

Recent Experience in European Tax Cases

Country	Case	Principal Issue	Status/Result	McDermott Lawyer
Germany	Royal Dutch Shell	The European Court of Justice has ruled in Deutsche Shell (C-293/06) that the German rules concerning the deduction of a depreciation in the value of start-up capital granted by a German company to its permanent establishment in Italy were incompatible with the EU law because the currency loss could be deducted in neither Germany nor Italy	Taxpayer won before European Court of Justice	Dirk Pohl
Germany	CLT UFA S.A. / Bertelsmann AG	Tax rate for permanent establishment in Germany reduced to 33.5 % from 42 % (1994); European Court of Justice; German Supreme Tax Court	Taxpayer won before European Court of Justice	Dirk Pohl Arndt Raupach
Germany	German affiliate of US Stock listed entity	This is the leading case regarding the so called double conversion model to achieve a tax free step up. The local tax court decided in favor of the plaintiff	The appeal is pending at the German Supreme Tax Court	Dirk Pohl Gero Burwitz
Germany	German public bank	Taxation after change of corporate tax corporation system. The local tax court decided in favor of the plaintiff	Pending at the German Supreme Tax Court	Dirk Pohl
Germany	Two leading German groups (energy sector)	This is the leading case regarding the treatment of a fiscal unit with several parents ("Mehrmütterorganshaft"), pending before the German Constitutional Court	Pending	Arndt Raupach Gero Burwitz
Italy	X S.p.A. vs. Agenzia delle Entrate (Revenue Agency) [plus other similar cases]	Whether taxpayer is entitled to refund of non-deducted input VAT on expenses related to company cars and mobile phones, due to alleged contrast with the EU VAT Directives of the Italian laws providing for limits on VAT deduction on such expenses	Taxpayer won before first instance Tax Court. Term for appeal still pending	Mario Martinelli Carlo Maria Paoletta
Italy	Y S.A. vs. Agenzia delle Entrate (Revenue Agency)	Whether a French taxpayer is entitled to refund of dividend tax credit based on the Italy-France DTC even after the expiration of the 4-year statute of limitations provided for by the Italian domestic law between the date of the tax payment and the date of the filing of the reimbursement claim	Pending	Mario Martinelli Carlo Maria Paoletta

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Italy	<i>W Ltd. vs. Agenzia delle Entrate (Revenue Agency)</i>	Whether a UK taxpayer is entitled to refund of the WHT on interest levied in excess of the Italy-UK Treaty rate in a case where the UK bondholder sold the bonds prior to maturity and no interest was paid by the issuer at that date	Pending	Mario Martinelli Andrea Tempestini Carlo Maria Paoella
Italy	<i>Z A.G. vs. Agenzia delle Entrate (Revenue Agency)</i> [plus other similar cases]	Whether a EU (German, in this case) taxpayer is entitled to refund of the WHT levied on Italian outbound dividends, due to the alleged violation of the free movement of capital principle	Pending	Mario Martinelli Carsten Steinhauer
UK	<i>Marine Midland v Pattison [1984]</i>	STC 10 re foreign exchange gains & losses Instructing Accountants ie directing the case & the solicitors' involvement	Special Commissioners Taxpayer won in House of Lords	Guy Madewell
UK	GlaxoSmithkline (formerly SmithKline Beecham)	Four separate cases involving Transfer Pricing (TP) re interest rates; and TP re drugs and raw materials; Company Residence; and Specialty debts Instructing Accountants ie directing case	Specials Commissioners reached very favourable settlement with IR	Guy Madewell
UK	A shipping Company – whether company trading or investment activity	Representing taxpayer and appearing before tribunal	Generals Commissioners Revenue withdrew their case	Guy Madewell
UK	A Barrister – basis of accounting (cash or accounts) for interest deductions	Representing taxpayer and appearing before tribunal	Generals Commissioners – reached very favourable settlement with IR	Guy Madewell

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UK	<i>Untelrab & Others v McGregor</i> [1995] SpC55	Instructing Accountants ie directing the case	Specials Commissioners – taxpayer won	Guy Madewell