

Direct taxation: The European Commission formally requests Belgium to amend its requirement on the operators of foreign securities lending systems to appoint a fiscal representative

The European Commission has formally requested Belgium to change a tax provision requiring the operators of foreign securities lending systems to appoint a fiscal representative in Belgium. The Commission considers this requirement a forbidden restriction of the freedom to provide services. 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.

Article 73/7 of the Royal Decree on the execution of the Income Tax Law 92 requires the operators of foreign securities lending systems to appoint a fiscal representative in Belgium. According to the Commission this requirement is a forbidden restriction of the freedom to provide services, in analogy with *Commission vs. Belgium*, Case C-522/04 of 5 July 2007. In that case the Court ruled that Belgium could not require foreign companies to appoint a fiscal representative for the annual tax on insurance contracts. As in that case, to ensure the provision of information by the operators of foreign securities lending systems Belgium could use the Mutual Assistance Directive (77/799). This Directive provides for the exchange by the authorities of the Member States of any information that may enable them to effect correct taxation.

Moreover, Belgium would not even need to rely on the Mutual Assistance Directive. It could directly ask the foreign provider for any information, in the same way as it would ask the information directly from a domestic provider. If it were found, on a case-by-case basis, that a foreign provider would provide false information the Belgian authorities could take appropriate action. In last instance they could revoke the license of the foreign provider to provide its securities lending activities on the Belgian market.

The Commission's case reference number is 2008/4418. See [IP/10/84](#) for a similar case against Spain.

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