

Technical questions

What is the concept of "paying agent upon receipt"? Why does the directive contain this concept?

Paying agents under the directive (every person who pays interest to individuals in the framework of a professional activity such as a financial institution, a bank or an independent asset manager) are ordinarily obliged to report information on the identity of the owner of the interest to their tax authorities, who pass the information to the Member State of residence of the beneficial owner, at the time when the interest payment is made to that beneficial owner (paying agents established in states or territories which apply the withholding tax are obliged to withhold a tax instead of communicating information). These agents could be defined as the normal paying agents "upon distribution" within the framework of the directive.

However, in order to avoid a situation where individuals could circumvent the directive by interposing, between normal paying agents and themselves, certain non-corporate entities such as untaxed associations and investment clubs, the current directive already assimilates those entities to paying agents. It obliges them to act as paying agents at the moment when they receive an interest payment from an upstream economic operator, regardless of the actual distribution of any sum to the individual beneficial owner ("paying agent upon receipt" rule).

The new Commission proposal intends to clarify this provision by establishing a "positive" and clearer definition of the concept of "paying agent upon receipt", by explicitly extending this concept also to entities with legal personality and to legal arrangements and by establishing a list (see Annex III of the proposal) of those entities and arrangements which have to be in any case considered as "paying agents upon receipt".

What are the intermediate entities established within the EU to which the provisions of the Directive would be applied upon receipt of the interest payments?

They are indicatively listed in Annex III of the Directive, in order to provide clarity to the upstream economic operators making interest payments to them. Appropriate procedures will be included in the directive in order to publicly adapt and update the list when necessary. However Member States will be obliged to treat as "paying agent upon receipt" any entity or legal arrangement established on its territory, regardless of its inclusion in the list of Annex III, when this entity or legal arrangement is not subject to taxation on its income within its territory, including on income arising to its non resident participants and beneficial owners.

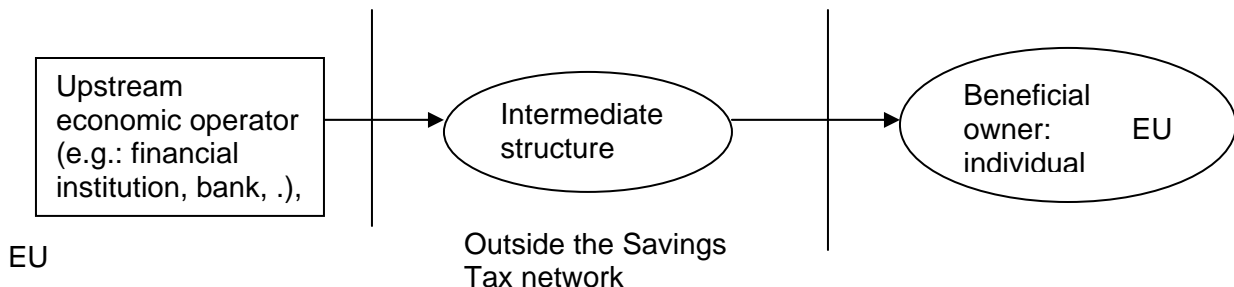
Does the Commission propose to include all life insurance certificates/contracts within the scope of the directive?

No. Only those life insurance contracts that can be considered by investors as equivalent to debt claims because their positive performance (beyond the guarantee of reimbursement of the capital invested) is strictly linked to income from debt claims or equivalent income and because the mortality or longevity risk covered under the contract is merely ancillary (lower than 5% of capital insured as an average over the duration of the contract). Typical examples are those contracts defined in Belgium as "branche 21" or "branche 23" (contracts linked to one or several investment funds, income considered as interest if certain conditions are met, notably a guaranteed return, see article 19, §1, 3° of the Belgian fiscal legislation).

The additional burden put by this provision on insurance companies can be limited by avoiding possible duplications of tasks in those cross-border situations where the insurance companies already provide the tax authority of the country of residence of the beneficiary with appropriate tools to allow it to apply the domestic tax rules of that country. Contributions from industry will be welcome in order to identify these possible cases and allow a discussion with Member States, either at the level of the Council or within the Committee set up by the amending Directive, in order to identify appropriate solutions.

Some practical examples on the impact of the proposal

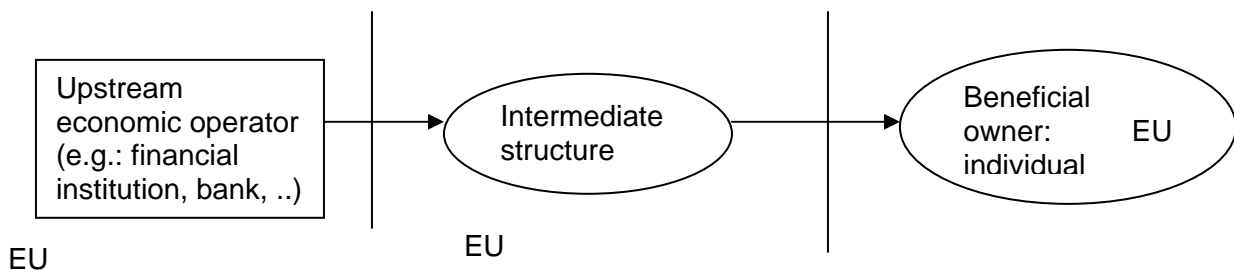
1) What if interest payments are made by financial institutions established within the EU to intermediate structures established outside the 42 jurisdictions participating in the Savings Tax network for the benefit of EU resident individuals?



Two situations can arise. Either the intermediate structure is listed in Annex I of the Directive or not. If it is not included in the list, the provisions of the Directive will not apply.

Should it be included in the list, the EU upstream economic operator would have to apply the “look-through” approach on the basis of the information already available to it under the anti-money laundering provisions and determine whether the effective beneficial owner behind the intermediate structure is an individual resident in the EU. In that case, the EU financial institution would act as **paying agent** and apply the provisions of the Directive (exchange of information or withholding tax) as if the payment to the intermediate structure was directly made to this individual. If not, the EU financial institution would not have to act as a paying agent under the Directive.

2) What if interest payments are made by financial institutions established within the EU to intermediate structures established within the EU for the benefit of an EU resident individual?

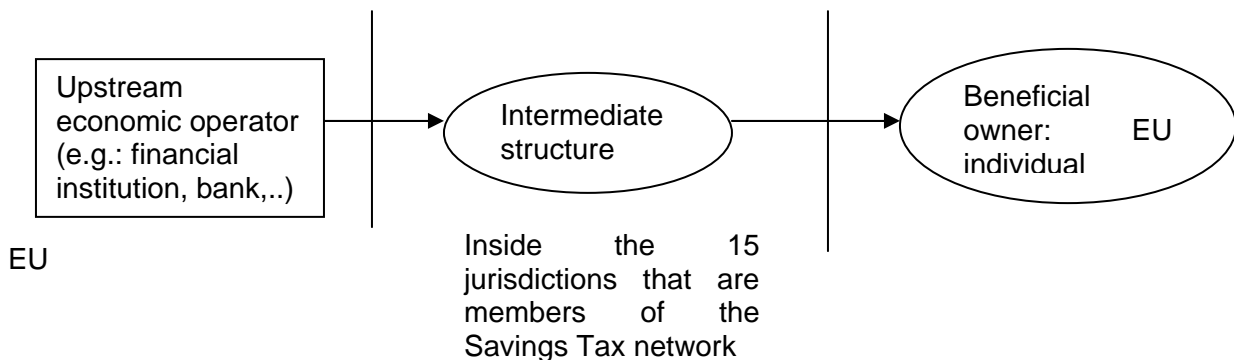


Two situations can arise. Either the intermediate structure is a **paying agent upon receipt** in accordance with the criteria of the Directive (see indicative list in Annex III of the Directive) or not.

In the first case, the provisions of the Directive (exchange of information or withholding tax) would apply upon receipt of the payments by the intermediate structure.

In the second case, the provisions of the Directive would not apply upon receipt of payments, but might apply at a later stage when interest payments are attributed by the intermediate structure to individuals resident in another EU Member State. The intermediate structures would then have to act as a normal **paying agent upon distribution**.

3) What if interest payments are made by financial institutions established within the EU to intermediate structures established within the 15 other jurisdictions participating in the Savings Tax network for the benefit of an EU resident individual?

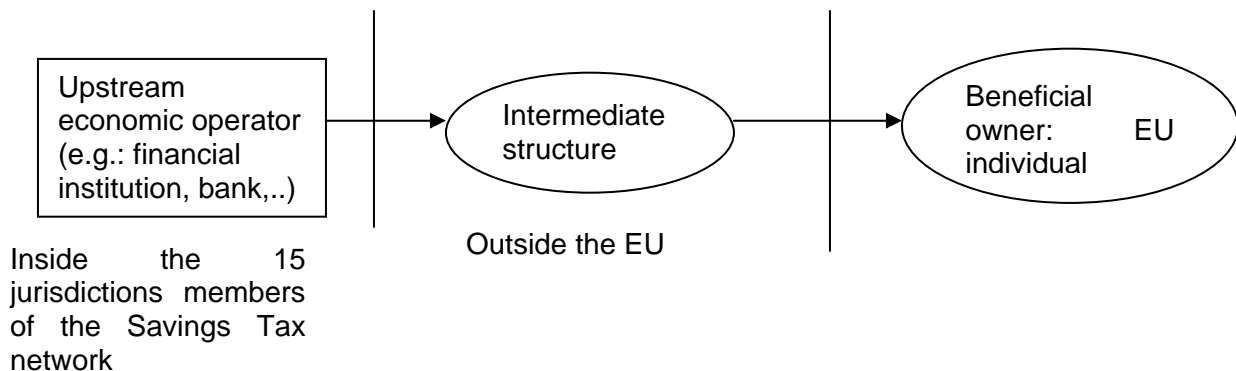


Sub-case1): The intermediate structure is established in the 10 dependent or associated territories and is listed in Annex 1 of the Directive: the EU upstream economic operator would have to apply the “look-through” approach on the basis of the information already available to it under the anti-money laundering provisions and determine whether the effective beneficial owner behind the intermediate structure is an individual resident in the EU. In that case, the **EU economic operator would act as paying agent** and apply the provisions of the Directive (exchange of information or withholding tax) as if the payment to the intermediate structure was directly made to this individual. If not, the EU financial institution would not have to act as a paying agent under the Directive.

Sub-case 2): The intermediate structure is established in the 10 dependent or associated territories, is not listed in Annex 1 of the Directive but is an entity to which the “paying agent upon receipt” rule already applies at present in these territories: the same provisions as those of the Directive (exchange of information or withholding tax) would apply upon receipt of the payments by **the intermediate structure that would act as paying agent** under the responsibility of the territory where it is established.

Sub-case 3): The intermediate structure is established in the 5 non-EU countries. Two situations arise. Either the intermediate structure is listed in Annex I of the Directive or not. If it is not included in the list, the provisions of the Directive will not apply. Should it be included in the list, the **upstream economic operator established in the EU** would have to act as **paying agent** under the directive and to apply the “look-through” approach on the basis of the information already available to it under the anti-money laundering provisions. It would then determine whether or not the effective beneficial owner behind the intermediate structure is an individual resident in the EU. Should it be the case, the provisions of the Directive (exchange of information or withholding tax) would apply on the payment to the intermediate structure. If not, the provisions of the Directive would not apply.

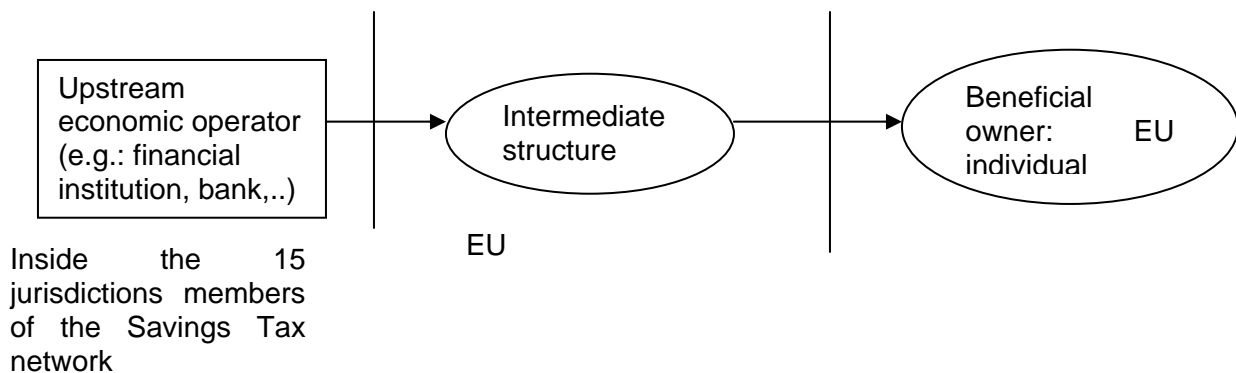
4) What if interest payments are made by financial institutions established within the 15 jurisdictions participating in the Savings Tax network to intermediate structures established outside the EU for the benefit of an EU resident individual?



In principle the provisions of the Directive **will not apply** unless the participating jurisdiction reviews its agreement with the EU to align it on the changes now being proposed for the Directive.

However, if the intermediate structure is established in any of the 10 dependent or associated territories and fulfils all the requirements to act as paying agent upon receipt which are foreseen under the bilateral agreements signed with Member States, the same provisions as those of the Directive (exchange of information or withholding tax) will apply under the responsibility of the territory where the intermediate structure is established.

5) What if interest payments are made by financial institutions established within the 15 jurisdictions participating in the Savings Tax network to intermediate structures established within the EU for the benefit of an EU resident individual?

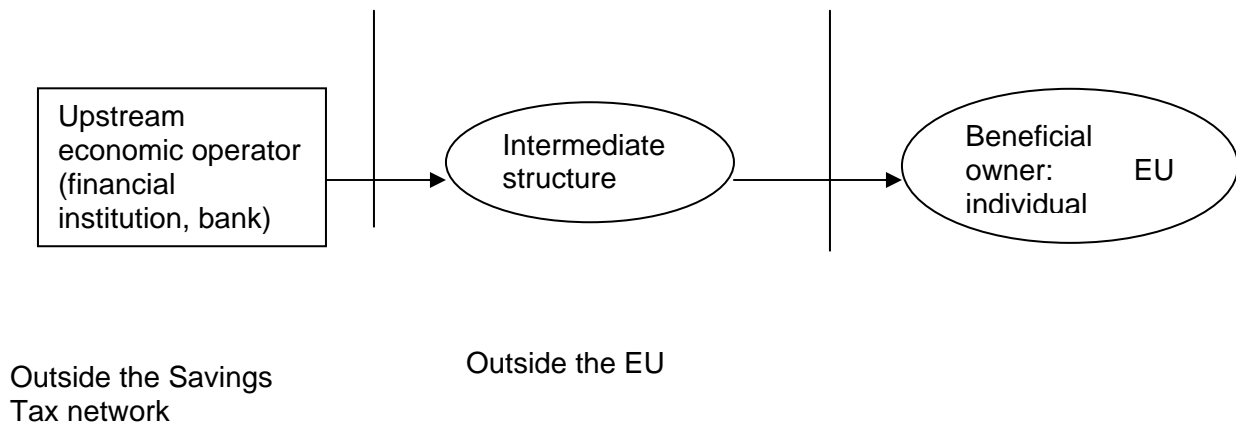


Two situations can arise. Either the intermediate structure is a **paying agent upon receipt** in accordance with the criteria of the Directive (see indicative list in Annex III of the Directive) or not.

In the first case, the provisions of the Directive (exchange of information or withholding tax) would apply upon receipt of the payments by the intermediate structure.

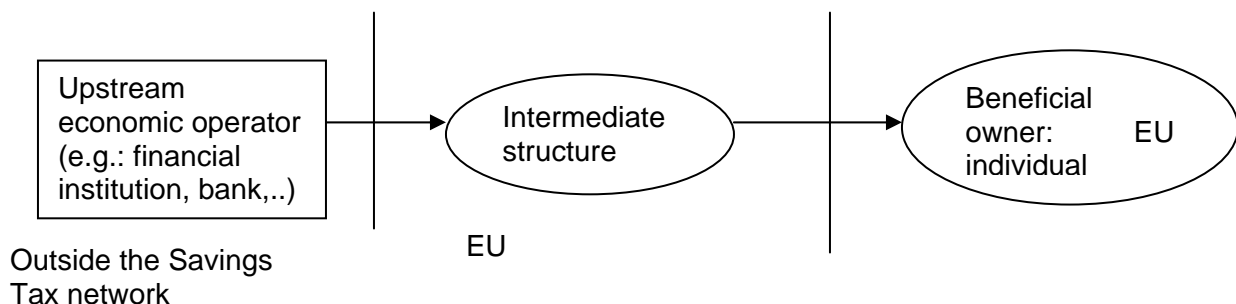
In the second case, the provisions of the Directive would not apply upon receipt of payments, but might apply at a later stage when interest payments are attributed by the intermediate structure to individuals resident in another EU Member State. The intermediate structures would then have to act as a normal **paying agent upon distribution**.

6) What if interest payments are made by financial institutions established outside the 42 EU Member States and jurisdictions participating in the Savings Tax network to intermediate structures established outside the EU for the benefit of an EU resident?



The provisions of the Directive do not apply unless the intermediate structure is established in one of the 15 jurisdictions participating in the Savings Tax network and has paying agent obligations under the agreements.

7) What if interest payments are made by financial institutions established outside the 42 EU Member States and jurisdictions participating in the Savings Tax network to intermediate structures established within the EU for the benefit of an EU resident?

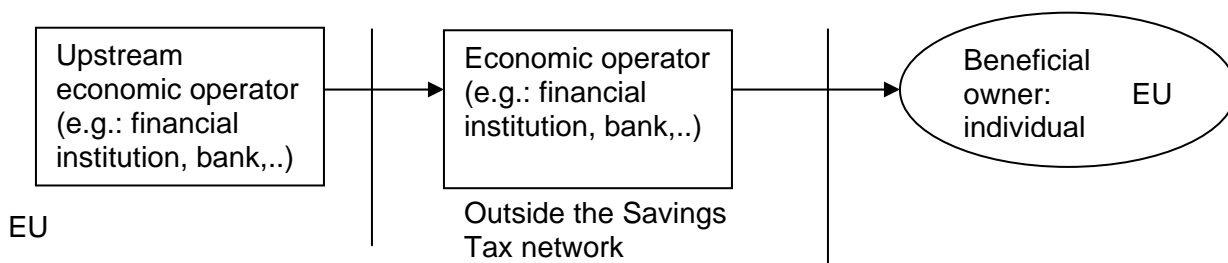


Two situations can arise. Either the intermediate structure is a **paying agent upon receipt** in accordance with the criteria of the Directive (see indicative list in Annex III of the Directive) or not.

In the first case, the provisions of the Directive (exchange of information or withholding tax) would apply upon receipt of the payments by the intermediate structure.

In the second case, the provisions of the Directive would not apply upon receipt of payments, but might apply at a later stage when interest payments are attributed by the intermediate structure to individuals resident in another EU Member State. The intermediate structures would then have to act as a normal **paying agent upon distribution**.

8) What if interest payments are made by financial institutions established within the EU to the benefit of an EU resident individual through other financial institutions established outside the 42 jurisdictions participating in the Savings Tax network?



The new proposal clarifies that the provisions of the Directive will apply if the first economic operator established within the EU is aware that it is making an interest payment to an individual beneficial owner which has already been identified by that economic operator as a resident in an EU Member State, regardless of the fact that the amount is credited on a current account held by this beneficial owner outside the Savings Tax network. As a matter of fact, the financial institution where this current account is held serves only as basis for a "passive receipt" of the interest payment, whilst the true **paying agent** is in this case **the financial institution established inside the EU**, which has then to apply the provisions of the Directive (exchange of information or withholding tax).

This will, among others, discourage dishonest beneficial owners to ask, to the only purpose of evading taxes, their financial institutions established within the EU to channel the interests payments to be made to them through branches or subsidiaries or other financial partners established outside the 42 jurisdictions participating in the Savings Tax network.