

**MEMO# 13443**

April 25, 2001

# **COMMISSION COMMUNICATION ON TAX OBSTACLES OF EU OCCUPATIONAL PENSIONS**

[13443] April 25, 2001 TO: INTERNATIONAL COMMITTEE No. 32-01 RE: COMMISSION COMMUNICATION ON TAX OBSTACLES OF EU OCCUPATIONAL PENSIONS On April 19, 2001, the Commission released a communication to the Council of Ministers, the European Parliament, and the Economic and Social Committee on eliminating tax obstacles to the cross-border provision of occupational pensions. The Commission issued a communication rather than a proposal for a new tax directive, which would have required unanimous approval by member states. The communication is not binding on the member states. A copy of the communication is attached. The Commission's communication is intended to complement the proposed EU directive on occupational pensions by addressing the tax aspects of cross-border occupational pensions.<sup>1</sup> The communication does not attempt to achieve harmonization of member state tax rules but seeks a coordinated approach. Specifically, the communication calls for the elimination of unduly restrictive or discriminatory tax rules and presents measures to safeguard member state tax revenues. As the basis for eliminating discriminatory practices, the Commission looks to the European Community (EC) Treaty, which prohibits discrimination on grounds of nationality, unequal treatment and other restrictions on the free movement of workers, freedom of establishment, and free movement of services and capital. Cross-Border Provision of Pensions Taxation of Pensions The Commission takes the view that there are no grounds justifying unequal treatment of schemes operated by pension institutions established in other member states: national rules cannot condition the deductibility of pension and life insurance contributions on the contributions being made to a domestic institution, and equal treatment must be provided for any yield tax (taxation of income and capital gains of pension assets) and taxation of benefits under domestic and cross-border schemes. <sup>1</sup> See Memorandum to International Committee No. 22-01 (Mar. 23, 2001) (Parliament's draft report on the Commission's proposal); Memorandum to International Committee No. 38-00 (Oct. 26, 2000) (Commission's original proposal). <sup>2</sup>In the communication, the Commission makes a distinction between two situations: one in which citizens who are resident in a member state join a foreign scheme and the other in which citizens who already belong to a pension scheme move to another member state. In the first situation, the Commission believes that the member state in which the citizens are resident may require that the scheme meet conditions for tax approval relating to the nature and level of benefits, age of retirement, qualifying beneficiaries, and other similar conditions. In the second situation in which citizens who already belong to a scheme move to another member state, according to the Commission, the host member state may not refuse to grant tax deduction of contributions paid to the foreign scheme because the scheme does not meet its conditions

for tax deduction.<sup>2</sup>

### Safeguarding of Member State Tax Rules

Recognizing the concerns of the member states regarding their ability to enforce properly the tax rules if they allowed their residents to participate in foreign pension schemes, the Commission's communication examines ways in which member states can safeguard their revenues. The Commission discusses a system for exchanging information and its intention to request that a committee under the Mutual Assistance in Tax Matters Directive hold consultations in order to agree to the details for the information exchange. As a possible alternative or supplement to the information exchange, the Commission also describes a proposal made by industry for pan-European pension institutions that would allow employees of a multinational company to belong to the same pension institution regardless of the member state in which they are employed. Under this system, a pan-European pension institution located in one member state would have different sections, each section complying with the requirements for tax approval, tax regulations, and social laws of the member state in which the person is employed. The Commission invites member states to explore with the Commission how a proposal for pan-European pension institutions could become operational.

### Double Taxation or Non-Taxation of Pensions

The Commission notes that the differences among the national rules for deductibility of contributions and taxation of benefits may lead to double taxation or non-taxation for workers moving to another member state or persons retiring to another member state. Member states generally tax pensioners in their country of residence regardless of the member state in which their contributions were deducted. Member states have different pension taxation systems with respect to contributions, investment income and capital gains, and benefits. Eleven member states have an EET system (Exempt contributions, Exempt investment income and capital gains, and Taxed benefits); three have an ETT system (Exempt contributions, Taxed investment income and capital gains, and Taxed benefits); and two have a TEE system (Tax contributions, Exempt investment income and capital gains, and Exempt benefits).<sup>2</sup>

Under the equal treatment principle, the total tax deduction that the host member state is obligated to grant would be limited to the deduction granted to domestic pension institutions.<sup>3</sup>

Because most member states have an EET system, the Commission takes the view that an alignment of pension taxation systems on the basis of the EET principle may be the most practical approach. The Commission welcomes broader acceptance of the EET principle to reduce the likelihood of double taxation or non-taxation for workers moving to another member state or for persons retiring to another member state. The Commission notes that, even among the member states that have an EET system, there are significant differences in the levels of deductibility of contributions for the second pillar. These differences may reflect choices by member states in designing their first and second pillars. As a result, the Commission does not envision proposing legislation to harmonize member states' pension taxation systems. The Commission encourages unilateral or bilateral solutions to the double taxation or non-taxation problem and is prepared to assist member states in undertaking a detailed study of existing bilateral provisions that could provide a general solution.

### Commission's Conclusions and Recommendations

The Commission intends to monitor the national rules and take necessary steps to ensure effective compliance with the EC Treaty, including bringing matters to the European Court of Justice. The Commission also will examine national tax rules impeding the cross-border transferability of pension capital. The Commission also invites the Council, the European Parliament, and the Economic and Social Committee to examine the Commission's proposals for an exchange of information and pan-European pension institutions, consider broader application of the EET principle within the EU, and examine the measures necessary to eliminate unjustified obstacles to the free movement of workers resulting from the diversity of member states' occupational pension taxation systems. \* \* \*

The Commission's communication has been forwarded to the Parliament and the Council of Ministers for discussion. On the EU occupational pensions

directive, we understand that the Parliament will not likely vote on the directive at a plenary session until after the summer recess. Please let us know if you have any concerns about the Commission's communication. If you have any comments or questions, please contact me at (202) 326-5810 or at [jchoi@ici.org](mailto:jchoi@ici.org). Jennifer S. Choi Assistant Counsel  
Attachment 3 Germany applies both the EET and the TEE systems. 4Attachment (in .pdf format)

---

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.