Direct taxes: The European Commission formally requests Greece not to impose withholding taxes on outbound dividends paid by Greek subsidiaries to their Swiss parent companies.

The Commission considers that Greece has not respected its obligations under Article 15(1) of the Agreement between the European Community and the Swiss Confederation providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments ("Agreement"), insofar as it subjects dividends paid by Greek subsidiaries to Swiss parent companies which fulfill the requirements provided for in Article 15(1) of the Agreement to a withholding tax at a rate of 10%.

Article 15(1) of the Agreement provides that dividends paid by subsidiary companies to parent companies shall not be subject to taxation in the source State under certain conditions. In particular, the parent company has to have a direct minimum holding of 25 % of the capital of a subsidiary for at least two years.

The Commission is of the opinion that Article 15(1) of the Agreement confers direct and unconditional rights on the companies which are concerned by its application, and establishes corresponding obligations for the contracting parties, i.e. for the Member States and Switzerland. The 10% withholding tax levied by Greece on the relevant dividend payments is in direct breach of the obligations imposed by the Agreement.

Background:

The incriminated provision is Article 54(1) of the Greek Income Tax Code (L. 2238/1994).

The request takes the form of a reasoned opinion (second step of the infringement procedure provided for in Article 258 of the Treaty on the Functioning of the European Union). 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 2009/4507.