Case C-298/05

Columbus Container Services BVBA & Co.

v

Finanzamt Bielefeld-Innenstadt

(Reference for a preliminary ruling from the Finanzgericht Münster)

(Articles 43 EC and 56 EC — Taxes on revenue and wealth — Conditions for taxing the profits of an establishment situated in another Member State — Double taxation convention — Methods of exempting or offsetting tax)

Summary of the Judgment

1. *Freedom of movement for persons — Freedom of establishment — Provisions of the Treaty — Scope*
   (Art. 43 EC)

2. *Preliminary rulings — Jurisdiction of the Court — Limits*
(Art. 234 EC)

3. *Freedom of movement for persons — Freedom of establishment — Free movement of capital — Tax legislation — Taxes on income*
(Arts 43 EC and 56 EC)

1. The acquisition by one or more natural persons residing in a Member State of all the shares in a company registered in another Member State, conferring on those persons definite influence over the company's decisions and allowing them to determine its activities, is covered by the Treaty provisions on the freedom of establishment. Those provisions thus apply to a situation in which all shares in the company are held, either directly or indirectly, by members of one family who pursue the same interests, take decisions concerning the company by agreement through the same representative at its general meeting and decide on its activities.

(see paras 46, 47)

(see paras 30-32)

2. The Court has no jurisdiction, under Article 234 EC, to rules on the possible infringement by a contracting Member State of the provisions of bilateral conventions designed to eliminate or to mitigate the effects of double taxation. The Court may not examine the relationship between a national measure and the provisions of a double taxation convention, since that question does not fall within the scope of Community law.

3. Articles 43 EC and 56 EC must be interpreted as not precluding tax legislation of a Member State under which the income of a resident national derived from capital invested in an establishment which has its registered office in another Member State is, notwithstanding the existence of a double taxation convention concluded with the Member State in which the establishment has its registered office, not exempted from

national income tax but is subject to national taxation against which the tax levied in the other Member State is set off.

In the current state of harmonisation of Community tax law, Member States enjoy a certain autonomy. It follows from that tax competence that the freedom of companies and partnerships to choose, for the purposes of establishment, between different Member States in no way means that the latter are obliged to adapt their own tax systems to the different systems of tax of the other Member States in order to guarantee that a company or partnership that has chosen to establish itself in a given Member State is taxed, at national level, in the same way as a company or partnership that has chosen to establish itself in another Member State. That fiscal autonomy also means that the Member States are at liberty to determine the conditions and the level of taxation for different types of establishments chosen by national companies or partnerships operating abroad, on condition that those companies or partnerships are not treated in a manner that is discriminatory in comparison with comparable national establishments.

(see paras 43, 45, 51, 53, 57, operative part)