

Direct taxation: The European Commission formally requests Sweden to amend its provisions on taxation of dividends paid to foreign pension funds

The European Commission has formally requested Sweden to change the provisions in the Swedish Dividend Withholding Tax Act, Income Tax Act and Act on Yield Tax on Pension Funds, which provide for different methods of calculation of the tax due on Swedish-sourced dividends, depending on whether the recipient is a resident or a non-resident pension fund.

Non-resident pension funds are subject to domestic withholding tax on Swedish-sourced dividends, in accordance with Article 4 of the Dividend Withholding Tax Act (1970:624) (*Kupongskattelagen*) (KL). The withholding tax rate amounts to 30%, although it may be reduced to 15% pursuant to the Swedish double tax conventions.

Resident pension funds are exempt from tax on dividends as well as from corporation tax, in accordance with Section 7, Article 2 of the Law on Taxation of Income (1999:1229) (*Inkomstskattelagen*) (IL). The Act on Yield Tax on Pension Funds (1990:661) (*Lag om avkastningsskatt på pensionsmedel*) (LAP), Article 9, imposes a 15% tax on resident pension funds. However, the taxable base for this tax is not based on actual profits but on a notional calculation (Articles 3 – 8 of LAP).

As a result of this system, the effective tax rate on Swedish-sourced dividends received by resident pension funds will in most cases be lower than the 15% tax on the gross dividend imposed on non-resident pension funds.

The above mentioned provisions of Swedish tax law appears to be contrary to Article 63 TFEU and the corresponding provisions of the EEA Agreement.

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 2006/4107.

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