Proposal for a Council Directive on the application to collective investment institutions of the Council Directive concerning the harmonization of sytems of company taxation and of withholding taxes on dividends

(Submitted by the Commission to the Council on 24 July 1978)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee,

Having regard to the opinion of the European Parliament,

Whereas the provisions of Council Directive ... of ... do not concern dividends that the final beneficiary receives through the intermediary of collective investment institutions;

Whereas investment in securities representing the capital of companies, carried out through the intermediary of collective investment institutions, should not be penalized, but on the contrary should be encouraged; whereas, in order to ensure fair taxation and develop the share market, it is important to settle the problem of dividends distributed to these institutions and redistributed by them to their participants;

Whereas, in order as far as possible to achieve equality of tax treatment between dividends distributed by companies to their shareholders and those distributed to collective investment institutions and redistributed by them to their participants, it is important to make arrangements, for the benefit of participants in collective investment institutions, for the transfer of tax credits attaching to dividends distributed by companies and for the transfer of the right to set off and obtain repayment of withholding taxes charged on dividends which such participants receive;

Whereas, because of substantial differences existing at present between the Member States as regards the legal form of these institutions and the tax arrangements to which they are subject, provision should be made for more than one method of transferring the right to obtain the tax credit and to set off witholding tax, with the choice of method being left to the individual Member State;

Whereas special rules should be established for cases where dividends are distributed to a collective investment institution or are redistributed by it exempt from withholding tax;

Whereas the budgetary cost of the tax credit and of setting off the withholding tax should be borne by the Member State that has levied corporation tax on the profits from which the dividends are derived and has charged withholding tax on their distribution; whereas, for this purpose, financial compensation between Member States must be provided for; whereas an exception to this rule must, however, be made where a collective investment institution redistributes dividends to another collective investment institution which holds at least 10 % of its participations and which does not redistribute these dividends; whereas, nevertheless, there need be no objection to Member States agreeing bilaterally to share this budgetary cost;

Whereas, in order to ensure tax neutrality, it is essential that income distributed to a collective investment institution and redistributed by it to its participants should not be treated less favourably if it derives from another Member State than if it is of national origin;

Whereas the provisions relating to dividends distributed to collective investment institutions and redistributed by them to their participants must be applied by the Member States at the same time as the provisions of Council Directive ... of ...,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

General provisions and definitions

Article 1

1. The Member States shall apply the provisions of the following Articles to income redistributed by collective investment institutions.

2. Save as otherwise provided in this Directive, the provisions of the Company Taxation Directive shall apply to dividends distributed to collective investment institutions.

Article 2

1. For the purposes of this Directive, the expression or the term:

— 'collective investment institutions', hereinafter called CIIs, means the institutions referred to in the Annex hereto, which forms an integral part of this Directive, provided that their purpose is the collective investment of capital raised by means of offers to the public and that their operations are based on the principle of spreading the investment risk;

— 'CII of a Member State' means a CII which is deemed to be resident in that State for tax purposes;

— the 'Company Taxation Directive' means Council Directive . . . of . . .;

— 'dividends' means dividends within the meaning of Article 2 (1) or Article 7 of the Company Taxation Directive in the case of dividends received by a CII and the same sums less the costs incurred by the CII in the case of dividends redistributed by it, provided that they have not been placed to reserve for a period of more than five years from the end of the accounting period during which they were received;

— 'dividends which have not suffered withholding tax' means dividends from which, in accordance with the provisions of the Company Taxation Directive and the provisions of this Directive, no withholding tax has been deducted either at distributing company level or at CII level, or in the case of which, in accordance with Article 7, such withholding tax as had been deducted has been repaid to the CII redistributing the dividends;

— 'dividends which have suffered withholding tax' means any other dividends;

— 'distributing company' means any company of a Member State, other than a CII, which distributes dividends.

2. Dividends received by a CII which, pursuant to the laws of the State of the CII, are attributed for tax purposes to the participants of the CII during the same year or in the following year shall be deemed to be dividends redistributed by the CII, whether or not an actual redistribution has been made.

3. The Council, acting by a qualified majority on a proposal from the Commission, may amend the Annex.

Article 3

Notwithstanding Article 2 (1), the Member States may agree among themselves that the provisions of this Directive shall apply to CIIs whose capital is not raised by means of offers to the public, and shall inform the Commission accordingly.

CHAPTER II

Provisions relating to tax credit

Article 4

1. Any dividend which a CII redistributes to its participants other than a CII shall confer on such participants, in accordance with Articles 4 and 5 of the Company Taxation Directive, entitlement to a tax credit at the rate determined, in accordance with Article 8 of that Directive, by the State of the distributing company.

2. Notwithstanding paragraph 1, the Member State of the CII shall be free to stipulate that the rate of the tax credit attached to the dividends redistributed by the CII shall, in all cases, be that which it has itself fixed in accordance with Article 8 of the Company Taxation Directive.

If use is made of this option, the State of the CII shall, when the dividends are redistributed by the CII, levy a compensatory tax or an advance payment equal to the tax credit granted to the participants and shall grant authorization for the tax credit attached to the dividends received by the CII to be set off against this compensatory tax or advance payment, but any excess shall not be repayable.

3. In all cases, the amount of the tax credit attached to the dividends redistributed by a CII shall be calculated by reference to the amount of such dividends.

The same shall apply to the amount of the tax credit set off against the compensatory tax or advance payment.

CHAPTER III

Provisions relating to withholding tax

Article 5

Any dividend which has suffered withholding tax and which a CII redistributes to its participants, other than a CII, shall confer on such participants, in accordance with Article 16 of the Company Taxation Directive, the right to set off withholding tax equal to 25 % of the amount of the dividend; any excess shall be repaid to them by the Member State charging the tax against which this withholding tax is to be set off.

Article 6

1. Each Member State shall be free to charge a withholding tax on dividends redistributed by the CIIs of that State. The rate of such withholding tax shall not exceed 25 %.

If use is made of this option, withholding tax of 25 % shall be set off against the withholding tax charged at CII level, but any excess shall not be repayable.

2. The set-off provided for in paragraph 1 shall not be carried out where the dividends have not already suffered withholding tax.

Article 7

Where a CII of a Member State, without itself being required to deduct a withholding tax, redistributes to participants resident in that State dividends which have already suffered withholding tax, the Member State of the CII shall be free to repay such withholding tax, calculated at the rate of 25 % to the CII, where one of the following two conditions is fulfilled:

— the name and address of the participant of the CII and the amount of the dividends received by him are automatically communicated to the taxation administration;

— the securities representing interests in the CII are registered in the names of the holders.

Article 8

Nothwithstanding Article 6 (1), the Member State of the CII must charge a withholding tax of 25 % where the CII redistributes dividends which have not suffered withholding tax. However, a Member State shall be free not to charge withholding tax where such dividends are redistributed to residents of that Member State and where one of the following two conditions is fulfilled:

— the name and address of the participant of the CII and the amount of the dividends received by him are automatically communicated to the taxation administration;

— securities representing interests in the CII are registered in the names of the holders.

Article 9

The amount of withholding tax which the participants in a CII are entitled to set off or to have repaid shall be calculated by reference to the amount of the dividends redistributed by the CII.

The same shall apply to:

— the amount of withholding tax suffered on dividends distributed to the CII which is set off against the amount of the withholding tax payable by the CII;

— the repayment of the withholding tax referred to in Article 7;

— the amount of the withholding tax referred to in Article 8.

CHAPTER IV

Provisions common to tax credit and to withholding tax

Article 10

1. The Member State of a CII may replace the set-off arrangements applicable to that CII under Articles 4 (2) and 6 (1) by an arrangement whereby the compensatory tax, advance payment or withholding tax is levied in full and the tax credits or withholding tax attaching to dividends received by the CII are repaid to the latter, up to the amounts that could have been set off under those Articles.

2. Any repayment made to a CII pursuant to paragraph 1 must be cancelled where the dividends are not redistributed by that CII during the year in which the repayment takes place or during the following year.

Article 11

1. For the purposes of this Directive, distributions made by a CII shall be deemed to represent:

— firstly, dividends received by that CII either during the year in which the distributions are made or during the preceding year;

— then, where appropriate, other dividends;

— finally, where appropriate, income of any other type, reduced by any losses incurred.

2. For the purposes of paragraph 1, the amount of dividends originating in each Member State shall be determined on a proportional basis. In the case of dividends referred to in the second indent above, the proportional basis shall apply to the dividends for all years, taken together.

Article 12

1. Expenses and costs that are incurred by a CII for the purpose of acquiring dividends and other receipts, including receipts from the disposal of fixed assets, and that can be directly attributed to a given category of receipts, shall be deducted from receipts in that category.

2. Expenses other than those referred to in paragraph 1 shall be allocated in proportion to total gross receipts from each category.

Article 13

1. Every CII of a Member State must notify that State and its participants of the amount of the dividends redistributed and of the amounts of tax credit and withholding tax that the participants are entitled to set off against personal tax.

2. Member States may enter into agreements on special additional provisions regarding the information that CIIs are required to furnish pursuant to paragraph 1 above.

Article 14

Where a participant in a CII, other than another CII, is resident in a Member State other than the State of the CII, the former Member State shall be entitled to receive financial compensation from the State of the CII equal to the amount of the tax credit and withholding tax which, pursuant to the provisions of this Directive, it has authorized to be set off or has repaid.

Article 15

1. Where a CII of a Member State redistributes to its participants dividends received from a company or from a CII of another Member State, the State of the CII redistributing such dividends shall be entitled to receive from that other Member State financial compensation equal to the amount of the tax credit attached to the dividends received by that CII and to the amount of withholding tax. Such compensation shall be calculated by reference to the amount of dividends redistributed by.that CII.

The Member State required to pay compensation may reduce the amount payable by up to 10 %.

2. Notwithstanding paragraph 1, where the participant in the CII redistributing the dividends is another CII holding not less than 10 % of the participations in the former CII, the financial compensation referred to in the above paragraph shall be paid only in so far as the dividends are redistributed by the other CII.

3. In the case provided for in Article 4 (2), the financial compensation referred to in paragraphs 1 and 2 may not exceed the amount of compensatory tax or advance payment levied at CII level.

4. Member States may enter into bilateral agreements which depart from the requirements of paragraphs 1, 2 and 3, provided that the rights of participants in CIIs, arising out of this Directive, are not affected.

CHAPTER V

Provisions regarding non-discrimination

Article 16

1. Save as otherwise provided in this Directive, a Member State may not accord less favourable tax treatment to income of any kind derived by a CII of that State from another Member State than it accords to income derived from a domestic source.

The same provision shall apply where such income is redistributed by the CII to residents of the State of the CII.

2. Save as otherwise provided in this Directive, the Member State in which a participant in a CII of another Member State is resident may not accord less favourable tax treatment to income of any kind derived from that CII than it accords to income derived from its own CIIs.

Article 17

1. Subject to provisions in respect of withholding tax rates in double taxation agreements concluded between Member States and non-member countries,

a Member State may not accord more favourable tax treatment to participants in the CIIs of that State who are resident in a non-member country than it accords to those who are resident in a Member State.

2. The Member States and the Commission shall cooperate with each another with a view to adopting a common position on this matter.

CHAPTER VI

Transitional and final provisions

Article 18

1. This Directive shall apply to dividends that have been distributed by a distributing company after the date stipulated in Article 22 of the Company Taxation Directive. It shall apply to any other income received or redistributed by a CII after that date.

2. By way of derogation from paragraph 1, Member States shall be free to apply that paragraph either in whole or in part where dividends or other income have been distributed or received before the date referred to therein.

Where use is made of this option, Articles 14 and 15 shall apply only where bilateral agreements have been concluded between the Member States concerned.

Article 19

The provisions of this Directive shall not preclude the application of national provisions the purpose of which is to prevent the recipient of a dividend from obtaining an unjustified advantage and which make it possible to refuse the set-off or repayment of the tax credit or withholding tax.

Article 20

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with the provisions of this Directive not later than the date stipulated in Article 22 of the Company Taxation Directive.

2. Member States shall ensure that the texts of any further main provisions of national law which they adopt in the field governed by this Directive are communicated to the Commission.

Article 21

This Directive is addressed to the Member States.

ANNEX

List of the collective investment institutions referred to in Article 2 (1)

BELGIUM:	Les fonds communs de placement, De gemeenschappelijke beleggingsfondsen within the meaning of the Loi sur les fonds communs de placement du 27. 3. 1957, Wet van 27. 3. 1957 betreffende de gemeenschappelijke beleggingsfondsen.
DENMARK:	Investeringsforeninger within the meaning of Lovbekendtgørelse nr. 130 af 6. 4. 1967 om beskatning af medlemmer af investeringsforeninger; Certifikat-udstedende investeringsforeninger.
GERMANY:	Kapitalanlagegesellschaften within the meaning of the Gesetz über Kapitalanlagegesellschaften as last amended.

FRANCE:	Société nationale d'investissement (SNI), referred to in Article 208-1° of the Code général des impôts;
	Sociétés d'investissement ordinaires (SIOs) referred to in Articles 208-1° bis and 208-2° of the Code général des impôts;
	Sociétés d'investissement à capital variable (SICAVs) referred to in Article 208-1° bis A of the Code général des impôts;
	Fonds communs de placement governed by Décret No 571842 du 28. 12. 1957, published in the Journal officiel de la République française du 29. 12. 1957.
IRELAND:	Units trusts within the meaning of the Unit Trusts Act 1972;
	Investment trust companies.
ITALY:	Le società ed enti finanziari.
LUXEMBOURG:	Fonds communs de placement and sociétés d'investissement featuring on the official list of investment funds drawn up by the Commissaire au contrôle des banques under Article IV (1) of the Arrêté Grand-Ducal du 22. 12. 1972 ayant pour objet le contrôle des fonds d'investissement.
NETHERLANDS:	Beleggingsinstellingen within the meaning of Article 28 of the Wet op de Vennootsschapsbelasting 1969.
UNITED KINGDOM:	Authorized units trusts within the meaning of Section 358 of the Income and Corporation Taxes Act 1970;
	Approved investment trusts within the meaning of Section 359 of the Income and Corporation Taxes Act 1970.