

Commissioners for Her Majesty's Revenue and Customs (Appellant) v Coal Staff Superannuation Scheme Trustees Ltd (Respondent)

Case ID: 2019/0215

Case summary

Issue

- (1) Whether the UK tax treatment of "manufactured overseas dividends" constituted a restriction of the free movement of capital, contrary to Article 63 TFEU.
- (2) If so, whether this restriction was justified under EU law.
- (3) If there was a restriction that could not be justified, what is the appropriate remedy.

Facts

The Respondent is the trustee of the British Coal Staff Superannuation Scheme, a registered pension fund holding a large portfolio of shares in UK and overseas companies. Between 2002 and 2008, the pension fund undertook a large number of "stock lending" transactions, by which it transferred overseas shares to various borrowers on the basis that the borrowers would retransfer to it the same or equivalent shares at the end of a defined term. Where dividends were payable on the transferred shares during the term, the stock lending agreements provided for the borrowers to pay the pension fund amounts equivalent to the value of the dividend. Under UK tax law, these sums are described as "manufactured overseas dividends".

Schedule 23A of the Income and Corporation Taxes Act 1988 Act required some of the borrowers to make a deduction for tax before paying a "manufactured overseas dividend" to the fund. Such deductions were treated as amounts withheld on account of overseas tax, rather than amounts payable as income tax. Because the pension fund was exempt from income tax, it was not able to claim relief in respect of these deducted sums. It claims that the relevant tax rules contravened EU law relating to the free movement of capital by treating manufactured overseas dividend income less favourably than UK manufactured dividend income (in respect of which no withholding tax was payable). The First-tier Tribunal dismissed the Respondent's claim. However, the Upper Tribunal reversed this decision. The Court of Appeal dismissed HMRC's subsequent appeal. HMRC now appeal to the Supreme Court.

Judgment appealed

[\[2019\] EWCA Civ 1610](#)

Parties

Appellant(s)

Commissioners for Her Majesty's Revenue and Customs

Respondent(s)

Coal Staff Superannuation Scheme Trustees Ltd

Appeal

Justices

Lord Reed, Lord Hodge, Lord Briggs, Lord Sales, Lord Hamblen

Hearing start date

26 Oct 2021

Hearing finish date

27 Oct 2021

Watch hearing

26 October 2021 [Morning session](#) [Afternoon session](#)

27 October 2021 [Morning session](#) [Afternoon session](#)

Judgment details

Judgment date

27 April 2022

Neutral citation

[2022] UKSC 10