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Direct taxation: Commission formally requests Belgium to change its discriminatory taxation of foreign investment companies

The European Commission has formally requested Belgium to amend rules leading to discriminatory taxation of foreign investment companies. Belgian investment companies do not pay tax on their Belgian interest and dividend income, while such income of foreign investment companies is taxed.

Under Belgian law, Belgian investment companies do not effectively pay tax on their Belgian-sourced interest and dividend income. They get a refund for any Belgian withholding taxes on their Belgian-sourced interest and dividend income. Foreign investment companies suffer withholding taxes of 15 or 25 % on their Belgian-sourced interest and dividend income and cannot claim refunds. The Commission considers that the Belgian provisions restrict the free movement of capital and the freedom of establishment.

Background

The discrimination results from the joint application of the articles 185, 185 bis, 276, 279, 304 en 248 of the Belgian Income Tax Code. In the opinion of the Commission the discrimination is incompatible with articles 49, 54 and 63 of the Treaty on the Functioning of the European Union (TFEU) and with the corresponding articles 31, 34 en 40 of the Agreement on the European Economic Area.

The request takes the form of a reasoned opinion (the second step of the infringement procedure provided for by Article 258 TFEU). If there is no satisfactory reaction to the reasoned opinion within two months, the Commission may decide to refer the matter to the Court of Justice of the European Union.

The Commission's case reference number is 2008/4624.

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