

ECJ Direct Tax Compass

Users Manual

The purpose of this book is to provide a useful tool to guide the reader through the multitude of the decisions of the ECJ relating to direct taxation, the volume and complexity of which increase year-by-year. To this end the book includes 118 summaries of the most relevant judgments¹ that influenced the evolution of EU direct tax law and were delivered up to 30 April 2008.

This book is a corollary to the IBFD online ECJ Direct Tax Case Law database², which contains all the case summaries included in this book as well as the summaries of the cases issued by the ECJ after the closing date of this edition³. The online database is regularly updated and offers more information, inter alia, on the pending cases and follow-up actions of the EU Commission and the Member States.

The cases in this book are organized in a topical structure and classified into four main chapters (Companies, Individuals, Third country cases and Inheritance tax) within which they are divided according to subtopics that represent all the important clusters of issues that the ECJ ruled upon since 1986.

Besides direct tax cases⁴ the book also includes several non-tax cases. The section “General Principles of EC Law” contains the early landmark decisions of the ECJ in which the Court laid down fundamental principles of EC law, such as supremacy and direct effect, the prohibition of non-discriminatory restrictions on the fundamental freedoms, the rule of reason test and the liability of Member States for damages caused by the breach of EC law. The summaries in this section are the reproduction of the summaries provided by the official website of the European Union⁵. In addition, the book also includes several landmark company law cases. The last group of non-tax cases consists of decisions interpreting the relationship between the fundamental freedoms outside the tax law field.

In addition to the case summaries, the book includes the most important texts of positive EC legislation, i.e. the relevant articles of the EC Treaty and the Directives enacted in the field of direct taxation.

In accordance with the aim of providing a guiding tool, the book includes various indexes and classification tables that aim to replicate the search functions of the online database as much as is feasible in a book format. The indexes and tables include the tax cases as well as the non-tax cases with the exception of those that concern the general principles of EC law (2.1). The keyword index is intended to facilitate search based on the subject matter of the cases. To this end, the keywords mirror the most important elements of a national tax system as well as the fundamental concepts of international tax law and EC law. Besides the keyword index, the book includes a chronological index. The classification tables offer a possibility for a search based on the legal

¹ 117 summaries of decisions of the ECJ plus the Fokus Bank decision of the EFTA Court.

² <http://online2.ibfd.org/ecjd/>

³ 30 April 2008

⁴ Two cases concerning VAT, i.e. Halifax (Joined Cases C-255/02) and Part Service (C-425/06), are included amongst the cases on anti-abuse rules (3.1.6), as they contain important findings that have relevance also to the direct tax field.

⁵ <http://eur-lex.europa.eu/>

basis of the decisions (fundamental freedoms or Directives) and the grounds invoked by Member States as justification for a restriction on a fundamental freedom. Finally, another table summarizes which Member States have been involved in what type of procedure before the ECJ either in the capacity of the home state of the investor or the host state where the investment is made.

The structure of the summaries (tax cases, company law cases and those concerning the relationship of the fundamental freedoms) follow a standard template. Preceding each summary is a header section, which provides the basic information about the case (case name and number⁶, the date of decision, the procedure and decision type, the legal basis upon which the case was decided, the EC Treaty or EEA Agreement articles invoked as well as other Community legislation referenced, whether a home or host state restriction of Community law was involved, the lists the justifications invoked and topical keywords). On the very top of each summary, a section "Synopsis" summarizes in few sentences the very essence of the case. The summaries start with a depiction of the facts of the case, the involved domestic and Community law and the issues as identified by the ECJ. Then the "Decision" part starts with a section "Scope", which contains all discussions concerning the legal basis upon which the case has been decided, the material and personal scope, the admissibility of the case and the relationship between the invoked fundamental freedoms. The following section "Discrimination/restriction" outlines all the arguments and conclusions of the ECJ about whether the domestic legislation at issue infringes upon Community law. A final section reproduces the considerations of the ECJ on the justifications that were invoked.

As to the numbering of the articles of the EC Treaty, the case summaries, with the exception of those relating to the general principles of EC law, refer exclusively to the new articles of the EC Treaty as renumbered by the Treaty of Amsterdam irrespective of whether the case was decided before or after its entry into force. The summaries on the general principles of EC law make reference to the old article numbers.

With all these features and content, we hope to offer a useful "compass" for students and practitioners alike to ease their navigation through the high seas of the ECJ's case law on direct tax.

Amsterdam, 15 June 2008

The Editors

⁶ For Joined Cases, it is an editorial convention of this book to always only list the first case number.