https://doi.org/10.25143/socr.23.2022.2.132-144

Definition of Tax Planning in the Case Law of the Court of Justice of the EU (ECJ)

LL.M CEU ***Jānis Zelmenis***
ORCID: 0000-0002-8178-6046
Law Firm "BDO Law"
Janis.Zelmenis@bdo.lv

Abstract

The objective of the study is to analyse the current and past case law of the European Court of Justice (ECJ) regarding tax disputes based on the modern legislation of the EU countries and applicable international law to determine the concept and criteria for legal tax planning. This article provides an in-depth study of the well-known Cadbury Schweppes case (2006), including the decision of the ECJ, which laid the foundation for a new concept of examination and interpretation of tax disputes on the merits in general. The introduction of the concept of "wholly artificial arrangements" and their characteristics stipulated and determined the development of the entire field of tax planning for years to come. Other rulings of the ECJ following the case of Cadbury Schweppes have described in greater detail and more specifically the concept of "wholly artificial arrangements" under the influence of the practice of tax planning itself, determining what tax planning is legitimate and how exactly it should be distinguished from tax evasion and tax avoidance.

Several research methods have been used in this study: comparative method, historical method, analytic method, inductive method.

Keywords: European Court of Justice, freedom of establishment, notion of economic substance, tax disputes, tax planning, wholly artificial arrangements, tax evasion.

Introduction

Theoretical significance of the study is that the presented article is the first scientific experience of doctrinal analysis of the category of tax planning within the case law of the ECJ. The practical significance of the results of the study is benefiting business activity and freedom of establishment within the EU. The definition of the concept

and content of the legitimate tax planning as part of financial activity of commercial undertakings in the EU countries, which opens prospects for entrepreneurs in terms of planning their expenses for making mandatory payments within the framework of legitimate legal arrangements. To achieve these objectives, particular court cases from the practice of the ECJ have been used and analysed in the study.

The historical method helped explore the formation of the functions and historic case law of the ECJ in elimination of gaps and interpretation of the provisions of the EU foundation documents in the field of creating the single economic space, freedom of establishment and development of integration processes.

The comparative method is used to examine and investigate tax regulation and practice of tax disputes resolving in EU Member States on the one hand and EU legislation and the ECJ practice on the other. This method allows to determine important role of the ECJ in formation of the framework of lawful tax planning.

The analytic and synthetic method was used to study regulatory enactments and other sources of law to identify the cases which concern tax planning. Through the inductive method, general conclusions from court cases have been drawn.

1 Role of Case Law of the ECJ in Integrated Regulation of Single Market

Case law on tax disputes and legitimacy of tax planning in the Member States of the European Union (hereinafter referred to as the EU) has undergone major change over the past 20 years that require doctrinal elaboration. Legal tax planning is justified from the economic and business point of view and is necessary. Not a single company or private individual is interested or even obliged to pay higher amounts of taxes in the course of their business activities, as stipulated by the law. Simultaneously, complexity lies in adequate perception of legitimacy of tax planning and interpretation of this legality by various legal entities and economic operators.

This perception in the EU varies depending on the specific legal situation, but the interpretation depending on the jurisdiction of a particular EU Member State will have the greatest impact. Although the concept of legitimate tax planning exists, interpretation and practical application of certain theoretical provisions will ultimately depend on the court of the country whose jurisdiction will raise the issue of tax planning.

The case law of the ECJ in tax disputes and related to tax planning is currently among the most elaborate and systematic ones; however, it is also new and not entirely established, as it is subject to the effect of numerous factors (a range of different political perspectives of the EU Member States, taxation policy and tax behaviour of subjects developing it, the transnational nature of tax planning).

For the purpose of maintaining stable functioning of the domestic market in the EU territory, creation of which led to increase of the number of cross-border and transnational transactions carried out by and between EU Member States, necessity arose to

eliminate not only direct barriers on the way of movement of capital, goods, services and persons, but also hindrances indirectly affecting fundamental freedoms of the domestic market. The above indirect barriers were to a large extent related to the tax burden established on the level of every Member State. Therefore, within the transformation process, the Union sets uniform principles of taxation in relation to a restricted number of taxes and duties by means of harmonisation, manifested mainly as adoption of directives and in the form of regulations in just few cases of exception, which are different from the first ones as to their legal force still a large independence in the field of taxation is provided to the EU Member States when it comes to direct taxation.

The ECJ plays a particular role in regulation of the single market by interpreting taxation – it is a supranational institution, independent of the Member States and most frequently protects interests of the Union as a whole, instead of individual countries. It has been assigned quite an extensive exclusive competence and, within the framework of direct jurisdiction, inter alia, hears cases on the claims of the European Commission to the EU Member States and disputes between them. Within the framework of indirect competence, the Court reviews preliminary requests by the jurisdiction authorities of the Member States regarding enforcement and interpretation of EU treaties and acts of its bodies and institutions. The ECJ plays a special role in developing law enforcement practice in tax disputes.

In the course of reviewing the matters within the framework of securing functioning of the single integration space, in the 1980-ies the ECJ started reviewing the issues of compatibility of the international tax treaties (aimed at avoiding double taxation) and their complex relations with the Treaty on establishing the European Union (TEU). In particular, the matter of redistribution of the powers of taxation due to signing of international tax treaties, where the Member States are parties, was the subject of review by the ECJ in cases like Avoir Fiscal (the ruling of the ECJ, dated 28 January 1986, case C-270/83) (Commission of the European Communities v. French Republic, 28.01.1986.) and Gilly (the ruling of the ECJ, dated 12 May 1998, case C-336/96). The issue of conformity of the provisions of international tax treaties with the provisions of the legislation adopted by the EU institutions on the basis of TEU and for its implementation is also among the subjects for review by the ECJ, which has pointed out the unconditional prevalence of the EU legislation: "[…] *the rights provided to subjects of economic activity* […] *by the Directive are unconditional and the Member State cannot subject compliance with them dependent on the international treaty with another Member State*" (Athinaiki Zithopiia AE v. Greek state, 04.10.2001). It is also worth pointing out the set of the rulings of the ECJ consisting of a group of acts governing the matters of free movement of capital (Article 56 of the Treaty on European Union) (Erika Waltraud Ilse Hollmann v. Fazenda Pública, 11.10.2007).

Thus, it can be concluded that the ECJ performs the most important functions of elimination of gaps and interpretation of the provisions of the EU foundation documents in the field of creating the single economic space and development of integration processes.

2 Concept and Characteristics of Tax Planning

Traditionally, types of tax planning include the classic and legitimate tax planning (aimed at ensuring correct and timely payment of taxes, accounting systems and reports), optimisation of tax planning (tax avoidance/tax mitigation), illegitimate tax planning (tax evasion). The focus of this article is legitimate tax planning.

Core principles of tax planning providing its actual efficiency under conditions of difficult economic and legal situation include compliance with legislation (legitimacy), application of knowledge, vision, consistency, individuality, cooperation in adoption of decisions, efficiency, possibility of choice, fast response, clarity, and reliability.

Classic tax optimisation is characterised by compliance with requirements of the legislative base; study of decisions of state authorities of tax inspection, as well as case law regarding tax optimisation, prudence, gradualism, and individuality. The above classic arrangement is also manifested by general efforts in decision making (tax optimisation is developed by a team of experts and includes accountants, lawyers and managers of relevant undertaking); proportionality of the price and quality (tax planning should guarantee actual economic effect); variability (an undertaking should develop several arrangements of tax optimisation and choose the safest and most profitable option); timeliness (timely response to amendments of tax legislation), comprehensiveness and effectiveness (the arrangement should be developed in a logic way, its components should be economically and legally effective).

Methods of the classic arrangement of tax optimisation include use of tax benefits and gaps in domestic legislation, choice of jurisdiction and form of transactions, the accounting policy, use of special tax territories/regimes, holding, choice of the type of company and migration.

Nevertheless, over the last 10–15 years the concept of tax planning has received both business and state interpretation, which, in essence, exclude any tax savings as such. The question remains whether companies have become quasi slaves of the Member States or there is still a compromise between such submission and freedom of establishment in any jurisdiction of the EU and enjoying the respective tax benefits. The key case for defining the position on this issue is the case Cadbury Schweppes (Cadbury Schweppes and Cadbury Schweppes Overseas, 12.09.2006), as in this case the competent opinion of supervisory nature was provided and the tax planning was interpreted by the court.

The Court was inquired of the freedom of establishment of undertakings and benefiting from tax benefits in the European Union. The group Cadbury Schweppes and Cadbury Schweppes Overseas Limited submitted an appeal against the claims by the UK tax service to the special commission of the United Kingdom by stating that legislation of the United Kingdom regarding controlled foreign companies was contrary to the provisions of the Treaty on the Functioning of the European Union (TFEU) regarding free movement of capital. The national court referred the matter for review to the ECJ.

On 12 September 2006, the ECJ adopted ruling on the case Cadbury Schweppes and Cadbury Schweppes Overseas v Commission tax authority. Following the hearing of the case, the ECJ supported the side of the company by establishing that provisions of the EU Member State (in this case, the United Kingdom) cannot be enforced and restrict the rights and freedoms of the company having founded a foreign controlled subsidiary if it follows from all the circumstances of the case that, irrespective of enjoying tax advantages, this company is engaged in actual economic operations in any EU Member State.

Having heard the case on its merits, the ECJ drew the following conclusions regarding the above key questions:

1. According to the settled case-law, although direct taxation falls within their competence, Member States must nonetheless exercise such competence consistently with the Community law.
2. If provisions of the national legislation restrict operation of the principle of freedom of establishment and performance of economic activity, as well as operation of the principle of free movement of capital, actions of companies which may cause doubts by tax authorities are unavoidable consequences of any other restrictions of freedom of establishment and performance of economic activities. In particular, in the argument part of its ruling, the Court of Justice points out that no establishment of general presumption of tax evasion and justification of a measure is possible in another Member State, which compromises exercise of fundamental freedom guaranteed by the Treaty.
3. In its ruling, the ECJ has explained its standpoint regarding freedom of establishment of companies and performance of economic activities. It has stated that establishment of a company in the EU Member State for the purpose of gaining profit in compliance with the legislation providing for tax benefits does not in itself suffice abuse of that freedom and, accordingly, is not a violation. Article 43 of the TFEU provides that freedom of establishment and performance of economic activities allows engaging in economic activities, founding and managing undertakings according to the conditions stipulated by the legislation, including for legal entities founded in the relevant EU Member State.

In compliance with Article 48 of the TFEU, such establishment provides the right to a company to exercise activity through a subsidiary, a branch, or an agency. The Court of Justice pointed out that conditions of the TFEU regarding freedom of establishment and performance of economic activity are aimed at ensuring that non-resident companies would be considered equal to resident companies of the relevant country. These conditions prohibit the EU Member State to prevent legal entities to found companies in another EU Member State registered in compliance with the relevant legislation.

Firstly, the ECJ also concluded that legislation of the United Kingdom, due to different approaches of taxation, causes damage to a resident company, in relation to which the legislation of foreign controlled companies is applied. The above legal provision

makes it difficult to exercise the freedom of establishment and performance of economic activity, as well as prevents establishment of subsidiaries in the EU Member State where such a subsidiary may enjoy more loyal taxation.

Simultaneously, Articles 43 and 48 of the TFEU also provide for restriction of validity of the freedom of establishment and performance of economic activity justified by the "general interest"; however, the ECJ established that necessity to prevent reduction of the state tax revenue was not an element of such "general interest", which would justify restriction of the freedom of establishment and performance of economic activity. Moreover, the ECJ emphasised that a resident company establishing a subsidiary in another EU Member State does not create general presumption of tax evasion and cannot compromise exercise of fundamental freedoms guaranteed under the TFEU.

However, restriction of freedom of establishment and performance of economic activity may be justified if it refers to artificial arrangements through which a company is trying to circumvent legislation of an interested EU Member State. The ECJ maintained the same arguments in other complicated cases; in particular, the case related to the tax on dividends (Commission of the European Communities v Italian Republic, 19.11.2009) and Belgium v Truck Centre SA (Belgian State-SPF Finances v Truck Centre SA, 18.09.2008).

The key concept used by the ECJ in review of the case of Cadbury Schweppes was the goal of any economic activity or transaction of the company. At the same time, the Court noted that such performance of economic activity in the territory of the country which encourages economic and social interaction within EU is legitimate. Freedom of establishment and economic activity presents the basis for continuous involvement of a country and the EU in the economic life of other countries, as well as presents the basis for gaining profit from this activity.

Thus, the ECJ has established in its case law that freedom of establishment and performance of economic activity within the scope of the TFEU provides for performance of economic activity by means of actual and effective establishment for an unrestricted term in any EU Member State for the purpose of performing true (and not fictitious) economic activity.

Secondly, the ECJ concluded on insufficiency of facts for stating that there were artificial agreements between the parties of the case consisting of and aimed at tax evasion. The Court of Justice pointed out that it was necessary to establish objective circumstances: existence of real estate, personnel, and material part of the company. The company has to prove that a foreign controlled company was actually established and engaged in effective economic activity. In other words, the ECJ has determined in its ruling which party has the burden of proof of non-existence of wholly artificial arrangements.

It should be stated that this precedent set the beginning of the direction of case law to other cases on tax disputes and served as the grounds for discussion of application of ruling and concepts developed by the ECJ during hearing of the case.

3 Criteria of Determining Legitimacy of Tax Planning. Concepts "Wholly Artificial Arrangements", "Abusive Practice", "Mailbox Companies" and "Substance"

The concepts interpreted and presented in the argumentation part of the rulings of the ECJ: wholly artificial arrangements; abusive practice; objective and subjective criteria/factors; "mailbox companies"; bogus company – are the key ones for the ruling, they form the basis of the methodology of evaluation of legitimacy of tax manoeuvres of the companies by the ECJ.

This wording was first applied by the ECJ in the case C-264/96 Imperial Chemical Industries plc v Kenneth Hall Colmer, which was related to tax provisions of the United Kingdom prohibiting application of tax benefits in relation to loss of a subsidiary of the holding company which is the resident of the United Kingdom. The ECJ of Justice used the same term in the case Lankhorst-Hoborst, 78 X and Y v Riksskatteverket, 79 Lasteyrie du Saillant (Hughes de Lasteyrie du Saillant v Ministère de l'Économie, des Finances et de l'Industrie, 11.03.2004).

However, in the case Cadbury Schweppes, the ECJ addresses the concept "wholly artificial arrangements", and points out that the situation when subsidiaries of the group are founded outside the EU Member State cannot evidence tax evasion per se. However, national legal provisions providing restrictions to exercising freedom of establishment may be justified in the case if they are aimed at fighting wholly artificial arrangements which are used by companies and aimed at circumventing national legislation. The ECJ maintained the same arguments and line of discussion in the case Test Claimants in the Thin Cap Group Litigation v Commissioners of Inland Revenue, 13.03.2007.

Another important concept applied by the ECJ in resolving tax disputes is the term "abusive practice". The standpoint of the ECJ concerning its interpretation has developed gradually and in the case Cadbury Schweppes, where the ECJ refers to the concept it has already applied in the cases Emsland-Starke (Emsland-Stärke GmbH v Hauptzollamt Hamburg-Jonas, 14.12.2000) and Halifax (Halifax plc, Leeds Permanent Development Services Ltd and County Wide Property Investments Ltd v Commissioners of Customs & Excise, 21.02.2006), where the essence of the disputes was not in the issues of direct taxation or exercising of fundamental freedoms. Thus, for several years since the hearing of these cases till adopting the ruling in the case Cadbury Schweppes, the ECJ has defined a particular concept of understanding what should be considered abuse and violation of rights.

Based on the case law of the ECJ, it can be concluded that two criteria need to be considered when determining the abusive practice: 1) objective non-compatibility of the goal of legislation with the results achieved by the company resulting from implementation of specific types of economic activity, and 2) subjective intentions of the company manifested as abusive practice to receive advantages.

Within this context, Starbucks case serves (Starbucks Corp., Starbucks Manufacturing Emea BV, 24.09.2019) as an example where the ECJ considers economic reality of transactions instead of reasonableness of transaction and does not consider the potential objective non-conformity between the law and results achieved by relevant types of economic activity. In this case, the company assured that know-how of roasting coffee was paid for, thus benefiting from favourable tax regime; although, based on considerations of reasonableness, it could be concluded that the transaction was performed for the taxation purpose (transaction was concluded with a related supplier, the prices of the supplied goods in comparison to other companies seemed to be too high for roasted coffee beans). However, the ECJ ruled that the Commission failed to prove the contrary, concluding that the company acted in a legitimate manner.

Moreover, in the analogous Apple case, the behaviour of the subsidiary in Ireland and taxation of the entire European profit only in Ireland, which is the country with the most favourable taxation regime, was viewed as tax evasion, as the EU Commission considered this behaviour to be a violation (the ruling is not freely available) and the Deputy Chair of the ECJ rejected the appeal by Apple as not substantiated by joining the EU Commission's position (Apple Sales International and Others, 17.05.2018).

Regarding the effect of the case law of the ECJ on the national judicial system, according to the opinion of the ECJ, obligation of national courts in finding true intentions and arguments of performed transactions is important. In performing the above analysis, national courts should consider the artificial nature of such transactions and the links between the legal, economic, and personal characteristics between legal entities involved in tax evasion arrangements.

In Cadbury Schweppes case, the ECJ is addressing the terms "mailbox company" and "bogus company". On the one hand, their use can be misleading, as it can create an impression that a legal entity not possessing premises, personnel, equipment (and therefore liable to be described as the "mailbox company") can be subjected to less favourable regulation in a cross-border situation. However, instructions and recommendations of the ECJ do not definitely mean that legal entities without premises, personnel and equipment can be totally disregarded. The size of premises and the number of personnel, and the quantity of equipment cannot be determined without considering the type of business activity the company is performing.

It is undisputed that a medium size holding company or a group of financial companies do not need a large number of personnel. Within the scale of a single country, such legal entities without offices or personnel are clearly not disregarded by tax authorities. On the other hand, in many jurisdictions such companies are subject to taxation of the company income of the minimum level, even if they receive non-taxable dividends.

It cannot be presumed that establishment of such a legal entity is definitely a wholly artificial arrangement. This conclusion is confirmed by the case "Eurofood IFSC" (Eurofood IFSC Ltd, 02.05.2006), where the ECJ pointed out that the mailbox

company is not a company which does not have office and personnel, instead, it is a company "*which does not perform economic activity in the territory of the EU Member State where it is located*".

The fact that the economic choice can be controlled by the holding company established in another EU Member State is not sufficient for disregarding the existence of such a company as a resident of another country. Key words in this regard are the "economic substance", "effective (actual) establishment", "effective economic activity" and "degree of the physical existence of the foreign dependent company".

If arrangements do not correspond to the economic reality, do not conform with the criterion of effective establishment, these can be disregarded. This is not surprising: tax authorities are well organised in finding actual facts and models, and this does not refer only to application of fundamental freedoms.

The concept of substance is extensively common among tax doctrines of many countries and is a key within the process of evaluation of a transaction regarding legitimacy of any tax manoeuvre. Within the context of international tax planning, "substance" means a set of respective features of performing economic activity that create impression of independent performance of business activity, in particular, comprehensive business.

"Substance" comprises everything: criteria of existence of the office, personnel, executive bodies, and bank accounts. The term has been seen increasingly often in cases heard by the ECJ, starting from the Cadbury Schweppes case, it was indirectly confirmed in BEPS (Base erosion and profit shifting. Organisation for Economic Cooperation and Profit Shifting) developed by the Organisation for Economic Cooperation and Development. Assessment of a company according to the criterion of "substance" is based on the following principle: if it is not possible to confirm the "substance" of the company performing activity in the territory of a foreign country, probability of declaring the operation of the company as a tax manoeuvre aimed at tax evasion increases considerably.

Conclusions

It can be concluded that the ECJ plays a major integrating role in shaping the EU single market, and eliminates the gaps of legal regulation on the EU level by its case law, defines the prevalence of the EU law over the law of the EU Member States, by its decisions confirms freedom of establishment within the EU

Although there is a range of issues which prohibit strict definition of tax planning, Cadbury Schweppes case has become the basis for definition of fundamental approach of understanding that there is "legitimate tax planning" and how it can be differentiated from tax evasion. It defines several approaches (concepts) based on which it is possible to judge legitimacy of tax planning with certain accuracy: the concept of use of wholly artificial arrangements, the concept of abusive practice, and the use of the substance has also been becoming increasingly meaningful over the last few years.

In the case Cadbury Schweppes, the ECJ resolved that tax provisions of the United Kingdom should not be applied if, based on objective factors confirmed by the third parties, it is proven that, irrespective of tax motivation, the foreign controlled company was established in the EU Member State and performs their effective economic activity. By this the ECJ has confirmed prevalence of the EU legal provisions over national legislation of the Member States in defining the single market.

The ECJ has also emphasised the importance of performing assessment of the behaviour of the taxable subject by focusing on **goals, objects, and reasons behind the disputed regulation**. The ECJ obliges national courts of the EU Member States to identify the true motivation and meaning of transactions performed by companies.

This is related to the goal set by the subjects of business operations by implementing the principle of freedom of establishment, and the essence is to allow entities from the EU Member States to establish subsidiaries and other "secondary" organisations in other EU Member States for the purpose of performing operations, and, thus, to encourage economic and social integration within the EU.

The ECJ establishes that freedom of establishment also provides participation of natural and legal entities of one EU Member State in the economic life of the other EU Member State on "robust and sustainable basis", and profit is gained in this process. That means that the concept of freedom of establishment within the scope of TFEU entails legally correct establishment for a non-restricted term for the purpose of gaining profit. From the moment when the ECJ applies the principle of freedom of establishment, it performs evaluation of the goal and object of such freedom.

In other parts of the argumentation of the ECJ in Cadbury case, the focus is on the object and reasons for regulation. In professional environment, there is an opinion according to which considering of the object and goal of regulation should be included in the process of interpretation of special provisions. Importance of such factors should not be made dependent on subjective assessments and requirements.

When the issue concerning artificial arrangements is resolved, intentions should not be taken into account separately from other criteria if the arrangement seems artificial or because the actual substance differs from what taxpayers are investing, or because the relevant arrangement is not covered by the regulation under the provision in compliance with interpretation of the object and goal of this provision.

In relation to the above referred for convenience and uniformity of concepts, the concept "wholly artificial arrangements" emerged in the practice of resolution of disputes concerning legitimacy of tax planning and its active use in many rulings of the ECJ began after the Court presented its position in the case Cadbury Schweppes.

Two conditions can be distinguished, worth paying attention to, for qualification of actions of the company as "using wholly artificial arrangements":

1) Does establishment and registration of the controlled foreign company by the resident holding company of another country affect economic reality of the EU Member State? Does the company perform effective economic activity

in the selected country or is such establishment fictitious and the company established in this way is the mailbox company or the bogus company?

2) Does the controlled foreign company physically exist at the place of establishment? Does this company possess premises, personnel, and equipment?

Depending on responses to the above questions, conclusions can be drawn concerning true intentions of company management by establishing subsidiaries in other countries. In the examined case, the ECJ took the side of the company Cadbury Schweppes, thus confirming the new approach to resolution of the dispute on legitimacy of tax planning.

It can be summarised that during identification of existence of abusive practice, two criteria should be satisfied:

1) objective non-compatibility of the goal of the legislation with the results achieved by the company in the result of definition of the types of economic activity, and
2) the subjective intentions of the company manifested as abusive practice to receive benefits.

Presently, there is the established position according to which all the listed markers of illegitimate tax planning are described by just a single characteristic of the company and tax planning named "substance". "Substance" is the concept comprising all key features allowing evaluation of company operation from the point of view of actual economic activity and business independence.

For the purpose of determining the degree of effect of the ruling in the case Cadbury Schweppes, upon the process of taking decisions concerning other disputes the question, the answer to the question regarding the effect of the case Cadbury Schweppes on the national law of the EU Member States is also important.

It is obvious that national law of any EU Member State should conform to the EU law; however, not all provisions of the national law have been primarily established at national level. National legislative bodies in the European Union do not have the discretion to act in relation to adoption of strategic decision, as the EU law accurately stipulates their competence, and in certain areas there is absolutely no space for rulemaking. If the EU law does not provide accurate rules which should be implemented by national legislators, the latter adopt decision independently as long as they conform with the requirements of the EU law. Such requirements may follow from both directives and from the primary EU law, for example, principles and freedoms.

The case Cadbury Schweppes presents a situation when the legal position of the ECJ concerning "wholly artificial arrangements" refers to application of imperative provision of the EU law which should be implemented in national law and does not leave the possibility for the national legislator to issue provisions based on its independent decision.

Bibliography

1. Amurta SGPS v. Inspecteur van de Belastingdienst. (2007). Available: http://curia.europa.eu/juris/document/document.jsf?text=&docid=72277&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3828164 [rev. 07.07.2022].
2. Apple Sales International and Others. (17.05.2018). *InfoCuria – Case-law of the Court of Justice*. Available: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62018CO0012 [rev. 09.04.2022].
3. Asscher, P. H., & Staatssecretaris van Financien. (1996). Available: http://curia.europa.eu/juris/showPdf.jsf?text=&docid=99724&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3828364 [rev. 07.12.2018] .
4. Athinaiki Zithopiia AE v. Greek state. (04.10.2001). *InfoCuria – Case-law of the Court of Justice*. Available: http://curia.europa.eu/juris/document/document.jsf?text=&docid=46243&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3820623 [rev. 07.12.2018].
5. Base erosion and profit shifting. Organisation for Economic Cooperation and Profit Shifting. (2018). Available: https://read.oecd-ilibrary.org/taxation/action-plan-on-base-erosion-and-profit-shifting_9789264202719-en#page5 [rev. 22.08.2022].
6. Belgian State – SPF Finances v Truck Center SA. (18.09.2008). *EUR-Lex*. Available: https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX:62007CC0282 [rev. 05.05.2019].
7. Cadbury Schweppes and Cadbury Schweppes Overseas. (12.09.2006). *InfoCuria – Case-law of the Court of Justice*. Available: http://curia.europa.eu/juris/liste.jsf?language=en&num=C-196/04. [rev. 07.12.2018].
8. Comission of the European Communities v. French Republic. (28.01.1986.) *InfoCuria – Case-law of the Court of Justice*. Available: http://curia.europa.eu/juris/showPdf.jsf;jsessionid=46E7EE1EEA39457B2316507098296B03?text=&docid=92863&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3811061 [rev. 07.12.2018].
9. Commission of the European Communities v Italian Republic. (19.11.2009). *EUR-Lex*. Available: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62007CJ0540 [rev. 05.02.2019].
10. Erika Waltraud Ilse Hollmann v. Fazenda Pública. (11.10.2007). Available: http://curia.europa.eu/juris/document/document.jsf?text=&docid=69844&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3827948 [rev. 07.12.2018].
11. Emsland-Stärke GmbH v Hauptzollamt Hamburg-Jonas. (14.12.2000). *InfoCuria – Case-law of the Court of Justice*. Available: http://curia.europa.eu/juris/liste.jsf?language=en&num=C-110/99 [rev. 07.12.2018].
12. Eurofood IFSC Ltd. (02.05.2006). *InfoCuria – Case-law of the Court of Justice*. Available: http://curia.europa.eu/juris/liste.jsf?language=en&num=C-341/04 [rev. 05.05.2020].
13. G.H.E.J. Wielockx v. Inspecteur der Directe Belstingen. (11.08.1995). Available: http://curia.europa.eu/juris/showPdf.jsf?text=&docid=99595&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3828638 [rev. 07.12.2018].
14. Halifax plc, Leeds Permanent Development Services Ltd and County Wide Property Investments Ltd v Commissioners of Customs & Excise. (21.02.2006). *InfoCuria – Case-law of the Court of Justice*. Available: http://curia.europa.eu/juris/liste.jsf?num=C-255/02 [rev. 07.12.2018].
15. Hughes de Lasteyrie du Saillant v Ministère de l'Économie, des Finances et de l'Industrie. (11.03.2004). *InfoCuria – Case-law of the Court of Justice*. Available: http://curia.europa.eu/juris/liste.jsf?language=en&num=c-9/02 [rev. 07.12.2018].

16. Imperial Chemical Industries plc (ICI) v Kenneth Hall Colmer (Her Majesty's Inspector of Taxes). (16.07.1998) . *EUR-Lex*. Available: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61996CJ0264 [rev. 07.12.2018].
17. Mr. And Mrs. Robert Gilly. (12.05.1998). [Electronic resource] // InfoCuria - Case-law of the Court of Justice. Electron Available: http://curia.europa.eu/juris/document/document.jsf?text=&docid=43844&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3811325 [rev. 07.12.2018].
18. Oce van der Grinten NV. (25.09.2003). *InfoCuria – Case-law of the Court of Justice*. Available: http://curia.europa.eu/juris/document/document.jsf?text=&docid=48631&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3818063 [rev. 07.12.2018].
19. Starbucks Corp., Starbucks Manufacturing Emea BV. (24.09.2019). *InfoCuria – Case-law of the Court of Justice*. Available: http://curia.europa.eu/juris/document/document.jsf?text=&docid=218101&pageIndex=0&doclang=LV&mode=lst&dir=&occ=first&part=1&cid=1966759 [rev. 09.04.2020].
20. Test Claimants in the Thin Cap Group Litigation v Commissioners of Inland Revenue. (13.03.2007). InfoCuria – Case-law of the Court of Justice. Available: http://curia.europa.eu/juris/liste.jsf?language=en&num=c-524/04 [rev. 07.12.2018].