

JUDGMENT OF THE COURT
30 March 1993 *

In Case C-24/92,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Directeur des Contributions Directes et des Accises (Director of Taxation and Excise Duties) of the Grand Duchy of Luxembourg for a preliminary ruling in the proceedings pending before him between

Pierre Corbiau

and

Administration des Contributions du Grand-Duché de Luxembourg

on the interpretation of Article 48 of the EEC Treaty,

THE COURT,

composed of: O. Due, President, G. C. Rodríguez Iglesias, M. Zuleeg, J. L. Murray (Presidents of Chambers), G. F. Mancini, R. Joliet, F. A. Schockweiler, J. C. Moitinho de Almeida and F. Grévisse, Judges,

Advocate General: M. Darmon,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of the Commission of the European Communities by its Principal Legal Adviser, H. Étienne, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of the Luxembourg Government, represented by J.-M. Klein, Conseiller de Direction de Première Classe

* Language of the case: French.

at the Ministry of Finance, and of the Commission at the hearing on 12 January 1993

after hearing the Opinion of the Advocate General at the sitting on 16 February 1993,

gives the following

Judgment

- 1 By a decision of 28 January 1992, received at the Court the same day, the Directeur des Contributions Directes et des Accises (Director of Taxation and Excise Duties) of the Grand Duchy of Luxembourg (hereinafter 'the Directeur des Contributions') referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Article 48 of that Treaty.

- 2 The question had arisen in an administrative appeal brought before the Directeur des Contributions by Mr Corbiau for the repayment of excessive amounts of income tax.

- 3 Mr Corbiau, who is a Belgian national, works at Banque Paribas in Luxembourg. He lived in Luxembourg until 25 October 1990, on which date he transferred his residence to Belgium while remaining employed in Luxembourg. Formerly a resident taxpayer in Luxembourg, he now became a non-resident taxpayer.

- 4 During the period from 1 January 1990 until 25 October 1990, his employer deducted income tax from his salary at the rate which would have been applicable if he had been a taxpayer resident in Luxembourg throughout the year.

- 5 When the amount of tax due was finally assessed, Mr Corbiau's income for the first ten months of the 1990 tax year was taxed at the progressive rate normally applicable to such income if earned over the whole year. Because that rate was lower than the one applied in calculating the amount of the deductions, the tax statement for 1990 showed excess taxation amounting to LFR 180 048.
- 6 The Luxembourg tax authorities refused to repay the excessive amount of tax deducted, relying on Article 154(6) of the Loi sur l'Impôt sur le Revenu (Income Tax Law), which provides that amounts deducted by way of tax from the salaries and wages of employed persons who are resident taxpayers for only part of the year are to become the property of the Treasury, whether such persons take up residence in the country or leave it during the course of the year.
- 7 On 28 June 1991, Mr Corbiau made an application to the Directeur des Contributions under Paragraph 131 of the Tax Code.
- 8 That provision provides that 'the Minister for Finance may in individual cases (or in several individual cases, as in the event of bad weather or other exceptional circumstances) grant full or partial remission of taxes owed to the State which it would be inequitable to collect having regard to the particular case, or order that taxes already paid be repaid or credited'.
- 9 Article 8 of the Grand-Ducal Order of 26 October 1944 provides that 'taxpayers' complaints and applications for remission or reduction of taxes shall be dealt with by the head of the relevant department or his deputy save where appeal is made to a body to be designated by ministerial order'.

- 10 Under Article 2(1) of the Law of 17 April 1964 reorganizing the Administration of Direct Taxes and Excise Duties, as amended by the Law of 20 March 1970, that function is conferred upon a director, who is the head of the administration.
- 11 Finally, Article 1 of the Ministerial Order of 10 April 1946 designated the Judicial Committee of the Conseil d'État (State Council), sitting with three members, as the body competent to rule at final instance on appeals in matters of taxation, contributions and entitlements.
- 12 Inputting his case to the Directeur des Contributions, Mr Corbiau relied on the judgment of the Court of Justice in Case C-175/88 *Biehl v Administration des Contributions* [1990] ECR I-1779, in which the Court held that: 'Article 48(2) of the Treaty precludes a Member State from providing in its tax legislation that sums deducted by way of tax from the salaries and wages of employed persons who are nationals of a Member State and are resident taxpayers for only part of the year because they take up residence in the country or leave it during the course of the tax year are to remain the property of the Treasury and are not repayable'.
- 13 Being uncertain as to how that judgment was to be applied to the matter before him, the Directeur des Contributions decided to refer the following question to the Court for a preliminary ruling:

'In a Member State where employed persons who have been resident taxpayers for the whole tax year are entitled to repayment of sums legally deducted by way of tax from their salaries by their employer if and to the extent to which the total of those deductions exceeds the amount of income tax assessed at the rate corresponding to the whole of their income for the year, is the fact that a Community national who has been a resident taxpayer for part of the year can obtain repayment of amounts of tax lawfully deducted only on the same condition and to the same extent contrary to Article 48 of the EEC Treaty?'

- 14 Before answering that question, the Court must consider whether the Directeur des Contributions constitutes a 'court or tribunal' within the meaning of Article 177 of the Treaty and whether, in consequence his reference is admissible.
- 15 It must be remembered that the expression 'court or tribunal' is a concept of Community law, which, by its very nature, can only mean an authority acting as a third party in relation to the authority which adopted the decision forming the subject-matter of the proceedings.
- 16 In this instance, the Directeur des Contributions does not act as such a third party. Being at the head of the Direction des Contributions Directes et des Accises (Direct Taxes and Excise Duties Directorate), he has a clear organizational link with the departments which made the disputed tax assessment, against which the complaint submitted to him is directed. This is confirmed, moreover, by the fact that, if the matter were to come before the Conseil d'État on appeal, the Directeur des Contributions would be a party to the proceedings.
- 17 The Directeur des Contributions is not, therefore, a court or tribunal within the meaning of Article 177 of the Treaty and the reference he has made must therefore be held inadmissible.

Costs

- 18 The costs incurred by the Luxembourg Government and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings before the Directeur des Contributions of the Grand Duchy of Luxembourg, the decision on costs is a matter for him.

On those grounds,

THE COURT,

hereby rules:

The reference made by the Directeur des Contributions Directes et des Accises of the Grand Duchy of Luxembourg is inadmissible.

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| Due | Rodríguez Iglesias | Zuleeg | Murray | Mancini |
| Joliet | Schockweiler | Moithinho de Almeida | | Grévisse |

Delivered in open court in Luxembourg on 30 March 1993.

J.-G. Giraud
Registrar

O. Due
President