

Joined Cases C-397/98 and C-410/98

Metallgesellschaft Ltd and Others and Hoechst AG
and Hoechst (UK) Ltd

v

Commissioners of Inland Revenue and HM Attorney General

(References for a preliminary ruling from the High Court of Justice
of England and Wales, Chancery Division)

(Freedom of establishment — Free movement of capital — Advance payment of
corporation tax on profits distributed by a subsidiary to its parent company —
Parent company having its seat in another Member State — Breach of
Community law — Action for restitution or action for damages — Interest)

Opinion of Advocate General Fennelly delivered on 12 September 2000 . . . I-1730
Judgment of the Court (Fifth Chamber), 8 March 2001 I-1760

Summary of the Judgment

1. *Freedom of movement for persons — Freedom of establishment — Tax legislation — Corporation tax — National legislation reserving to resident companies that are subsidiaries of parent companies having their seat in the national territory the possibility of benefiting from a taxation regime (group income election) — Not permissible*
(EC Treaty, Arts 52 (now, after amendment, Art. 43 EC) and 58 (now Art 48 EC))

2. *Freedom of movement for persons — Freedom of establishment — Tax legislation — Corporation tax — Companies resident in one Member State and which are subsidiaries of parent companies having their seat in another Member State required to make advance payment of that tax — Possible for resident subsidiaries of resident parent companies to escape that requirement — Breach of Community law — Obligation to make good the loss caused by advance payment — Reimbursement or reparation of the financial loss suffered — Payment of interest — Detailed procedural rules governing reimbursement or reparation — Application of national law — Condition — Observance of the principle of the effectiveness of Community law* (EC Treaty, Arts 52 (now, after amendment, Art. 43 EC) and 58 (now Art. 48 EC))
3. *Community law — Rights conferred on individuals — Infringement by a Member State — Obligation to make good the damage caused to individuals — Action for reimbursement or reparation — Detailed procedural rules — Application of national law — Limits — Circumstances of the case*

1. It is contrary to Article 52 of the Treaty (now, after amendment, Article 43 EC) for the tax legislation of a Member State to afford subsidiary companies resident in that Member State the possibility of benefiting from a taxation regime (group income election) allowing them to pay dividends to their parent company without having to pay advance corporation tax where their parent company is also resident in that Member State but to deny them that possibility where their parent company has its seat in another Member State.

advance corporation tax in respect of dividends paid to its parent company having its seat in another Member State even though, in similar circumstances, the subsidiaries of parent companies resident in the first Member State were entitled to opt for a taxation regime that allowed them to avoid that obligation, Article 52 of the Treaty (now, after amendment, Article 43 EC) requires that resident subsidiaries and their non-resident parent companies should have an effective legal remedy in order to obtain reimbursement or reparation of the financial loss which they have sustained and from which the authorities of the Member State concerned have benefited as a result of the advance payment of tax by the subsidiaries.

(see para. 76 and operative part 1)

2. Where a subsidiary resident in one Member State has been obliged to pay

The mere fact that the sole object of such an action is the payment of

interest equivalent to the financial loss suffered as a result of the loss of use of the sums paid prematurely does not constitute a ground for dismissing such an action, for the award of interest represents the 'reimbursement' of that which was improperly paid and would appear to be essential in restoring the equal treatment guaranteed by Article 52 of the Treaty.

While, in the absence of Community rules, it is for the domestic legal system of the Member State concerned to lay down the detailed procedural rules governing actions for repayment of taxes levied in breach of Community law or for reparation of loss caused by breach of Community law, including ancillary questions such as the payment of interest, those rules must not render practically impossible or excessively difficult the exercise of rights conferred by Community law. ...

(see paras 87, 96 and operative part 2)

national rules of procedure which may, in particular, require applicants to act with reasonable diligence in order to avoid loss or damage or to limit its extent.

It is, however, contrary to Community law for a national court to refuse or reduce a claim brought before it by a subsidiary resident in that Member State and its non-resident parent company for reimbursement or reparation of the financial loss which they have suffered as a consequence of the advance payment of corporation tax by the subsidiary, on the sole ground that they did not apply to the tax authorities in order to benefit from the taxation regime which would have exempted the subsidiary from making payments in advance and that they therefore did not make use of the legal remedies available to them to challenge the refusals of the tax authorities, by invoking the primacy and direct effect of the provisions of Community law, where upon any view national law denied resident subsidiaries and their non-resident parent companies the benefit of that taxation regime.

3. Actions brought by individuals before the courts of a Member State for repayment of national taxes levied in breach of Community law or for reparation of the loss caused in breach of Community law are subject to

(see paras 102, 107 and operative part 3)