

Newsalert

EU Direct Tax Group

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EU Direct Tax Group

The EUDTG is one of PwC's Thought Leadership Initiatives and embedded in the International Tax Services Network. The EUDTG is a pan-European network of EU tax law experts and provides assistance to organizations, companies and private persons to help them to fully benefit from their rights under EU law.

The EU Direct Tax Group of PricewaterhouseCoopers and the EFRP lodge complaints with the European Commission regarding dividend and interest taxation of pension funds.

The EU Direct Tax Group of PricewaterhouseCoopers (PwC) and the European Federation for Retirement Provision (EFRP) lodged 26 complaints with the European Commission regarding the discriminatory taxation of dividend and interest payments to pension funds. The complaints concern the legislation of 18 different Member States that is considered to be in breach of the free movement of capital as laid down in the EC Treaty. The complaints are supported by a comprehensive study that has been prepared by PwC's EU Direct Tax Group.

In those 18 Member States local pension funds can benefit from a (partial) exemption or refund of withholding taxes levied on dividend and interest payments received from their local investments. A foreign pension fund cannot benefit from such an exemption or refund of withholding taxes levied on comparable investments in that Member State. This discriminatory treatment puts foreign pension funds in a disadvantageous position, as their net income is lower than the net income of comparable local pension funds.

The following Member States are targeted for infringements regarding both dividend taxation and interest taxation: Austria, Czech Republic, France, Germany, Lithuania, Poland, Portugal and Slovenia. In addition, PwC and the EFRP are of the view that the legislation of Denmark, Estonia, Finland, Hungary, Italy, Latvia, The Netherlands, Spain and Sweden with respect to dividend taxation does not meet the requirements of the EC Treaty. The same goes for the taxation of interest in the United Kingdom.

In the complaints PwC and the EFRP ask the European Commission to start infringement procedures under article 226 of the EC Treaty. If the European Commission decides to start such a procedure, this might ultimately lead to a decision of the European Court of Justice (ECJ) on this issue of discriminatory treatment.

The recent decisions of the ECJ that are supporting our view have already resulted in a reaction of the Dutch State Secretary of Finance. In Dutch parliament, he announced that he is considering the gradual abolishment of dividend withholding tax in the Netherlands. He even seems to suggest that he is willing to find a solution for foreign pension funds that are currently in a disadvantageous position because of the Dutch legislation.

In the meantime, various pension funds across the European Union have started claiming a refund of withholding tax in the Member States that are targeted by these complaints. In this way, they are making sure that they obtain their rights from Community law by avoiding that the local statutory time limits become applicable.

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