



30.1.2015

## NOTICE TO MEMBERS

**Subject: Petition No 2170/2013 by B.A-R. (Spanish) on Transfer of pension rights**

### 1. Summary of petition

The petitioner is experiencing problems with her pension transfer from France to Spain. She would like to know if her French pension can be taxed in Spain if it concerns a public pension. (The rest of the petition is not clear).

### 2. Admissibility

Declared admissible on 5 September 2014. Information requested from Commission under Rule 216(6).

### 3. Commission reply, received on 30 January 2015

#### The Commission's observations

The petitioner receives both a Spanish and French old-age pension. He would like to know firstly, if the calculation of his Spanish pension is accurate and secondly, if the French pension is taxable in Spain.

On the first point, the petition is not clear, so the Commission cannot present its observations.

On the second point, at the present stage of the development of EU law there is limited harmonisation in the area of direct taxation which falls essentially within the competence of Member States. Therefore, in principle, Spain is free to tax French pensions received by persons residing in its territory.

In the exercise of this competence, however, Member States have to respect their obligations

under the EU law. In particular, they are not allowed to discriminate on the basis of nationality or to create or maintain discrimination against nationals of other Member States who exercise their free movement under the Treaty on the Functioning of the European Union.

To limit or to avoid double taxation, Member States have generally concluded bilateral agreements, the interpretation and application of which are not governed by EU law. Thus, as regards the taxation rights over the French pensions, articles 18 and 19 of the Agreement between France and Spain to avoid double taxation, signed in Madrid on 10 October 1995<sup>1</sup> (DTC) define the State competent to tax pensions. Thus, pensions paid by France<sup>2</sup> to a person in respect of services rendered to France<sup>3</sup> are taxable only in France. However, such pensions shall be taxable only in Spain if the person concerned is a resident in Spain and of Spanish nationality, without being also a French national. All the other French pensions paid to a resident in Spain in consideration of past employment are taxable only in Spain.

### Conclusion

Based on the information available, the petition does not disclose any misapplication of EU law in this individual case.

Should the petitioner opine that the provisions of the DTC have been wrongly applied, in addition to the national means of appeal available to him, he may initiate the mutual agreement procedure set by article 26 of the DTC.

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<sup>1</sup> La convention entre la République française et le Royaume d'Espagne en vue d'éviter les doubles impositions et de prévenir l'évasion et la fraude fiscales en matière d'impôts sur le revenu et sur la fortune (ensemble un protocole). France ratified the convention by the Law No 97-206 of 10 March 1997. It was also published in Spain in «BOE» No 140, of 12 June 1997, pages 17982 to 17993.

<sup>2</sup> a territorial authority or other French legal persons governed by public law, either directly or out of funds established by them.

<sup>3</sup> to this authority or legal person.