Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

2 June 2016*

(Reference for a preliminary ruling — Free movement of capital — Article 63 TFEU — Taxation of pension funds' income — Difference in treatment of resident and non-resident pension funds — Resident pension funds subject to lump sum taxation on the basis of a notional yield — Withholding tax applied to dividends received by non-resident pension funds — Whether comparable)

In Case C-252/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Högsta förvaltningsdomstolen (Supreme Administrative Court, Sweden), made by decision of 20 May 2014, received at the Court on 23 May 2014, in the proceedings

Pensioenfonds Metaal en Techniek

v

Skatteverket,

THE COURT (First Chamber),

composed of A. Tizzano, Vice-President of the Court, acting as President of the First Chamber, F. Biltgen, E. Levits (Rapporteur), M. Berger and S. Rodin, Judges,

Advocate General: M. Szpunar,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 21 May 2015,

after considering the observations submitted on behalf of

— Pensioenfonds Metaal en Techniek, by F. Boulogne and G. Andersson, advokat,

— the Swedish Government, by A. Falk, C. Meyer-Seitz, U. Persson, N. Otte Widgren, K. Sparrman, L. Swedenborg, E. Karlsson and F. Sjövall, acting as Agents,

— the German Government, by T. Henze and K. Petersen, acting as Agents,

— the European Commission, by J. Enegren, W. Roels and C. Tufvesson, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 10 September 2015,

* Language of the case: Swedish.

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 63 TFEU.

2 The request has been made in proceedings between Pensioenfonds Metaal en Techniek ('PMT'), a pension fund established in the Netherlands, and Skatteverket (Tax Authority, Sweden) regarding the tax on dividends paid by PMT in Sweden in the period 2002-2006.

National legal framework

Legislation governing pension funds

3 Article 9 of the lagen (1967:531) om tryggande av pensionsutfästelse m. m. (Law (1967:531) on safeguarding pension commitments etc., 'the LTP') defines a pension fund as a fund set up by an employer, the exclusive purpose of which is to safeguard the award of a pension to workers or their surviving dependents.

4 In accordance with Article 12 of that law, pension funds are formally prohibited from undertaking to pay pensions and may not either make payments in respect of occupational pensions. The mission of a pension fund is solely to manage the capital that the employer deposits with it and to guarantee that the promises of a pension by the latter can be honoured.

5 The undertakings of pension funds to safeguard the pension commitments made by employers are long term undertakings. Pursuant to Article 10a of the LTP, pension funds' assets must be invested in such a manner as to allow good risk diversification in order to manage optimally and cautiously the interests of those who depend on the institution. Pension funds must follow the investment guidelines complying with the requirements laid down in the regulations and the general guidelines of the Finansinspektionens föreskrifter (Financial Supervisory Authority, Sweden) concerning investment guidelines and impact assessments of institutions undertaking activities in the occupational retirement provision business (Finansinspektionens föreskrifter och allmänna råd om placeringsriktlinjer och konsekvensanalys för institut som driver tjänstepensionsverksamhet, FFF 2011:16).

6 Pension funds form part of the methods chosen by the Kingdom of Sweden to design and safeguard pension schemes. In order to safeguard pension commitments, it is also possible to take out assurance or to register reserves on the balance sheet combined with a credit guarantee or a municipal or State guarantee.

Taxation of resident pension funds

7 Legal persons which are fully liable to pay tax in Sweden are subject to tax on income pursuant to the inkomstskattelagen (1999:1229) (Law (1999:1229) on income tax, hereinafter 'the IL'), which covers, in particular, capital gains, dividends and interest.

8 Pursuant to Article 2(2), first subparagraph, point 3 of Chapter 7 of the IL, pension funds are, however, fully exempt from the tax liabilities laid down by that law. That law refers, in that respect, to the provisions on capital yield tax set out in the lagen (1990:661) om avkastningsskatt på pensionsmedel (Law (1990:661) on Yield Tax on Pension Funds, hereinafter 'the LAP').

9 Pursuant to Article 2 of the LAP, Swedish pension funds as well as life assurance companies must pay capital yield tax, which is tax calculated at a fixed rate intended to tax the current yields from retirement savings and the tax base of which is calculated in two stages in accordance with Articles 3 to 8 of that law.

10 In the first place, the capital base, which is made up of the value of the pension company's assets at the beginning of the current tax year less financial liabilities at that date, must be calculated. According to the Swedish Government, a pension fund may, pursuant to Article 11(4) of the LTP, take out a loan only for the purpose of meeting its temporary liquidity needs, and only on condition that the amount of the loan is of minor importance in comparison to the size of the pension institution.

11 In the second place, the lump sum yield of that capital, that is to say, the tax base, is ascertained by multiplying the capital base by the average yield on government bonds in the calendar year immediately preceding the tax year. Pursuant to Article 9 of the LAP, tax on capital yield is set at a rate of 15% of the tax base thereby obtained.

12 That tax on capital yield applies to Swedish pension funds and life assurance companies, and foreign life assurance companies and institutions for the provision of occupational pensions having a permanent establishment in Sweden as well, and its aim is, according to the referring court, to achieve a uniform lump sum yield taxation of all forms of pension savings. That method is used both for the tax on the capital yield of individual retirement savings and for insurance policies for pension schemes, endowment policies and other forms of pension capital.

Taxation of non-resident pension funds

13 Foreign legal persons in receipt of share dividends from Swedish limited companies or with shares in Swedish investment funds must pay in Sweden a tax at source on dividends ('withholding tax') in accordance with Articles 1 and 4 of the kupongskattelagen (1970:624) (Law (1970:624) on the taxation of dividends 'the KSL').

14 Pursuant to Article 5 of the KSL, the withholding tax is set at the rate of 30% of the distributed dividends. In accordance with the tax agreement between the Kingdom of Sweden and the Kingdom of the Netherlands, the rate of withholding tax distributed between those two Member States must nevertheless not exceed 15% of the gross value of the dividends.

The dispute in the main proceedings and the question referred for a preliminary ruling

15 In the period 2002-2006, PMT received from Swedish limited companies dividends, upon which a 15% withholding tax was levied, corresponding to a total sum of Swedish kronas SEK 20 957 836 (about EUR 2 262 861).

16 In December 2007, PMT asked the Swedish tax authorities to refund the withholding tax paid, on the basis that the levy of that tax was contrary to the EU rules on free movement of capital. PMT claimed that it had to be treated like a fund taxed under the LAP and, on this basis, benefit from more favourable taxation. It claimed that the difference in taxation resulting from the application of the LAP and of the KSL was not justified.

17 The Swedish tax authorities having rejected PMT's request, PMT brought an action before the Länsrätten i Dalarnas län (Dalarna County Administrative Court, Sweden) which was dismissed too.

18 Following the appeal brought by PMT, the Kammarrätten i Sundsvall (Sundsvall Administrative Court of Appeal, Sweden) held, first, that it had not been demonstrated that PMT had been unfavourably taxed in comparison with equivalent Swedish pension funds and, second, that it had not been proved that the different taxation regimes were discriminatory.

19 PMT brought an appeal in cassation before the Högsta förvaltningsdomstolen (Supreme Administrative Court, Sweden) claiming that the scheme of the national legislation on the taxation of pension funds was discriminatory. The capital yield tax replaces not only the withholding tax, but also capital gains tax on transfers and on interest, and the taxation of the dividends paid to Swedish pension funds is considerably lower than the formal levy on capital yield tax. Foreign pension funds, being subject to gross taxation in the form of a withholding tax levied at the point of distribution of those dividends, also may not benefit from capping over time, sought by the lump sum method.

20 Furthermore, the calculation of capital yield tax applicable to resident pension funds allows for the deduction of financial liabilities, whereas the withholding of tax applicable to non-resident shareholding pension funds does not allow it.

21 Finally, whereas tax is withheld when the dividends are distributed, capital yield tax, for its part, is calculated and levied in the year following the distribution of dividends, creating a liquidity disadvantage for non-resident pension funds.

22 The Swedish tax authorities contend that the national tax framework provides for two different methods of taxation and does not give rise to any discrimination. The actual taxation of the dividends paid to resident pension funds corresponds to the withholding tax levied in accordance with the tax agreements on dividends paid to non-resident pension funds. The regime applicable to non-resident pension funds can, furthermore, be more advantageous, first, because of trends in the yield of government bonds and, second, on the ground that taxation is levied only once the dividends have been distributed, whereas resident pension funds pay capital yield tax yearly. The expenses that resident pension funds may potentially deduct by virtue of their liabilities being taken into account in the calculation of the capital base do not relate to the dividends received and there are no liabilities directly associated with the dividends on the capital invested in Sweden. Resident pension funds pay in advance a monthly tax on profits by way of payment on account and do not therefore benefit from any liquidity advantage.

23 The referring court confirms that the taxation regime applied to pension funds depends on their status as a resident on the national territory and the nominal tax rate at issue in the case pending before it is set at 15% both for capital yield tax and the withholding tax.

24 That court also states that capital yield tax is based on a notional yield. This means that, having regard to the method of calculation of the tax base for capital yield, the taxation could be more advantageous for resident shareholders some years, whereas in other years, by contrast, the outcome of the taxation of those shareholders could be less favourable compared to the outcome of taxation of non-resident shareholders. It states that capital yield tax is levied annually without taking into account any distribution of dividends. Furthermore, the referring court states that it was argued before it that the scheme of the national legislation on the taxation of pension funds was discriminatory, in particular because financial losses could be deducted when the base for capital yield tax was calculated and because the point at which the tax is levied can create a liquidity disadvantage for foreign pension funds.

25 In those circumstances, the Högsta förvaltningsdomstolen (Supreme Administrative Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Does Article 63 TFEU constitute an obstacle to national legislation under which dividends from a resident company are taxed at source if the shareholder is resident in another Member State, while such dividends, if paid to a resident shareholder, are subject to a tax calculated as a definitive lump sum and on a notional yield, which, over time, is intended to correspond to the normal taxation of all yields on capital?'

The question referred for a preliminary ruling

26 By its question, the referring court asks, in essence, whether Article 63 TFEU must be interpreted as precluding national legislation under which the dividends distributed by a resident company are subject to a tax levied at source where those dividends are paid to a non-resident company and, where those dividends are paid to a resident pension fund, to a tax calculated as a definitive lump sum and on a notional yield, which, over time, is intended to correspond to the normal taxation of all yields on capital under the scheme of general law.

27 It follows from settled case-law that the measures prohibited by Article 63(1) TFEU, as restrictions on the movement of capital, include those that are such as to discourage non-residents from making investments in a Member State or to discourage that Member State's residents from doing so in other States (see judgment of 8 November 2012 in *Commission* v *Finland*, C-342/10, EU:C:2012:688, paragraph 28, and 22 November 2012 in *Commission* v *Germany*, C-600/10, not published, EU:C:2012:737, paragraph 14).

28 Specifically, the less favourable treatment by a Member State of dividends paid to non-resident pension funds, compared to the treatment of dividends paid to resident pension funds, is liable to deter companies established in a Member State other than that first Member State from pursuing investments in that same first Member State and, consequently, amounts to a restriction of the free movement of capital, prohibited, in principle, under Article 63 TFEU (see judgment of 8 November 2012 in *Commission* v *Finland*, C-342/10, EU:C:2012:688, paragraph 33, and 22 November 2012 in *Commission* v *Germany*, C-600/10, not published, EU:C:2012:737, paragraph 15).

29 According to the legislation at issue in the main proceedings, pension funds are subject, in relation to the dividends distributed to them, to two different taxation regimes, the application of which depends on their status as a resident or non-resident in the territory of the Member State of the company distributing the dividends.

30 It follows from the order for reference that only the dividends paid to non-resident pension funds by a Swedish company are affected by a withholding tax of 30% of their gross amount, a reduction of that rate being nonetheless possible under a double taxation agreement. As observed by the referring court, the dividends received by PMT were subject to a 15% withholding under such an agreement made between the Kingdom of Sweden and the Kingdom of the Netherlands.

31 By contrast, the dividends paid to resident pension funds are not subject to such a withholding tax, but to capital yield tax, the tax base of which is calculated in two stages. First, the value of the whole of the assets at the beginning of the tax year is determined, reduced by the financial liabilities at the same date. Second, that net amount is multiplied by the average government bond yield for the calendar year immediately preceding the tax year at issue. The result thus obtained represents a notional yield, taxed at the rate of 15%.

32 The difference between the two taxation regimes concerns, in particular, the method of calculating the tax base as well as the manner in which it is levied, the nominal tax rate being, in the context of both regimes, identical.

33 As for the question whether the laws of a Member State, such as those at issue in the main proceedings, constitute a restriction of the free movement of capital, it must be ascertained whether such a difference in treatment of the taxation of dividends paid to pension funds, dependent on their status as residents or not, leads to less favourable treatment of non-resident pension funds compared to resident pension funds.

34 It is for the referring court, which alone can know precisely the facts of the case before it, to assess whether, with regard to the dividends at issue in this case, the levy on the appellants in the main proceedings of the withholding tax of 15% pursuant to the bilateral agreement on double taxation results in that appellant, ultimately, bearing heavier tax burdens in Sweden than those borne by resident pension funds in respect of similar dividends (see, to that effect, judgment of 17 September 2015 in *Miljoen and Others*, C-10/14, C-14/14 and C-17/14, EU:C:2015:608, paragraph 48).

35 In that respect, the Swedish and German Governments claim that such an assessment must be undertaken over several years, corresponding to an economic cycle, to be able to show that, according to those Governments, the taxation of those dividends leads to the same result after one economic cycle, applying one method or the other.

36 It is therefore important to determine whether the referring court must carry out its assessment of a potentially less favourable treatment of dividends distributed to non-resident pension funds for a period comprising several years, examined together, as argued for by those Governments, or whether such an assessment must be undertaken on an annual basis, for every year of the period to which the case relates, as the Commission argues.

37 It is noteworthy that, first, if, according to the Swedish Government, the method of lump sum taxation is intended to achieve a uniform taxation of direct and indirect savings and level out taxation over time, it is nevertheless apparent from the file before the Court that capital yield tax, which applies to resident pension funds, is calculated annually. The Court has previously held that the relevant period, for the purposes of comparing tax burdens on dividends paid to residents and non-residents, is the period taken into account for dividends paid to residents (see, to that effect, judgment of 17 September 2015 in *Miljoen and Others*, C-10/14, C-14/14 and C-17/14, EU:C:2015:608, paragraph 51).

38 Moreover, the Court has already held that, regarding the freedom of establishment, even if a Member State's tax system is favourable to non-resident companies more often than not, that does not prevent it leading, where that system proves disadvantageous for those companies, to an inequality of treatment in relation to resident taxpayers and thus creating a hindrance to the freedom of establishment (see, to that effect, judgments of 14 December 2000 in *AMID*, C-141/99, EU:C:2000:696, paragraph 27, and 22 March 2007 in *Talotta*, C-383/05, EU:C:2007:181, paragraph 31). Similarly, the Court has previously held that the fact that the applicable national rules place non-residents at a disadvantage cannot be compensated for by the fact that, in other situations, that same legislation does not discriminate between non-residents and residents (judgment of 18 July 2007 in *Lakebrink and Peters-Lakebrink*, C-182/06, EU:C:2007:452, paragraph 23).

39 It follows from such an interpretation that a potentially less favourable treatment of dividends distributed to non-resident pension funds during one tax year cannot be compensated by their potentially favourable treatment during other tax years.

40 In any event, as the Commission claims without being contradicted on that point by the Swedish Government, the applicable legislation does not provide a mechanism which ensures that the tax burden applied to national dividends received by resident pension funds will be in due course the same as that applied to similar dividends received by non-resident pension funds.

41 It follows that the assessment of whether there exists a potentially detrimental treatment of the dividends paid to non-resident funds must be undertaken for each tax year, taken individually.

42 As the Swedish Government itself admits, in paragraph 48 of its written submissions, in the years in which the actual yield of the shares is greater than the lump sum yield corresponding to the yield of government bonds, which would be the case, in particular, in the current state of the market, it is advantageous for a non-resident pension fund to pay, instead of a withholding tax, a tax on the yield, as it is applied to resident funds.

43 That assessment is essentially shared by the referring court, which explains that, having regard to the method of calculation of the capital yield tax base, the outcome in terms of tax could be more advantageous for resident shareholders certain years, whilst, in other years, more advantageous to non-resident shareholders.

44 Since the difference in treatment established by the tax laws of a Member State, such as that at issue in the main proceedings, regarding the taxation of dividends paid to resident pension funds and the taxation of similar dividends paid to non-resident pension funds, is capable of resulting in the dividends paid to those latter funds bearing a heavier tax burden in comparison to that borne by resident pension funds, such a difference in treatment is liable to deter such non-resident pension funds from making investments in that Member State and, consequently, amounts to a restriction of the free movement of capital prohibited, in principle, by Article 63 TFEU.

45 Under Article 65(1)(a) TFEU, 'the provisions of Article 63 [TFEU] shall be without prejudice to the rights of Member States … to apply the relevant provisions of their tax law which distinguish between taxpayers who are not in the same situation with regard to their place of residence or with regard to the place where their capital is invested'.

46 That provision, in so far as it amounts to a derogation from the fundamental principle of free movement of capital, must be interpreted strictly. It may not be therefore interpreted as meaning that all tax legislation that draws a distinction between taxpayers on the basis of their place of residence or the Member State in which they invest their capital is automatically compatible with the TFEU. Indeed, the derogation in Article 65(1)(a) TFEU is itself limited by Article 65(3) TFEU, which provides that the national provisions referred to in paragraph 1 of that Article 'shall not constitute a means of arbitrary discrimination or a disguised restriction on the free movement of capital and payments as defined in Article 63 [TFEU]' (judgment of 10 April 2014 in *Emerging Markets Series of DFA Investment Trust Company*, C-190/12, EU:C:2014:249, paragraphs 55 and 56 and the case-law cited).

47 The differences in treatment authorised by Article 65(1)(a) TFEU must therefore be distinguished from discrimination prohibited by Article 65(3) TFEU. It is clear from the Court's case-law that, before national tax legislation, such as that at issue in the main proceedings, may be regarded as compatible with the provisions of the Treaty on the free movement of capital, the difference in treatment must concern situations not objectively comparable or be justified by an overriding reason in the public interest (see judgment of 10 May 2012 in *Santander Asset Management SGIIC and Others*, C-338/11 to C-347/11, EU:C:2012:286, paragraph 23 and the case-law cited).

48 It should be noted that the comparability of a cross-border situation with an internal situation must be examined having regard to the aim pursued by the national provisions at issue (judgment of 8 November 2012 in *Commission* v *Finland*, C-342/10, EU:C:2012:688, paragraph 36 and case-law cited), as well as the purpose and content of the latter (see judgment of 10 May 2012 in *Commission* v *Estonia*, C-39/10, EU:C:2012:282, paragraph 51).

49 Moreover, only the relevant distinguishing criteria established by the legislation in question must be taken into account in determining whether the difference in treatment resulting from that legislation reflects an objectively different situation (see judgment of 10 May 2012 in *Santander Asset Management SGIIC and Others*, C-338/11 to C-347/11, EU:C:2012:286, paragraph 28).

50 In the present case, as stated in paragraph 29 above, the legislation at issue in the main proceedings sets out a distinguishing criterion based on the place of residence of the pension fund that is the beneficiary of the dividends, subjecting the dividends received by non-resident pension funds to the withholding tax and those received by resident pension funds to capital yield tax.

51 It must therefore be ascertained whether, in the light of the objective, and the purpose and content of the legislation at issue in the main proceedings as well, resident and non-resident pension funds are in a comparable situation.

52 In that respect, it must be noted that the taxation affecting resident pension funds has a different purpose from that applied to non-resident pension funds. Thus, whereas the former are taxed on the basis of their total income, calculated on the basis of their assets reduced by their liabilities, to which a standard yield rate is applied, irrespective of the actual receipt of dividends in the course of the tax year at issue, the latter are taxed on the dividends received in Sweden in that tax year.

53 In the context of occupational pension schemes, of which pension funds form part, the national legislation on the taxation of those funds means to introduce neutral taxation independent of the economic climate surrounding various kinds of assets and all of the kinds of pension products concerned.

54 In order to achieve such an objective, all the assets of a resident pension fund are subject to yearly lump sum taxation, reflecting the yield of those assets, irrespective of the receipt of income generated by those assets, in particular the receipt of dividends.

55 Such taxation of resident pension funds is levied by the Kingdom of Sweden, in its capacity as the State of residence of those pension funds, having by virtue of that capacity taxation powers over their total income.

56 By contrast, as regards pension funds not resident in Sweden, that Member State has, in accordance with the bilateral double taxation agreement entered into with the Kingdom of the Netherlands, only the power to tax income from the assets of those funds which are situated in Sweden. Thus, the Kingdom of Sweden taxes the dividends received by non-resident pension funds in its capacity as the source country of those dividends.

57 Since, under that agreement, the Kingdom of Sweden has no power to tax the assets of non-resident pension funds, such as those at issue in the main proceedings, situated in its territory, the mere holding of assets in Sweden by contrast cannot give rise to taxation in that Member State.

58 Therefore, because of the Kingdom of Sweden's limited power of taxation regarding non-resident pension funds, that Member State may not tax all the assets of those pension funds.

59 In those circumstances, the aim pursued by the national legislation at issue in the main proceedings, that is to say, the application of neutral taxation independent of the economic climate surrounding various kinds of assets as well as all the kinds of pension products concerned, which presupposes that pensions funds are taxed on the whole of the assets, cannot be attained in respect of non-resident pension funds.

60 Nor can that object, which also presupposes that pensions funds are taxed annually and irrespective of the distribution of dividends, be achieved through the taxation of dividends received by non-resident pension funds in accordance with the lump sum method, using as a basis, to calculate the tax due, the value of the underlying assets, since, as has been set out in paragraphs 56 to 58 of the present judgment, non-resident pension funds may, in any event, be taxed only when dividends are distributed to them.

61 Furthermore, as the Advocate General observed in substance in points 32 and 33 of his Opinion, the neutrality of taxation in respect of the type of investment, sought by the legislation at issue in the main proceedings, presupposes the taxation of the whole of the taxpayer's invested capital, whatever the make-up of his investment portfolio.

62 Such an aim cannot be achieved in the case of a non-resident pension fund, subject, in Sweden, to the taxation of its income having its source in that Member State only.

63 It must therefore be held that, in the light of the aim pursued by the national legislation, and of its purpose and content too, a non-resident pension fund is not in a situation comparable to that of a resident pension fund.

64 That being noted, it is important, moreover, to observe that, if the application of two different taxation methods to resident and non-resident pension funds is in this instance justified by the difference in situation of these two categories of taxpayers, the Court has previously held that, in relation to professional expenses directly linked to an activity that has generated taxable income in a Member State, residents and non-residents of that State are in a comparable situation (judgment of 17 September 2015, *Miljoen and Others*, C-10/14, C-14/14 and C-17/14, EU:C:2015:608, paragraph 57).

65 It is, therefore, for the referring court to determine whether the taxation method applied to resident pension funds, by means of the calculation of the tax base of those funds and, in particular, the inclusion of their liabilities in the calculation of the capital base, allows for the taking into account of any professional expenses directly connected to the receipt of dividends, as PMT appears to claim. If that were the case, it should also be admissible to take into consideration such expenses in respect of non-resident pension funds.

66 In the light of all the foregoing considerations, the answer to the question referred for a preliminary ruling is that Article 63 TFEU must be interpreted as:

— not precluding national legislation under which the dividends distributed by a resident company are subject to a tax levied at source (a withholding tax) where those dividends are paid to a non-resident pension fund and, where those dividends are paid to a resident pension fund, to a tax calculated as a definitive lump sum and on a notional yield, which, over time, is intended to correspond to the normal taxation of all yields on capital under the general law regime;

— it nevertheless precludes non-resident pension funds being prevented from taking into account any professional expenses directly linked to the receipt of dividends, where the calculation method for the tax base of resident pension funds allows them to be taken into account, that being a matter for the referring court to determine.

Costs

67 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

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

— **Article 63 TFEU must be interpreted as not precluding national legislation under which the dividends distributed by a resident company are subject to a tax levied at source (a withholding tax) where those dividends are paid to a non-resident pension fund and, where those dividends are paid to a resident pension fund, to a tax calculated as a definitive lump sum and on a notional yield, which, over time, is intended to correspond to the normal taxation of all yields on capital under the general law regime;**

— **it nevertheless precludes non-resident pension funds being prevented from taking into account any professional expenses directly linked to the receipt of dividends, where the calculation method for the tax base of resident pension funds allows them to be taken into account, that being a matter for the referring court to determine.**

[Signatures]