

Direct taxation: The European Commission formally requests the United Kingdom to amend its provisions which improperly implement a ruling of the Court of Justice on cross-border loss relief

The European Commission has formally requested the United Kingdom to change its provisions of the Corporate Tax Act 2010 which improperly implement the ruling of the Court of Justice of the European Union in Marks & Spencer on cross-border loss relief. These provisions are incompatible with the right of establishment provided for in Articles 49 and 54 of the Treaty on the Functioning of the EU. The request takes the form of an additional reasoned opinion (the second step of the infringement procedure). If there is no satisfactory reaction within two months, the Commission may decide to refer the matter to the Court of Justice of the European Union.

In the Marks & Spencer ruling (Case C-446/03 of 13 December 2005) the Court ruled that it is disproportionate to prohibit a UK parent company from deducting the losses of its non-resident subsidiary, when the latter has exhausted all possibilities for relief in its State of establishment. Following this ruling, the UK should in principle grant relief for definitive losses of a subsidiary established in another Member State. However, although the legislation has been amended, the UK continues to impose conditions on cross-border group loss relief which in practice make it impossible or virtually impossible for the taxpayer to benefit from such relief in accordance with the judgment in Marks & Spencer. On 6 October 2009 the Commission decided to refer the UK to the CJ over improper implementation of the ruling in its domestic legislation.

The current additional reasoned opinion is aimed at enlarging the scope of the proceeding in order to cover the new legislation enacted in Corporate Tax Act 2010 which repealed previously challenged provisions of the Income and Corporation Taxes Act 1988 and Finance Act 2006.

The Commission's case reference number is 2007/4026.

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http://ec.europa.eu/taxation_customs/common/infringements/infringement_cases/index_en.htm

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