

*Other party to the proceedings:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)

By order of 10 July 2009 the Court of Justice (Fifth Chamber) held that the appeal was inadmissible.

**Reference for a preliminary ruling from the Finanzgericht Köln (Germany) lodged on 13 July 2009 — Wienand Meilicke, Frau Heidi Christa Weyde and Marina Stöffler v Finanzamt Bonn-Innenstadt**

(Case C-262/09)

(2009/C 267/46)

*Language of the case:* German

**Referring court**

Finanzgericht Köln

**Parties to the main proceedings**

*Applicants:* Wienand Meilicke, Frau Heidi Christa Weyde and Marina Stöffler

*Defendant:* Finanzamt Bonn-Innenstadt

**Questions referred**

1. Do the free movement of capital under Articles 56(1) EC and 58(1)(a) and (3) EC, the principle of effectiveness and the principle of 'effet utile' preclude legislation — like Paragraph 36(2), second sentence, point 3 of the Einkommensteuergesetz (Law on income tax, 'the EStG') (in the version in force during the relevant years) — under which corporation tax amounting to three sevenths of the gross dividends is set off against the income tax, provided such dividends do not originate from distributions for which capital and reserves are deemed to have been used within the meaning of Paragraph 30(2)(1) of the Körperschaftsteuergesetz (Law on corporation tax, 'the KStG') (in the version in force during the relevant years), although the corporation tax charged on dividends received from a company resident in another EC country which was actually paid is in practice impossible to determine and could be higher?
2. Do the free movement of capital under Articles 56(1) EC and 58(1)(a) and (3) EC, the principle of effectiveness and the principle of 'effet utile' preclude legislation — like

Paragraph 36(2), second sentence, point 3, fourth sentence, (b) of the EStG (in the version in force in the relevant years) — under which credit for corporation tax requires the submission of a corporation tax certificate within the meaning of Paragraphs 44 et seq. of the KStG (in the version in force in the relevant years), which must contain, inter alia, the amount of corporation tax deductible and the composition of the payment under the various parts of the capital and reserves available for distribution on the basis of a special division of capital and reserves within the meaning of Paragraph 30 of the KStG (in the version in force in the relevant years), although it is in practice impossible to determine the foreign corporation tax actually paid which is to be set off and to provide the certificate in respect of foreign dividends?

3. Does the free movement of capital under Articles 56(1) EC and 58(1)(a) and (3) EC require that where it is actually impossible to submit a corporation tax certificate within the meaning of Paragraph 44 of the KStG (in the version in force in the relevant years) and in the absence of being able to determine the corporation tax charged on the foreign dividends which was actually paid, the amount of the charge to corporation tax should be estimated and if appropriate at the same time indirect prior charges to corporation tax should be taken into account?

4. (a) If the second question is answered in the negative and a corporation tax certificate is required:

Should the principle of effectiveness and the principle of 'effet utile' be understood as meaning that they preclude legislation — like the second sentence of Paragraph 175(2) of the Abgabenordnung (Tax Code, 'AO') in conjunction with Article 97(9)(3) of the Einführungs-gesetz zur Abgabenordnung (Introductory law of the Tax Code, 'EGAO') — under which, from 29 October 2004, without any transitional period for the purposes of claiming credit for foreign corporation tax, the submission, inter alia, of a corporation tax certificate is no longer deemed to be an event with retroactive effect, as a result of which it is made procedurally impossible to set off foreign corporation tax where income tax assessments have become final?

- (b) If the second question is answered in the affirmative and no corporation tax certificate is required:

Should the free movement of capital under Article 56 EC, the principle of effectiveness and the principle of 'effet utile' be understood to preclude legislation — like Paragraph 175(1), first sentence, point 2, of the AO — under which a tax assessment notice must be amended provided that an event with retroactive effect occurs — such as for example the submission of a corporation tax certificate — and consequently a corporation tax credit is possible in relation to domestic dividends even where income tax assessments have become final, whereas this would not be possible in relation to foreign dividends for want of a corporation tax certificate?