

ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER M109

MUTUAL LEGAL ASSISTANCE (TAX MATTERS) ACT

Showing the Law as at 15 December 2010

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition revises Act 6/2005, in force 1 July 2005

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MUTUAL LEGAL ASSISTANCE (TAX MATTERS) ACT

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MUTUAL LEGAL ASSISTANCE (TAX MATTERS) ACT

Interpretation

1. (1) In this Act, unless the context otherwise requires—

"Article" means an Article of the Directive;

"competent authority", in relation to Anguilla, has the meaning given in section 3;

"Directive" means the Directive of the Council of the European Union known as Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments, as set out in Schedule 1;

"Member State" means a country that is a member of the European Union;

"Minister" means the Minister to whom responsibility for finance is assigned;

"residence", in relation to a beneficial owner, means the country or territory where his permanent residence is located, subject to section 5;

"third country" means a country other than a Member State;

"UCITS" means an undertaking for collective investment in transferable securities that is recognised in accordance with the Directive of the Council of the European Union known as Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities.

(2) Unless the context otherwise requires or this Act expressly provides to the contrary—

(a) an expression that is defined in the Directive shall have the same meaning in this Act as that given to it in the Directive;

(b) where the Directive provides for the construction of an expression therein, that expression shall be construed in accordance with those provisions for the purposes of this Act.

(3) A reference in the Directive to an "economic operator" shall be construed in accordance with such rules, regulations or guidelines as may be made by the Minister and any such rules, regulations or guidelines made shall be published in the *Gazette.*

(4) For the purposes of the definition of "interest payment" in Article 6—

(a) "interest" includes income mentioned in Article 6(1)(d) only to the extent that such income corresponds to gains directly or indirectly deriving from interest payments defined in Article 6(1)(a) and (b);

(b) "interest payment" as defined in Article 6(1)(c) and (d) does not include income referred to therein from an undertaking for collective investment established within

Anguilla that is equivalent to an UCITS where the investment in debt claims referred to in Article 6(1)(a) of such undertaking has not exceeded 15% of its assets;

(c) interest paid or credited to an account of an entity referred to in Article 4(2) which has not qualified for the option under Article 4(3) and is established within Anguilla shall not be considered as an interest payment under Article 6(4) where the investment of such an entity in debt claims referred to in Article 6(1)(a) has not exceeded 15% of its assets.

Implementation of the Directive

2. (1) This Act shall apply for the purpose of giving effect to the Directive.

(2) Where any provision of this Act is inconsistent with a provision of the Directive, this Act shall prevail.

(3) Where the Directive is amended by the Council of the European Union and the amendment is adopted by the Government of the United Kingdom, the Minister may, where he considers it necessary in the public interest to do so, by regulation subject to affirmative resolution of the House of Assembly, make provisions to give effect to the amendment, including such modifications to this Act or Schedule 1 as are specified in the Order issued by the Government of the United Kingdom.

Competent authority

3. (1) The Comptroller of Inland Revenue is the competent authority in Anguilla for the purposes of the Directive and he may, in writing, designate any person or authority to perform the functions of the competent authority under this Act and the Directive.

(2) The Comptroller of Inland Revenue shall cause the designation of a person or authority under subsection (1) to be notified in the *Gazette* as soon as practicable after the designation is made.

Identity of beneficial owner

4. (1) A paying agent shall establish the identity of a beneficial owner in accordance with this section.

(2) Where the paying agent and the recipient of the interest entered into contractual relations before 1 July 2005, the paying agent shall establish the name and address of the beneficial owner by using the information at its disposal, in particular, information held pursuant to the Proceeds of Crime Act and any regulations made or Guidance Notes issued under it and any other enactment in force in Anguilla which provides for the prevention of the use of the financial system for the purpose of money laundering.

(Am. in L.R. 15/12/2010)

(3) Where the paying agent and the recipient of the interest enter into contractual relations, or carry out any transaction in the absence of contractual relations, on or after 1 July 2005, the paying agent shall establish the name and address of the beneficial owner and, if any, the tax identification number allocated to the beneficial owner by his Member State of residence for tax purposes.

(4) Subject to subsection (5), a paying agent shall establish the details specified in subsection (3) on the basis of the passport or the official identity card presented by the beneficial owner.

(5) Where the address or the tax identification number of a beneficial owner does not appear on his passport or official identity card, the paying agent shall establish the address or the tax identification number, as the case may be, on the basis of any other documentary proof of identity presented by the beneficial owner.

(6) Where the tax identification number of a beneficial owner does not appear on his passport, his official identity card or any other documentary proof presented by him, the paying agent shall establish the date and place of birth of the beneficial owner on the basis of the passport or the official identity card presented by the beneficial owner.

Residence of beneficial owner

5. (1) A paying agent shall establish the residence of a beneficial owner in accordance with this section.

(2) Where the paying agent and the recipient of the interest entered into contractual relations before 1 July 2005, the paying agent shall establish the residence of the beneficial owner by using the information at its disposal and, in particular, information held pursuant to Proceeds of Crime Act and any regulations made or Guidance Notes issued under it and any other enactment in force in Anguilla that provides for the prevention of the use of the financial system for the purpose of money laundering.

(Am. in L.R. 15/12/2010)

(3) Subject to subsection (4), where the paying agent is unable to establish residence as provided for in subsection (2), or where the paying agent and the recipient of the interest enter into contractual relations, or carry out any transaction in the absence of contractual relations, on or after 1 July 2005, the paying agent shall establish the residence of the beneficial owner on the basis of the passport, the official identity card or, if necessary, any other documentary proof of identity presented by the beneficial owner.

(4) Where a beneficial owner presents a passport or official identity card issued by a Member State and declares himself to be resident in a third country, the paying agent shall establish the residence of the beneficial owner on the basis of a certificate of residence for tax purposes or other equivalent document issued by a competent authority of the third country in which the beneficial owner claims to be resident, and if the beneficial owner fails to present such a certificate, the paying agent shall treat the Member State which issued the passport or other official identity document as the residence of the beneficial owner.

(5) Where a question arises as to whether or not a certificate of residence for tax purposes or other equivalent document issued by a competent authority of a third country is valid, the decision of the competent authority shall be conclusive on the subject.

Exchange of information

6. (1) Where the beneficial owner of interest is resident in a Member State, the paying agent shall report to the competent authority—

(a) the identity and residence of the beneficial owner established in accordance with sections 4 and 5;

(b) the name and address of the paying agent;

(c) the account number of the beneficial owner or, where there is none, identification of the debt claim giving rise to the interest or other instrument giving rise to the savings income; and

(d) information concerning the interest payment in accordance with subsection (2).

(2) Reports of information concerning interest payments shall distinguish between the following categories of interest and indicate—

(a) in the case of an interest payment within the meaning of Article 6(1)(a), the amount of interest paid or credited;

(b) in the case of an interest payment within the meaning of Article 6(1)(b) or (d), either the amount of interest or income referred to in those paragraphs or the full amount of the proceeds from the sale, redemption or refund;

(c) in the case of an interest payment within the meaning of Article 6(1)(c), either the amount of income referred to in that paragraph or the full amount of the distribution;

(d) in the case of an interest payment within the meaning of Article 6(4), the amount of interest attributable to each of the members of the entity referred to in Article 4(2) who meet the conditions of Articles 1(1) and 2(1).

(3) The competent authority shall—

(a) at least once a year and within 6 months following the end of each calendar year; and

(b) without requiring a request to do so,

communicate to the competent authority of the Member State that is the residence of the beneficial owner, the information reported under subsections (1) and (2) in respect of that beneficial owner.

Penalty

7. Where a paying agent fails to—

(a) establish the identity of a beneficial owner in accordance with section 4;

(b) establish the residence of a beneficial owner in accordance with section 5; or

(c) make a report as required by section 6(1);

he shall be guilty of an offence and liable on summary conviction to a fine of $10,000 or to imprisonment for a term of 6 months or to both.

Confidentiality

8. (1) Information established or reported by a paying agent in accordance with this Act shall be treated as confidential, and no person shall disclose any such information except in accordance with this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of $15,000 or to imprisonment for a term of 6 months or to both.

Protection of persons disclosing confidential information

9. A person who divulges any confidential information in conformity with this Act shall be deemed not to commit any offence under the Confidential Relationships Act or under any other law for the time being in force in Anguilla by reason only of such disclosure; and such disclosure shall be deemed not to be a breach of any confidential relationship between that person and any other person; and no civil claim or action whatsoever shall lie against the person making such disclosure or against such person's principal or employer by reason of such disclosure.

Regulations

10. The Minister may make regulations generally for the purpose of carrying out the provisions of this Act, and in particular for—

(a) paying agents and receiving agents;

(b) all matters pertaining to savings income and interest; and

(c) reports to be made under this Act.

Application of agreement with Member State

11. (1) Where, pursuant to the Directive, the Government of Anguilla enters into an agreement with the Government of a Member State to implement the provisions of the Directive, the provisions of this Act shall be applied in accordance with that agreement, notwithstanding any inconsistency with a provision of the Directive or this Act.

(2) An agreement referred to in subsection (1) may be in the form set out in Schedule 2.

Use of information

12. (1) Any information transmitted by or to a Member State shall be used only for the purpose for which it was provided.

(2) The Government of Anguilla may unilaterally suspend the operation of an agreement referred to in section 11 on the grounds that information transmitted pursuant to the agreement has been used for a purpose other than that for which it was provided.

Provisional application of the Directive

13. Without prejudice to the Model Agreements set out in Schedule 2, the convention may be applied provisionally by exchange of Notes between Anguilla and the Member States.

Citation

14. This Act may be cited as the Mutual Legal Assistance (Tax Matters) Act, Revised Statutes and Regulations of Anguilla, Chapter 109.

SCHEDULE 1

(Section 1)

COUNCIL DIRECTIVE 2003/48/EC

of 3 JUNE 2003

ON TAXATION OF SAVINGS INCOME IN THE FORM OF INTEREST PAYMENTS

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 94 thereof,

Having regard to the proposal from the Commission[1],

Having regard to the opinion of the European Parliament[2],

Having regard to the opinion of the European Economic and Social Committee[3],

Whereas:

(1) Articles 56 to 60 of the Treaty guarantee the free movement of capital.

(2) Savings income in the form of interest payments from debt claims constitutes taxable income for residents of all Member States.

(3) By virtue of Article 58(1) of the Treaty Member States have the right to apply the relevant provisions of their tax law which distinguish between taxpayers who are not in the same situation with regard to their place of residence or with regard to the place where their capital is invested, and to take all requisite measures to prevent infringements of national law and regulations, in particular in the field of taxation.

(4) In accordance with Article 58(3) of the Treaty, the provisions of Member States' tax law designed to counter abuse or fraud should not constitute a means of arbitrary discrimination or a disguised restriction on the free movement of capital and payments as established by Article 56 of the Treaty.

(5) In the absence of any coordination of national tax systems for taxation of savings income in the form of interest payments, particularly as far as the treatment of interest received by non-residents is concerned, residents of Member States are currently often able to avoid any form of taxation in their Member State of residence on interest they receive in another Member State.

(6) This situation is creating distortions in the capital movements between Member States, which are incompatible with the internal market.

(7) This Directive builds on the consensus reached at the Santa Maria da Feira European Council of 19 and 20 June 2000 and the subsequent Ecofin Council meetings of 26 and 27 November 2000, 13 December 2001 and 21 January 2003.

(8) The ultimate aim of this Directive is to enable savings income in the form of interest payments made in one Member State to beneficial owners who are individuals resident in another Member State to be made subject to effective taxation in accordance with the laws of the latter Member State.

[1] OJ C 270 E, 25.9.2001, p. 259.
[2] OJ C 47 E, 27.2.2003, p. 553.
[3] OJ C 48, 21.2.2002, p. 55.

(9) The aim of this Directive can best be achieved by targeting interest payments made or secured by economic operators established in the Member States to or for the benefit of beneficial owners who are individuals resident in another Member State.

(10) Since the objective of this Directive cannot be sufficiently achieved by the Member States, because of the lack of any coordination of national systems for the taxation of savings income, and can therefore be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.

(11) The paying agent is the economic operator who pays interest to or secures the payment of interest for the immediate benefit of the beneficial owner.

(12) In defining the notion of interest payment and the paying agent mechanism, reference should be made, where appropriate, to Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)[4].

(13) The scope of this Directive should be limited to taxation of savings income in the form of interest payments on debt claims, to the exclusion, *inter alia*, of the issues relating to the taxation of pension and insurance benefits.

(14) The ultimate aim of bringing about effective taxation of interest payments in the beneficial owner's Member State of residence for tax purposes can be achieved through the exchange of information concerning interest payments between Member States.

(15) Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct and indirect taxation[5] already provides a basis for Member States to exchange information for tax purposes on the income covered by this Directive. It should continue to apply to such exchanges of information in addition to this Directive insofar as this Directive does not derogate from it.

(16) The automatic exchange of information between Member States concerning interest payments covered by this Directive makes possible the effective taxation of those payments in the beneficial owner's Member State of residence for tax purposes in accordance with the national laws of that State. It is therefore necessary to stipulate that Member States which exchange information pursuant to this Directive should not be permitted to rely on the limits to the exchange of information as set out in Article 8 of Directive 77/799/EEC.

(17) In view of structural differences, Austria, Belgium and Luxembourg cannot apply the automatic exchange of information at the same time as the other Member States. During a transitional period, given that a withholding tax can ensure a minimum level of effective taxation, especially at a rate increasing progressively to 35%, these three Member States should apply a withholding tax to the savings income covered by this Directive.

(18) In order to avoid differences in treatment, Austria, Belgium and Luxembourg should not be obliged to apply automatic exchange of information before the Swiss Confederation, the Principality of Andorra, the Principality of Liechtenstein, the Principality of Monaco and the Republic of San Marino ensure effective exchange of information on request concerning payments of interest.

(19) Those Member States should transfer the greater part of their revenue of this withholding tax to the Member State of residence of the beneficial owner of the interest.

(20) Those Member States should provide for a procedure allowing beneficial owners resident for tax purposes in other Member States to avoid the imposition of this withholding tax by authorising their paying agent to report the interest payments or by presenting a certificate issued by the competent authority of their Member State of residence for tax purposes.

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[4] OJ L 375, 31.12.1985, p. 3. Directive as last amended by Directive 2001/108/EC of the European Parliament and of the Council (OJ L 41, 13.2.2002, p. 35).

[5] OJ L 336, 27.12.1977, p. 15. Directive as last amended by the 1994 Act of Accession

(21) The Member State of residence for tax purposes of the beneficial owner should ensure the elimination of any double taxation of the interest payments which might result from the imposition of this withholding tax in accordance with the procedures laid down in this Directive. It should do so by crediting this withholding tax up to the amount of tax due in its territory and by reimbursing to the beneficial owner any excess amount of tax withheld. It may, however, instead of applying this tax credit mechanism, grant a refund of the withholding tax.

(22) In order to avoid market disruption, this Directive should, during the transitional period, not apply to interest payments on certain negotiable debt securities.

(23) This Directive should not preclude Member States from levying other types of withholding tax than that referred to in this Directive on interest arising in their territories.

(24) So long as the United States of America, Switzerland, Andorra, Liechtenstein, Monaco, San Marino and the relevant dependent or associated territories of the Member States do not all apply measures equivalent to, or the same as, those provided for by this Directive, capital flight towards these countries and territories could imperil the attainment of its objectives. Therefore, it is necessary for the Directive to apply from the same date as that on which all these countries and territories apply such measures.

(25) The Commission should report every three years on the operation of this Directive and propose to the Council any amendments that prove necessary in order better to ensure effective taxation of savings income and to remove undesirable distortions of competition.

(26) This Directive respects the fundamental rights and principles which are recognised, in particular, by the Charter of Fundamental Rights of the European Union,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

INTRODUCTORY PROVISIONS

Article 1

Aim

1. The ultimate aim of the Directive is to enable savings income in the form of interest payments made in one Member State to beneficial owners who are individuals resident for tax purposes in another Member State to be made subject to effective taxation in accordance with the laws of the latter Member State.

2. Member States shall take the necessary measures to ensure that the tasks necessary for the implementation of this Directive are carried out by paying agents established within their territory, irrespective of the place of establishment of the debtor of the debt claim producing the interest.

Article 2

Definition of beneficial owner

1. For the purposes of this Directive, '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, that is to say that:

(a) he acts as a paying agent within the meaning of Article 4(1); or

(b) he acts on behalf of a legal person, an entity which is taxed on its profits under the general arrangements for business taxation, an UCITS authorised in accordance with Directive 85/611/EEC or an entity referred to in Article 4(2) of this Directive and, in the last mentioned case, discloses the name and address of that entity to the economic operator making the

interest payment and the latter communicates such information to the competent authority of its Member State of establishment, or

(c) he acts on behalf of another individual who is the beneficial owner and discloses to the paying agent the identity of that beneficial owner in accordance with Article 3(2).

2. Where a paying agent has information suggesting that the individual who receives an interest payment or for whom an interest payment is secured may not be the beneficial owner, and where neither paragraph 1(a) nor 1(b) applies to that individual, it shall take reasonable steps to establish the identity of the beneficial owner in accordance with Article 3(2). If the paying agent is unable to identify the beneficial owner, it shall treat the individual in question as the beneficial owner.

Article 3

Identity and residence of beneficial owners

1. Each Member State shall, within its territory, adopt and ensure the application of the procedures necessary to allow the paying agent to identify the beneficial owners and their residence for the purposes of Articles 8 to 12.

Such procedures shall comply with the minimum standards established in paragraphs 2 and 3.

2. The paying agent shall establish the identity of the beneficial owner on the basis of minimum standards which vary according to when relations between the paying agent and the recipient of the interest are entered into, as follows:

(a) for contractual relations entered into before 1 January 2004, the paying agent shall establish the identity of the beneficial owner, consisting of his name and address, by using the information at its disposal, in particular pursuant to the regulations in force in its State of establishment and to Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering[6];

(b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1 January 2004, the paying agent shall establish the identity of the beneficial owner, consisting of the name, address and, if there is one, the tax identification number allocated by the Member State of residence for tax purposes. These details shall be established on the basis of the passport or of the official identity card presented by the beneficial owner. If it does not appear on that passport or on that official identity card, the address shall be established on the basis of any other documentary proof of identity presented by the beneficial owner. If the tax identification number is not mentioned on the passport, on the official identity card or any other documentary proof of identity, including, possibly, the certificate of residence for tax purposes, presented by the beneficial owner, the identity shall be supplemented by a reference to the latter's date and place of birth established on the basis of his passport or official identification card.

3. The paying agent shall establish the residence of the beneficial owner on the basis of minimum standards which vary according to when relations between the paying agent and the recipient of the interest are entered into. Subject to the conditions set out below, residence shall be considered to be situated in the country where the beneficial owner has his permanent address:

(a) for contractual relations entered into before 1 January 2004, the paying agent shall establish the residence of the beneficial owner by using the information at its disposal, in particular pursuant to the regulations in force in its State of establishment and to Directive 91/308/EEC;

(b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1 January 2004, the paying agent shall establish the residence of the

[6] OJ L 166, 28.6.1991, p. 77. Directive as last amended by Directive 2001/97/EC of the European Parliament and of the Council (OJ L 344, 28.12.2001, p. 76).

beneficial owner on the basis of the address mentioned on the passport, on the official identity card or, if necessary, on the basis of any documentary proof of identity presented by the beneficial owner and according to the following procedure: for individuals presenting a passport or official identity card issued by a Member State who declare themselves to be resident in a third country, residence shall be established by means of a tax residence certificate issued by the competent authority of the third country in which the individual claims to be resident. Failing the presentation of such a certificate, the Member State which issued the passport or other official identity document shall be considered to be the country of residence.

Article 4

Definition of paying agent

1. For the purposes of this Directive, '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.

2. Any entity established in a Member State to which interest is paid or for which interest is secured for the benefit of the beneficial owner shall also be considered a paying agent upon such payment or securing of such payment. This provision shall not apply if the economic operator has reason to believe, on the basis of official evidence produced by that entity, that:

(a) it is a legal person, with the exception of those legal persons referred to in paragraph 5; or

(b) its profits are taxed under the general arrangements for business taxation; or

(c) it is an UCITS recognised in accordance with Directive 85/611/EEC.

An economic operator paying interest to, or securing interest for, such an entity established in another Member State which is considered a paying agent under this paragraph shall communicate the name and address of the entity and the total amount of interest paid to, or secured for, the entity to the competent authority of its Member State of establishment, which shall pass this information on to the competent authority of the Member State where the entity is established.

3. The entity referred to in paragraph 2 shall, however, have the option of being treated for the purposes of this Directive as an UCITS as referred to in 2(c). The exercise of this option shall require a certificate to be issued by the Member State in which the entity is established and presented to the economic operator by that entity. Member States shall lay down the detailed rules for this option for entities established in their territory.

4. Where the economic operator and the entity referred to in paragraph 2 are established in the same Member State, that Member State shall take the necessary measures to ensure that the entity complies with the provisions of this Directive when it acts as a paying agent.

5. The legal persons exempted from paragraph 2(a) are:

(a) in Finland: avoin yhtiö (Ay) and kommandiittiyhtiö (Ky)/ öppet bolag and kommanditbolag;

(b) in Sweden: handelsbolag (HB) and kommanditbolag (KB).

Article 5

Definition of competent authority

For the purposes of this Directive, 'competent authority' means:

(a) for Member States, any of the authorities notified by the Member States to the Commission;

(b) for third countries, the competent authority for the purposes of bilateral or multilateral tax conventions or, failing that, such other authority as is competent to issue certificates of residence for tax purposes.

Article 6

Definition of interest payment

1. For the purposes of this Directive, 'interest payment' means:

(a) interest paid or credited to an account, relating to debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and, in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures; penalty charges for late payments shall not be regarded as interest payments;

(b) interest accrued or capitalised at the sale, refund or redemption of the debt claims referred to in (a);

(c) income deriving from interest payments either directly or through an entity referred to in Article 4(2), distributed by:

(i) an UCITS authorised in accordance with Directive 85/611/EEC,

(ii) entities which qualify for the option under Article 4(3),

(iii) undertakings for collective investment established outside the territory referred to in Article 7;

(d) income realised upon the sale, refund or redemption of shares or units in the following undertakings and entities, if they invest directly or indirectly, via other undertakings for collective investment or entities referred to below, more than 40% of their assets in debt claims as referred to in (a):

(i) an UCITS authorised in accordance with Directive 85/611/EEC,

(ii) entities which qualify for the option under Article 4(3),

(iii) undertakings for collective investment established outside the territory referred to in Article 7.

However, Member States shall have the option of including income mentioned under (d) in the definition of interest only to the extent that such income corresponds to gains directly or indirectly deriving from interest payments within the meaning of (a) and (b).

2. As regards paragraph 1(c) and (d), when a paying agent has no information concerning the proportion of the income which derives from interest payments, the total amount of the income shall be considered an interest payment.

3. As regards paragraph 1(d), when a paying agent has no information concerning the percentage of the assets invested in debt claims or in shares or units as defined in that paragraph, that percentage shall be considered to be above 40%. Where he cannot determine the amount of income realised by the beneficial owner, the income shall be deemed to correspond to the proceeds of the sale, refund or redemption of the shares or units.

4. When interest, as defined in paragraph 1, is paid to or credited to an account held by an entity referred to in Article 4(2), such entity not having qualified for the option under Article 4(3), it shall be considered an interest payment by such entity.

5. As regards paragraph 1(b) and (d), Member States shall have the option of requiring paying agents in their territory to annualise the interest over a period of time which may not exceed one year, and treating such annualised interest as an interest payment even if no sale, redemption or refund occurs during that period.

6. By way of derogation from paragraphs 1(c) and (d), Member States shall have the option of excluding from the definition of interest payment any income referred to in those provisions from undertakings or entities established within their territory where the investment in debt claims referred to in paragraph 1(a) of such entities has not exceeded 15% of their assets. Likewise, by way of derogation from paragraph 4, Member States shall have the option of excluding from the definition of interest payment in paragraph 1 interest paid or credited to an account of an entity referred to in Article 4(2) which has not qualified for the option under Article 4(3) and is established within their territory, where the investment of such an entity in debt claims referred to in paragraph 1(a) has not exceeded 15% of its assets. The exercise of such option by a Member State shall be binding on other Member States.

7. The percentage referred to in paragraph 1(d) and paragraph 3 shall from 1 January 2011 be 25%.

8. The percentages referred to in paragraph 1(d) and in paragraph 6 shall be determined by reference to the investment policy as laid down in the fund rules or instruments of incorporation of the undertakings or entities concerned and, failing which, by reference to the actual composition of the assets of the undertakings or entities concerned.

Article 7

Territorial scope

This Directive shall apply to interest paid by a paying agent established within the territory to which the Treaty applies by virtue of Article 299 thereof.

CHAPTER II

EXCHANGE OF INFORMATION

Article 8

Information reporting by the paying agent

1. Where the beneficial owner is resident in a Member State other than that in which the paying agent is established, the minimum amount of information to be reported by the paying agent to the competent authority of its Member State of establishment shall consist of:

(a) the identity and residence of the beneficial owner established in accordance with Article 3;

(b) the name and address of the paying agent;

(c) the account number of the beneficial owner or, where there is none, identification of the debt claim giving rise to the interest;

(d) information concerning the interest payment in accordance with paragraph 2.

2. The minimum amount of information concerning interest payment to be reported by the paying agent shall distinguish between the following categories of interest and indicate:

(a) in the case of an interest payment within the meaning of Article 6(1)(a): the amount of interest paid or credited;

(b) in the case of an interest payment within the meaning of Article 6(1)(b) or (d): either the amount of interest or income referred to in those paragraphs or the full amount of the proceeds from the sale, redemption or refund;

(c) in the case of an interest payment within the meaning of Article 6(1)(c): either the amount of income referred to in that paragraph or the full amount of the distribution;

(d) in the case of an interest payment within the meaning of Article 6(4): the amount of interest attributable to each of the members of the entity referred to in Article 4(2) who meet the conditions of Articles 1(1) and 2(1);

(e) where a Member State exercises the option under Article 6(5): the amount of annualised interest.

However, Member States may restrict the minimum amount of information concerning interest payment to be reported by the paying agent to the total amount of interest or income and to the total amount of the proceeds from sale, redemption or refund.

Article 9

Automatic exchange of information

1. The competent authority of the Member State of the paying agent shall communicate the information referred to in Article 8 to the competent authority of the Member State of residence of the beneficial owner.

2. The communication of information shall be automatic and shall take place at least once a year, within six months following the end of the tax year of the Member State of the paying agent, for all interest payments made during that year.

3. The provisions of Directive 77/799/EEC shall apply to the exchange of information under this Directive, provided that the provisions of this Directive do not derogate there from.

However, Article 8 of Directive 77/799/EEC shall not apply to the information to be provided pursuant to this chapter.

CHAPTER III

TRANSITIONAL PROVISIONS

Article 10

Transitional period

1. During a transitional period starting on the date referred to in Article 17(2) and (3) and subject to Article 13(1), Belgium, Luxembourg and Austria shall not be required to apply the provisions of Chapter II.

They shall, however, receive information from the other Member States in accordance with Chapter II.

During the transitional period, the aim of this Directive shall be to ensure minimum effective taxation of savings in the form of interest payments made in one Member State to beneficial owners who are individuals resident for tax purposes in another Member State.

2. The transitional period shall end at the end of the first full fiscal year following the later of the following dates:

—the date of entry into force of an agreement between the European Community, following a unanimous decision of the Council, and the last of the Swiss Confederation, the Principality of Liechtenstein, the Republic of San Marino, the Principality of Monaco and the Principality of Andorra, providing for the exchange of information upon request as defined in the OECD

Model Agreement on Exchange of Information on Tax Matters released on 18 April 2002 (hereinafter the 'OECD Model Agreement') with respect to interest payments, as defined in this Directive, made by paying agents established within their respective territories to beneficial owners resident in the territory to which the Directive applies, in addition to the simultaneous application by those same countries of a withholding tax on such payments at the rate defined for the corresponding periods referred to in Article 11(1),

—the date on which the Council agrees by unanimity that the United States of America is committed to exchange of information upon request as defined in the OECD Model Agreement with respect to interest payments, as defined in this directive, made by paying agents established within its territory to beneficial owners resident in the territory to which the Directive applies.

3. At the end of the transitional period, Belgium, Luxembourg and Austria shall be required to apply the provisions of Chapter II and they shall cease to apply the withholding tax and the revenue sharing provided for in Articles 11 and 12. If, during the transitional period, Belgium, Luxembourg or Austria elects to apply the provisions of Chapter II, it shall no longer apply the withholding tax and the revenue sharing provided for in Articles 11 and 12.

Article 11

Withholding tax

1. During the transitional period referred to in Article 10, where the beneficial owner is resident in a Member State other than that in which the paying agent is established, Belgium, Luxembourg and Austria shall levy a withholding tax at a rate of 15% during the first three years of the transitional period, 20% for the subsequent three years and 35% thereafter.

2. The paying agent shall levy withholding tax as follows:

(a) in the case of an interest payment within the meaning of Article 6(1)(a): on the amount of interest paid or credited;

(b) in the case of an interest payment within the meaning of Article 6(1)(b) or (d): on the amount of interest or income referred to in those paragraphs or by a levy of equivalent effect to be borne by the recipient on the full amount of the proceeds of the sale, redemption or refund;

(c) in the case of an interest payment within the meaning of Article 6(1)(c): on the amount of income referred to in that paragraph;

(d) in the case of an interest payment within the meaning of Article 6(4): on the amount of interest attributable to each of the members of the entity referred to in Article 4(2) who meet the conditions of Articles 1(1) and 2(1);

(e) where a Member State exercises the option under Article 6(5): on the amount of annualised interest.

3. For the purposes of points (a) and (b) of paragraph 2, withholding tax shall be levied pro rata to the period of holding of the debt claim by the beneficial owner. When the paying agent is unable to determine the period of holding on the basis of information in its possession, it shall treat the beneficial owner as having held the debt claim throughout its period of existence unless he provides evidence of the date of acquisition.

4. The imposition of withholding tax by the Member State of the paying agent shall not preclude the Member State of residence for tax purposes of the beneficial owner from taxing the income in accordance with its national law, subject to compliance with the Treaty.

5. During the transitional period, Member States levying withholding tax may provide that an economic operator paying interest to, or securing interest for, an entity referred to in Article 4(2) established in another Member State shall be considered the paying agent in place of the entity and shall levy the withholding tax on

that interest, unless the entity has formally agreed to its name, address and the total amount of interest paid to it or secured for it being communicated in accordance with the last subparagraph of Article 4(2).

Article 12

Revenue sharing

1. Member States levying withholding tax in accordance with Article 11(1) shall retain 25% of their revenue and transfer 75% of the revenue to the Member State of residence of the beneficial owner of the interest.

2. Member States levying withholding tax in accordance with Article 11(5) shall retain 25% of the revenue and transfer 75% to the other Member States proportionate to the transfers carried out pursuant to paragraph 1 of this Article.

3. Such transfers shall take place at the latest within a period of six months following the end of the tax year of the Member State of the paying agent in the case of paragraph 1, or that of the Member State of the economic operator in the case of paragraph 2.

4. Member States levying withholding tax shall take the necessary measures to ensure the proper functioning of the revenue-sharing system.

Article 13

Exceptions to the withholding tax procedure

1. Member States levying withholding tax in accordance with Article 11 shall provide for one or both of the following procedures in order to ensure that the beneficial owners may request that no tax be withheld:

(a) a procedure which allows the beneficial owner expressly to authorise the paying agent to report information in accordance with Chapter II, such authorisation covering all interest paid to the beneficial owner by that paying agent; in such cases, the provisions of Article 9 shall apply;

(b) 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 for tax purposes in accordance with paragraph 2.

2. At the request of the beneficial owner, the competent authority of his Member State of residence for tax purposes shall issue a certificate indicating:

(a) the name, address and tax or other identification number or, failing such, the date and place of birth of the beneficial owner;

(b) the name and address of the paying agent;

(c) the account number of the beneficial owner or, where there is none, the identification of the security.

Such certificate shall be valid for a period not exceeding three years. It shall be issued to any beneficial owner who requests it, within two months following such request.

Article 14

Elimination of double taxation

1. The Member State of residence for tax purposes of the beneficial owner shall ensure the elimination of any double taxation which might result from the imposition of the withholding tax referred to in Article 11, in accordance with the provisions of paragraphs 2 and 3.

2. If interest received by a beneficial owner has been subject to withholding tax in the Member State of the paying agent, the Member State of residence for tax purposes of the beneficial owner shall grant him a tax credit equal to the amount of the tax withheld in accordance with its national law. Where this amount exceeds the amount of tax due in accordance with its national law, the Member State of residence for tax purposes shall repay the excess amount of tax withheld to the beneficial owner.

3. If, in addition to the withholding tax referred to in Article 11, interest received by a beneficial owner has been subject to any other type of withholding tax and the Member State of residence for tax purposes grants a tax credit for such withholding tax in accordance with its national law or double taxation conventions, such other withholding tax shall be credited before the procedure in paragraph 2 is applied.

4. The Member State of residence for tax purposes of the beneficial owner may replace the tax credit mechanism referred to in paragraphs 2 and 3 by a refund of the withholding tax referred to in Article 11.

Article 15

Negotiable debt securities

1. During the transitional period referred to in Article 10, but until 31 December 2010 at the latest, domestic and international bonds and other negotiable debt securities which have been first issued before 1 March 2001 or for which the original issuing prospectuses have been approved before that date by the competent authorities within the meaning of Council Directive 80/390/EEC[7] or by the responsible authorities in third countries shall not be considered as debt claims within the meaning of Article 6(1)(a), provided that no further issues of such negotiable debt securities are made on or after 1 March 2002. However, should the transitional period referred to in Article 10 continue beyond 31 December 2010, the provisions of this Article shall only continue to apply in respect of such negotiable debt securities:

—which contain gross-up and early redemption clauses; and

—where the paying agent as defined in Article 4 is established in a Member State applying the withholding tax referred to in Article 11 and that paying agent pays interest to, or secures the payment of interest for the immediate benefit of, a beneficial owner resident in another Member State.

If a further issue is made on or after 1 March 2002 of an aforementioned negotiable debt security issued by a Government or a related entity acting as a public authority or whose role is recognised by an international treaty, as defined in the Annex, the entire issue of such security, consisting of the original issue and any further issue, shall be considered a debt claim within the meaning of Article 6(1)(a).

If a further issue is made on or after 1 March 2002 of an aforementioned negotiable debt security issued by any other issuer not covered by the second subparagraph, such further issue shall be considered a debt claim within the meaning of Article 6(1)(a).

2. Nothing in this Article shall prevent Member States from taxing the income from the negotiable debt securities referred to in paragraph 1 in accordance with their national laws.

[7] OJ L 100, 17.4.1980, p. 1. Directive repealed by Directive 2001/34/EC of the European Parliament and of the Council (OJ L 184, 6.7.2001, p. 1).

CHAPTER IV

MISCELLANEOUS AND FINAL PROVISIONS

Article 16

Other withholding taxes

This Directive shall not preclude Member States from levying other types of withholding tax than that referred to in Article 11 in accordance with their national laws or double-taxation conventions.

Article 17

Transposition

1. Before 1 January 2004 Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.

2. Member States shall apply these provisions from 1 January 2005 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 (the Channel Islands, the Isle of Man and the dependent or associated territories in the Caribbean) apply from that same date automatic exchange of information in the same manner as is provided for in Chapter II of this 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).

3. The Council shall decide, by unanimity, at least six months before 1 January 2005, whether the condition set out in paragraph 2 will be met, having regard to the dates of entry into force of the relevant measures in the third countries and dependent or associated territories concerned. If the Council does not decide that the condition will be met, it shall, acting unanimously on a proposal by the Commission, adopt a new date for the purposes of paragraph 2.

4. When Member States adopt the provisions necessary to comply with this Directive, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

5. Member States shall forthwith inform the Commission thereof and communicate to the Commission the main provisions of national law which they adopt in the field covered by this Directive and a correlation table between this Directive and the national provisions adopted.

Article 18

Review

The Commission shall report to the Council every three years on the operation of this Directive. On the basis of these reports, the Commission shall, where appropriate, propose to the Council any amendments to the Directive that prove necessary in order better to ensure effective taxation of savings income and to remove undesirable distortions of competition.

Article 19

Entry into force

This Directive shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union.*

Article 20

Addressees

This Directive is addressed to the Member States.

Done at Luxembourg, 3 June 2003.

For the Council

The President

N. CHRISTODOULAKIS

ANNEX

LIST OF RELATED ENTITIES REFERRED TO IN ARTICLE 15

For the purposes of Article 15, the following entities will be considered to be a 'related entity acting as a public authority or whose role is recognised by an international treaty':

— entities within the European Union:

Belgium	Vlaams Gewest (Flemish Region) Région wallonne (Walloon Region) Région bruxelloise/Brussels Gewest (Brussels Region) Communauté française (French Community) Vlaamse Gemeenschap (Flemish Community) Deutschsprachige Gemeinschaft (German-speaking Community)
Spain	Xunta de Galicia (Regional Executive of Galicia) Junta de Andalucía (Regional Executive of Andalusia) Junta de Extremadura (Regional Executive of Extremadura) Junta de Castilla-La Mancha (Regional Executive of Castilla-La Mancha) Junta de Castilla-León (Regional Executive of Castilla-León) Gobierno Foral de Navarra (Regional Government of Navarre) Govern de les Illes Balears (Government of the Balearic Islands) Generalitat de Catalunya (Autonomous Government of Catalonia) Generalitat de Valencia (Autonomous Government of Valencia) Diputación General de Aragón (Regional Council of Aragon) Gobierno de las Islas Canarias (Government of the Canary Islands) Gobierno de Murcia (Government of Murcia) Gobierno de Madrid (Government of Madrid) Gobierno de la Comunidad Autónoma del País Vasco/Euzkadi (Government of the Autonomous Community of the Basque Country) Diputación Foral de Guipúzcoa (Regional Council of Guipúzcoa) Diputación Foral de Vizcaya/Bizkaia (Regional Council of Vizcaya) Diputación Foral de Alava (Regional Council of Alava) Ayuntamiento de Madrid (City Council of Madrid) Ayuntamiento de Barcelona (City Council of Barcelona) Cabildo Insular de Gran Canaria (Island Council of Gran Canaria) Cabildo Insular de Tenerife (Island Council of Tenerife) Instituto de Crédito Oficial (Public Credit Institution) Instituto Catalán de Finanzas (Finance Institution of Catalonia) Instituto Valenciano de Finanzas (Finance Institution of Valencia)
Greece	• •••••▪ μ▪▪ • •••••▪▪•▪▪ •▪ • •••••• (National Telecommunications Organisation) • •••••▪ μ▪▪ • ▪•••••• μ• • •••••• (National Railways Organisation) • • μ•▪ ▪ • ▪▪•▪▪ • •••••▪ μ▪▪ (Public Electricity Company)
France	La Caisse d'amortissement de la dette sociale (CADES) (Social Debt Redemption Fund) L'Agence française de développement (AFD) (French Development Agency) Réseau Ferré de France (RFF) (French Rail Network) Caisse Nationale des Autoroutes (CNA) (National Motorways Fund) Assistance publique Hôpitaux de Paris (APHP) (Paris Hospitals Public Assistance) Charbonnages de France (CDF) (French Coal Board) Entreprise minière et chimique (EMC) (Mining and Chemicals Company)

Italy	Regions Provinces Municipalities Cassa Depositi e Prestiti (Deposits and Loans Fund)
Portugal	Região Autónoma da Madeira (Autonomous Region of Madeira) Região Autónoma dos Açores (Autonomous Region of Azores) Municipalities

—international entities:

European Bank for Reconstruction and Development
European Investment Bank
Asian Development Bank
African Development Bank
World Bank/IBRD/IMF
International Finance Corporation
Inter-American Development Bank
Council of Europe Soc. Dev. Fund
Euratom
European Community
Corporación Andina de Fomento (CAF) (Andean Development Corporation)
Eurofima
European Coal & Steel Community
Nordic Investment Bank
Caribbean Development Bank

The provisions of Article 15 are without prejudice to any international obligations that Member States may have entered into with respect to the abovementioned international entities.

— entities in third countries:

Those entities that meet the following criteria:

1. the entity is clearly considered to be a public entity according to the national criteria;

2. such public entity is a non-market producer which administers and finances a group of activities, principally providing non-market goods and services, intended for the benefit of the community and which are effectively controlled by general government;

3. such public entity is a large and regular issuer of debt;

4. the State concerned is able to guarantee that such public entity will not exercise early redemption in the event of gross-up clauses.

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SCHEDULE 2

(Section 11)

ANGUILLA – MODEL CONVENTIONS CONCERNING THE AUTOMATIC EXCHANGE OF INFORMATION ABOUT SAVINGS INCOME IN THE FORM OF INTEREST PAYMENTS

Annex I – Model Convention between the Government of Anguilla and the Government of [EU Member State (other than Belgium, Austria and Luxembourg)]

Annex II – Model Convention between the Government of Anguilla and the Government of [Belgium, Austria or Luxembourg]

ANNEX I

CONVENTION BETWEEN THE GOVERNMENT OF ANGUILLA AND THE GOVERNMENT OF [EU member state (other than Belgium, Austria and Luxembourg)] CONCERNING THE AUTOMATIC EXCHANGE OF INFORMATION ABOUT SAVINGS INCOME IN THE FORM OF INTEREST PAYMENTS

The Government of Anguilla and the Government of [**EU Member State**], desiring to conclude a Convention which enables savings income in the form of interest payments made in one of the Contracting Parties to beneficial owners who are individuals resident in the other Contracting Party, to be made subject to effective taxation in accordance with the laws of the latter Contracting Party in conformity with Directive 2003/48/EC of the Council of the European Union of 3 June 2003 on taxation of savings income in the form of interest payments, have agreed as follows:

Article 1

General Scope

1. This Convention shall apply to interest paid by a paying agent established within the territory of one of the Contracting Parties with a view to enable savings income in the form of interest payments made in one Contracting Party to beneficial owners who are individuals resident for tax purposes in the other Contracting Party to be made subject to effective taxation in accordance with the laws of the latter Contracting Party.

2. The scope of this Convention shall be limited to taxation of savings income in the form of interest payments on debt claims, to the exclusion, *inter alia*, of the issues relating to the taxation of pension and insurance benefits.

Article 2

Definitions

1. For the purposes of this Convention, unless the context otherwise requires:

   (a) the term "a Contracting Party" and "the other Contracting Party" mean Anguilla or [**EU Member State**] as the context requires;

(b) the term "Directive" means the Directive 2003/48/EC of the Council of the European Union of 3 June 2003 on taxation of savings income in the form of interest payments, as applicable at the date of signing this Convention;

(c) the term "[insert name of EU Member State]" means: ……

(d) the term "beneficial owner" means the beneficial owner according to article 2 of the Directive;

(e) the term "paying agent" means the paying agent according to article 4 of the Directive;

(f) the term "competent authority" means

(i) in the case of Anguilla: the Comptroller of Inland Revenue,

(ii) in the case of [**EU Member State**]: the competent authority of that State according to article 5 of the Directive.

(g) the term "interest payment" means the interest payment according to article 6, due account being taken of article 15, of the Directive;

(h) any term not otherwise defined herein shall have the meaning given to it in the Directive.

2. For the purposes of this Convention, in the provisions of the Directives to which this Convention refers, instead of "Member States" has to be read: Contracting Parties.

Article 3

Identity and residence of beneficial owners

Each Contracting Party shall, within its territory, adopt and ensure the application of the procedures necessary to allow the paying agent to identify the beneficial owners and their residence for the purpose of Article 4. These procedures shall comply with the minimum standards established in Article 3, paragraphs 2 and 3 of the Directive, with the proviso that, with respect to Anguilla and in relation to subparagraph (a) of each of these paragraphs, the identity and residence of the Beneficial Owner shall be established on the basis of the information which is available to the Paying Agent by virtue of the application of the relevant provisions of legislation in force in Anguilla on prevention of the use of the financial system for the purpose of money laundering.

Article 4

Automatic exchange of information

1. The competent authority of the Contracting Party where the paying agent is established, shall communicate the information referred to in Article 8 of the Directive to the competent authority of the other Contracting Party of residence of the beneficial owner.

2. The communication of information shall be automatic and shall take place at least once a year, within six months following the end of the tax year of the Contracting Party of the paying agent, for all interest payments made during that year.

3. Information exchange under this Convention shall be treated by the Contracting Parties in a manner consistent with the provisions of Article 7 of Council Directive 77/799/EEC.

Article 5

Transposition

Before 1 January 2005 the Contracting Parties shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Convention.

Article 6

Annex

The text of the Directive and of Article 7 of Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct and indirect taxation, as applicable at the date of signing this Convention, and to which this Convention refers, are appended as an Annex to, and form an integral part of, this Convention. The text of Article 7 of Council Directive 77/799/EEC in this annex shall be replaced by the text of the said Article in the revised Council Directive 77/799/EEC if this revised Directive enters into force before the date from which the provisions of this Convention shall take effect.

Article 7

Entry Into Force

1. This Convention shall enter into force on the thirtieth day after the latter of the dates on which the respective Governments have notified each other in writing that the respective formalities constitutionally required have been complied with, and its provisions shall have effect from the date from which the Directive is applicable according to Article 17, paragraph 2 and 3, of the Directive.

2. Article 4 of this Agreement shall not have effect in [**EU Member State**] in the absence of direct taxation in Anguilla.

Article 8

Termination

This Convention shall remain in force until terminated by one of the Contracting Parties. Either Party may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the expiration of a period of three years from the date of its entry into force. In such event the Convention shall cease to have effect for periods beginning after the end of the calendar year in which the notice of termination has been given.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Convention.

Done at …… this ……day of ……

in duplicate in the ……..…….. and English languages all texts being equally authentic.

ANNEX TO ANNEX 1

Text of Article 7 of Directive 77/799/EEC

"Provisions relating to secrecy

1. All information made known to a Member State under this Directive shall be kept secret in that State in the same manner as information received under its national legislation. In any case, such information:

- may be made available only to the persons directly involved in the assessment of the tax or in the administrative control of this assessment,

- may be made known only in connection with judicial proceedings or administrative proceedings involving sanctions undertaken with a view to, or relating to, the making or reviewing the tax assessment and only to persons who are directly involved in such proceedings; such information may, however, be disclosed during public hearings or in judgements if the competent authority of the Member State supplying the information raises no objection,

- shall in no circumstances be used other than for taxation purposes or in connection with judicial proceedings or administrative proceedings involving sanctions undertaken with a view to, or in relation to, the making or reviewing the tax assessment.

In addition, Member States may provide for the information referred to in the first subparagraph to be used for assessment of other levies, duties and taxes covered by Article 2 of Directive 76/308/EEC[8].

2. Paragraph 1 shall not oblige a Member State whose legislation or administrative practices lays down, for domestic purposes, narrower limits than those contained in the provisions of that paragraph, to provide information if the State concerned does not undertake to respect those narrower limits.

3. Notwithstanding paragraph 1, the competent authorities of the Member State providing the information may permit it to be used for other purposes in the requesting State if, under the legislation of the informing State, the information could, in similar circumstances, be used in the informing State for similar purposes.

4. Where a competent authority of a Member State considers that information which it has received from the competent authority of another Member State is likely to be useful to the competent authority of a third Member State, it may transmit it to the latter competent authority with the agreement of the competent authority which supplied the information. "

[8] OJ L 73, 19.3.1976, p. 18.

ANNEX II

CONVENTION BETWEEN [THE GOVERNMENT OF] ANGUILLA AND THE GOVERNMENT OF [Belgium, Austria or Luxembourg] CONCERNING THE AUTOMATIC EXCHANGE OF INFORMATION ABOUT SAVINGS INCOME IN THE FORM OF INTEREST PAYMENTS

The Government of Anguilla and the Government of [**Belgium or Austria or Luxembourg**], desiring to conclude a Convention which enables savings income in the form of interest payments made in one of the Contracting Parties to beneficial owners who are individuals resident in the other Contracting Party, to be made subject to effective taxation in accordance with the laws of the latter Contracting Party in conformity with Directive 2003/48/EC of the Council of the European Union of 3 June 2003 on taxation of savings income in the form of interest payments, have agreed as follows:

Article 1

General Scope

1. This Convention shall apply to interest paid by a paying agent established within the territory of one of the Contracting Parties with a view to enable savings income in the form of interest payments made in one Contracting Party to beneficial owners who are individuals resident for tax purposes in the other Contracting Party to be made subject to effective taxation in accordance with the laws of the latter Contracting Party.

2. The scope of this Convention shall be limited to taxation of savings income in the form of interest payments on debt claims, to the exclusion, *inter alia*, of the issues relating to the taxation of pension and insurance benefits.

Article 2

Definitions

1. For the purposes of this Convention, unless the context otherwise requires:

(a) The term "a Contracting Party" and "the other Contracting Party" mean Anguilla or [**Belgium, Austria or Luxembourg**] as the context requires;

(b) The term "Directive" means the Directive 2003/48/EC of the Council of the European Union of 3 June 2003 on taxation of savings income in the form of interest payments, as applicable at the date of signing this Convention;

(c) The term "[**Belgium or Austria or Luxembourg**]" means: ……

(d) the term "beneficial owner" means the beneficial owner according to article 2 of the Directive;

(e) the term "paying agent" means the paying agent according to article 4 of the Directive;

(f) the term "competent authority" means

(i) in the case of Anguilla: the Comptroller of Inland Revenue,

(ii) in the case of [**Belgium or Austria or Luxembourg**]: ……

(g) the term "interest payment" means the interest payment according to article 6, due account being taken of article 15, of the Directive.

(h) any term not otherwise defined herein shall have the meaning given to it in the Directive.

2. For the purposes of this Convention, in the provisions of the Directives to which this Convention refers, instead of "Member States" has to be read: Contracting Parties.

Article 3

Identity and residence of beneficial owners

Each Contracting Party shall, within its territory, adopt and ensure the application of the procedures necessary to allow the paying agent to identify the beneficial owners and their residence for the purpose of Articles 4 to 6. These procedures shall comply with the minimum standards established in Article 3, paragraphs 2 and 3 of the Directive, with the proviso that, with respect to Anguilla and in relation to subparagraph (a) of each of these paragraphs, the identity and residence of the Beneficial Owner shall be established on the basis of the information which is available to the Paying Agent by virtue of the application of the relevant provisions of legislation in force in Anguilla on prevention of the use of the financial system for the purpose of money laundering.

Article 4

Automatic exchange of information

1. The competent authority of the Contracting Party where the paying agent is established, shall communicate the information referred to in Article 8 of the Directive to the competent authority of the other Contracting Party of residence of the beneficial owner.

2. The communication of information shall be automatic and shall take place at least once a year, within six months following the end of the tax year of the Contracting Party of the paying agent, for all interest payments made during that year.

3. Information exchange under this Convention shall be treated by the Contracting Parties in a manner consistent with the provisions of Article 7 of Council Directive 77/799/EEC.

Article 5

Transitional provisions

1. During the transitional period referred to in Article 10 of the Directive, where the beneficial owner is resident in Anguilla and the paying agent is resident in [**Belgium, Austria or Luxembourg**], [**Belgium, Austria or Luxembourg**] shall levy a withholding tax at a rate of 15% during the first three years of the transitional period, 20% for the subsequent three years and 35% thereafter. During this period, [**Belgium, Austria or Luxembourg**] shall not be required to apply the provisions of Article 4. It shall, however, receive information from Anguilla in accordance with that Article.

2. The paying agent shall levy the withholding tax as described in article 11, paragraphs 2 and 3 of the Directive.

3. The imposition of withholding tax by [**Belgium, Austria or Luxembourg**] shall not preclude Anguilla from taxing the income in accordance with its national law.

4. During the transitional period, [**Belgium, Austria or Luxembourg**] may provide that an economic operator paying interest to, or securing interest for, an entity referred to in Article 4, paragraph 2, of the Directive, established in Anguilla, shall be considered the paying agent in place of the entity and shall levy the withholding tax on that interest, unless the entity has formally agreed to its name, address and the total amount of interest paid to it or secured for it being communicated in accordance with the last subparagraph of that paragraph.

5. At the end of the transitional period, [**Belgium, Austria or Luxembourg**] shall be required to apply the provisions of Article 4 and shall cease to apply the withholding tax and the revenue sharing provided for in this

provision and in Article 6. If, during the transitional period, [**Belgium, Austria or Luxembourg**] elects to apply the provisions of Article 4, it shall no longer apply the withholding tax and the revenue sharing provided for in this provision and in Article 6.

Article 6

Revenue sharing

1. [**Belgium, Austria or Luxembourg**] shall retain 25% of the revenue of the withholding tax mentioned in Article 5, paragraph 1, and transfer 75% of the revenue to Anguilla.

2. If [**Belgium, Austria or Luxembourg**] levies withholding tax in accordance with article 5, paragraph 4, [**Belgium, Austria or Luxembourg**] shall retain 25% of the revenue and transfer 75% to Anguilla of the revenue of the withholding tax levied on interest payments made to entities referred to in Article 4, paragraph 2, of the Directive, established in Anguilla.

3. Such transfers shall take place at the latest within a period of six months following the end of the tax year of [**Belgium, Austria or Luxembourg**].

4. [**Belgium, Austria or Luxembourg**] shall take the necessary measures to ensure the proper functioning of this revenue-sharing system.

Article 7

Exceptions to the withholding procedure

1. [**Belgium, Austria or Luxembourg**] shall provide for one or both of the procedures of article 13, paragraph 1, of the Directive in order to ensure that the beneficial owners may request that no tax be withheld.

2. At the request of the beneficial owner, the competent authority of his Contracting Party of residence for tax purposes shall issue a certificate in accordance with Article 13, paragraph 2, of the Directive.

Article 8

Elimination of double taxation

Anguilla shall ensure the elimination of any double taxation which might result from the imposition of the withholding tax referred to in Article 5, in accordance with the provisions of Article 14, paragraph 2 and 3 of the Directive or will provide a refund of the withholding tax.

Article 9

Other withholding taxes

The Convention shall not preclude the Contracting Parties from levying other types of withholding tax than that referred to in Article 5 in accordance with their national laws or double-taxation conventions.

Article 10

Transposition

Before 1 January 2005 the Contracting Parties shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Convention.

Article 11

Annex

The text of the Directive and of Article 7 of Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct and indirect taxation, as applicable at the date of signing this Convention, and to which this Convention refers, are appended as an Annex to, and form an integral part of, this Convention. The text of Article 7 of Council Directive 77/799/EEC in this annex shall be replaced by the text of the said Article in the revised Council Directive 77/799/EEC if this revised Directive enters into force before the date from which the provisions of this Convention shall take effect.

Article 12

Entry Into Force

1. This Convention shall enter into force on the thirtieth day after the latter of the dates on which the respective Governments have notified each other in writing that the respective formalities constitutionally required have been complied with, and its provisions shall have effect from the date from which the Directive is applicable according to Article 17, paragraph 2 and 3, of the Directive.

2. Articles 4 to 7 of this Agreement shall not have effect in [**Belgium, Austria or Luxembourg**] in the absence of direct taxation in Anguilla.

Article 13

Termination

This Convention shall remain in force until terminated by one of the Contracting Parties. Either Party may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the expiration of a period of three years from the date of its entry into force. In such event the Convention shall cease to have effect for periods beginning after the end of the calendar year in which the notice of termination has been given.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Convention.

Done at …… this …….. day of ……..

in duplicate in the ……..……. and English languages all texts being equally authentic.

ANNEX TO ANNEX II

Text of Article 7 of Directive 77/799/EEC

"Provisions relating to secrecy

1. All information made known to a Member State under this Directive shall be kept secret in that State in the same manner as information received under its national legislation. In any case, such information:

- may be made available only to the persons directly involved in the assessment of the tax or in the administrative control of this assessment,
- may be made known only in connection with judicial proceedings or administrative proceedings involving sanctions undertaken with a view to, or relating to, the making or reviewing the tax assessment and only to persons who are directly involved in such proceedings; such information may, however, be disclosed during public hearings or in judgements if the competent authority of the Member State supplying the information raises no objection,
- shall in no circumstances be used other than for taxation purposes or in connection with judicial proceedings or administrative proceedings involving sanctions undertaken with a view to, or in relation to, the making or reviewing the tax assessment.

In addition, Member States may provide for the information referred to in the first subparagraph to be used for assessment of other levies, duties and taxes covered by Article 2 of Directive 76/308/EEC[9].

2. Paragraph 1 shall not oblige a Member State whose legislation or administrative practices lays down, for domestic purposes, narrower limits than those contained in the provisions of that paragraph, to provide information if the State concerned does not undertake to respect those narrower limits.

3. Notwithstanding paragraph 1, the competent authorities of the Member State providing the information may permit it to be used for other purposes in the requesting State if, under the legislation of the informing State, the information could, in similar circumstances, be used in the informing State for similar purposes.

4. Where a competent authority of a Member State considers that information which it has received from the competent authority of another Member State is likely to be useful to the competent authority of a third Member State, it may transmit it to the latter competent authority with the agreement of the competent authority which supplied the information. "

[9] OJ L 73, 19.3.1976, p. 18.