

Judgment of the Court (Fifth Chamber) of 13 March 2014 (request for a preliminary ruling from the Tribunal administratif de Grenoble — France) — Margaretha Bouanich v Direction départementale des finances publiques de la Drôme

(Case C-375/12) ⁽¹⁾

(Reference for a preliminary ruling — Article 63 TFEU — Free movement of capital — Article 49 TFEU — Freedom of establishment — Tax on income of natural persons — Mechanism capping direct taxes by reference to income — Bilateral tax agreement for avoidance of double taxation — Taxation of dividends distributed by a company established in another Member State and already subject to a withholding tax — Failure to take into account or partial taking into account of the tax paid in the other Member State for the calculation of the tax cap — Article 65 TFEU — Restriction — Justification)

(2014/C 135/05)

Language of the case: French

Referring court

Tribunal administratif de Grenoble

Parties to the main proceedings

Applicant: Margaretha Bouanich

Defendant: Direction départementale des finances publiques de la Drôme

Re:

Request for a preliminary ruling — Tribunal administratif de Grenoble — Interpretation of Articles 49, 63 and 65 TFEU — National legislation on personal income tax imposing a cap on the proportion of direct tax payable by a taxpayer — Mechanism known as the ‘bouclier fiscal’ (tax shield) — Bilateral tax convention — Taxation of dividends distributed by a company established in another Member State and already subject to a withholding tax — Sums deducted at source partially taken into account for the calculation of the tax cap — Justification of such legislation on the grounds of the cohesion of the tax system, a balanced allocation of taxing powers between the Member States, or any other overriding reason in the public interest.

Operative part of the judgment

Articles 49 TFEU, 63 TFEU and 65 TFEU must be interpreted as precluding legislation of a Member State under which, where a resident of that Member State who is a shareholder of a company established in another Member State receives dividends taxed in the two Member States and the double taxation is regulated by the imputation in the Member State of residence of a tax credit of an amount corresponding to the tax paid in the State of the distributing company, a mechanism capping various direct taxes at a certain percentage of income received during a year does not take into account, or takes only partially into account, the tax paid in the State of the distributing company.

⁽¹⁾ OJ C 319, 20.10.2012.