



Reports of Cases

Case C-318/10

Société d'investissement pour l'agriculture tropicale SA (SIAT)
v
État belge

(Reference for a preliminary ruling from the Cour de cassation (Belgium))

(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)

Summary of the Judgment

1. *Freedom to provide services — Provisions of the Treaty — Scope — Recipients of services*

(Art. 49 EC)

2. *Freedom to provide services — Restrictions — Tax legislation — Tax on income — Deduction of expenses incurred as payment for the provision of services — Expenses incurred in relation to a service provider established in another Member State — Deductibility conditional upon the provision of proof of the genuine and proper nature of the services and the normal nature of the related payments — Not permissible — Justification — Combating tax evasion and avoidance — Effectiveness of fiscal supervision — Balanced allocation between Member States of the power to impose taxes — Legislation which does not meet the requirements of the principle of legal certainty — Lack of justification*

(Art. 49 EC)

1. See the text of the decision.

(see para. 19)

2. Legislation of a Member State under which payments made by a resident taxpayer to a non-resident company for supplies or services are not to be regarded as deductible business expenses where the non-resident company is not subject, in the Member State of establishment, to tax on income or is subject, as regards the relevant income, to a tax regime which is appreciably more advantageous than the applicable regime in the former Member State, unless the taxpayer proves that such payments relate to genuine and proper transactions and do not exceed the normal limits, whereas, under the general rule, such payments are to be regarded as deductible business expenses if they are necessary

for acquiring or retaining taxable income and if the taxpayer demonstrates the authenticity and amount of those expenses constitutes a restriction on the freedom to provide services within the meaning of Article 49 EC.

A special rule which lays down stricter conditions for being allowed to deduct business expenses paid to a non-resident company than those laid down in the general rule and the scope of which has not been delimited with precision beforehand because the assessment concerning the applicability of the special rule is carried out on a case-by-case basis by the tax authority is liable both to dissuade resident taxpayers in that Member State from exercising their right to the freedom to provide services and from making use of the services of providers established in another Member State and to dissuade those providers from offering their services to recipients established in the former State.

Moreover, although such a rule is suitable for attaining the objectives of preventing tax evasion and avoidance and of preserving both the effectiveness of fiscal supervision and the balanced allocation between Member States of the power to impose taxes, it cannot be regarded as justified, as it is not proportionate to those objectives. Since it is not possible, at the outset, to determine its scope with sufficient precision and its applicability remains a matter of uncertainty, such a rule does not meet the requirements of the principle of legal certainty, in accordance with which rules of law must be clear, precise and predictable as regards their effects, in particular where they may have unfavourable consequences for individuals and undertakings.

(see paras 26-29, 48, 57-60, operative part)