Direct taxation: The European Commission refers Denmark to the European Court of Justice over restrictive exit tax provisions for companies

The European Commission refers Denmark to the Court of Justice, due to Denmark’s failure to comply with the Commission’s reasoned opinion considering the Danish tax rules that impose an immediate exit tax on companies as incompatible with the freedom of establishment of Article 49 of the Treaty on the Functioning of the European Union.

Section 7A of the Danish Corporate Tax Act provides for immediate taxation of capital gains on assets transferred outside Denmark.

The Commission sent Denmark a reasoned opinion considering that such exit tax rules are likely to dissuade businesses and companies from exercising their right of freedom of establishment and constitute restrictions of Article 49 TFEU (IP/10/299). Immediate taxation of accrued but unrealised capital gains at the moment of exit amounts to a restriction if there would be no similar taxation in comparable domestic situations. It follows from the case-law that the Member States should defer the collection of their taxes until the moment of actual realisation of the capital gains.

The Commission has also referred The Netherlands, Spain and Portugal (IP/09/1460) to the Court of Justice for similar exit tax rules and sent a reasoned opinion to Belgium (IP/10/299).

Background
The Commission's case reference numbers is 2008/2157 (DK).

For press releases on infringement cases in the taxation or customs field see:  
http://ec.europa.eu/taxation_customs/common/infringements/infringement_cases/index_en.htm

For the latest general information on infringement measures against Member States see:  
http://ec.europa.eu/community_law/index_en.htm