

Direct taxation: The European Commission refers The Netherlands to the Court of Justice over exit tax rules for companies and businesses

The European Commission referred The Netherlands to the Court of Justice today, due to The Netherlands' failure to comply with the Commission's reasoned opinion on Dutch tax rules that impose an exit tax on companies and businesses.

The Dutch tax law provides for exit taxation of non-incorporated businesses and of companies. According to the Commission such exit taxation is likely to dissuade businesses and companies from exercising their right of freedom of establishment and thus constitutes a restriction of Article 49 of the Treaty on the Functioning of the European Union ([IP/10/299](#)). Immediate taxation of accrued but unrealised capital gains at the moment of exit amounts to a restriction if there is no similar taxation in comparable domestic situations. It follows from the case-law that the Member States should defer the collection of their taxes until the moment of actual realisation of the capital gains.

Other pending exit taxation cases concern Denmark (referred to the Court of Justice today), Spain and Portugal ([IP/09/1460](#)) and Belgium ([IP/10/299](#)). A similar case against Sweden was closed, since Sweden complied with the Commission's request ([IP/08/1362](#)).

Background

The incriminated provisions are articles 3.60 and 3.61 of the Income tax law 2001 and articles 15c and 15d of the Corporate tax law 1969.

The Commission's case reference numbers is 2008/2207.

For press releases on infringement cases in the taxation or customs field see:

http://ec.europa.eu/taxation_customs/common/infringements/infringement_cases/index_en.htm

For the latest general information on infringement measures against Member States see:

http://ec.europa.eu/community_law/index_en.htm