Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation. If these Korean cases were analysed in light of the current approach of the CJEU, the factors regarded as evidence of beneficial ownership and abuse of law are as follows:

**Beneficial ownership**

Beneficial ownership, a term imported into tax treaties from common law, has been the source of much controversy. In recent years, this controversy has been triggered by the English Court of Appeal decision in the case of **Kuo food International Finance Ltd v JP Morgan Chase Bank N.A. London Branch** (2016 ENCA 2016/1440). The court noted that the Korean Supreme Court’s decision is based on a lack of beneficial ownership, with litigation often ensuing. This controversy ultimately resulted in the 2013 OECD consultation on the meaning of beneficial ownership in Article 6 of the Parent-subsidiary Directive. These conclusions of the consultation were included in Commentary to the 2014 OECD Model. As a result, the OECD Model does not have its own beneficial ownership requirement. If beneficial ownership is such an agreement-based anti-abuse provision, then the application of the directive may be subject to its requirements.

**Meaning of Beneficial ownership**

The term **beneficial ownership** is defined in the relevant tax treaty as the person who is entitled to enjoy either the income or the asset in question. In the case of **Kuo food International Finance Ltd v JP Morgan Chase Bank N.A. London Branch**, the Danish court asked whether the beneficial ownership requirement in a treaty between Member States is to be treated as the beneficial owner of interest or royalties only if it receives those payments for its own benefit and not as an intermediary, such as an agent, trustee or administrator, for another person. The court noted that the term is the directive must be given an autonomous EU meaning and not the domestic meaning under the law of the member state applying the directive. This may be different from the tax treaty, where article 121 of the OECD Model may require a reference to a domestic law meaning. In contrast, the Danish court indicated that the beneficial ownership requirement should be interpreted in a consistent manner with the autonomous EU meaning.

**Beneficial ownership and Abuse of Law**

The Korean Supreme Court ruled in the case of **Corning** that in bilateral tax treaties, where the ordinary meaning in different languages could explain the different meanings in the Model, the need for a single EU law meaning in the directive may distinguish the directive meaning from the Model. This controversy ultimately resulted in the 2013 OECD consultation on the meaning of the term “beneficial ownership’. The court’s concern in these cases was whether the recipient of the payment could be a beneficial owner if it was put to the Irish company to the Irish subsidiary. The reasons included the lack of commercial purpose for its existence in connection with the facts of the case involving dividends, interest and royalties.

**OEC Model Treaty and Commentary**

The case of **Kuo food International Finance Ltd v JP Morgan Chase Bank N.A. London Branch** was decided on the basis that the English court should interpret the term “beneficial ownership” according to the English lex ferendi. In the case of **Kuo food International Finance Ltd v JP Morgan Chase Bank N.A. London Branch**, the Danish court indicated that the term is to be treated as the beneficial owner of dividends paid to it by the Korean company. The court noted that it is not necessary for a domestic court to interpret the term in the context of the burden of proof of abuse, including conduit companies and the burden of proof. In the context of the burden of proof, the court acknowledged that the term “beneficial ownership” cannot be interpreted as it is used in the Model, which does not have its own beneficial ownership requirement. If beneficial ownership is such an agreement-based anti-abuse provision, then the application of the directive may be subject to its requirements.

**Beneficial ownership: CJEU Landmark ruling**

The judgment of the CJEU in the landmark decision of **Stork Food & Biofuel v. The Collector of Customs** (2018 C-116/16), decided November 29, 2018, that a beneficial owner in Article 12 of the Parent-subsidiary Directive has to be a person who is entitled to enjoy either the income or the asset in question, has been acknowledged by the CJEU. As a result, when the court says that a conduit company cannot be a beneficial owner of dividends paid to it by the Danish company, the Danish court interpreted the term in the Danish law sense, which is an agreement-based anti-abuse provision. Instead of answering this question, the CJEU confirms the general legal principle that EU law cannot be relied on for abusive or fraudulent ends. As a result, it is unnecessary for a domestic or agreement-based anti-abuse provision, then the application of the directive may be subject to its requirements.