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ECJ: No further taxation of dividend in case of Parent-Subsidiary Directive exemption

In a request for a preliminary ruling from Italy, the European Court of Justice (ECJ) held that a national legislation providing for tax being levied on more than 5% of the amount of the dividends that financial intermediaries receive, as parent companies, from their subsidiaries resident in other Member States is contrary to EU law. This also applies in the case of a tax which is not a tax on corporate income but which includes in its basis of assessment those dividends or a part thereof.

Background

Italy, like many other Member States, does not have only one direct tax that is payable by companies and linked (in whole or in part) to the income but also a regional tax on productive activities (imposta regionale sulle attivita' produttive; 'IRAP'), which has been levied since the late 1990s and was thus already in existence when the Parent-Subsidiary Directive was recast in 2011. In the case of banks, that tax includes 50% of their dividend income in its basis of assessment. Thus, the bank resident in the region, as the parent company, is not required to pay any further corporation tax on the dividends received, since Italy has implemented the Parent-Subsidiary Directive in that respect. However, those dividends are partially covered by IRAP, which is levied in Italy on all persons carrying on a commercial activity. If those persons are companies, IRAP is levied parallel to corporation tax. That results in further (indirect) taxation of those dividends.

Decision

The ECJ notes that Directive 2011/96, where it provides that a Member State which has opted for the exemption system must refrain from taxing the profits which a parent company resident in that Member State receives from its subsidiaries resident in other Member States, does not apply to a particular type of tax. Consequently, from a literal point of view, the **exemption system concerns any tax** that includes in its assessment basis the dividends a parent company receives from its subsidiaries resident in other Member States. In addition, the Court notes that that directive seeks to avoid double taxation of those profits in economic terms and that, accordingly, the exemption system applies to any tax which, in the Member State of residence of the parent company, includes in its basis of assessment even a part of those profits, whatever the nature of that tax.

More details to be found here (ECJ **press release No. 98/25** of 1 August 2025).

Keywords

Parent/Subsidiary Directive, dividend exemption