



EUROPEAN COMMISSION

DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Direct taxation, Tax Coordination, Economic Analysis and Evaluation
Direct Tax Policy & Cooperation

Brussels, 19 MARS 2013
TAXUD D2/HP/sb/taxud.d.2(2013)445851

Subject: Double taxation in the EU

Thank you for your email to Commissioner Šemeta concerning the situation of retired Danish citizens whose pensions are being subject to double taxation by Denmark and France. I have been asked to reply to you. I am sorry to hear that that you did not receive a reply to your first mail but I hope that this reply will contain information that is useful for you.

As you know from our previous correspondence EU Member States and their political subdivisions have broad freedom to design their tax systems in the way that they consider to be the most appropriate to meet their domestic policy objectives, although, in the exercise of their taxation rights, they must respect their obligations under the EU Treaties. They must, therefore, comply with any EU legislation in the relevant field. Furthermore, they are not allowed to discriminate on the basis of nationality or to apply unjustified restrictions to the exercise of the fundamental EU Treaty freedoms.

As the EU Court of Justice has repeatedly stated, double taxation that arises as a result of the parallel application by Member States of their non-harmonised taxing rules does not amount to a breach of EU law. The Member States may conclude tax treaties between themselves in order to allocate taxing rights and avoid double taxation. However, there is no obligation under EU law for Member States to conclude such treaties. In the absence of tax treaties, the respective national provisions apply independently of each other and taxpayers in such cases risk being doubly taxed.

Although there can be no doubt that double taxation is detrimental to the functioning of the Internal Market, it does not constitute a breach of the treaties. Commissioner Šemeta repeatedly stresses the need for a complete network of tax treaties between the Member States and the importance of closing any gaps in the network, so that individuals and companies can exercise their right to move and operate freely within the EU. As you know from our previous correspondence, the Commission adopted a Communication on double taxation in 2011 (COM(2011)712) in order to define the existing problems and outline possible solutions for further work. The Commission is currently developing

proposals to follow up on that Communication and hopes to present an initiative to Member States by the end of this year.

Unfortunately it will take time to achieve progress in this area and I realize from your letter that you do not have that time. I hope, however, that at least the information in this letter clarifies the situation for you.

Yours sincerely,



Bert Zuidendorp
Head of Unit