Direct taxation: The European Commission requests Portugal to amend discriminatory taxation of non-resident taxpayers

The European Commission has requested Portugal to amend its tax rules concerning non-resident taxpayers. Non-residents are in certain cases taxed on a gross base and are taxed according to flat rates, while residents are taxed on a net base (i.e. they have the right to deduct certain costs) and are taxed according to progressive rates. These differences in treatment may result in a less favourable tax treatment of non-residents than of resident taxpayers, which is contrary to the freedom to provide services and the freedom of capital movement.

Articles 22, 68, 71 and 72 of the CIRS (Personal Income Tax Code) provide for the rules to determine the tax base and tax rates as applied to earned income of non-resident individuals. Non-residents are in certain cases taxed on a gross base and are taxed according to flat rates, while residents are taxed on a net base (i.e. they have the right to deduct certain costs) and are taxed according to progressive rates. The Commission considers that such differences in treatment are an obstacle to the single market, in particular to the freedom to provide services of Article 56 TFEU and to the freedom of capital movement of Article 63 TFEU.

Background

The Commission's request is in the form of a 'reasoned opinion', the second stage of the infringement procedure provided for in Article 258 of the Treaty on the Functioning of the European Union [TFEU]. If Portugal does not reply satisfactorily to the reasoned opinion within two months, the Commission may refer the matter to the European Court of Justice.

The Commission's case reference number is 2007/2364.

For the press releases issued on infringement procedures in the taxation or customs area 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