COURT OF JUSTICE
OF THE EUROPEAN UNION

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Judgment of the Court in Case C-585/22 | Staatssecretaris van Financiën (Interest in respect of an intra-group loan)

Combatting tax fraud: national legislation which limits the deduction of interest paid in respect of an intra-group loan is compatible with EU law

X is a company incorporated under Netherlands law which belongs to a multinational group of companies. That group includes, inter alia, companies A and C, both established in Belgium. A is the sole shareholder of X and the majority shareholder of C. In 2000, X acquired the majority of the shares in a company incorporated under Netherlands laws, in which A acquired the remaining shares. X financed that acquisition by means of loans contracted with C, which used for that purpose own funds obtained through a capital contribution made by A. In the corporation tax assessment notice addressed to X for 2007, the Netherlands State Secretary for Finance refused to deduct the interest paid by that company to C.

X challenged that refusal before the Netherlands courts, the last of which being the Supreme Court of the Netherlands. The referring court notes that the legislation at issue establishes a presumption that interest paid in respect of intra-group loan debts constitutes or forms part of wholly artificial arrangements. Nevertheless, the Supreme Court asks whether that legislation is compatible, inter alia, with the freedom of establishment, since that legislation is capable of placing cross-border situations at a disadvantage.

In its judgment, the Court of Justice finds that the Netherlands legislation does in fact entail a difference in treatment which may have a deterrent effect on the exercise of the freedom of establishment.

However, **that legislation pursues the legitimate objective of combatting tax fraud and tax evasion**. It seeks to prevent a group's own funds from being presented, in a contrived manner, as being funds borrowed by a Netherlands entity of that group and the interest on that loan from being deducted from the taxable profit in the Netherlands. That objective also applies to cases where, as in the present case, an entity becomes an entity related to the same taxpayer only following the acquisition or increase of a shareholding.

The Court also states that the presumption of a wholly artificial arrangement may be rebutted by the taxpayer. In that context, the Court emphasises that the examination of compliance with arm's length conditions must relate, inter alia, to the economic reality of the transactions. Where the artificial nature of a given transaction results from an exceptionally high rate of interest on such a loan which, moreover, reflects economic reality, the principle of proportionality requires the deduction of the proportion of interest paid which exceeds the normal market rate. By contrast, where the loan is, in itself, devoid of economic justification and, but for the relationship between the companies and the tax advantage sought, would never have been contracted, it is consistent with the principle of proportionality to refuse the deduction of the whole interest.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

The full text and, as the case may be, an abstract of the judgment is published on the CURIA website on the day of delivery.

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Pictures of the delivery of the judgment are available from 'Europe by Satellite' ✆ (+32) 2 2964106.

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