SUMMARY

ECJ 19 June 2014, joined cases C-53/13 and C-80/13 (Strojírny Prostějov a.s. and ACO Industries Tábor s.r.o. - v - Odvolaci finanční ředitelství), Free movement, Tax

Facts

Strojírny Prostějov and ACO Industries are Czech companies. They hired temporary workers ('temps') from Slovak temporary manpower agencies that had branch offices in the Czech Republic. The Czech tax authorities required Strojírny Prostějov and ACO Industries (the user undertakings) to deduct Czech withholding tax from their payments to the manpower agencies. The withholding tax in question is an advance on the income tax owed by the temps. In the case of ACO Industries the withholding tax was calculated on the basis of the assumption that 60% of the manpower agency's invoice consisted of the temps' salaries.

National proceedings

The user undertakings appealed against the tax authorities' decisions. They argued that if the manpower agencies had been Czech companies, they would not have had to deduct withholding tax. In that case, the obligation to deduct withholding tax would have rested on the manpower agencies, not on the user undertakings.

Two courts, one at the appellate level and the other being the Supreme Court, referred questions to the ECJ for a preliminary ruling. The appellate court asked whether the position taken by the Czech tax authorities was compatible with Articles 56 and 57 TFEU (freedom to provide services). The Supreme Court's questions also related to Articles 18 (prohibition of

nationality discrimination), 45 (freedom of movement for workers) and 49 (right of establishment) TFEU. The Supreme Court also questioned the legality of the 60% assumption.

ECJ's findings

The ECJ sees no need to examine the questions in the light of Articles 18, 45 and 49 TFEU. It limits its examination to Article 56, which requires the abolition of any restriction on the freedom to provide services in another Member State (§ 26-36).
The withholding obligation entails an administrative burden on user undertakings that hire temps from non-Czech manpower agencies. User undertakings hiring temps from a Czech manpower agency do not have that burden. Consequently, the withholding obligation is liable to render the cross-border hiring of temps less attractive and it affects the right of user undertakings freely to choose cross-border services. It follows that the Czech legislation at issue constitutes a restriction on freedom to provide services, prohibited in principle by Article 56 TFEU (§ 37-42).
This restriction may be justified by overriding requirements in the public interest in so far as that interest is not already safeguarded by the rules to which the service provider is subject in its own Member State and in so far as it is appropriate and necessary for obtaining the objective pursued. The need to ensure effective tax collection may constitute such an overriding requirement. However, in this case, the manpower agencies in question have branches in the territory of the host state and the advance payments on the salaries of the temps concerned were in fact made by those branches. It follows that the Czech legislation at issue is not appropriate to ensuring efficient tax collection (§ 43-53).
The ECJ has on several occasions held that the prevention of tax evasion and the need for effective fiscal supervision may be relied on to justify restrictions on the exercise of the fundamental freedoms guaranteed by the TFEU. However, a general presumption of tax evasion based on the fact that a service provider is based in another Member State is not sufficient to justify a fiscal measure which compromises the objectives of the TFEU (§ 54-59).
There is no need to answer the question on the 60% assumption (§ 61-62).

Ruling

Article 56 TFEU precludes legislation, such as that at issue in the main proceedings, under which companies established in one Member State using workers employed and seconded by temporary employment agencies established in another Member State, but operating in the first Member State through a branch, are obliged to withhold tax and to pay to the first

Member State an advance payment on the income tax due by those workers, whereas the same obligation is not imposed on companies established in the first Member State which use the services of temporary employment agencies established in that Member State.

Creator: European Court of Justice (ECJ)
Verdict at: 2014-06-19
Case number: C-53/13 and C-80/13