

Judgment of the Court (First Chamber) of 16 July 2009
(reference for a preliminary ruling from the Tribunal de première instance de Liège (Belgium)) — Jacques Damseaux v État belge

(Case C-128/08) ⁽¹⁾

(Free movement of capital — Taxation of investment income — Double taxation convention — Obligation of the Member States under Article 293 EC)

(2009/C 267/30)

Language of the case: French

Referring court

Tribunal de première instance de Liège

Parties to the main proceedings

Applicant: Jacques Damseaux

Defendant: État belge

Re:

Reference for a preliminary ruling — Tribunal de première instance de Liège — Interpretation of Articles 56, 58 and 293 EC — Heavier taxation of investment income from abroad than of investment income paid by a company established in the Member State of residence — Obstacle to free movement of capital — Scope of conventions preventing double taxation — Obligation of Member States under Article 293 EC

Operative part of the judgment

In so far as Community law, in its current state and in a situation such as that at issue in the main proceedings, does not lay down any general criteria for the attribution of areas of competence between the Member States in relation to the elimination of double taxation within the European Community, Article 56 EC does not preclude a bilateral tax convention, such as that at issue in the main proceedings, under which dividends distributed by a company established in one Member State to a shareholder residing in another Member State are liable to be taxed in both Member States, and which does not provide that the Member State in which the shareholder resides is unconditionally obliged to prevent the resulting juridical double taxation.

Judgment of the Court (First Chamber) of 17 September 2009 (reference for a preliminary ruling from the Bundesfinanzhof (Germany)) — Glaxo Wellcome GmbH & Co. v Finanzamt München II

(Case C-182/08) ⁽¹⁾

(Freedom of establishment and free movement of capital — Corporation tax — Acquisition of shares in a capital company — Conditions for taking into account, when determining the acquirer's tax base, the reduction in value of the shares resulting from the dividend distribution)

(2009/C 267/31)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Glaxo Wellcome GmbH & Co.

Defendant: Finanzamt München II

Re:

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of Articles 43 and 56 EC — Acquisition by a taxpayer who is entitled to a corporation tax credit of shares in a capital company which is fully taxable — National legislation providing for the taking into account, when determining the acquirer's tax base, of depreciation of the shares by reason of the payment of dividends where the shares were acquired from a shareholder who is entitled to a corporation tax credit, but which excludes that reduction of the tax base where the shares were acquired from a shareholder who is not entitled to a tax credit of that kind

Operative part of the judgment

Article 73b of the EC Treaty (now Article 56 EC) must be interpreted as not precluding legislation of a Member State which excludes the reduction in value of shares as a result of the distribution of dividends from the basis of assessment for a resident taxpayer, where that taxpayer has acquired shares in a resident capital company from a non-resident shareholder, whereas, had the shares been acquired from a resident shareholder, such a reduction in value would have reduced the acquirer's basis of assessment.

This applies in cases where such legislation does not exceed what is necessary to maintain a balanced allocation of the power to impose taxes between the Member States and to prevent wholly artificial arrangements which do not reflect economic reality and whose only purpose is unduly to obtain a tax advantage. It is for the national

⁽¹⁾ OJ C 142, 7.6.2008.