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INTERNATIONAL TAX CASE SUMMARY

FONCIÈRE VÉLIZY ROSE vs FRANCE

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HEAD OF ACADEMICS

Welcome to the Academy of Tax Law's case and judgment summaries. These documents have been carefully curated to support professionals, students, and researchers navigating the complex landscape of international tax and transfer pricing. At the Academy, we understand that tax law is ever-evolving, with key rulings continuously shaping its practice.

Each summary you'll find here is designed to provide not just the facts, but the context and implications of pivotal legal decisions. These case summaries are created to serve as a valuable resource for legal teams, multinationals, revenue authorities, and academics, offering insights that go beyond the surface. Our goal is to ensure you remain informed and prepared, whether you are dealing with tax planning, dispute resolution, or risk management.

We believe that knowledge is the foundation of sound decision-making, and with these resources, we hope to empower you in your professional journey. As you delve into the analysis, remember that staying ahead in tax law requires not just understanding the rules but how to apply them in a dynamic, global environment.

Thank you for choosing the Academy of Tax Law as your partner in this ongoing learning experience.

Sincerely,
Dr. Daniel N Erasmus

PART 1

SUMMARY

JUDGEMENT SUMMARY

CASE OVERVIEW

Court: Council of State, 9th – 10th Joint Chambers, France

Case No: 471147

Applicant: Foncière Vélizy Rose (FVR)

Defendant: Minister to the Prime Minister, Responsible for Budget and Public Accounts

Judgment Date: 8 November 2024

Full Judgment: CLICK FOR FULL JUDGMENT

View Online: CLICK TO VIEW SUMMARY ONLINE

JUDGMENT SUMMARY

The Council of State reviewed an appeal by Foncière Vélizy Rose (FVR) regarding the withholding tax on an interim dividend of EUR 3.6 million distributed to Vélizy Rose Investment (VRI), a Luxembourg-based entity, which was subsequently paid to Dewnos Investment. The Paris Administrative Court of Appeal had dismissed FVR's claim to discharge this withholding tax, prompting the appeal.

FVR argued that the withholding tax exemption under Article 119 ter of the French General Tax Code (GTC) applied as VRI qualified as the beneficial owner of the dividend. The court examined whether VRI's status as the dividend's beneficial owner met the conditions for the withholding tax exemption. Noting that VRI's sole function was holding FVR's shares and that it transferred the full dividend to Dewnos Investment the following day, the court ruled that VRI could not be deemed the beneficial owner.

FVR further contended that applying Articles 119a and 119b of the GTC infringed on the freedom of establishment under Articles 49 and 54 of the Treaty on the Functioning of the European Union (TFEU). The court rejected this, aligning with earlier European jurisprudence, holding that beneficial ownership requirements did not contravene EU law or directives.

The Council of State upheld the lower courts' findings, confirming that VRI's lack of effective beneficial ownership disqualified FVR from the withholding tax exemption. The appeal was dismissed, and the judgment underlined the critical nature of beneficial ownership in tax treaty applications.

KEY POINTS

OF THE JUDGMENT

BACKGROUND

Foncière Vélizy Rose (FVR) underwent an accounting audit for 2013–2015. In 2014, FVR distributed an interim dividend of EUR 3.6 million to its sole shareholder, Vélizy Rose Investment (VRI), a Luxembourg entity. The dividend was immediately passed to Dewnos Investment, VRI's parent company.

The French tax authorities challenged the withholding tax exemption claimed under Article 119 ter of the General Tax Code. This exemption applies to dividends distributed to EU-based entities that meet specific beneficial ownership and operational conditions. The authorities argued that VRI was merely an intermediary with no substantial activity or effective ownership.

KEY POINTS
OF THE JUDGMENT

CORE DISPUTE

The dispute centered on whether VRI was the beneficial owner of the dividend, a condition for exemption under Article 119 ter of the General Tax Code. FVR argued that VRI's Luxembourg location and the absence of explicit conditions in the Franco-Luxembourg treaty supported the exemption.

The authorities asserted that VRI acted solely as a conduit, with the dividend's immediate transfer to Dewnos Investment demonstrating the absence of beneficial ownership. They also argued that EU directives did not prohibit imposing a beneficial ownership condition.

KEY POINTS
OF THE JUDGMENT

COURT FINDINGS

The Council of State conducted a thorough evaluation of the facts and legal principles surrounding the withholding tax exemption claimed by Foncière Vélizy Rose (FVR). The court's findings rested on three major pillars:

1. Assessment of Beneficial Ownership: The court emphasized that beneficial ownership is a substantive criterion requiring proof of economic control and entitlement to the income. In this case, Vélizy Rose Investment (VRI) failed to demonstrate such control. The court noted that VRI's immediate transfer of the EUR 3.6 million dividend to its parent company, Dewnos Investment, illustrated a conduit arrangement. This lack of retention or discretion over the dividend underscored VRI's ineligibility as the beneficial owner under Article 119 ter of the General Tax Code. no economic control over the funds.
2. Compliance with EU Directives: The court analyzed the compatibility of the French tax rules with the European Union's directives, particularly the Parent-Subsidiary Directive. It concluded that the beneficial ownership requirement aligns with the directive's objectives to prevent abuse and ensure that tax benefits apply only to entities genuinely entitled to them. This assessment countered FVR's argument that the rules infringed upon the freedom of establishment under the Treaty on the Functioning of the European Union (TFEU).
3. Substance-over-Form Principle: A critical aspect of the findings was the application of the substance-over-form doctrine. The court rejected the notion that VRI's formal status as the recipient of the dividend was sufficient for claiming the exemption. Instead, it focused on the economic reality of the arrangement, which revealed that VRI lacked any substantive activity or decision-making capacity concerning the income.

The judgment also addressed FVR's contention that withholding tax rules disproportionately affected cross-border transactions. The court found no evidence of discrimination, highlighting that similar rules apply to domestic and cross-border scenarios under French tax law.

Moreover, the court examined the administrative practices of the French tax authorities and concluded that their decision to deny the exemption was well-grounded in both law and fact. The authorities' reliance on transactional analysis and their scrutiny of VRI's activities were deemed legally sound.

KEY POINTS

OF THE JUDGMENT

OUTCOME

The Council of State's judgment decisively dismissed the appeal by Foncière Vélizy Rose (FVR), affirming the rulings of the lower courts. The court ruled that VRI, the Luxembourg-based entity to which the dividend was paid, could not be regarded as the beneficial owner within the meaning of Article 119 ter of the French General Tax Code. This finding was crucial in denying the withholding tax exemption claimed by FVR.

The ruling emphasized that beneficial ownership entails more than formal possession of funds. It requires demonstrable economic control over the income and the ability to decide its ultimate use. The court noted that VRI acted merely as an intermediary, immediately transferring the EUR 3.6 million dividend to Dewnos Investment without retaining any economic benefit.

Moreover, the Council of State highlighted that the beneficial ownership condition under Article 119 ter aligns with both French domestic tax law and the objectives of EU directives. By doing so, the court rejected FVR's argument that the requirement infringed upon the freedom of establishment enshrined in the Treaty on the Functioning of the European Union (TFEU). The judgment reinforced that the beneficial ownership test prevents abuse of withholding tax exemptions, ensuring they apply only to entities genuinely entitled to the benefits.

The judgment further clarified that the immediate reallocation of funds by VRI to its parent company indicated a lack of substance in VRI's operations. This lack of substance was critical in demonstrating that VRI did not meet the criteria necessary for withholding tax exemptions under French law.

In rejecting the appeal, the court validated the French tax authorities' approach to scrutinizing claims of tax treaty benefits where the underlying economic substance is questionable. The judgment sends a strong signal to multinational corporations about the importance of aligning their cross-border structures with the principles of substance and beneficial ownership.

Additionally, the court's decision underscored the necessity of maintaining consistency in applying withholding tax exemptions. By holding that the beneficial ownership requirement is compatible with the objectives of relevant EU directives, the ruling ensures that the principle of legal certainty is upheld in cross-border tax matters.

Ultimately, the outcome not only upheld the withholding tax but also established a clear precedent for similar cases. It underscored the vital role of substance in claiming tax treaty benefits and provided a robust framework for revenue authorities to challenge arrangements lacking genuine economic activity.

TP METHOD

HIGHLIGHTED (IF ANY)

Although this case primarily concerned withholding tax exemptions, the principles resonate with transfer pricing practices, particularly the substance-over-form doctrine. The tax authorities assessed whether VRI's structure and operations demonstrated genuine economic activity or if it was a conduit entity established to exploit tax benefits.

The application of the beneficial ownership test mirrors the analytical framework of transfer pricing methodologies such as the Transactional Net Margin Method (TNMM), which emphasizes substance and the arm's length principle. The judgment highlights that operational substance is not merely procedural but integral to applying both withholding tax exemptions and transfer pricing methods effectively. For example, if VRI had engaged in managerial oversight, risk assumption, or other activities indicative of ownership, its claim might have been substantiated.

The authorities used transaction tracing to demonstrate that the dividend lacked economic retention within VRI, undermining its claim. Such an approach is analogous to functional analyses in transfer pricing, where entities are evaluated on the functions performed, assets employed, and risks assumed.

PART 2

SIGNIFICANCE

MAJOR ISSUES

AREAS OF CONTENTION

The judgment clarified key contentious issues:

Beneficial Ownership
Whether VRI's activities or lack thereof qualified it as the beneficial owner of the dividend under Article 119 ter. The authorities contended that VRI's conduit role disqualified it.

Freedom of Establishment
FVR argued that withholding tax rules violated Articles 49 and 54 of the TFEU. The court ruled that the beneficial ownership requirement did not infringe on EU freedoms since it aimed to prevent abuse.

Double Tax Treaty Interpretation
Whether beneficial ownership was an implied requirement for treaty benefits. The court affirmed that the treaty's objectives justified applying such a condition even if not explicitly stated.

EXPECTED
OR CONTROVERSIAL?

This decision was largely expected given its alignment with prior case law emphasizing the principle of substance over form in tax matters. Courts across jurisdictions have consistently upheld the necessity of demonstrating genuine economic activity for claiming tax treaty benefits. However, the decision remains somewhat controversial due to its potential implications for multinational enterprises relying on intermediary structures to access treaty benefits.

Critics argue that the stringent interpretation of beneficial ownership may create uncertainty for businesses engaging in legitimate cross-border activities. They contend that the line between a valid holding company structure and an abusive conduit entity is not always clear. Nonetheless, proponents of the ruling emphasize that it strengthens the integrity of international tax systems by curbing treaty shopping and ensuring that tax benefits are allocated based on economic substance rather than formalistic arrangements.

The judgment's reliance on the Parent-Subsidiary Directive and its alignment with EU law mitigate its controversial aspects, as it ensures consistency with the broader objectives of preventing abuse and promoting fairness in taxation. While MNEs may view the decision as restrictive, it reinforces the importance of compliance and transparency in international tax planning.

SIGNIFICANCE
FOR MULTINATIONALS

The Foncière Vélizy Rose case serves as a critical reminder for multinational enterprises (MNEs) about the importance of ensuring substance in their tax planning strategies. The judgment underscores several key lessons:

Economic Substance
MNEs must ensure that intermediary entities exhibit real economic activity and control over income. Simply acting as a conduit for financial flows can disqualify an entity from accessing treaty benefits.

Risk of Treaty Shopping
The ruling highlights the risks associated with using holding companies in low-tax jurisdictions solely to exploit treaty benefits. Tax authorities are increasingly scrutinizing such structures to ensure compliance with the principles of beneficial ownership.

Operational Alignment
MNEs should align their operational structures with their tax positions. This includes demonstrating that intermediary entities have genuine decision-making authority and retain control over income.

Enhanced Compliance
The decision reinforces the need for robust compliance measures, including comprehensive documentation and regular reviews of cross-border structures.

By taking these steps, MNEs can mitigate the risks of disputes and align their operations with global tax principles.

SIGNIFICANCE

FOR REVENUE SERVICES

For revenue authorities, the Foncière Vélizy Rose case provides a strong precedent for applying substance-over-form principles in cross-border tax matters. Key takeaways include:

Empowered Scrutiny
The judgment validates rigorous scrutiny of claims to tax treaty benefits, particularly where intermediary entities are involved.

Framework for Assessments
The reliance on beneficial ownership as a substantive criterion offers a clear framework for assessing the validity of treaty benefit claims.

Deterrence of Abuse
By upholding the denial of benefits to conduit entities, the decision serves as a deterrent to treaty shopping and reinforces the integrity of international tax systems.

Encouragement for Compliance
The ruling incentivizes businesses to ensure transparency and compliance in their tax planning strategies, reducing the scope for disputes.

The decision strengthens the ability of revenue services to address tax avoidance and ensures that treaty benefits are granted based on genuine economic activity.

RELEVANT CASES

DENMARK VS T DANMAR & Y DENMARK

These pivotal cases established that companies acting as mere intermediaries or conduits cannot claim the benefits of EU directives. The Court of Justice of the European Union (CJEU) underscored that beneficial ownership must reflect genuine control and entitlement to income. The ruling aligned closely with the principle applied in the Foncière Vélizy Rose case, reinforcing the necessity of substance over form in claiming tax exemptions.

Click here to download the judgment.

PREVOST CAR INC. V. CANADA

This landmark Canadian case emphasized the importance of legal and economic ownership in applying tax treaty provisions. The court held that only entities with true control over funds, including the discretion to decide their use, could claim treaty benefits. This decision parallels the Foncière Vélizy Rose case in its emphasis on substance and the need for clear economic control.

Click here to download the judgment.

INDOFOOD VS JP MORGAN CHASE BANK

WHile this is not a Transfer Pricing case, this case from the UK courts focused on the definition of beneficial ownership in the context of interest payments under a tax treaty. It clarified that the beneficial owner must retain more than formal title; they must exercise genuine control over the income. The principles from this judgment resonate with the findings in the Foncière Vélizy Rose case.

Click here to read the judgment.

PART 3

PREVENTION

ENGAGING EXPERTS

The Foncière Vélizy Rose case underscores the importance of involving transfer pricing and international tax experts. Such professionals provide critical support to MNEs in areas like:

Structuring Transactions
Experts help design cross-border structures that align with both domestic and international tax regulations, ensuring economic substance and compliance.

Risk Analysis
They assess potential areas of exposure related to beneficial ownership and withholding tax exemptions, helping MNEs anticipate challenges from tax authorities.

Documentation and Evidence
By preparing robust and defensible documentation, transfer pricing experts substantiate an MNE's claim to tax treaty benefits. This includes comprehensive functional analyses, evidence of control over income, and compliance with the arm's length principle.

Dispute Resolution
Experts provide critical support during audits or litigation, offering insights grounded in case law and industry standards.

By engaging professionals, MNEs can mitigate risks and ensure that their tax positions are defensible, aligning their operations with the principles of substance and beneficial ownership.

PREVENTATIVE

MEASURES TO AVOID SIMILAR CASES

TAX RISK MANAGEMENT PROCESS

Preventing disputes like the Foncière Vélizy Rose case requires robust tax governance and proactive measures. Key strategies include:

Economic Substance Checks
Regular reviews of intermediary entities can confirm that they meet beneficial ownership criteria. Such checks include verifying operational activities, decision-making processes, and financial flows.

Enhanced Documentation
Comprehensive and up-to-date documentation is critical. This includes evidence of economic substance, functional analyses, and the rationale behind claiming treaty benefits.

Training and Capacity Building:
Providing regular training on changes in tax regulations and case law ensures that teams remain compliant and proactive in their planning.

Implementing these measures reduces the likelihood of disputes, aligns MNE operations with global tax norms, and strengthens their defense against potential audits or litigation.

DOWNLOAD FREE BOOK

TAX INTELLIGENCE: THE 7 HABITUAL TAX MISTAKES MADE BY COMPANIES

Tax Intelligence: The 7 Habitual Tax Mistakes Made by Companies" by Dr. Daniel N. Erasmus is a must-read for businesses seeking to navigate the intricate world of tax compliance and risk management. By highlighting common pitfalls and offering strategic solutions, Erasmus equips companies with the knowledge to improve their tax practices and secure financial stability.

PREVENTATIVE

MEASURES TO AVOID SIMILAR CASES

TAX STEERING COMMITTEE

Establishing a tax steering committee can help ensure that tax policies are aligned with the broader business strategy and that transactions are vetted for both commercial and tax implications. A tax steering committee can:

- Review all significant cross-border transactions before they are executed.
- Ensure that tax decisions are made in the context of overall business objectives, not solely for tax savings.
- Monitor changes in international tax laws to ensure ongoing compliance and avoid disputes like this case.

DOWNLOAD FREE E-BOOK

DRIVING TAX COMPLIANCE: THE ESSENTIAL ROLE OF THE TAX STEERING COMMITTEE

The eBook "Driving Tax Compliance: The Essential Role of a Tax Steering Committee" by Prof. Dr. Daniel N. Erasmus, Renier van Rensburg, and Gilbert Ferreira, emphasizes the critical importance of establishing a Tax Steering Committee (TSC) within multinational corporations to ensure tax compliance and manage tax-related risks effectively.

INTERNATIONAL TAX

CASE SUMMARY

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