

Newsalert

EU Direct Tax Group

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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.

Poland to end discriminatory treatment of non-resident EU / EEA pension and investment funds investing in Poland before end of 2009

On 6 July 2009, the Polish Government issued a reply to the European Commission's reasoned opinion sent to Poland of 15 May 2009 regarding its discriminatory taxation of foreign pension and investment funds. On 23 March 2009, the Commission had sent Poland a request for removing the breach of Articles 43, 48, 49 and 56 EC Treaty. The Polish Government has acknowledged that its legislation is in breach of EC Law.

The Commission argues that Poland is in breach of EC Law, since the Polish corporate income tax law ("CIT Law") results in a higher taxation of dividends and interest paid to pension and investment funds residing in countries of the EU / European Economic Area than taxation of dividends and interest paid to Polish funds. The questioned provisions encompass Art. 6 sec. 1 point 10 and 11 of the Polish CIT Law.

The Polish Government has now recognised that certain kinds of income paid to foreign tax resident funds in Poland are subject to taxation at source, whereas domestic funds benefit from a subjective tax exemption in Poland. The Polish Government will now introduce appropriate amendments to the CIT Law which will come into effect from 1 January 2010.

Consequently, foreign pension and investment funds have strong arguments to claim that withholding tax remitted in the past from dividends and interest paid thereto was imposed contrary to EC Law. Hence, foreign EU / EEA pension and investment funds investing in Poland have currently an opportunity to apply for a refund of withholding tax remitted in the past years as far back as 1 May 2004.

PwC Poland has already gained valuable experience in assisting clients with preparing applications for withholding tax refunds as well as representing taxpayers on these issues.

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