JUDGMENT OF THE COURT (First Chamber)

18 October 2012 (*)

(Freedom to provide services – Restrictions – Fiscal legislation – Obligation on the recipient of a service, established in the national territory, to withhold at source the wages tax on the remuneration due to a service provider established in another Member State – No such obligation in respect of a service provider established in the same Member State)

In Case C-498/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Hoge Raad der Nederlanden (Netherlands), made by decision of 24 September 2010, received at the Court on 14 October 2010, in the proceedings

X NV

v

Staatssecretaris van Financiën,

THE COURT (First Chamber),

composed of A. Tizzano, acting as President of the First Chamber, M. Safjan, A. Borg Barthet, E. Levits (Rapporteur) and J.-J. Kasel Judges,

Advocate General: J. Kokott,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 17 November 2011,

after considering the observations submitted on behalf of:

– X NV, by F.A. Engelen and S.C.W. Douma, belastingadviseurs,

– the Netherlands Government, by B. Koopman and C. Wissels, acting as Agents,

– the Belgian Government, by J.-C. Halleux and M. Jacobs, acting as Agents,

– the German Government, by T. Henze and J. Möller, acting as Agents,

– the French Government, by G. de Bergues and N. Rouam, acting as Agents,

– the Italian Government, by G. Palmieri, acting as Agent, assisted by S. Fiorentino, avvocato dello Stato,

– the Swedish Government, by A. Falk and S. Johannesson, acting as Agents,

– the United Kingdom Government, by L. Seeboruth, acting as Agent,

– the European Commission, by R. Lyal and W. Roels, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 21 December 2011,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 56 TFEU.

2 The reference has been made in proceedings between X NV ('X'), a semi-professional football club ('betaaldvoetbalorganisatie') established in the Netherlands, and the Staatssecretaris van Financiën (State Secretary for Finance) concerning the withholding tax levied on the remuneration paid to a service provider established in another Member State.

Legal context

Netherlands law

3 Under Article 1 of the 1964 Law on Wages Tax (Wet op de loonbelasting 1964; 'Wet LB 1964'):

'A direct tax, known as wages tax, shall be levied on workers or their employers under a withholding obligation, artists, professional athletes, foreign companies and other natural persons designated by this Law or pursuant to its provisions.'

4 Until 1 January 2007, Article 5b(1) and (3) of the Wet LB 1964 provided as follows:

'1. For the purposes of the application of this Law and the provisions based thereon, a "foreign company" means a group of natural persons or legal persons not principally resident or established in the Netherlands, where the members of the group, individually or jointly, under a short-term agreement, or otherwise temporarily, perform as artists or engage professionally in a branch of sport in the Netherlands.

…

3. If a member of a foreign company performs or engages professionally in a branch of sport in the context of an employment relationship with a person who is under a withholding obligation who is not established in the Netherlands, the tax on the remuneration shall be levied pursuant to the provisions applicable to the foreign company.'

5 Since 1 January 2007, that article has been worded as follows:

'For the purposes of the application of this Law and the provisions based thereon, a "foreign company" means a group of natural persons or bodies not principally resident or established in the Netherlands, where the members of the group, individually or jointly, perform as artists or engage professionally in a branch of sport in the Netherlands under a short-term agreement, unless:

...

2. it is accepted, in accordance with rules laid down by ministerial decree, that the company consists mainly of members who are resident or established in a country with which the Kingdom of the Netherlands has concluded an agreement for the prevention of double taxation, or they are resident or established in the Netherlands, the Netherlands Antilles or Aruba.'

6 Article 8a(1) of the Wet LB 1964 provides:

‘In respect of an artist, a professional athlete or a foreign company, if the artistic or sporting performance is based on a short-term contract, the person under the withholding obligation shall be determined as follows:

a. where the fee is received from the person with whom the artistic or sporting performance was agreed, it shall be the person with whom the performance was agreed;

b. where the fee is received from a third party, it shall be that third party.’

7 Article 35g of the Wet LB 1964 provides:

‘1. In the case of a foreign company, the tax shall be levied by reference to the fee.

2. The “fee” means the total of the amounts received by the foreign company for the artistic or sporting performance carried out in the Netherlands. The fee shall include reimbursement of expenses and the right to receive, after a certain period or conditionally, one or more payment(s) or benefit(s).

3. The following shall not form part of the fee:

a. allowances and benefits relating to food and drink…;

b. allowances for the travel and subsistence expenses – other than the cost of travel by private car – necessary for the proper implementation of the artistic or sporting performance, provided that the company produces supporting documentation to the person under the withholding obligation and that that person maintains and keeps such documentation available for inspection;

c. benefits aimed at avoiding the travel and subsistence expenses necessary for proper implementation of the artistic or sporting performance;

...

4. The fee shall not include what can be regarded as, pursuant to a decision of the inspector, an allowance not forming part of the fee (decision concerning the reimbursement of expenses). The decision concerning the reimbursement of expenses shall be issued by the inspector on request and shall be open to challenge. The request shall be presented by the company or the person under the withholding obligation prior to the artistic or sporting performance, or by the person under the withholding obligation no later than one month after the performance. … ’

8 Article 35h(1) of the Wet LB 1964 provides that the withholding tax rate amounts to 20% of the fee.

The Convention between the Kingdom of the Netherlands and the United Kingdom of Great Britain and Northern Ireland

9 Article 17 of the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains, concluded on 7 November 1980 between the Kingdom of the Netherlands and the United Kingdom of Great Britain and Northern Ireland (‘the Convention for the Avoidance of Double Taxation’), provides:

‘1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of one of the States as an entertainer … or as an athlete, from his personal activities as such exercised in the

other State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the State in which the activities of the entertainer or athlete are exercised.'

10 Article 22(1) of that convention is worded as follows:

'Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom (which shall not affect the general principle hereof):

a. Netherlands tax payable under the law of the Netherlands and in accordance with the provisions of this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within the Netherlands (excluding, in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits, income or chargeable gains by reference to which the Netherlands tax is computed;

…'

The dispute in the main proceedings and the questions referred for a preliminary ruling

11 In July 2002 and March 2004, X agreed to play friendly matches against two semi-professional football clubs established in the United Kingdom. Those matches took place in the Netherlands in August 2002 and August 2004 respectively.

12 X paid those clubs EUR 133 000 and EUR 50 000, respectively, for the matches at issue. Those sums were not paid to the players by those clubs.

13 As it neither withheld nor paid wages tax in respect of those sums, X received assessments relating to wages tax in the amounts of EUR 26 050 and EUR 9 450 respectively, corresponding to 20% of those sums after deduction of certain costs.

14 X appealed against the decisions concerning those assessments at first instance before the Rechtbank te 's-Gravenhage (District Court, The Hague), which annulled those decisions and assessments.

15 Following an appeal by the Staatssecretaris van Financiën, the Gerechtshof te 's-Gravenhage (Regional Court of Appeal, The Hague), by judgment of 1 December 2008, set aside the rulings of the Rechtbank te 's-Gravenhage.

16 As it took the view that the Netherlands legislation constituted a restriction within the meaning of Article 56 TFEU which could not be justified, X appealed in cassation against the judgment of the Gerechtshof te 's-Gravenhage to the Hoge Raad der Nederlanden (Supreme Court of the Netherlands).

17 In those circumstances, the Hoge Raad der Nederlanden decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Must Article 56 TFEU be interpreted as meaning that a restriction on the freedom to provide services exists if the recipient of a service, provided by a service provider established in

another Member State, is obliged, under the legislation of the Member State where the service recipient is established and where the service is provided, to withhold tax on the remuneration payable for that service, whereas that withholding obligation does not exist in relation to a service provider who is established in the same Member State as the service recipient?

2 (a) If the answer to the previous question has the effect that legislation which provides for the imposition of tax by a service recipient hinders the freedom to provide services, can such a hindrance then be justified by the need to ensure that taxes are levied and collected from foreign companies whose stay in the Netherlands is short and which are difficult to monitor, with the result that the implementation of the taxing powers allocated to the Netherlands becomes problematic?

(b) In that case, is it relevant that the legislation was later amended for situations such as the one at issue here, in the sense that the tax was unilaterally waived because it proved incapable of being simply and efficiently applied?

3. Does the rule go beyond what is necessary given the opportunities for mutual assistance in the recovery of taxes presented in particular by [Council Directive 76/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures (OJ 1976 L 73, p. 18), as amended by Council Directive 2001/44/EC of 15 June 2001 (OJ 2001 L 175, p. 17), ('Directive 76/308')]?

4. In answering the foregoing questions, is it relevant that the tax which is payable on the remuneration in the Member State where the service recipient is established can be set off against tax which is payable on that remuneration in that other Member State?'

Consideration of the questions referred for a preliminary ruling

18 As a preliminary point, it should be recalled that, according to well-established case-law, although direct taxation falls within their competence, the Member States must nonetheless exercise that competence in a manner consistent with European Union law (see, inter alia, Case C-374/04 *Test Claimants in Class IV of the ACT Group Litigation* [2006] ECR I-11673, paragraph 36; Case C-379/05 *Amurta* [2007] ECR I-9569, paragraph 16; and Case C-303/07 *Aberdeen Property Fininvest Alpha* [2009] ECR I-5145, paragraph 24).

The first question

19 By its first question, the Hoge Raad der Nederlanden asks, in essence, whether Article 56 TFEU must be interpreted as meaning that the obligation imposed, under the legislation of a Member State, on the recipient of services to withhold tax on the remuneration paid to service providers established in another Member State, whereas no such obligation exists in relation to remuneration paid to service providers who are established in the Member State at issue, constitutes a restriction on the freedom to provide services within the meaning of that provision.

20 It is important to note at the outset that Article 56 TFEU precludes the application of any national rules which have the effect of making the provision of services between Member States more difficult than the provision of services purely within a Member State (see, inter alia, Joined Cases C-155/08 and C-157/08 *X and Passenheim-van Schoot* [2009] ECR I-5093, paragraph 32 and the case-law cited).

21 In accordance with the Court's case-law, Article 56 TFEU requires the abolition of any restriction

on the freedom to provide services imposed on the ground that the person providing a service is established in a Member State other than that in which the service is provided (Case C-290/04 *FKP Scorpio Konzertproduktionen* [2006] ECR I-9461, paragraph 31, and Case C-345/04 *Centro Equestre da Lezíria Grande* [2007] ECR I-1425, paragraph 20).

22 Restrictions on the freedom to provide services are national measures which prohibit, impede or render less attractive the exercise of that freedom (see, inter alia, Case C-330/07 *Jobra* [2008] ECR I-9099, paragraph 19, and Case C-287/10 *Tankreederei I* [2010] ECR I-14233, paragraph 15).

23 Furthermore, according to settled case-law, Article 56 TFEU confers rights not only on the provider of services but also on the recipient of those services (see Case C-294/97 *Eurowings Luftverkehr* [1999] ECR I-7447, paragraph 34; *FKP Scorpio Konzertproduktionen*, paragraph 32; and Case C-233/09 *Dijkman and Dijkman-Lavaleije* [2010] ECR I-6645, paragraph 24).

24 The Kingdom of the Netherlands imposes on the recipients of services who have recourse to non-resident service providers in the sports sector an obligation to withhold at source, at the minimum rate of 20%, tax on the remuneration paid to those non-resident service providers. By contrast, in the case of a resident service provider, the recipient of the services at issue is not under such an obligation.

25 In that regard, the governments which have submitted observations to the Court refer to the judgment in Case C-282/07 *Truck Center* [2008] ECR I-10767 and argue that the difference in treatment between the remuneration paid to resident service providers and that paid to non-resident service providers may be explained by the application of two different taxation techniques to taxpayers who are in different situations. While the remuneration paid to a service provider established in the Netherlands is not subject to withholding tax, that service provider is himself subject to direct taxation in the form of corporation tax or, where appropriate, tax on income in the Netherlands. The need to apply different tax collection techniques may be explained by the position of the Kingdom of the Netherlands, which differs in respect of resident service providers, who are directly subject to the supervision of the Netherlands tax authorities, and non-resident service providers, in relation to whom that Member State acts as the State of the source of the income and cannot therefore simply determine and recover the fiscal debts from the taxpayer, but is dependent on cooperation with the tax authorities of the State of residence of that taxpayer.

26 While it is true that the Court has already accepted the application of different tax collection techniques to those deriving income from capital depending on whether they are resident or non-resident, that difference in treatment relates to situations which are not objectively comparable (*Truck Center*, paragraph 41). As that difference in treatment does not, moreover, necessarily procure an advantage for resident recipients, the Court has ruled that it does not constitute a restriction of the freedom of establishment (*Truck Center*, paragraphs 49 and 50).

27 However, as the Advocate General has noted in point 32 of her Opinion, the provider and the recipient of the services are two distinct legal entities, each with its own interests and each entitled to claim the benefit of the freedom to provide services if their rights are infringed.

28 However, it is important to note that, irrespective of the effects that the withholding tax may have on the tax situation of non-resident service providers, such an obligation to withhold tax, inasmuch as it entails an additional administrative burden as well as the related risks concerning liability, is liable to render cross-border services less attractive for resident recipients of services than services provided by resident service providers and to deter those recipients from having recourse to non-resident service providers.

29 That finding is not invalidated by the Netherlands Government's arguments that the impact of the additional administrative burden imposed on the recipient of services, firstly, is negligible in so far as that person is already obliged to withhold other taxes at source and to transfer the amounts withheld to the tax authorities, and, secondly, is offset by the reduction of the administrative burden on the non-resident service provider, who will not have to submit a tax return in the Netherlands in addition to his administrative obligations vis-à-vis the tax authorities of the Member State in which he is established.

30 In that regard, suffice it to point out that a restriction on a fundamental freedom is prohibited by the TFEU even if it is of limited scope or minor importance (see, to that effect, Case C-34/98 *Commission* v *France* [2000] ECR I-995, paragraph 49; Case C-9/02 *de Lasteyrie du Saillant* [2004] ECR I-2409, paragraph 43; Case C-170/05 *Denkavit Internationaal and Denkavit France* [2006] ECR I-11949, paragraph 50; and *Dijkman and Dijkman-Lavaleije*, paragraph 42).

31 Furthermore, in accordance with the case-law of the Court, unfavourable tax treatment contrary to a fundamental freedom cannot be considered to be compatible with European Union law as a result of the existence of other advantages, even supposing that such advantages exist (see to that effect, Case C-35/98 *Verkooijen* [2000] ECR I-4071, paragraph 61; *Amurta*, paragraph 75; and *Dijkman and Dijkman-Lavaleije*, paragraph 41).

32 Consequently, it must be held that the obligation on the recipient of services to withhold at source tax on the remuneration paid to non-resident service providers, whereas such a withholding tax at source is not levied on remuneration paid to resident service providers, constitutes a restriction on the freedom to provide services in that it entails an additional administrative burden and related liability risks.

33 That finding is not such as to affect, as pointed out by the Advocate General in point 39 of her Opinion, the answer to the question, which is, moreover, not the subject of the present reference for a preliminary ruling, whether a withholding tax at source such as that at issue in the main proceedings also constitutes a restriction on the freedom to provide services if it results in the provision of services carried out by a non-resident provider being subject to a greater tax burden than that of a provision of services carried out by a resident provider. In so far as such a withholding tax may have repercussions on the cost of provision of the service at issue, it is liable to deter both the non-resident provider from providing that service and the recipient of the service from having recourse to such a provider.

34 In the light of the foregoing, the answer to the first question is that Article 56 TFEU must be interpreted as meaning that the obligation imposed, under the legislation of the Member State, on the service recipient to withhold at source wages tax on the remuneration paid to service providers established in another Member State, whereas such an obligation does not exist in relation to remuneration paid to service providers who are established in the Member State at issue, constitutes a restriction on the freedom to provide services, within the meaning of that provision, in that it entails an additional administrative burden and related liability risks.

The second and third questions

35 By its second and third questions, which it is appropriate to examine together, the referring court asks, in essence, whether the restriction on the freedom to provide services resulting from national legislation, such as that at issue in the main proceedings, can be justified by the need to ensure the effective collection of tax and does not go beyond what is necessary to achieve that objective, even taking account of the opportunities for mutual assistance in the recovery of taxes provided by Directive 76/308. That court also raises the question as to whether account should be taken of the

fact that that national legislation was amended, the Kingdom of the Netherlands having relinquished the withholding tax at issue in the main proceedings.

36 In accordance with settled case-law, a restriction on the freedom to provide services may be accepted only if it is justified by overriding reasons in the public interest. Even if that were so, application of that restriction would still have to be such as to ensure achievement of the aim pursued and not go beyond what is necessary for that purpose (*Tankreederei I*, paragraph 19 and the case-law cited).

37 It follows from well-established case-law that the need for, and proportionality of, provisions adopted by a Member State are not excluded merely because that State has chosen a system of protection different from that adopted by another Member State (see Case C-36/02 *Omega* [2004] ECR I-9609, paragraph 38), as those provisions need be assessed solely in the light of the objectives pursued by the national authorities of the Member State concerned and of the level of protection which they seek to ensure (see, to that effect, Case C-124/97 *Läärä and Others* [1999] ECR I-6067, paragraph 36; Case C-67/98 *Zenatti* [1999] ECR I-7289, paragraph 34; and Case C-6/01 *Anomar and Others* [2003] ECR I-8621, paragraph 80).

38 It follows, by analogy, that the subsequent renunciation by a Member State of the application of a measure also cannot prejudice either its appropriateness to achieve the aim pursued or its proportionality, both of which must be assessed solely in the light of the objectives pursued.

39 The Court has already held that the need to ensure the effective collection of income tax constitutes an overriding reason in the general interest capable of justifying a restriction on the freedom to provide services. According to the Court, the procedure of retention at source and the liability rules supporting it constitute a legitimate and appropriate means of ensuring the tax treatment of the income of a person established outside the State of taxation and ensuring that the income concerned does not escape taxation in the State of residence and the State where the services are provided (*FKP Scorpio Konzertproduktionen*, paragraph 36).

40 The governments which submitted observations to the Court claim that such a justification must be allowed in respect of the legislation here at issue in the main proceedings.

41 The Netherlands Government explains, in particular, that the withholding at source at issue in the main proceedings was introduced following the finding by the tax authorities that the system based on tax assessments addressed individually to each non-resident service provider proved to be ineffective as a result of the difficulties and the administrative burden that such a system generated for the non-resident service providers as well as for the authorities. According to the Netherlands Government, the withholding tax at source levied on remuneration paid to sports clubs, from which relevant expenses are deducted, allows the players' income to be taxed in a simpler and more effective manner, both from the point of view of the players and from that of the authorities.

42 In this respect, it should be noted that, in the case of service providers who provide occasional services in a Member State other than that in which they are established, and where they remain only a short period of time, a withholding tax at source constitutes an appropriate means of ensuring the effective collection of the tax due.

43 It is also necessary to determine whether that measure does not go beyond what is necessary to ensure the effective collection of the tax due, in the light of, inter alia, the opportunities presented by Directive 76/308 in the field of mutual assistance for the recovery of taxes.

44 Directive 76/308 establishes common rules on mutual assistance in order to ensure the recovery of

claims relating to certain levies, duties and taxes (Case C-233/08 *Kyrian* [2010] ECR I-177, paragraph 34). In accordance with the provisions of that directive, a Member State may request assistance from another Member State in relation to the recovery of income tax payable by a taxpayer resident in the latter Member State (Case C-520/04 *Turpeinen* [2006] ECR I-10685, paragraph 37).

45 It follows from the first, second and third recitals in the preamble to Directive 76/308 that the purpose of that directive is to eliminate obstacles to the establishment and functioning of the common market resulting from the territorial limitation of the scope of application of national provisions relating to recovery.

46 Directive 76/308 thus provides for measures of assistance in the form of the disclosure of information useful for the recovery, notification of instruments to the addressee and the recovery of claims which are the subject of an instrument permitting their enforcement.

47 The extension of the scope of Directive 76/308, in particular to claims relating to taxes on income, by Directive 2001/44, seeks, as is evident from recitals 1, 2 and 3 in the preamble to the latter, to safeguard the 'fiscal neutrality of the internal market' and to protect the financial interests of Member States in view of the growth of tax fraud (Case C-338/01 *Commission* v *Council* [2004] ECR I-4829, paragraph 68). While Directive 2001/44 carries out a degree of approximation of national provisions in the area of taxation inasmuch as it obliges all Member States to treat claims originating in other Member States as being national claims (*Commission* v *Council*, paragraph 75), its aim, as the Advocate General has noted in point 53 of her Opinion, was not to replace the taxation at source as a method of collecting tax.

48 In the present case, it must be noted that the renunciation of withholding tax at source and the recourse to the arrangements governing mutual assistance would, admittedly, allow the elimination of the restriction to the freedom to provide services caused to the recipient of services by the national legislation at issue in the main proceedings.

49 However, such a renunciation would not necessarily eliminate all the formalities for which the service recipient is responsible. As some of the governments which submitted observations to the Court have pointed out, the withholding tax allows the tax authorities to take note of the event giving rise to the tax for which the non-resident service provider is liable. In the absence of such a withholding tax, the tax authorities of the Member State concerned would be likely to be required to impose an obligation on the service recipient, established on the territory of that State, to declare the service carried out by the non-resident service provider.

50 In addition, the renunciation of withholding tax would give rise to the need to collect the tax from the non-resident service provider, something which could, as the Advocate General has observed in point 58 of her Opinion, lead to a serious burden on the foreign service provider in that he would have to submit a tax return in a foreign language and to familiarise himself with a tax system in a Member State other than that in which he is established. The non-resident service provider could thus be deterred from providing a service in the Member State concerned and it might ultimately prove to be more difficult for the service recipient to obtain a service from a Member State other than that in which he is established.

51 Furthermore, such direct collection from the non-resident service provider would also give rise to a significant administrative burden for the tax authorities responsible for the service recipient in view of the large number of services provided on an *ad hoc* basis.

52 In the light of all of those considerations, it must be held, as the Advocate General has observed in

point 59 of her Opinion, that the collection of the tax directly from the non-resident service provider would not necessarily constitute a less severe means than deduction at source.

53 In the light of the foregoing, the answer to the second and third questions is that, in so far as the restriction on the freedom to provide services arising from national legislation, such as that at issue in the main proceedings, results from the obligation to withhold tax at source, in that it entails an additional administrative burden and related liability risks, that restriction can be justified by the need to ensure the effective collection of tax and does not go beyond what is necessary to achieve that purpose, even in the light of the opportunities for mutual assistance in the recovery of taxes presented by Directive 76/308. The subsequent renunciation of the withholding tax at issue in the main proceedings cannot prejudice either its appropriateness to achieve the aim pursued or its proportionality, both of which must be assessed solely in the light of the objectives pursued.

The fourth question

54 By its fourth question, the referring court seeks to ascertain whether, in order to determine whether the obligation on the service recipient to withhold tax at source, in that it entails an additional administrative burden and related liability risks, constitutes a restriction on the freedom to provide services prohibited by Article 56 TFEU, it is necessary to ascertain whether the non-resident service provider may deduct the tax withheld in the Netherlands from the tax for which he is liable in the Member State in which he is established.

55 As has been pointed out in paragraph 28 of the present judgment, the obligation to withhold tax at source is liable to both render cross-border services less attractive for resident service recipients than services provided by resident service providers and to deter those recipients from having recourse to non-resident service providers, irrespective of the effects that the withholding tax may have on the tax situation of non-resident service providers.

56 Therefore, the tax treatment of the service provider in the Member State in which he is established is not relevant for the purpose of determining whether the obligation on the recipient of services to withhold that tax at source constitutes a restriction on the freedom to provide services prohibited by Article 56 TFEU.

57 Consequently, the answer to the fourth question is that, in order to determine whether the obligation on the service recipient to withhold tax at source, in that it entails an additional administrative burden and related liability risks, constitutes a restriction on the freedom to provide services prohibited by Article 56 TFEU, it is irrelevant whether the non-resident service provider may deduct the tax withheld in the Netherlands from the tax for which he is liable in the Member State in which he is established.

Costs

58 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

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

1. **Article 56 TFEU must be interpreted as meaning that the obligation imposed, under the legislation of a Member State, on the service recipient to withhold at source wages tax on the remuneration paid to service providers established in another Member State,**

whereas such an obligation does not exist in relation to remuneration paid to service providers who are established in the Member State at issue, constitutes a restriction on the freedom to provide services, within the meaning of that provision, in that it entails an additional administrative burden and related liability risks.

2. **In so far as the restriction to the freedom to provide services arising from national legislation, such as that at issue in the main proceedings, results from the obligation to withhold tax at source, in that it entails an additional administrative burden and related liability risks, that restriction can be justified by the need to ensure the effective collection of tax and does not go beyond what is necessary to achieve that purpose, even in the light of the opportunities for mutual assistance in the recovery of taxes presented by Council Directive 76/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures, as amended by Council Directive 2001/44/EC of 15 June 2001. The subsequent renunciation of the withholding tax at issue in the main proceedings cannot prejudice either its appropriateness to achieve the aim pursued or its proportionality, both of which must be assessed solely in the light of the objectives pursued.**

3. **In order to determine whether the obligation on the service recipient to withhold tax at source, in that it entails an additional administrative burden and related liability risks, constitutes a restriction on the freedom to provide services prohibited by Article 56 TFEU, it is irrelevant whether the non-resident service provider may deduct the tax withheld in the Netherlands from the tax for which he is liable in the Member State in which he is established.**

[Signatures]

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* Language of the case: Dutch.