

Newsalert

EU Direct Tax Group

NA 2007 – 001



25 January 2007

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Judgement in the case Meindl, C-329/05

Mr. Meindl, a German-resident national of Austria in 1997 derived professional and business income in Germany of DM 136,422. His wife, Mrs. Meindl-Berger, who retained her residence in Austria, received special maternity and confinement allowances in total at about DM 26,995, which was exempt from Austrian income tax and not taxed in Germany either.

Under German Income Tax Law as applicable in 1997, a married couple with one spouse being resident in Germany and the other one having its residence in another EU / EEA Member State qualified for joint assessment either (i) if 90 % of the couple's worldwide aggregate income of the year was subject to German income tax, or (ii) if the income not subject to German income tax did not exceed DM 24,000. The amount of the spouses' worldwide aggregate income had to be assessed in accordance with German income tax rules.

The German tax authorities refused the spouses' application for joint assessment since, first, the benefits Mrs. Meindl-Berger received in Austria exceeded the 10 %-threshold and secondly, the DM 24,000-limit was reached as well. It was held that Austrian wage compensation benefits were not exempt from tax under the German Income Tax Act as they were not paid under *German law*. The fact, that those benefits were not subject to tax under Austrian law had no bearing on whether they were to be taken into account in the examination of an application for joint assessment.

The German Federal Financial Court referred the case to the ECJ, asking whether or not this refusal was contrary to the freedom of establishment under Article 43 of the EC Treaty. The ECJ handed down its judgement on January 25, 2007. It started by pointing out that in relation to direct taxes, the situations of residents and non-residents are generally not comparable, because the income received in the territory of a State by a non-resident is in most cases only a part of his total income which is concentrated at his place of residence where personal and family circumstances are to be assessed. However, Mr. Meindl is tax resident in Germany and receives the entire taxable income of the household in Germany.

It thus held that a resident taxpayer whose spouse is resident in the same Member State and receives only income not subject to tax is objectively in the same situation as a resident taxpayer whose spouse is resident in another Member State and receives only income not subject to tax in that Member State because, in both cases, the household's taxable income is derived from the professional activity of only one of the spouses and, in both cases, that spouse is the relevant taxpayer. Since only in the first case the resident taxpayer is entitled to joint assessment, both cases are treated differently. Additionally, the residence condition for the spouse is a requirement which German nationals will be able to satisfy more easily than nationals of other Member States living in Germany; the members of their families more frequently live outside Germany.

The ECJ stated that this is a discrimination prohibited by Art. 43 EC and not justifiable since Mr. Meindl is in no way entitled to have his personal and family circumstances taken into account. As already ascertained in *Zurstrassen* (C-87/99), this account can only be taken by the state of residence when a taxpayer receives the entire income of the household there.

Finally, having regard to the case *Gschwind*, (C-391/97), the ECJ pointed out that the 90 %- or DM 24.000-limits as such were not contrary to EC law as long as the possibility to take into account the spouses' personal and family circumstances in the State of residence is maintained.

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