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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 European Commission formally requests Belgium, Spain, Italy, Luxembourg, the Netherlands and Portugal to change the taxation of outbound dividends

The European Commission has announced in its press release of the 25th of July (IP/06/1060) that formal requests have been sent to Belgium, Italy, Luxemburg, Netherlands, Portugal and Spain. These formal requests regard the discriminatory taxation of outbound dividends to companies that are a resident within the EU or the EEA.

In these Member States, non-resident shareholders / companies are taxed more burdensomely than resident shareholders / companies. After all, in case of a dividend distribution from a company to a resident shareholder / company the dividend in the hands of the shareholder is not taxed at all or taxed at a very low rate while a dividend distribution to a non-resident shareholder / company is subject to (withholding) tax in the range of 5 to 25%. The European Commission takes the view that this difference in treatment results in an infringement of the freedom of establishment and the free movement of capital, as provided for in the EC Treaty.

These formal requests are another clear signal that the taxation of outbound dividends is not in line with the EC Treaty, if the legislation at issue distinguishes between domestic and foreign shareholders. This view is supported by the findings of the European Free Trade Association (' EFTA') Court in the Fokus Bank judgement (E-1/04) and the conclusion of Advocate General Geelhoed in the Denkavit case (C-170/05). Although the case law of the European Court of Justice is not clear in every single respect, the tendency is very clear.

The formal requests clearly support the 26 complaints lodged with the European Commission against 18 Member States by PricewaterhouseCoopers' EU Direct Tax Group and the European Federation for Retirement Provision (EFRP) on the discriminatory treatment of EU pension funds on their cross-border portfolio investments. Pension funds –but also investment funds such as SICAV's and OEIC's- that are liable to dividend withholding tax when they are making cross-border investments in Belgium, Italy, (Luxembourg), the Netherlands, Portugal and Spain are well advised to consider their position in these countries. Although these formal requests of the European Commission might not in any case target the specific taxation of outbound dividends to pension funds and investment funds, it is definitely a new landmark showing that the taxation of outbound dividends must be in line with the EC Treaty.

The formal requests are in the form of reasoned opinions to give the Member State the opportunity to submit its observations based upon Article 226 EC Treaty. If the State concerned does not comply with the request within two months, the Commission may refer the matter before the European Court of Justice. We note that the Dutch government has already announced to change the taxation of outbound dividends to foreign pension funds and to EU companies participating for at least 5% in a Dutch company as of 2007.

* connectedthinking

For more detailed information, please do not hesitate to contact your local PwC contact person or a member of the EUDTG.

Frank Engelen +31 10 407 5302 frank.engelen@nl.pwc.com
Marcel Jakobsen +31 10 407 5354 marcel.jakobsen@nl.pwc.com

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