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Judgment of the Court in Joined Cases C-92/24 to C-94/24 | Banca Mediolanum

Taxation: national legislation providing for tax being levied on more than 5% of the amount of the dividends that financial intermediaries receive, as parent companies, from their subsidiaries resident in other Member States is contrary to EU law

This applies also in the case of a tax which is not a tax on corporate income but which includes in its basis of assessment those dividends or a fraction thereof

In the tax years 2014 and 2015, Banca Mediolanum, a bank resident for tax purposes in Italy, received dividends from its subsidiaries which had their tax residences in other Member States of the European Union. Banca Mediolanum included those dividends in the basis of assessment for corporation tax ('IRES'), up to a maximum of 5% of their amount. In its capacity as a financial intermediary, it also included those dividends in the basis of assessment for the regional tax on production activities ('IRAP'), corresponding to 50% of their amount, in order to comply with a provision of the Italian legislative decree governing IRAP¹ specifically relating to those intermediaries. Subsequently, Banca Mediolanum applied for a reimbursement of that proportion of IRAP, claiming that that provision is contrary to EU law. The tax authority rejected that application, arguing that that provision is not contrary to Directive 2011/96.² The Italian court before which the cases are pending seeks an interpretation of that directive from the Court of Justice.

In its judgment delivered today, the Court recalls that, as regards the tax treatment of profits distributed by a subsidiary to its parent company, Directive 2011/96 expressly leaves it open to the Member States to choose between the exemption system³ and the imputation system.⁴ Italy applies the exemption system. Nevertheless, in addition to providing for a tax levied on 5% of the amount of the dividends distributed to parent companies resident in Italy by their subsidiaries, permitted by that directive, the national legislation requires, in essence, that 50% of those dividends be included in the basis of assessment for another tax, namely IRAP, irrespective of the origin of those dividends.

The Court notes that Directive 2011/96,⁵ where it provides that a Member State which has opted for the exemption system must refrain from taxing the profits which a parent company resident in that Member State receives from its subsidiaries resident in other Member States, does not apply to a tax in particular. Consequently, from a literal point of view, the exemption system concerns any tax that includes in its basis of assessment the dividends a parent company receives from its subsidiaries which are resident in other Member States. In addition, the Court notes that **that directive seeks to avoid double taxation of those profits in economic terms and that, accordingly, the exemption system applies to any tax** which, in the Member State of residence of the parent company, includes in its basis of assessment even a part of those profits, whatever the nature of that tax. The effect of the provision of the Italian legislative decree governing IRAP relating specifically to those intermediaries is that 50% of the dividends which those intermediaries receive from their subsidiaries are included in the basis of assessment for IRAP for which the financial intermediaries are liable, irrespective of the origin of those dividends.

Thus, where the exemption system has been chosen, Directive 2011/96 **precludes national legislation pursuant to which a Member State may levy tax on more than 5% of the amount of the dividends which the financial intermediaries resident in that Member State receive from their subsidiaries resident in other Member States, including where that is done by way of a tax which is not a tax on corporate income, such as IRES, but which includes in its basis of assessment those dividends, or a fraction thereof, as is the case with IRAP.**

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text and, as the case may be, an abstract](#) of the judgment are published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355.

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¹ Legislative Decree No 446 introducing a regional tax on production activities, revising personal income tax brackets, rates and deductions, and introducing a regional supplement to that tax, as well as reorganising the provisions governing local taxation.

² Council Directive [2011/96/EU](#) of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States.

³ Provided for in Article 4(1)(a).

⁴ Provided for in Article 4(1)(b).

⁵ Article 4(1)(a).