

Direct taxes: The European Commission refers Austria to the Court of justice over provisions related to the appointment of fiscal representatives

The European Commission decided to refer Austria to the Court of justice of the European Union over provisions related to the appointment of a fiscal representative. The Commission considers that the rules which request foreign investment funds, real estate funds and credit institutions to appoint a fiscal representative result in discriminatory treatment. The Commission also considers discriminatory the prohibition for foreign credit institutions and certified public accountants to be appointed as fiscal representative for investors in investment funds or real estate funds and considers these rules to be incompatible with the freedom to provide services.

This case concerns two aspects of the Austrian rules in respect to the requirement to appoint a fiscal representative.

Under Austrian rules, domestic credit institutions managing domestic investment funds or real estate funds are exempted from the requirement to appoint a fiscal representative. Foreign investment funds and real estate funds on the other hand must always appoint a fiscal representative when carrying out operations in Austria. Moreover, foreign credit institutions managing domestic investment funds or real estate funds must also appoint a fiscal representative. The Commission considers that these rules lead to a disproportionate restriction of the freedom to provide services.

In addition, the Austrian rules lead to a discrimination against foreign credit institutions and foreign certified public accountants. Only a domestic credit institution or domestic certified public accountant can be appointed as a fiscal representative for investors in an investment fund or real estate fund. This constitutes direct discrimination based on the place of establishment of the service provider.

The Commission is of the opinion that Austria has in both cases failed to fulfil its obligations under Article 49 of the Treaty on the Functioning of the European Union and Article 36 of the EEA Agreement, i.e. the freedom to provide services.

Background:

The incriminated provisions are Paragraphs 40 and 42 of the Investment Funds Act ("InvFG"), Paragraphs 40 and 42 of the Real Estate Investment Funds Act ("ImmoInvFG"), Points 53 and 54 of the Investment Funds Guidelines 2003 ("InvFR") and Paragraph 231 of the Federal Tax Advising and Related Professions Act ("WTBG").

The referral to the Court of justice is the last step in the infringement procedure based on Article 258 TFEU after a letter of formal notice and a reasoned opinion has been sent.

The Commission's case reference number is 2008/4638.

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

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