Kluwer International Tax Blog

The contents of Highlights & Insights on European Taxation

Giorgio Beretta (Amsterdam Centre for Tax Law (ACTL) of the University of Amsterdam; Lund University) · Wednesday, March 5th, 2025

Highlights & Insights on European Taxation

Please find below a selection of articles published this month (February 2025) in Highlights & Insights on European Taxation, plus one freely accessible article.

Highlights & Insights on European Taxation (H&I) is a publication by Wolters Kluwer Nederland BV.

The journal offers extensive information on all recent developments in European Taxation in the area of direct taxation and state aid, VAT, customs and excises, and environmental taxes.

To subscribe to the Journal's page, please click **HERE**

Year 2025, no. 2

TABLE OF CONTENTS

DIRECT TAXATION, LEGISLATION

– US withdrawal from Global Tax Deal. Chair of the tax subcommittee of the European Parliament

(comments by the **Editorial Board**) (*H&I* 2025/23)

– Memorandum America First Trade Policy

(comments by the **Editorial Board**) (*H&I* 2025/22)

– Global Tax Deal has no force or effect in the United States

(comments by the **Editorial Board**) (*H&I* 2025/21)

DIRECT TAXATION, CASE LAW

– XX (unit-linked) **(C-782/22)**. Gross-Net taxable base. EU law precludes difference in treatment between residents and non-residents as regards dividends received in the Netherlands. Court of

Justice

(comments by the **Editorial Board**) (*H&I* 2025/60)

– ***Volvo Group Belgium* (C-436/23)**. EU law does not preclude Belgian fairness tax on the resident subsidiaries of non-resident companies. Court of Justice

(comments by the **Editorial Board**) (*H&I* 2025/25)

– ***Credit Suisse Securities* (C-601/23)**. Free movement of capital precludes Spanish dividend withholding tax. Court of Justice

(comments by the **Editorial Board**) (*H&I* 2025/59)

INDIRECT TAXATION, CASE LAW

– ***Lomoco Development* (C-594/23)**. Building land. Supply of land that has the foundations of residential housing structures in place

(comments by **Marta Papis-Almansa**) (*H&I*2025/26)

CUSTOMS AND EXCISE

– ***Sistem Lux* (C-717/22 and C-372/23)**. CJ's findings on customs sanctions and confiscation rules. Court of Justice

(comments by **Tom Walsh**) (*H&I* 2025/48)

– EU-Chile Interim Trade Agreement (ITA) will enter into force on 1 February 2025

(comments by **Piet Jan de Jonge**) (*H&I* 2025/29)

– Georgia joins the Common Transit Convention and the Convention on the Simplification of Formalities in Trade in Goods

(comments by **Piet Jan de Jonge**) (*H&I* 2025/28)

– New Computerised Transit System (NCTS): The deployment of the phase 5 is succesful

(comments by **Piet Jan de Jonge**) (*H&I* 2025/27)

MISCELLANEOUS

– A bolder, simpler, faster Union: the 2025 Commission work programme

(comments by the **Editorial Board**) (*H&I* 2025/53)

– Communication from the Commission on the Competitiveness Compass for the EU

(comments by the **Editorial Board**) (*H&I* 2025/45)

FREE ARTICLE

– *Credit Suisse Securities* (C-601/23). Free movement of capital precludes Spanish dividend withholding tax. Court of Justice

(comments by the **Editorial Board**) (*H&I* 2025/59)

In this case, the Court of Justice of the European Union (CJ) clarifies the treatment of withholding tax on dividends in the context of EU law. The case centred on Spanish tax rules applied in Biscay, where resident companies experiencing financial losses were entitled to reclaim withholding tax on dividends, whereas non-resident companies in similar circumstances were denied this benefit. The CJ found that this distinction contravened the principle of free movement of capital under Article 63 of the Treaty on the Functioning of the European Union (TFEU).

This judgment aligns with previous CJ rulings, particularly *Sofina* (CJ 22 November 2018, C-575/17, ECLI:EU:C:2018:943), reinforcing the principle that tax measures must be applied in a non-discriminatory manner, regardless of the taxpayer's residency. It highlights the Court's commitment to ensuring that national tax provisions do not impose unjustified restrictions on cross-border investment. The decision may push Member States to review their withholding tax systems to ensure compliance with EU law, particularly in cases where tax relief mechanisms favour domestic over foreign entities.

However, while the ruling strengthens the free movement of capital, it also raises practical challenges. Tax authorities will need to develop procedures to accurately assess the financial standing of non-resident companies to ensure fair application of tax refunds. This could require enhanced cooperation between Member States' tax administrations and lead to administrative complexities. Additionally, the decision may open the door for a wave of refund claims from non-resident entities previously disadvantaged under similar tax regimes, potentially creating financial and administrative pressures for national tax authorities.

Territoriality and Non-Resident Taxpayers

The CJ's judgment in *Credit Suisse Securities* (19 December 2024, C-601/23, ECLI:EU:C:2024:1048) can be seen as diverging from the Court's earlier ruling in *Futura Participations and Singer* (CJ 8 June 2006, C-250/95, ECLI:EU:C:2006:384) in several key respects. While both cases deal with the tax treatment of non-resident companies, they apply different reasoning regarding territoriality and non-discrimination in tax law.

In *Futura Participations*, the Court upheld a Luxembourg rule that allowed non-residents to carry forward losses 'only if those losses were economically connected to a Luxembourg permanent establishment'. The Court reasoned that Luxembourg was entitled to apply the principle of territoriality, meaning that a Member State can restrict tax advantages to income and losses arising within its jurisdiction. Since Luxembourg did not tax worldwide income for non-residents, it was not required to grant them the same tax benefits as residents.

In contrast, *Credit Suisse Securities* focused on the discriminatory impact of Spain's withholding tax system on dividend taxation. The Court found that Spain's rules, which allowed loss-making domestic companies to reclaim withholding tax while denying the same benefit to non-resident companies, violated the free movement of capital (Article 63 TFEU). This ruling did not give much weight to the territoriality argument, despite the fact that non-resident companies might not have been subject to full taxation in Spain.

Justification for Different Treatment

In *Futura Participations*, the CJ accepted that the different treatment of non-residents was objectively justified because Luxembourg did not tax them on a worldwide basis. The Court acknowledged that Member States have discretion in setting conditions for tax deductions when they relate to non-residents.

In *Credit Suisse Securities*, however, the Court took a stricter approach and ruled that Spain's refusal to grant a withholding tax refund to non-residents was discriminatory, even though non-resident companies were not taxed on their global income in Spain. The judgment did not consider whether Spain's rules could be justified by the need to ensure tax coherence or territoriality, which had been an acceptable justification in *Futura Participations*.

Broader Implications for Withholding Taxes and Tax Sovereignty

By departing from *Futura Participations*, the *Credit Suisse Securities* ruling creates uncertainty about the extent to which Member States can apply territoriality principles in cross-border taxation. The decision suggests that even if a non-resident entity does not have a taxable presence in a Member State, it may still be entitled to the same tax refunds as domestic entities. This could limit the ability of Member States to design tax systems that differentiate between domestic and foreign taxpayers based on their taxable nexus.

Conclusion

While both cases address the tax treatment of non-resident companies, *Credit Suisse Securities* departs from *Futura Participations* by downplaying the importance of territoriality in justifying different tax treatment. The ruling places a stronger emphasis on the free movement of capital, potentially restricting the ability of Member States to apply tax rules that distinguish between residents and non-residents. This shift raises important questions about the balance between tax sovereignty and EU fundamental freedoms, with implications for future cases involving cross-border taxation

Editorial Board

To make sure you do not miss out on regular updates from the Kluwer International Tax Blog, please subscribe here.

This entry was posted on Wednesday, March 5th, 2025 at 4:32 pm and is filed under Customs and Excise, Direct taxation, EU law, Indirect taxation
You can follow any responses to this entry through the Comments (RSS) feed. You can leave a response, or trackback from your own site.