



Supreme Court rules on treatment Prêt Participatif and Titre Subordonnée à Duree Indeterminée

On 25 November 2005 the Supreme Court decided in two cases concerning hybrid financial instruments. The first case concerned the question whether income from a so-called Prêt Participatif could qualify for the participation exemption. The High Court of Den Bosch determined that such was not the case and the taxpayer appealed against the decision. The second, involving the same taxpayer in a following year, concerned the question whether income from a so-called Titre Subordonnée à Duree Indeterminée (TSDI) could qualify for the participation exemption. The same High Court determined that such was the case and the tax authorities appealed against the decision. See our newsletters of [February 2005](#) and [May 2004](#) for further details.

The taxpayer won both cases before the Supreme Court which motivated its decision to reverse the High Court's decision on the Prêt Participatif and confirmed its decision on the TSDI without further motivation. In deciding on the Prêt Participatif, the Supreme Court argued that the fact that the Prêt Participatif had a 1% fixed interest rate did not prevent it from being qualified as profit dependent, since the market rates at the time were 8% and higher. It furthermore determined that the fact that the Prêt Participatif had a term of 95 years did not prevent it from being treated since that is so long – longer than 50 years – that this fact does not carry any independent meaning. In saying this, the Court seems to have said that any loan longer than 50 years can be treated as being without a fixed redemption date. Both the [High Court](#) and the [Supreme Court](#) considerations are available to subscribers to our website.

High Court rules on the netting of forwards and futures

On 23 November 2005, the High Court of Amsterdam ruled in the following interesting case. XBV, belonging to XCorp in the US, deals in agricultural products including the processing of soya and cacao. XBV (and its consolidated subsidiaries) purchases raw beans through over the counter forward purchases and sells the processed products by over the counter forward sales. The forward sales ran for periods varying between 8 to 24 months; the forward purchases were only acquired at the start of the harvest season, since it was only then possible to determine the quality of the harvest. XBV covered the difference between its forward sales and forward purchases through the purchase of futures listed on the London exchange. The futures were subsequently replaced by forward purchase around the time of the harvest season. XBV strived towards a so-called flat priced position under which the forwards sales and the forward purchases and futures came as close as possible to a perfect match in time and quantity, thus resulting in neither substantial losses or gains being made on these derivatives.

One of the issues in the case was the question on how to treat unrealized gains and losses on the forwards and futures for tax purposes. The taxpayer argued that unless positions were perfectly matched in time and quantity, unrealized losses could be taken whilst profits could be postponed until realization. Referring to the Supreme Court's decision of 23 January 2004 (see our [February 2004](#) newsletter), the Court rejected this position as being contrary to the accounting principles of reality and matching. According to the Court the accounting principle of prudence only required that a net unrealized profit be postponed and that a net unrealized loss may be taken. These net positions have to be calculated per product group.

The Court subsequently addressed XBV's concerns regarding so-called differential and spread risks. The differential risk is risk that price difference between the high quality beans required under the forward purchase agreements and the standard quality beans traded under futures may be larger than anticipated. The spread risk is a timing risk because the actual date of purchase under a future may deviate from the fixed dates upon which the future expires (considering the fact that XBV is said to rarely let futures expire, but always exchanged them for forwards, this argument surprises us). The Court rejected both these concerns as being concerns about the future which can not be quantified on the year end tax balance sheet of XBV. This is a good decision in a complicated procedure.

0% dividend tax to Netherlands Antilles announced

On 1 December 2005 the Dutch and the Netherlands Antilles governments reached an agreement on introducing a 0% dividend withholding tax on profit distributions between the two countries. However, taxpayers should not rejoice too soon, since the 0% seem to be surrounded by various conditions which may not all be acceptable to everyone. According to a press announcement from the Dutch Ministry of Finance, the essence of the Agreement is that Dutch companies can transfer dividends at 0% dividend tax to the Netherlands Antilles and vice versa. Normally the Netherlands withholds 8.3% tax on dividends to the Antilles. The condition for 0% is that the dividend is invested in the soon to be incorporated Revivment bank ("Herstelbank"). This bank will be monitored by the NA Central Bank.

The taxpayer won both cases on applying the participation exemption to income from these instruments.

One of the issues was the question how to treat unrealised gains and losses on the forwards and futures

The full dividend must subsequently be deposited with the Revivment Bank for 24 months. 75% of the dividend must be deposited with the Revivment bank for the next 24 months. After 48 months, the money can be transferred to the shareholders without any taxation. Anyone who does not want to invest in the Revivment bank, but wishes to make use of the 0% dividend tax, will have to comply to very strict conditions, although nothing is said about what these conditions would be. However, the announcement does start out by saying that pure tax driven structures will be prevented.

Ministry reissues decree on interest deduction limitations

As part of an effort to clear up the large number of decrees dealing with the same topic and decrees which have (partially) lost their relevance, the Ministry issued a decree on 23 December 2005 which deals with the interest limitation rules of [article 10a](#) (outstanding dividend distributions, capital contributions, share redemptions, transfers of subsidiaries within a group, and other so-called base erosion transactions) and [article 15ad](#) (leveraged takeovers and capital contributions) of the Corporate Income Tax Act; a leveraged takeover is a transaction where a local holding finances the acquisition of a Dutch target with debt and subsequently forms a consolidated group with the target in order to offset the profits of the target against these financing costs.

The decree deals with the following:

- ❖ interest liabilities stemming from asset transactions among related parties are deductible if tax has actually been paid in the Netherlands on the hidden reserves realized. If not, it is investigated whether the interest deduction should be limited under the abuse of law (fraus legis) doctrine;
- ❖ the conversion of a non-deductible art. 10a debt or replacing the creditor does not change the deductibility;
- ❖ the counterproof required to make interest deductible is a double motive test: both the loan and the related legal action must be largely based on business motives. However, under certain listed circumstances it is assumed that the business motive tests are met;
- ❖ if the interest payments made on an article 10a loan can be shown to be taxed in part, then, under certain conditions, the debtor may deduct the interest payments to the extent that is subject to tax;
- ❖ in case of leveraged takeovers and capital contributions, the law allows the interest to be deducted currently to the extent that that the related creditor acquired a loan from an unrelated entity in connection with the acquisition of the shares. According to the decree, if the loan extended does not run parallel to the external financing, this can be an indication for the absence of a link between acquiring the internal loan and the external financing for the takeover. The taxpayer would have to show the opposite to be likely;
- ❖ according to the Ministry, the external financing condition is not satisfied if a takeover is ultimately financed by an external loan if the loan is contributed as capital into a tax haven company, a company with losses to be compensated, or a tax exempt company and this company subsequently extends a loan to the takeover holding;
- ❖ in case of external financing made possible by a group guarantee, the interest could be deductible if the loan made by the taxpayer can be treated as a real third party loan for the group of related persons as a whole.

A [translation](#) of the decree is available to subscribers to our website.

Ministry reissues decree on Trusts & NA private foundations

As part of an effort to clear up the large number of decrees dealing with the same topic and decrees which have (partially) lost their relevance, the Ministry issued a decree on 15 December 2005 which deals with the Dutch tax treatment of Trusts and Netherlands Antilles Private Foundations.

An Antilles private foundation is a special foundation used for private use and not public benefit. Unlike the Dutch foundation, this foundation allows the possibility of creating an equity for the benefit of the ultimate beneficiary and to make distributions to him or his family. There are no prohibited distributions. The Antilles private foundation has few formal requirements and e.g. does not need annual accounts or to publish an end of year balance sheet.

Referring to decisions of the Dutch Supreme Court on irrevocable discretionary trusts of 18 November 1998, the decree concludes that the creation and existence of floating equity, i.e. equity that can not be allocated to one specific person, does not belong under Dutch tax law. It seems that unless the a trust is a truly irrevocable discretionary trust, meaning that the grantor truly has no power over it anymore and the beneficiaries have no objective legitimate expectancy of any benefits from the trust, the trust will generally be treated as being tax transparent.

The State Secretary is prepared to issue (advance) certainty about the tax consequences of a Trust, Antilles Private Foundation or other similar vehicle. This is subject to the condition that all documentation (including side letters and letters of wishes) are provided to the tax authorities and provided that a consistent tax result is reached with regard to the entity in its totality, including the persons involved in it. This means that agreements can only be made in which the consequences for the - current and future - levy of gift tax, personal income tax, corporate income tax, dividend tax, inheritance tax and the collection of these taxes has been determined. The real estate transfer tax is not included.

It is understood from the decree that in most cases (i.e. not involving irrevocable discretionary trusts) the agreement with the tax authorities will include a so-called transparency agreement under which the entity is deemed not to exist for the application of Dutch regulations with regard to the levying and collection of taxes, including tax treaties.

Finally, the State Secretary notes that – in his view – the participation by a Dutch taxpayer in not only trusts and Antilles Private Foundations, but also a Liechtenstein Anstalt, Stiftung, or Treuhand must be reported in personal income tax returns. A [translation](#) of the decree is available to subscribers to our website.

As part of an effort to clear up large number of decrees dealing with the same topic and outdated decrees, the Ministry published various combined updated decrees

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Ministry reissues decree on limitations on loss compensation

As part of an effort to clear up the large number of decrees dealing with the same topic and decrees which have (partially) lost their relevance, the Ministry issued a decree on 20 December 2005 which deals with the limitation of loss compensation through loss carry forwards and loss carry backs.

Under Dutch law, the right to loss compensation may be lost if there is an important (more than 30%) change in the ultimate shareholders of a company and that company has reduced its business activities significantly when compared to the oldest year from which losses are carried forward. The decree, which tends to get very technical in places and which also represents a number of view points which may not hold up in court, deals with the following issues.

- ❖ the conversion of ordinary shares to cumulative preference shares among existing shareholders could lead to an important shareholder change;
- ❖ the measure also applies to co-operatives;
- ❖ except under very limited circumstances, the repurchase of shares by an original shareholder can not lead to the revival of compensable losses (where those losses were lost through an important change in shareholders caused by the original sale by that shareholder);
- ❖ the loss limitation rules are not triggered by the transfer of a subsidiary within a group as long as the ultimate group interest is not changed;
- ❖ the loss limitation rules can also apply to losses which are substantially present in assets at the beginning of the year in which an important shareholder change takes place, but which is only realised after the change. On the other hand, the presence of positive hidden reserves may also be taken into account;
- ❖ According to the law the change of interest does not trigger a loss of compensable losses to the extent it concerns the extension of the ultimate interest by a shareholder which already has at least 1/3 of the ultimate interest in the taxpayer. However the literal text of the law provides problems in certain instances, where the exemption should apply. The decree provides relief for such instances;
- ❖ with regard to the business activities test, the decree determines that in case of a consolidated group, the test should be applied to the activities of the consolidated group as a whole and not to the individual members;
- ❖ the law requires that the assets have not largely consisted of investments for a period of more than 3 months during the year in which the losses were suffered. The law defines the leasing of real estate to unrelated parties as an investment. According to the decree the leasing of real estate to related parties can also be an investment;
- ❖ in determining whether the assets of the taxpayer largely consists of investments, the fair market value of assets and not their book value is to be used;
- ❖ liquid assets tied up in the business enterprise of a taxpayer, do not qualify as investments;
- ❖ the law provides the possibility to compensate losses with profits which can be allocated to activities which are continued after an important shareholder change (so-called profit splitting). If a choice is made for profit splitting only profits made from the continued activities made in years in which the assets did not largely consist of investments for more than 3 months can be compensated;
- ❖ the law also provides for a possibility to compensate losses through a revaluation of assets and release reinvestment provisions before the tax losses are lost. The decree allows for various measures regarding these facilities.

A [translation](#) of the decree is available to subscribers to our website.

2007 Taxplan discussed in parliament

On 19 December 2005 the Dutch Second Chamber debated with the State Secretary of Finance about the new corporate income tax regime to be introduced in 2007. A couple of interesting points arising from this discussion are:

- ❖ the State Secretary is more in favour of lowering the general corporate income tax rate than allowing depreciation on slow depreciating assets, such as real estate, since a lower rate is more of an incentive to produce profits than a high rate combined with high deductions, which only favours the import of deductions. This is a logic with which we fully agree;
- ❖ in view of the ECJ decision in [Marks & Spencer](#), the plans for introducing cross border loss compensation in 2007 will be withdrawn (as the government noted, the ECJ seems to be on the retreat). Together with this plans to withdraw the possibility of deducting losses from the liquidation of a participation will be reconsidered in order to keep them in line with Marks & Spencer;
- ❖ the State Secretary is still in favour of limiting the carry forward of losses to eight years and the carry back to no more than one year, however, members of parliament have urged the State Secretary to reconsider this position;
- ❖ besides the group finance income box which will probably be taxed at 10% (5% too high as far as we are concerned), a box for taxing income from innovation at a similar low rate is considered, as requested by the Second Chamber. It can be expected that such an income box would resemble similar regimes in France and Hungary since, according to the State Secretary, these regimes have not been considered as harmful tax competition or illegal state aid. The regime currently considered by the State Secretary is one where R&D costs could be deducted against normal tax rates and, if this leads to a successful product, that product can then be transferred (taxable) to the innovation box at fair market value after which the income will be taxed at a lower rate. The taxpayer would be able to determine the time of conversion to the innovation box himself;
- ❖ a possible tax rate of 20% for the first Euro 41.000 was discussed and seems like real possibility for the future;

the repurchase of shares by an original shareholder can generally not lead to the revival of compensable losses

liquid assets tied up in the business enterprise of a taxpayer, do not qualify as investments

in view of the ECJ decision in Marks & Spencer, the plans for introducing cross border loss compensation in 2007 will be withdrawn

P +31-20-717 3338
M +31-6-1135 4615
JohannMuller@Dutchtax.net

- ❖ as a note aside the State Secretary noted that in view of the fact that the old (pre-March 2001) ruling regime and rulings expired on 31 December 2005, taxpayer (who remained in the Netherlands) will be able to get certainty about their tax position under the new ruling regime with retro-active effect as of 1 January 2006. Solutions will be found on a per case basis and a practical of doing so is still being studied;
- ❖ finally, the State Secretary strongly advised against any parliamentary investigative commission to determine which corporate income tax measures are (possibly) not EU compliant. According to the State Secretary the findings of such a commission will only expose all the Dutch weaknesses and hurt the Netherlands in future litigation. In view of the recent decisions of the ECJ in the D-Case and Marks & Spencer (and the obvious political character of these decisions), we believe that an answer that such an investigation would not be practical since no-one knows where the ECJ is currently going, might have been better. The answer given instead looks like a combination of “if we can not see it, it is not there” and “if we do not look for it, then no-one can blame us for not having found it” approach – which seems even less defensible in court. This is quite contrary to the general approach of this State Secretary so far.

A possible tax rate of 20% for the first Euro 41.000 (and 25% for the rest) was mentioned

Various bills accepted by Dutch First and Second Chambers

On 13 December 2005 the First Chamber accepted the 2006 Tax Plan and the 2006 Corporate Tax Package. These bills have been discussed in our [November 2005](#) and [October 2005](#) newsletters. On 29 November 2005 the First Chamber also accepted the bill on converting debt to equity in case of the debtor being a Dutch taxpayer and on converting receivables to equity in case of the creditor being a Dutch taxpayer. This bill, which was already introduced in December 2003 has been discussed last in our [November 2005](#) newsletter under “Other points of interest”.

The Dutch Second Chamber accepted the bill on amendments to rules of changing loss making branches into subsidiaries through the interposing of another subsidiary. This bill was discussed in our [June 2005](#) newsletter.

New mutual investment fund vehicle announced

On 20 December 2005 a new mutual investment fund vehicle was announced of which the legislation still has to be drafted. According to the announcement the new vehicle will not be subject to Dutch corporate income tax and its profit distributions will not be subject to Dutch dividend tax. No conditions will be set with regard to the participants in the vehicle, the financing of the vehicle or the profit distributions. On the downside, this entity would (naturally) not be entitled to any benefits of the Dutch treaty network and foreign source taxes paid by it will not be refunded by the Netherlands.

It is hoped that the Netherlands can become an attractive alternative to Luxembourg and Ireland

It is hoped that the Netherlands can become an attractive resort for mutual investment funds through the new vehicle and that it can thereby compete with Ireland and Luxembourg for the mutual investment fund business. It should be noted that the abolishment of the capital duty as of 1 January 2006 forms part of this drive. See our [April 2005](#) newsletter for further details.

The current Dutch taxable mutual investment fund will remain as an alternative. The latter vehicle is subject to corporate income tax (albeit at a rate of 0%), its profit distributions are subject to Dutch dividend tax, there are several shareholder, financing and profit distribution requirements and participants can get foreign source taxes levied from the vehicle refunded by the Dutch government (otherwise they would not invest via mutual funds, but invest in foreign securities directly instead).

As is the case with the decree on interest deduction limitations, the Ministry also combined and reissued various decrees on the existing mutual investment fund regime on 7 December 2005.

Other points of interest

- ❖ In a highly factual case, the Supreme Court determined on 16 December 2005 that it is unlikely that a “standard” financing ruling, under which financing spreads of 1/16% were accepted, included income and losses from loans to third parties on which the taxpayer ran debtors risk (the debtor in question was in a state of suspension of payments). Therefore the write down on a third party loan might be deductible. The Supreme Court referred the question to the High Court of Den Bosch for further investigation.
- ❖ On 14 October 2005 and without further motivation, the Supreme Court rejected the State Secretary’s appeal against the decision that a Belgian BCC was not resident in the Netherlands. See our [November 2004](#) newsletter for further details on the case.
- ❖ On 25 November 2005 the Supreme Court rejected the taxpayer’s appeal against the decision that the Dutch branch of a Belgian bank can not be deemed to be financed with (deductible) debt only. See our [October 2004](#) newsletter for further details on the case.
- ❖ On 21 December 2005 the State Secretary announced that the exemption from real estate transfer tax (6%) for the contribution of a whole business will be extended to also apply to: a) the contribution of all assets and liabilities, except assets which fulfil no function in the business and b) the contribution of the beneficial, but not the legal, ownership of real estate. The approval has retro-active effect to 26 September 2005 and will also be effected in an amendment to the Legal Transactions Act Decree.
- ❖ In answering parliamentary questions on 19 December 2005, the State Secretary of Finance confirmed that as of the compulsory filing of electronic income tax returns (2005), participations in transparent entities must be

- ❖ reported on an item by item basis in the tax balance sheet and profit and loss account. It is no longer possible to consolidate such participations under one or two entries only
- ❖ On 23 December 2005 the Ministry reissued a decree on market interest rates. The decree gives an overview of market interest rates on a month by month basis as of January 1994. According to the decree taxpayers may use this information when determining the year end current value of long term interest free loans. The decree will be updated on annual basis.

EU related tax developments

Advocate General advises on question of abuse in merger

On 6 November 2005 Advocate General Wattel published his opinion in the following case. In 1999 ABV formed a consolidated group with its parent, BBV. ABV was the subsidiary of C, a Swedish listed company. In 1999 EAG, a Germany company, made a bid to acquire C. Due to a potential market monopoly thus created, the EU competition authorities required EAG to dispose of some of its business in order to get the planned acquisition approved. EAG agreed to dispose of a substantial part of ABV's business. In September 2000 it was agreed that the unrelated FBV would acquire that business from ABV. The deal was structured such that on 29 December 2000 ABV spun off the business into DBV in a legal merger against the issue of its shares to BBV. BBV sold the acquired DBV shares to FBV around August 2001.

The question was whether the spin off was exempt from taxation. According to Dutch law, this is not the case if the spin off is primarily aimed at the avoidance or deferral of taxation; there is a presumption that this is the case if the shares acquired through the spin off are disposed of within three years. ABV requested the tax inspector to confirm that the spin off would be tax exempt. However the tax inspector refused in view of the fact that the disposal of the shares acquired through the spin off was already determined before the spin off took place. An appeal was filed against the inspector's decision and the High Court of the Hague decided for the taxpayer on 1 March 2005. The State Secretary of Finance appealed against this decision, repeating the argument that an exempt spin off is not possible if the disposal of the shares acquired through the spin off is arranged even before the spin off took place. According to the tax authorities, the fact that this was done to comply with EU competition law, did not change that.

In his opinion, the Advocate General argues that the literal text of the law does not require the transaction to be taxed (it only transfers the burden of proof to the taxpayer in case of a sale within three years). The Advocate General agreed with the State Secretary that in view of the fact that the shares were to be sold against cash, ABV would have the necessary funds to pay the tax due on the realisation of the hidden reserves. This might not have been possible had the shares not been sold and that is actually the very reason for actually providing the exemption. However, the Advocate General points out the criterion of lack of funds, is not to be found in the law. The Advocate General then went on to argue that based on the parliamentary history it can be concluded that spin offs may be exempt even if the disposal of the acquired shares are agreed upfront, provided that the transaction takes place for business reasons. In view of the EU requirements, the business motive for the transaction was not in question.

The Advocate General did not take into consideration the EC Merger directive since spin offs were not covered by the 1990 version of the Merger directive.

Painful omission leads to capital duty

On 9 December 2005 the High Court of Amsterdam published a decision for a taxpayer in the following case. In 1999 XBV held 86% of the shares in YBV. On 15 January 1999, XBV purchased all the shares in ABV for NLG 24 mio and sold them to YBV for NLG 4.7 mio (ABV's net asset value); on 1 February 1999, XBV purchased all the shares in BBV for NLG 40 mio and sold them to YBV for NLG 3.8 mio; and finally on 15 March XBV purchased all the shares in CBV for NLG 24 mio and transferred them to YBV for NLG 0.7 mio.

On 5 August 2003 the tax inspector levied an additional assessment of 1% capital duty on the above transfers, arguing that none of the exemptions from capital duty are applicable and even if they were, they would still not be available since the taxpayer did not follow the legal requirement of filing a capital duty return and requesting the exemptions within one month after the transactions. The High Court waived aside the tax inspector's latter argument, referring to the Supreme Court's decision of 26 November 2004 in which such argument was not accepted either and then determined that any exemption from capital duty which is dependent upon requesting the application thereof within one month is contrary to the EC capital duty directive.

The Court agreed with the inspector that none of the exemptions from capital duty were applicable. The Court based its conclusion on the argument that the transactions between XBV and YBV all concerned the sale of share and not the contribution of shares, which might have qualified for either the share merger or the asset merger exemption. The Court was also not prepared to follow YBV's references to and interpretation of the parliamentary history of the capital duty act stating that informal capital contributions also qualified for these exemptions. According to the Court this only applied in case of true merger agreements as opposed to agreements of sale as described here above.

... based on parliamentary history it can be concluded that spin offs may be exempt even if the disposal of the acquired shares are agreed upfront...

The Court may have been unnecessarily strict in interpreting the law: the EU has indicated that capital duty should be abolished and the law should be interpreted along those lines.

We feel that the Court might have been unnecessarily strict in its interpretation of the law and the transactions. After all, the material difference between the informal capital contribution of shares to a taxpayer and the above transactions are nil. In 1985 the EU has indicated that capital duty should eventually be phased out since it constitutes a hindrance to the free movement of capital (preamble to Council Directive 85/303/EC) which we believe requires a broad interpretation of the exemptions from capital duty. Besides, under EC law the merger facilities remain available in case of payments in cash not exceeding 10 % of the nominal value of the shares. The court's decision does not mention whether any of the cash payments exceeded this threshold.

Decree on dividends to and from Switzerland

On 6 December 2005 the Ministry issued a decree on the exemption of dividend tax paid to and from Switzerland under the Dutch/Swiss tax treaty and under the agreement between the EC and Switzerland on the Savings Directive and the Parent/Subsidiary Directive. Under application of the treaty, the State Secretary allows a Dutch dividend payer to request an (partial) exemption from withholding dividend tax, provided that the Swiss receiver is the ultimate beneficiary (neither the treaty nor the protocol mention the requirement of being an ultimate beneficiary). Once such approval is granted by the tax inspector, it remains applicable as long as the Swiss corporate shareholder remains resident in Switzerland and retains a qualifying interest in the Dutch company.

The Dutch dividend distributing company can also apply for an exemption from withholding dividend tax under the agreement between the EC and Switzerland on the Savings Directive and the Parent/Subsidiary Directive. Here too the receiver must be the ultimate beneficiary (article 15, first paragraph, of the agreement allows for the application of provisions for the prevention of fraud or abuse). The other conditions under article 15 of the agreement must also be fulfilled (25% interest, minimum holding period, no residence in third countries, subject to tax and the right legal form).

The provisions regarding the Dutch/Swiss tax treaty has retro-active effect till 1 January 2005, the provisions on the EC agreement till 1 July 2005.

Hot links

- ❖ The European Commission has adopted a Communication ([COM/2005/702](#)) for a possible solution to compliance costs and other company tax difficulties that Small and Medium Enterprises face doing cross border business.
- ❖ The European Commission has [decided](#) to refer Sweden to the European Court of Justice because capital gains from home sales attract tax relief only if the sold home is situated in Sweden and the sales proceeds are reinvested in a replacement residence in Sweden.
- ❖ The EU Council on 12 December agreed on the use of a new standard format for the exchange of information as regards the taxation of savings directive ([2003/48/CE](#)), to be used by EU Member States from 2008 onwards.
- ❖ The European Parliament's plenary on 13 December [endorsed](#) Pier-Luigi Bersani's report favouring the introduction of a Common Consolidated Corporate Tax Base (CCCTB).
- ❖ The European Commission is planning to present a Communication on cross border loss relief to the European Parliament and EU Council next year that will take account of the Court's ruling in the Marks & Spencer Case.
- ❖ The European Commission on 8 December authorised the [fiscal incentives](#) for companies adopted by Italy in the Competitiveness Decree law No 80 of 14 March 2005.
- ❖ European Tax and Customs Commissioner László Kovács on 8 December delivered [a speech](#) on "The future of EU taxation policy" at the Tax Directors' Institute in London.
- ❖ A Commission staged workshop on tax treaties and EU law was held in Brussels in July 2005, focusing on the effects of ECJ rulings for the tax treaty area, and possible solutions. See the [Commission's website](#).
- ❖ The Commission adopted [a proposal](#) for a Code of Conduct to standardise documentation that multinationals must provide to tax authorities on transfer pricing. The [press release](#) contains further relevant links.
- ❖ It seems as though it will not be the ECJ, but now the Commission that will drive tax developments in Europe as the Commission [acts](#) to ensure seven Member States implement EU laws.
- ❖ Financial reporting: Commission [welcomes](#) Parliament's support for strengthened accounting rules.
- ❖ [Financial Penalties](#) for Member States who fail to comply with ECJ Judgments: Commission clarifies rules.
- ❖ On 9 December 2005, EU Commissioner Charlie McCreevy unequivocally stated his support for [tax competition](#). As the Swiss say: "competition is only harmful for those who are unfit to compete!"
- ❖ Company law: [cross-border mergers Directive](#) adopted and published.
- ❖ Last, but certainly not least: The EU Court of Justice published its political decision in the [Marks & Spencer Case](#) (we never knew this case was about transfer pricing – see considerations number 46 & 49).

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