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Taxation: Commission refers Belgium, Finland and France to the European Court of Justice and sends a reasoned opinion to Spain

Today the Commission referred Belgium, Finland and France to the European Court of Justice over their failure to comply with previous formal requests to amend various tax provisions. The Commission also formally requested that Spain amend its inheritance and gift tax regime.

Belgian tax exemption on interests

The Commission has decided to refer Belgium to the European Court of Justice over measures which allow tax exemptions for interest paid by domestic banks, but not for interest paid by foreign banks. The interest that Belgian residents receive on their savings is subject to different tax treatment depending on whether it is paid by a domestic bank or a foreign bank. Only interest paid by a domestic bank can benefit from a tax exemption. Thus, only Belgian residents who have a savings deposit account with a Belgian bank can benefit from the tax advantage. The Commission considers that the Belgian provisions restrict the free movement of capital and the freedom to provide services.

Finnish withholding tax on dividends

Finland is also being referred to the European Court of Justice because of failure to comply with a Reasoned Opinion on its legislation which discriminates against foreign pension funds. Dividends paid to a non-resident pension fund by a foreign company based in Finland for tax purposes, are subject to a withholding tax on gross income at a rate of 19,5%. Finnish pension funds, on the other hand, are taxed under a special regime: there is no withholding tax, but 75% of dividend income is subject to corporation tax. Since the nominal corporate income tax rate is 26%, the resulting tax rate for dividends paid to Finnish pension funds is 19,5%. However, tax is calculated on their net income, i.e. after deduction of costs as well as current pension liabilities. In practice therefore, the effective tax rate on dividend income paid to a Finnish pension fund is lower than 19,5%.

French tax representative regime

France has a reverse-charge system whereby the client is designated as liable to pay VAT if the supplier or vendor is not established in the country. This is in line with EU rules. However, by derogation from this system, the vendor is allowed to declare in his own tax statement the tax owed by his clients, in principle as reverse-charged, and to offset this from his own due VAT. To be able to do this, a non-established vendor must register for VAT in France and designate a tax representative ('répondant fiscal') to declare and pay the VAT on his behalf. This is incompatible with the VAT Directive which provides that taxable persons established in the EU and certain third countries should not have to designate a tax representative for VAT in another Member State. As France has failed to comply with the reasoned opinion issued by the Commission, the matter is being referred to the European Court of Justice.

Spanish inheritance and gift tax

The European Commission has requested Spain to amend its tax provisions on inheritance and gift tax, which impose a higher tax burden on non-residents or assets held abroad. The provisions are incompatible with the free movement of workers and capital. Spain has 2 months to react to today's Reasoned Opinion.

New: For more detailed information on each of the cases above, see:

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