

ECJ Direct Tax Compass 2014

Madalina Cotrut
Managing Editor

Table of Contents

Preface to the Sixth Edition	iii
Abbreviations	v
Table of Contents	vii
Keyword Index	1
1. Tax Case Law	
1.1. Companies	51
1.1.1. Directives	51
1.1.1.1. Parent-Subsidiary Directive	51
<i>Denkavit I</i> , C-283/94	51
<i>Epson Europe</i> , C-375/98	55
<i>Athinaiki Zythopiia</i> , C-294/99	57
<i>Oce Van der Grinten</i> , C-58/01	59
<i>Burda</i> , C-284/06	62
<i>Credit Mutuel</i> , C-27/07	65
<i>Les Vergers</i> , C-48/07	67
<i>Cobelfret</i> , C-138/07	69
<i>Gaz de France</i> , C-247/08	72
<i>Ferrero and GBE</i> , C-338/08	74
<i>Punch Graphix Prepress Belgium</i> , C-371/11	77
1.1.1.2. Merger Directive	79
<i>Leur-Bloem</i> , C-28/95	79
<i>Andersen og Jensen</i> , C-43/00	83
<i>Kofoed</i> , C-321/05	86
<i>A.T.</i> , C-285/07	88
<i>Zwijnenburg</i> , C-352/08	90
<i>Foggia</i> , C-126/10	92
<i>Pelati</i> , C-603/10	95
<i>3D I Sri</i> , C-207/11	97
1.1.2. Discrimination against permanent establishments of non-residents	99
<i>Avoir Fiscal</i> , 270/83	99
<i>Royal Bank of Scotland</i> , C-311/97	101
<i>CLT-UFA</i> , C-253/03	103
1.1.3. Losses	106
1.1.3.1. Permanent establishment losses	106
<i>Futura</i> , C-250/95	106
<i>AMID</i> , C-141/99	109
<i>Deutsche Shell</i> , C-293/06	112

	<i>Lidl Belgium</i> , C-414/06	115
	<i>Krankenheim</i> , C-157/07	119
	<i>Philips Electronics</i> , C-18/11	121
1.1.3.2.	Subsidiary losses	123
	<i>ICI</i> , C-264/96	123
	<i>Marks & Spencer</i> , C-446/03	127
	<i>Rewe Zentralfinanz</i> , C-347/04	130
	<i>OyAA</i> , C-231/05	133
	<i>STEKO</i> , C-377/07	136
	<i>Papillon</i> , C-418/07	139
1.1.4.	Dividends	142
1.1.4.1.	Outbound dividends	142
	<i>Metallgesellschaft</i> , C-397/98	142
	<i>ACT Group Litigation</i> , C-374/04	147
	<i>Fokus Bank</i> , E-1/04	150
	<i>Denkavit II</i> , C-170/05	153
	<i>Amurta</i> , C-379/05	156
	<i>Aberdeen</i> , C-303/07	159
	<i>Commission v. Netherlands</i> , C-521/07	162
	<i>Commission v. /fa/y</i> , C-540/07	164
	<i>Commission v. Spain</i> , C-487/08	167
	<i>Commission v. Germany</i> , C-284/09	169
	<i>Amorim Energia</i> , C-38/11	172
	<i>Tate & Lyle Investments</i> , C-384/11	174
1.1.4.2.	Inbound dividends	177
	<i>FII Group Litigation</i> , C-446/04	177
	<i>Orange European Smallcap Fund</i> , C-194/06	182
	<i>Haribo and Salinen</i> , C-436/08	189
	<i>Accor</i> , C-310/09	195
	<i>FII Group Litigation II</i> , C-35/11	199
1.1.5.	Interest	202
	<i>Truck Center</i> , C-282/07 *	202
	<i>Scheuten</i> , C-397/09	204
	<i>Banco Bilbao Vizcaya Argentaria</i> , C-157/10	205
1.1.6.	Deduction of financing and other costs	208
	<i>Bosal</i> , C-168/01	208
	<i>Keller</i> , C-471/04	211
	<i>S/^7</i> : C-318/10	214
	<i>Argenta Spaarbank</i> , C-350/11	218
1.1.7.	Anti-abuse rules	221
	<i>Lankhorst-Hohorst</i> , C-324/00	221
	<i>Halifax</i> , C-255/02	224
	<i>Cadbury Schweppes</i> , C-196/04	228
	<i>Thin Cap</i> , C-524/04	231
	<i>Columbus Container</i> , C-298/05	236
	<i>ELISA</i> , C-451/05	239
	<i>Part Service</i> , C-425/06	242
	<i>Lammers & Van Cleeff</i> , C-105/07	246
	<i>Glaxo Wellcome</i> , C-182/08	248

	<i>SGI</i> , C-311/08	251
1.1.8.	Reorganizations	255
	<i>XAB & YAB</i> , C-200/98	255
	<i>A Oy</i> , C-48/11	257
	<i>A Oy</i> , C-123/11	260
	<i>DMC</i> , C-164/12	263
1.1.9.	R&D incentives and investment credits	267
	<i>Fournier</i> , C-39/04	267
	<i>Commission v. Spain</i> , C-248/06	269
	<i>Jobra</i> , C-330/07	272
	<i>Commission v. Austria</i> , C-10/10	274
	<i>Tankreederei</i> , C-287/10	276
	<i>Waypoint Aviation</i> , C-9/11	278
1.1.10.	Non-profit organizations	281
	<i>Stauffer</i> , C-386/04	281
1.1.11.	Wealth tax on shareholdings	284
	<i>Bauer</i> , C-360/06	284
1.1.12.	Transactions with non-residents	286
	<i>Halliburton</i> , C-1/93	286
	<i>Eurowings</i> , C-294/97	288
1.1.13.	Taxation of investment vehicles and insurance companies	291
	<i>Commission v. Portugal</i> , C-493/09	291
	<i>Commission v. Finland</i> , C-342/10	293
	<i>Commission v. Germany</i> , C-600/10	296
	<i>RVS Levensverzekeringen, 'C-24H11</i>	297
	<i>Santander Asset Management SGIIC and Others</i> , C-338/11	298
	<i>Commission v. Belgium</i> , C-370/11	301
	<i>Commission v. Belgium</i> , C-387/11	302
	<i>Wheels Common Investment Fund</i> , C-424/11	305
1.1.14.	Tax treaties	307
	<i>Saint-Gobain</i> , C-307/97	307
1.1.15.	Transfer of residence and exit taxes	310
	<i>Commission v. Portugal</i> , C-38/10	310
	<i>National Grid Indus</i> , C-371/10 '	312
	<i>Commission v. Spain</i> , C-64/U	318
	<i>Commission v. Denmark</i> , C-261/11	320
	<i>Commission v. Netherlands</i> , C-301/11	322
	<i>DI VI Finanziaria SAPA di Diego delta Valle</i> , C-380/11	323
1.1.16.	Taxation of cross-border service providers	326
	<i>Centra Equestre</i> , C-345/04	326
	<i>Commission v. Belgium</i> , C-433/04	328
	<i>X</i> , C-498/10	331
	<i>Commission v. Belgium</i> , C-296/12	333
1.2.	Individuals	335
1.2.1.	Taxation of investors	335
1.2.1.1.	Dividends	335
	<i>Verkooijen</i> , C-35/98	335

Table of Contents

	<i>Lenz</i> , C-315/02	338
	<i>Marminen</i> , C-319/02	341
	<i>Meilicke I</i> , C-292/04	345
	<i>Kerckhaert-Morres</i> , C-513/04	347
	<i>Commission v. Greece</i> , C-406/07	349
	<i>Damseaux</i> , C-128/08	351
	<i>Dijkman</i> , C-233/09	353
	<i>Meilicke II</i> , C-262/09	355
	<i>Beker</i> , C-168/11	357
	<i>Levy and Sebbag</i> , C-540/11	359
1.2.1.2.	Interest	361
	<i>Commission v. France</i> , C-334/02	361
	<i>Commission v. Portugal</i> , C-20/09	363
	<i>Commission v. Belgium</i> , C-383/10	365
1.2.1.3.	Capital gains	367
	<i>X and Y</i> , C-436/00	367
	<i>Commission v. Spain</i> , C-219/03	370
	<i>De Baeck</i> , C-268/03	372
	<i>Bouanich</i> , C-265/04	374
	<i>Gronfeldt</i> , C-436/06	376
1.2.1.4.	Wealth-tax on shareholdings	379
	<i>Baars</i> , C-251/98	379
1.2.1.5.	Acquisition of shareholdings	382
	<i>Weidert and Paulus</i> , C-242/03	382
1.2.2.	Taxation of cross-border workers and entrepreneurs	385
1.2.2.1.	Deductions, allowances with respect to personal and family circumstances	385
	<i>Schumacker</i> , C-279/93	385
	<i>Gschwind</i> , C-391/97	389
	<i>Zurstrassen</i> , C-87/99	391
	<i>De Groot</i> , C-385/00	393
	<i>Wallentin</i> , C-169/03	396
	<i>Schempp</i> , C-403/03	398
	<i>Blanckaert</i> , C-512/03	400
	<i>Meindl</i> , C-329/05	403
	<i>Commission v. Germany</i> , C-269/07	405
	<i>Ruffler</i> , C-544/07	408
	<i>Filipiak</i> , C-314/08	410
	<i>Schroder</i> , C-450/09	412
	<i>Schulz-Delzers and Schulz</i> , C-240/10	414
	<i>Ettwein</i> , C-425/11	416
	<i>Imfeld and Garcet</i> , C-303/12	418
1.2.2.2.	Deductions with respect to foreign expenses	420
	<i>Gootjes-Schwartz</i> , C-76/05	420
	<i>Commission v. Germany (School Fee)</i> , C-318/05	423
	<i>Zanotti</i> , C-56/09	425
1.2.2.3.	Deductions with respect to economic activity	427
	<i>Conijn</i> , C-346/04	427

	<i>Gielen</i> , C-440/08	429
1.2.2.4.	Deductions with respect to pension and life insurance contributions	431
	<i>Bachmann</i> , C-204/90	431
	<i>Wielockx</i> , C-80/94	435
	<i>Safir</i> , C-118/96	437
	<i>Danner</i> , C-136/00	439
	<i>Skandia</i> , C-422/01	443
	<i>Commission v. Denmark</i> , C-150/04	446
	<i>Commission v. Belgium</i> , C-522/04	449
1.2.2.5.	Pension income	453
	<i>Turpeinen</i> , C-520/04	453
	<i>Commission v. Estonia</i> , C-39/10	455
1.2.2.6.	Minimum tax base	457
	<i>Talotla</i> , C-383/05	457
1.2.2.7.	Tax rate	460
	<i>Asscher</i> , C-107/94	460
1.2.2.8.	Notional tax	463
	<i>Erny</i> , C-172/11	463
1.2.2.9.	Exemption	466
	<i>Petersen and Petersen</i> , C-544/11	466
1.2.3.	Taxation of cross-border service providers	469
	<i>Gerritse</i> , C-234/01	469
	<i>Scorpio</i> , C-290/04	472
	<i>Jundt</i> , C-281/06	476
1.2.4.	Immovable property	480
1.2.4.1.	Capital gains	480
	<i>Commission v. Portugal</i> , C-345/05	480
	<i>Commission v. Sweden</i> , C-104/06	482
	<i>Hollmann</i> , C-443/06	485
	<i>Commission v. Spain</i> , C-562/07	487
1.2.4.2.	Losses	489
	<i>Ritter-Coulais</i> , C-152/03	489
	<i>Lakebrink</i> , C-182/06	491
	<i>Renneberg</i> , C-527/06	494
	<i>Busley and Cibrian</i> , C-35/08	496
	<i>K</i> , C-322/11	499
1.2.4.3.	Acquisition of immovable property	501
	<i>Commission v. Belgium</i> , C-250/08	501
	<i>Commission v. Greece</i> , C-155/09	504
	<i>Commission v. Hungary</i> , C-253/09	506
1.2.5.	Lotteries	510
	<i>Lindman</i> , C-42/02	510
	<i>Commission v. Spain</i> , C-153/08	511
1.2.6.	Gifts and donations	514
	<i>Persche</i> , C-318/07	514
1.2.7.	Anti-abuse rules	517
	<i>Xand Passenheim</i> , C-155/08	517

	<i>Commission v. Portugal</i> , C-267/09	520
1.2.8.	Transfer of residence and exit taxes	323
	<i>Biehl</i> , C-175/88	523
	<i>Commission v. Luxembourg (Biehl II)</i> , C-151/94	525
	<i>Lasteyrie du Saillant</i> , C-9/02	527
	<i>N.</i> C-470/04	530
	<i>Commission v. Spain</i> , C-269/09	534
1.2.9.	Tax treaties	537
	<i>Gilly</i> , C-336/96	537
	<i>D</i> , C-376/03	541
1.3.	Third-Country Cases	545
	<i>Lasertec</i> , C-492/04	545
	<i>A.</i> C-101/05	547
	<i>A and B</i> , C-102/05	550
	<i>Holbock</i> , C-157/05	552
	<i>CFC and Dividend Group Litigation</i> , C-201/05	555
	<i>Stahlwerk Ergste</i> , C-415/06	562
	<i>KBC</i> , C-439/07	564
	<i>Hengartner and Gasser</i> , C-70/09	568
	<i>Rimbaud</i> , C-72/09	569
	<i>Prunus</i> , C-384/09	572
	<i>Welte</i> , C-181/12	574
	<i>Itelcar</i> , C-282/12	577
1.4.	Inheritance and Gift Taxes	579
	<i>Barbier</i> , C-364/01	579
	<i>VanHilten</i> , C-513/03	581
	<i>Geurts and Vogten</i> , C-464/05	583
	<i>Jager</i> , C-256/06	585
	<i>Eckelkamp</i> , C-11/07	588
	<i>Arens-Sikken</i> , C-43/07	590
	<i>B/ocfc</i> C-67/08	593
	<i>Maimier</i> , C-510/08	595
	<i>Missionswerk</i> , C-25/10	597
	<i>Halley and others</i> , C-132/10	599
	<i>Scheunemann</i> , C-31/11	602
1.5.	Administrative Requirements and Procedures	605
	<i>Commission v. Austria</i> , C-387/10	605
	<i>3 M Italia SpA</i> , C-417/10	606
	<i>Belvedere Costruzioni</i> , C-500/10	609
	<i>Sqfilo</i> , C-529/10	610
	<i>Irimie</i> , C-565/11	612
	<i>Sabou</i> , C-276/12	613
	<i>F// Group Litigation III</i> , C-362/12	615

1.6.	State Aid	617
	<i>Portugal v. Commission</i> , C-88/03	617
	<i>UGT-Rioja</i> , C-428/06	621
	<i>Paint Graphos</i> , C-78/08	625
	<i>Regione Sardegna</i> , C-169/08	628
	<i>Commission and Spain v. Gibraltar and United Kingdom</i> , C-106/09 P	631
	<i>Commission v. Greece</i> , C-354/10	634
	<i>POy</i> , C-6/12	636
	<i>Magdeburger Muhlenwerke</i> , C-129/12	638
2i	Non-Tax Case Law	
2.1.	General Principles of EU Law	643
	<i>Van Gend & Loos</i> , 26/62	643
	<i>Costa v. ENEL</i> , 6/64	644
	<i>Dassonville</i> , 8/74	646
	<i>Cassis de Dijon</i> , 120/78	647
	<i>Marleasing</i> , C-106/89	647
	<i>Francovich</i> , C-6/90	648
	<i>Keck and Mithouard</i> , C-267/91	650
	<i>Brasserie du Pecheur</i> , C-46/93	651
	<i>Bosman</i> , C-415/93	653
	<i>Gebhard</i> , C-55/94	658
	<i>Kobler</i> , C-224/01	659
	<i>Traghetti del Mediterraneo</i> , C-173/03	660
2.2.	Company Law	663
	<i>Daily Mail</i> , 81/87	663
	<i>Centros</i> , C-212/97	665
	<i>Oberseering</i> , C-208/00	669
	<i>Inspire Art</i> , C-167/01	673
	<i>SEVIC</i> , C-411/03	679
	<i>Cartesio</i> , C-210/06	681
	<i>VALE</i> , C-378/10	684
2.3.	Relationship of the Fundamental Freedoms	687
	<i>Open Skies</i> , C-466/98	687
	<i>KPN Golden Shares</i> , C-282/04	690
	<i>Fidium Finanz</i> , C-452/04	692
	<i>Volkswagen</i> , C-112/05	695
	<i>Commission v. Germany</i> , C-95/12	698
3.	Legislation	
3.1.	TFEU Relevant Articles	703

3.2.	EC Treaty Selected Articles	759
3.3.	EC Treaty/TFEU Table of Equivalences (Selected Provisions)	769
3.4.	Directives	771
	<i>Parent-Subsidiary Directive</i> (2011/96/EU)	771
	<i>Merger Directive</i> (2009/133/EC)	781
	<i>Interest and Royalties Directive</i> (2003/49/EC)	798
	<i>Mutual Assistance Directive</i> [for the Exchange of Information] (2011/16/EU)	808
	<i>Mutual Assistance Directive</i> [for the Recovery of Claims] (2010/24/EU)	829
4.	Classification Tables	<
	<i>Alphabetical List of Cases</i>	851
	<i>Chronological List of Cases</i>	859
	<i>Table of Legal Bases</i>	867
	<i>Table of Justification Grounds</i>	877