Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

18 September 2019*

(References for a preliminary ruling — Direct taxation — Directive 90/434/EEC — Directive 2009/133/EC — Article 8 — Capital gains relating to exchange of securities transactions — Transfer of securities received at the time of the exchange — Capital gain on which tax has been deferred — Taxation of the shareholders — Taxation on the basis of different bases of assessment and rate rules — Reductions of the basis of assessment taking into account the period for which securities have been held)

In Joined Cases C-662/18 and C-672/18,

TWO REQUESTS for a preliminary ruling under Article 267 TFEU from the Conseil d'État (France), made by decisions of 12 October 2018, received at the Court on 23 and 29 October 2018 respectively, in the proceedings

AQ (C-662/18),

DN (C-672/18)

v

Ministre de l'Action and des Comptes publics

THE COURT (Eighth Chamber),

composed of F. Biltgen, President of the Chamber, J. Malenovský and C.G. Fernlund (Rapporteur), Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of

– AQ and DN, by M. Bornhauser and N. Canetti, lawyers,

– the French Government, by A. Alidière, E. de Moustier and D. Colas, acting as Agents,

– the European Commission, by W. Roels and N. Gossement, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

* Language of the case: French.

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Article 8 of Council Directive 2009/133/EC of 19 October 2009 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States (OJ 2009 L 310, p. 34) and of Article 8 of Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States (OJ 1990 L 225, p. 1).

2 The references have been made in the course of proceedings between AQ (C-662/18) and DN (C-672/18) and the tax authorities concerning those authorities' refusal, when taxing capital gains on which tax has been deferred Article 8 of each of those directives and those realised on the transfer of securities received in the course of an exchange of securities, to apply to them an overall relief in respect of tax counted from the date of acquisition of the securities exchanged.

Legal context

European Union law

3 As stated in recital 1 of Directive 2009/133, that directive codified Directive 90/434, which had been substantially amended several times.

4 Recitals 2 to 5 and 10 of Directive 2009/133 correspond, in substance, to recitals 1 to 4 and 8 respectively of Directive 90/434. In addition, Article 8(1), (4), (6) and (7) of the first of those directives corresponds, in essence, to Article 8(1) and (2) of the second of the directives.

5 Recitals 2 to 5 and 10 of Directive 2009/133 state:

'(2) Mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States may be necessary in order to create within the Community conditions analogous to those of an internal market and in order thus to ensure the effective functioning of such an internal market. Such operations ought not to be hampered by restrictions, disadvantages or distortions arising in particular from the tax provisions of the Member States. To that end it is necessary, with respect to such operations, to provide for tax rules which are neutral from the point of view of competition, in order to allow enterprises to adapt to the requirements of the internal market, to increase their productivity and to improve their competitive strength at the international level.

(3) Tax provisions disadvantage such operations, in comparison with those concerning companies of the same Member State. It is necessary to remove such disadvantages.

(4) It is not possible to attain this objective by an extension at Community level of the systems in force in the Member States, since differences between these systems tend to produce distortions. Only a common tax system is able to provide a satisfactory solution in this respect.

(5) The common tax system ought to avoid the imposition of tax in connection with mergers, … while at the same time safeguarding the financial interests of the Member State of the transferring or acquired company.

…

(10) The allotment to the shareholders of the transferring company of securities of the receiving or acquiring company should not in itself give rise to any taxation in the hands of such shareholders.'

6 Under Article 2(e) of that directive, '"the exchange of shares" means an operation whereby a company acquires a holding in the capital of another company such that it obtains a majority of the voting rights in that company …'

7 Article 8 of the directive provides:

'1. On a merger, division or exchange of shares, the allotment of securities representing the capital of the receiving or acquiring company to a shareholder of the transferring or acquired company in exchange for securities representing the capital of the latter company shall not, of itself, give rise to any taxation of the income, profits or capital gains of that shareholder.

…

4. Paragraphs 1 and 3 shall apply only if the shareholder does not attribute to the securities received a value for tax purposes higher than the value the securities exchanged had immediately before the merger, division or exchange of shares.

…

6. The application of paragraph 1 shall not prevent the Member States from taxing the gain arising out of the subsequent transfer of securities received in the same way as the gain arising out of the transfer of securities existing before the acquisition.

7. For the purpose of this article, "value for tax purposes" shall mean the value on the basis of which any gain or loss would be computed for the purposes of tax upon the income, profits or capital gains of a shareholder of the company.

…'

French law

National legislation

– The national legislation applicable in Cases C-662/18 and C-672/18

8 Article 150-0 D of the code général des impôts (General Tax Code; 'the CGI'), in the version resulting from loi n° 2013-1278, du 29 décembre 2013, de finances pour 2014 (Law No 2013-1278 of 29 December 2013 on finances for 2014; 'Law No 2013-1278'). applicable to gains made and dividends received with effect from 1 January 2013, states:

'1. …

Net gains from the transfer for valuable consideration of shares, partnership shares, rights over those shares or partnership shares, or securities representing those shares, partnership shares or rights, referred to in Article 150-0 A I, and the payments referred to in Article 150-0 A II 7 and 7 bis and

the last two subparagraphs of Article 150-0 A II 8, in Article 150-0 F and Article 163 quinquies C II 1 shall be reduced by an amount of relief determined in accordance with subparagraphs 1 ter or 1 quater of this article as applicable.

…

1 ter. The relief referred to in 1 shall be equal to:

(a) 50% of the amount of the net gains or dividends where the shares, partnership shares, rights or securities have been held for at least two years and less than eight years at the date of the transfer or distribution;

(b) 65% of the amount of the net gains or dividends where the shares, partnership shares, rights or securities have been held for at least eight years at the date of the transfer or distribution.'

9 Article 17 of Law No 2013-1278 provides:

'I and II shall apply to gains made and dividends received with effect from 1 January 2013, with the exception of 1° and 4° of D, of E, the 23rd and 24th subparagraphs of 2° of F, G and H, b and c of 1° of K, L, of 1° and 3°, of N, O, R and W of I and 2° of II, which shall apply to gains made and dividends received with effect from 1 January 2014. M and V shall not apply to taxpayers who, as at 31 December 2013, benefit from the tax deferral referred to in Article 150-0 D bis, in the version in force on that date.'

– *The national legislation applicable in Case C-662/18*

10 Article 150-0 B (I) ter of the CGI, in the version resulting from Article 18 of loi n° 2012-1510, du 29 décembre 2012, de finances rectificative pour 2012 (Law No 2012-1510 of 29 December 2012 on finance amendment for 2012), applicable to gains realised with effect from 14 November 2012, provides:

'Taxation of capital gains obtained, directly or by an intercalated person, in the course of a contribution of transferable securities, share rights, securities or rights relating thereto, as defined in Article 150-0 A, to a company subject to corporation tax or to an equivalent tax shall be carried over if the conditions laid down in III of this article are satisfied …'

11 Article 200 A of the CGI, in the version resulting from Article 34 of loi n° 2016-1918, du 29 décembre 2016, de finances rectificative pour 2016 (Law No 2016-1918 of 29 December 2016, on finance amendment for 2016), provides:

'…

2. Net gains obtained under the conditions laid down in Article 150-0 A shall be taken into account for the purpose of determining the overall net income defined in Article 158.

…

2 ter. (a) The capital gains referred to in Article 150-0B ter are liable to income tax at the rate equal to the ratio between the following:

– the numerator constituted by the result of the difference between, on the one hand, the amount of tax that would have been due, in the year of the contribution, from the application of Article 197 to the sum of the whole of the capital gains mentioned in the first indent of this paragraph (a) and the income taxed for the same year under the conditions of Article 197 and, on the other hand, the amount of the tax due for that same year and established under the conditions of Article 197;

– the denominator constituted by the total of the capital gains mentioned in the first indent of this paragraph (a) retained in the second indent of this paragraph (a).

For the determination of the rate mentioned in the first indent of this paragraph (a), the capital gains mentioned in that same first indent shall, as appropriate, be reduced by the single reduction mentioned in Article 150-0 D(1).

By derogation, the rate applicable to the capital gains resulting from contributions realised between 14 November and 31 December 2012 shall be determined in accordance with Article 10 IV A of loi n° °2012-1509 du 29 décembre 2012 de finances pour 2013 (Law No 2012-1509 of 29 December 2012 on finances for 2013; 'Law No 2012-1509').

…'

12 By virtue of Article 10 IV A of Law No 2012-1509, the capital gains referred to in Article 150-0 B ter I resulting from contributions realised between 14 November and 31 December 2012 are taxable at the flat rate of 24% or, where all the conditions laid down in Article 200 A 2 bis, in the version resulting from that same law, are fulfilled, at the flat rate of 19% fixed by that same subparagraph 2 bis.

13 By virtue of Article 17 III of Law No 2013-1278, the reductions for the holding period provided for in Article 150-0 D1 ter and 1 quater of the CGI, applicable to the net gains obtained under the conditions laid down in Article 150-0 A of the CGI and taken into account for determining net overall revenue subject to the progressive scale of income tax under Article 200 A (2), apply to gains realised with effect from 1 January 2013.

– *The national legislation applicable in Case C-672/18*

14 Article 92 B of the CGI, in the version applicable to gains realised before 1 January 2000, provides:

'1. As from 1 January 1992 or 1 January 1991 in the case of transfers of securities to a company liable to corporation tax, the taxation of a capital gain that arises on an exchange of securities arising out of a public offering, merger, division, takeover of a mutual fund by an investment company with variable share capital carried out in accordance with the rules in force, or a transfer of securities to a company subject to corporation tax, may be deferred until the securities received upon the exchange are transferred or repurchased…'

15 Article 160 I ter of the CGI, in the version applicable to gains realised before 1 January 2000, provides:

'4. On an exchange of membership rights arising out of a merger, division or transfer of shares to a company subject to corporation tax, the taxation of a capital gain that arises as from 1 January 1991 may be deferred under the conditions laid down in Article 92 B II …'

16 Under Article 200 A 2 of the CGI, in the wording applicable to income received from 1 January 2013, resulting from Law No 2012-1509, net gains obtained in the circumstances established in Article 150-0 A are taken into account to determine the total net income subject to the progressive scale for income tax.

Administrative doctrine

17 Paragraph 130 of the administrative commentary published in the *Bulletin officiel des finances publiques* (Official Gazette of Public Finances) on 24 July 2017 under the reference BOI-RPPM-PVBMI-20-20-10 ('paragraph 130 of the administrative commentary') states:

'… [the] holding period relief does not apply … to the net gains from an assignment, exchange or transfer that arose before 1 January 2013 and on which tax has been deferred under the conditions set out in Article 92 B II, Article 160 I ter and Article 150 A bis of the CGI in the wording in force before 1 January 2000 …'

The disputes in the main proceedings and the questions referred for a preliminary ruling

18 With regard to Case C-662/18, it is apparent from the file before the Court that, in the context of an exchange of shares on 14 December 2012, AQ transferred securities which he held in a company governed by French law to another company governed by French law, in exchange for securities of that company. According to AQ, that exchange of shares did not confer on the acquiring company the majority of the voting rights in the acquired company. When that transaction was effected, a capital gain corresponding to the value of the securities exchanged at the date of that transfer, less the purchase price of those securities, was recorded and deferred for tax purposes. In 2015, since the subsequent transfer of the securities received in exchange ended that deferral of taxation, that capital gain and the capital gain resulting from the transfer of the securities received in exchange, were taxed.

19 In accordance with administrative practice, by virtue of paragraph 130 of the administrative doctrine, the capital gain deferred for tax purposes was initially taxed at the rate applicable during the year of transfer of the securities received in exchange, but without the benefit of the allowance for the length of time they were held provided for in national legislation for capital gains realised as from 1 January 2013. In addition, the allowance for the length of time the securities received in exchange were held was calculated taking into account the date of the exchange and not the date of acquisition of the securities exchanged. Pursuant to a decision of the Conseil constitutionnel (Constitutional Council, France), that capital gain, in the form of deferred taxation, was subsequently taxed at the rate of taxation in force at the time when the securities in question were supplied, that is to say, at the rate applicable during 2012.

20 With regard to Case C-672/18, it is apparent from the file before the Court that, at the time of a merger operation between two companies governed by French law in 1998, DN received, in exchange for its securities, securities of the other company forming part of that merger. On that occasion, a capital gain relating to the securities exchanged was recorded and deferred for tax purposes. In 2016, the subsequent transfer of the securities received in exchange ended that deferral of taxation. Thus, that capital gain and those arising from the transfer of the securities received in exchange were taxed.

21 In accordance with administrative practice, pursuant to paragraph 130 of the administrative doctrine, the capital gain deferred for tax purposes was taxed at the rate applicable during the year in which the securities received in exchange were transferred, but without application of the allowance for the length of time they were held provided for in national legislation in respect of capital gains realised as

from 1 January 2013. In addition, the allowance for the length of time the securities received in exchange were held was calculated taking into account the date of the exchange and not the date of acquisition of the securities exchanged.

22 Taking the view that the tax treatment resulting from that paragraph 130 does not comply either with the purpose of Directive 2009/133 or Article 8 thereof, AQ and DN brought an action before the Conseil d'État (Council of State, France) seeking the annulment of that paragraph 130. They submit that, as a result of that non-compliance, the application of the national provisions at issue in the main proceedings should be excluded in the event of a dispute relating to a cross-border situation. They result in reverse discrimination, to the detriment of situations which, like their own, are purely internal, contrary to the constitutional principles of equality before the law and equal distribution of public burdens.

23 The referring court states, in essence, that the interpretation of EU law, in particular of Article 8 of Directive 2009/133, is necessary for the resolution of disputes before it.

24 In those circumstances, the Conseil d'État (Council of State) decided, in the two cases in the main proceedings, to stay the proceedings and to refer to the Court of Justice, in each of those cases, the same questions for a preliminary ruling, worded as follows:

'(1) Must the provisions of Article 8 of [Directive 2009/133] be interpreted as precluding different bases of assessment and rate rules being used to tax the capital gain arising on a transfer of securities received in exchange and the deferred capital gain?

(2) Must those provisions be interpreted in particular as precluding a situation in which reductions of the basis of assessment intended to take into account the period for which securities have been held do not apply to the deferred capital gain, having regard to the fact that that basis of assessment rule did not apply on the date on which the capital gain arose, but they do apply to the capital gain on a transfer of the securities received in exchange, taking into account the date of the exchange instead of the date on which the securities given in exchange were acquired?'

25 By order of the President of the Court of 14 November 2018, Cases C-662/18 and C-672/18 were joined for the purposes of the written and oral procedure and of the judgment.

Consideration of the questions referred

Admissibility

26 It must be noted that it is clear from the file before the Court that the facts giving rise to the disputes in the main proceedings concern transactions involving companies established in a single Member State, in this case the French Republic. In addition, as regards Case C-662/18, AQ stated that the transaction at issue in the main proceedings does not constitute an exchange of shares within the meaning of Directive 2009/133, since that transaction did not confer on the acquiring company the majority of the voting rights of the acquired company.

27 All the parties which have submitted written observations state, in essence, that the national legislation concerned provides, for situations which do not fall within the scope of EU law, solutions consistent with those adopted by EU law and are of the view that the questions referred for a preliminary ruling are admissible.

28 It must be noted that the Court has found requests for preliminary rulings to be admissible in cases in which, although the facts of the main proceedings were outside the direct scope of EU law, the provisions of EU law had been made applicable by national legislation, which, in dealing with situations confined in all respects within a single Member State, had followed the same approach as that provided for by EU law (judgment of 22 March 2018, *Jacob and Lassus*, C-327/16 and C-421/16, EU:C:2018:210, paragraph 33 and the case-law cited).

29 In addition, the Court has held that such requests are admissible also in cases where the provision of EU law of which an interpretation is requested is to apply, in the context of national law, in situations different from those provided for by the corresponding EU law provision (see, to that effect, judgments of 11 October 2001, *Adam*, C-267/99, EU:C:2001:534, paragraphs 27 to 29, and of 7 November 2018, *C and A*, C-257/17, EU:C:2018:876, paragraph 33 and the case-law cited).

30 In such circumstances, it is clearly in the interest of the European Union that, in order to forestall future differences of interpretation, provisions or concepts taken from EU law should be interpreted uniformly, irrespective of the circumstances in which they are to apply (judgments of 22 March 2018, *Jacob and Lassus*, C-327/16 and C-421/16, EU:C:2018:210, paragraph 34 and the case-law cited, and of 7 November 2018, *C and A*, C-257/17, EU:C:2018:876, paragraph 32 and the case-law cited).

31 In the present case, in the first place, it must be noted that the questions referred for a preliminary ruling concern the interpretation of provisions of EU law. In the second place, it is apparent from the file before the Court that the national legislation applicable in the cases in the main proceedings, adopted in order to implement Directive 90/434, replaced by Directive 2009/133, conforms, as regards the solutions applied to situations such as those at issue in those cases, to those provided for in those directives.

32 The requests for a preliminary ruling must therefore be held to be admissible.

Substance

33 As a preliminary point, it should be noted that, first, the questions referred concern solely Directive 2009/133, which replaced Directive 90/434. However, since the merger at issue in Case C-672/18 took place before the first of those directives entered into force, it must be understood that, by its questions, the referring court asks the Court to interpret both Directive 2009/133 and Directive 90/434.

34 Second, as is apparent from paragraphs 3 and 4 of this judgment, those two directives have the same objective and the provisions of Directive 2009/133 which are relevant in the present case correspond to those of Directive 90/434. Accordingly, on the one hand, the references in this judgment to Article 8(1), (4), (6) and (7) of Directive 2009/133 must be understood as references to Article 8(1) and the first to third subparagraphs of Article 8(2) of Directive 90/434. On the other, the case-law of the Court relating to one of those two directives also applies to the other.

35 Third, it is apparent from the order for reference that the tax regime at issue in the main proceedings has the effect that the allowance provided for under national law is applied only to the fraction of the capital gain resulting from the transfer of the securities received in exchange, by discounting the length of time that they have been held since the date of the exchange of securities and not since the date of the acquisition of the securities exchanged.

36 Therefore, it must be held, that by its questions, which should be examined together, the referring court asks, in essence, whether Article 8(1) and (6) of Directive 2009/133 and Article 8(1) and the second subparagraph of Article 8(2) of Directive 90/434 must be interpreted as meaning that, in the context of an exchange of securities, they require that the same tax treatment be applied to the capital gain relating to the securities exchanged and deferred for taxation, as well as that resulting from the

transfer of the securities received in exchange, in the light of the tax rate and the application of a tax allowance to take account of the length of time the securities were held, as that which would be applied to the capital gain which would have been realised at the time of transfer of the securities existing before the exchange, if that transaction had not taken place.

37 It must be noted that, in the cases in the main proceedings, it has not been claimed that the taxpayers concerned have attributed to the securities received in exchange 'a tax value' higher than that which the securities exchanged had immediately before the exchange transactions concerned, or that that tax value was not calculated in accordance with Article 8(7) of Directive 2009/133. It follows, as is apparent from Article 8(4) of that directive, that Article 8(1) thereof is applicable to those transactions.

38 By virtue of Article 8(1) of Directive 2009/133, in a merger or exchange of shares, the allotment of securities representing the capital of the receiving or acquiring company to a shareholder of the transferring or acquired company in exchange for securities representing the capital of the latter company must not, of itself, give rise to any taxation of the income, profits or capital gains of that shareholder.

39 Article 8(6) of that directive provides nonetheless that the application of Article 8(1) is not to prevent the Member States from taxing the gain arising out of the subsequent transfer of securities received in the same way as the gain arising out of the transfer of securities existing before the acquisition.

40 In that regard, the Court has previously held that, although Article 8(1) of the Merger Directive, by providing that an exchange of securities cannot by itself give rise to the taxation of the capital gain resulting from that transaction, ensures the tax neutrality of such a transaction, the purpose of that fiscal neutrality is not, however, to avoid such a capital gain being taxed by the Member States with fiscal competence in respect of that gain, but only to prohibit them from considering that exchange as the chargeable event for the purposes of taxation (see, to that effect, judgment of 22 March 2018, *Jacob and Lassus*, C-327/16 and C-421/16, EU:C:2018:210, paragraph 50 and the case-law cited).

41 In addition, the Court has stated that, since Directive 2009/133 does not contain provisions on the appropriate fiscal measures for the purposes of implementing Article 8 thereof, the Member States have, subject to compliance with EU law, a certain degree of latitude with regard to that implementation (see, to that effect, judgment of 22 March 2018, *Jacob and Lassus*, C-327/16 and C-421/16, EU:C:2018:210, paragraphs 51 and 52 and the case-law cited).

42 In that context, the Court has previously accepted that a measure that consists in establishing the capital gain resulting from the exchange of securities and leading to the chargeable event for the taxation of that capital gain being deferred until the year in which the event putting an end to the deferral of taxation occurs, constitutes merely 'a technique' which, while allowing the Member States to preserve their fiscal competence and, accordingly, their financial interests, in accordance with Article 8(6) of Directive 2009/133, respects the principle of fiscal neutrality as set out Article 8(1) of that directive in that it leads to the exchange of securities not giving rise, of itself, to any taxation of that capital gain (see, to that effect, judgment of 22 March 2018, *Jacob and Lassus*, C-327/16 and C-421/16, EU:C:2018:210, paragraphs 54 and 55).

43 Deferral of the chargeable event for the taxation of the capital gain relating to the securities exchanged necessarily means that the taxation of that capital gain follows the tax rules and the rate in force at the date on which that chargeable event occurs, in the present case on the date of the subsequent transfer of the securities received in exchange. It follows that, if, on that date, the tax legislation concerned provides for an allowance scheme for the length of time the securities were held, a capital gain deferred for taxation must also benefit from such an allowance scheme, under the same conditions as would have been applicable to the capital gain that would have been made on the transfer of securities existing before the exchange if the exchange had not taken place.

44 Any other measure would go beyond a mere finding of the capital gain relating to the securities exchanged in the exchange of securities at the time it took place and could lead to real disadvantageous tax consequences on taxation of that gain at the date of the chargeable event for that taxation, in the present case on the date of the subsequent transfer of the securities received in exchange, which would be contrary to the principle of fiscal neutrality referred to in Article 8(1) of Directive 2009/133.

45 As regards the capital gain relating to the securities received in exchange, as is apparent from the wording of Article 8(6) of Directive 2009/133, those securities are simply substituted for the securities existing before the exchange. It is therefore appropriate to apply the same tax treatment and, in particular, the same tax relief to the capital gain resulting from the exchange and in respect of which taxation is deferred and to the capital gain relating to the transfer of the securities received in exchange as that which would have been applied to the capital gain that would have been realised on the transfer of the securities existing before the exchange if the exchange had not taken place.

46 That assessment is not called into question by the objective of safeguarding the financial interests of the Member States. Those interests, as is apparent from Article 8(6) of Directive 2009/133, are restricted to levying a tax equal to that to which they would have been entitled if the exchange of securities had not taken place.

47 In the light of all the foregoing considerations, the answer to the questions referred is that Article 8(1) and (6) of Directive 2009/133 and Article 8(1) and the second subparagraph of Article 8(2) of Directive 90/434 must be interpreted as meaning that, in the context of an exchange of securities, they require the application, to the capital gain relating to the securities exchanged and deferred for taxation and to the capital gain resulting from the transfer of the securities received in exchange, of the same tax treatment, in the light of the tax rate and the application of a tax allowance to take account of the length of time the securities were held, as that which would have been applied to the capital gain which would have been realised on the transfer of the securities existing before the exchange if the exchange had not taken place.

Costs

48 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Eighth Chamber) hereby rules:

Article 8(1) and (6) of Council Directive 2009/133/EC of 19 October 2009 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States and Article 8(1) and the second subparagraph of Article 8(2) of Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States must be interpreted as meaning that, in the context of an exchange of securities, they require the application, to the capital gain relating to the securities exchanged and deferred for taxation and to the capital gain resulting from the transfer of the securities received in exchange, of the same tax treatment, in the light of the tax rate and the application of a tax allowance to take account of the length of time the securities were held, as that which would have been applied to the capital gain which would have been realised on the transfer of the securities existing before the exchange if the exchange had not taken place.

[Signatures]