

Direct Taxation: The European Commission requests France to amend its discriminatory taxation of foreign pension and investment funds

The European Commission has formally requested France to change tax rules leading to discriminatory taxation of foreign pension and investment funds. Under these rules, dividends paid to foreign pension and investment funds (outbound dividends) are taxed more heavily than dividends paid to domestic pension and investment funds (domestic dividends). The Commission considers these rules incompatible with the free movement of capital.

The French legislation provides that dividends paid to pension and investment funds established in France are exempt from withholding tax and are not taxed in the hands of pension and investment funds. By contrast, a withholding tax of 25% is levied on dividends paid to pension and investment funds established elsewhere in the EU or in the EEA countries. Bilateral tax treaties may provide for a reduced (generally 15%) withholding tax rate. According to the Commission this difference in treatment is a restriction of the free movement of capital as guaranteed by Article 63 of the Treaty on the functioning of the EU (TFEU) and Article 40 of the EEA Agreement.

Background

The incriminated provisions are Articles 119bis and 187 of the French Tax Code (CGI) according to which dividends distributions to persons non tax resident in France are subject to a withholding tax of 25%.

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 cases reference numbers are 2006/4097 (pension funds) and 2008/4439 (investment funds).

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/eulaw/index_en.htm