Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

19 November 2015*

(Reference for a preliminary ruling — Taxation — Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons — Relationship between that agreement and bilateral agreements on double taxation — Equal treatment — Discrimination on grounds of nationality — National of a Member State of the European Union — Frontier workers — Income tax — Allocation of fiscal sovereignty — Connecting factor for tax purposes — Nationality)

In Case C-241/14,

Request for a preliminary ruling under Article 267 TFEU from the Finanzgericht Baden-Württemberg (Finance Court, Baden-Württemberg, Germany), made by decision of 19 December 2013, received at the Court on 16 May 2014, in the proceedings

Roman Bukovansky

v

Finanzamt Lörrach,

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Second Chamber, acting as President of the Third Chamber, C. Toader and C.G. Fernlund (Rapporteur), Judges,

Advocate General: P. Mengozzi,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 26 February 2015,

after considering the observations submitted on behalf of:

— Mr Bukovansky, by H. Hauswirth, Rechtsanwalt,

— the Finanzamt Lörrach, by D. Gress and S. Parodi-Neef, acting as Agents,

— the German Government, by T. Henze and B. Beutler, acting as Agents,

— the Swedish Government, by A. Falk, C. Meyer-Seitz, U. Persson, N. Otte Widgren, F. Sjövall, L. Swedenborg and E. Karlsson, acting as Agents,

* Language of the case: German.

— the United Kingdom Government, by M. Holt, acting as Agent, and by S. Ford, Barrister,

— the European Commission, by R. Lyal and M. Wasmeier, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 30 April 2015,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, signed in Luxembourg on 21 June 1999 (OJ 2002 L 114, p. 6; the 'Agreement on the Free Movement of Persons').

2 The request has been made in proceedings between Mr Bukovansky, a German national, and the Finanzamt Lörrach (Lörrach Tax Office) concerning the decision whereby the latter taxed Mr Bukovansky's employment income in Germany for the period after he had transferred his residence from Germany to Switzerland.

Legal context

EU law

3 The European Community and its Member States, of the one part, and the Swiss Confederation, of the other, signed seven agreements on 21 June 1999, including the Agreement on the Free Movement of Persons. By Decision 2002/309/EC, Euratom of the Council and of the Commission of 4 April 2002 (OJ 2002 L 114, p. 1), those seven agreements were approved on behalf of the Community, and they entered into force on 1 June 2002.

4 Under the preamble to the Agreement on the Free Movement of Persons, the Contracting Parties are '[r]esolved to bring about the free movement of persons between them on the basis of the rules applying in the European Community'.

5 The Agreement on the Free Movement of Persons seeks, in accordance with Article 1(a) and (d) thereof, to accord nationals of the Member States of the European Union and the Swiss Confederation a right of entry, residence, access to work as employed persons, establishment on a self-employed basis and the right to stay in the territory of the Contracting Parties, and to accord them the same living, employment and working conditions as those accorded to nationals.

6 Article 2 of that agreement, entitled 'Non-discrimination', provides:

'Nationals of one Contracting Party who are lawfully resident in the territory of another Contracting Party shall not, in application of and in accordance with the provisions of Annexes I, II and III to this Agreement, be the subject of any discrimination on grounds of nationality.'

7 Article 4 of that agreement, entitled 'Right of residence and access to an economic activity', states:

'The right of residence and access to an economic activity shall be guaranteed … in accordance with the provisions of Annex I.'

8 Under Article 15 of the Agreement on the Free Movement of Persons, the Annexes and Protocols to that agreement are to form an integral part thereof.

9 Article 16 of that agreement, entitled 'Reference to Community law', reads as follows:

'1. In order to attain the objectives pursued by this Agreement, the Contracting Parties shall take all measures necessary to ensure that rights and obligations equivalent to those contained in the legal acts of the European Community to which reference is made are applied in relations between them.

2. In so far as the application of this Agreement involves concepts of Community law, account shall be taken of the relevant case-law of the Court of Justice of the European Communities prior to the date of its signature. Case-law after that date shall be brought to Switzerland's attention. To ensure that the Agreement works properly, the Joint Committee shall, at the request of either Contracting Party, determine the implications of such case-law.'

10 Article 21 of that agreement, entitled 'Relationship to bilateral agreements on double taxation', provides in paragraph 1:

'The provisions of bilateral agreements between Switzerland and the Member States of the European Community on double taxation shall be unaffected by the provisions of this Agreement. In particular, the provisions of this Agreement shall not affect the double taxation agreements' definition of "frontier workers".'

11 Article 7 of Annex I to the Agreement on the Free Movement of Persons is entitled 'Employed frontier workers' and states in paragraph 1 as follows:

'An employed frontier worker is a national of a Contracting Party who has his residence in the territory of a Contracting Party and who pursues an activity as an employed person in the territory of the other Contracting Party, returning to his place of residence as a rule every day, or at least once a week.'

12 Article 9 of that annex, entitled 'Equal treatment', provides in paragraphs 1 and 2 as follows:

'1. An employed person who is a national of a Contracting Party may not, by reason of his nationality, be treated differently in the territory of the other Contracting Party from national employed persons as regards conditions of employment and working conditions, especially as regards pay, dismissal, or reinstatement or re-employment if he becomes unemployed.

2. An employed person and the members of his family referred to in Article 3 of this Annex shall enjoy the same tax concessions and welfare benefits as national employed persons and members of their family.'

Treaty law

13 The Agreement of 11 August 1971 between the Swiss Confederation and the Federal Republic of Germany (*Bundesgesetzblatt* 1972 II, p. 1022), as amended by the revising Protocol of 12 March 2002 (*Bundesgesetzblatt* 2003 II, p. 67; 'the German-Swiss Agreement') is a bilateral agreement concluded for the avoidance of double taxation with respect to taxation of income and assets.

14 Article 4 of the German-Swiss Agreement provides:

'1. For the purposes of this Agreement, the expression "resident of a Contracting State" means any person who, under the law of that State, is there subject to unlimited tax liability.

...

4. Notwithstanding the other provisions of this Agreement, the Federal Republic of Germany may tax a natural person who is resident in Switzerland, but who is not a Swiss national and was subject to unlimited tax liability in the Federal Republic of Germany for a total of at least five years, on income originating in the Federal Republic of Germany and assets located in the territory thereof in the year in which the unlimited tax liability came to an end for the last time and in the following five years. Under this Agreement, the taxation of such income and assets by Switzerland shall not be prejudiced. However, by analogous application of German legislation on the calculation of foreign taxes, the Federal Republic of Germany shall credit the Swiss tax levied on that income or those assets in conformity with the provisions of this Agreement against the portion of the German tax (other than corporation tax) levied under the present provisions on that income or those assets, in addition to German tax which would apply in accordance with the provisions of [Articles] 6 to 22. The provisions of this paragraph shall not apply where the natural person has become a resident of Switzerland in order there to pursue genuine salaried employment on behalf of an employer to which he is not linked, independently of his work relationship, by a substantial direct or indirect economic interest in the form of a shareholding or otherwise.

5. In the case where a natural person is considered to be a resident of a Contracting State, within the meaning of this article, for only part of the year and is considered to be a resident of the other Contracting State for the remainder of the year (change of place of residence), each State may collect taxes established on the basis of the unlimited liability to tax only in proportion to the period during which that person was considered to be a resident of that State.

...'

15 Article 15 of the German-Swiss Agreement states:

'1. Without prejudice to the provisions of [Articles] 15a to 19, salaries, wages and other similar remuneration which a resident of a Contracting State receives in respect of employment shall be taxable only in that State unless the employment is pursued in the other Contracting State. If the employment is pursued there, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of [paragraph] 1, remuneration received by a resident of a Contracting State in respect of employment pursued in the other Contracting State shall be taxable only in the first State if:

a. The recipient is present in the other State for a period or periods not exceeding a total of 183 days during the calendar year in question;

b. The remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and

c. The remuneration is not borne by a permanent or fixed establishment which the employer has in the other State.

...

4. Subject to the provisions of [Article] 15a, a natural person who is a resident of a Contracting State but who carries on an activity as a board member, director, manager or executive officer of a capital company resident in the other Contracting State may be taxed in that other State in respect of the remuneration which he receives for such activity, provided that his activity is not circumscribed in

such a way that it includes only tasks which produce all of their effects outside that other State. If that other State does not tax that income, it is taxable in the State in which the natural person is resident.'

16 Article 15a of the German-Swiss Agreement provides:

'1. Notwithstanding the provisions of [Article] 15, salaries, wages and other similar remuneration which a frontier worker obtains from employment may be taxed in the Contracting State in which he resides. By way of compensation, the Contracting State in which the work is carried out may deduct tax at source on that remuneration. That tax may not exceed 4.5% of the gross amount of the remuneration where residence has been demonstrated by an official certificate of the competent tax authority of the Contracting State in which the taxpayer resides. The provisions of Article 4(4) shall prevail.

2. Any person who is a resident of a Contracting State, but whose place of work is situated in the other Contracting State, from where he regularly returns to his place of residence is considered to be a frontier worker within the meaning of [Paragraph] 1. If, after work, that person does not regularly return to his place of residence, he loses his classification as a frontier worker only if, in relation to an occupation throughout the calendar year, he does not return to his place of residence for more than 60 working days as a result of the performance of his work.

3. The Contracting State in which the frontier worker is resident shall take account, notwithstanding the provisions of [Article] 24, of the tax collected under the provisions of the third sentence of [paragraph] 1 as follows:

a. in the Federal Republic of Germany, the tax is credited against German income tax in accordance with the provisions of [Paragraph] 36 of the Law on income tax ("Einkommensteuergesetz"), to the exclusion of the provisions of [Paragraph] 34c of that Law. The tax is also taken into account when determining advance payments of income tax;

...'

German law

17 Under Paragraph 1(1) of the Law on income tax (Einkommensteuergesetz; 'the EStG'), in the version amended on 20 December 2007 (*Bundesgesetzblatt* 2007 I, p. 3150), natural persons who have their place of residence or habitual residence in Germany are subject to unlimited income tax liability.

18 Paragraph 1(4) of the EStG provides:

'Natural persons who do not have a place of permanent residence or habitual residence in Germany shall, without prejudice to Paragraph 1(2) and (3) and Paragraph 1(a), be subject to limited income tax liability, in so far as they receive income in Germany within the meaning of Paragraph 49.'

19 Paragraph 49 of the EStG, relating to partially taxable income, states:

'1. Income received in Germany for the purposes of partial income tax liability means (Paragraph 1(4)):

...

4. income from employment (Paragraph 19)

(a) which is, or has been, carried out or performed in Germany,

...

(c) received as remuneration for activity as a manager, executive officer or member of the board of a company the management of which is established in Germany;

...'

The dispute in the main proceedings and the question referred

20 Mr Bukovansky, who has German and Czech nationalities, lived from 1969 until July 2008 in Germany. From January 1999 to February 2006 he worked in Switzerland, where he was employed by a number of companies belonging to the Novartis Group. He was at that time subject to income tax in his State of residence, namely the Federal Republic of Germany.

21 In March 2006, Mr Bukovansky was transferred by his Swiss employer, as part of a transfer agreement, to a subsidiary of that group, Novartis Pharma Productions GmbH ('W-GmbH'), established in Germany. Initially, Mr Bukovansky's employment in Germany was to last for two years; however, it was progressively extended up to the end of 2012.

22 On 1 August 2008, Mr Bukovansky, while continuing to work for W-GmbH in Germany, transferred his residence to Switzerland. In his income declaration for 2008 he assumed that, for the period during which he had been resident in Switzerland, namely from August to December 2008, he was, pursuant to Article 15a(1) of the German-Swiss Agreement, to be subject, in respect of his employment income paid by W-GmbH, to tax in Switzerland as a 'reverse' frontier worker.

23 The Lörrach Tax Office, however, took the view that the income in question had to be subject to taxation in Germany for the entire tax year 2008. That tax office found that, for the period from August to December 2008, Mr Bukovansky was subject to income tax in Germany under Paragraphs 1(4) and 49(1) of the EStG and that, furthermore, the income paid to him as an employee by W-GmbH had, in accordance with Article 4(4) of the German-Swiss Agreement, to be taxed in Germany.

24 Following an objection lodged by Mr Bukovansky, the Lörrach Tax Office, first, confirmed the income tax notice assessment established for the purposes of taxation of the income concerned and, second, took into account the amounts which Mr Bukovansky had paid to the Swiss tax authorities by way of income tax as from August 2008.

25 In his action brought before the Finanzgericht Baden-Württemberg (Finance Court, Baden-Württemberg), Mr Bukovansky maintained his line of argument, submitting that the payment received for his activity performed for W-GmbH for the period from August to December 2008 had to be exempt from tax in Germany and to be subject solely to tax in Switzerland. The Lörrach Tax Office has contended that that action should be dismissed.

26 The referring court points out that, in accordance with Article 15a(1) of the German-Swiss Agreement, the Swiss Confederation must be considered, from August 2008, to be Mr Bukovansky's State of residence and to be entitled to tax Mr Bukovansky's employment income as from that month.

27 However, the referring court notes that, since Mr Bukovansky is not a Swiss national and was subject to unlimited tax liability in the Federal Republic of Germany for a total of at least five years, and maintained his place of employment in Germany following his move to Switzerland, Article 4(4) of that agreement also provides that, notwithstanding the other provisions of that agreement, the Federal Republic of Germany may tax Mr Bukovansky on income originating in Germany and on assets located in German territory in the year in which the unlimited tax liability came to an end for the last time and

in the following five years, the Federal Republic of Germany crediting, however, the Swiss tax levied on the income in question against the relevant portion of the German tax. For that period, the tax burden borne by Mr Bukovansky was at the level of the tax imposed on the German income.

28 However, the referring court considers that the taxation provided for in Article 4(4) of the German-Swiss Agreement, imposed on persons who do not have Swiss nationality, constitutes less favourable treatment than that accorded to Swiss nationals. The right to tax the employment income of a Swiss national resident in Germany, who ceases to be resident in that State while retaining his place of employment in it, is, in the view of that court, vested solely in Switzerland. The question therefore arises as to whether that difference in treatment is compatible with the principle of equal treatment set out in Article 9 of Annex I to the Agreement on the Free Movement of Persons and with the prohibition of discrimination based on nationality referred to in Article 2 of that agreement.

29 According to the referring court, Article 21(1) of the Agreement on the Free Movement of Persons does not preclude non-application of the provisions of the German-Swiss Agreement on taxation contained in Article 4(4) thereof, read in conjunction with the fourth sentence of Article 15a(1) thereof. While the provisions of the German-Swiss Agreement are not, in principle, affected by the provisions of the Agreement on the Free Movement of Persons, the provisions of agreements on double taxation cannot, however, run counter to prohibitions of discrimination laid down by EU law. Those agreements should, in the view of the referring court, be applied in compliance with the obligations arising from the fundamental freedoms set out in the Agreement on the Free Movement of Persons.

30 In those circumstances the Finanzgericht Baden-Württemberg (Finance Court, Baden-Württemberg) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Are the provisions of the Agreement on the Free Movement of Persons, and, in particular the preamble thereto, Articles 1, 2 and 21 thereof and Articles 7 and 9 of Annex I thereto, to be interpreted as meaning that a worker who has moved from Germany to Switzerland, who is not a Swiss national and who, since moving to Switzerland, has been a ‘reverse frontier worker’ within the meaning of Article 15a(1) of the German-Swiss Agreement cannot be made subject to tax by Germany pursuant to Article 4(4), in conjunction with the fourth sentence of Article 15a(1), of that agreement?’

Consideration of the question referred

31 By its question, the referring court asks, in essence, whether the principles of non-discrimination and equal treatment, set out in Article 2 of the Agreement on the Free Movement of Persons and in Article 9 of Annex I thereto, must be interpreted as precluding a bilateral agreement on double taxation, such as the German-Swiss Agreement, under which the right to tax employment income of a German taxpayer who does not have Swiss nationality, although he has transferred his residence from Germany to Switzerland whilst retaining his place of employment in the first of those Member States, is vested in the State in which that income originates, namely the Federal Republic of Germany, whereas the right to tax employment income of a Swiss national who is in an analogous situation is vested in the new State of residence, in this case the Swiss Confederation.

32 With regard to the facts of the case in the main proceedings and the provisions of the Agreement on the Free Movement of Persons which may apply, it must be stated that, on the basis of its wording, Article 7(1) of Annex I to that agreement is applicable to Mr Bukovansky’s situation. Mr Bukovansky is a national ‘of a Contracting Party’, namely the Federal Republic of Germany, is resident in the

territory 'of a Contracting Party', in the present case the Swiss Confederation, and pursues a paid activity as an employed person in the territory 'of the other Contracting Party', namely the Federal Republic of Germany.

33 That provision draws a distinction between the place of residence, situated in the territory of one Contracting Party, and the place where a paid activity is pursued, which must be in the territory of the other Contracting Party, irrespective of the nationality of the person concerned (see, to that effect, judgment in *Ettwein*, C-425/11, EU:C:2013:121, paragraph 35). Under that provision, Mr Bukovansky must be classified as an 'employed frontier worker' for the purposes of the application of the Agreement on the Free Movement of Persons, since, moreover, it is common ground that, as a rule, he commutes every day, or at least once a week, between his place of residence and that of his employment.

34 With regard to bilateral agreements on double taxation concluded between the Swiss Confederation and the EU Member States, it should be noted that, under Article 21(1) of the Agreement on the Free Movement of Persons, the provisions of such agreements are not affected by those of the Agreement on the Free Movement of Persons.

35 However, it is necessary to determine whether that provision of the Agreement on the Free Movement of Persons allows contracting States to derogate from all of its provisions.

36 In this regard, it should be noted that Article 9 of Annex I to the Agreement on the Free Movement of Persons, entitled 'Equal treatment', provides, in paragraph 2, a specific rule intended to provide the employed person and the members of his family with the same tax concessions and welfare benefits as those available to national employed persons and members of their families. In that context, it should be recalled that the Court has held that, with regard to tax concessions, the principle of equal treatment, laid down in that provision, may also be claimed by a worker who is a national of a Contracting Party, having exercised his right to free movement, with regard to his State of origin (see, to that effect, judgment in *Ettwein*, C-425/11, EU:C:2013:121, paragraph 33 and the case-law cited and paragraphs 42 and 43).

37 Hearing requests for a preliminary ruling on the question of whether the agreements on double taxation concluded between the EU Member States must be compatible with the principle of equal treatment and, in general, with the freedoms of movement guaranteed by primary EU law, the Court has held that the Member States are free to determine the connecting factors for the allocation of fiscal sovereignty in bilateral agreements for the avoidance of double taxation, but are obliged, in exercising the power of taxation thus allocated, to observe that principle and those freedoms (see judgments in *Gilly*, C-336/96, EU:C:1998:221, paragraph 30; *Renneberg*, C-527/06, EU:C:2008:566, paragraphs 48 to 51; and *Imfeld and Garcet*, C-303/12, EU:C:2013:822, paragraphs 41 and 42).

38 Consequently, where, in an agreement on double taxation concluded between the Member States, the criterion of nationality appears in a provision which is intended to allocate fiscal sovereignty, such differentiation based on nationality cannot be regarded as constituting prohibited discrimination (judgment in *Gilly*, C-336/96, EU:C:1998:221, paragraph 30). As regards, by contrast, the exercise of fiscal sovereignty granted by such a provision, the Member State in which that sovereignty is vested must observe the principle of equal treatment.

39 That case-law on the relationship between primary EU law and agreements on double taxation concluded between Member States must apply by analogy to the relationship between the Agreement on the Free Movement of Persons and agreements on double taxation concluded between the Member States and the Swiss Confederation.

40 As is clear from the preamble and from Articles 1(d) and 16(2) of the Agreement on the Free Movement of Persons, the latter is intended to achieve, in favour of EU nationals and those of the Swiss Confederation, the free movement of persons on the territory of the Contracting Parties to that agreement based on the rules applying in the European Union, the terms of which must be interpreted in accordance with the case-law of the Court of Justice.

41 Admittedly, Article 21 of the Agreement on the Free Movement of Persons provides that agreements on double taxation between the EU Member States and the Swiss Confederation are not affected by the provisions of that agreement. However, that article cannot have a scope that conflicts with the principles underlying the legislation of which it is part (see, by analogy, judgment in *TNT Express Nederland*, C-533/08, EU:C:2010:243, paragraph 51). Article 21 cannot therefore be understood as allowing the EU Member States and the Swiss Confederation to undermine the attainment of the free movement of persons by depriving, in the exercise of fiscal sovereignty as allocated by their bilateral agreements on double taxation, Article 9(2) of Annex I to the Agreement on the Free Movement of Persons of its effectiveness.

42 With regard to the case in the main proceedings, it should be noted that it is common ground that Mr Bukovansky, even after the transfer of his residence from Germany to Switzerland, is treated, for tax purposes, in the same way, by the State in which his employment income originates, in the present case the Federal Republic of Germany, as a taxable person working and residing in Germany.

43 Mr Bukovansky claims that he has suffered unequal treatment in comparison with a Swiss national who, like him, has transferred his residence from Germany to Switzerland, whilst retaining the place of his employment in the first of those States, since the power to tax that person's employment income is vested in the State of his residence, namely the Swiss Confederation, and not, as in Mr Bukovansky's case, in the State in which the employment income originates, namely the Federal Republic of Germany.

44 In that regard, it must be stated that the objective of an agreement on double taxation, such as the German-Swiss Agreement, is to prevent the same income from being taxed in each of the two parties to that agreement; it is not to ensure that the tax to which the taxpayer is subject in one State is no higher than that to which he or she would be subject in the other contracting State (judgment in *Gilly*, C-336/96, EU:C:1998:221, paragraph 46).

45 In the present case, it should be noted that the difference in treatment that Mr Bukovansky claims to have suffered results from the allocation of fiscal sovereignty between the parties to the agreement concerned and follows from the disparities existing between the tax schemes of those parties. However, as noted in paragraphs 37 and 38 of the present judgment, the choice by those parties, with a view to allocating fiscal sovereignty between them, of different connecting factors is not such as to constitute prohibited discrimination.

46 Accordingly, since, in comparison with taxable persons residing in Germany, Mr Bukovansky does not suffer any tax disadvantage, there is no reason to conclude that there is discrimination resulting from unequal treatment contrary to Article 9(2) of Annex I to the Agreement on the Free Movement of Persons.

47 With regard to the principle of non-discrimination laid down in Article 2 of that agreement, it should be noted that that article prohibits, as a general rule, any discrimination on grounds of nationality. As Article 9 of Annex I to the Agreement on the Free Movement of Persons ensures the application of that principle in the area of the free movement of workers, there are also no grounds for concluding that there is discrimination contrary to Article 2 (see, by analogy, judgment in *Werner*, C-112/91, EU:C:1993:27, paragraphs 19 and 20 and the case-law cited).

48 Having regard to all of the foregoing considerations, the answer to the question referred is that the principles of non-discrimination and of equal treatment, set out in Article 2 of the Agreement on the Free Movement of Persons and in Article 9 of Annex I thereto, must be interpreted as not precluding a bilateral agreement on double taxation, such as the German-Swiss Agreement, under which the power to tax the employment income of a German taxpayer who does not have Swiss nationality, although he has transferred his residence from Germany to Switzerland, whilst retaining his place of employment in the first of those States, is vested in the State in which that income originates, namely the Federal Republic of Germany, whereas the power to tax the employment income of a Swiss national who is in an analogous situation is vested in the new State of residence, in this case the Swiss Confederation.

Costs

49 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 (Third Chamber) hereby rules:

The principles of non-discrimination and of equal treatment, set out in Article 2 of the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, signed in Luxembourg on 21 June 1999, and in Article 9 of Annex I to that agreement, must be interpreted as not precluding a bilateral agreement on double taxation, such as the Agreement of 11 August 1971 between the Swiss Confederation and the Federal Republic of Germany, as amended by the revising Protocol of 12 March 2002, under which the power to tax the employment income of a German taxpayer who does not have Swiss nationality, although he has transferred his residence from Germany to Switzerland, whilst retaining his place of employment in the first of those States, is vested in the State in which that income originates, namely the Federal Republic of Germany, whereas the power to tax the employment income of a Swiss national who is in an analogous situation is vested in the new State of residence, in this case the Swiss Confederation.

[Signatures]