

Case summary

Issue(s)

1. The compatibility of United Kingdom corporate taxation with certain principles of EU law and the liabilities of the Revenue to a taxpayer who has overpaid tax on the basis of incompatible United Kingdom legislation.
2. Issues arising out of the case of *Prudential Assurance Company Limited v Commissioners for Her Majesty's Revenue and Customs* [2018] UKSC 39 ("Prudential SC").

Facts

This is the lead case under the Franked Investment Income ("FII") Group Litigation Order ("GLO"). The respondents are the Test Claimants, whose claims concern corporation tax paid by UK resident parent companies on dividends received from their foreign subsidiaries and advance corporation tax ("ACT") typically paid by the group's ultimate parent on dividends distributed to their shareholders, under the regime in force until 5th April 1999. The Test Claimants contend that the relevant United Kingdom tax provisions were contrary to Article 43 EC (now Article 49 TFEU) on freedom of establishment and/or Article 56 EC (now Article 63 TFEU) on free movement of capital. In consequence, they claim restitution and damages from the Revenue. The procedural history involves two Court of Appeal decisions, a decision of the Supreme Court, and three decisions of the Court of Justice of the European Union (FII (CJEU) 1, 2 and 3). The issues raised have been decided in favour of the Test Claimants. The Revenue now appeal against the judgments of the Court of Appeal in FII (CA) 1 [2010] EWCA Civ 103 and FII (CA) 2 [2016] EWCA Civ 1180, as regards their determinations in respect of the compatibility of the tax regime with EU law and the appropriate remedy. This application was stood out of the list pending the decision in *Prudential* and the parties have now submitted additional documents to address the issues which were resolved in that case.