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CÚIRT BHREITHIÚNAIS NA gCÓMHPHOBAL EORPACH
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Press and Information

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Judgment of the Court of Justice in Case C-152/03

Hans-Jürgen Ritter-Coulais and Monique Ritter-Coulais v. Finanzamt Germersheim

GERMAN LEGISLATION WHICH DOES NOT ALLOW FOREIGN ‘NEGATIVE INCOME’ TO BE TAKEN INTO ACCOUNT FOR THE PURPOSES OF DETERMINING THE RATE OF TAXATION IS CONTRARY TO COMMUNITY LAW

The treatment of non-resident workers under German legislation is less favourable than that afforded to workers who reside in Germany in their own homes.

Hans-Jürgen and Monique Ritter-Coulais earned income in Germany from employment as secondary school teachers but lived in a private dwelling in France, which they owned.

For the 1987 tax year, Mr and Mrs Ritter-Coulais requested that ‘negative income’ (loss of income) deriving from their own use of their house as a dwelling be taken into account for the purposes of determining the rate for their tax liability. That ‘negative income’ is income derived from the use of immovable property which is taxable only in the State in which that property is situated, namely, in the main proceedings, in France, under the agreement between France and Germany for the avoidance of double taxation. The tax agreement provides, however, that that does not limit the right of Germany to take account of such income for the purposes of determining the rate applicable to taxes payable in that Member State.

Accordingly, under the Einkommensteuergesetz¹, the German tax authorities take account of foreign income for the purposes of determining the rate of taxation. That law provides, however, that in the absence of positive income from the letting of real property in another

¹ The Law on Income Tax, in the version applicable in 1987.

state, no account should be taken of equivalent income losses for the purposes of determining the basis of assessment or the rate of taxation.

The tax authorities and the court of first instance having denied their claim, Mr and Mrs Ritter-Coulais appealed to the Bundesfinanzhof, which referred the matter to the Court of Justice of the European Communities.

The Court of Justice points out, firstly, that freedom of movement for persons is intended to facilitate the pursuit of occupational activities of all kinds throughout the Community and precludes measures which might place Community nationals at a disadvantage when they wish to pursue an economic activity in another Member State.

However, under German legislation, individuals such as Mr and Mrs Ritter-Coulais, who worked in Germany whilst residing in their own home in another Member State, were not entitled, in the absence of positive income, to have income losses relating to the use of their home taken into account for the purposes of determining their income tax rate, in contrast with individuals working and residing in their own homes in Germany.

It follows that the treatment of non-resident workers under the German legislation is less favourable than that afforded to workers who reside in Germany in their own homes.

Moreover, that unfavourable treatment of non-resident taxpayers is not justified by the need for fiscal coherence in the national tax system, of which that legislation forms part.

The Court therefore holds that Community law precludes national legislation which does not permit natural persons in receipt of income from employment in one Member State, and assessable to tax on their total income there, to have income losses relating to their own use of a private dwelling in another Member State taken into account for the purposes of determining the rate of taxation applicable to their income in the former state, whereas positive income relating to such a dwelling is taken into account.

Unofficial document for media use, not binding on the Court of Justice.

Languages available: FR, DE, EN

The full text of the judgment may be found on the Court's internet site

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-152/03>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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