

Case C-397/09

Scheuten Solar Technology GmbH

v

Finanzamt Gelsenkirchen-Süd

(Reference for a preliminary
ruling from the Bundesfinanzhof)

(Taxation — Directive 2003/49/EC — Common system of taxation applicable to interest and royalty payments made between associated companies of different Member States — Business tax — Determination of the basis of assessment)

Opinion of Advocate General Sharpston delivered on 12 May 2011 I - 6457

Judgment of the Court (Third Chamber), 21 July 2011 I - 6480

Summary of the Judgment

Approximation of laws — Common system of taxation applicable to interest and royalty payments made between associated companies of different Member States — Directive 2003/49 — Scope

(Council Directive 2003/49, Art. 1(1))

Article 1(1) of Directive 2003/49 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States must be interpreted as not precluding a provision of national tax law under which loan interest paid by a company established in one Member State to an associated company in another Member State is incorporated into the basis of assessment of the business tax payable by the former company.

That provision, read in the light of recitals 2 to 4 in the preamble to that directive, aims to avoid legal double taxation of cross-border payments of interest by prohibiting the taxation of interest in the source Member State to the detriment of the actual beneficial owner. It thus concerns solely the tax position of

the interest creditor. The provisions of national law on the basis of assessment of the payer of the interest, such as the rules on the deductibility of certain expenditure and the nature of that expenditure, thus form part of the fiscal policy of each Member State.

So, in the absence of a provision governing the rules for calculating the basis of assessment of the payer of interest, the scope of Article 1(1) of Directive 2003/49 cannot extend beyond the exemption it lays down.

(see paras 28, 33-34, 36, operative part)