

Parties to the main proceedings

Applicant: Vorarlberger Landes- und Hypothekenbank AG

Defendant: Finanzamt Feldkirch

Question referred

Is legislation which imposes a charge on the basis of the balance sheet total of credit institutions contrary to the freedom to provide services under Article 56 et seq. TFEU and/or to the free movement of capital and payments under Article 63 TFEU if, for the purposes of the charge, banking transactions with clients in other Member States are taken into account for a credit institution with its seat in Austria whereas the same does not apply to a credit institution with its seat in Austria which enters into such transactions as the parent company of a group of credit institutions through a credit institution belonging to the group with its seat in another Member State, the balance sheet of which must, since it belongs to a group of companies, be consolidated with that of the credit institution acting as a parent company, because the charge is levied on the basis of the unconsolidated (that is to say, not included in a group financial statement) balance sheet total?

Request for a preliminary ruling from the Finanzgericht München (Germany) lodged on 17 November 2017 — College Pension Plan of British Columbia v Finanzamt München III

(Case C-641/17)

(2018/C 112/09)

Language of the case: German

Referring court

Finanzgericht München

Parties to the main proceedings

Applicant: College Pension Plan of British Columbia

Defendant: Finanzamt München III

Questions referred

1. Does the freedom of movement of capital under Article 63(1) TFEU in conjunction with Article 65 TFEU preclude legislation of a Member State under which a non-resident institution operating an occupational pension scheme whose essential structure is similar to a German pension fund does not receive any relief from tax on income from capital in respect of dividends received, whereas such dividend distributions to domestic pension funds do not result in any increase in their corporation tax liability, or only a comparatively small one, because the latter are able to reduce their taxable profit in a tax assessment procedure by deducting the amounts reserved to meet their pension payment obligations and to neutralise the tax on income from capital through a set-off, and also receive a refund in the event that the amount of corporation tax payable is less than the amount set-off?
 2. If the answer to Question 1 is yes: is the restriction of the free movement of capital through Paragraph 32(1) No 2 of the Law on corporation tax permissible with respect to third countries under Article 63 TFEU in conjunction with Article 64 (1) TFEU because it relates to the provision of financial services?
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