



The differentiated taxation of dividends received by the parent companies of a tax-integrated group depending on where the subsidiaries are established is contrary to EU law

Such a difference in treatment represents an unjustified interference with the freedom of establishment

According to French law, dividends received by a parent company by virtue of its shareholdings in other companies may be deducted from its net total profits and are thus exempt from tax, save for a 5% proportion corresponding to the costs and expenses relating to those holdings. However, where the dividends come from companies belonging to a tax-integrated group, the proportion of costs and expenses can be deducted from the profits, so that, ultimately, the dividends are not subject to any tax. Since only companies established in France may belong to such a tax group, the legislation at issue excludes parent companies which own subsidiaries in other Member States from the benefit of full tax exemption in respect of dividends received. Where the dividends come from subsidiaries established in other Member States, there is no provision for the possibility of deducting the proportion of costs and expenses, as a result of which the dividends are taxed at up to 5%.

Steria, a company which is a member of Groupe Steria, has holdings in subsidiaries established in France and in other Member States. In its view, the French rules are contrary to the freedom of establishment enshrined in EU law, since it is denied the deduction of the 5% proportion in respect of dividends distributed by subsidiaries established in another Member State, yet would have been eligible if those subsidiaries had been established in France. This issue has been brought before the Court of Justice by the Administrative Court of Appeal of Versailles.

By today's judgment, the Court of Justice holds that **the French legislation at issue disadvantages parent companies which own subsidiaries established in other Member States**, which is liable to make it less attractive for those companies to exercise their freedom of establishment, as they would be deterred from setting up subsidiaries in other Member States.

The Court also notes that, in order for that difference in treatment to be compatible with the freedom of establishment, it must relate to situations which are not objectively comparable or be justified by an overriding reason in the general interest. The Court considers in that regard that the situation of companies belonging to a tax-integrated group is comparable to that of companies not belonging to such a group, in so far as, in each case, the parent company bears the costs and expenses related to its shareholding in the subsidiary.

Lastly, the Court holds that the difference in treatment at issue is not justified by an overriding reason in the general interest, such as the need to preserve the allocation of the power to impose taxes between Member States. That difference in treatment concerns only incoming dividends, received by resident parent companies, so that what is concerned is the fiscal sovereignty of one and the same Member State. Similarly, the need to safeguard the cohesion of the tax system at issue cannot be relied on as an overriding reason in the general interest, because the French rules at issue do not entail any tax disadvantage for the parent company of the tax-integrated group that would offset the tax advantage (full exemption from tax on dividends) conferred on it.

The Court concludes that **the difference in treatment established by the French legislation is not compatible with the freedom of establishment.**

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 EU 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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