What's Going On In ...

European Union

The Advocate General's Opinion in *Denkavit II*

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INTRODUCTION

Advocate General Geelhoed of the European Court of Justice (ECJ) delivered his Opinion in *Denkavit II*[1] on 27 April 2006. On 15 December 2004, the French Supreme Administrative Court (*Conseil d'Etat*)[2] had requested a preliminary ruling from the ECJ regarding the compatibility of the French withholding tax on outbound dividends with the freedom of establishment in Art. 43 (previously, Art. 52) of the EC Treaty. In his Opinion, the Advocate General opined that the French withholding tax on outbound dividends is incompatible with the freedom of establishment. The Advocate General also opined that this is not justified by the France–Netherlands tax treaty of 16 March 1973.

THE CASE

The facts

Two French companies, Agro Finances SARL and Denkavit France SARL, distributed dividends to their Netherlands parent company, Denkavit International BV, from 1987 to 1989. Denkavit International BV owned 99.9% of the shares in Agro Finance Sarl and 100% in Denkavit France SARL (50% directly and 50% via Agro Finance SARL). Under French domestic law, dividends distributed by a French subsidiary to a French parent are not subject to withholding tax and are 95% exempt at the level of the French parent.[3] In contrast, dividends distributed by a French subsidiary to a foreign parent are subject to a 25% withholding tax.[4] In *Denkavit II*, the dividend withholding tax was reduced to 5% by Art. 10(2)(a) of the France–Netherlands tax treaty. Denkavit International BV could not credit the 5% French withholding tax against its Netherlands corporate income tax liability, as under Netherlands law, the dividend income was tax exempt due to the participation exemption.[5]

The French and the Netherlands companies initiated a procedure in the French courts in which they claimed a refund of the withholding tax paid on the dividend distributions on the grounds that EU parents should be treated no less favourably than French parents.

Request for a preliminary ruling

The Supreme Administrative Court asked the ECJ the following three questions:[6]

(1) whether or not a mechanism that provides for the taxation of dividends in the hands of the parent, which is not a French resident but which provides for an exemption in respect of French parents, is compatible with the freedom of establishment;
(2) whether or not in determining the (in)compatibility of the French dividend withholding tax regime with the freedom of establishment, it should be taken into account that a tax treaty between France and another Member State allows France to levy a dividend withholding tax (at a reduced rate) and provides for relief from double (juridical) taxation in the other Member State by means of a tax credit; and
(3) if the tax treaty is to be taken into account in considering the compatibility of the withholding tax mechanism with the freedom of establishment, whether or not the fact that a foreign parent cannot make use of the tax credit mechanism under the tax treaty results in the incompatibility of the French withholding tax regime with the freedom of establishment.

INFRINGEMENT OF THE FREEDOM OF ESTABLISHMENT

Introductory remarks

The Advocate General gave a positive answer to the first question put by the Supreme Administrative Court.

Scope

As Denkavit International BV owned a majority shareholding in its two French subsidiaries, the Supreme Administrative Court and Advocate General Geelhoed examined the case in the light of the freedom of establishment. Currently, in similar circumstances, the EC Parent-Subsidiary Directive[7] would apply and result in

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1. ECJ, Advocate General Geelhoed's Opinion, 27 April 2006, Case C-170/05, *Denkavit International BV Denkavit France SARL v. Ministre de l'Économie, des Finances et de l'Industrie*.
2. CE 15 December 2004, No 235069, 10e and 9e s.-s., *Sté Denkavit International BV and SARL Denkavit France*. For more on this, see S. Baranger, "Preliminary Ruling Requested from the ECJ on the Compatibility of French Taxation on Outgoing Dividends with the Freedom of Establishment", 45 *European Taxation* 7 (2005), pp. 304-307.
3. Art. 145 and Art. 216 French Tax Code (*Code Général des Impôts*, CGI).
4. Art. 119 bis and Art. 187(1) CGI.
5. Art. 13 Netherlands Corporate Income Tax Law.
6. ECJ, Advocate General Geelhoed's Opinion, 27 April 2006, Case C-170/05, *Denkavit International BV Denkavit France SARL v. Ministre de l'Économie, des Finances et de l'Industrie*, Para. 10.
7. Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, Official Journal (EC), L 225, 20 August 1990, pp. 6-9.

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zero tax on the dividend distributions. *Denkavit II* could, however, still be relevant in situations in which the EC Parent-Subsidiary Directive does not apply, provided that an infringement could also be found regarding the free movement of capital in Art. 56 of the EC Treaty.[8]

Advocate General Geelhoed's new criteria

The new reasoning

Advocate General Geelhoed has developed a new line of reasoning in four Opinions[9] relating to the taxation of cross-border dividends. The approach is based on two main distinctions, i.e. the difference between "true" and "quasi-" restrictions and the difference in respect of the obligations of the home and the source Member State.

Distinction between true and quasi-restrictions

In his Opinion in *Test Claimants in Class IV of the ACT Group Litigation*, Advocate General Geelhoed considered that there is no difference, in practice, between restrictions and discrimination. A distinction should, however, be made between true and quasi-restrictions.[10]

Quasi-restrictions, which are the result of the co-existence of national tax systems, are derived from (1) the existence of cumulative administrative compliance for companies active cross-border, (2) disparities between national tax systems and (3) the need to divide tax jurisdiction (dislocation of the tax base). According to Advocate General Geelhoed, quasi-restrictions can only be eliminated by tax harmonization at an EU level. Failing this, the restrictions fall outside the scope of Art. 43 of the EC Treaty.

In contrast, true restrictions, which fall within the scope of Art. 43 of the EC Treaty, are genuinely restrictive national direct tax measures, which, in practice, qualify as direct or indirect discriminatory measures.[11] To be classified as an infringement, a disadvantageous tax treatment must follow from discrimination resulting from the rules of one jurisdiction.

Distinction between home and source Member State obligations

In his Opinion in *Test Claimants in Class IV of the ACT Group Litigation*, Advocate General Geelhoed also distinguished between home and source Member State obligations. This relies on the nature of the tax jurisdiction exercised in each case, which differs fundamentally, depending on whether an economic operator is subject to home or source Member State taxation.

The obligation of the home Member State is to treat domestic and foreign source income of its tax residents similarly if the foreign-source income is included in the taxable base.[12] The obligation of the source Member State only arises insofar as it exercises its tax jurisdiction over the non-residents. In this case, the source Member State cannot discriminate between resident and non-resident taxpayers.

Economic double taxation

Analysis

In his analysis in *Denkavit II*, Advocate General Geelhoed describes the tax mechanisms resulting in economic double taxation and juridical double taxation on dividend flows. Economic double taxation is relieved at the level of the French parent by not imposing a dividend withholding tax in combination with the participation exemption regime to the dividend income, resulting in a "one-time" taxation of the income at the level of the French subsidiary. In contrast, outbound dividends paid to the Netherlands parent are subject to a withholding tax, which results in economic double taxation in France.[13]

Advocate General Geelhoed then applies the first distinction between true and quasi-restrictions (see previously). To invoke the provision of Art. 43 and Art. 56 of the EC Treaty, the difference in treatment must be the consequence of a direct or a covert discrimination, which results from the provisions of one Member State (which is the case) and not from a disparity or the allocation of taxing rights between tax systems of two or more Member States.[14,15]

Advocate General Geelhoed next applied the second distinction,[16] under which the source Member State cannot discriminate between residents and non-residents in exercising its taxing powers on income derived by non-residents. A source Member State that relieves economic double taxation domestically for

8. This is not fully clear, as Advocate General Geelhoed does not comment on this in his Opinion. In his Opinion in *Test Claimants in Class IV of the ACT Group Litigation*, which concerns the UK imputation system, Advocate General Geelhoed, however, held that the application of the two freedoms has the same result. See ECJ, Advocate General Geelhoed's Opinion, 23 February 2006, Case C-374/04, *Test Claimants in Class IV of the ACT Group Litigation (Pirelli, Essilor and Sony), Test Claimants in Class IV of the ACT Group Litigation (BMW) v. Commissioners of Inland Revenue*, Para. 30.

9. ECJ, Advocate General Geelhoed's Opinion, 23 February 2006, Case C-374/04, *Test Claimants in Class IV of the ACT Group Litigation (Pirelli, Essilor and Sony), Test Claimants in Class IV of the ACT Group Litigation (BMW) v. Commissioners of Inland Revenue*; 6 April 2006, Case C-446/04, *Test Claimants in the FII Group Litigation v. Commissioners of Inland Revenue*; 6 April 2006, Case C-513/04, *Mark Kerckaert Bernadette Morres v. Belgian State*; and 27 April 2006, Case C-170/05, *Denkavit International BV Denkavit France SARL v. Ministre de l'Économie, des Finances et de l'Industrie*.

10. ECJ, Advocate General Geelhoed's Opinion, 23 February 2006, Case C-374/04, *Test Claimants in Class IV of the ACT Group Litigation (Pirelli, Essilor and Sony), Test Claimants in Class IV of the ACT Group Litigation (BMW) v. Commissioners of Inland Revenue*, Paras. 36-54.

11. Id., Para. 56.

12. Id., Para. 58.

13. ECJ, Advocate General Geelhoed's Opinion, 27 April 2006, Case C-170/05, *Denkavit International BV Denkavit France SARL v. Ministre de l'Économie, des Finances et de l'Industrie*, Para. 18.

14. Id., Para. 20.

15. Advocate General Geelhoed adopted similar reasoning in ECJ, Advocate General Geelhoed's Opinion, 23 February 2006, Case C-374/04, *Test Claimants in Class IV of the ACT Group Litigation (Pirelli, Essilor and Sony), Test Claimants in Class IV of the ACT Group Litigation (BMW) v. Commissioners of Inland Revenue*, Para. 32 et seq.; 6 April 2006, Case C-446/04, *Test Claimants in the FII Group Litigation v. Commissioners of Inland Revenue*, Para. 37 et seq.; and 6 April 2006, Case C-513/04, *Mark Kerckaert Bernadette Morres v. Belgian State*, Paras. 18-19.

16. ECJ, Advocate General Geelhoed's Opinion, 23 February 2006, Case C-374/04, *Test Claimants in Class IV of the ACT Group Litigation (Pirelli, Essilor and Sony), Test Claimants in Class IV of the ACT Group Litigation (BMW) v. Commissioners of Inland Revenue*, Paras. 66-73 and 88.

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residents must extend this to non-residents if economic double taxation is the result of its own tax jurisdiction.

Comparability

If Advocate General Geelhoed's reasoning is followed, to fall within Art. 43 of the EC Treaty, disadvantageous tax treatment must follow from *discrimination* resulting from the rules of one jurisdiction, i.e. France.[17] According to settled case law, the concept of *discrimination*, which consists of "the application of different rules to comparable situations or in the application of the same rule to different situations",[18] the comparability between a domestic parent and an EU parent is an essential element of the discrimination test. It is regrettable that the direct comparability between resident and non-resident EU parents in respect of the taxation of dividends, which to date has never been considered by the ECJ, was not clearly addressed by Advocate General Geelhoed in his analysis. Specifically the Advocate General states that

> the nature of a source State's obligation under Article 43 EC is, in so far as it exercises tax jurisdiction over non-resident's income, to treat it in a comparable way to residents' income.[19]

Implicitly, Advocate General Geelhoed reasons that resident and non-resident parents are in a comparable situation, as the source Member State exercises its tax jurisdiction on both.[20]

The Advocate General concluded that the French system is a classical example of discrimination between Netherlands and French parents, as France imposed a higher tax burden on outbound dividends paid to Netherlands parents than that on domestic dividends paid to French parents. The Advocate General, therefore, found that this difference in treatment is discriminatory within the meaning of Art. 43 of the EC Treaty.[21] Advocate General Geelhoed disregarded the fact that a French parent is still liable to corporate income tax on 5% of the dividends received, which results in a tax burden of approximately 1.66%. Although relatively small, this is still significant compared to the 5% dividend withholding tax suffered by Denkavit in France. If the Advocate General's reasoning is followed, he would probably not find an infringement of the freedom of establishment if the French dividend withholding tax on dividends paid to non-resident parents did not exceed the French corporate income tax effectively levied at the level of a domestic French parent, even if (as in *Denkavit II*) no French dividend withholding tax was levied on dividend distributions to the French parent.

Justifications

Advocate General Geelhoed rejected the justification based on the territoriality principle advanced by the French government and the claim that the residence Member State should relieve economic double taxation.[22] In respect of juridical double taxation of cross-border income, the source Member State has the primary right to tax under international tax law and the residence Member State may decide whether or not to relieve this double taxation. According to the Advocate General, this does not alter the obligation of the source Member State to apply to a non-resident comparable treatment as that of a resident, as the former is subject to the tax jurisdiction of the source Member State.[23] The Advocate General also noted that France did not raise the question of justifications based on the prevention of tax avoidance or the coherence of domestic tax systems.[24]

TAX TREATIES AND THE COMPATIBILITY OF DOMESTIC AND EC LAW

The France–Netherlands tax treaty

The second question deals with the effect of tax treaties, resulting in the removal of the discrimination arising under domestic law. Specifically, the tax-sharing mechanism in Art. 10(2)(a) of the France–Netherlands tax treaty reduces the rate of withholding tax to 5% for participations of at least 25% and provides for relief in respect of double taxation in the residence state. As potential discrimination could be fully compensated by the tax treaty sharing rule, the Supreme Administrative Court asked the ECJ whether or not the compatibility of French domestic law with EC law should be considered by taking into account a tax treaty. The result would be that the tax treaty could legitimize the French discriminatory withholding tax regime.

Preliminary observations

In the *Fokus Bank* case, the EFTA Court held that discrimination on the basis of domestic tax law cannot be offset by advantages, which shareholders may obtain in their state of residence on the basis of foreign tax law or on the basis of a tax treaty with the shareholder's residence state.[25] In other words, the effect of tax treaties should be disregarded in determining whether or not a domestic tax regime infringes a fundamental freedom. The Commission also argued that "compliance with Community law cannot be dependent on the content of a tax treaty concluded between two member states".[26] This line of reasoning was, however, not adopted by the ECJ. Specifically, in *Bouanich* the ECJ held that the France–Sweden tax treaty should

17. Id., Para. 55.
18. ECJ, 29 April 1999, Case C-311/97, *Royal Bank of Scotland plc v. Ellinko Dimosio (Greek State)* [1999] ECR I-2651, Para. 26.
19. ECJ, Advocate General Geelhoed's Opinion, 27 April 2006, Case C-170/05, *Denkavit International BV Denkavit France SARL v. Ministre de l'Économie, des Finances et de l'Industrie*, Para. 22.
20. Advocate General Geelhoed only refers to ECJ, Advocate General Geelhoed's Opinion, 23 February 2006, Case C-374/04, *Test Claimants in Class IV of the ACT Group Litigation (Pirelli, Essilor and Sony), Test Claimants in Class IV of the ACT Group Litigation (BMW) v. Commissioners of Inland Revenue*, Paras. 66-73 and 88, which lists the situations in which a home Member State must provide equal treatment to residents and non-residents.
21. ECJ, Advocate General Geelhoed's Opinion, 27 April 2006, Case C-170/05, *Denkavit International BV Denkavit France SARL v. Ministre de l'Économie, des Finances et de l'Industrie*, Para. 29.
22. Id., Paras. 26-27.
23. Id., Para. 27.
24. Id., Para. 28.
25. EFTA Court, 23 November 2004, Case E-1/04, *Fokus Bank ASA v. The Norwegian State*, Paras. 37-38.
26. ECJ, 19 January 2006, Case C-265/04, *Margaretha Bouanich v. Skatteverket*, Para. 46.

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be taken into account in determining whether or not a non-resident shareholder in fact is treated less favourably than a domestic shareholder with regard to the taxation of a share repurchase in the source Member State.[27]

General principle

Advocate General Geelhoed adheres to the ECJ's reasoning in *Bouanich* and acknowledges the need to take account of tax treaties. In this respect, the Advocate General relies on the fact that EC law, as it now stands, does not provide for allocation of taxing rights between the Member States.[28] Advocate General Geelhoed dealt with the need to take account of tax treaties under two ways, i.e. the allocation of taxing powers and the economic reality of cross-border transactions, under which the combination of Member States' tax systems, including tax treaties, must be analysed as a whole.

With regard to the allocation of tax jurisdiction, Advocate General Geelhoed held that

> it is open to a source State which imposes double economic taxation on dividends to ensure, by a DTC and following inter-state negotiations, that this will be relieved by the home State.[29]

Requirements

Advocate General Geelhoed pointed out two requirements under which a Member State may rely on a tax treaty to legitimize a discriminatory domestic law, i.e.:

(1) the treatment of non-residents under the tax treaty is the same as that for residents; and
(2) the Member State whose domestic law is discriminatory ensures that the application of the tax treaty does not lead to a discriminatory result.

In *Denkavit II*, the Netherlands participation regime prevented the offsetting the French withholding tax against Netherlands corporate income tax, which resulted in a non-creditable withholding tax of 5%. Consequently, the French-source dividends paid to the Netherlands parent remained subject to a "double level" of taxation in France (corporate income tax at the level of the subsidiary and withholding tax at the level of the Netherlands parent). In contrast, French-source dividends paid to a French parent are only subject to "one level" of taxation, with quasi-complete relief of economic double taxation. The Advocate General, therefore, concluded that, even applying the France–Netherlands tax treaty, the French system results in discrimination in breach of Art. 43 of the EC Treaty.[30]

The Advocate General rejected the justification advanced by the French government based on the disparity of the French and Netherlands tax systems. Specifically, he stated that *Denkavit II* relates to a clear discriminatory treatment in one Member State and not to a disparity between two tax systems.[31]

CONSEQUENCES OF ADVOCATE GENERAL GEELHOED'S ANALYSIS

The example of Germany

It is interesting to apply Advocate General Geelhoed's criteria to the withholding tax regimes of other Member States, for instance to Germany. Under German tax law, dividends and other profit distributions paid by resident companies are subject to withholding tax of 20%. The withholding tax applies to both resident and non-resident shareholders, so there is no discrimination at the withholding tax level. Resident parents benefit from a credit for the withholding tax against their final corporate income tax liability or from a refund in the event of an excess credit. Non-resident parents that are not liable to corporate income tax for their dividend income in Germany are, however, not entitled to a refund and perhaps, but not necessarily, to a credit against their tax liability in their home Member States. Dividends derived by resident parents are, in principle, also exempt in respect of 95% of the amount. As a result, for non-resident parents, there is no relief for German economic double taxation, unless the German dividend withholding is reduced to nil by a tax treaty concluded by Germany and the parent's residence Member States.[32]

Economic double taxation

The question is whether or not the German system is compatible with the EC Treaty, despite the fact that the dividend withholding tax regime does not distinguish between dividends paid to domestic and foreign parents. In Germany (as in the Netherlands), the distinction between resident and non-resident parents is due to the fact that the domestic parent benefits from a refund of the German withholding tax, whereas the foreign parent cannot claim such a refund in Germany.

If Advocate General Geelhoed's reasoning is followed, the answer depends on the German withholding tax in terms of economic double taxation. If, for instance, the parent is a Netherlands BV that benefits from the participation exemption (as in *Denkavit II*), the German dividend withholding tax gives rise to economic double taxation and should be in breach of the EC Treaty. If, however, the parent's Member State has a classical system without a participation exemption (or if the participation exemption does not apply), Germany is not at fault in causing economic double taxation where the German withholding tax is fully credited in the parent's home Member State. At first sight, this outcome may appear to deviate from Advocate

27. Id., Paras. 51 and 56.
28. ECJ, Advocate General Geelhoed's Opinion, 27 April 2006, Case C-170/05, *Denkavit International BV Denkavit France SARL v. Ministre de l'Économie, des Finances et de l'Industrie*, Para. 34. (See also ECJ, 5 July 2005, Case C-376/03, *D. v. Inspecteur van de Belastingdienst/Particulieren/Ondernemingen buitenland te Heerlen* [2005] ECR I-5821, Paras. 50-53.)
29. Id., Para. 35.
30. Id., Para. 49.
31. Id., Para. 51.
32. For example, in the tax treaties with Sweden (European Union) and with Norway (European Economic Area).

General Geelhoed's instruction to the source Member States to achieve, by means of a tax treaty, a relief for economic double taxation in the home Member State, which is equivalent to the relief in the source Member State.[33] The authors believe, however, that this does not mean that, if a source Member State does not levy economic double taxation in an internal situation, it is also responsible for avoiding economic double taxation on outbound dividends as such, but, rather, that the source Member State is responsible for removing *source Member State* double economic taxation, and that it does not matter whether this removal takes place in the source Member State itself or in the home Member State.

In the example, without the German withholding tax, economic double taxation would arise due to the home Member State's tax regime, and as such would constitute a disparity, or a quasi-restriction in Advocate General Geelhoed's line of reasoning, which falls outside the scope of the EC Treaty. In this case, in the authors' opinion, the German withholding tax that is fully creditable in the parent's residence Member State, despite its differential treatment, does not breach the freedom of establishment or the free movement of capital.[34] This is true, in the authors' view, irrespective of whether the German withholding tax is credited against the parent's corporate income tax liability in its residence Member State on the basis of its domestic tax legislation or a tax treaty. In other words, the authors believe that, if Advocate General Geelhoed's criteria are followed by the ECJ, these should be extended to include also the effect of the domestic tax legislation in the parent's home Member State.

A final question is whether or not Germany, if it provides a refund of domestic withholding tax on dividend income, should also provide a refund for foreign withholding tax on dividends derived from a foreign subsidiary. In the authors' opinion, no clear answer can be found to this question in Advocate General Geelhoed's four recent Opinions.

33. ECJ, Advocate General Geelhoed's Opinion, 27 April 2006, Case C-170/05, *Denkavit International BV Denkavit France SARL v. Ministre de l'Économie, des Finances et de l'Industrie*, Para. 44.

34. Clearly, in the authors' opinion, the source Member State cannot be prevented from levying a dividend withholding tax on outbound dividends if the home Member State taxes the inbound dividends in full. This would effectively result in the transfer of tax revenue from the source to the home Member State, which would deviate from the tax-sharing mechanism generally agreed on by the two Member States in a tax treaty. Such a position would also not be in line with the ECJ's view that, in negotiating a tax treaty, "the member states are at liberty to determine the connecting factors for the purposes of allocating powers of taxation" (ECJ, 5 July 2005, Case C-376/03, *D. v. Inspecteur van de Belastingdienst/Particulieren/Ondernemingen buitenland te Heerlen* [2005] ECR I-5821, Para. 52).

Switzerland

Swiss Supreme Court Decision on Treaty Abuse

Stefan Oesterhelt* and Maurus Winzap**

INTRODUCTION

Most Swiss tax treaties grant withholding tax reductions only to beneficial owners.[1] In addition, only a few Swiss tax treaties contain anti-abuse provisions.[2] By way of the (1962) Abuse Decree,[3] Switzerland adopted unilateral measures against the improper use of tax treaties. The (1962) Abuse Decree, however, only applies to payments made to a Swiss company (inbound). Notwithstanding the absence of applicable anti-abuse provisions in the Denmark–Switzerland tax treaty of 23 November 1973, the Swiss Supreme Court held for the first time in its decision of 28 November 2005[4] that, under international law, a reservation of abuse of rights is inherent in all tax treaties.

FACTUAL BACKGROUND TO THE DECISION

A Swiss company was 100% owned by a Danish holding company (DanCo). DanCo was owned by a Guernsey-domiciled company, which, itself, was owned by a Bermuda company. The sole shareholder and director of that company was a person resident in Bermuda. A refund of the 35% Swiss dividend withholding tax was, therefore, denied to DanCo.

RATIONALE FOR THE DECISION

The Supreme Court determined in its findings of fact that the reservation of the abuse of rights must be viewed as part of the principle of good faith based on Art. 26 and Art. 31(1) of the Vienna Convention on the Law of Treaties (hereinafter: the Vienna Convention). These provisions forbid the abuse of a legal principle to further interests that the legal principle is not intended to protect. As a result, under Para. 9.4 of the Commentary on Art. 1 of the OECD Model Convention (hereinafter: the OECD Model), this may be considered to be an internationally recognized principle, which provides that states are not required to grant the

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1. Exceptions are, inter alia, the tax treaties with Austria, Denmark, Ireland, Portugal, Spain and Sweden.
2. These include, in particular, the tax treaties with Belgium, France, Germany, Italy, the Netherlands, the United Kingdom and the United States. See the detailed comments in Lutz, *Abkommensmissbrauch* (Zurich: Schulthess, 2005), p. 103 et seq.
3. *Bundesratsbeschluss betreffend Massnahmen gegen die ungerechtfertigte Inanspruchnahme von Doppelbesteuerungsabkommen des Bundes*, 14 December 1962 (SR 672.202).
4. 2A.239/2005 of 28 November 2005.

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