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UNICE REACTION TO MARKS & SPENCER PLC v DAVID HALSEY RULING

In its judgment in *Marks & Spencer plc v David Halsey* (C-446/03) the European Court of Justice ruled today that a group relief regime which does not allow a parent company to deduct the losses incurred by its subsidiaries established abroad is, in principle, compatible with Community Law. However, it is contrary to freedom of establishment to preclude the possibility for the resident parent company to deduct the losses incurred by non-resident subsidiaries from its taxable profits, if the parent company shows that those losses were not and could not be taken into account in the state of residence of those subsidiaries.

The Court refers to the risk of double use of losses but considers that the United Kingdom provisions do not observe the principle of proportionality, that is to say, that they go beyond what is necessary to attain the objectives pursued.

In UNICE's view, the ruling provides a better opportunity for cross-border group consolidation within the European Union. It thus constitutes a step in the right direction towards better functioning of the internal market. This will enhance the competitiveness of the European economy and promote growth and employment. However, to achieve the objectives of the Lisbon agenda – to make Europe the most competitive economy – businesses in a group must not be taxed on more than their yearly net profit. The ruling does not achieve that objective, *since the losses are not deductible when the taxable profit is calculated.*

Full cross-border relief of losses and the elimination of double taxation of intra-group transactions will be possible with a common consolidated corporate tax base. It is important that Member States work actively on such a system, in close cooperation with the European Commission and the business community.

NOTE TO THE EDITOR

UNICE is the voice of more than 20 million small, medium and large companies. Active in European affairs since 1958, UNICE's members are 39 central industrial and employers' federations from 33 countries, working together to achieve growth and competitiveness in Europe.

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