



Euro Tax Flash

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Euro Tax Flash from KPMG's EU Tax Centre



[CJEU decision in the Kohll-Schlesser case](#)

[Freedom of workers – Foreign pension – Tax credit – Coherence](#)

On May 26, 2016 the Court of Justice of the European Union (CJEU) issued its decision in the Kohll-Schlesser case (C-300/15). The case concerns Luxembourg rules, which grant a tax credit to resident pensioners receiving pension income, subject to the condition that they have a certificate of deduction of Luxembourg tax, i.e. in effect limited to Luxembourg source pensions. The CJEU held that not granting the credit in respect of pensions received in connection with previous employment in the Netherlands, was a restriction of the free movement of workers which was not justified.

[Background](#)

The taxpayer, Mr Kohll, was a Luxembourg citizen who had moved back to Luxembourg to retire after being employed in the Netherlands for several years. He received two pensions in connection with this former employment, one a state pension and the other from his former Dutch employer. He was refused the benefit of a tax credit in computing his Luxembourg income tax liability and claimed that this infringed the EU free movement of workers (Article 45 TFEU). The Luxembourg tribunal referred the question to the CJEU.

The CJEU decision

The CJEU first addressed the question which EU freedom was applicable and concluded that, at least as regards the pension from his former employer, the free movement of workers was applicable. In this respect the court distinguished Mr Kohll's case from someone who only exercised his right to move within the EU on his retirement. The latter would not be able to invoke the free movement of workers. Mr Kohll however could do, irrespective of whether he moved back to Luxembourg to retire or to find new employment.

The CJEU went on to conclude that the Luxembourg rules restricted the free movement of workers because they effectively denied the tax benefit for pensions derived from other Member States, thus making it less attractive for Luxembourg residents to take up employment outside Luxembourg. In addressing potential justifications for the restriction, the Court first considered whether Mr Kohll's situation was comparable to a Luxembourg resident receiving a pension from Luxembourg. In light of the objective of the tax benefit, which was to provide a financial benefit to retired persons, the Court held that the two situations were comparable, since both were in scope of the social object of the rules.

The CJEU rejected the Luxembourg government's argument that the different treatment was justified. Their first argument was in essence that restricting the benefit to pensions paid by Luxembourg institutions was the only practical way of granting the benefit since they had the necessary information and operated an effective mechanism for granting the credit to Luxembourg taxpayers. As regards having the necessary information the Court pointed out that it was equally possible to ask taxpayers to provide this directly. The Court also pointed out that administrative difficulties can never by themselves justify the restriction of a fundamental freedom. The government's second argument was directly based on the need to preserve the coherence of the national tax system. The CJEU rejected this argument since there was no direct link between the benefit and a corresponding tax charge. While there was a link between the credit and the Luxembourg withholding tax, this only related to the withholding tax mechanism and not the charge itself. The Court pointed out in this respect that pensions were subject to Luxembourg income tax whether or not derived from Luxembourg institutions.

EU Tax Centre comment

This decision largely follows the AG's opinion and is in line with previous case law of the CJEU. The decision does make clear that a Member State cannot simply use a difference as regards withholding agent status to justify denying tax benefits in cross-border situations. As such it raises interesting parallels with tax rules in other Member States, such as the Dutch tax rules on investment funds whose entitlement to tax benefits is dependent on their status as Dutch withholding tax agent.

Should you have any queries, please do not hesitate to contact [KPMG's EU Tax Centre](#), or, as appropriate, your local KPMG tax advisor.



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