



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

29 April 2021 *

(Reference for a preliminary ruling – Article 63 TFEU – Free movement of capital – Income tax – Income from capital – Income distributed by a resident undertaking for collective investment in transferable securities (UCITS) constituted in accordance with contract law – Income distributed by a UCITS established in another Member State and constituted in accordance with statute – Difference in treatment – Article 65 TFEU – Objectively comparable situations)

In Case C-480/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Korkein hallinto-oikeus (Supreme Administrative Court, Finland), made by decision of 19 June 2019, received at the Court on 24 June 2019, in the proceedings brought by

E

joined party:

Veronsaajien oikeudenvalvontayksikkö,

THE COURT (Second Chamber),

composed of A. Arabadjiev, President of the Chamber, A. Kumin, T. von Danwitz, P.G. Xuereb (Rapporteur) and I. Ziemele, Judges,

Advocate General: G. Hogan,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- E, by A. Leppänen, varatuomari,
- the Finnish Government, by M. Pere, acting as Agent,
- the European Commission, by W. Roels and I. Koskinen, acting as Agents,

* Language of the case: Finnish.

after hearing the Opinion of the Advocate General at the sitting on 19 November 2020,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 63 and 65 TFEU.
- 2 The request has been made in proceedings brought by E concerning the decision of 10 November 2017 of the Keskusverolautakunta (Central Tax Committee, Finland) by which the latter held that the income received by E from an investment fund in the form of a company with variable capital (*société d'investissement à capital variable*; 'SICAV') incorporated under Luxembourg law must be taxed in Finland as income from employment.

Legal context

EU law

- 3 Under recital 4 of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ 2009 L 302, p. 32) ('the UCITS Directive'), the objective of that directive is to provide for common basic rules for the authorisation, supervision, structure and activities of undertakings for collective investment in transferable securities (UCITS) established in the Member States and the information that they are required to publish.
- 4 Recital 83 of the UCITS Directive states:

'This Directive should not affect national rules on taxation, including arrangements that may be imposed by Member States to ensure compliance with those rules in their territory.'
- 5 Article 1(1) to (3) of that directive provides:

'1. This Directive applies to [UCITS] established within the territories of the Member States.
2. For the purposes of this Directive, and subject to Article 3, UCITS means an undertaking:
(a) with the sole object of collective investment in transferable securities or in other liquid financial assets referred to in Article 50(1) of capital raised from the public and which operate on the principle of risk-spreading; and
(b) with units which are, at the request of holders, repurchased or redeemed, directly or indirectly, out of those undertakings' assets. Action taken by a UCITS to ensure that the stock exchange value of its units does not significantly vary from their net asset value shall be regarded as equivalent to such repurchase or redemption.

Member States may allow UCITS to consist of several investment compartments.

3. The undertakings referred to in paragraph 2 may be constituted in accordance with contract law (as common funds managed by management companies), trust law (as unit trusts), or statute (as investment companies).

...'

- 6 Under Article 4(1)(a) of Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65 and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ 2011 L 174, p. 1), alternative investment funds are defined as:

'... collective investment undertakings, including investment compartments thereof, which:

- (i) raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and
- (ii) do not require authorisation pursuant to Article 5 of the [UCITS] Directive'.

Finnish law

- 7 Points 1 and 2 of Paragraph 2(1) in Chapter 1 of the Sijoitusrahastolaki (48/1999) (Law on investment funds (48/1999)) of 29 January 1999, are worded as follows:

'For the purposes of the present law, the following definitions shall apply:

- (1) Investment fund activity: the procurement by the public of funds for collective investment and the investment of those funds mainly in financial instruments, immovable property, immovable property securities or other investments, and the management of investment funds, specialised funds and the marketing of fund units ...;
 - (2) Investment funds: funds procured in the context of investment fund activity and invested in accordance with the rules established in Finland and in accordance with Chapter 11 and the obligations arising therefrom ...'
- 8 Under Paragraph 2(1), point (10), in Chapter 1 of that law, an 'undertaking for collective investment' is an undertaking which carries out, in a Member State of the European Economic Area (EEA) other than the Republic of Finland, an activity related to collective investment for which it has authorisation and which, in accordance with the legislation of its State of establishment, meets the requirements of the UCITS Directive.
- 9 Paragraph 3, entitled 'Entities', of the Tuloverolaki (1535/1992) (Law on income tax (1535/1992); 'the Law on income tax'), of 30 December 1992, is worded as follows:

'Entities for the purpose of this law shall mean ...

...

(4) share companies, cooperative associations, savings banks, investment funds, universities, mutual insurance companies, grain storage warehouses, non-profit associations or profit-making associations, foundations and institutions;

...'

10 Paragraph 20 of the Law on income tax, entitled 'Entities exempt from income tax', provides, in point 2 of its first subparagraph, an exemption from income tax for investment funds.

11 Paragraph 32 of that law, entitled 'Income from capital, states:

'Income from capital, which is taxable in accordance with the more detailed provisions below, shall be earnings from assets, profit from the transfer of assets and other such income which may be assumed to have been accrued from assets. Income from capital includes interest income, dividend income in accordance with the provisions in Paragraphs 33a to 33d, rental income, profit shares, earnings from life insurance, capital income from forestry, income from mineral substances and capital gains. Income from capital shall also be the capital income share in distributed business income, in the income share of the partner in a consortium and in the income from reindeer husbandry.'

12 Paragraph 33a of that law, entitled 'Dividends distributed by a listed company', provides as follows:

'85% of dividends distributed by a listed company shall be capital income and 15% shall be non-taxable income.

Dividends from a listed company shall be dividends from a company the shares of which are, at the time at which that company decides to distribute the dividends, the subject of:

(1) trading on a regulated market within the meaning of the laki kaupankäynnistä rahoitusvälineillä (748/2012) (Law on the trading of financial instruments (748/2012));

(2) trading on another regulated market controlled by a public authority outside the [EEA]; or

(3) trading in a multilateral trading facility within the meaning of Law [(748/2012)], on condition that the asset was traded at the request of the company or with its approval.

The distribution by a listed company of shares within the meaning of Paragraph 1(1) of Chapter 13 of the osakeyhtiölaki (624/2006) (Law on public limited companies (624/2006)), which are derived from a reserve of its own available funds shall be considered to be a dividend and shall be subject to the provisions of this paragraph.'

13 As set out in Paragraph 33b of the Law on income tax, entitled 'Dividends distributed by an unlisted company':

'25% of the dividends distributed by an unlisted company shall be taxable capital income and 75% shall be non-taxable income, up to an amount corresponding to an annual return of 8% calculated on the basis of the mathematical value of the shares in the tax year, which value is established in the laki varojen arvostamisesta verotuksessa (1142/2005) (Law 1142/2005 on the valuation of assets for purposes of taxation (1142/2005)). In so far as the amount of dividends received by the taxpayer exceeds EUR 150 000, 85% shall be capital income and 15% shall be non-taxable income.

For the portion of dividends exceeding the annual income referred to in subparagraph 1 above, 75% shall be income from employment and 25% shall be non-taxable income.

Without prejudice to any other provisions relating to the taxation of dividends provided for in this law, a dividend shall constitute employment income if, in accordance with a clause in the articles of association, a decision of the general meeting, a shareholders' agreement or any other agreement, its distribution is the consideration for a contribution in labour made by the recipient of the dividend or a person belonging to its sphere of interest. The dividend constitutes the income of the person who has made the contribution of work in question.

...

The distribution, by an unlisted company, of shares within the meaning of Paragraph 1(1) of Chapter 13 of law (624/2006), which are derived from a reserve of its own available funds, shall be considered a dividend and shall be subject to the provisions of the present paragraph.'

- 14 Paragraph 33c of the Law on income tax, entitled 'Dividends received from a foreign entity', states:

'Dividends received from a foreign entity constitute taxable income in accordance with Paragraphs 33a and 33b of this Law, if the entity is a company within the meaning of Article 2 of [Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ 2011 L 345, p. 8), as amended by Council Directive 2014/86/EU of 8 July 2014 (OJ 2014 L 219, p. 40)]. ...

Dividends received from foreign entities other than those mentioned in subparagraph 1 above shall constitute taxable income in accordance with the provisions of Paragraphs 33a and 33b, if the entity in question is obliged, without options or exemption, to pay at least 10% tax on the income from which the dividends were distributed and:

- (1) according to the tax legislation of a State belonging to the [EEA], the entity has its registered office in that State and, according to a convention preventing double taxation, the entity does not have its registered office in a State outside the [EEA]; or
- (2) a convention preventing double taxation, which applies to the dividends distributed by the entity, is in force between the entity's State of residence and Finland in the tax year.

Dividends received from foreign entities other than those mentioned in subparagraphs 1 and 2 constitute fully taxable income from employment.

...'

The dispute in the main proceedings and the question referred for a preliminary ruling

- 15 E is a natural person residing in Finland who invested in a compartment of a SICAV incorporated under Luxembourg law, which is a UCITS constituted 'in accordance with statute (as [an investment company])', within the meaning of Article 1(3) of the UCITS Directive. E's investments concern so-called profit shares, from which the earnings accrued are distributed annually by that SICAV to the investors.

- 16 On 20 June 2017, E submitted a request for a preliminary decision to the Central Tax Committee concerning the taxation of the earnings which were to be distributed to him by the SICAV incorporated under Luxembourg law at issue.
- 17 In that request, E submitted that a SICAV incorporated under Luxembourg law should be equated with an investment fund constituted under Finnish law, that is to say, a UCITS ‘constituted in accordance with contract law (as common funds managed by management companies)’ within the meaning of Article 1(3) of the UCITS Directive. In his view, the earnings distributed by such a SICAV should accordingly be taxed in the same way as the income earnings distributed by investment funds constituted under Finnish law, that is to say, as income from capital, pursuant to Paragraph 32 of the Law on income tax. In that regard, E noted in particular that the SICAV incorporated under Luxembourg law at issue carried on similar activities to those of investment funds constituted under Finnish law and that the management of that SICAV corresponds to the management of those funds.
- 18 In its definitive preliminary decision of 10 November 2017, the Central Tax Committee determined that, in accordance with the national case-law, in order to rule on the levying of income tax in Finland on income derived from an undertaking established in another State, the functional and legal characteristics of that undertaking had to be taken into account in relation to comparable Finnish undertakings.
- 19 The Central Tax Committee took the view that the SICAV presented the functional characteristics of a Finnish investment fund, but that similar general functional characteristics could be observed, for example, in collective investment in the form of public limited companies. The Central Tax Committee held that the SICAV incorporated under Luxembourg law at issue, in particular by virtue of its legal form, was objectively comparable to a Finnish public limited company carrying on investment activities.
- 20 According to that committee, the earnings which that SICAV distributed must therefore be regarded as a dividend and taxed as income from employment in accordance with Paragraph 33c(3) of the Law on income tax.
- 21 E brought an action before the Korkein hallinto-oikeus (Supreme Administrative Court, Finland) seeking the annulment of the decision of the Central Tax Committee. Before that court, E submitted that the taxation of the earnings distributed by the SICAV incorporated under Luxembourg law at issue as income from employment, in accordance with Paragraph 33c(3), is more stringent than the taxation of earnings distributed by an investment fund constituted under Finnish law as capital income and, consequently, contrary to the free movement of capital enshrined in Article 63 TFEU.
- 22 The referring court states that the income tax to be paid for employment income may exceed 50%, whereas, for capital income, that tax is only 30% or 34% in the case where the taxable amount exceeds EUR 30 000. It adds that, in order to determine the nature of the income, within the meaning of the Law on income tax, consisting of the earnings at issue, it is necessary to decide with which Finnish corporation that SICAV must be equated, while ensuring that an interpretation based on the legal form of the entity such as that made by the Central Tax Committee is not contrary to Articles 63 and 65 TFEU, and it is unsure, in particular, whether UCITS having different legal forms, established in accordance with the UCITS Directive, must be equated with each other for the purposes of taxation of earnings received by investors.

- 23 It is in that context that the Korkein hallinto-oikeus (Supreme Administrative Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Are Articles 63 and 65 TFEU to be interpreted as meaning that they preclude an interpretation [of provisions of national law] according to which income received by a natural person residing in Finland from a [UCITS] based in another Member State and constituted in accordance with statute within the meaning of the [UCITS] Directive ... is not, for the purposes of income tax, treated in the same way as income received from a Finnish investment fund constituted in accordance with contract law within the meaning of the same directive ... because the legal form of the [UCITS] located in the other Member State does not correspond to the legal structure of the national investment fund?’

Consideration of the question referred

- 24 By its question, the referring court asks, in essence, whether Articles 63 and 65 TFEU must be interpreted as precluding a tax practice of a Member State whereby, for the purpose of taxing the income of a natural person residing in that Member State, the income received from a UCITS constituted in accordance with statute established in another Member State is not equated with income received from UCITS established in the first Member State, on the ground that the latter do not have the same legal form as the former.
- 25 According to the Court’s case-law, the Member States must exercise their competence in the area of direct taxation in a manner that is compatible with EU law and, in particular, with the fundamental freedoms guaranteed by the FEU Treaty (see, to that effect, judgment of 18 June 2019, *Austria v Germany*, C-591/17, EU:C:2019:504, paragraph 56 and the case-law cited).
- 26 Article 63(1) TFEU generally prohibits restrictions on movements of capital between Member States (judgment of 16 September 2020, *Romenergo and Aris Capital*, C-339/19, EU:C:2020:709, paragraph 31 and the case-law cited). The measures prohibited by that provision, as restrictions on the movement of capital, include those that are such as to discourage non-residents from making investments in a Member State or to discourage that Member State’s residents from doing so in other States (judgment of 30 April 2020, *Société Générale*, C-565/18, EU:C:2020:318, paragraph 22).
- 27 In particular, a difference in treatment, where it leads to less favourable treatment of the income of a resident of a Member State originating in another Member State in comparison with the treatment of income originating in the first Member State, is liable to dissuade such a resident from investing his or her capital in another Member State (see, to that effect, judgments of 10 February 2011, *Haribo Lakritzen Hans Riegel and Österreichische Salinen*, C-436/08 and C-437/08, EU:C:2011:61, paragraph 80; of 24 November 2016, *SECIL*, C-464/14, EU:C:2016:896, paragraph 50; and of 20 September 2018, *EV*, C-685/16, EU:C:2018:743, paragraph 63).
- 28 That being the case, pursuant to Article 65(1)(a) TFEU, Article 63 TFEU is, nonetheless, without prejudice to the rights of Member States to apply the relevant provisions of their tax law which distinguish between taxpayers who are not in the same situation with regard to their place of residence or with regard to the place where their capital is invested.

- 29 In so far as that provision constitutes a derogation from the fundamental principle of the free movement of capital, it must be interpreted strictly. Consequently, it cannot be interpreted as meaning that all tax legislation which draws a distinction between taxpayers on the basis of their place of residence or of the State in which they invest their capital is automatically compatible with the FEU Treaty. Indeed, the derogation in Article 65(1)(a) TFEU is itself limited by Article 65(3) TFEU, which provides that the national provisions referred to in paragraph 1 of that article ‘shall not constitute a means of arbitrary discrimination or a disguised restriction on the free movement of capital and payments as defined in Article 63 [TFEU]’ (judgment of 21 June 2018, *Fidelity Funds and Others*, C-480/16, EU:C:2018:480, paragraph 47 and the case-law cited).
- 30 The Court has also held that a distinction must, therefore, be made between the differences in treatment authorised under Article 65(1)(a) TFEU and the discrimination prohibited by Article 65(3) TFEU. Before national tax legislation can be regarded as compatible with the Treaty provisions on the free movement of capital, the difference in treatment resulting from that legislation must concern situations which are not objectively comparable or must be justified by an overriding reason in the public interest (judgment of 30 April 2020, *Société Générale*, C-565/18, EU:C:2020:318, paragraph 24).
- 31 It is therefore appropriate to examine, first of all, whether there is a difference in treatment, next, whether the situations are potentially comparable, and lastly, if necessary, whether the difference in treatment may be justified.

Whether there is a difference in treatment

- 32 It is apparent from the order for reference that the question referred for a preliminary ruling is raised in the context of a dispute concerning the taxation of income received by E from a SICAV incorporated under Luxembourg law, that is to say, a UCITS constituted in accordance with statute, within the meaning of the UCITS Directive. In Finland, however, UCITS established under the UCITS Directive are constituted in accordance with contract law and cannot be constituted in accordance with statute.
- 33 E is of the opinion that the income received from a SICAV should be taxed in the same way as income from a UCITS constituted under Finnish law in accordance with contract law. By contrast, the Central Tax Committee takes the view that, in so far as a SICAV, which is a UCITS constituted in accordance with statute, resembles a public limited company established in Finland, the income received from it should be treated in the same way as dividends received from such companies.
- 34 It is thus necessary to determine, in the first place, whether, by treating the income received from the SICAV incorporated under Luxembourg law at issue in the main proceedings differently to income received from a UCITS constituted under Finnish law, the former income is subject to less favourable tax treatment.
- 35 Pursuant to Paragraph 32 of the Law on income tax, income from capital covers earnings from assets, profit from the transfer of assets and other such earnings which may be assumed to have been accrued from assets. The examples of income from capital expressly listed by the Finnish legislature in that Paragraph 32 include both profit shares received from UCITS and dividends

received from public limited companies. According to what is indicated in the request for a preliminary ruling, the tax rate applicable to income from capital is 30% for the portion of that income below EUR 30 000 and 34% for the portion of that income above that amount.

- 36 However, while the profit shares distributed by UCITS constituted under Finnish law are the subject of taxation at the level of the recipient, as income from capital, the income received from a SICAV incorporated under Luxembourg law is treated as dividends received from an entity established in a State other than the Republic of Finland, within the meaning of Paragraph 33c of the Law on income tax, and is taxed, in accordance with its third subparagraph, as income from employment, at a progressive rate which may be up to 50%.
- 37 Such a difference in treatment is liable to result in less favourable treatment of the income distributed by a SICAV incorporated under Luxembourg law in comparison with the treatment of income distributed by a UCITS constituted under Finnish law.
- 38 In the second place, it should be noted that the tax treatment reserved for the income received by E from the SICAV incorporated under Luxembourg law at issue in the main proceedings does not resemble that which is reserved for income received from alternative investment funds either, within the meaning of Article 4(1)(a) of Directive 2011/61, which are not subject to the UCITS Directive and which have the form of a public limited company. As the Finnish Government made clear in its written response to the questions addressed to it, such funds may be created in accordance with Finnish law.
- 39 It is apparent from the case file before the Court that the income of public limited companies established in Finland is subject to double taxation, once at the corporate level, as company earnings, and once at the level of recipients, as income from capital. In order to mitigate the effects of double taxation, the measures provided for in Paragraphs 33a and 33b of the Law on income tax adapt the taxation at the level of recipients, in particular by exempting a portion of the income from tax on capital income.
- 40 In that regard, in its response to the Court's questions, the Finnish Government explains that, if a public limited company carries on an investment activity of a similar type to an investment fund, it would not be exempt from tax but would normally be subject to corporation tax, and the earnings which it distributes would be subject to the rules on the taxation of dividends, which are based on partial double taxation.
- 41 However, as is apparent from the order for reference, that is not the case for a SICAV incorporated under Luxembourg law. Indeed, it is clear from that order that, according to the Central Tax Committee, such a SICAV is, for the purposes of applying Paragraph 33c of the Law on income tax, an entity which is not covered by Directive 2011/96, as amended, which has its registered office in a Member State of the EEA other than the Republic of Finland, which is subject to a convention for the prevention of double taxation and which is not required to pay tax at the minimum rate of 10% on its income. Accordingly, the measures at national level designed to prevent double taxation do not apply to the income received from that SICAV.
- 42 In those circumstances, the view must be taken that the income received from the SICAV incorporated under Luxembourg law at issue in the main proceedings by a recipient residing in Finland is subject to less favourable treatment than income received both from public limited companies and from UCITS constituted under Finnish law in accordance with contract law.

- 43 That difference in treatment is liable to dissuade Finnish residents from investing in Member States other than the Republic of Finland, and is thus liable to restrict the free movement of capital.

Whether the situations are objectively comparable

- 44 As follows from the case-law recalled in paragraphs 29 and 30 above, such a difference in treatment can be permitted only if it concerns situations which are not objectively comparable.
- 45 It should be noted that the SICAV incorporated under Luxembourg law at issue in the main proceedings and a UCITS constituted under Finnish law are two types of UCITS within the meaning of the UCITS Directive.
- 46 As is apparent from Article 1(1) of the UCITS Directive, their sole object is the collective investment in transferable securities or other liquid financial assets of capital raised from the public and which operate on the principle of risk-spreading, and the units of which are, at the request of holders, re-purchased or redeemed, directly or indirectly, out of those undertakings' assets.
- 47 However, as the Advocate General observed in point 45 of his Opinion, the legal classification of certain situations for the purposes of commercial law do not necessarily carry over for the purposes of taxation. It should therefore be noted, as the Finnish Government has stated, that the mere fact that resident and non-resident UCITS are both UCITS within the meaning of the UCITS Directive is not decisive for establishing whether the situations at issue are comparable.
- 48 First, that directive did not harmonise the taxation applicable to UCITS and the earnings which they distribute. It follows in particular from recitals 4 and 83 of that directive that, while it establishes common basic rules for the authorisation, supervision, structure and activities of UCITS and the information that they are required to publish, it does not affect national rules concerning taxation.
- 49 Secondly, it is clear from the Court's case-law that the comparability of a cross-border situation with an internal one must be examined having regard to the objective pursued by the national provisions at issue as well as their purpose and content, and that only the relevant distinguishing criteria established by the legislation in question must be taken into account in determining whether the difference in treatment resulting from that legislation reflects an objectively different situation (judgment of 21 June 2018, *Fidelity Funds and Others*, C-480/16, EU:C:2018:480, paragraphs 50 and 51 and the case-law cited).
- 50 In that regard, it is apparent from the Finnish Government's written response to the Court's questions, and subject to verification by the referring court, that the objective of the tax treatment of the activity of investment funds provided for by Finnish tax legislation can be regarded as establishing a single tax at the investor level. The provisions concerning the tax treatment of dividends received by natural persons are designed to ensure that the income of a company is also taxed at the shareholder level, while providing for the mitigation of the double taxation of that income.

- 51 However, with regard to such objectives, it appears that the SICAV incorporated under Luxembourg law finds itself in a situation which is objectively comparable to that of a UCITS constituted under Finnish law. As is apparent from the case file available to the Court, and subject to verification by the referring court, those two entities are exempt from income tax and the earnings received from them is subject to taxation only at the level of the recipients.
- 52 It is true that, unlike a UCITS constituted under Finnish law, a SICAV incorporated under Luxembourg law is constituted in accordance with statute and is, in that respect, equated to a public limited company the distributed income of which is taxed pursuant to Paragraph 33c(3) of the Law on income tax.
- 53 However, it must also be pointed out, as was recalled in paragraph 35 above, that the examples of income from capital listed in Paragraph 32 of the Law on income tax include both profit shares received from the UCITS and dividends received from public limited companies. Consequently, the Finnish legislature does not appear to have made the distinction between income from capital, on the one hand, and income from employment, on the other hand, contingent on the legal form of the distributing body, but, on the contrary, appears to have taken the view that both the earnings distributed by bodies constituted in accordance with contract law and those constituted in accordance with statute constitute income from capital.
- 54 It follows that the fact that a SICAV incorporated under Luxembourg law is constituted in accordance with statute does not place that undertaking in a different situation in relation to a UCITS constituted under Finnish law in accordance with contract law as regards the tax treatment of the distributed earnings.
- 55 It follows that, subject to verification by the referring court, the difference in treatment between the respective income received from a SICAV incorporated under Luxembourg law and a UCITS constituted under Finnish law concerns objectively comparable situations.

Whether there is an overriding reason in the public interest

- 56 It should be recalled that, according to the Court's settled case-law, a restriction on the free movement of capital is permissible if it is justified by overriding reasons in the public interest, if it is suitable for securing the attainment of the objective which it pursues and if it does not go beyond what is necessary in order to attain that objective (see, to that effect, judgments of 26 February 2019, *X (Controlled companies established in third countries)*, C-135/17, EU:C:2019:136, paragraph 70, and of 30 January 2020, *Köln-Aktienfonds Deka*, C-156/17, EU:C:2020:51, paragraph 83 and the case-law cited).
- 57 In the present case, however, it is sufficient to note that the Finnish Government has not relied on such reasons and that the referring court has also not identified such reasons.
- 58 In the light of all of the foregoing considerations, the answer to the question referred is that Articles 63 and 65 TFEU must be interpreted as precluding a tax practice of a Member State according to which, for the purpose of the taxation of income of a natural person residing in that Member State, the income received from a UCITS constituted in accordance with statute and established in another Member State cannot be equated with income received from UCITS established in the first Member State on the ground that the latter do not have the same legal form.

Costs

- 59 Since these proceedings are, for the parties to the main proceedings, a step in the actions pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

Articles 63 and 65 TFEU must be interpreted as precluding a tax practice of a Member State according to which, for the purpose of the taxation of income of a natural person residing in that Member State, the income received from an undertaking for collective investment in transferable securities (UCITS) constituted in accordance with statute and established in another Member State cannot be equated with income received from UCITS established in the first Member State on the ground that the latter do not have the same legal form.

[Signatures]