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Press and Information

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Judgment of the Court in Case C-39/04

Laboratoires Fournier SA v Direction des vérifications nationales et internationales

FRENCH LEGISLATION WHICH RESTRICTS THE BENEFIT OF A TAX CREDIT ONLY TO RESEARCH CARRIED OUT IN FRANCE RESTRICTS THE FREEDOM TO PROVIDE SERVICES

Such legislation, based indirectly on the place of establishment of the service provider, is likely to restrict its cross-border activities.

The French Code général des impôts¹ (General Tax Code) provides that industrial and commercial or agricultural undertakings may receive a tax credit for expenditure relating to scientific and technical research activities carried out in France.

Laboratoires Fournier, which manufactures and sells pharmaceutical products, commissioned centres based in various Member States to undertake research projects and took the resultant expenditure into account in calculating its tax credit for research for the years 1995 and 1996. In 1998, following an audit, the Direction des vérifications (Audit Directorate) disallowed that expenditure for the calculation of the tax credit and issued tax adjustment notices to Laboratoires Fournier.

Laboratoires Fournier brought proceedings before the Tribunal administratif (Administrative Court), Dijon. As part of those proceedings, the national court is asking the Court of Justice of the European Communities whether Community law precludes legislation of a Member State which restricts the benefit of a tax credit for research only to research carried out in that Member State.

The Court of Justice states, first, that direct taxation falls within the competence of the Member States, which must exercise that competence consistently with Community law. The French Code général des impôts makes the provision of services constituted by research activity subject to different tax arrangements depending on whether it is carried out in the

¹ Article 244(c)B of the French Code général des impôts (General Tax Code), in the version in force at the time of the facts giving rise to the main proceedings, and Article 49(g)H of Annex III to the Code général des impôts, in the version in force at the time of the facts giving rise to the main proceedings.

Member State concerned or in other Member States. Such legislation does not flow from the principle of fiscal territoriality but is based indirectly upon the place of establishment of the service provider and is liable to restrict its cross-border activities. **Consequently, it is contrary to the principle of freedom to provide services.**

Second, the Court considers whether that difference in treatment may be justified.

Referring to earlier case-law, the Court states that **the need to safeguard the coherence of the tax system** may justify a restriction on the exercise of the fundamental freedoms. However, in the cases giving rise to those judgments, there was a direct link, with respect to the taxpayer subject to the tax, between the deductibility of its operating expenses and its later taxation. In a situation such as that in this case, by contrast, the Court finds that there is **no such direct link** between general corporation tax and a tax credit for part of the research expenditure incurred by a company.

Next the Court states that the **promotion of research and development** may be an overriding reason relating to public interest which may justify a restriction on the exercise of fundamental freedoms. It notes, however, that legislation such as that at issue is directly contrary to the objective of the Community policy in that field, which aims to exploit the internal market potential to the full, in particular through the removal of legal and fiscal obstacles to cooperation between undertakings.

Lastly, the Court states that **effectiveness of fiscal supervision** constitutes an overriding requirement of general interest authorising a Member State to apply measures which enable the amount of costs deductible in that State as research expenditure to be ascertained. However, national legislation, such as that at issue, which absolutely prevents the taxpayer from submitting evidence regarding expenditure relating to research carried out in other Member States cannot be justified in the name of effectiveness of fiscal supervision.

The Court concludes that the principle of freedom to provide services precludes legislation of a Member State which restricts the benefit of a tax credit for research only to research carried out in that Member State.

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Languages available: FR, EN, DE

The full text of the judgment may be found on the Court's internet site:

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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