

Judgment of the Court (Second Chamber) of 26 May 2016 (request for a preliminary ruling from the Cour d'appel de Bruxelles — Belgium) — État belge, SPF Finances v NN (L) International SA, formerly ING International SA, successor to the rights and obligations of ING Dynamic SA

(Case C-48/15) ⁽¹⁾

(Reference for a preliminary ruling — Direct taxation — Free movement of capital — Freedom to provide services — Directive 69/335/EEC — Articles 2, 4, 10 and 11 — Directive 85/611/EEC — Articles 10 and 293 EC — Annual tax on undertakings for collective investment — Double taxation — Penalties applicable to collective investment undertakings governed by foreign law)

(2016/C 260/07)

Language of the case: French

Referring court

Cour d'appel de Bruxelles

Parties to the main proceedings

Applicant: État belge, SPF Finances

Defendant: NN (L) International SA, formerly ING International SA, successor to the rights and obligations of ING Dynamic SA

Operative part of the judgment

1. Articles 2, 4, 10 and 11 of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital, as amended by Council Directive 85/303/EEC of 10 June 1985, must be interpreted as not precluding legislation of a Member State imposing an annual tax on undertakings for collective investment, such as the tax at issue in the main proceedings, which makes undertakings for collective investment governed by foreign law marketing units in that Member State subject to that tax.
2. Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), read, if appropriate, in conjunction with Article 10 EC and Article 293, second indent, EC, must be interpreted as not precluding the legislation of a Member State imposing an annual tax on UCIs, such as the tax at issue in the main proceedings, which makes UCIs governed by foreign law marketing units in that Member State subject to that tax, provided that that legislation is applied in a non-discriminatory way.
3. Article 56 EC must be interpreted as not precluding the legislation of a Member State imposing an annual tax on UCIs, such as the tax at issue in the main proceedings, which makes UCIs governed by foreign law marketing units in that Member State subject to that tax.
4. Article 49 EC must be interpreted as precluding a national provision, such as Article 162(2) of the Inheritance Tax Code, as amended by the Programme Law of 22 December 2003, by which a Member State imposes a specific penalty, namely the prohibition, ordered by a court, of making future investments of its units in that Member State, on UCIs governed by foreign law in the event of non-compliance by the latter with the obligation to file the annual declaration necessary for the recovery of a tax on UCIs or in the event of non-payment of that tax.

⁽¹⁾ OJ C 138, 27.4.2015.