Case C-264/96

Imperial Chemical Industries plc (ICI)
v
Kenneth Hall Colmer (HM Inspector of Taxes)

(Reference for a preliminary ruling
from the House of Lords)

(Right of establishment — Corporation tax — Surrender by one company to another company in the same group of tax relief on trading losses — Residence requirement imposed on group companies — Discrimination according to the location of the corporate seat — Obligations of the national court)

Summary of the Judgment

1. *Preliminary rulings — Jurisdiction of the Court — Limits — Manifestly irrelevant questions (EC Treaty, Art. 177)*

2. *Freedom of movement for persons — Freedom of establishment — Tax legislation — Corporation tax — Tax relief — National legislation making consortium relief available solely to companies which control, wholly or mainly, subsidiaries whose seat is in the national territory — Not permissible*

   (EC Treaty, Arts 52, 56 and 58)

3. *Member States — Obligations — Situation outside the scope of Community law — Obligation on the national courts to interpret domestic law in a way conforming with Community law — No such obligation*

   (EC Treaty, Art. 5)

1. In the context of the preliminary ruling procedure under Article 177, it is solely for the national courts before which proceedings are pending, and which must assume responsibility for the judgment to be given, to determine in the light of the particular circumstances of each case both the need for a preliminary ruling to enable them to give judgment and the relevance of the questions which they submit to the Court. A request for a preliminary ruling from a national court may be rejected only if it is manifest that the interpretation of Community law or the examination of the validity of a rule of Community law sought by that court bears no relation to the true facts or the subject-matter of the main proceedings.

2. Article 52 of the Treaty precludes legislation of a Member State which, in the case of companies established in that State belonging to a consortium through which they control a holding company, by means of which they exercise their right to freedom of establishment in order to set up subsidiaries in other Member States, makes a particular form of tax relief subject to the requirement that the holding company's business consist wholly or mainly in the holding of shares in subsidiaries that are established in the Member State concerned.

   Such legislation, which makes a tax advantage in the form of consortium relief available solely to companies which control, wholly or mainly, subsidiaries whose seat is in the national territory, applies the test of the subsidiaries' seat to establish differential tax treatment of consortium companies established in that Member State and is not justified in terms of a need to ensure the cohesion of the national tax system arising from the fact that the revenue lost through the granting of tax relief on losses incurred by resident subsidiaries cannot be offset by taxing the profits of non-resident subsidiaries, since there is no direct link between the consortium relief granted for losses incurred by a resident subsidiary and the taxation of profits made by non-resident subsidiaries.

3. When deciding an issue concerning a situation which lies outside the scope of Community law, the national court is not required, under Community law, either to interpret its legislation in a way conforming with Community law or to disapply that legislation. Where a particular provision must be disapplied in a situation covered by Community law, but that same provision could remain applicable to a situation not so covered, it is for the competent body of the State concerned to remove that legal uncertainty in so far as it might affect rights deriving from Community rules.