

Case C-391/97

Frans Gschwind

v

Finanzamt Aachen-Aussenstadt

(Reference for a preliminary ruling
from the Finanzgericht Köln)

(Article 48 of the EC Treaty (now, after amendment, Article 39 EC) — Equal treatment — Taxation of non-residents' income — Taxation scale for married couples)

Opinion of Advocate General Ruiz-Jarabo Colomer delivered on 11 March 1999 I-5453
Judgment of the Court, 14 September 1999. I-5478

Summary of the Judgment

Freedom of movement for persons — Workers — Equal treatment — Remuneration — Income tax — National legislation making tax benefits granted to resident married couples subject, in the case of non-resident couples, to a condition concerning income level — Whether permissible — Conditions

(EC Treaty, Art. 48(2) (now, after amendment, Art. 39(2) EC))

Article 48(2) of the Treaty (now, after amendment, Article 39(2) EC) is to be interpreted as not precluding the application of national legislation under which resident married couples are granted tax benefits while, in the case of non-resident couples, such benefits are subject to the condition that at least 90% of total income be subject to tax in that Member State, failing which, if that percentage is not reached, income from foreign sources and not subject to tax in that State must not exceed a certain ceiling, the possibility being thus maintained for account to be taken of the couple's personal and family circumstances in the State of residence.

The fact that a Member State does not grant to a non-resident certain tax benefits which it grants to a resident is not, as a rule, discriminatory since, as regards direct taxation, those two categories of taxpayer are not in a comparable situation. Specifically, a non-resident married couple — one of whom works in the State of taxation in question and who may, owing to the existence of a sufficient tax base in the State of residence, have personal and family circumstances taken into account by its tax authorities — is not in a situation comparable to that of a resident married couple, even if one of the spouses works in another Member State.