Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

28 February 2013 *

(Free movement of capital — Income tax — Income from capital — Convention for the avoidance of double taxation — Dividends distributed by companies established in Member States and third countries — Calculation of the maximum amount of foreign withholding tax deductible against national income tax — Failure to take account of personal and lifestyle costs — Justification)

In Case C-168/11,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesfinanzhof (Germany), made by decision of 9 February 2011, received at the Court on 6 April 2011, in the proceedings

Manfred Beker,

Christa Beker

v

Finanzamt Heilbronn,

THE COURT (Second Chamber),

composed of A. Rosas (Rapporteur), acting as President of the Second Chamber, U. Lõhmus, A. Ó Caoimh, A. Arabadjiev and C.G. Fernlund, Judges,

Advocate General: P. Mengozzi,

Registrar: K. Sztranc-Sławiczek, Administrator,

having regard to the written procedure and further to the hearing on 26 April 2012,

after considering the observations submitted on behalf of:

— Mr Beker and Mrs Beker, by M. Beker, Rechtsanwalt,

— the Finanzamt Heilbronn, by W. Steinacher and M. Ritter von Rittershain, acting as Agents,

— the German Government, by T. Henze and K. Petersen, acting as Agents,

— the French Government, by J.-S. Pilczer, acting as Agent,

— the Swedish Government, by A. Falk, acting as Agent,

* Language of the case: German.

— the European Commission, by R. Lyal and W. Mölls, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 12 July 2012,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 63 TFEU.

2 The request has been made in proceedings between Mr and Mrs Beker and the Finanzamt Heilbronn (Heilbronn Tax office) concerning the calculation, in the context of the application of bilateral conventions for the avoidance of double taxation, of the maximum amount of foreign withholding tax deductible against the income tax due, according to the income tax scale, in respect of income subject to unlimited tax liability.

Legal context

The double taxation conventions

3 The question whether the Federal Republic of Germany is authorised to levy income tax on foreign income and, if so, whether foreign withholding tax should be taken into account in that respect, is regulated, so far as concerns the main proceedings, by the conventions for the avoidance of double taxation concluded between the Federal Republic of Germany and the French Republic (convention of 21 July 1959, as amended), the Grand Duchy of Luxembourg (convention of 23 August 1958, as amended), the Kingdom of the Netherlands (convention of 16 June 1959), the Swiss Confederation (convention of 11 August 1971), the United States of America (convention of 29 August 1989, as amended) and Japan (convention of 22 April 1966).

4 When a taxpayer with unlimited liability to income tax in Germany earns income from capital in another State, the latter State withholds tax at source in accordance with the conventions for the avoidance of double taxation. The income tax paid at source in accordance with those conventions is offset against the income tax due in Germany. As regards the offsetting procedure, the conventions concluded between the Federal Republic of Germany and the French Republic, the Swiss Confederation, the United States of America and Japan refer to German tax law.

German Law

5 Under Paragraph 1 of the Law on Income Tax (Einkommensteuergesetz), in the version contained in the 2007 Annual Tax Law (Jahressteuergesetz 2007), of 13 December 2006 (BGBl. 2006 I, p. 2878, 'the EStG'), applicable to the year 2007, natural persons who are resident in Germany are wholly liable to income tax in that Member State.

6 Paragraph 2 EStG states:

'(1) The following are liable to income tax:

…

5. income from capital;

…

which the taxpayer realises during the period in which he has unlimited liability to income tax or as income realised in the national territory during the period in which he has limited liability to income tax. The category to which the various forms of income belong is determined in accordance with Paragraphs 13 to 24.

(2) Income shall include:

1. profits derived from agriculture and forestry, industrial, commercial and artisanal activities as well as from self-employment (Paragraphs 4 to 7k);

2. surplus income over and above professional expenses in the case of other categories of revenue (Paragraphs 8 to 9a).

(3) Total revenue (Summe der Einkünfte), less the proportional tax allowance for elderly retired persons (Altersentlastungsbetrag), the amount of the tax exemption for single parents and the deduction provided for in Paragraph 13(3) constitutes the total amount of income (Gesamtbetrag der Einkünfte).

(4) The total of the sources of income, less special expenditure and extraordinary costs, constitutes income (Einkommen).

(5) Income less the tax-free allowances referred to in Paragraph 32(6) and the other amounts to be deducted from income constitutes taxable income (zu versteuerndes Einkommen), which forms the basis of assessment according to the income tax scale. Whereas other laws relate to the concept of taxable income, income, for the purposes of these laws, must be considered, in all cases referred to in Paragraph 32, subject to the deduction of the tax-free allowances laid down in Paragraph 32(6) …'.

7 Paragraph 34c(1) EStG states:

'In the case of taxpayers with unlimited tax liability whose foreign income is liable to tax corresponding to German income tax in the State in which the income originates, the tax assessed and paid abroad, subject to a reduction to which a right has been acquired, shall be offset against German income tax due in respect of income from that State. The German tax on foreign income shall be calculated by apportioning the German tax on the taxable income (zu versteuerndes Einkommen) including foreign income, in accordance with Paragraphs 32a, 32b, 32c, 34 and 34b, in the proportion that that foreign income bears to total income (Summe der Einkünfte). The calculation of foreign income is not required to take account of foreign income which is not, in its State of origin, taxed in accordance with the law of that State. … Foreign taxes can be offset only to the extent that they relate to income received during the tax period.'

8 Paragraph 34c(2) of EStG provides:

'On application by the taxpayer, the foreign tax, rather than being set-off (sub-paragraph 1), shall be deducted during assessment of the income in so far as it relates to foreign income which is not exempt from tax.'

The dispute in the main proceedings and the question referred for a preliminary ruling

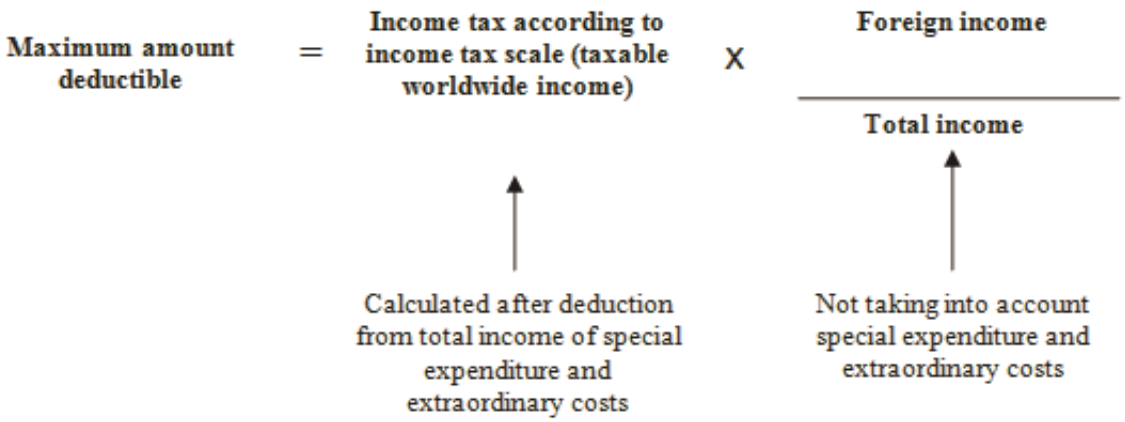
9 As spouses, the applicants in the main proceedings were jointly assessed for income tax in Germany. In that regard, all their worldwide income was taxed. During the tax year at issue, namely 2007, they received, in addition to their German income, income from their minority capital holdings in various

corporate enterprises having their principal place of business in other Member States, namely the French Republic, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands, and in third States, namely the Swiss Confederation, the United States of America and Japan. In respect of those holdings, the applicants received dividends totalling EUR 24 111.29 which gave rise to payment, in the various States of origin of those dividends, of foreign tax in the total sum of EUR 2 853.02.

10 Under the conventions for the avoidance of double taxation, concluded between the Federal Republic of Germany and the States of origin of those dividends, it is open to that Member State, as the State of residence of the applicants in the main proceedings, to levy a tax on foreign dividends. In order to avoid juridical double taxation of those dividends, foreign withholding tax is offset against the income tax due according to the income tax scale, up to the level of the German income tax charged on the income concerned.

11 The second sentence of Paragraph 34c(1) EStG ('the contested rules') lays down the maximum amount of foreign withholding tax which can be offset against the income tax due, according to the income tax scale, in respect of incomes subject to unlimited tax liability by the taxable person. That limit is calculated by multiplying the amount of income tax due according to the income tax scale by the ratio of foreign income to total income. However, the latter amount does not take account of special expenditure and extraordinary costs such as costs relating to lifestyle or to personal circumstances, whereas those costs are taken into account in the calculation of income tax due according to the income tax scale.

12 The amount of income tax charged on foreign income (maximum amount of foreign income tax to be offset) is thus calculated, in accordance with the contested rules, by multiplying the amount of income tax due according to the income tax scale by the ratio (fraction) of the amount of foreign income to the amount of total income of the taxpayer as follows:



13 In the present case, the Finanzamt Heilbronn calculated the maximum amount of foreign withholding tax deductible as being EUR 1 282, therefore it offset that amount against the income tax due by the applicants in the main proceedings according to the income tax scale.

14 The applicants in the main proceedings sought, before the Finanzgericht Baden-Württemberg (Finance Court of Baden-Württemberg), amendment of the tax assessment notice which applied to them and a reduction of their income tax relating to the year at issue in the amount of EUR 1 200, on the ground

that the German authorities had based the calculation of the maximum amount deductible on total revenue before general deductions corresponding to special expenditure and extraordinary costs, such as costs relating to lifestyle or to personal and family circumstances had been taken into account.

15 Since the legal action against that tax notice was rejected, the applicants in the main proceedings appealed 'on a point of law' ('Revision') to the Bundesfinanzhof (Federal Finance Court).

16 Being in doubt regarding the compatibility with European Union law of the method of calculation of the maximum amount deductible provided for by the contested rules, the Bundesfinanzhof decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Does Article [63 TFEU] preclude a rule in a Member State by which – in accordance with treaties concluded in order to avoid double taxation – in the case of taxpayers with unlimited tax liability whose foreign income is liable to tax corresponding to national (German) income tax in the State in which the income originates, the foreign tax is offset against national (German) income tax levied on income from that State in such a way that the national (German) income tax resulting from assessment of the income to be taxed – including foreign income – is apportioned in the proportion that that foreign income bears to total income – and hence without taking into account special expenditure or extraordinary costs as costs relating to personal life style and personal and family circumstances?'

Consideration of the question referred

17 By its question the national court asks, in essence, whether Article 63 TFEU must be interpreted as precluding rules of a Member State under which, in the context of a system aimed at limiting double taxation, where persons subject to unlimited tax liability pay on foreign income, in the State where that income originates, a tax equivalent to the income tax levied by the said Member State, the foreign tax is offset against income tax levied in that Member State by multiplying the amount of tax due in respect of taxable income in the same Member State, including foreign income, by the proportion that that foreign income bears to total income, the latter not taking into account special expenditure or extraordinary costs such as costs relating to lifestyle or to personal and family circumstances.

Preliminary observation

18 The applicants in the main proceedings claim that the decision for reference deviates from the purpose of their application, which relates to the offsetting of foreign withholding tax against German income tax in so far as that increases due to foreign income being taken into account. They claim that the decision for reference does not set out all of their application in so far as it does not refer to the first tax band allowances and rate reductions which all taxpayers enjoy, but concerns itself only with 'special expenditure or extraordinary costs such as costs relating to personal lifestyle and personal and family circumstances'. If the Court were to limit itself to replying in the affirmative to the question referred for a preliminary ruling and if the proceedings continued in that limited context, the calculation of the share which represents foreign income would not relate, in accordance with the approach taken by the Finanzamt Heilbronn, to total income, but to the amount of taxable income calculated.

19 It should be noted that, according to settled case-law, questions on the interpretation of European Union law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of European Union law that is sought bears no relation to the facts of the main action or its purpose, where the problem is hypothetical, or where the Court

does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, inter alia, Joined Cases C-188/10 and C-189/10 *Melki and Abdeli* [2010] ECR I-5667, paragraph 27, and judgment of 28 February 2012 in Case C-41/11 *Inter-Environnement Wallonie and Terre wallonne* [2012] ECR, paragraph 35).

20 In the present case, it is not apparent that the question referred by the national court falls within one of those hypotheses. On the contrary, it should be noted that, as is apparent from paragraph 20 of the Advocate General's Opinion, the national court states, in the final part of its decision for reference, that the application brought before it by the applicants in the main proceedings is confined to the amount of the difference resulting when tax-deductible lifestyle costs are included in the calculation of the maximum amount deductible and that, under national procedural rules, it is precluded from looking beyond that claim.

21 In those circumstances, it is not necessary to rephrase the question submitted for a preliminary ruling.

The freedom at issue

22 All the interested persons who have submitted observations to the Court agree that the freedom at issue in the main proceedings is the free movement of capital enshrined in Article 63 TFEU.

23 In this connection, it is to be noted that the tax treatment of dividends may fall within Article 49 TFEU on freedom of establishment and Article 63 TFEU on the free movement of capital (Joined Cases C-436/08 and C-437/08 *Haribo Lakritzen Hans Riegel and Österreichische Salinen* [2011] ECR I-305, paragraph 33, and Case C-35/11 *Test Claimants in the FII Group Litigation* [2012] ECR, paragraph 89).

24 As regards the question whether national legislation falls within the scope of one or other of the freedoms of movement, it is clear from well established case-law that the purpose of the legislation concerned must be taken into consideration (*Test Claimants in the FII Group Litigation*, paragraph 90 and the case-law cited).

25 National legislation intended to apply only to those shareholdings which enable the holder to exert a definite influence on a company's decisions and to determine its activities falls within the scope of Article 49 TFEU on freedom of establishment (*Test Claimants in the FII Group Litigation*, paragraph 91 and the case-law cited).

26 On the other hand, national provisions which apply to shareholdings acquired solely with the intention of making a financial investment without any intention to influence the management and control of the undertaking must be examined exclusively in light of the free movement of capital (*Test Claimants in the FII Group Litigation*, paragraph 92 and the case-law cited).

27 In the present case, the contested rules apply regardless of the amount of shareholding held in a company. In so far as those rules relate to dividends which originate in a Member State, it cannot therefore be determined from their purpose whether they fall predominantly within the scope of Article 49 TFEU or Article 63 TFEU (see, to that effect, *Test Claimants in the FII Group Litigation*, paragraph 93).

28 In such circumstances, the Court takes account of the facts of the case in point in order to determine whether the situation to which the dispute in the main proceedings relates falls within the scope of one or other of those provisions (*Test Claimants in the FII Group Litigation*, paragraph 94 and the case-law cited).

29 In the present case, it must be stated that the main proceedings relate to the taxation, in Germany, of dividends received by natural persons who reside in that Member State, from shareholdings which they hold in capital companies having their principal place of business in either another Member State or in a third State, amounting to less than 10% of the capital of those companies. Shareholdings of that size do not confer the possibility of exercising definite influence over the decisions of the companies concerned and determining their activities.

30 The Court has also held that national rules relating to the tax treatment of dividends from a third country which do not apply exclusively to situations in which the parent company exercises decisive influence over the company paying the dividends must be assessed in the light of Article 63 TFEU (*Test Claimants in the FII Group Litigation*, paragraph 99).

31 It follows from the foregoing that rules such as the contested rules must be considered exclusively in the light of the free movement of capital enshrined in Article 63 TFEU, and to which the national court's question refers.

The existence of a restriction on the free movement of capital

32 It should be noted that, pursuant to the case-law of the Court, in the absence of unifying or harmonising measures adopted by the European Union, the Member States retain competence for determining the criteria for taxation on income and capital with a view to eliminating double taxation by means, inter alia, of international agreements. In that context, the Member States are free to determine the connecting factors for the allocation of fiscal jurisdiction in bilateral agreements for the avoidance of double taxation (see, inter alia, Case C-307/97 *Saint-Gobain ZN* [1999] ECR I-6161, paragraph 57; Case C-385/00 *de Groot* [2002] ECR I-11819, paragraph 93; Case C-265/04 *Bouanich* [2006] ECR I-923, paragraph 49; and Case C-527/06 *Renneberg* [2008] ECR I-7735, paragraph 48).

33 Nevertheless, that allocation of the power of taxation does not mean that the Member States are entitled to impose measures that contravene the freedoms of movement guaranteed by the TFEU (*Renneberg*, paragraph 50).

34 As far as concerns the exercise of the power of taxation so allocated by bilateral conventions to prevent double taxation, the Member States must comply with European Union rules (*de Groot*, paragraph 94, and *Renneberg*, paragraph 51).

35 It also follows from settled case-law of the Court that the measures prohibited by Article 63(1) TFEU, as restrictions on the movement of capital, include those which are such as to discourage non-residents from making investments in a Member State or to discourage that Member State's residents from doing so in other States (Case C-370/05 *Festersen* [2007] ECR I-1129, paragraph 24; Case C-101/05 *A* [2007] ECR I-11531, paragraph 40; and *Haribo Lakritzen Hans Riegel and Österreichische Salinen*, paragraph 50).

36 In the present case, it should be noted that the method of calculation of the maximum amount of foreign withholding tax deductible, provided for by the contested rules, does not fully take account of the costs relating to lifestyle and to personal and family circumstances of the taxpayer.

37 The maximum amount deductible is determined, in accordance with the contested rules, by applying a formula multiplying the income tax due according to the income tax scale, which constitutes the tax that the taxpayer would have paid if all revenue had been obtained in Germany, by a fraction having the amount of foreign income as the numerator and total income as the denominator.

38 Total taxable income – on the basis of which the income tax due according to the income tax scale, which constitutes the first part of that formula, is calculated – is determined by applying to total income, regardless of where it is received, all allowances permitted under the German rules, in particular costs relating to lifestyle or to personal and family circumstances of the taxpayer. On the other hand, those costs are not deducted from total income, which is the denominator in the fraction constituting the second part of that formula.

39 In that respect, it must be noted from the outset that the use, as denominator in the fraction in the second part of that same formula, of total income instead of taxable income has the result of reducing the maximum amount deductible which the taxpayer is likely to benefit from.

40 As the Advocate General noted at paragraphs 34 and 35 of his Opinion, the logic underlying the contested rules appears to be that the resident taxpayer benefits completely from the personal and family allowances when all the income has been received in Germany, whereas that is not the case when one part of that income has been received abroad.

41 In a similar way to the rules at issue in *de Groot*, although it is true that rules of a Member State, such as the contested rules, take into account allowances corresponding to special costs and extraordinary charges such as costs relating to lifestyle or to personal and family circumstances to calculate the theoretical amount of tax levied on all of the taxpayer's income, such rules lead in practice to taxpayers resident in that Member State who received one part of their income abroad benefiting from the allowances corresponding to those special costs and extraordinary charges only up to the amount of their income received in their Member State of residence.

42 A proportion of those allowances were thus not taken into account by that Member State in calculating those taxpayers' income tax.

43 According to paragraph 90 of *de Groot*, it is a matter for the State of residence, in principle, to grant the taxpayer all the tax allowances relating to his personal and family circumstances because that State is best placed to assess the taxpayer's personal ability to pay tax, since that is where his personal and financial interests are centred.

44 It is also apparent from that judgment that the Member State in which the income originated is required to take into account personal and family circumstances only where the taxpayer receives almost all or all of his taxable income in that State and where he has no significant income in his State of residence, so that the latter is not in a position to grant him the advantages resulting from taking account of his personal and family circumstances (see, to that effect, *de Groot*, paragraph 89).

45 The principles set out in that judgment appear to be fully transposable to the present case, even though that judgment concerns the free movement of workers and even though the facts at issue in that case differ in relation to the circumstances of the applicants in the main proceedings.

46 It is necessary to state, as the Advocate General did at paragraph 44 of his Opinion, that the fact that, in order to reduce double taxation, the rules at issue in *de Groot* provide, unlike the contested rules, for an exemption scheme and not a set-off scheme is irrelevant.

47 The elements on which the Court focused its analysis in that judgment consisted of the formula employed in the rules concerned for the calculation of the amount of exemption granted to the resident taxpayer in respect of income received and taxed in the various Member States of employment of that taxpayer, and the concrete effect of that formula. The effect was, as in the case in the main proceedings, that the taxpayer benefited from the allowances relating to his personal and family circumstances only in proportion to the income which he had received in the Member State of residence (see, to that effect, *de Groot*, paragraph 91).

48 It should be added, in that respect, that the method employed in the rules at issue in that judgment in order to limit double taxation appears to constitute a variation of the exemption method, designed so as to correspond, in practice, to a set-off scheme (see, to that effect, *de Groot*, paragraphs 21 to 23).

49 Finally, the German Government's argument that, in essence, the contested rules are not contrary to the free movement of capital in so far as all of the personal and family allowances were taken into account in the calculation of the amount of income tax due according to the income tax scale, which constitutes the first part of the formula used in order to calculate the maximum amount of foreign withholding tax deductible, cannot be accepted.

50 It should be noted that the rules at issue in *de Groot* also necessitated taking account of the allowances linked to the taxpayer's family and personal circumstances at the stage of calculation of the theoretical amount of tax payable on his total income, which constituted the first part of the formula provided for by those rules in calculating the relief to be granted to the taxpayer. In a manner similar to what the contested rules provide for, the application of the fraction constituting the second part of that formula led however to the taxpayer benefiting from the allowances relating to his family and personal circumstances only in proportion to the income which he had received in the Member State of residence.

51 It follows from all of the foregoing considerations that, in a situation such as that at issue in the main proceedings, taxpayers resident in one Member State who have received one part of their revenue abroad are at a disadvantage compared with taxpayers resident in the same Member State who received all of their revenue in that Member State and who therefore benefit from all allowances corresponding to special costs and extraordinary charges such as costs relating to lifestyle or to personal and family circumstances.

52 Consequently, such a difference in treatment is likely to discourage persons subject to unlimited taxation in a Member State from investing their capital in companies having their principal place of business in another Member State or in a third State.

53 It follows that rules of a Member State such as the contested rules constitute a restriction on the free movement of capital within the meaning of Article 63 TFEU.

Justification for the restriction of the free movement of capital

54 As a subsidiary plea, in order to justify the restriction on the free movement of capital, the German Government relies on considerations relating to preservation of the allocation of the power to impose taxes between Member States.

55 For the purposes of offsetting foreign withholding tax, that principle implies that it is possible to deduct expenses or costs only when they are directly linked to the tax revenue coming under a Member State's power to impose taxes under the allocation of powers between States provided for by the conventions for the avoidance of double taxation. The State of residence is not therefore obliged to compensate for disadvantages linked to the failure to take into account the taxpayers' personal circumstances during the taxation of foreign income in the State in which that income originates.

56 Although the preservation of the allocation of the power to impose taxes between Member States is admittedly likely to constitute an overriding reason relating to the public interest justifying a restriction on the exercise of freedom of movement within the European Union, it should be stated that such a justification was however rejected by the Court in *de Groot*, which concerned rules similar to the contested rules. As the Advocate General noted at paragraph 51 of his Opinion, it is apparent from paragraphs 98 to 101 of that judgment that such a justification cannot be invoked by a taxpayer's State of residence in order to evade its responsibility in principle to grant to the taxpayer

the personal and family allowances to which he is entitled, unless, of their own accord or as a consequence of specific international agreements, the States in which one part of the income is received grant such allowances.

57 In any event, a justification related to the need to safeguard the balanced allocation between the Member States of the power to tax may be accepted, in particular, where the system in question is designed to prevent conduct capable of jeopardising the right of a Member State to exercise its powers of taxation in relation to activities carried out in its territory (see, to that effect, Case C-347/04 *Rewe Zentralfinanz* [2007] ECR I-2647, paragraph 42; Case C-231/05 *Oy AA* [2007] ECR I-6373, paragraph 54; and Case C-311/08 *SGI* [2010] ECR I-487, paragraph 60).

58 In the present case, the fact that the Federal Republic of Germany fully grants the benefit of the personal and family allowances to the applicants in the main proceedings does not undermine that right. That Member State does not forgo part of its tax jurisdiction to other Member States. The income received in Germany by the applicants in the main proceedings is not less taxed than if it constituted the only income received by the persons concerned and the latter had not received foreign income.

59 It should be noted that, according to the German Government, in essence, in so far as personal and family allowances do not have any link with the specific elements of revenue, they burden overall income and must thus be assigned uniformly to the taxpayer's total income, domestic and foreign, so that the granting thereof may be limited to a part proportionate to the share of income received in Germany in that total income.

60 It is apparent from the case-law cited at paragraph 44 of this judgment that those allowances must, in principle, be taken into account in full by the State of residence. It follows that they must in principle, as the Advocate General stated at paragraph 54 of his Opinion, be applied in full to the part of the taxpayer's income received in that State.

61 Finally, it should also be stated that the German rules provide for the possibility of choosing a system other than the offsetting of foreign withholding tax against German tax, namely the deduction of foreign taxation from the taxable amount.

62 Even if such a system were compatible with European Union law, according to the case-law the fact that a national scheme which restricts the freedoms of movement is optional does not mean that it is not incompatible with Community law (see, to that effect, Case C-446/04 *Test Claimants in the FII Group Litigation* [2006] ECR I-11753, paragraph 162, and Case C-440/08 *Gielen* [2010] ECR I-2323, paragraph 53). The existence of an option which would possibly render a situation compatible with European Union law does not, in itself, correct the illegal nature of a system, such as the system provided for by the contested rules, which comprises a mechanism of taxation not compatible with that law. It should be added that this is even more so in the situation where, as in the present case, the mechanism incompatible with European Union law is one which is automatically applied where the taxpayer fails to make a choice.

63 In the light of all of the foregoing considerations, the answer to the question referred is that Article 63 TFEU must be interpreted as precluding rules of a Member State under which, in the context of a system aimed at limiting double taxation, where persons subject to unlimited tax liability pay on foreign income, in the State where that income originates, a tax equivalent to the income tax levied by the said Member State, the offsetting of that foreign tax against the amount of income tax levied in the said Member State is carried out by multiplying the amount of the tax due in respect of taxable income in the same Member State, including foreign income, by the proportion that that foreign income bears to total income, that latter sum not taking into account special expenditure or extraordinary costs such as costs relating to lifestyle or to personal and family circumstances.

Costs

64 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 (Second Chamber) hereby rules:

Article 63 TFEU must be interpreted as precluding rules of a Member State under which, in the context of a system aimed at limiting double taxation, where persons subject to unlimited tax liability pay on foreign income, in the State where that income originates, a tax equivalent to the income tax levied by the said Member State, the offsetting of that foreign tax against the amount of income tax levied in the said Member State is carried out by multiplying the amount of the tax due in respect of taxable income in the same Member State, including foreign income, by the proportion that that foreign income bears to total income, that latter sum not taking into account special expenditure or extraordinary costs such as costs relating to lifestyle or to personal and family circumstances.

[Signatures]