Joined Cases C-92/24 to C-94/24

Banca Mediolanum SpA

v

Agenzia delle Entrate – Direzione Regionale della Lombardia

(Request for a preliminary ruling from the Corte di Giustizia Tributaria di secondo grado della Lombardia)

Judgment of the Court (Fourth Chamber) of 1 August 2025

(Reference for a preliminary ruling – Taxation – Common system of taxation applicable in the case of parent companies and subsidiaries of different Member States – Directive 2011/96/EU – Article 4(1)(a) – Prohibition on taxing profits received by the parent company – Prevention of double taxation of dividends – Scope – Regional tax on production activities – Inclusion of 50% of dividends received by the parent companies in the basis of assessment for that tax)

Approximation of laws – Common system of taxation applicable in the case of parent companies and subsidiaries of different Member States – Directive 2011/96 – Prevention of economic double taxation – Tax exemption, with regard to the parent company, of dividends received – Dividends received by the parent company from its subsidiaries resident in other Member States – Member State of the parent company providing for a tax levied on more than 5% of the amount of the dividends – Not permissible – Taxation by way of a tax which is not a tax on corporate income – Irrelevant

(Council Directive 2011/96, Art. 4)

(see paragraphs 35, 38, 41, 44, 47, operative part)

Résumé

In response to a request for a preliminary ruling from the Corte di giustizia tributaria di secondo grado della Lombardia (Tax Court of Second Instance, Lombardy, Italy), the Court clarifies the scope of the elimination of cross-border double taxation as regards the profits of two companies connected by a parent-subsidiary arrangement, in the light of Directive 2011/96. ([1])

In the tax years 2014 and 2015, Banca Mediolanum, a bank resident for tax purposes in Italy, held shares in several companies which had their tax residences in other Member States of the European Union. Banca Mediolanum received dividends from those subsidiaries on that basis. 5% of the amount of those dividends was included in the basis of assessment for the Italian tax on corporate income ('IRES'), in accordance with the national legislation governing that tax.

In its capacity as a financial intermediary, Banca Mediolanum also included those dividends in the basis of assessment for the regional tax on production activities ('IRAP'), corresponding to 50% of their amount, pursuant to the provision of the Italian legislation relating to IRAP specifically concerning financial intermediaries.

Subsequently, claiming that that provision was contrary to Article 4 of Directive 2011/96, Banca Mediolanum brought applications before the tax authority seeking reimbursement of the proportion of IRAP resulting from the inclusion in the basis of assessment for that tax of amounts corresponding to 50% of the dividends received from subsidiaries resident in other Member States.

The tax authority rejected those applications on the ground that that provision is not contrary to Article 4 of Directive 2011/96, in so far as that article is intended to apply only to income tax, such as IRES, and not also to IRAP.

After those rejection decisions were confirmed by the Commissione tributaria provinciale di Milano (Provincial Tax Court, Milan, Italy), Banca Mediolanum brought an appeal before the Corte di Giustizia

Tributaria di secondo grado della Lombardia (Tax Court of Second Instance, Lombardy), which is the referring court.

The referring court decided to stay the proceedings and to ask the Court of Justice whether, in essence, Article 4 of Directive 2011/96 must be interpreted as precluding national legislation pursuant to which a Member State that has opted for the exemption system provided for by that directive may levy tax on more than 5% of the amount of the dividends which the financial intermediaries resident in that Member State receive, as parent companies within the meaning of that directive, from their subsidiaries resident in other Member States, including where that is done by way of a tax which is not a tax on corporate income, but which includes in its basis of assessment those dividends or a fraction thereof.

By its judgment, the Court answers that question in the affirmative.

Findings of the Court

In reaching that conclusion, the Court recalls, as a preliminary point, that, as regards the tax treatment of the profits distributed by a subsidiary to its parent company, Article 4(1) of Directive 2011/96 expressly leaves it open to the Member States to choose between the system provided for in Article 4(1)(a) ('the exemption system') and the system provided for in Article 4(1)(b) ('the imputation system'). In that regard, the Court notes that the Italian Republic applies the exemption system.

Furthermore, the Court states that, under Article 4(3) of that directive, Member States retain the option of providing, in particular, that the charges relating to the holding of the parent company in the capital of the subsidiary may not be deducted from the taxable profits of the parent company. The management costs relating to the holding may be fixed as a flat rate which may not exceed 5% of the profits distributed by the subsidiary.

As regards the interpretation of Article 4 of Directive 2011/96, in the first place, the Court finds that, from a literal point of view, it is clear from the wording of Article 4(1)(a) that a Member State which has chosen the exemption system must refrain from taxing the profits which a parent company resident in that Member State receives from its subsidiaries resident in other Member States.

In line with its case-law, the Court points out that the application of that provision is not limited to a tax in particular. ([2]) Consequently, from a literal point of view, Article 4(1)(a) of that directive must be interpreted as meaning that the exemption system it provides for concerns any tax which includes in its basis of assessment the dividends a parent company receives from its subsidiaries which are resident in other Member States.

In the second place, from a contextual point of view, the Court states that Article 2 of Directive 2011/96 only defines the scope *ratione personae* of that directive, and not the scope *ratione materiae* thereof. Therefore, the fact that IRAP is not included in the taxes set out in Part B of Annex I to that directive, to which Article 2(a)(iii) of that directive refers, does not mean that that tax is excluded from the material scope of that directive.

In the third and last place, from a teleological point of view, the Court notes that, in order to ensure the neutrality, from the tax point of view, of the distribution of profits by a subsidiary established in one Member State to its parent company established in another Member State, Directive 2011/96 aims to avoid, in particular, by the rule laid down in Article 4(1)(a) thereof, in economic terms, double taxation of those profits. Accordingly, distributed profits cannot be taxed, first, at the level of the subsidiary and, then, at the level of the parent company. ([3])

The Court concludes that Article 4 of Directive 2011/96 must be interpreted as precluding national legislation pursuant to which a Member State that has opted for the exemption system may levy tax on more than 5% of the amount of the dividends which the financial intermediaries resident in that Member State receive from their subsidiaries resident in other Member States, including where that is done by way of a tax which is not a tax on corporate income, such as IRES, but which includes in its basis of assessment those dividends or a fraction thereof, as is the case with IRAP.

Furthermore, the Court states that the principle of equal treatment enshrined in EU law cannot be relied on in a purely domestic situation, such as that liable to arise from the fact that the answer to the present question referred for a preliminary ruling does not concern dividends which a parent company resident in Italy receives from its Italian subsidiaries. Therefore, it is for the referring court to determine whether there is reverse discrimination prohibited by national law and, where relevant, establish how that discrimination should be removed.

---

(1) Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ 2011 L 345, p. 8).

(2) See, to that effect, judgment of 17 May 2017, AFEP and Others (C-365/16, EU:C:2017:378, paragraphs 5, 33 and 35), and judgment of 12 May 2022, Schneider Electric and Others (C-556/20, EU:C:2022:378, paragraph 47).

(3) See, to that effect, judgment of 13 March 2025, John Cockerill (C-135/24, EU:C:2025:176, paragraph 33); see also, to that effect and by analogy, judgment of 12 May 2022, Schneider Electric and Others (C-556/20, EU:C:2022:378, paragraph 45).