YIN
Young IFA Network

INTERNATIONAL FISCAL ASSOCIATION · YOUNG IFA NETWORK

Case Law Observatory.

YIN Global Tax Jurisprudence Update

BENEFICIAL OWNERSHIP · TRANSFER PRICING · TREATY INTERPRETATION · CROSS-BORDER WITHHOLDING

Reference period 1 October 2025 – 31 May 2026

22 decisions · 14 jurisdictions

Europe · Latin America · North America

Young IFA Network

Contents

Young IFA Network

REGION 01

Europe

- Austria 1
- Belgium 1
- Germany 2
- Hungary 2
- Italy 2
- Spain 1

9 decisions · 6 jurisdictions

Austria | Federal Tax Court (BFG) | 22 April 2026 | RV/7101581/2019

TAGS Germany-Austria-DTA | Article 18 | Article 19 | Public service pensions | Social security | Statutory insurance

HOLDING

Pensions paid by the German Statutory Pension Insurance are classified as social security benefits under Article 18(2) of the Germany-Austria DTA (corresponding to Article 18(2) OECD-MC) rather than government service pensions under Article 19(2) (corresponding to Article 19(2) OECD-MC), regardless of whether the contributions were earned during public service.

FACTS

An Austrian resident received pensions from the German Statutory Pension Insurance based on ten years of private sector work, ten years as a public sector lecturer, and voluntary subsequent payments. While Germany taxed the income as social security under Article 18(2), the Austrian tax administration sought to classify it under Article 19(2) as a government service pension to maintain full taxing rights in Austria.

DECISION AND REASONING

The BFG determined that "pension" is not explicitly defined in the DTA. Therefore, Article 3(2) allows to recourse to national law, which distinguishes social security from employment-based remuneration. The court identified the German Statutory Pension Insurance as a statutory social security carrier, fulfilling the state task of basic old-age provision, meaning its payments are based on contributions rather than specific services rendered to a public employer. It rejected the "functional causality" theory, which would have applied Article 19(2) DTA simply because the recipient was a former public employee, arguing this would undermine the specific legal scope of Article 18(2) DTA. Finally, the court emphasized that aligning with the German classification was necessary to fulfill the DTA's core objective of avoiding double taxation and unresolvable jurisdictional conflicts.

WHY IT MATTERS INTERNATIONALLY

Both Article 18 OECD-MC and Article 19(2) OECD-MC apply to remuneration paid on the basis of a previous activity. In principle, the wording of Article 18 DTA itself regulates its relationship with Article 19(2) OECD-MC: If a pension is already covered as a public service pension within the meaning of Article 19(2) OECD-MC, Article 18 OECD-MC recedes. While contributions under Article 18 OECD-MC originate from the private sector, services under Article 19(2) OECD-MC were rendered to the State. This is assumed to be the case if the activity lies in public interest, whereby the nature of the activity is intended to be irrelevant. However, deviating from this view, the Administrative Court (VwGH) has thus far classified pensions for public service employees as pensions within the meaning of Article 18 OECD-MC if the employee themselves does not exercise a public function, such as the issuance of formal administrative decisions (cf. VwGH 19.9.2007, 2007/13/0088).

CONTRIBUTOR Marlene Czernobila, Institute for Austrian and International Tax Law, Marlene.czernobila@wu.ac.at

EU | Court of Justice of the European Union | 26 February 2026 | C-524/23 (European Commission v Kingdom of Belgium)

TAGS Abuse and anti-abuse doctrines | Transfer pricing | CFC rules

FACTS

Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (“**ATAD 1 directive**”) had to be transposed by Member States by 31 December 2018. The ATAD 1 directive contains several anti-avoidance rules inspired by the OECD BEPS project, including rules on interest deduction, exit taxation, a general anti-abuse rule (“**GAAR**”) and CFC rules. The CFC rules set out in the ATAD 1 directive contain two variants: Model A and Model B. Under Model A, certain specific types of passive income are included as CFC income. Under Model B, a transfer pricing approach is taken. The CFC rules further contain a provision stating that “[t]he Member State of the taxpayer shall allow a deduction of the tax paid by the entity or permanent establishment from the tax liability of the taxpayer in its state of tax residence or location. The deduction shall be calculated in accordance with national law” (Article 8(7) ATAD 1). Belgium originally implemented the Model B CFC rules, but did not implement Article 8(7) of the ATAD 1 directive in its domestic laws on the basis of the belief that it could provide for a stricter implementation of the directive. The Commission started an infringement procedure against Belgium, ultimately resulting in the court proceedings addressed in this note.

HOLDING

In failing to implement Article 8(7) of the ATAD 1 directive in relation to the Model B CFC rules, Belgium failed to fulfill its implementation obligations under the ATAD 1 directive.

DECISION AND REASONING

The Court of Justice of the European Union (“**CJEU**”) held that Belgium failed to meet its obligation to transpose the directive (by 31 December 2018). In reaching this conclusion, the CJEU assessed the obligations of Member States under Article 8(7) of the ATAD 1 directive.

Belgium, in part supported by the Netherlands, asserted that:

- There is only an obligation to implement Article 8(7) of the ATAD 1 directive if a Member State opts for Model A CFC rules.
- Implementing Article 8(7) would remove the deterrent effect of the Model B CFC rules.
- The ATAD 1 directive is a minimum standard and, as such, Member States can implement more strict anti-abuse rules.

The CJEU did not follow the position of Belgium (and the Netherlands) and reaffirmed that the provisions of a directive must be implemented with unquestionable binding force and in such a way that enable a person concerned by such a measure to ascertain the scope of their rights and obligations.

The CJEU first concludes from the language of Article 8(7) of the ATAD 1 directive that the provision is mandatory in nature, and does not mention any derogation therefrom. Further, the provision does not differentiate between Model A and Model B CFC rules.

Secondly, the CJEU concludes that the context in which Article 8(7) of the ATAD 1 directive occurs bears out that literal interpretation. In the first place, several paragraphs of Article 8 of the ATAD 1 directive specifically refer to Model A or Model B, whereas Article 8(7) does not. The relationship between the CFC rules laid down in Article 7 and 8 of the ATAD 1 directive (lex specialis) and the GAAR (lex generalis) also means there is no room to apply a national anti-abuse provision to bypass the specific provisions of Article 8(7) of the ATAD 1 directive.

Thirdly, the CJEU rules that although minimum harmonization does not prevent the Member States from retaining or adopting more stringent measures, those measures must not be of such a nature as to seriously jeopardize the result prescribed by the directive and must comply with the Treaty on the Functioning of the European Union. Moreover, a Member State may not adopt stricter measures in respect of matters that are exhaustively regulated by the directive, which is the case with Article 8(7).

Fourthly, the CJEU concludes from the recitals of the ATAD 1 directive that the anti-abuse rules contained therein should be implemented and applied in accordance with the principle of proportionality. The objective of the directive (to combat the erosion of tax bases in the internal market and cross-border tax avoidance) does not justify subjecting income to economic double taxation.

Following this reasoning, the CJEU rules that Belgium indeed failed to implement Article 8(7) of the ATAD 1 directive into domestic law.

• WHY IT MATTERS INTERNATIONALLY

Belgium had already amended its legislation in 2023, rendering the judgment relevant only for the past. Nonetheless, given the ruling of the Court of Justice, taxpayers can now initiate an ex officio relief procedure to claim a refund for the period prior to 2023. Although the case was an infringement procedure initiated by the Commission against Belgium, the CJEU issued a judgment with potentially broader relevance. With respect to the CFC rules, the Netherlands similarly has not implemented Article 8(7) of the ATAD 1 directive in relation to its primary implementation of the directive: the Model B CFC rules. The Netherlands only implemented Article 8(7) of the ATAD 1 directive in relation to its 'additional CFC measure', which is loosely based on Model A of the ATAD 1 directive. Since the judgment, the Netherlands Ministry of Finance has responded that at present it sees no reason to amend the Dutch implementation of the Model B CFC rules. The question remains whether this position is justified or not.

More broadly, the reasoning of the judgment in relation to the principle of proportionality and the fact that double taxation resulting from the implementation or application of anti-abuse provisions can result in obstacles to the internal market, may result in challenges of domestic implementations of provisions of the ATAD 1 directive (or any anti-abuse rule contained in a directive, for that matter). In the Netherlands, the implementation of the interest deduction rule has been challenged as being disproportionate. It is yet to be seen if a challenge solely based on proportionality is sufficient to find domestic implementations contrary to EU law, as in the case of the CFC rules, this is a supporting argument, in addition to the text and context of Article 8(7) of the ATAD 1 directive itself.

STATUS OF JUDGMENT

● Final.

CONTRIBUTORS

Rhys Bane, EY, rhys.bane@nl.ey.com & Eva Nackaerts, Sansen International Tax Lawyers, eva@sanseninternational.tax

LINK TO THE COURT JUDGMENT (WITH AI-GENERATED ENGLISH TRANSLATION)

eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62023CJ0524.

Germany | Federal Fiscal Court (Bundesfinanzhof) | 11 March 2026 | I R 13/23; ECLI:DE:BFH:2026:U.110326.IR13.23.0

TAGS: Tax treaty interpretation | Hybrid entities | Cross-border withholding | Beneficial ownership | Treaty entitlement

HOLDING

A US S-Corporation may benefit from the 0% participation dividend withholding tax rate under the double taxation treaty Germany – USA ("DTT USA"), provided the dividend income is taxed in the US at the level of its US-resident shareholders as income of US residents; German domestic law only shifts the procedural right to claim the refund to those shareholders.

FACTS

A US corporation had elected to be treated as a so-called S-Corporation for US tax purposes. It was therefore tax transparent in the US but still treated as opaque in Germany. The US corporation held 100% of a German limited corporation, which distributed dividends subject to German withholding tax. The German Federal Tax Office (Bundeszentralamt für Steuern) granted only partial relief and refused a full refund to 0%.

DECISION AND REASONING

The German Federal Fiscal Court confirmed that the S-Corporation qualified as the beneficial owner of the dividends for German treaty purposes. The Court followed its earlier case law on Article 1(7) of the DTT USA and held that the treaty benefit is available where the dividend income is taxed in the US in the hands of US-resident shareholders as income of residents. The Court rejected the tax authority's view that Sec. 50d para. 1 sent. 11 of the German Income Tax Act, as then in force, had a substantive treaty-overriding effect. That provision does not deny the treaty benefit. It merely determines who must file the refund claim. In this case, the claim had to be pursued by the shareholders to whom the income was attributed under US tax law.

Note: The same principles should apply to the now in force Sec. 50d para. 11a German Income Tax Act.

WHY IT MATTERS INTERNATIONALLY

The case is relevant wherever German-source dividends are routed through hybrid entities. This does not exclude treaty access but requires that the residence-state taxation and the German refund mechanics are analyzed together. The decision is particularly relevant for international advisers advising on German inbound investment structures and related withholding tax refund claims.

STATUS OF JUDGMENT: Final.

CONTRIBUTOR: Stefan Schick, Noerr PartGmbB, stefan.schick@noerr.com

LINK TO THE COURT JUDGMENT (WITH AI-GENERATED ENGLISH TRANSLATION)

https://www.bundesfinanzhof.de/en/entscheidungen/entscheidungen-online/decision-detail/STRE202610105/

Germany | Federal Fiscal Court (Bundesfinanzhof) | 19 November 2025 | I R 41/22; ECLI:DE:BFH:2025.191125.IR41.22.0

TAGS Tax treaty interpretation | Exit taxation | Cross-border restructurings | Real estate-rich companies | EU fundamental freedoms

HOLDING

A mere change in law, including the entry into force of a new tax treaty, may trigger German exit taxation if Germany's taxation right is excluded or restricted. The deemed withdrawal occurs in the last legal second before that restriction becomes effective.

FACTS

As part of the special business assets (Sonderbetriebsvermögen) of a limited partner resident in Germany for tax purposes, a German partnership accounted for shares in a Spanish corporation. The assets of the Spanish corporation consisted mainly of Spanish real estate. The double taxation treaty Germany – Spain of 2011 introduced a real estate-rich company clause that had not existed under the former treaty. The competent German tax office treated the treaty change as a restriction of the German taxation right regarding hidden reserves in the Spanish corporation's shares and assessed an exit taxation gain for 2013.

DECISION AND REASONING

The Federal Fiscal Court accepted, in principle, that German exit taxation does not require an active act of the taxpayer. According to the court, the wording of Sec. 4 para. 1 sent. 3 German Income Tax Act refers to the exclusion or restriction of Germany's right of taxation and does not require an actual withdrawal act. The purpose of the rule is to secure Germany's right of taxation over hidden reserves immediately before it is lost or restricted. The Court also rejected general constitutional and EU-law objections to passive exit taxation. Therefore, the deemed withdrawal occurs in the last legal second before the new treaty rule becomes applicable. On the facts assumed by the tax office, this would have been 31 December 2012, not 2013, hence, the tax office assessed the gains in the wrong taxation period. The appeal was therefore dismissed.

WHY IT MATTERS INTERNATIONALLY

Treaty amendments can create dry-tax exposure for German-held foreign assets even without a sale, migration or restructuring step. In treaty-transition cases, the decisive analysis is whether and when the new treaty actually restricts Germany's taxing right over the specific asset or gain.

STATUS OF JUDGMENT: Final.

CONTRIBUTOR: Stefan Schick, Noerr PartGmbB, stefan.schick@noerr.com

LINK TO THE COURT JUDGMENT (WITH AI-GENERATED ENGLISH TRANSLATION)

https://www.bundesfinanzhof.de/en/entscheidungen/entscheidungen-online/decision-detail/STRE202610067/

HUNGARY

EU | Court of Justice of the European Union | 22 January 2026 | C-144/24 (Additional mining fee)

TAGS EU fundamental freedoms

FACTS

In 2021, in response to economic disruptions from the COVID-19 pandemic and the Ukraine war, Hungary imposed a ninety percent additional mining fee on basic construction materials sold above state-set reference prices. The levy targeted mining operators with 2019 net turnovers exceeding approximately HUF 3 billion (ca. EUR 7.7 million at the time), while a parallel decree established minimum extraction obligations to prevent companies from holding back production to avoid selling at a lower price.

HOLDING

Hungary failed to fulfil its obligations under Article 49 TFEU by implementing an "additional mining fee" that penalized sales above state-set reference prices, creating a disproportionate and unjustified restriction that primarily targeted foreign-owned undertakings.

DECISION AND REASONING

The Court of Justice ruled that the fee restricted the freedom of establishment and constituted prohibited indirect discrimination under Article 49 TFEU. The Court rejected Hungary's argument that the turnover threshold was a neutral tax criterion, finding that the frozen 2019 baseline permanently targeted three foreign-held undertakings while exempting domestic competitors that caught up to them in the meantime. Additionally, the Court held that economic recovery or the protection of basic construction material supply chains does not constitute an overriding public security interest under Article 52(1) TFEU. Consequently, the CJEU held that speculative concerns regarding raw material shortages could not justify such severe, disproportionate price-control mechanisms.

WHY IT MATTERS INTERNATIONALLY

The ruling limits the ability of Member States to isolate foreign-owned competitors through the use of arbitrarily set corporate metrics. It offers a benchmark for multinational corporations contesting asymmetric, sector-specific taxes across Europe. After the judgment, the Hungarian regulator informed affected companies that they did not have to make the 2025 self-declaration or payment of the mining fee. The ruling has also been relied on by companies seeking refunds or damages for additional mining fees already paid under the unlawful regime.

STATUS OF JUDGMENT	Final.
CONTRIBUTORS	Anilla Gondi & Tóbiás Kun, Jalsovszky Law Firm, agondi@jalsovszky.com
LINK TO THE COURT JUDGMENT	https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62024CJ0144

EU | Court of Justice of the European Union | 16 April 2026 | C-519/24 (Nitrogénművek)

TAGS: State aid | EU fundamental freedoms

FACTS

During a state of emergency related to the war in Ukraine, Hungary introduced a carbon dioxide tax of thirty-six euros per tonne on industrial installations receiving free emission allowances under the EU ETS. The tax applied only to the biggest emitters with average annual emissions exceeding twenty-five thousand tonnes whose free allocations covered at least fifty percent of those emissions.

HOLDING

Article 1 and Article 10a of Directive 2003/87/EC preclude national legislation that subjects operators receiving significant free allocations of greenhouse gas emission allowances under the EU ETS to a specific tax on those emissions, as such measures neutralize the incentive structures of the allowance system and undermine competitiveness.

DECISION AND REASONING

The Court of Justice ruled that the tax directly undermined the objectives of Directive 2003/87/EC. The Court observed that the EU ETS relies on the market value of allowances to financially incentivize operators to reduce emissions. Because the transitional rules under Article 10a concerning free allocations are fully harmonized, Member States cannot introduce unilateral taxes that effectively strip these allowances of their economic value. The Court held that even a national mechanism permitting a fifty percent tax base reduction for operators meeting certain emission targets could not salvage the tax, as it still neutralized the EU-wide market-driven incentive structure.

WHY IT MATTERS INTERNATIONALLY

The ruling prevents national governments from using tax legislation to claw back fully harmonized EU environmental subsidies, even under a state of emergency. It secures the legal integrity of the EU environmental subsidy system against fragmented national taxes, ensuring that market-driven incentives for green technology investments remain consistent across the internal market.

STATUS OF JUDGMENT: Final.

CONTRIBUTORS: Anilla Gondi & Tóbiás Kun, Jalsovszky Law Firm, agondi@jalsovszky.com

LINK TO THE COURT JUDGMENT: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62024CJ0519

Italy | Supreme Court, Tax Division | 10 December 2025 | No. 32149/2025

TAGS: Beneficial ownership · Dividends · Parent-subsidiary directive · Treaty shopping · Holding companies · Dominion test · OECD commentary · CJEU case law

HOLDING

The absence of an operational commercial structure in an intermediate holding company does not, in itself, justify the denial of beneficial owner status in respect of dividends; the decisive enquiry remains whether the entity retained genuine economic dominion over the income received.

FACTS

An Italian subsidiary (ItCo) within a US-headed multinational group distributed dividends to its Danish parent (DkCo), applying the 0% withholding rate under Article 10(2)(a) of the Italy-Denmark Double Tax Treaty. The Italian Tax Authority (ITA) challenged the exemption, contending that DkCo was a conduit entity interposed for treaty-shopping purposes and that the true beneficial owner was the ultimate US parent (USCo). The assessment initially imposed the 27% domestic rate, later reduced to 5% under the Italy-US Convention. The Regional Tax Court of Lazio upheld the ITA's position, finding that DkCo had a "substantially non-existent" operational structure and that all decisions concerning the distributions – timing, amount and fiscal management – were directed by USCo.

DECISION AND REASONING

The Supreme Court held that the lower court had failed to conduct the dominion test - identified as the core of the beneficial ownership enquiry. The decisive question was whether DkCo retained the dividends for its own account and could freely use or reinvest them, or was instead subject to an obligation to remit them upstream – in other words, whether it lacked genuine ownership of and economic dominion over the income received. The lower court had focused on the absence of an operational structure without verifying whether DkCo actually retained, in whole or in part, the dividends received, using them for its own purposes so as to have the right to use and enjoy the income flows. The Court stressed that a pure holding company, whose corporate purpose is the management of participations rather than direct commercial activity, cannot be denied beneficial ownership status merely because it lacks employees or premises. To hold otherwise would conflate the substantive business activity test with the dominion test, which are distinct enquiries. The Court also criticized the disregard of the certificate of tax residence issued by the Danish tax authorities, noting its evidential value unless challenged through forgery proceedings. The case was remanded for a new assessment of the facts in light of the principles expressed by the Court.

WHY IT MATTERS INTERNATIONALLY

The decision clarifies that the structural simplicity of a holding entity is not, in itself, a proxy for the absence of beneficial ownership. Affirmative evidence that the intermediary was constrained to pass the income onward is required. The Court applied the tripartite test framework - substantive business activity, dominion and business purpose – first systematized by the Italian Supreme Court in Cass. No. 6005/2023, drawing on the CJEU Danish Cases (2019) and subsequent EU case law. The principles articulated are further confirmed by the later Cass. No. 1635/2026, concerning royalties.

STATUS OF JUDGMENT	The Supreme Court's judgment on the points of law is final. The case has been remanded to the Regional Tax Court of Lazio for a fresh examination of the facts.
CONTRIBUTOR	Jacopo Mario Rosa, Chiomenti Law Firm, Milan, Italy, jacopomario.rosa@chiomenti.net.
LINK TO THE COURT JUDGMENT	https://www.italgiure.giustizia.it/xway/application/nif/clean/hc.dll?verbo=attach&db=snciv&id=./20251211/snciv@s50@a2025@n32149@tO.clean.pdf

Italy | Supreme Court, Tax Division | 25 January 2026 | No. 1635/2026

TAGS Beneficial ownership · Royalties · Tax treaty interpretation · Conduit company · Treaty shopping · OECD commentary · CJEU case law · Anti-abuse doctrines

HOLDING

The commercial substance of an intermediary entity is not, in itself, determinative of beneficial ownership under a tax treaty; the decisive enquiry is whether the recipient retains genuine freedom to use and enjoy the income, or is instead subject to a legal or factual obligation to pass it onward.

FACTS

An Italian company (ItCo), part of a US-headed multinational group, paid royalties to its German affiliate (DeCo) for the use of trademarks and proprietary know-how, applying the 5% withholding rate under Article 12 of the Italy-Germany Double Tax Treaty. During a tax audit, the ITA identified an internal e-mail from DeCo's accounting department stating that the royalties had not been recorded in DeCo's profit and loss account and had been remitted in full, on a 1:1 basis, to the US parent (USCo). On that basis, the ITA challenged the treaty rate, contending that USCo was the beneficial owner and that the 10% withholding rate under the Italy-US Convention should apply.

DECISION AND REASONING

The Supreme Court held that the Regional Tax Court had erred by limiting its analysis to whether DeCo was a wholly artificial arrangement thereby conflating the broader beneficial ownership enquiry with the narrower concept of sham interposition. Applying the tripartite framework first systematised in Cass. No. 6005/2023 and confirmed in Cass. No. 32149/2025, the Court assessed: (i) the substantive business activity test; (ii) the dominion test – identified as the central element – examining whether the recipient's right to use and enjoy the income is constrained by an obligation to remit it onward, such that the intermediary lacks genuine ownership and availability of the income; and (iii) the business purpose test. The Court stressed that a conduit arrangement may exist even where the intermediary carries on genuine commercial activity, provided that it effectively acts as a mere pass-through vehicle with respect to the relevant income. The internal e-mail – in which DeCo's accounting function stated that the royalties were remitted to USCo on a 1:1 basis – was considered a legitimate evidential element potentially capable of demonstrating the pass-through obligation. The case was remanded for a new assessment of the facts in light of the above principles.

WHY IT MATTERS INTERNATIONALLY

Confirming and extending the principles laid down in Cass. No. 32149/2025 on dividends, this decision applies the same framework to intra-group royalty flows. It signals that operational substance does not shield an intermediary from a finding that it lacks beneficial ownership where the dominion test is not satisfied. The decision resonates beyond Italy, particularly in jurisdictions with anti-abuse approaches aligned with the OECD Model and the principles developed in the CJEU Danish Cases and subsequent EU case law.

STATUS OF JUDGMENT	The Supreme Court's judgment on the points of law is final. The case has been remanded to the Regional Tax Court of Lombardy for a new assessment of the facts.
CONTRIBUTOR	Jacopo Mario Rosa, Chiomenti Law Firm, Milan, Italy, jacopomario.rosa@chiomenti.net.
LINK TO THE COURT JUDGMENT	https://www.italgiure.giustizia.it/xway/application/nif/clean/hc.dll?verbo=attach&db=snciv&id=./20260125/snciv@s50@a2026@n01635@tS.clean.pdf

SPAIN

Spain | Spanish Supreme Court (Contentious-Administrative Jurisdiction) | 12 January 2026 | No. 7/2026

TAGS: Double tax agreement | Cross-border withholding | Royalties | Beneficial ownership

HOLDING

The withholding tax rate of a DTA is displaced by a rule of EU law even though it cannot be applied.

FACTS

VESA is a Spanish company that is part of a multinational group whose parent company (VELCRO INDUSTRIES) resides in Curaçao, which cedes the use of trademarks and other technology in exchange for the payment of royalties. The management and collection of royalties is the responsibility of the group's subholding company, VELCRO HOLDING, which is based in the Netherlands. VELCRO HOLDING has no right to dispose of the royalties, so it transfers them in their entirety to the parent company. In relation to the obligation to withhold that VESA has, it considers that if the requirements to apply the exemption of the Interest & Royalty Directive are not met, it can apply the 6% rate of the DTA signed by Spain and the Netherlands.

DECISION AND REASONING

The exemption of the Interest & Royalty Directive does not apply because although VESA and VELCRO HOLDING are associated companies located in the EU, VELCRO HOLDING does not receive royalties for its own benefit but as a mere intermediary. The beneficial ownership is a requirement to apply this exemption that is not required by Article 12 of the Spain-The Netherlands DTA. Nevertheless, by virtue of the principle of primacy of European Union law, the withholding tax rate included in the DTA signed by Spain and the Netherlands cannot be applied. The court considers that a DTA cannot be applied subsidiarily in the absence of a rule of EU law when the requirements of this rule are not met.

WHY IT MATTERS INTERNATIONALLY

Even if a rule of EU law does not apply because the requirements are not met, the principle of the primacy of EU law displaces the applicability of the double tax treaty. Therefore, the taxpayer cannot access to the benefits of the treaty even if the beneficial ownership is not required, because the rule of EU law prevails even if it is not applied.

STATUS OF JUDGMENT: Final.

CONTRIBUTOR: Elizabeth Gil García, University of Alicante, elizabeth@ua.es

LINK TO THE COURT JUDGMENT: the judgment is available (in Spanish) in the case law base of the Supreme Court: https://www.poderjudicial.es/search/ (ECLI:ES:TS:2026:20).

REGION 02

Latin America

- Argentina 1
- Brazil 2
- Chile 2
- Colombia 2
- Peru 1
- Uruguay 1

9 decisions · 6 jurisdictions

Argentina | National Tax Court (Division A) | 27 November 2025 | ZTE Corporation (Argentine Branch), File No. 49.259-I and accumulated file EX-2021-105305765-APN-SGAI#TFN

TAGS Permanent establishment | Foreign exchange

HOLDING

A foreign company's branch and its head office have a distinct tax personality for Argentine tax purposes. Accordingly, exchange losses arising from intra-entity transactions cannot be disregarded by relying on domestic private law concepts where the tax legislation provides a specific tax treatment.

FACTS

ZTE Corporation's Argentine branch deducted foreign exchange losses incurred between 2011 and 2015 in connection with US dollar-denominated import debt owed to its Chinese head office. The Argentine Tax Administration (ARCA, formerly AFIP) challenged the deductions, arguing on the basis of the substance over form principle, that a branch and its head office lack separate legal personality. Consequently, it maintained that purchases between the branch and its head office were legally impossible and that the related foreign exchange losses were therefore not deductible.

DECISION AND REASONING

Division A of the National Tax Court unanimously set aside the challenged tax assessments. The Court held that, for Argentine tax purposes, a permanent establishment and its foreign head office have a distinct tax personality. It further observed that the transfer pricing treatment of the transactions had not been challenged, implying that the transactions had been accepted as complying with the arm's length principle. Finally, the Court held that domestic private law concepts cannot override the specific tax treatment established under the tax legislation. Accordingly, the foreign exchange losses remained deductible.

WHY IT MATTERS INTERNATIONALLY

The decision affirms the autonomy of tax law and reinforces the OECD-aligned separate entity and arm's length principles applicable to permanent establishments. Although the Argentina–China tax treaty was not applicable because it was not in force during the relevant tax years, the decision is particularly relevant for multinational groups whose head offices are located in jurisdictions that do not have a tax treaty with Argentina.

STATUS OF JUDGMENT: Not a final decision, can be appealed.

CONTRIBUTOR: Luciano Cativa, Partner FBA Tax, lcativa@fba.tax.

Brazil | Federal Regional Court of the 3rd Region (TRF-3), 3rd Panel | 18 March 2026 | Appeal/Mandatory Review No. 5004332-63.2019.4.03.6102

TAGS: Treaty interpretation | CFC | Double taxation | Foreign profits | Corporate income tax

HOLDING

TRF-3, the second-level judicial federal appellate court responsible for the states of São Paulo and Mato Grosso do Sul, held that Brazil could not levy corporate income taxes (IRPJ and CSLL) on undistributed profits earned by a Brazilian company's controlled company resident in the Netherlands, because Article VII of the Brazil–Netherlands tax treaty prevailed over Brazil's domestic super-CFC rule in Article 74 of Provisional Measure 2.158-35/2001.

FACTS

Montecitrus Participações Ltda. was assessed for IRPJ and CSLL after it did not include, in its 2008 Brazilian taxable base, profits earned by its Dutch controlled company, Montecitrus Holding B.V. The tax assessment was based on Article 74 of Provisional Measure No. 2,158-35/2001, which deemed profits earned by foreign controlled companies to be available to the Brazilian parent company at the end of each fiscal year. The lower court granted mandamus relief in favor of Montecitrus, and the Federal Treasury appealed.

DECISION AND REASONING

TRF-3 dismissed both the Federal Treasury's appeal and the mandatory review. The court relied on the STF's interpretation of Article 74 of Provisional Measure No. 2,158 35/2001 in Unconstitutionality Suit (ADI) No. 2,588, under which the super-CFC rule was confined to controlled or affiliated companies located in tax-favored jurisdictions or jurisdictions lacking adequate corporate and fiscal controls. The court held that the Netherlands did not fall within that category, particularly because Brazil and the Netherlands had concluded a double tax treaty. TRF-3 further held that Article 7(1) of the Brazil Netherlands treaty allocated taxing rights over business profits to the state of residence of the enterprise, unless the enterprise carried on business in the other state through a permanent establishment (PE). Because Montecitrus Holding B.V. had no PE in Brazil and its profits had not actually been distributed to the Brazilian parent, Brazil could not tax those profits merely by deeming them available under domestic law. Applying Article 98 of the Brazilian National Tax Code, the court gave priority to the treaty over conflicting domestic tax legislation.

WHY IT MATTERS INTERNATIONALLY

The decision is significant for multinational groups with Brazilian parent companies and subsidiaries in treaty jurisdictions because it treats business-profits provisions in double tax treaties as a substantive limit on Brazil's domestic CFC- taxation. It is also important in light of the pending "Vale case" (Extraordinary Appeal No. 870.214) before the Brazilian Supreme Court, which is expected to decide whether Brazil may tax undistributed profits of foreign controlled companies located in treaty countries. Until the Supreme Court resolves that issue, the decision illustrates the practical uncertainty between the treaty-protective approach adopted by the STJ and some regional federal courts, and the tax authorities' broader view that Brazil's worldwide taxation rules permit immediate taxation of foreign controlled-company profits.

STATUS OF JUDGMENT	A motion to clarify remains pending before TRF-3, and the decision may still be appealed to the Superior Courts.
CONTRIBUTOR	Pedro Grillo, Brigagão, Duque Estrada Advogados, pgrillo@bde.com.br.

Brazil | Administrative Court of Tax Appeals (CARF), 1st Section, 4th Chamber, 2nd Ordinary Panel | 27 April 2026 | Decision No. 1402-007.701, Administrative Proceeding No. 10735.900122/2022-81

TAGS: Treaty interpretation | Cross-border withholding | Tax residence | Substance | Interest on equity

HOLDING

CARF, Brazil's federal administrative tax appeals court, held that interest on equity (juros sobre o capital próprio – JCP) paid to GE Brazil Holding Limited was subject to Brazilian withholding income tax at the 15% treaty rate, rather than the 25% domestic rate, on the grounds that the recipient was tax resident in the Netherlands.

FACTS

In 2017, GE Celma paid interest on equity (JCP) to its controlling shareholder, GE Brazil Holding Limited. At the time of payment, GE Celma withheld Brazilian withholding income tax at a 25% rate, on the basis that the recipient was treated as resident in Ireland, a jurisdiction included on Brazil's list of low-tax jurisdictions. GE Celma subsequently argued that, although GE Brazil Holding Limited was incorporated in Ireland, it was tax resident in the Netherlands and therefore entitled to treaty relief under the Brazil-Netherlands double tax treaty. On that basis, GE Celma claimed a refund of the excess withholding tax, asserting that the applicable rate was 15%, rather than 25%.

DECISION AND REASONING

CARF allowed the taxpayer's administrative appeal. The dispute turned on whether the recipient's residence should be determined under Brazil's domestic tax-domicile rule – which, under Article 127 of the National Tax Code, refers to the entity's legal seat – or under the applicable treaty rule. CARF held that, for treaty purposes, Article 4 of the Brazil–Netherlands double tax treaty prevailed, so that a legal entity's residence should be determined by reference to its place of effective management. The panel relied on the Dutch tax residence certificate, corporate documents requiring board meetings and management activities to take place in the Netherlands, the existence of Dutch directors and Dutch tax filings, and evidence that the JCP income had been reported in the Netherlands. CARF also found that the recipient carried on substantive economic activity and therefore applied the treaty limitation, under which Brazilian withholding tax was capped at 15%.

WHY IT MATTERS INTERNATIONALLY

The decision is significant because it gives practical effect to treaty residence rules over domestic tax-domicile concepts where a cross border payment falls within the scope of an applicable tax treaty. It is particularly relevant for holding structures in which the place of incorporation, place of effective management, and payment flows point to different jurisdictions. The ruling also underscores the evidentiary value of tax residence certificates and contemporaneous governance records in establishing treaty residence and access to treaty benefits.

STATUS OF JUDGMENT

The decision remains subject to appeal to CARF's Higher Chamber.

CONTRIBUTOR

Pedro Grillo, Brigagão, Duque Estrada Advogados, pgrillo@bde.com.br.

Chile | 2nd Tax and Customs Tribunal, Metropolitan Region | 24 April 2026 | Comercial Mabe Chile Limitada / SII, RIT GR-16-00063-2021 – RUC 21-9-0000387-6

TAGS Transfer pricing | TNMM | Intercompany financing

HOLDING

The court partially upheld the taxpayer's challenge: the SII's (Chilean Tax Authority) transfer pricing adjustment on intercompany goods purchases (applying TNMM) was confirmed as lawful, but the adjustment on intercompany financing was quashed for insufficient administrative reasoning.

FACTS

Mabe Chile, the Chilean distribution subsidiary of the Mexican Mabe Group, distributed home appliances purchased mainly from related parties abroad. The Tax Authorities argued that (i) the intercompany purchase prices did not meet the arm's length standard and (ii) interest rates on intercompany loans from Mabe Perú exceeded market rates.

DECISION AND REASONING

The Court upheld the SII's TNMM adjustment on goods purchases. Related-party transactions departing from arm's length trigger transfer pricing rules, regardless of commercial loss explanations. RPM was rejected due to significant risks borne by Mabe Chile. TNMM (operating margin) with external comparables set a 2.11%–4.07% range; adjustment reduced cost of sales by CLP 549 million to the median. The intercompany financing adjustment was reversed due to insufficient justification of credit rating recalibration, lack of loan-term analysis, and inadequate benchmarking, violating reasoning requirements.

WHY IT MATTERS INTERNATIONALLY

This decision aligns clearly with OECD Guidelines Chapter I and Chapter III providing one of the more detailed Chilean judicial endorsements of those principles. Fact patterns likely to arise in other jurisdictions.

STATUS OF JUDGMENT

Partially upheld at first instance; appealable before the Court of Appeals.

CONTRIBUTOR

Pablo Mahu, Serrano Abogados, pmahu@serranoabogados.cl.

Chile | 2nd Tax and Customs Tribunal, Metropolitan Region | 4 March 2026 | Nissan Chile SpA con XV Dirección Regional Santiago Oriente del SII, RIT GR-16-00080-2020 – RUC 20-9-0000334-0

TAGS: Transfer pricing | Resale price method | Full-risk distributor

HOLDING

The SII's transfer pricing adjustment was quashed because (i) the objected transactions were purely domestic (Nissan Chile to unrelated retail dealers), and (ii) the adjustment methodology was not the Resale Price Method but rather a hypothetical scenario built on unsubstantiated assumptions.

FACTS

Nissan Chile was the sole Chilean subsidiary of Nissan Japan, acting as a full-risk wholesale distributor selling to a network of 20 unrelated retail dealerships. In its first year of operations Nissan Chile implemented an aggressive market-entry strategy of discounts, bonuses and incentives passed on to independent retailers, but produced a negative operating margin. The SII issued an assessment applying the Resale Price Method and a comparability adjustment that allocated 59.37% of the incentive costs to the foreign related parties.

DECISION AND REASONING

The court fully quashed the tax assessment on two independent grounds. First, transfer pricing rules apply only to cross-border transactions with related parties. The SII's challenge targeted domestic incentives granted to independent retailers. Second, the SII misapplied the Resale Price Method (RPM). RPM adjusts the cost of goods purchased, not revenue-side incentives. The authority instead used a speculative "scenario without incentives," allocating costs to foreign affiliates without proper data or verification. A key flaw was ignoring the taxpayer's full-risk distributor status. The court recognized that temporary below-market margins from legitimate market-penetration strategies are OECD-compliant.

WHY IT MATTERS INTERNATIONALLY

The ruling aligns with OECD guidance by confirming that temporary below-median margins during legitimate market penetration do not trigger TP issues. It also requires tax authorities to correctly apply and justify their chosen method; mischaracterizing adjustments (e.g., claiming RPM while using hypothetical scenarios) will fail on due-process grounds.

STATUS OF JUDGMENT: Final at first-instance level. Appealable before the Court of Appeals.

CONTRIBUTOR: Pablo Mahu, Serrano Abogados, pmahu@serranoabogados.cl.

Colombia | Council of State (Administrative Litigation Chamber, Fourth Section) | Judgment dated 12 February 2026 | Case No. 25000-23-37-000-2020-00319-00 (28267)

TAGS: Transfer pricing · Intercompany services · Withholding tax · Deductibility

HOLDING

Compliance with the transfer pricing regime does not exempt taxpayers from the withholding tax requirements applicable to payments for intercompany services to related foreign entities, and both substantive and formal requirements must be satisfied for such expenses to be deductible.

FACTS

Needish Colombia S.A.S. (formerly Groupon Colombia S.A.S.) claimed deductions in its 2015 income tax and income tax for equity (Impuesto a la Renta para la Equidad – CREE) returns for administrative services received from Needish Limitada (Chile) (COP 1,644,783,000) and Groupon Inc. (United States) (COP 81,680,000). The Colombian Tax Administration (DIAN) rejected the deductions, alleging insufficient proof of actual service delivery and lack of withholding tax compliance. DIAN also imposed an accuracy penalty for including non-deductible expenses, resulting in lower taxable income.

DECISION AND REASONING

The Court confirmed DIAN's disallowance, finding the taxpayer failed to demonstrate effective service delivery through tangible work products as required by the service contract. Critically, payments for administrative and directional services to foreign parent companies require withholding tax under Article 124 of the Colombian Tax Code, regardless of transfer pricing compliance. The transfer pricing regime does not exempt this formal requirement. The accuracy penalty was upheld because the inclusion of disallowed deductions generated reduced tax liability, constituting a sanctionable fact. The Court rejected claims of "differing legal criteria" as grounds for penalty relief absent substantive evidence of conflicting interpretative jurisprudence.

WHY IT MATTERS INTERNATIONALLY

This ruling establishes that Colombian courts apply Article 124 ET with strict formalism: transfer pricing compliance does not waive mandatory withholding on intercompany service payments to related foreign entities. Service deductibility requires both economic substance (arm's length pricing) and formal compliance (withholding tax), creating dual gatekeeping for intercompany deductions. The decision signals heightened evidentiary burdens for multinational groups claiming service deductions.

STATUS OF JUDGMENT: Final.

CONTRIBUTOR: Maria Alejandra Buitrago, mabuitrago@capralegal.com.

Colombia | Council of State (Administrative Litigation Chamber, Fourth Section) | Judgment dated 16 April 2026 | Case No. 25000-23-37-000-2017-01569-01 (26059)

TAGS: Permanent establishment · Deductibility · Documentation · Withholding tax

HOLDING

Costs incurred by a foreign head office are deductible by its Colombian branch only if they are recorded in the branch's accounting books in Colombian pesos and supported by documentation that satisfies the requirements of Colombian tax law.

FACTS

China United Engineering Corporation, the Colombian branch of a Chinese company, formed a consortium with another non-resident entity to perform a turnkey contract for the construction of a thermoelectric power plant in Colombia. The branch declared Colombian-source income from the project, claiming 100% of the revenues, costs and withholding taxes. The Colombian Tax Administration (DIAN) partially disallowed operating costs and administrative expenses, adjusting the income components in accordance with the consortium's 70% participation share. DIAN also imposed an accuracy penalty for cost misstatement.

DECISION AND REASONING

The Council of State upheld the first-instance judgment dismissing the taxpayer's claims. It held that costs incurred by the foreign head office abroad are deductible only if they are recorded in the branch's accounting books in Colombian pesos and supported by documentation that complies with the requirements of Colombian tax law. The Court rejected the application of the indirect cost estimation method under Article 82 of the Colombian Tax Code, holding that this provision applies only to the sale of assets and not to service contracts. The Court also upheld the accuracy penalty, finding that, although the costs were economically real, they failed to satisfy the mandatory formal requirements for tax recognition. The inclusion of non-compliant costs resulted in a lower taxable income, thereby giving rise to the accuracy penalty. The Court clarified that penalties apply to costs lacking legal recognition, regardless of economic reality.

WHY IT MATTERS INTERNATIONALLY

The decision establishes that foreign branches operating in Colombia must record all costs attributable to their permanent establishment in Colombian pesos in their own accounting books and support them with appropriate documentation. Economic substance and transfer pricing studies do not substitute for mandatory accounting and formal documentation requirements. The decision signals strict formalism in the branch's taxation: branches cannot rely solely on parent company records or third-party certifications for cost deductibility.

STATUS OF JUDGMENT: Final.

CONTRIBUTOR: Maria Alejandra Buitrago, mabuitrago@capralegal.com.

Peru | Supreme Court (Fifth Constitutional and Social Chamber) | Decision dated 9 April 2025, published on 30 January 2026 | Casación No. 25241-2024 Lima

TAGS Transfer pricing · Characterisation · Resale price method · Anti-abuse

HOLDING

Functional characterisation of a controlled transaction for purposes of selecting the most appropriate transfer pricing method does not constitute a legal recharacterisation of the transaction and therefore does not require application of the general anti-avoidance rule.

FACTS

CUSA S.A.C., the Peruvian subsidiary of Manuchar N.V. (Belgium), purchased chemical inputs from its parent company and resold them to ALICORP S.A. under delivery-duty-paid (DDP) terms. CUSA argued that its role was limited to providing logistics services rather than acting as a distributor, and therefore the resale price method was inappropriate. Following a transfer pricing audit for fiscal year 2007, the Peruvian Tax Administration (SUNAT) characterised the transactions as distribution activities and applied the resale price method. The Administrative Tax Court upheld the assessment.

DECISION AND REASONING

The Supreme Court dismissed the taxpayer's cassation appeal and upheld the lower courts' judgments. The core legal question was whether SUNAT's functional characterisation amounted to a retroactive application of the general anti-avoidance clause (GAAR, Norma XVI of the Tax Code), which entered into force only in 2012. The Court held that Article 32-A of the Income Tax Law, applicable during the 2007 tax year, already required the tax authority to identify the functions performed, assets used, and risks assumed by the parties in order to select the most appropriate transfer pricing method. Such functional characterisation forms part of the comparability analysis and does not entail challenging the validity of the legal transaction or substituting the parties' declared business arrangement. The Court further noted that neither the administrative nor the judicial decisions invoked the GAAR, and the re-characterisation was confined to determining the appropriate transfer pricing method - specifically, preferring the resale price method over the comparable uncontrolled price method for buy-sell activities without significant value-added.

WHY IT MATTERS INTERNATIONALLY

The decision closely reflects the distinction drawn in paragraphs 1.119-1.122 of the OECD Transfer Pricing Guidelines (2022) between accurately delineating a controlled transaction and disregarding or recharacterising it under domestic anti-abuse rules. By confirming that functional recharacterisation for method-selection purposes falls within the ordinary scope of transfer pricing and not within anti-avoidance powers, the decision aligns with the OECD's position that proper delineation - based on conduct of the parties - is inherent to the arm's length analysis and does not require a GAAR trigger. This reasoning offers a useful comparator for disputes in other jurisdictions where taxpayers invoke similar arguments to resist functional recharacterisation.

STATUS OF JUDGMENT: Final (cassation dismissed; no further ordinary appeal available).

CONTRIBUTOR: Gabriela Haro, Partner, PwC Peru, gabriela.haro@pwc.com.

Uruguay | Contentious-Administrative Court of 2nd Turn (Montevideo) | 6 April 2026 | Sentencia Definitiva N° 111/2026

TAGS: Exchange of information · Foreseeable relevant information · Mutual administrative assistance · Due process · Beneficial ownership · Double taxation treaty · Ecuador

HOLDING

No violation of due process occurs for lack of prior review to the file when the information exchanged relates to a taxpayer that is not the subject of the investigation in the requesting jurisdiction, but merely a third party connected to the foreign tax audit.

FACTS

Uruguay's tax authority (DGI) received an information request from Ecuador regarding an investigation into Mr. BB, who was reported as the ultimate beneficial owner of AA (a Uruguayan company). DGI gathered information from AA and transmitted it to Ecuador. AA challenged the act, arguing that it had not been given prior review of the file before transmission, violating due process, transparency and its right of defense.

DECISION AND REASONING

The Court dismissed the claim. It held that the prior review right under Article 10 of Decree No. 313/011 is limited to "persons or entities examined or investigated in the requesting State." Since Ecuador was investigating Mr. BB (a natural person), and AA was merely the corporate vehicle through which BB held his interest – not the target of the investigation – AA had no standing to demand prior access. The Court adopted the reasoning of prior judgments (No. 55/2026 and 90/2026) that the special regime for international tax cooperation requires balancing individual rights against the public interest in mutual assistance, and that access rights attach only to the actual investigated party.

WHY IT MATTERS INTERNATIONALLY

This decision adopts a restrictive reading of the procedural safeguards available to third-party information holders in exchange-of-information cases. It departs from broader due-process approaches in some EU jurisdictions, where any taxpayer whose data is collected and transmitted may be entitled to be heard before disclosure. Practitioners advising clients in jurisdictions with expansive exchange networks (including under the OECD/Global Forum framework) should note that the threshold for "foreseeably relevant" information may be satisfied even when the data originates from a non-targeted entity, with judicial review of procedure confined to the formal investigation target. This case also illustrates how domestic courts navigate the tension between the efficiency of mutual assistance and taxpayer safeguards.

STATUS OF JUDGMENT: Final.

CONTRIBUTOR: Héctor López González, drhalopez@hotmail.com.

YIN
Young IFA Network

REGION 03

North America

- Canada 2
- United States 2

4 decisions · 2 jurisdictions

Canada | Federal Court of Appeal | 29 September 2025 | 2025 FCA 176

TAGS Beneficial ownership Tax treaty interpretation Cross-border withholding

HOLDING

The Court held that Luxembourg entities that received dividends on shares of a Canadian corporation under related-party securities lending arrangements were not the beneficial owners of those dividends. As a result, the dividends were not eligible for the reduced 5% withholding rate under the Canada-Luxembourg Treaty, and the Canadian payer was liable for withholding at the domestic Part XIII rate.

FACTS

Three Barbados-resident corporations (Barbcos) owning 71.5% of Husky Energy Inc., a public Canadian corporation, loaned their shares to related Luxembourg entities (Luxcos) under securities lending agreements. Husky paid the dividends to the Luxcos, subject to withholding at 5% as per the Luxembourg Treaty rather than 15% under the Barbados Treaty. The Luxcos later returned the shares and an amount equal to the gross dividends to the Barbcos.

DECISION AND REASONING

In determining whether the Luxcos were beneficial owners of the dividends, the Court interpreted the Canada-Luxembourg Treaty in accordance with the Vienna Convention and considered the 2003 OECD Commentary on Article 10. It analysed whether the Luxcos received the dividends for their own use and enjoyment and assumed the associated risk and control. Looking to legal substance, it concluded that the arrangements were not "true" securities lending agreements, since the parties never intended that the Luxcos would dispose of the Husky shares, and no collateral was provided. Moreover, the Luxcos were required to pay the gross dividends to the Barbcos, and cost-free hedges eliminated any risk to the Luxcos. It determined that the Luxcos were conduits with very narrow powers and could therefore not be beneficial owners.

WHY IT MATTERS INTERNATIONALLY

The judgment is significant because it may be read as marking the outer boundary of Canada's previously more permissive approach to beneficial ownership in treaty cases such as Prévost Car Inc. v. Canada, 2009 FCA 57, and Velcro Canada Inc. v. The Queen, 2012 TCC 57, rather than as a wholesale departure from that jurisprudence. Unlike cases in which a treaty-country recipient retained sufficient legal and commercial control notwithstanding an onward-payment arrangement, the Court placed substantial weight on the Luxcos' narrow powers, obligation to make dividend-equivalent payments, lack of meaningful economic exposure, and absence of practical enjoyment of the dividends. Read together with C&W Offshore Ltd. v. His Majesty The King, 2026 TCC 40, the decision suggests that Canadian courts will not deny beneficial ownership merely because there is a back-to-back or onward-payment structure, but may do so where the intermediary's role is preordained, riskless, and economically equivalent to that of a conduit. On that basis, the decision aligns Canadian treaty interpretation more closely with the OECD Commentary's conduit analysis and with international decisions, including the Swiss Federal Supreme Court's reasoning in Case 2C_209/2017.

STATUS OF JUDGMENT

Subject to a pending application for leave to appeal to the Supreme Court of Canada.

CONTRIBUTORS

Sammy Cheaib, Davies Ward Phillips & Vineberg, scheaib@dwpv.com. Charles Garofalo, Davies Ward Phillips & Vineberg, chgarofalo@dwpv.com

Canada | Tax Court of Canada | 4 March 2026 | 2026 TCC 40

TAGS Beneficial ownership | Tax treaty interpretation | Cross-border withholding

HOLDING

The Tax Court of Canada held that a U.K. corporation receiving rental payments under a sublease of mooring chains was the beneficial owner of those payments, despite having leased the chains from its Norwegian affiliate and remitted most of the rental income onward.

FACTS

C&W Offshore Ltd. (C&W), a Canadian corporation, leased mooring chains from InterMoor Ltd. (InterMoor UK), a corporation resident of the United Kingdom, who in turn leased the chains from InterMoor AS, its Norwegian affiliate (InterMoor Norway). C&W did not withhold non-resident tax in the rental payments it made to InterMoor UK.

DECISION AND REASONING

C&W was required to withhold a 10% tax on the rental payments in accordance with the Canada-United Kingdom Tax Treaty because InterMoor UK was the beneficial owner of these payments. Applying the beneficial ownership test from Prévost Car, 2009 FCA 57 Inc. v. Canada, the Court determined that InterMoor UK had the possession, control and use of the rental payments and assumed the risks associated with them. Had InterMoor Norway been the beneficial owner, the rental payments would have been exempt from tax under the Canada-Norway Tax Treaty. However, InterMoor Norway's ownership of the mooring chains does not make it the beneficial owner of the rental payments.

WHY IT MATTERS INTERNATIONALLY

This case provides useful guidance on beneficial ownership with respect to rental payments in cross-border leasing agreements and helps reconcile Canada's treaty jurisprudence after Canada v. Hutchison Whampoa Luxembourg Holdings S.À.R.L. (Husky Energy Inc.), 2025 FCA 176. By applying the Prévost Car, 2009 FCA 57, Inc. v. Canada attributes of ownership – possession, control, use and risk – the Tax Court of Canada confirmed that an intermediary may be the beneficial owner even in a back-to-back leasing structure where it has genuine legal and commercial control over the payments. The decision therefore shows that Husky should not be read as adopting a broad anti-conduit rule: onward-payment mechanics are not fatal in themselves, but beneficial ownership may be denied where the intermediary lacks meaningful discretion, risk and economic enjoyment.

STATUS OF JUDGMENT

Final and not subject to appeal.

CONTRIBUTORS

Marc André Gaudreau Duval, Davies Ward Phillips & Vineberg LLP, maduval@dwpv.com , Jane Chen, Davies Ward Phillips & Vineberg LLP, jchen@dwpv.com.

United States | U.S. Tax Court | 26 August 2024 and 8 April 2026 | 163 T.C. 76; 166 T.C. No. 8 | Docket No. 8435-23

Varian Medical Systems, Inc. & Subsidiaries v. Commissioner (Varian I and Varian II)

TAGS: Challenges to regulations | Dividends-received deduction | Foreign tax credits | Controlled foreign corporations

HOLDING

In Varian I, the Tax Court held that a mismatch among the effective dates of changes made by the Tax Cuts and Jobs Act of 2017 allowed the taxpayer to claim a dividends-received deduction for deemed dividends arising from foreign taxes paid by its controlled foreign corporations ("CFCs"). The Tax Court held that the Treasury regulation disallowing that result was invalid to the extent it conflicted with the statutory effective dates. In Varian II, the Tax Court held that the dividends-received deduction was subject to a holding-period requirement and therefore was available only for amounts attributable to first-tier CFCs directly owned by the taxpayer's U.S. group. The Tax Court also adopted the Commissioner's method for calculating the related foreign tax credit disallowance.

FACTS

This case arose from the interaction of the effective dates of several changes made by the Tax Cuts and Jobs Act of 2017 (TCJA), including the new foreign dividends-received deduction under section 245A. Because those effective dates did not align, section 245A applied during Varian's 2018 fiscal year to certain foreign taxes paid by its CFCs (known as 'deemed paid taxes' to the US shareholder, Varian) that gave rise to deemed dividends under section 78.

Treasury and the IRS had published a regulation disallowing that benefit. Varian took a position contrary to this regulation based on the statutory text of the TCJA and claimed a section 245A dividends-received deduction for the section 78 deemed dividends. The section 78 amounts were attributable to both first-tier CFCs directly owned by Varian's U.S. group and lower-tier CFCs held indirectly through foreign subsidiaries.

DECISION AND REASONING

The Tax Court addressed the dispute in two opinions. Varian I, issued in August 2024, resolved whether the section 245A dividends-received deduction applied to the section 78 deemed dividend amounts despite the regulation. Varian II, issued in April 2026, addressed the holding-period limitation and the calculation of the related foreign tax credit disallowance.

In Varian I, the Tax Court held that the regulation was invalid because it contradicted the plain language of the statutory effective dates under the Supreme Court's Loper Bright precedent, which instructs courts to find the 'best' interpretation of a statute rather than deferring to an agency's (such as the IRS's) interpretation. The court therefore allowed the section 245A deduction for the section 78 deemed dividends arising during the transition year. The court also held that section 245A(d)(1) denied foreign tax credits associated with the deductible amounts.

In Varian II, the Tax Court further narrowed the practical benefit of Varian I. Section 246(c), as modified for section 245A, requires the taxpayer to hold the relevant shares for more than 365 days during a 731-day period. The court interpreted 'held by the taxpayer' to require direct ownership. The deduction therefore was available for section 78 amounts attributable to first-tier CFCs directly owned by Varian's U.S. group, but not for amounts attributable to lower-tier CFCs held through foreign subsidiaries.

Varian II also addressed the fraction used to determine the foreign tax credits denied under section 245A(d)(1).

WHY IT MATTERS INTERNATIONALLY

Read together, Varian I and Varian II show that the unusual TCJA effective-date mismatch created a real but limited dividends-received deduction benefit. Varian I allowed the deduction for section 78 amounts during the transition year, while Varian II curtailed that benefit for lower-tier CFC structures that did not satisfy the direct holding-period requirement.

The decisions also show that a section 245A dividends-received deduction and the related foreign tax credits must be considered together. Even where the deduction is available, the associated foreign tax credit haircut can be larger than the deduction.

Finally, Varian I remains an important example of courts overturning tax regulations promulgated by Treasury and the IRS on the ground that the regulations are contrary to the statutory text.

STATUS OF JUDGMENT

- Tax Court opinions issued August 26, 2024 (Varian I), and April 8, 2026 (Varian II).

CONTRIBUTOR

Shae Qian, Covington & Burling LLP

LINK TO THE COURT JUDGMENT

Varian I opinion (PDF) | Varian II opinion (PDF)

United States | U.S. Tax Court | 28 January 2026 | 166 T.C. No. 1 | Docket No. 11832-20

Aventis, Inc. & Subsidiaries v. Commissioner

TAGS Hybrids | Cross-border financing | Beneficial ownership | Debt-equity characterization

HOLDING

Interest expense deductions under a purported financial asset securitization investment trust (FASIT) were denied on the ground that the FASIT did not satisfy statutory requirements regarding principal and interest. Substantial compliance did not cure those defects. Aventis remained the beneficial owner of the underlying assets, and the preferred stock was equity rather than debt, so the related payments were nondeductible dividends rather than deductible interest.

FACTS

Aventis, Inc., a U.S. member of the Sanofi group, entered into a financing transaction in July 2000 to support expansion in North America. The transaction relied on the former FASIT regime in sections 860H through 860L, which generally allowed a qualifying entity to hold financial assets and issue specified ownership and regular interests. Congress repealed the regime in 2004 but preserved qualifying arrangements that remained outstanding under their original terms.

Aventis placed approximately $571.5 million of intercompany receivables into a segregated asset pool. A French affiliate, Societe Anonyme Aventis Nutrition (SAAN), paid $559.5 million for Series A/E preferred stock that the parties designated as a FASIT regular interest. A transaction vehicle held a $500,000 Class I note designated as the ownership interest, and a bank held an $11.5 million Class II note designated as another regular interest.

The structure was intended to produce different characterizations in the two countries. Aventis expected to deduct payments on the preferred stock as interest under the U.S. FASIT rules, while SAAN expected to treat those payments as dividends eligible for the French participation exemption. For 2008 through 2011, the vehicle reported the pool's income and assets and claimed deductions associated with the preferred-stock payments. The IRS disregarded the purported FASIT, allocated the income to Aventis, and denied the deductions.

DECISION AND REASONING

Former section 860L(b)(1) required a FASIT regular interest to unconditionally entitle its holder to a specified principal amount and to interest at a fixed or permitted variable rate. The Series A/E preferred stock failed both requirements. The liquidation preference depended on the value of the pool after fees, expenses, and senior claims, and SAAN stood behind other claimants. Its return also depended on residual earnings and board-declared dividends rather than a fixed or permitted variable rate. Later changes to the dividend rate provided an additional reason the instrument would not have continued to qualify under its original terms.

The Tax Court declined to apply substantial compliance because the defects concerned essential statutory elements, not a procedural detail. The repeal provision's grandfather rule likewise did not preserve an arrangement that never qualified or that later ceased to satisfy the original terms.

The court also held that Aventis had not transferred beneficial ownership of the receivables and related assets. Aventis retained legal title, possession, and significant control; it could substitute, sell, or modify assets; and only Aventis had direct recourse against the underlying obligors. The investors received contractual rights to cash flows, but not the ownership prerogatives and economic control necessary to shift the asset income away from Aventis.

Finally, applying the Third Circuit's debt-equity framework, the court characterized the Series A/E instrument as equity. The documents and accounting treatment called it stock; payments depended on board action and the pool's earnings; SAAN possessed shareholder rights; the instrument lacked a fixed maturity date and enforceable creditor remedies; and repayment was subordinated. The related-party, tax-driven terms also differed from those an outside lender would ordinarily accept. The payments to SAAN therefore were dividends, not deductible business interest.

WHY IT MATTERS INTERNATIONALLY

The case shows that beneficial ownership turns on control, risk, and enforceable rights, not merely on labels or the contractual routing of cash flows. Groups using securitizations, receivable pools, or similar financing vehicles should identify who holds title, who can manage or replace assets, who bears loss and receives gain, and who can enforce collection.

More broadly, grandfather protection for a repealed regime requires continuing compliance with the preserved arrangement. Material changes to pricing or other terms can jeopardize that protection, and substantial compliance is unlikely to rescue a structure that misses the regime's core requirements.

STATUS OF JUDGMENT

Taxpayer appeal to the U.S. Court of Appeals for the Third Circuit commenced April 24, 2026.

CONTRIBUTOR

Shae Qian, Covington & Burling LLP

LINK TO THE COURT JUDGMENT

U.S. Tax Court opinion (Tax Notes court document)

Young IFA Network

CASE LAW OBSERVATORY

Global Tax Jurisprudence · 1 October 2025 – 31 May 2026