

Direct taxation: The European Commission formally requests Belgium to amend a rule providing that contributions for pension savings only qualify for tax relief if paid in Belgium

The European Commission has formally requested Belgium to change an income tax rule providing that only pension savings paid to Belgian institutions and, insofar as collective pension savings are concerned, only if invested in Belgium funds, qualify for tax relief. The Commission considers these requirements a forbidden restriction of the freedom to provide services and the freedom of capital movement. 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 145/8 of the Income Tax Law 92 (CIR 92) provides that payments to collective pension accounts, to individual pension accounts and for insured savings only qualify for tax relief if they are paid in Belgium. Belgium claims that this restriction is necessary to safeguard the security of the monies invested by the pension savers. According to the Commission the restriction is disproportionate. The prudential supervision of the pension savings providers concerns for the most part investment restrictions and reporting requirements. These investment restrictions and reporting requirements can also be imposed on foreign providers. Where Belgium would like to check whether the foreign providers or funds apply the investment restrictions or the information provided by the foreign provider or fund it could do so on the basis of the Mutual Assistance Directive (77/799/EEC). Moreover, in so far as insured savings are concerned they are covered by the Third Life Insurance Directive (2002/83/EC). This means that the supervision of the life insurance company providing the insured savings product is shifted to the home state of the provider, with all the safeguards offered by the Directive.

The reasoned opinion is based on Articles 56 and 63 TFEU and Articles 31 and 40 of the EEA-Agreement.

The Commission's case reference number is 2005/5060.

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http://ec.europa.eu/taxation_customs/common/infringements/infringement_cases/index_en.htm

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