

# ECJ Decides on UK Group Transfer Rules Being Compatible with Freedom of Establishment and Free Movement of Capital: *Gallagher* (Case C-707/20) (Direct Tax)

16 February 2023

Report from IBFD Knowledge Centre

On 16 February 2023, the Court of Justice of the European Union (ECJ) gave its decision in *Gallagher Limited v. The Commissioners for Her Majesty's Revenue & Customs* ([Case C-707/20](#)) based on a number of grounds.

"On those grounds, the Court (Third Chamber) hereby rules:

1. Article 63 [TFEU](#) must be interpreted as meaning that national legislation which applies only to groups of companies does not fall within its scope.
2. Article 49 TFEU must be interpreted as meaning that national legislation which imposes an immediate tax charge on a disposal of assets from a company which is resident for tax purposes in a Member State to a sister company which is resident for tax purposes in a third country and which does not carry on a trade in that Member State through a permanent establishment, where both of those companies are subsidiaries wholly owned by a common parent which is resident for tax purposes in another Member State, does not constitute a restriction on the freedom of establishment, within the meaning of Article 49 TFEU, of that parent company, in circumstances where such a disposal would be made on a tax-neutral basis if the sister company were also resident in the first Member State or carried on a trade there through a permanent establishment.
3. Article 49 TFEU must be interpreted as meaning that a restriction of the right to freedom of establishment resulting from the difference in treatment between national and cross-border disposals of assets for consideration within a group of companies under national legislation which imposes an immediate tax charge on a disposal of assets by a company resident for tax purposes in a Member State may, in principle, be justified by the need to maintain a balanced allocation of the power to impose taxes between the Member States, without it being necessary to provide for the possibility of deferring payment of the charge in order to guarantee the proportionality of that restriction, where the taxpayer concerned has obtained, by way of consideration for the disposal of the assets, an amount equal to the full market value of those assets."

For the Advocate General's opinion regarding the case, see [European Union-1, News 20 September 2022](#).

A more substantial report containing details of the ECJ's decision will be published in the ECJ Case Law collection in due course.

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European Union; United Kingdom - ECJ Decides on UK Group Transfer Rules Being Compatible with Freedom of Establishment and Free Movement of Capital: Gallaher (Case C-707/20) (Direct Tax) (16 Feb. 2023), News IBFD.

Exported / Printed on 10 Mar. 2024 by hkermadi@deloitte.lu.