

**Judgment of the Court (Third Chamber) of 13 March 2008 –**

**Commission v Spain**

**(Case C-248/06)**

Failure of a Member State to fulfil obligations – Freedom of establishment – Freedom to provide services – Restrictions – Research and development – Rules for the deduction of costs incurred abroad

Freedom of movement for persons – Freedom of establishment – Freedom to provide services – Restrictions – Tax legislation – Corporation tax (Arts 43 EC and 49 EC; EEA Agreement, Arts 31 and 36) (see paras 25, 42-43, operative part)

**Re:**

Failure of a Member State to fulfil obligations – Infringement of Articles 43 EC, 48 EC and 49 EC and Articles 31 EEA and 36 EEA – Rules for deducting costs for research and development and technological innovation incurred abroad more rigorous than those applicable to costs incurred in Spain.

**Operative part**

The Court:

1.

Declares that, by maintaining in force rules for the deduction of costs relating to research and development and technological innovation which are less favourable in respect of costs incurred abroad than costs incurred in Spain – such rules deriving from Article 35 of the Law on corporation tax, as amended by Royal Legislative Decree 4/2004 of 5 March 2004 – the Kingdom of Spain has failed to fulfil its obligations under Articles 43 EC and 49 EC on freedom of establishment and the freedom to provide services, and the corresponding articles in the Agreement on the European Economic Area of 2 May 1992, namely Articles 31 and 36 of that Agreement;

2.

Orders the Kingdom of Spain to pay the costs.