

Operative part of the judgment

The provisions of the FEU Treaty relating to freedom of establishment preclude, in circumstances, such as those in the main proceedings, where the trustees, under national law, are treated as a single and continuing body of persons, distinct from the persons who may from time to time be the trustees, legislation of a Member State, such as that at issue in the main proceedings, which provides for the taxation of unrealised gains in value of assets held in trust when the majority of the trustees transfer their residence to another Member State, but fails to permit payment of the tax payable to be deferred.

⁽¹⁾ OJ C 48, 8.2.2016.

Judgment of the Court (Grand Chamber) of 12 September 2017 — Republic of Austria v Federal Republic of Germany

(Case C-648/15) ⁽¹⁾

(Article 273 TFEU — Dispute between Member States submitted to the Court under a special agreement between the parties — Taxation — Bilateral convention for the avoidance of double taxation — Taxation of interest from financial instruments — Definition of ‘debt-claims with participation in profits’)

(2017/C 382/13)

Language of the case: German

Parties

Applicant: Republic of Austria (represented by: C. Pesendorfer, F. Koppensteiner and H. Jirousek, acting as Agents)

Defendant: Federal Republic of Germany (represented by: T. Henze and J. Möller, acting as Agents)

Operative part of the judgment

1. The concept of ‘debt-claims with participation in profits’ referred to in Article 11(2) of the *Abkommen zwischen der Republik Österreich und der Bundesrepublik Deutschland zur Vermeidung der Doppelbesteuerung auf dem Gebiet der Steuern vom Einkommen und vom Vermögen* (Convention between the Republic of Austria and the Federal Republic of Germany for the avoidance of double taxation with respect to taxes on income and capital) of 24 August 2000 must be interpreted as excluding certificates such as those at issue in the present case.
2. The Federal Republic of Germany is ordered to pay the costs.

⁽¹⁾ OJ C 38, 1.2.2016.