

Case C-439/97

Sandoz GmbH

v

Finanzlandesdirektion für Wien, Niederösterreich und Burgenland

(Reference for a preliminary ruling  
from the Verwaltungsgerichtshof (Austria))

(Loan agreements — Stamp duty — Rules governing imposition —  
Discrimination)

Opinion of Advocate General Léger delivered on 20 May 1999 . . . . . I-7043  
Judgment of the Court (Sixth Chamber), 14 October 1999 . . . . . I-7066

Summary of the Judgment

1. *Free movement of capital — Restrictions — Taxation by a Member State of loan agreements, including those entered into in another Member State — Justified by the need to prevent the infringement of national tax law and regulations*  
(EC Treaty, Arts 73b(1), 73d(1)(b) and (3) (now Arts 56(1) EC, 58(1)(b) and (3) EC))

2. *Free movement of capital — Restrictions — Taxation by a Member State only of loans entered into in another Member State — Not permissible — Whether justifiable — No justification*  
 (EC Treaty, Arts 73b(1) and 73d(1)(b) (now Arts 56(1) EC and 58(1)(b) EC))

1. Articles 73b(1) and 73d(1)(b) and (3) of the Treaty (now Articles 56(1) EC and 58(1)(b) and (3) EC) are to be interpreted as not precluding the levying of duty, under the legislation of a Member State, on loan agreements, including those entered into in another Member State, payable by all natural and legal persons resident in that State who enter into such a contract, irrespective of the nationality of the contracting parties or of the place where the loan is contracted.
2. Articles 73b(1) and 73d(1)(b) of the Treaty (now Articles 56(1) EC and 58(1)(b) EC) preclude legislation of a Member State which provides that, where a natural or legal person resident in that State concludes outside the national territory a loan agreement which is not set down in a written instrument and not recorded by an entry in the borrower's books and accounts, he is liable to pay stamp duty, whereas, in the case of a loan entered into in that Member State such duty is not payable even if the agreement is not set down in a written instrument.

Although, in depriving residents of a Member State of the possibility of benefiting from the absence of taxation which may be associated with loans obtained outside the national territory, such legislation is likely to deter them from obtaining loans from persons established in other Member States and therefore constitutes a restriction on the movement of capital, it is intended to ensure equality of tax treatment of borrowers by preventing taxable persons from evading the requirements of domestic tax legislation and is therefore essential in order to prevent infringements of national tax law and regulations.

Such legislation, which discriminates according to the place where the loan is contracted, is likely to deter residents from contracting loans with persons established in other Member States and therefore constitutes a restriction on the movement of capital. It cannot be justified by the need to ensure equal tax treatment of residents, since the discrimination entailed as between residents runs counter to that objective; nor can it be justified in terms of the objective of preventing fraud by borrowers who are resident in that State.