

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (First Chamber) of 12 July 2012 — European Commission v Kingdom of Spain(Case C-269/09) ⁽¹⁾

(Failure of a Member State to fulfil obligations — Articles 18 EC, 39 EC and 43 EC — Articles 28 and 31 of the EEA Agreement — Tax legislation — Transfer abroad of a taxpayer's residence — Obligation to include any income not yet charged to tax in the tax base for the preceding tax year — Loss of the advantage to be gained by deferring the tax debt)

(2012/C 287/02)

Language of the case: Spanish

Parties

Applicant: European Commission (represented by: R. Lyal and F. Jimeno Fernández, Agents)

Defendant: Kingdom of Spain (represented by: M. Muñoz Pérez, Agent)

Intervener in support of the defendant: Federal Republic of Germany (represented by: M. Lumma and C. Blaschke, and by K. Petersen, Agents), Kingdom of the Netherlands (represented by: C. Wissels and M. de Ree, Agents), Portuguese Republic (represented by: L. Inez Fernandes, Agent)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 19 EC, 38 EC and 43 EC and of Articles 28 and 31 of the EEA Agreement — Taxpayers transferring their residence abroad — Obligation to include all income not yet charged to tax in the tax base for the last tax year during which they were considered to be resident taxpayers

Operative part of the judgment

The Court:

1. Declares that the Kingdom of Spain has failed to fulfil its obligations under Articles 18 EC, 39 EC and 43 EC, by adopting and maintaining in Article 14(3) of Law 35/2006 on personal income tax and amending in part the laws on the taxation of corporations, of the income of non-residents and of

wealth (Ley 35/2006 del Impuesto sobre la Renta de las Personas Físicas y de modificación parcial de las leyes de los Impuestos sobre Sociedades, sobre la Renta de no residentes y sobre el Patrimonio) of 28 November 2006, a provision under which taxpayers who transfer their residence to another Member State must include, in the tax base for the last tax year in which they were treated as resident taxpayers, any income not yet charged to tax;

2. Dismisses the action as to the remainder;
3. Orders the Kingdom of Spain to pay three-quarters of the costs, and the European Commission to pay the remaining quarter;
4. Orders the Federal Republic of Germany, the Kingdom of the Netherlands and the Portuguese Republic to bear their own costs.

⁽¹⁾ OJ C 220, 12.9.2009.

Judgment of the Court (First Chamber) of 5 July 2012 (reference for a preliminary ruling from the Cour de cassation — Belgium) — Société d'investissement pour l'agriculture tropicale SA (SIAT) v État belge

(Case C-318/10) ⁽¹⁾

(Freedom to provide services — Tax legislation — Deduction as business expenses of expenses incurred as payment for the provision of services — Expenses incurred in relation to a service provider established in another Member State in which that provider is not subject to tax on income or is subject there to a tax regime which is appreciably more advantageous — Deductibility conditional upon the provision of proof of the genuine and proper nature of the services and the normal nature of the related payments — Obstacle — Justification — Combating tax evasion and avoidance — Effectiveness of fiscal supervision — Balanced allocation between Member States of the power to impose taxes — Proportionality)

(2012/C 287/03)

Language of the case: French

Referring court

Cour de cassation