



Court of Justice of the European Union

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Luxembourg, 12 December 2013

Judgment in Case C-362/12

Test Claimants in the Franked Investment Income Group Litigation v
Commissioners of Inland Revenue and Commissioners for Her Majesty's
Revenue and Customs

Press and Information

EU law precludes UK legislation whose effect is to deprive taxpayers, without notice and retroactively, of a remedy for recovering tax levied in breach of EU law

The fact that a second remedy is available to taxpayers for recovering that tax does not counteract the negative consequences of removing the more favourable remedy

Under English law, as it stood before 24 June 2004, two remedies were available for recovering tax levied in breach of EU law. The first, the '*Woolwich* cause of action' was an action for recovery of tax unlawfully levied, for which the limitation period was six years from the date of payment of the tax. The second, the '*Kleinwort Benson* cause of action', permitted the restitution of sums paid under a mistake of law. The limitation period for that action was six years from the date the claimant discovered the mistake of law or could with reasonable diligence have discovered it.

By legislation enacted on 24 June 2004, the national legislature decided that the limitation period for the '*Kleinwort Benson* cause of action' was not to apply in relation to a mistake of law relating to a taxation matter within the remit of the Commissioners of Inland Revenue¹. The new rule applied retroactively to actions brought on or after 8 September 2003, the date on which the United Kingdom Government had announced its intention to adopt the legislation.

By a judgment delivered on 8 March 2001², the Court of Justice held that certain aspects of the advance corporation tax ('ACT') regime, which applied in the United Kingdom from 1973 to 1999, were incompatible with the freedom of establishment and the free movement of capital.

Following that judgment, Aegis, the multinational media and digital communications group, introduced a claim on 8 September 2003 on the basis of the '*Kleinwort Benson* cause of action', seeking to recover ACT wrongly paid between 1973 and 1999. The limitation period applicable to that action began to run on 8 March 2001, the date on which the Court of Justice gave its ruling on the compatibility of the ACT regime with EU law.

As the retroactive application of the legislation of 24 June 2004 meant that Aegis could no longer bring a claim for recovery on the basis of the '*Kleinwort Benson* cause of action', the group turned to the United Kingdom courts, arguing that denying it the benefit of the more favourable rules on limitation applicable to such an action was contrary to a number of principles of EU law.

In that context, the Supreme Court of the United Kingdom has asked the Court of Justice whether it is compatible with the EU law principles of effectiveness, legal certainty and the protection of legitimate expectations to remove the '*Kleinwort Benson* cause of action' without notice and retroactively.

By its judgment of today, the Court finds, first, that the limitation period of six years applicable to the '*Woolwich* cause of action', which starts to run on the date of payment of the tax, is, in itself,

¹ A United Kingdom tax authority.

² Joined Cases [C-397/98](#) and [C-410/98](#) *Metallgesellschaft and Others*. The Court also gave rulings on this issue in Cases [C-374/04](#) and [C-446/04](#) (see also Press Release No [96/06](#)) and in Case [C-35/11](#) (see also Press Release No [144/12](#)).

compatible with the principle of effectiveness, which prohibits the application of national rules which make it impossible or excessively difficult to recover tax levied in breach of EU law.

The Court then recalls that the principle of effectiveness does not prevent, in principle, the retroactive application of a new period for bringing proceedings which is shorter than the period previously applicable, where such application concerns actions for the recovery of tax which have not yet been commenced by the time the new period enters into force but which relate to sums paid whilst the old period was still applicable.

However, the new national rules must include **transitional arrangements** allowing an adequate period after the enactment of the legislation **for lodging the claims for repayment which persons were entitled to submit under the previous legislation**. Such transitional arrangements are necessary where the immediate application to those claims of a limitation period shorter than that which was previously in force would have the effect of retroactively depriving some individuals of their right to repayment, or of allowing them too short a period for asserting that right.

Consequently, **national legislation curtailing, retroactively and without any transitional arrangements, the period within which repayment could be claimed of sums collected in breach of EU law is incompatible with the principle of effectiveness**.

In that regard, the Court observes that the fact that two legal remedies are available to taxpayers for recovering the tax unlawfully levied does not necessarily counteract the negative consequences of removing one of those remedies.

Lastly, for the same reasons, the Court finds that the domestic legislation also infringes the principles of legal certainty and the protection of legitimate expectations.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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