

Case C-374/04

Test Claimants in Class IV of the ACT Group Litigation

v

Commissioners of Inland Revenue

(Reference for a preliminary ruling from the
High Court of Justice of England and Wales, Chancery Division)

(Freedom of establishment — Free movement of capital — Corporation tax —
Payment of dividends — Tax credit — Separate treatment of resident and
non-resident shareholders — Bilateral double taxation conventions)

Opinion of Advocate General Geelhoed delivered on 23 February 2006 . . . I - 11676
Judgment of the Court (Grand Chamber), 12 December 2006 I - 11718

Summary of the Judgment

1. *Freedom of movement for persons — Freedom of establishment — Free movement of capital — Tax legislation*

I - 11673

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

1. Articles 43 EC and 56 EC must be interpreted as meaning that, where a Member State has a system for preventing or mitigating a series of charges to tax or economic double taxation for dividends paid to residents by resident companies, it must treat dividends paid to residents by non-resident companies in the same way.

The situation of shareholders resident in a Member State and receiving dividends from a company established in that State is comparable to that of shareholders who are resident in that State and receive dividends from a company established in another Member State, inasmuch as both the dividends deriving from a national source and those deriving from a foreign source may be subject, first, in the case of corporate shareholders, to a series of charges to tax and, secondly, in the case of ultimate shareholders, to economic double taxation. However, the company making the distribution and the shareholder to whom it is paid are not resident in the same Member State, the Member State in which the company making the distribution is resident is not in the

same position as the Member State in which the shareholder receiving the distribution is resident. The position of a Member State in which both the companies making the distribution and the ultimate shareholders are resident is not comparable to that of a Member State in which a company is resident which pays dividends to a non-resident company, which pays them, in turn, to its ultimate shareholders, in that the second State acts, in principle, only as the State in which the distributed profits are derived. On the other hand, it is in its capacity as the Member State in which the shareholder is resident that, when a resident company pays dividends to its resident ultimate shareholders, that Member State grants to such shareholders, on payment of the dividends, a tax credit equal to the fraction of the advance corporation tax paid by the company which made the distributed profits.

(see paras 55, 56, 58, 64, 65)

2. Articles 43 EC and 56 EC do not prevent a Member State, on a distribution of dividends by a company resident in that State, from granting companies receiving those dividends which are also resident in that State a tax credit equal to the fraction of the corporation tax paid on the distributed profits by the company making the distribution, when it does not grant such a tax credit to companies receiving such dividends which are resident in another Member State and are not subject to tax on dividends in the first State.

(see para. 74, operative part 1)

3. Articles 43 EC and 56 EC do not preclude a situation in which a Member State does not extend the entitlement to a tax credit provided for in a double

taxation convention concluded with another Member State for companies resident in the second State which receive dividends from a company resident in the first State to companies resident in a third Member State with which it has concluded a double taxation convention which does not provide for such an entitlement for companies resident in that third State.

The fact that the reciprocal rights and obligations under the first convention apply only to persons resident in one of the two contracting Member States is an inherent consequence of bilateral double taxation conventions.

(see paras 91, 94, operative part 2)