



General decree on participation exemption

On 1 February 2006, the tax authorities issued an extensive decree on the application of the participation exemption, collecting various points of view taken from past decrees and updating them to the current state of the law and case law. The decree is effective as of 1 January 2006 and includes the following interesting points.

- ❖ A pledge on shares which does not limit the shareholders' right to vote or to receive dividends, leaves the participation exemption in tact for the shareholder (it may otherwise become questionable whether the shareholder is the beneficial owner of the shares).
- ❖ The ministry sticks to its interpretation of the law that foreign subsidiaries must be subject to tax in their countries of residence in order to qualify for the participation exemption. A foreign subsidiary only paying tax where it has a permanent establishment, does not pass the subject to tax test. In view of the fact that the participation exemption is meant to prevent double taxation, we regret the lack of lenience in this regard.
- ❖ On the other hand, companies resident in Hong Kong and operating a taxable business in Hong Kong can qualify for the participation exemption.
- ❖ Saudi Arabian companies, subject to income tax and the "zakat", Estonian companies subject to a profits distribution tax only, companies paying the Petroleum Profits tax in Nigeria and certain companies resident in and paying tax in the Isle of Man also qualify for the participation exemption. The fact that taxpayer may negotiate both their tax rate and taxable basis in the Isle of Man, does not automatically prevent application of the participation exemption. See our [November 2005](#) newsletter on recent Dutch and Isle of Man treaty negotiations.
- ❖ The Belgian SICAV, the Luxembourg SICAV, the Belgian Coordination Centres and Hungarian group finance companies all have problems qualifying for the participation exemption or benefits of the Parent/Subsidiary Directive. Companies from the UAE have to prove that they are actually subject to a profit tax in the UAE.
- ❖ Relief is provided from anti-abuse measures regarding the transfer of written down debt to group companies and the intra-group transfers of their enterprises.

The [table of contents](#) of the decree is available here. Subscribers to our website have access to [the full text](#) of the decree; others may [purchase](#) a translation of the text.

Supreme Court rules on tax consolidated groups

On 13 January 2006 the Dutch Supreme Court ruled in two cases regarding the Dutch tax consolidation rules.

Under the Dutch consolidation rules as they applied in 1999, two taxpayers could only be consolidated if, among others, the parent held an interest of at least 99% in the consolidated subsidiary during the whole year of consolidation. The rule was interpreted very strictly and a parent e.g. acquiring the necessary interest at 12.05 on January 1 of a calendar book year would not satisfy this test, whilst a parent acquiring the same interest at 11.59 on 31 December would. In the first case before the court the Dutch company, X BV, had a consolidated subsidiary, Y BV, a US sister company, A Inc, and a US parent B Inc. On 23 May 1997, A Inc. contributed USD 88.500.000 to Y BV against the issue of 1 share with a par value of NLG 1.000. On the same day, A Inc contributed this share to X BV against the issue of one share. We assume that these contributions were structured in this way to try to qualify for exemptions from the 1% Dutch capital duty applicable at the time. The question was whether the fact that A Inc held an interest with such a huge share premium in Y BV for part of 23 May 1997, led to the dissolution of the consolidation between X BV and Y BV. The Supreme Court determined that this was not the case, arguing that X BV's legal and beneficial interest in Y BV did not change substantially during the transactions.

Under the new tax consolidation regime of 2003, this contribution might still have lead to a dissolution of the consolidation eventhough the minimum interest requirement has been reduced from 99% to 95%. However, unlike the old regime, it is possible under the regime to also commence a consolidation during a financial year. However, this possibility would not prevent the realising of any tax liabilities triggered by the preceding dissolution, therefore this decision may also be of interest under the 2003 consolidation regime.

The Supreme Court's other decision dealt with the possible triggering of such a tax liability upon the dissolution of a consolidated group. One of the anti-abuse measures of the consolidation regime concerns the transfer of hidden reserves within the tax consolidated group, followed by a tax free disposal of those reserves, e.g. through the participation exemption. The most common example of this is a company (ACo) having an asset worth 1000, including a hidden reserve of 600. Instead of selling that asset directly to a buyer and paying 35 percent tax on the 600 hidden reserve realised, ACo incorporates BCo; forms a consolidated group with BCo; transfers the asset to BCo; deconsolidates BCo and finally sells BCo to the buyer.

The hidden reserve then remains with BCo and ACo is said to have transformed its taxable profit into an exempt gain under the participation exemption. In order to prevent this, the law dictated that the assets of BCo had to be marked to market just before the deconsolidation of BCo. Up until the new consolidation regime of 2003, one of the conditions to be fulfilled in order for this anti-abuse measure to be triggered was that the hidden reserves must have been received by the consolidated group, either through a sale of the shares BCo, or otherwise. The receipt criterion itself was vague, caused confusion and was dropped during the 2003 changes (at the risk of creating overkill instead).

In the case at hand, and through a twist of fate, it was the taxpayer who insisted on applying the anti-abuse measure and the tax inspector, the High Court and the Supreme Court denying him that application. The facts were as follows. The taxpayer, ABV, acquired all the shares in BBV in 1998 and included it into the consolidated group between ABV and CBV. All the assets and liabilities of BBV (including any goodwill present) were transferred from BBV to CBV. However, since the acquired business was unsuccessful, none of the transferred goodwill was left by 1999. The shares of CBV were sold in 2000 and ABV wanted to take a write down of the goodwill at the end of 1999, thus taking a tax deductible loss on the revaluation. However, the Supreme Court denied such a write down arguing that the anti-abuse measure is not applicable since it has not been shown that any hidden reserves (goodwill) were present in the transferred business in 1998 and that there were no goodwill left at the end of 1999. We assume that the Supreme Court would have come to a similar decision under the new 2003 consolidation regime since the purpose and intent of the measure still is to target the transfer of hidden reserves, and if none are transferred, then the regime should not be applied, not even after the receipt criterion has been dropped.

Other points of interest

- ❖ On 18 January 2006 the Netherlands and Greece signed a protocol to the 1981 Dutch Greek treaty, abolishing the tax sparing credits available on Greek sourced payments. The protocol shall enter into force on 1 July 2006 and shall have effect to amounts of interest or royalties paid or credited on or after 1 July 2006.
- ❖ On 17 January and 30 January 2006 the authorities also published updated collective decrees regarding the tax treatment of co-operatives and mutual investment funds taxed at 0%. According to the latter decree, the EU Company (SE) and companies incorporated in other EU (and we assume EEA) countries, may also qualify as mutual investment funds, if resident in the Netherlands and if certain other conditions are met.

EU related tax developments

Two cases on Bosal and third countries

On 28 December 2005 Dutch Advocate General Wattel issued his opinion on the question whether the EU Court of Justice (ECJ) decision in Bosal (Case C-168/03) is applicable in relation to participations in non-EU member states. The case concerned participations in Poland, Cyprus and other countries, prior to the accession of Poland and Cyprus to the EU. We have discussed the facts of this case in our [March 2005](#) newsletter and refer to that for further details on the facts of this case. In a lengthy but highly readable opinion the AG advises neither to apply the Bosal doctrine and allow deductions for non-EU participations prior to the Dutch legislative changes of 2004, nor to refer this question to the ECJ. The AG believes that cost deduction limitations are covered by the grandfathering clause of article 57, first paragraph, of the EC treaty which allows the application to third countries of any restrictions which existed on 31 December 1993 under national law adopted in respect of the movement of capital to or from third countries involving direct investment or establishment.

The Advocate General comes to these conclusions on a number of grounds, including the following:

1. He rejected the tax authorities' claim that where both the freedom of establishment (majority participations) and the free movement of capital applies, only the freedom of establishment rules are applicable. He pointed out that the Dutch tax authorities' interpretation would result in the free movement capital to third country never being applicable to majority interest, but only minority interests. It seems odd that minority interest should receive a better treatment than majority interests.

Referring to AG Alber's opinion in the Baars case (case [C-251/98](#)), the Dutch AG pointed out that it seems as though the ECJ applies the following rules in case of different freedoms coinciding: if one of the freedoms are directly restricted, the national law is only tested against that freedom; if both coinciding freedoms are directly restricted, then the national law is tested against both the criteria of both freedoms.

The AG also gave an interesting overview of cases pending before the ECJ dealing with the issue of the free movement of capital with regard to third countries. These cases include: Lasertec ([C-492/04](#)); Van Hilten-van der Heijden ([C-513/03](#)); the UK group litigation on thin capitalisation ([C-524/04](#)); A vs Riksskatteverket ([C-101/05](#)); A and B vs Riksstatterverket ([C-102/05](#)); the UK group litigation on CFC legislation ([C-201/05](#)); Fidium Finance AG ([C-452/04](#)) and Holböck ([C-157/05](#)). In the AG's point view – to which we fully subscribe – the ECJ will most likely apply the free movement of capital more restrictively with regard to third countries than to member states, not by defining the freedom differently, but: a more extensive interpretation of justifications such as coherence, the lack of third country exchange of information and a more extensive interpretation of the rule of reason under article 58 of the EC treaty.

2. After conceding that the limitation on cost deductions rules could constitute a restriction on the free movement of capital, the AG argues that the rules is saved by the grandfathering of article 57 of the EC treaty quoted here above. He rejected the taxpayer's arguments that relying on paragraph 35 of the Sanz de Lera case ([C-163/94](#)), arguing that such an interpretation of the treaty would render the standstill provision meaningless.

The AG did not deal with the issue pointed out in our [April 2005](#) newsletter being that if this measure had been amended on time to be in line with the freedom of establishment as determined under Bosal (Case [C-168/01](#)), such may well have constituted such a significant change of the law whereby the 1993 grandfathering privilege would have been lost. In effect the taxpayer is getting penalised for the Dutch government not amending the restrictions on the freedom of establishment on time.

3. The AG then looked at the question whether the EU/Polish Europe agreement required the application of the Bosal decision with regard to Poland. The taxpayer's argument that article 44 of the Europe agreement with Poland should, against its literal wording, be interpreted extensively to mean that the freedom of establishment requirement does not only apply to Poland and inbound investment from the EU, but also to the EU members and outbound investment to Poland was rejected.

Referring to the fact that the taxpayer did not rely on article 60 of the Europe agreement on time, the AG rejected this instrument of appeal as well. We refer to the last paragraph of our [March 2005](#) newsletter in this regard. Article 60 and 61 seem to require the free movement of capital between the EU and Poland; unlike article 44, this article does not work one way only, but creates obligations for both the EU and Poland. The AG did say that he did not believe that the reliance on article 60 would have been of any help, had reference been made to it by the taxpayer on time, but did not say why.

4. In dealing with Bosal, the AG also makes various references to the ECJ's recent decision in Marks & Spencer II (case [C-446/03](#)) and apparent contradictions between the two cases. According to the AG, M&S is a departure from the Bosal decision in that the ECJ explicitly allowed member states to treat foreign subsidiaries differently from local subsidiaries, unlike it did in Bosal (Case [C-168/01](#)).

We note that the Supreme Court has already decided along the lines advised by Advocate General Wattel in the case discussed in our [April 2005](#) newsletter.

Next the High Court of the Hague decided on 1 November 2005 on the same question with regard to a US participation. The case concerned the tax year 1999 when the taxpayer, a Dutch subsidiary of a Netherlands Antilles parent held interests of 15.8 % in an Austrian company and 29.5% in a US company. The taxpayer wanted to deduct costs for both participations, but the tax inspector only allowed a deduction for the Austrian company on the basis of the Bosal decision mentioned here above. After waiving a pre-emptive strike of the tax inspector arguing that the appeal against the decision to disallow the cost deduction was filed too late, the Court dealt with the question whether the Bosal decision also applied with regard to the US subsidiary. Like the Advocate General, the Court came to the conclusion that the interest deduction limitation was not in contravention of EU law, since the limitation was grandfathered by article 57 of the EC treaty.

In both cases the taxpayer (or at least its adviser) argued unsuccessfully that based on point 35 of the ECJ decision in the Sanz de Lera case (joined cases C-163/94, C-165/94 and C-250/94), article 57 only applies to specific categories of capital movements and that the Dutch cost deduction limitation rules were not covered by that. The taxpayer appealed against this decision to the Supreme Court and it might be anticipated that this Court might decide on both cases on the same day.

Amendments to P/S directive implemented into Dutch law

On 2 February 2006, the Dutch legislation implementing the amendments of directive 2003/123/EC of the Parent/Subsidiary Directive (1990/435/EEC) were published in the Government Gazette. The law has retro-active effect to 1 January 2005, the date by which the amendments of directive 2003/123/EC had to be implemented by the member states. The only changes required under Dutch law concern the lowering of the minimum interest requirements from 20% in 2005 to 15% in 2007 and 10% in 2009. Until now, the Dutch authorities have allowed for these amendments to be applied through the publication of decrees. We refer to our ... newsletters for further information.

Supreme Court rules on application of Merger Directive

On 3 February 2006, the Supreme Court ruled on the question whether Dutch law was in contravention of the EC Merger Directive. The facts were as follows. The taxpayer was incorporated in 1999 and is listed on the Amsterdam stock exchange. On 20 September 2001, A, another listed company was merged into the taxpayer. A had loss making subsidiaries in Switzerland and Germany. These ceased their activities in 2001, were liquidated in 2002 and the liquidations were finally settled in 2003. On 28 March 2002 the tax inspector issued a decision confirming that the merger was done primarily for business reasons and therefore lead to the deferral of taxation. One of the conditions to this confirmation was that "if a participation belongs to either merging party of which the enterprise has been ceased completely or almost completely at the time of proposing the merger, then a loss from liquidation of the participation is only taken into account with the acquiring person up to the amount of the (remaining) profit that would be allocable to the enterprise of the acquiring person or disappearing person under the second standard condition. The remaining amount is reduced as loss from liquidation from the positive taxable amount of the

acquiring person of the three preceding years and the following years in the order they arise, to the extent they can be allocated to the relevant enterprise under the profit split.” This condition has originally been introduced to combat leveraged takeovers in which a foreign group would incorporate a Dutch company, finance it with intercompany debt to acquire a Dutch target and then merge the target into the Dutch holding whereby the profits of the target would be offset against the interest paid to the foreign group creditor.

The taxpayer objected against the application of this condition arguing that there has been no tax evasion or avoidance in its case, that the condition does not allow the possibility of proving this and that the liquidation of A’s subsidiaries were only deferred for foreign corporate reasons, not tax reasons and not because of the merger. The taxpayer argued that this was not in line with the EC Merger Directive (Directive 90/434/EEC) since the relevant condition did not investigate per case whether tax evasion was the motive for the merger, (as required under the ECJ’s *Leur-Bloem* decision (Case [C-28/95](#))). In its original decision, the High Court further determined article 6 of the Merger Directive allows member states to determine for themselves whether they allow the acquiring company to acquire any of the losses of the disappearing company or not. The Supreme Court confirmed the High Court’s decision.

Various Courts decide on capital duty

Now that capital duty has been abolished in the Netherlands since 1 January 2006, it seems as though the stream of decisions on capital duty is ever increasing. Since our last newsletter, the ECJ, the Advocate General to the ECJ, the Dutch Supreme Court, the High Court of Amsterdam and the local court of Breda issued decisions / an opinion regarding Dutch capital duty.

ECJ in Senior Engineering Investments BV

First, on 12 January 2006, the ECJ decided in the Senior Engineering Investments BV case (case [C-494/03](#)) that the capital duty directives preclude a member state from levying duty on a capital company (subsidiary) in respect of a contribution paid by its parent company (the grandparent company) to its subsidiary (a sub-subsidiary). Senior BV’s shares were held by an English company Senior Limited. Senior BV itself held all the shares of a German company Senior GmbH. On 8 December 1997 Senior Limited paid a contribution of DEM 10 071 000 to Senior GmbH. In Germany that transaction did not give rise to any levy payable by Senior GmbH since Germany had abolished capital duty with effect from 1 January 1992. In the Netherlands, Senior BV was required to pay capital duty of NLG 113 490. The ECJ argued that since capital duty may only be levied on a contribution once and since the contribution should have been subject to capital duty in Germany, that same contribution could not be subject to capital duty in the Netherlands again. The Court determined that it is of little importance that the contribution in question may possibly have also increased the assets of Senior BV since such an increase can not be treated as a separate second contribution. It further determined that the fact that Germany did not levy any capital duty was irrelevant too.

ECJ Advocate General opinion in Magpar VI BV

Next, on 17 January 2006, Advocate General Tizzano issued his opinion in the MagPar VI BV case (case [C-509/04](#)). The facts are as follows: In 1998 XBV and four other companies concluded a general partnership, the Magnus Partnership. Each of the five companies had one individual as shareholder. In August 1998, Magpar VI and four other companies were incorporated. Magpar VI acquired all the shares in XBV against shares. This contribution was exempt from Dutch capital duty under the share merger exemption. However, the exemption has a claw back provision which would be triggered if, among others, Magpar VI would dispose of any of the shares in XBV within the five years following the merger. On 31 August 1998 Magnus NV was incorporated and acquired all the assets in XBV against the issue of shares to Magpar VI in a triangular legal merger. This transaction in itself did not trigger the claw back of the previous exemption, since it qualified for an exemption itself. On the same date, Magpar VI contributed its shares in Magnus NV to the Pym Co-operative as membership contribution. On 27 November 1998, Magnus NV’s shares were listed on the Amsterdam stock exchange.

The Dutch authorities levied capital duty from Magpar VI, since it did not hold the shares in Magnus NV for at least five years. According to the Dutch authorities, the five year holding applicable to the contribution of XBV in August 1998 was transferred to the shares Magnus NV through the legal merger. In view of the disputed capital duty liability, Dutch Supreme Court posted the following questions to the ECJ:

1. Are the Capital Duty Directives to be interpreted as meaning that if a company, within five years after the acquisition of shares in the course of a share merger that is exempt from capital duty, ceases to hold those shares because the company in which the shares were held has been the subject of a merger, the requirements referred to in the above-mentioned provision of the Directive are to apply to the shares in the acquiring company?
2. Is it relevant that the company in which the shares were held ceased to exist as result of the coming into force of a legal merger with another company, so that it is not possible to speak of a disposal of shares in a literal sense?

According to the Advocate General, the text of the Directives is clear: it does not mention any replacement claw back period in case of an exempt share merger followed by another exempt merger, and therefore there is no replacement claw back measure (we love this simple and clear approach: if it is not there, it is not there). The Advocate General further notes that such a replacement claw back would not be in line with the spirit of the directives, being to eliminate the interference of capital duty on restructurings. The Advocate General advises that the Court’s second question should be answered negatively, since the disappearance of a company through a legal merger does not change the underlying economic effect of the transfer.

Dutch Supreme Court

The next case was decided by the Dutch Supreme Court on 13 January 2006. X BV (taxpayer), was a 100% subsidiary of A BV which was a 100% subsidiary of B AG in Germany. On 24 and 25 March 1999 A BV acquired various subsidiaries from B AG plus a loan of Euro 1.8 billion. On 1 April 1999 A BV transferred all the above subsidiaries plus cash of Euro 1.8 billion to X BV without any compensation. Thereafter A BV transferred X BV to L AG a German sister company. A part of the shares in L AG were listed on 13 March 2000. We discussed the Advocate General's opinion on this case in our [October 2005](#) newsletter. The Supreme Court upheld the High Court decision that capital was due on the contribution, because there was no discrimination with regard to non Dutch resident companies and because the amount of Euro 1.8 billion was intended for the future expansion and financial reorganisation of the future X-group, this amount could not be treated as part of an independent enterprise consisting of subsidiaries already at the time of contribution to X BV.

The Supreme Court agreed with the taxpayer that the High Court was wrong in determining that business merger exemption can not be applicable if no shares were issued in the merger. However, since other conditions were not fulfilled, this was insufficient to let the taxpayer win.

High Court of Amsterdam

The next case, decided by the High Court of Amsterdam on 2 January 2006 is one that has already been to the High Court of the Hague and then by the Supreme Court, which referred the case to Amsterdam. The facts of the case were as follows: On 18 September 1996 X Corp transferred US\$ 34 mio to Y Corp in China. Y Corp invested this money into X International Investments Inc which invested the money into three direct subsidiaries, X International Investments I – III Inc. Each of these three companies contributed all their cash (being practically all their assets) into X International Investments I-III BV. On 24 October 1996, X Corp transferred US\$ 8.6 mio to three Chinese companies. These three companies invested their funds into X International Investments Inc which invested the funds in X International Investments IV-VI Inc, which invested their funds into X International Investments IV – VI BV.

The Dutch tax authorities argued that the 6 US special purpose vehicles (X International Investments I – VI Inc) were incorporated with the sole purpose of make exempt capital contributions to the 6 BV's. The exemption used, was the exemption for the contribution of all the assets and liabilities of the contributor; cash in the case of each of the 6 US contributing companies. However, the indirect parent itself could not have made such a contribution since its assets consisted of much more than cash only, therefore the transactions constituted an abuse of law. The High Court determined to the contrary that in the case of X International Investments I BV there can be no abuse if the exemption could also have been applicable if the contribution was made directly by X International Investments Inc, i.e. if the contribution would have constituted all of X International Investments Inc's assets and liabilities at the time. It determined that on 18 September 1996 the assets of X International Investments Inc only consisted of the cash acquired from Y Corp. Therefore, based on a decision of the Dutch Supreme Court of 30 May 2001, the contributions to X International Investments I – III BV were indeed exempt from capital duty and there was no abuse of law.

We understand the High Court decision such that the contributions to X International Investments I – III BV are exempt because they are in effect treated as one contribution. However, the contributions to X International Investments IV – VI BV would not be exempt. In the latter case, X International Investments Inc's assets did not only consist of the cash contributed, but also of the shares in X International Investments I-III Inc. The shares in these company would have had to be contributed as well for the exemption of contributing practically all one's assets and liabilities to be applicable.

Local Court of Breda

Last but not least the Local Court of Breda determined on 14 January 2006 that levying capital duty on contributions to a Dutch company from Belgian contributors did not constitute an illegal restriction on the free movement of capital. The Court based its decision on the fact that similar contributions from Dutch residents would also have been subject to Dutch capital duty and that Dutch capital duty law is a correct implementation of the EEC Capital Duty Directives into Dutch law. The Court considered this an acte clair and decided not to refer the question to the ECJ. Although one may wonder whether the Court should not have investigated the question whether the Capital Duty Directives themselves are not in contravention of the EC treaty and the free movement of capital, it can also be said that it is quite understandable if the Court left that question and the question of reference to the final court of appeal instead.

High Court rules on free movement of workers

On 6 February 2006, the High Court of Arnhem ruled on the following case. A Dutch woman (the taxpayer) lived in the Netherlands with her partner and also worked in the Netherlands; her partner worked in Germany where his income was subject to German income tax. The partner did not pay any tax in the Netherlands due to double tax relief. After deducting mortgage interest for her Dutch home the taxpayer's taxable income was negative. She subsequently also claimed various deductions such as a base deduction and employment cost deduction. After initially allowing these deductions, the tax inspector subsequently reclaimed the deductions in the woman's final personal income tax assessment for 2001.

The woman appealed, arguing that denying the deductions were in contravention with EU law since she and her partner would have been entitled to these deductions had he worked in the Netherlands. The argument is built up as follows. Under Dutch law, the various deductions claimed can not exceed the tax due on (in this case) the taxpayer's income from employment less the mortgage deduction. The taxpayer's partner is allowed to transfer his unused deductions to her, however, since all his income was exempt from taxation in the Netherlands, he had no deductions.

The court waived the tax inspector's first argument that since the taxpayer lived and worked in the Netherlands this was a pure national situation not falling under EU law. The Court countered that the partner worked in Germany, whereby the couple encountered the limitations to the transfer of deductions as implemented under Dutch law. Referring to the ECJ decision in the De Groot case (case [C-385/00](#)), the court subsequently determined that the free movement of workers also prevent the state of residence from restricting the free acceptance and performance of employment by its citizens in other member states. In this case the family missed tax deductions because the partner worked in Germany. Determining that the tax inspector's argument that the partner paid no tax in the Netherlands did not constitute a justification for this restriction, since this is only due the prevention of double taxation, the Court decided that the taxpayer was entitled to the deductions. The Court determined in addition that the taxpayer was entitled to both deductions for the personal income tax and the social security tax. The fact that the partner was not insured in the Netherlands was irrelevant.

Hot links

- ❖ On 31 January 2006 the Commission published a [contract award notice](#) on a "study to increase the understanding of the economic effects of the VAT exemption for financial and insurance services".
- ❖ On 9 February 2006 during a visit of EU Internal Market Commissioner Charlie McCreevy to Washington DC, he and SEC Chairman Christopher Cox affirmed their [commitment](#) to eliminating the need for reconciliation between IFRS and US GAAP.
- ❖ The dividend tax case discussed in our [November 2005](#) newsletter has been registered with the ECJ as the Amurta case ([case number C-379/05](#)).
- ❖ On 8 February 2006 the European Commission has launched under EC Treaty state aid rules a formal investigation into [Luxembourg's 1929 legislation](#) exempting holdings and financial companies from corporate taxation.
- ❖ On 16 January 2006 the European Commission has decided to [refer Spain to the ECJ](#) over its taxation of non-residents' capital gains realised on the sale of Spanish immovable property and its taxation of non-residents' employment-related income.
- ❖ Also on 16 January 2006, the Commission [requested Portugal](#) to end discriminatory taxation of foreign banks.

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