



Reports of Cases

Judgment of the Court (Third Chamber) of 18 July 2013 — *Commission v Denmark*

(Case C-261/11)

(Failure of a Member State to fulfil obligations — Freedom of establishment — Article 49 TFEU — Article 31 of the EEA Agreement — Restrictions — Tax legislation — Transfer of assets to another Member State — Immediate taxation of unrealised capital gains)

1. *Freedom of movement for persons — Freedom of establishment — Provisions of the Treaty — Scope (Art. 49 TFEU) (see paras 25-28)*
2. *Freedom of movement for persons — Freedom of establishment — Restrictions — Tax legislation — Transfer of the assets of a company which are situated in the territory of the Member State concerned to another Member State — National legislation prescribing the immediate taxation of unrealised capital gains relating to the assets transferred — Not permissible — Scope — Justification — Lack of balanced distribution of the power of taxation between the Member States (Art. 49 TFEU) (see paras 29-32, 35-38, operative part)*
3. *International agreements — Agreement establishing the European Economic Area — Freedom of movement for persons — Freedom of establishment — Tax legislation — Transfer of the assets of a company which are situated in the territory of the Member State concerned to a non-member country party to that agreement — National legislation prescribing the immediate taxation of unrealised capital gains relating to the assets transferred — Not permissible — Justification — No need to ensure effective recovery of the tax (EEA Agreement, Art. 31) (see paras 42-47, operative part)*

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 49 TFEU and Article 31 EEA — Tax provisions laying down immediate taxation on exit for companies transferring assets to another Member State but not laying down an equivalent tax on transfers of assets within national territory.

Operative part

The Court:

1. Declares that, by adopting and maintaining in force Paragraph 8(4) of the Law on taxation of the income of share companies and other matters (Lov om indkomstbeskatning af aktieselskaber m.v., lovbekendtgørelse nr. 1376, 7 December 2010), concerning the immediate taxation of the income of share companies, and consequently a tax system providing for the immediate taxation of unrealised capital gains relating to a transfer of assets by a company established in Denmark to another Member State of the European Union or to a non-member country party to the Agreement on the European Economic Area of 2 May 1992, the Kingdom of Denmark has failed to fulfil its obligations under Article 49 TFEU and Article 31 of the EEA Agreement;
2. Orders the Kingdom of Denmark to pay the costs;
3. Orders the Federal Republic of Germany, the Kingdom of Spain, the Kingdom of the Netherlands, the Portuguese Republic, the Republic of Finland and the Kingdom of Sweden to bear their own costs.