



What changes to the EU Savings Directive means to you

Do recent changes made to the EU Savings Directive impact private fund managers? Morgan Lewis lawyers Kate Habershon and Katerina Heal provide the answer.

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The world of private investment funds is well familiar with the EU Savings Directive that emerged back in 2003. The directive has gradually become part of the national laws of the EU member states prompting investment funds, amongst other players in the financial arena, to consider its impact on their operations (although it would be fair to say that many EU-based investment funds have been largely unaffected).

Broadly speaking, the directive aims to impose reporting obligations on certain entities, called 'paying agents' based within EU member states that make payments of interest to individuals resident in other EU member states, thus, encouraging cross-border exchange of information and ultimately assisting the authorities to collect tax on the interest payments. It has, however, become apparent that the directive does not extend to certain types of income that it was intended to target and not all investment funds are currently required to comply with such rules. As a result, certain changes were adopted by the EU in April to improve the operation of the directive going forward.

Amongst significant changes is a clear extension of the reporting net to cover a wider range of payments that will now include income derived from certain interest-bearing securities and interest, and equivalent income, derived from collective investment funds.

In addition, to prevent certain interposed intermediate entities or legal arrangements being used to circumvent the requirements of the directive, a so-called "look-through" approach will be required. This will require paying agents to look through certain non-EU entities and intermediate structures to the ultimate beneficial owners of the income. In particular, EU entities that pay interest or equivalent income to a non-EU entity, knowing that the entity will on-pay such interest to individuals resident in another EU member state, would now also be considered as paying agents, as would entities that are not subject to effective taxation (including EU-based entities) that receive interest.

Paying agents will now be required to collect additional information on the beneficial owners, such as their date and place of birth as well as their tax identification numbers.

So, what do the changes actually mean for GPs?

Because the changes make it clear that reporting obligations would now extend to paying agents who are not only established in the EU but who also have their place of effective management within the EU, it is likely that certain previously unaffected investment funds (such as non-EU partnerships having only limited presence in the EU via a manager) could fall under the extended umbrella of the directive.

Reporting will also be required by an investment fund making payments of interest or equivalent income to an entity established outside the EU that on-pays to an EU resident individual.

Furthermore, paying agents who make interest payments to entities that are not subject to effective taxation (such as an English limited partnership) could be treated as making payments to the ultimate individual beneficial owners of payments. This could potentially result in portfolio companies of an investment fund that make straightforward payments of interest to the fund, becoming subject to the directive.

The above is just a snapshot of some of the changes to the directive but it has already become apparent that these changes would require serious consideration by many investment funds. Even though the changes are not expected to be implemented into the national laws of the EU Member States until January 2016, with the view to coming into force from April 2017, it would be advisable to begin considering the changes now. To the extent that the changes are expected to be relevant, appropriate procedures need to be put in place to ensure that all concerned entities comply with the reporting obligations.

Those investment funds that are currently in the process of negotiating their legal documentation with their potential investors may decide to use this opportunity to review and update the relevant provisions in the legal documentation. Until now, many funds have been able to rely on the existing provisions in their fund documentation to capture the proposed changes, but their information seeking provisions may need to be extended to permit the funds and their affiliated entities to collect all the required information in order to comply with the forthcoming changes.

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