

ECJ Decides that Cross-Border Pension Rules in the Netherlands Are Incompatible with EU Law: *Commission v. Pays-Bas (Transfert de valeur de droits à pension)* (Case C-459/22) (Direct Tax)

16 November 2023

Report from IBFD Knowledge Centre

On 16 November 2023, the Court of Justice of the European Union (ECJ) gave its decision in *European Commission v. Kingdom of the Netherlands* ([Case C-459/22](#)) based on a number of grounds.

On those grounds, the Court (Sixth Chamber) hereby rules:

1. By establishing and maintaining in force the requirements for the transfer of pension capital in Article 19a(1)(d) and Article 19b(1) and (2) of the 1964 Law on Wages Tax, in the version applicable to the present action, Article 40c of the Implementation Regulation of the Tax collection Act, Article 10d(3) of the Wage Tax Implementation Decree 1965 and Annex IV to the Decree on Payroll Taxes, Income tax, international aspects of pensions and annuity entitlements of 9 October 2015, which requires a pension institution established in a Member State other than the Kingdom of the Netherlands to provide security for the recovery of the tax on the transfer of the value of pension entitlements which may be payable by workers who take up employment in that other Member State and wish to transfer the value of their pension rights to that State, or, failing that, accept liability for any tax that may be due or give those employees the opportunity to provide sufficient security, the Kingdom of the Netherlands has failed to fulfil its obligations under Article 45 [TFEU](#);
2. Orders the Kingdom of the Netherlands to pay the costs.

(Unofficial translation by IBFD Knowledge Centre)

For a previous TNS regarding the case, see [European Commission Again Refers Netherlands to ECJ Over Its Cross-Border Pension Rules \(19 September 2022\)](#).

A more substantial report containing details of the ECJ's decision will be published in the ECJ Case Law collection in due course.

