

Domestic anti-abuse rules and DTT

CE, Plén., 25 octobre 2017, n° 396954, *Verdannot et autres*, RJF 1/18 n° 70

- “Under those provisions [Art. L. 64 of the French Code of Tax Procedures], (...) the tax authority (...) may disregard certain instruments or acts by the taxpayer as unenforceable against it if (...) there cannot have been any other reason for them [those instruments or acts] other than a desire to avoid (...) the tax liability that the taxpayer would ordinarily have borne if he had not completed those instruments or acts (...), by attempting to rely upon a literal application of the legislation contrary to the stated aims of the legislator. The same applies when a taxpayer attempts to use a rule in a double tax treaty, designed to allocate the authority to impose taxes between countries with a view to avoiding double taxation, even if that treaty does not contain any express provisions on the doctrine of evasion.”
- “The States that are parties to the France-Luxembourg double tax treaty cannot be regarded as having intended, with a view to allocating the authority to impose taxes between them, to apply its provisions to situations created using artificial arrangements lacking any economic substance”.

Domestic anti-abuse rules and DTT

- Overriding the Treaty or protecting the Treaty ?
- What about more specific anti-abuse rules ?
- What if there had been anti-abuse provisions in the Treaty itself?

Interpretation of Tax Treaties

Main principles in France

- Art. 1, §3 of France/Germany DTT : “ This convention applies to all other taxes that are analogous or similar in their nature which may be created, after its signature, in one of the contracting States ”
- CE, Plén., 24 novembre 2014, n° 368935, *Min. c/ Société Lufthansa AG*, RJF 2/15 n° 120
- CE, Plén., 13 juin 2018, n° 415769, *Min. c/ Société Deutsche Bahn AG*, To be published

Interpretation of Tax Treaties

Main principles in France

➤ *Min. c/ Société Lufthansa AG :*

- “ Although the stipulations of the Franco-German Tax Convention do not expressly set out an exemption from the housing tax in the event of an exemption from the trading licence tax in France and although its Article 6 limits itself (...) to laying down for international air transport companies, an exemption of the direct taxes on the profits and, by analogy, of the trading licence tax [Gewerbesteuer], these stipulations must be interpreted in the light of their purpose and their end (...) ”.
- “ Since by virtue of I of Article 1407 of the General Tax Code the housing tax is payable, for the buildings that it occupies to carry out its business, by a company exempted from the business tax and then the corporate property charge and is analysed, in such a case, as a tax replacing these taxes [themselves having replaced the ancient trading licence tax], Article 6 must be interpreted as having as its purpose and its effect to preclude the housing tax from being imposed on companies exempted in France, by virtue of its stipulations, from the trading licence tax and taxes which have replaced it ”.

Interpretation of Tax Treaties

Main principles in France

➤ *Min. c/ Société Deutsche Bahn AG :*

- Special tax on network companies (energy, electronic communications, public transport...); created in 2010
- Given the sectoral limitations of the application scope of this tax (...), it cannot be considered as analogous or similar in its nature to the trading licence tax (Gewerbesteuer), despite similarities in the tax bases.