



Reports of Cases

Case C-383/10

European Commission v Kingdom of Belgium

(Failure of a Member State to fulfil obligations — Articles 56 TFEU and 63 TFEU — Articles 36 and 40 of the EEA Agreement — Tax legislation — Tax exemption reserved to interest payments by resident banks and excluding interest payments by banks established abroad)

Summary — Judgment of the Court (Fifth Chamber), 6 June 2013

1. *Member States — Retained powers — Direct taxation — Obligation to exercise that power in a manner consistent with EU law*
2. *Freedom to provide services — Restrictions — Tax legislation — National legislation limiting a tax exemption to interest payments by resident banks by excluding interest payments by banks established abroad — Justification based on the need to guarantee the effectiveness of fiscal supervision — Inadequacy of the cooperation instruments at the level of EU law — General presumption of tax evasion or tax avoidance — Not permissible*

(Art. 56 TFEU; EEA Agreement, Art. 36; Council Directive 77/799)

1. See the text of the decision.

(see para. 40)

2. A Member State which introduces and maintains a system of discriminatory taxation of interest payments by non-resident banks, resulting from the application of a tax exemption limited to interest payments by resident banks, fails to fulfil its obligations under Article 56 TFEU and Article 36 of the Agreement on the European Economic Area.

National legislation which sets up a different tax system for interest from a savings deposit according to whether or not the interest is paid by banks established in a given Member State creates an obstacle to the freedom to provide services. It has the effect of discouraging residents from one Member State from using the services of banks established in other Member States and from opening and keeping savings accounts with banks which are not established in the Member State of residence. A tax system which impedes the freedom to provide services may be justified by the need to guarantee the effectiveness of fiscal supervision and by the prevention of tax evasion and avoidance, subject to compliance with the principle of proportionality, in the sense that it must be appropriate for ensuring the attainment of the objective that it pursues and that it does not go beyond what is necessary to attain that objective.

However, justification based on the inadequacy of the cooperation instruments at the level of EU law cannot be accepted, given that the mechanisms covered by Directive 77/799 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation are

sufficient to enable a Member State to check the truthfulness of the returns made by taxpayers relating to their income earned in another Member State. Possible difficulties in obtaining the information required or shortcomings in terms of cooperation between their tax authorities do not constitute a justification for restricting the fundamental freedoms guaranteed by the Treaty. There is no reason why the tax authorities concerned should not request from the taxpayer the evidence that they consider they need to effect a correct assessment of the taxes concerned and, where appropriate, refuse the exemption applied for if that evidence is not supplied.

Moreover, the justification based on the risk of double exemption, and therefore, implicitly, the justification of preventing tax evasion and avoidance, can be accepted only if the legislation is aimed at wholly artificial arrangements the objective of which is to circumvent the tax laws, which precludes any general presumption of tax evasion. Consequently, a general presumption of tax evasion or tax avoidance cannot justify a fiscal measure which compromises the objectives of the Treaty.

(see paras 44, 45, 47, 49, 51-54, 61, 64, 75, operative part)