



Case C- 39/16 - Argenta Spaarbank NV v. Belgische Staat

The Court of Justice declares incompatibility with the Parent Subsidiary Directive of rules limiting interest deduction for the Parent to the extent of dividends received

On 26 October 2017 the Court of Justice of the European Union (“CJEU”) issued its decision in the case *Argenta Spaarbank* (C-39/16), which concerns the compatibility of a Belgian provision denying interest deduction at the level of the Parent Company with Article 4(2) of the Parent Subsidiary Directive (Directive 90/435/EEC; hereafter “PSD”). Under the relevant Belgian provision, Belgium resident companies could not deduct interest payments to the extent that, in the same tax year, they receive exempt dividends from participations owned for less than a year. In the case at stake, the interest paid was not incurred for the financing of the Subsidiaries that distributed the dividends.

With regard to the first preliminary question, the CJEU concludes that the Belgian provision is not compatible with Article 4(2) PSD. The latter provision grants Member States the right to deny the deduction of costs “relating to the holding”, since the dividends stemming from the holding are exempt. On the contrary, a literal interpretation of Article 4(2) PSD excludes the right for Member States to deny the deduction of interest incurred by the Parent Company, which are not related to the holding in the Subsidiary, up to the amount of the dividends received (para. 45).

According to the Court, this Interpretation is confirmed by the fact that Article 4(2) must be interpreted narrowly, as it is an exception to the general rule provided for by Article 4(1) (para. 51). In addition, the non-deductibility of interest incurred by the Parent Company, and not related to the holding in the Subsidiary, up to the amount of the dividends received is tantamount to the non-application of the exemption provided for in Article 4(1) and defeats the objective of the Directive (para. 52). Finally, the Court notes that the objective of Article 4(2) is to prevent the Parent Company to benefit from a double tax advantage (see also case C-48/07, *Les Vergers du Vieux Tauves*, para. 42), i.e. the exemption of the dividends received and the deduction of connected costs. In this respect, a provision that denies the deduction of interest unrelated to the acquisition of the holdings goes beyond what is necessary to pursue that objective and must be held contrary to the PSD (paras. 53-56).

With regard to the second preliminary question, the Court concludes that the application of the Belgian provision is also not allowed by Article 1(2) PSD, which reflects the general principle of EU law that any abuse of right is prohibited. According to the CJEU, operations put in place by the Parent Company with a view to benefit from a double tax advantage are specifically addressed by Article 4(2), which the EU legislator considers an effective and proportionate means to counteract such arrangements. For this reason, Member States cannot

enact anti-abusive measures that go beyond the specific anti-avoidance rule provided for in Article 4(2) in relation to the same type of abusive conduct (para. 62).

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