation of the EU Savings Tax Directive will also affect Gibraltar, the UK Crown Dependencies (Guernsey, Isle of Man and Jersey), the UK Overseas Territories (Anguilla, British Virgin Islands, Cayman Islands, Montserrat and Turks & Caicos Islands), the Dependent Territories of the Netherlands (Netherlands Antilles and Aruba) (“dependent and overseas territories”) and third countries (Andorra, Liechtenstein, Monaco, San Marino and Switzerland).

H. What is the status of the BVI implementing legislation and bilateral agreements?

The BVI has introduced the implementing legislation, the Mutual Legal Assistance (Tax Matters) (Amendment) Bill 2004 (“the Bill”). The intention is to bring the Bill into force shortly. Bilateral agreements have been agreed with the European Union and will be entered into with the 25 Member States of the European Union. A committee comprising public and private sector individuals drafted the BVI model agreements, the text of which appears in Schedule 3 of the Bill.

Two BVI model agreements were agreed—one between the BVI and those EU Member States that opted for automatic exchange of information and one between the BVI and the three EU Member States that chose the withholding tax option. The text of the BVI model agreements follows the EU Savings Tax Directive with BVI modifications and with additional safeguard provisions regarding suspension and termination in certain circumstances.

I. What are the procedures and circumstances for termination of a bilateral savings tax agreement by the BVI?

Either contracting party may terminate an agreement pursuant to Article 17 of the BVI model agreement. Further, pursuant to Clause 20 of the Bill any information transmitted by or to a Member State shall be used only for the purpose for which it was provided and

the BVI Government may unilaterally suspend the operation of an agreement on the grounds that information transmitted pursuant to the agreement has been used for a purpose other than that for which it was provided.

J. What steps may the BVI Government take if there is evidence that the playing field is not level?

The BVI has agreed to apply withholding tax with effect from the same date as EU Member States apply the EU Savings Tax Directive provided that the EU Member States have adopted laws, regulations and administrative provisions necessary to comply with the EU Savings Tax Directive and the conditions imposed in Article 17 have been met.

Where there is evidence that a level playing field does not exist, the BVI may terminate pursuant to Article 17 of the BVI model agreements or invoke suspension of the application of the bilateral agreements pursuant to Article 18 of the BVI model agreements.

K. Will the EU Savings Tax Directive affect you?

If you are an individual who is resident in an EU Member State and earn bank interest or other savings income, as defined by the EU Savings Tax Directive, on deposits or investments held in your own name in another EU Member State, third country or dependent or overseas territory referred to in paragraph G above, then you will probably be affected by the implementation of the EU Savings Tax Directive.

The EU Savings Tax Directive does not apply to individuals, including EU nationals, who are resident outside the EU.

L. What is the BVI position regarding confidentiality?

Article 14 of the BVI model agreement states that all information provided and received by the competent authority shall be kept confidential. Further clause 18 of the Bill provides that information established or reported by a paying agent in accordance with Part II shall be treated as confidential, and no person shall disclose any such information except in accordance with Part II. Clause 18(2) of the Bill provides that a person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding two years, or both.

M. What is the position regarding BVI mutual funds?

The term “interest” may include income derived from interest payments distributed by certain undertakings for collective investment and income realised upon the sale or redemption of a holding in certain undertakings for collective investment.

Pursuant to Article 6 of the EU Savings Tax Directive and Article 9 of the BVI model agreements only income from UCITS or UCITS equivalents falls within the definition of “interest payment”. Therefore, BVI non-UCITS equivalents fall outside the scope of the EU Savings Tax Directive and, therefore, there will be no requirement for BVI paying agents to apply a withholding tax or report information on income payments to investors in respect of these categories of collective investment schemes.

With the exception of restricted public funds (see below), all private, professional and public mutual funds recognised or registered under the Mutual Funds Act, 1996 are to be treated by the BVI as non-UCITS equivalents and, therefore, outside the scope of the EU Savings Tax Directive. Only restricted public funds will be treated by the BVI as being UCITS equivalent. Restricted public funds are a class of public fund.

- If a BVI non-UCITS equivalent has a paying agent established in the BVI then it will be out of the scope of the EU Savings Tax Directive.
- If a BVI non-UCITS equivalent has a paying agent in an EU Member State then it is anticipated that, under the local legislation of the EU Member State, such funds will be treated in the same manner as EU non-UCITS and, therefore, will be out of scope of the EU Savings Tax Directive.
- If a BVI non-UCITS equivalent or an UCITS equivalent has a paying agent outside of the BVI and the EU, then it will be out of scope of the EU Savings Tax Directive.
- For BVI UCITS equivalents (which are in the scope of the Directive), there is no obligation on the paying agent of a BVI fund to apply a withholding tax or report information on payments made on sale or redemption of units in the fund where the percentage of the fund's assets held in debt claims does not exceed 40%.
- For BVI UCITS equivalents (which are in the scope of the Directive), there is no obligation on the paying agent of a BVI fund to apply a withholding tax or report information on income payments where the percentage of the fund's assets in debt claims does not exceed 15%.

2. KEY TERMS

N. Who is a relevant payee?

Article 2 of the EU Savings Tax Directive states that it only applies to interest paid to individuals. Pursuant to the United Kingdom Reporting of Savings Income Information Regulations 2003 the paying agent or receiving agent, as the case may be, shall regard a person as a relevant payee if he is an individual resident in a prescribed territory² and who has received a savings income payment or for whom a savings income payment has been secured.

An individual is not a relevant payee if the individual:

- (a) is a paying agent;
- (b) acts on behalf of a residual entity;

² EU Member States, third countries and dependent and overseas territories.

- (c) (i) is himself a paying agent
- (ii) he acts on behalf of a legal person, taxable entity, UCITS or residual entity or
- (iii) receives the payment for the benefit of another individual who is the beneficial owner; or
- (d) acts on behalf of another individual for whose benefit the payment is received or secured.

O. Who is a “beneficial owner”?

Pursuant to the EU Savings Tax Directive a “beneficial owner” means any individual who receives an interest payment or any individual for whom an interest payment is secured, unless he provides evidence that it was not received or secured for his own benefit.

P. What is “savings income in the form of interest payment”?

The EU Savings Tax Directive recognizes four categories of interest payments:

1. Interest paid on debt-claims or credited to accounts.
2. Interest accrued or capitalized at sale, refund or redemption of debt-claims.
3. Income deriving from interest payments by certain unit trusts and other collective investment funds that have invested more than 15% of their investments in debt-claims.
4. Income realized upon sale or redemption in certain collective investment funds that have invested more than 40% of their investments in debt-claims.

Savings income may be regarded as interest earned on bank deposits, interest from and proceeds on the sale or redemption of certain bonds and income from certain investment funds.

Q. What is the definition of “residence”?

“Residence”, in relation to a beneficial owner, means the country or territory where his permanent address is located, subject to certain conditions set out in Article 3.3 of the EU Savings Tax Directive and Article 7.3 of the BVI model agreements.

R. What is a “paying agent”?

A “paying agent” means any economic operator who pays interest to, or secures the payment of interest for the immediate benefit of the beneficial owner, whether the operator is the debtor of the debt claim which produces the interest or the operator charged by the debtor or the beneficial owner with paying interest or securing the payment of interest. The paying agent will be the entity that pays the beneficial owner interest or investment fund income.

3. SPECIFIC EXAMPLES

S. I am a resident in an EU Member State and have a bank account in the BVI- will I have tax withheld?

Once the bilateral agreements come into force interest on your BVI bank account will be received net of the withholding tax (the initial rate is 15%) unless you choose exchange of information or show to the satisfaction of your paying agent that you are exempt from tax and savings income or that you are not liable to tax unless the interest is remitted to your country of residence.

T. I am an EU national but am not currently residing within the EU. Will my bank account and other investments in the BVI fall within the scope of the bilateral agreements between the BVI and EU Member States?

Provided that you continue to reside outside the EU, savings income arising from your bank deposits and/or other investments in the BVI fall outside the scope of the bilateral agreements. However, your paying agent in the BVI may require you to provide proof of your residence.

U. What happens if I choose exchange of information?

The tax authority in your country of residence will receive information about savings income that you receive from the BVI. This information will be supplied by the tax authority of the country in which the person who pays you, or who collects the income for you, is based. This information may be compared with the tax returns you file with your domestic tax authority.

V. What is the position regarding companies?

The EU Savings Tax Directive only applies to individuals and therefore payments to companies fall outside the scope of the Directive.

W. What is the position regarding trusts?

All payments to a trust are made to the trustees. Accordingly paying agents will need to determine whether the trustee is a relevant payee.

X. Guidance notes

The BVI Government is in the process of preparing Guidance Notes for the implementation of the EU Savings Tax Directive aimed at those who will be considered paying agents in the BVI and who will have responsibility for deduction of withholding tax from interest payments made to individuals resident in an EU Member State.

Find out more

This Guide does not replace the need to obtain proper legal advice in respect of the application of the EU Savings Tax Directive. You may contact your financial services provider in the British Virgin Islands concerning its plans to meet the requirements of the EU Savings Tax Directive. You may contact the following for inquiries of a general nature:

Ms. Mathilda C.R. Uhrle
Director, Finance and Economic Affairs
Finance and Economic Affairs Secretariat
Ministry of Finance
Government of the British Virgin Islands
Haycraft Building, 1 Pasea Estate
Tortola, British Virgin Islands
Tel: (+1 284) 468 3701 ext 2606
Fax: (+1 284) 468 1002
E-mail: muhrle@gov.vg

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