

Direct taxation: The European Commission formally requests the United Kingdom to amend its provision which provides for a retroactive limitation period in old actions for mistake of law relating to direct tax

The European Commission has formally requested the United Kingdom to change its provision of the Finance Act 2007 (FA 2007) which provides for a retroactive limitation period in old actions for mistake of law relating to direct tax.

Section 107 FA 2007 provides for a retroactive limitation period in old actions for mistake of law relating to direct tax, by suppressing one of the previously possible start dates for a limitation period for repayment of taxes. Doing so it exceeds the limits of national procedural autonomy stemming from Article 4(3) Treaty on the European Union [ex Article 10 EC Treaty].

Since the limitation period introduced therein does not provide for any transitional rules (except for section 107(3)) it renders virtually impossible or excessively difficult the exercise of rights conferred by Community/Union law. Moreover, for the same reason Section 107 FA 2007 infringes the general principles of effectiveness and of legitimate expectations.

Background:

The request takes the form of a reasoned opinion (the second step of the infringement procedure provided for by Article 258 of the Treaty on the Functioning of the EU (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 2009/4462.