Press and Information Division

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Judgment of the Court in Case C-422/01

Försäkringsaktiebolaget Skandia and Ola Ramstedt v *Riksskatteverket*

SWEDISH TAX RULES WHICH FAVOUR OCCUPATIONAL PENSION INSURANCE POLICIES TAKEN OUT WITH A SWEDISH INSURER OVER THOSE TAKEN OUT WITH AN INSURER IN ANOTHER MEMBER STATE ARE INCOMPATIBLE WITH COMMUNITY LAW

The Court of Justice rejected the arguments put forward by the Swedish Government to justify their tax rules

In the matter of occupational pension insurance, policies which are taken out by an employer paying the premiums on behalf of one of his employees, Swedish legislation makes a distinction between pension insurance and endowment insurance. To be considered as pension insurance, a policy must, as a rule, be taken out with an insurer established in Sweden.

In terms of direct taxation the two types of insurance are subject to different rules on deduction with effects which may be less favourable for endowment insurance and thus for occupational pension insurance policies taken out with an insurer established in another Member State. Premiums paid by the employer under a pension insurance policy are immediately deductible when calculating his taxable income and the retirement benefits subsequently paid out are subject to income tax in their entirety in the hands of the retired employee. On the other hand, premiums paid by an employer under an endowment insurance policy are not deductible but the employer has a right to deduct the amounts he has undertaken contractually to pay to the employee. When received by the employee, the sums received constitute taxable earned income.

Ola Ramstedt, a Swedish citizen resident in Sweden, is employed by the Swedish company, Skandia. Mr Ramstedt and Skandia agreed that part of Mr Ramstedt's pension was to be provided by Skandia taking out an occupational pension insurance policy with an insurance company established in another Member State. Mr Ramstedt and Skandia applied for an

advance ruling from the Skatterättsnämnden (Council for Advance Tax Rulings) as to whether the insurance policy would be deemed to be pension insurance.

The Skatterättsnämnden ruled that, in its view, the insurance policy should be considered as endowment insurance under the Swedish rules.

Mr Ramstedt and Skandia appealed against this advance ruling to the Regeringsrätten (Supreme Administrative Court). The Regeringsrätten referred a question to the Court of Justice of the EC on the compatibility of the Swedish legislation with the Community rules.

As a preliminary point the Court stated that **the Treaty provisions relating to freedom to provide services apply to such a situation**. The Community rules provide that services normally provided for remuneration are to be considered to be services. In fact, the premiums which Skandia pays are the consideration for the pension which will be paid to Mr Ramstedt when he retires. It is therefore irrelevant that Mr Ramstedt does not pay the premiums himself.

Moreover, the Court points out that **tax rules such as those in force in Sweden restrict freedom to provide services**. Those rules are liable both to deter Swedish employers from taking out occupational pension insurance with institutions established in a Member State other than Sweden and to deter those institutions from offering their services on the Swedish market.

It remains only for the Court to determine whether such rules can be justified.

The Court considers that the **arguments** put forward by the Swedish Government are **not convincing**.

As regards the need to ensure the fiscal cohesion of the national system, the Court has held that there must be a direct connection between the deductibility of contributions and the liability to tax on sums payable by insurers in order for such a justification to be upheld. There is no such correlation in the Swedish system, as there is no compensatory measure to offset the disadvantage suffered by an employer who chooses a foreign insurer compared with an employer who takes out comparable insurance with a Swedish company.

The Court considers that the effectiveness of fiscal controls can be ensured by measures which restrict freedom to provide services to a lesser degree for example by relying on a 1977 Directive[1] which provides for exchange of information on tax between the competent authorities of the Member States.

As regards the need to preserve the tax base of the Member State, the Court points out that any tax advantage for providers of services resulting from the low taxation to which they are subject in the Member State of establishment cannot be used by another Member State to justify less favourable treatment in tax matters given to recipients of services established in the latter State. Moreover, the need to prevent the reduction of tax revenue is not one of the grounds which would justify a restriction on the freedom to provide services.

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[1]Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation