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Judgment of the Court of Justice in Case C-292/04

Wienand Meilicke and Others v. Finanzamt Bonn-Innenstadt

A MEMBER STATE MAY NOT RESERVE THE RIGHT TO A TAX CREDIT TO DIVIDENDS RECEIVED FROM CAPITAL COMPANIES ESTABLISHED IN THAT MEMBER STATE

Since that aspect of the free movement of capital was clarified earlier by the judgment in Verkooijen, the temporal effects of which the Court did not limit, it does not limit the temporal effects of its judgment of today

The facts in the main proceedings date from the 1990s. Under the German legislation then in force, persons fully taxable for income tax purposes in Germany were entitled to a tax credit for dividends from German companies, but not for dividends from companies established in other Member States. Shareholders in the latter companies did not benefit, therefore, from that mechanism which enables taxpayers to deduct 3/7 of the dividends paid to them from the income tax payable to the German tax authorities.

Between 1995 and 1997, Mr Meilicke, a German citizen residing in Germany, received dividends in respect of shares he held in Netherlands and Danish companies. In 2000, the heirs of Mr Meilicke, who had died in the meantime, unsuccessfully applied to the Finanzamt Bonn-Innenstadt for the tax credit on those dividends. Mr Meilicke's heirs then brought proceedings before the Finanzgericht Köln, which sought a preliminary ruling from the Court of Justice of the European Communities as to whether the Community provisions on the free movement of capital allow a tax system such as the German one.

An unjustified restriction on the free movement of capital

In its judgment of today, the Court holds that the German tax legislation restricts the free movement of capital. In that respect, it refers to its case-law clarifying the requirements arising from the principle of free movement of capital in respect of dividends received by residents from non-resident companies.¹

¹ In its judgment in Case C-35/98 *Verkooijen* [2000] ECR I-4071, the Court held that Community law precludes a legislative provision of a Member State which makes the grant of an exemption from income tax payable on dividends paid to natural persons who are shareholders subject to the condition that those dividends are paid by a company whose seat is in that Member State.

The Court states that the tax credit under the German legislation, like that which gave rise to the proceedings in *Manninen*, is designed to prevent the double taxation of companies' profits distributed in the form of dividends.

It observes in that regard that such legislation, by limiting the tax credit to dividends paid by companies established in Germany, first, disadvantages persons who are fully taxable in Germany for income tax purposes and receive dividends from companies established in other Member States. Such persons are not entitled to set off against their income tax the corporation tax payable by those companies in their State of establishment.

Second, the legislation constitutes an obstacle to those companies raising capital in Germany.

The Court then rejects the argument that the legislation in question is justified by the need to safeguard the cohesion of the national tax system. It observes, in that respect, that it would be sufficient, without threatening the cohesion of the national tax system, to grant to a taxpayer who holds shares in a company established in another Member State, a tax credit calculated by reference to the corporation tax payable by that company in that latter Member State. Such a solution would constitute a measure less restrictive of the free movement of capital.

The Court does not limit the temporal effects of its judgment

In the observations it submitted to the Court, the German Government made the point that it was possible for the Court to limit the temporal effects of its judgment. First, it drew the Court's attention to the grave consequences which a declaration of the incompatibility of the legislation at issue with the free movement of capital would have. Second, it argued that prior to the judgment in *Verkooijen* in 2000, it was possible to believe that that legislation was compatible with Community law.

The Court notes that it may limit the temporal effects of an interpretation of a rule of Community law only exceptionally and in the actual judgment ruling upon the interpretation sought.

It makes clear that there must necessarily be a single occasion when a decision is made on the temporal effects of the requested interpretation, which the Court gives of a provision of Community law. In that regard, the principle that a restriction may be allowed only in the actual judgment ruling upon that interpretation guarantees the equal treatment of the Member States and of other persons subject to Community law, and fulfils the requirements arising from the principle of legal certainty.

It points out, in that regard, that the requirements arising from the principle of free movement of capital in respect of dividends received by residents from non-resident companies have already been clarified in *Verkooijen*, and that the temporal effects of that judgment were not limited.

On those grounds, the Court concludes that it is therefore not appropriate to limit the temporal effects of today's judgment.

In its judgment in Case C-319/02 *Manninen* [2004] ECR I-7477, the Court decided that the calculation of a tax credit must take account of the tax actually paid by the company in the Member State in which it is established.

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Languages available: BG CS DE EL EN ES FR HU IT NL PL PT RO 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-292/04>*

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

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*Pictures of the delivery of the judgment are available on EbS "Europe by Satellite",
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