



Press and Information

Court of Justice of the European Union

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Judgment in Case C-385/12

Hervis Sport- és Divatkereskedelmi Kft. v Nemzeti Adó- és Vámhivatal
Közép-dunántúli Regionális Adó Főigazgatósága

Taxation which disadvantages undertakings linked, within a group, to companies established in another Member State constitutes indirect discrimination on the basis of the registered office of the companies

Such could be the case of the Hungarian tax on the turnover of store retail trade payable by all of those undertakings on the basis of their overall turnover

According to Hungarian legislation relating to tax on the turnover of store retail trade, taxable legal persons constituting, within a group, linked undertakings must aggregate their turnover before applying a steeply progressive rate and dividing the resulting amount of tax among them in proportion to their actual turnover.

Hervis operates sports shops in Hungary and is part of a group of undertakings whose parent company, SPAR Österreichische Warenhandels AG, is established in another Member State. Under the Hungarian legislation, Hervis is liable to pay a share of the special tax payable by all the undertakings belonging to the group. The application of that legislation, however, has the effect of making Hervis liable to an average rate of taxation considerably higher than that which would apply if solely the turnover of its own stores were taken into consideration.

Its application to be exempted from the special tax having been rejected by the tax authorities, Hervis brought proceedings in Hungary. The national court asks the Court of Justice whether the Hungarian legislation on the special tax is compatible with the principles of freedom of establishment and equal treatment, where it has potentially discriminatory effects with regard to taxable legal persons 'linked', within a group, to companies established in another Member State.

By its judgment delivered today, the Court holds that the Hungarian legislation on the special tax differentiates between taxable persons on the basis of whether they belong to a group. Although it does not entail any direct discrimination (since the special tax is levied in identical circumstances for all the companies engaged in store retail trade in Hungary), that criterion of differentiation has the effect of disadvantaging linked undertakings compared with undertakings which are not part of a group.

In that regard, the Court explains, first, that the rate of the special tax is very steeply progressive, in particular in its upper band. Secondly, the special tax is calculated, for linked undertakings, on the basis of the consolidated turnover of the group, although, in the case of a legal person which is not part of a group (such as independent franchisees), the tax base is limited to the turnover of the taxable person taken individually.

The Court holds that the application of that steeply progressive scale to a consolidated tax base consisting of turnover is liable to disadvantage undertakings linked, within a group, to companies established in another Member State. The Court invites the national court to establish whether that is the case on the Hungarian market. If it is the case, it is for the national court to hold that the Hungarian legislation entails indirect discrimination on the basis of the registered office of the companies, since that discrimination is not justified by overriding reasons in the public interest.

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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Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106