

Judgment of the Court (Third Chamber) of 23 April 2009 – Commission v Greece

(Case C-406/07)

Failure of a Member State to fulfil obligations – Freedom of establishment – Free movement of capital – Direct taxation – Taxation of dividends from shares in companies – Rate of taxation for partnerships

1. *Freedom of movement for persons – Freedom of establishment – Free movement of capital – Provisions of the Treaty – Scope (Art. 43 EC and 56 EC) (see para. 22)*
2. *Freedom of movement for persons – Freedom of establishment – Free movement of capital – Tax legislation – Corporation tax (Art. 43 EC and 56 EC; EEA Agreement, Arts 31 and 40) (see paras 25-28, operative part)*
3. *Freedom of movement for persons – Freedom of establishment – Tax legislation (Art. 43 EC; EEA Agreement, Art. 40) (see paras 39-43, operative part)*

Re:

Failure of a Member State to fulfil obligations – Breach of Articles 43 EC and 56 EC – National rules providing for tax exemption for dividends distributed by national companies but not for dividends distributed by companies whose seat is in another Member State.

Operative part

The Court:

1.

Declares that, by applying a tax regime for dividends from abroad that is less favourable than that applied to domestic dividends, the Hellenic Republic has failed to fulfil its obligations under Articles 43 EC and 56 EC and the corresponding articles of the Agreement on the European Economic Area of 2 May 1992, namely Articles 31 and 40 thereof;

Declares that, by maintaining in force the provisions of the Income Tax Code (Law 2238/1994, as amended by Law 3296/2004), by which foreign partnerships in Greece are taxed more heavily than domestic partnerships, the Hellenic Republic has failed to fulfil its obligations under Article 43 EC and Article 31 of the Agreement on the European Economic Area;

2.

Orders the Hellenic Republic to pay the costs.