

Tax & Legal Alert

The European Commission asks Poland to end fiscal discrimination against foreign investment and pension funds

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The Commission has formally requested Poland to amend its tax legislation which discriminates against investment funds and pension funds from other EU and EEA countries.

Under Polish tax legislation, domestic investment funds and pension funds are exempted from corporate income tax. However, funds established outside Poland can only benefit from this exemption under certain conditions which are not applied to Polish funds. Such discriminatory provisions are in breach of EU law, which requires that all tax exemptions should be granted equally to resident and non-resident taxpayers.

Despite the corrective measures taken by Poland in November 2010 in response to a previous request, the Commission considers that Poland is still not fulfilling its obligations under Articles 56 and 63 TFEU (freedom to provide services and free movement of capital) and the corresponding Articles 36 and 40 of the EEA Agreement.

As a result of this discrimination, investment and pension funds based in other EU and in the EEA are placed at a disadvantage compared to their Polish based counterparts

and Polish citizens are therefore liable to enjoy less choice of pension and investment funds.

The Commission's request takes the form of an additional reasoned opinion (second step of EU infringement proceedings). In the absence of a satisfactory response within two months, the Commission may refer Poland to the European Court of Justice.

Background

The Commission sent a letter of formal notice to Poland on 23 March 2007 and a reasoned opinion on 15 May 2009 (IP/09/780). On 14 January 2011 Poland informed the Commission that it had amended its Corporate Income Tax Act in November 2010. However, the Commission considers that the amendments to the Polish Law do not entirely eliminate tax discrimination against foreign funds.

The Polish tax legislation grants the tax exemption to foreign funds on condition that they are subject to tax in their states of residence, whereas the exemption for domestic funds is granted unconditionally. Such a condition is not in line with EU law as some pension and investment funds from other EU/EEA States will not be granted the benefit of the exemption in Poland, which would otherwise be granted to all similar Polish funds without any additional requirements.

Should you be interested in obtaining further information on the outlined issues and their implications please contact Rebeka Weintraub-Filek, tel. + 48 71 356 1152, rebeka.weintraub-filek@pl.pwc.com.