TRIBUNAL DE JUSTICIA DE LAS COMUNIDADES EUROPEAS
SOUDNÍ DVŮR EVROPSKÝCH SPOLEČENSTVÍ
DE EUROPÆISKE FÆLLESSKABERS DOMSTOL
GERICHTSHOF DER EUROPÄISCHEN GEMEINSCHAFTEN
EUROOPA ÜHENDUSTE KOHUS
ΔΙΚΑΣΤΗΡΙΟ ΤΩΝ ΕΥΡΩΠΑΪΚΩΝ ΚΟΙΝΟΤΗΤΩΝ
COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES
COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES
CÚIRT BHREITHIÚNAIS NA gCÓMHPHOBAL EORPACH
CORTE DI GIUSTIZIA DELLE COMUNITÀ EUROPEE
EIROPAS KOPIENU TIESA

POS BENDRIJŲ TEISINGUMO TEISMAS
JRÓPAI KÖZÖSSÉGEK BÍRÓSÁGA
IL-QORTI TAL-ĠUSTIZZJA TAL-KOMUNITAJIET EWROPEJ
HOF VAN JUSTITIE VAN DE EUROPESE GEMEENSCHAPPEN
TRYBUNAŁ SPRAWIEDLIWOŚCI WSPÓLNOT EUROPEJSKICH
TRIBUNAL DE JUSTIÇA DAS COMUNIDADES EUROPEIAS
SÚDNY DVOR EURÓPSKYCH SPOLOČENSTIEV
SODIŠČE EVROPSKIH SKUPNOSTI
EUROOPAN YHTEISÖJEN TUOMIOISTUIN
EUROPEISKA GEMENSKAPERNAS DOMSTOL

Press and Information

PRESS RELEASE No 92/2006

14 November 2006

Judgment of the Court of Justice in Case C-513/04

Mark Kerckhaert and Bernadette Morres v. Belgische Staat

A MEMBER STATE MAY SUBJECT SHARE DIVIDENDS FROM COMPANIES ESTABLISHED IN ITS TERRITORY AND THOSE FROM COMPANIES ESTABLISHED IN ANOTHER MEMBER STATE TO THE SAME UNIFORM TAX RATE

In that regard, it is not necessary to provide for the possibility of setting off tax levied by deduction at source in that other Member State

In 1995 and 1996 Mr and Mrs Kerckhaert-Morres, who are resident in Belgium, received dividends from Eurofers SARL, a company established in France. In France the gross dividends were made subject to a levy of 15%, deducted at source by way of tax on income. In their tax return Mr and Mrs Kerckhaert-Morres applied to take advantage of a tax benefit corresponding to the French tax at source. That application was rejected.

As they took the view that that rejection effectively made dividends originating in France subject to a heavier tax burden than that imposed on dividends from companies established in Belgium, Mr and Mrs Kerckhaert-Morres brought an action before the Rechtbank van eerste aanleg te Gent (Court of First Instance, Ghent). That court decided to refer a question to the Court of Justice of the European Communities for a preliminary ruling.

The Court first of all points out that, according to settled case-law, although direct taxation falls within the competence of the Member States, the latter must none the less exercise that competence in a manner consistent with Community law. In addition, the Court has found, in several judgments, that the laws of the Member States at issue did not treat in the same way dividend income from companies established in the Member State in which the taxpayer concerned is resident and dividend income from companies established in another Member State, thereby denying recipients of the latter dividends the tax benefits granted to the others[1].

[1] Case C-35/98 *Verkooijen* [2000] ECR I-4071, Case C-315/02 *Lenz* [2004] ECR I-7063, and Case C-319/02 *Manninen* [2004] ECR I-7477.

However, the Court takes the view that the case in the main proceedings differs from those which gave rise to those judgments in as much the Belgian tax legislation does not make any distinction between dividends from companies established in Belgium and dividends from companies established in another Member State. Both are taxed at an identical rate of 25% by way of income tax.

The adverse consequences which might arise from the application of an income tax system such as the Belgian system at issue in the main proceedings result from the exercise in parallel by two Member States of their fiscal sovereignty. Community law does not lay down any general criteria for the attribution of areas of competence between the Member States in relation to the elimination of double taxation within the Community. Consequently, it is for the Member States to take the measures necessary to prevent situations such as that at issue in the main proceedings by applying, for example, the apportionment criteria followed in international tax practice.

Therefore, the Court's answer to the question referred is that Community law does not preclude legislation of a Member State, such as Belgian tax legislation, which, in the context of income tax, makes dividends from shares in companies established in the territory of that State and dividends from shares in companies established in another Member State subject to the same uniform rate of taxation, without providing for the possibility of setting off tax levied by deduction at source in that other Member State.

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

Languages available: FR, CS, DE, EN, ES, EL, IT, HU, NL, PL, SK, SL

The full text of the judgment may be found on the Court's internet site
http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-513/04
It can usually be consulted after midday (CET) on the day judgment is delivered.

For further information, please contact Christopher Fretwell
Tel: (00352) 4303 3355 Fax: (00352) 4303 2731