Beneficial ownership: CJEU Landmark ruling

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The judgments of the CJEU in Dangerous Goods (Schindler) and Kluwer cases, as well as those of the Danish court in the Prevost Car Inc. v. The Queen and T Danmark cases have attracted significant attention in the last few years. These judgments are of particular interest to the double tax treaty and anti-abuse regimes of all Member States, as well as tax practitioners. This is because these decisions concern the interpretation of the OECD Model Treaty and Commentary on the meaning of beneficial ownership in the context of the Parent-subsidiary Directive and Interest and Royalties Directive.

The Court of Justice of the European Union (CJEU) was asked in Schindler to interpret the term “beneficial ownership” as defined in Article 1 of the Parent-subsidiary Directive, in relation to the income concerned. This is an issue of profound importance, as it is at the heart of the anti-abuse rules of both the Parent-subsidiary Directive and the Interest and Royalties Directive. The CJEU’s interpretation of this term is therefore of critical importance for the application of these directives and for the interpretation of the term “beneficial ownership” by domestic courts of the Member States in the context of double tax treaties.

The Court held that the term “beneficial ownership” must be interpreted as “a person who is entitled to enjoy the economic benefit of the dividend income received and who is neither bound by law nor by contract to re-transfer the income to another person”. The Court noted that this interpretation is consistent with the ordinary meaning of the term in the context of European Union law, as well as with the meaning of the term in the OECD Model Treaty and Commentary.

The Court also noted that the term “beneficial ownership” must be interpreted in a way that is consistent with the objective of the Parent-subsidiary Directive, which is to ensure that dividends are subject to tax in the country of origin rather than in the country of destination. In order to achieve this objective, the Court held that the term “beneficial ownership” must be interpreted in a way that is consistent with the ordinary meaning of the term in the context of European Union law, as well as with the meaning of the term in the OECD Model Treaty and Commentary.

The Court’s interpretation of the term “beneficial ownership” is therefore of critical importance for the application of the Parent-subsidiary Directive and the Interest and Royalties Directive. It is also of crucial importance for the interpretation of the term “beneficial ownership” by domestic courts of the Member States in the context of double tax treaties. This is because the term “beneficial ownership” is subject to a high degree of uncertainty, and it is therefore crucial that it be interpreted in a way that is consistent with the objective of the Parent-subsidiary Directive, which is to ensure that dividends are subject to tax in the country of origin rather than in the country of destination.

In conclusion, the Court’s interpretation of the term “beneficial ownership” is of critical importance for the application of the Parent-subsidiary Directive and the Interest and Royalties Directive. It is also of crucial importance for the interpretation of the term “beneficial ownership” by domestic courts of the Member States in the context of double tax treaties. This is because the term “beneficial ownership” is subject to a high degree of uncertainty, and it is therefore crucial that it be interpreted in a way that is consistent with the objective of the Parent-subsidiary Directive, which is to ensure that dividends are subject to tax in the country of origin rather than in the country of destination.