Taxation: The European Commission requests Denmark to amend the exit tax on shares held by individuals

Today, the European Commission has formally requested Denmark to amend its legislation concerning the exit tax on shares held by individuals leaving the country.

Pursuant to the contested rules, when a person leaves Denmark to take up residence in another Member State, Denmark calculates the Danish tax due on his/her portfolio of shares. This tax is not immediately collected at the moment of exit but is progressively levied as long as the person sells the shares, or receives dividends or other type of income from its portfolio.

The European Commission considers that, although the Danish tax rules amount to a restriction of the fundamental freedoms, such a restriction could be justified on the need to preserve Denmark's taxing rights over the gains accrued before the person leaves Denmark (anti-abuse purpose). However, the European Commission thinks that the Danish tax rules are not properly designed to achieve this purpose because (i) an individual selling his shares after having left Denmark might be subject to a higher tax than if he had stayed in Denmark and (ii) the rules presume that all individuals leaving Denmark and owning shares intend to avoid Danish tax; the person may not prove a legitimate transfer of residence in exercise of his/her fundamental freedoms.

The European Commission therefore takes the view that Denmark has failed to fulfil its obligations under Articles 21, 45 and 49 TFEU and Articles 28 and 31 EEA Agreement.

Consequently, Denmark is requested to change its legislation and to bring it in line with EU law. (The request takes the form of a "reasoned opinion". the second stage of an infringement procedure). Failing this, the European Commission may refer the cases before the EU's Court of Justice. The reference of the case is IN/2008/4992.