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Editorial

Tax Deductible Expenses Regarding Dividend Withholding Taxes: CJEU (Implicitly) Repeals Outlier Société Générale (C-17/14)

Eric C.C.M. Kemmeren*

The author posits that the XX ruling (implicitly) repeals or at least mitigates the outlier ruling Société Générale (C-17/14). The Court of Justice of the European Union (CJEU) should clarify in a subsequent ruling that it repealed the Société Générale (C-17/14) ruling in full because a full repeal would contribute most to the development of the EU internal market. Nevertheless, the ruling contributes to the development of the EU internal market, the creation of a level playing field, the establishment of international tax neutrality, to capital and labour import neutrality (CLIN), the realization of the ability-to-pay and the direct-benefit principles, occasionally to the establishment of an origin-based allocation of tax jurisdiction on dividend income and to a certain extent to the realization of some of the SDGs 1, 8, 10, 16 and 17. Therefore, the author welcomes this ruling.

Keywords: EU tax law, free movement of capital, tax deductible expenses, dividend, internal market, capital markets, sustainable development goals

1 Introduction

Court of Justice of the European Union's (CJEU's) ruling *Société Générale* (C-17/14)[1] triggered quite some criticism.[2] The CJEU decided in this case on what tax deductible expenses must be taken into account in order to calculate the net income of a non-resident from the perspective of the fundamental freedoms when comparing the tax burdens of non-residents and residents receiving dividend income.[3] It ruled consistently with its own settled case-law that in relation to expenses such as business expenses which are directly linked to an activity that has generated taxable income in a Member State, that residents and non-residents of that state are in a comparable situation. However, in this context, it developed its own standard on what deductible expenses regarding dividend income must be considered. According to the court, expenses directly linked to dividend income are '*only* expenses directly linked to the *actual payment* [emphasis added] of the dividends'.[4] Consequently, the court decided that the deduction of the dividend included in the purchase price of the shares was not deductible, since the purpose of that deduction was to establish the actual purchase price of the shares. Furthermore, the financing costs were not deductible either, because, according to the court, they concerned ownership of the shares per se. This ruling could be considered an outlier, because normally the court follows the reasoning that it is up to the national court to determine what deductible expenses should be taken into account based on the national tax laws of the Member State concerned to assess whether the tax burden for non-residents on a certain item of income is higher than for residents.[5]

Tax deductible expenses regarding dividends were again at stake in the decision CJEU of 7 November 2024, Case C-782/22 (*XX*). Similar to the *Société Générale* (C-17/14) ruling, the question was raised of what tax deductible expenses should be considered in the Netherlands in respect of dividend income paid by a company resident in the Netherlands and received by a non-resident company in order to assess of whether the non-resident company suffered from a higher tax burden

* Prof. Dr Eric C.C.M Kemmeren is Professor of international tax law and international taxation at the Fiscal Institute Tilburg of Tilburg University, The Netherlands. He is also a deputy justice of the Arnhem Court of Appeal (Tax Division) and of counsel to Ernst & Young Belastingadviseurs B.V., Rotterdam, The Netherlands. Email: kemmeren@tilburguniversity.edu.

1 *See* CJEU 17 Sep. 2015, joined Cases C-10/14, C-14/14 and C-17/14, *Miljoen* a.o.

2 *See* e.g., Rens Paternotte in his annotation to CJEU 17 Sep. 2015, Case C-17/14 (*Société Générale*), H&I 2015/343; Karin Spindler-Simader, *Dividend Withholding Taxes After Miljoen, X and Société Générale*, 25 EC Tax Rev. 70–76 (2016), doi:10.54648/ECTA2016008; Advocate General Kokott, in her opinion of 17 Mar. 2016, Case C-18/15 (*Brisal*), paras 31–36; B. M. van der Werf, *The Effective Tax Burden Analysis After Société Générale, PMT and Brisal*, 18(4) Derivatives & Fin. Instruments (2016), doi: 10.59403/1adyewa; Dutch Advocate General Wattel in his opinion of 23 Dec. 2015, no. 12/03235, BNB 2016/88, paras 3.6–3.12; P. G. H. Albert in his annotation to BNB 2016/88; H. Vermeulen, *Over Outbound Dividend, kostentoerekening en inningskosten. Het mysterie in de zaak Société Générale*, 2016/1515 NTFR ; E. C. C. M. Kemmeren, *Gross Withholding Taxes: Is the Court of Justice of the European Union Back on Track With Regard to Deductible Expenses?*, 26 EC Tax Rev. 2–9 (2017), doi: 10.54648/ECTA2017001.

3 *See* CJEU 17 Sep. 2015, Case C-17/14 (*Société Générale*), paras 55–60.

4 *See ibid.*, para. 59.

5 *See* e.g., *supra* n. 2.

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than a company resident in the Netherlands. This new ruling leads to the research questions of this editorial:

(1) Did the CJEU in the *XX* ruling repeal its outlier ruling *Société Générale* (C-17/14)?
(2) And if so, should this repeal be considered contributing to the development of the internal market?

The structure of this XXL editorial is as follows. After setting a benchmark to answer the second question (section 2), the author will discuss the *XX* ruling, starting with the presentation of the facts, national law and tax treaty law (section 3), followed by the essential considerations of the CJEU (section 4), essential comments on the ruling (section 5) and finally the main conclusions (section 6).

The author thinks that both questions are relevant from an academic perspective because, as far as he knows, not much academic research has been done in this context. He also believes that the answers to these questions are of societal relevance. The answers may have an impact on the tax burdens of non-resident investors receiving dividend income from companies resident in Member States. They may lead to a reduction of that tax burden and, therefore, to a higher return on investments. As a result, the answers may also have budgetary consequences for both the Member State of the paying company, i.e., less tax revenue, and the residence state of the dividend recipient, i.e., a lower tax credit and, therefore, more tax revenue. Therefore, the answers may also impact a state's capacity to finance its public goods and services, i.e., the volume and/or level of its public goods and services.

The applied research methodology is the traditional doctrinal legal methodology.[6] This methodology makes it possible to acquire a more comprehensive understanding of what tax deductible expenses must be taken into account to calculate the net income of a non-resident from the perspective of the fundamental freedoms when comparing the tax burdens of non-residents and residents receiving dividend income, whether the *XX* ruling repeals the *Société Générale* (C-17/14) ruling, and if so, whether this repeal should be considered contributing to the development of the internal market. Therefore, the author thinks that the application of the doctrinal legal methodology is appropriate to answer the research questions.

2 Benchmarks[7]

The author strongly believes that the overall approach should be that the comments put forth in this editorial should contribute to the development of the internal market and that these comments may be useful building blocks for legislative acts of a Member State's legislature, as well as for court decisions regarding tax deductible expenses that must be taken into account when comparing the tax burdens of non-resident and resident recipients of dividend income.

2.1 Moving Towards an Internal Market

With regard to establishing the internal market, it should be considered that we are moving towards an internal market but that we are not there yet. This is illustrated by the fact that we still have twenty-seven tax jurisdictions within the European Union. With respect to prohibited restrictions of fundamental freedoms, the CJEU accepts justifications as the preservation of the balanced allocation of tax jurisdiction between Member States, maintaining the coherence of a national tax system and the application of the territoriality principle. The 'internal market' is an 'area without internal frontiers in which the free movement of goods, persons, services and capital is ensured'. The internal market is characterized by the abolition, as among the Member States, of obstacles to the free movement of goods, persons, services and capital. For operations within the EU, it is essential that the internal market be analogous in nature to the domestic market of a single state. An internal market requires, inter alia, a system ensuring that competition in the internal market is not distorted.

In this context, it is essential that the CJEU's decisions contribute to improving tax neutrality, i.e., that they contribute to a level playing field. The decisions should contribute to optimizing the allocation of the production factors of labour and capital to improve the overall welfare or perhaps, to put it more broadly, the overall well-being within the European Union. Insofar as elements of the internal market have been extended in relation to

[6] *See* e.g., Michael Salter & Julie Mason, *Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research* (Pearson Education 2007); Jan B. M. Vranken, *Wij weten wel wat wij doen – Over juridisch-dogmatisch onderzoek in het privaatrecht, maar wel een slag anders*, 26 Nederlands Juristenblad (NJB) 8 (2014); *Recht in Geding II* (M. S. Groenhuijsen et al. eds, Boom Juridische Uitgevers 2016; G. van Dijck, M. Snel & T. van Golen, *Methoden van rechtswetenschappelijk onderzoek* (Den Haag: Boom juridisch 2018); and Kavita Dehalwar & Shashikant Nishant Sharma, *Fundamentals of Research Writing and Uses of Research Methodologies* (Edupedia Publications Pvt Ltd 2023). Doctrinal legal research covers positive law, as contained in written and unwritten international, European and national rules, treaties, court decisions, policies, principles, concepts, doctrines and articles in the commentary literature.

[7] The presented benchmarks have been developed in, e.g., E. C. C. M. Kemmeren, *Principle of Origin in Tax Conventions, A Rethinking of Models*, PhD thesis Tilburg University (Dongen: E.C.C.M. Kemmeren/Pijnenburg vormgevers-uitgevers 2001; also available on https://repository.tilburguniversity.edu/bitstreams/57088ce1-3e14-4cb4-9d16-5f03da52a695/download, at 21–45, 69–83, 131–145, 204–214, 323–350, 379–388, and 505–519; Kemmeren, *supra* n. 2, at 2–3; E.C.C.M. Kemmeren, *Nederlands belastingverdragsbeleid en ontwikkelingslanden: op de goede weg?*, MBB 2025/7, at 20–24; and E. C. C. M. Kemmeren, *The Netherlands II: Taxation of Cross-Border Transfers of Pension Claims – Cases C-360/22 and C-459/22 (European Commission v. The Netherlands): Inconsistent Caselaw but Enhancing the Internal Market*, in*CJEU – Recent developments in Direct Taxation 2024 (2025)* 173–177, 180 (Georg Kofler et al. eds, Linde Verlag, Vienna 2025).

third states, the same is true in respect of the area of the European Union and a third state to the extent that the internal market has, in substance, been extended to that area. The concept of efficiency assumes that productivity will be at its highest when the production factors are distributed by a market mechanism without public interference or, at least, with as little interference as possible. Complete neutrality is probably not possible, but from an efficiency perspective, the highest possible level of neutrality should be pursued. Other values, such as equity, may justify a deviation from these rules in specific situations.

2.2 International Tax Neutrality

In the author's view, international tax neutrality implies that the relation between taxes (burdens) and public goods and services (benefits) should not be disrupted to the disadvantage of transnational investment, but transnational investment should not be favoured either. For that reason, the effect of taxation cannot be isolated from the overall effects of all other state-induced transaction and production costs and benefits. In this way, fair competition is promoted between foreign and domestic persons who are carrying on the same genuine economic activities under the same market conditions and using the same public goods and services to the same extent in the same state. The same is *mutatis mutandis* true regarding foreign and domestic (portfolio) investors. Taxation based on residence is incompatible with such neutrality approach since no state can ensure that foreign activities carried out by its residents are subject to the same transaction and other state-induced costs and benefits.

2.3 Capital and Labour Import Neutrality

According to the author, international tax neutrality is also in line with capital and labour import neutrality (CLIN), which is defined as follows: labour and capital funds originating in various states should compete on equal terms in the labour and capital markets of a state, irrespective of the place of residence or the worker or investor. Although CLIN is generally regarded as fostering competitiveness, the author posits that it also fosters efficiency, which capital and labour export neutrality (CLEN) does not do. In terms of CLEN, an income recipient should pay the same total (domestic plus foreign) tax, irrespective of whether they derive a given amount of labour or investment income from foreign or from domestic sources. Since CLIN fosters not only competitiveness but also efficiency, it best satisfies the development of the internal market which is based on an open market economy with free competition.

2.4 Origin-Based Taxation

The author opines that international tax neutrality and CLIN also imply adherence to a system of an origin state-based taxation. Income should be taxed only, or at least primarily, in the state where it has been generated.

2.4.1 Direct-Benefit and Ability-to-Pay Principles

The ability-to-pay principle is based on the idea that the public facilities provided by a state contribute to the operation of the income-producing activities (direct-benefit principle). A person who benefits from public expenses made by a state should also contribute to financing these expenses by paying taxes. In substance, the direct-benefit principle is part of the ability-to-pay principle. The state where the income has been created contributes to a person's wealth, which gives them the capacity (ability) to pay taxes. In the author's view, this means that a person either producing income (increasing ability-to-pay) or establishing and preserving capital (maintaining ability-to-pay) thus benefiting from public goods and services provided by a state which enable him to produce income or to establish and preserve capital, should also contribute to financing these public expenses. Therefore, an origin-based allocation of tax jurisdiction is in line with the ability-to-pay principle. This principle also implies that persons in similar economic positions should be treated equally (horizontal equality), and that persons in dissimilar economic positions should be treated differently, according to the degree of dissimilarity (vertical equality).

2.4.2 Origin of Income

Origin-based taxation justifies taxation of income by a state if the income is created within the territory of that state, i.e., the cause of the income is within the territory of the state concerned. That state makes the yield or the acquisition of wealth possible. Only individuals can create income, things in themselves cannot. The intellectual element is the key component for the production of income. Through the action of an individual, with or without using a device (a capital component), value may be added to things. Whereas the causal relationship between production of income and the territory of a state is predominant under the principle of origin, it is of minor or no importance under the principle of source. Therefore, the principle of origin and the principle of source are not necessarily identical. If the income is not generated in a state but, nevertheless, physically appears to have originated from that state, tax jurisdiction may be allocated to that state on the basis of the principle of source but not on the principle of origin.[8] In this context

[8] Therefore, in the author's view, it is not self-evident that the principle of source, as generally used, may serve as a justification for a tax on income, since the income may be produced or the property may be established and preserved in a state other than the one in which the person from which the income has been received or the property concerned is physically situated. For the allocation of tax jurisdiction on income from activities, a substantial relationship between the activity and the state concerned is required. Such

and because of the rules of the cases under discussion, the analysis below focuses only on income from shares.

On the basis of the principle of origin, tax jurisdiction on dividends and capital gains on shares must be assigned to the state *in which the profits have been produced*, which is not necessarily the state of which the paying company is a resident. The allocation of tax jurisdiction on profits of, dividends from, and capital gains on shares in a company should be attuned to each other in order to avoid not only international juridical double taxation, but also economic double taxation. The shareholder's state of residence should refrain from taxing the profits of the company, the capital gains on its shares, and the dividend received. However, it must noted that these allocation rules do not compel this state to apply an income exemption system as a method to eliminate double taxation. These allocation rules can also be applied under a system based on CLEN.

2.5 Sustainable Development Goals

The author opines that EU law should also contribute to the realization of the United Nations' Sustainable Development Goals (SDGs). They offer a comprehensive approach to tackling poverty, inequality, climate change and peace while fostering prosperity and ensuring environmental sustainability. They are aimed at being achieved by 2030. The SGDs act as a roadmap for creating a more inclusive, equitable and sustainable world. They are a universal call for action to improve the lives of all people while safeguarding the planet. The SDGs are interconnected, addressing issues like education, health, gender equality, clean water and the need for sustainable economic growth. The author posits that for direct taxation particularly the SDGs 1, 8, 10, 16 and 17 are relevant. These are as follows:

1. End poverty in all its forms everywhere;
8. Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all;
10. Reduce inequality within and among countries;
16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels; and
17. Strengthen the means of implementation and revitalize the global partnership for sustainable development, e. g., to make progress particularly in areas like financing for development.[9]

A number of these SDGs may not directly focus on the development of the internal market, but one should not forget that EU law may also affect relations with third countries, including low- and middle-income countries in respect of whom, for example, the free movement of capital and the freedom of payments apply.[10]

The author thinks that an origin-based taxation will contribute in many respects to the realization of the mentioned SDGs, since such a taxation allows states in which the income is created to tax that income. Based on the principle of origin, tax jurisdiction on dividends and capital gains on shares must be assigned to the state in which the profits have been produced. The state of residence of the shareholder should preferably exempt the dividend income and the capital gains on shares. Compared to the current allocation of taxing rights, under an origin-based allocation of these rights, the rights of the state or origin, the state in which the profits have been produced, will increase. In general, such an allocation will enhance equal treatment and will increase tax revenues in low- and middle-income countries. Therefore, an origin-based taxation may contribute to reducing poverty in all its forms everywhere, to promoting sustained, inclusive and sustainable economic growth, to reducing inequality among countries, to promoting sustainable development, to building effective, accountable and inclusive institutions, and to strengthening the means of implementation and revitalize the global partnership for sustainable development particular in an area like financing for development.

2.6 Interim Conclusion

In conclusion, international tax neutrality and CLIN imply that income should be taxed only in the state to which it can be economically linked. Therefore, the following five factors are interdependent and contribute to the development of the internal market of the European Union: creating a level playing field; establishing international tax neutrality; CLIN; satisfying the ability-to-pay and the direct-benefit principles; and establishing an origin-based allocation of tax jurisdiction on income. Furthermore, an origin-based taxation will also contribute in many respects to the realization of SDGs 1, 8, 10, 16 and 17.

3 Facts/national law and tax treaty law

XX was a company established in the United Kingdom (UK) and subject to corporate income tax (CIT), with a publicly traded company established in the United States (US) as its sole shareholder. XX was registered in the UK as an insurance company and entered into agreements with UK-based institutional pension insurers and employers that were referred to as 'unit-linked policies'.

a relationship should be considered present if a substantial income-producing activity is exercised in the state concerned. An income-producing activity is considered to be substantial if the activity forms an essential and significant part of the activity as a whole.

[9] *See* https://sdgs.un.org/goals/ (accessed 13 Oct. 2025).

[10] *See* Art. 63 Treaty on the Functioning of the European Union (TFEU).

The clients used XX's services because of cost advantages, as XX was able to invest cost-efficiently due to economies of scale, because of XX's expertise, which was part of the B Group, one of the largest asset managers in the world, and because of greater risk diversification that could be achieved by investing through XX. The unit-linked policies had the legal form (under UK law) of an insurance contract, although they did not involve any insurance risk. The sole purpose of the policies was for XX to invest the premium amounts to generate investment returns. The (pension) insurance risk in relation to pension agreements concluded between XX's clients and third parties rested with the clients. XX's remuneration for the investment activities offered to its customers corresponded to a percentage of the value of the assets managed for those customers and depended in part on the returns on investment obtained.

XX invested the premium amounts in, among other things, companies based in the Netherlands. A 15% dividend withholding tax (DWHT) was levied on dividends paid by these companies.[11] XX was not entitled to claim a refund of withholding tax levied by the Netherlands in the UK. XX was not a non-resident taxpayer for Dutch CIT purposes.[12] It requested the Dutch tax inspector to refund DWHT of more than EUR fifty-four million for the period from 2003 to 2010.

The Court of Appeal in Den Bosch decided to refer a question to the CJEU for a preliminary ruling. That court stated that, as regards dividends received in the Netherlands, XX was faced with a difference in tax treatment as compared with resident taxpayers. Dividends received by XX were subject to a 15% tax on their *gross* amount, whereas a resident taxpayer who received the same dividends and otherwise carried on activities comparable to those of XX was effectively not taxed on those dividends. Were XX established in the Netherlands, corporation tax would be levied only on the remuneration that it received for the services that it provided to its customers. The *net* corporation tax base by way of the dividends received would be nil, since, when determining profit, the increase in commitments to customers under unit-linked insurance contracts would be taken into account as expenses.[13] The (DWHT levied on the dividends concerned could be set of against the CIT due by the CIT taxpayer. If the DWHT exceeded the CIT, the excess DWHT would be refunded to the CIT taxpayer.[14] Although the receipt of dividends as such did not affect XX's various balance sheet items, either on the assets side or the liabilities side, the court held that there would nevertheless be a *direct causal link* between XX's return on investment and the changes in its commitments to its customers. As dividends were distributed profits, there would be an economic link between those dividends, which form part of the return on the investments made by XX, and the changes in the level of its commitments to its customers. In view of that link, were XX established in the Netherlands, it would not be subject to corporation tax on those dividends. In the context of the free movement of capital, the court raised the question as to whether XX was comparable with a resident recipient of dividends from the point of view of the expenses resulting from the increase in commitments to its customers. This question was raised, because the court found the CJEU's case law unclear.[15] According to the court, the *Société Générale* ruling indicated that XX was not comparable: expenses directly linked to dividend income are 'only expenses directly linked to the actual payment of the dividends'.[16] However, the court also posited that the rulings *Schröder*, *Brisal*, *Grünewald*, *Sofina*, *Pensioenfonds Metaal en Techniek, College Pension Plan of British Columbia*, and *Viva Telecom Bulgaria* indicated that XX was comparable as the CJEU did not repeat the strict attribution of costs to dividend income or interest income in these judgments.[17] The court itself was inclined to take the position that XX was comparable with a resident CIT taxpayer.

[11] *See* Arts 1–3 and 5 of the Dutch Dividend Withholding Tax Act 1965 (in Dutch: *Wet op de dividendbelasting 1965*) (DWHTA) in conjunction with Art. 10 of the Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of the Netherlands for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains effective as of 6 Apr. 1981 and terminated as of 1 Jan. 2011 (the Netherlands); 1 Jan. 2011/6 Apr. 2011 (United Kingdom).

[12] *See* Art. 3(1) in conjunction with Art. 17 Corporate Income Tax 1969 (in Dutch: *Wet op de vennootschapsbelasting 1969*) (CITA).

[13] *See* Art. 2 in conjunction with Arts 7 (1–2) and Art. 8 CITA and Art. 3.8 Personal Income Tax Act 2001 (in Dutch: *Wet inkomstenbelasting 2001* (PITA)).

[14] *See* Art. 25(1) CITA in conjunction with Art. 15 General Taxes Act (in Dutch: *Algemene wet in zake rijksbelastingen*) (GTA). It should be noted that as from 1 Jan. 2022 a full refund of DWT is not granted anymore. The refund has been limited to the CIT due before setting of the DWT and other prepayments against the CIT. The excess DWHT can be rolled over indefinitely. *See* Art. 25a(3–4) and Art. 25b CITA.

[15] *See* Hof (Court of Appeal) 's-Hertogenbosch 14 Dec. 2022, nos 20/00535 t/m 20/00542, ECLI:NL:GHSHE:2022:4471, published in, inter alia, Vakstudie-Nieuws (V-N) 2023/2.5, paras 4.39–4.45. G. Butler, *Offsetting Dividend Taxation through Corporate Taxation for Resident Undertakings and the Free Movement of Capital*, 65(1) Eur. Tax'n 41 (2025), doi: 10.59403/1krjkvg, suggests that the court raised the questions because it would lack courage to go itself against the position of the Dutch tax authorities and that may have been concerned about the financial repercussions if itself would answer the questions. This author considers Butler's false speculations. Butler does not provide any proof for his positions. This author posits that Butler's positions do not contribute to the academic debate. The court's ruling and this contribution prove the opposite of Butler's position.

[16] *See* CJEU 17 Sep. 2015, *supra* n. 3, para. 59.

[17] *See* CJEU 31 Mar. 2011, Case, C-450/09 (*Schröder*), CJEU 24 Feb. 2015, Case C-559/13 (*Grünewald*), CJEU 2 Jun. 2016, Case C-252/14 (*Pensioenfonds Metaal en Techniek*) (*PMT*), CJEU 13 Jul. 2016, Case C-18/15 (*Brisal*), CJEU 22 Nov. 2018, Case C-575/17 (*Sofina*), CJEU 13 Nov. 2019, Case C-641/17 (*College Pension Plan of British Columbia*) (*CPPBC*), respectively CJEU 24 Feb. 2022, Case C-257/20 (*Viva Telecom Bulgaria*).

4 Essential considerations of CJEU

The author will present in this section the essential considerations of the CJEU which are necessary to answer the research questions. In this context, the author will address the following issues: jurisdiction of the CJEU to interpret national laws of Member State (section 4.1), whether a restriction of the free movement of capital existed (section 4.2), whether concerning the assessment of the tax burden residents and non-residents companies were in a comparable situation in respect of the expenses to be considered (section 4.3), whether non-resident investment funds like XX and resident investment funds were comparable as regards dividends from Netherlands sources (section 4.4), whether overriding reasons in the public interest were acceptable if a restriction must be assumed (section 4.5), and finally the CJEU's decision of whether the Dutch system was inconsistent with Article 63 TFEU (section 4.6).

4.1 No Jurisdiction of the CJEU to Interpret National Laws of a Member State

The CJEU recalled that, as far as the interpretation of national provisions is concerned, the Court was in principle required to rely on the description given by the referring court. According to settled case-law, the Court did not have jurisdiction to interpret the internal law of a Member State.[18]

In line with this principle, the CJEU relied fully on the referring court for the interpretation of Dutch national law, i.e., that there was a direct causal link between the return on investment (the received dividends) and the changes in XX's commitments to its clients. The CJEU also followed the referring court in its interpretation that it was precisely because of that link that a resident company was not taxed on those dividends by way of CIT. The same is true in respect of the referring court's decision that there was an economic link between those dividends and the change in the level of commitments to customers. The CJEU also accepted that it was up to the referring court to determine of whether the Dutch legislation recognized a direct link between the dividends received by resident companies and the change in the level of commitments to the customers of those companies. Finally, it also decided that it was the competence of the referring court to examine whether the deduction related to the change in the level of commitments to the customers of resident companies from the CIT base was not intended as a pure and simple exemption from taxation of the dividends distributed to resident companies concluding unit-linked contracts.

[18] *See* CJEU 7 Nov. 2024, Case C-782/22 (*XX*), paras 38 and 58–60.

4.2 Restriction of the Free Movement of Capital

The CJEU judged that the Dutch tax rules constituted a restriction of Article 63 TFEU.[19] The unfavourable treatment of dividends received by non-resident companies was liable to deter them from making investments in the Netherlands, although DWHT was levied both on dividends paid to resident companies and on dividends paid to non-resident companies. However, the application of the mechanism for offsetting the DWHT against the CIT payable by a resident company – and for the refund of DWHT, in the event that the CIT payable was lower than the DWHT withheld –combined with the method of calculating the resident company's taxable base allowing for the deduction of expenses relating to the increase in commitments to customers by way of unit-linked contracts, resulted in the dividends paid to resident companies being exempt from tax. Consequently, dividends paid to non-resident companies were treated less favourably than dividends paid to resident companies, in so far as the former were subject to a final tax rate of 15%, whereas the latter were ultimately exempt from tax.

4.3 Assessment of the Tax Burden: Residents and Non-residents Companies Were in a Comparable Situation in Respect of the Expenses to Be Considered

The CJEU concluded that concerning the assessment of the tax burden, resident and non-resident investment companies were in a comparable situation in respect of the expenses to be considered.[20]

The CJEU started with referring to its settled case-law.[21] In relation to expenses such as business expenses which were directly linked to an activity that had generated taxable income in a Member State, residents and non-residents of that state were in a comparable situation. Expenses occasioned by the activity in question were directly linked to that activity and were accordingly necessary in order to carry out that activity. As regards dividend income, such a direct link existed only in the case of expenses directly linked to the actual receipt of the dividends. No such link existed as regards the deduction of the dividend included in the purchase price of the shares, the purpose of such a deduction being to establish the actual purchase price of the shares, or as regards the financing costs, as those concerned ownership per se of the shares giving rise to the dividends. Then, the CJEU held [emphasis added]:

> 52 It is true that it *does not seem possible* for the increase in commitments to customers to be linked to the actual receipt of the dividends, within the meaning of the case-law cited in paragraph 50 of the present judgment [author's addition:

[19] *See ibid.*, paras 39–41.
[20] *See ibid.*, paras 45–63.
[21] *See ibid.*, paras 48–51.

judgment of 17 September 2015, *Miljoen and Others*, C-10/14, C-14/14 and C-17/14, paragraphs 58 and 59].

53 However, *that fact alone* does *not* support the conclusion that the situations of resident and non-resident dividend recipients *are incomparable* in the light of the Netherlands legislation at issue in the main proceedings.

54 Indeed, in paragraphs 55 and 81 of the judgment of 13 November 2019, College Pension Plan of British Columbia (C 641/17, EU:C:2019:960), *which was delivered after the judgment of 17 September 2015, Miljoen and Others (C 10/14, C 14/14 and C 17/14, EU:C:2015:608)*, the Court held, in essence, that a non-resident pension fund, which *allocates the dividends received to provisions for pensions that it will have to pay in the future*, intentionally or pursuant to the law in force in its state of residence, was in *a situation comparable* to that of a resident pension fund in the light of national legislation by virtue of which, for the calculation of corporation tax, the receipt of dividends by such a resident pension fund results in a very small increase in its taxable profit, and even, in certain cases, in no increase in that profit. The Court in fact noted, in that paragraph 55, that *such a receipt had the effect of increasing the technical provisions in due proportion* and that the taxable profit of the resident pension fund concerned increased only where the returns on non-accounting investments were not credited to the various agreements of the latter pension fund.

Subsequently, the CJEU argued that in the *CPPBC* ruling that there was a causal link between the receipt of dividends, the increase in mathematical provisions and other items on the liabilities side and the absence of any increase in the taxable amount of the resident fund. Furthermore, it held that the German legislation allowing complete or almost complete exemption from tax of dividends paid to resident pension funds thus facilitated the accumulation of the capital of such funds, while all pension funds are, in principle, required to invest insurance premiums on the capital market in order to generate income in the form of dividends that enable them to meet their future obligations under insurance contracts. The CJEU concluded that resident and non-resident pension funds were comparable for calculating the German CIT tax base.[22]

However, XX was not a pension fund. According to the CJEU that did not matter. XX's activity was characterized by the fact that it invested, particularly in shares in the Netherlands, in order to cover its commitments to its clients under unit-linked contracts. The returns on investment obtained by XX entailed a corresponding change in the value of its commitments to its clients under those contracts like the commitments of the Canadian pension fund in the CPPBC ruling.[23]

4.4 Non-resident Investment Funds like XX and Resident Investment Funds Were Comparable as Regards Dividend from Netherlands Sources

XX was not only comparable to pension funds, but also to investment funds resident in the Netherlands.[24] By means of the DWTA, the Netherlands exercised its power of taxation on both residents and non-residents, including resident and non-resident investment funds, receiving dividends from companies resident in the Netherlands. Therefore, the Netherlands was also obliged to prevent or mitigate a series of liabilities to tax or economic double taxation to establish that non-resident taxpayers were subject to the same treatment as resident taxpayers.

For the comparability of XX with resident investment funds, it was relevant that the referring court considered that there was a direct causal link between the return on investment (the dividends received from companies resident in the Netherlands) and the changes in XX's commitments. It was also important that it was precisely because of that link that a resident company was not taxed on those dividends by way of CIT, since they constituted distributed profits and since there was an economic link between those dividends and the change in the level of commitments to XX's customers.

The CJEU continued that [emphasis added]:

[i]f it transpires, however, having regard to the specific purpose of the investment activities, that the national legislation recognises such *a direct link between the dividends received* by resident companies and *the change in the level of commitments to the customers* of those companies, which it is for the referring court to determine, it would have to be held that a non-resident company is *in a situation objectively comparable* with that of a resident company as regards dividends from Netherlands sources, since such a non-resident company pursues the same activity and *the dividends received by it result in the change in the level of commitments to its customers.*[25]

Finally, the CJEU specified that if a direct link were recognized by the Dutch legislation between the dividends received by resident companies and the change in the level of commitments to the customers of those companies, which might be deducted from the Dutch CIT base, it would be for the referring court to examine whether such a mechanism was not intended as a pure and simple exemption from taxation of the dividends distributed to resident companies concluding unit-linked contracts.

[22] *See ibid.*, paras 55–56.
[23] *See ibid.*, para. 57.
[24] *See ibid.*, paras 58–62.
[25] *See ibid.*, para. 59.

4.5 No Overriding Reasons in the Public Interest Were Acceptable

Maybe, the Dutch legislation could be justified by overriding reasons in the public interests.[26]

However, no such reasons were put forward either by the referring court nor by the Netherlands Government. In those circumstances, it would be for the referring court to examine whether there is any justification in the light of the objectives pursued by the Dutch legislation. In this context, the CJEU addressed justifications put forward by Germany. However, it did not accept any of them.

It rejected the claim that the restriction could be justified because of the need to safeguard the balanced allocation between the Member States of the power to tax.[27] The Netherlands had chosen not to tax resident companies in respect of the dividend income concerned. The Netherlands had also decided to neutralize in full the burden of the withholding tax on those dividends when they were paid to resident companies. In those circumstances, the safeguarding of the balanced allocation between the Member States of the power to tax could not justify the taxation of companies established in other Member States in respect of that type of income.

It did neither embrace as justification of prevention of double deduction of expenses.[28] The CJEU noted that a Member State was entitled to verify that expenses borne from dividends, could not be regarded, in another Member State, as burdening other income – such as the income from the remuneration paid by the company's customers for the investments made – and that they were not, on that basis, deducted from that income in that other Member State. However, the CJEU did not accept that the restriction could be justified by merely relying on, without further clarification, the potential risk that expenses borne from dividends might be deducted a second time in the state of residence of the company receiving them. It was not established how that risk was not prevented by the implementation of the provisions of Directive 77/799/EEC.[29] Therefore, the German Government did not make it possible for the CJEU to assess the scope of that argument.

Finally, the CJE rejected the justification of the need to preserve the coherence of the Dutch tax system.[30] The claim of the German Government was based on the assumption that the expenses relating to the increase in commitments to XX's customers were not directly linked to the activity which generated taxable dividend income in the Netherlands, but related to the remuneration received by the company receiving the dividends, from its customers for the investments that it had made for them. Such remuneration was not taxable in the Netherlands. However, the CJEU argued that it was apparent that a non-resident company was in a situation comparable with that of a company resident in the Netherlands as regards the taking into account of the expenses relating to the increase in commitments to customers only in so far as the Dutch tax system recognized a direct link between those dividends and those expenses. The Netherlands had the power to tax dividends from Netherlands sources distributed to both resident and non-resident companies.[31] Therefore, this justification did not fly either.

4.6 CJEU's Decision: The Dutch System is Inconsistent With Article 63 TFEU

Based on the above, the CJEU decided that Article 63(1) TFEU precluded the Dutch tax legislation. Under this legislation dividends distributed by a company resident in the Netherlands to a non-resident company, which had invested in the shares of the first company in order to cover future payment commitments, were subject to a DWHT of 15% on their gross amount. However, dividends distributed to a company resident in the Netherlands were subject to a DWHT which might be offset in full against the CIT payable by the second company and gave rise to a refund. This led to a tax burden on those dividends being nil due to the taking into account in the calculation of the second company's CIT tax base of the costs arising from the increase in its future payment commitments. Such a different treatment was inconsistent with the free movement of capital.[32]

5. Essential comments

The author will discuss some of the essentials of the judgment based on the questions raised in section 1 and the benchmarks developed in section 2. The author opines that CJEU's considerations are in many respects convincing, especially concerning the (implicit) repeal or at least mitigating the effects of the *Société Générale* (C-17/14) ruling. The decision contributes to promoting the internal market. It contributes to a level playing concerning the taxation of dividend income. It becomes more profitable for investors resident in EU Member States or in third countries to invest in shares of companies resident in (other) Member States. Their return on investment will increase because expenses may be deducted from a CIT base if a direct link is recognized by a Member

[26] *See ibid.*, paras 64–75.
[27] *See ibid.*, paras 68–70.
[28] *See ibid.*, paras 71–72.
[29] *See* Council Directive 77/799/EEC of 19 Dec. 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation and taxation of insurance premiums (OJ 1977 L 336, at 15), as amended by Council Directive 2004/106/EC of 16 Nov. 2004 (OJ 2004 L 359, at 30). This directive was in force during the period at issue in the main proceedings.
[30] *See* CJEU, *supra* n. 18, paras 73–74.
[31] *See* s. 4.4 of this contribution.
[32] *See* CJEU, *supra* n. 18, para. 76 and dictum.

State's national legislation in which the dividend paying company is resident between the dividends received by resident companies and the change in the level of commitments to the customers of those companies, whereas this has not been accepted in respect of non-resident investors. Therefore, this judgment could potentially contribute to reducing frictions in the different capital markets of the EU and around the globe. These conclusions are further substantiated below.

The author will start by discussing that the *XX* ruling (implicitly) repeals or at least mitigates the effects of the *Société Générale* (C-17/14) ruling (section 5.1). Subsequently, he will opine that the *XX* ruling is in line with the CJEU's settled case law in respect of taking into account business expenses (section 5.2). Next to this, he will address the impact of this ruling on national tax legislations of Member States, including the Netherlands (section 5.3). Finally, he will assess whether this ruling satisfies the benchmarks developed in section 2 of this contribution (section 5.4).

5.1 *XX* Ruling (implicitly) Repeals or at Least Mitigates Outlier Ruling *Société Générale* (C-17/14)

In the *Société Générale* (C-17/14) ruling, the CJEU surprisingly developed its own standard to compare the tax burdens between residents and non-resident recipients of dividends.[33] It decided that concerning non-residents '*only* expenses directly linked to the *actual payment* [emphasis added] of the dividends' should be considered.[34] However, a tax base should not be established by the CJEU. It is the competence of a Member States to determine its own tax systems and thus also its CIT tax base as interpreted by the judiciary of that Member State. The author opines that the *Société Générale* (C-17/14) ruling is an outlier. The author posits that the *XX* ruling confirms this analyses. The CJEU emphasizes that, as far as the interpretation of national provisions is concerned, the Court is in principle required to rely on the description given by the referring court. The CJEU does not have jurisdiction to interpret the internal law of a Member State. In line with this principle, the CJEU relied fully on the referring court for the interpretation of Dutch national law.[35]

According to the author, in line with this position, the CJEU (implicitly) repeals or at least mitigates the effects of the *Société Générale* (C-17/14) ruling which makes this ruling an outlier, indeed. He posits that this position is evidenced by paragraphs 52–54 of the *XX* ruling.[36] The CJEU puts the *Société Générale* (C-17/14) ruling in a historical context. It emphasizes that this ruling was delivered before the *CPPBC* ruling. It refers in paragraph 54 to this ruling and then stresses that the *CPPBC* ruling 'was delivered after the judgment of 17 September 2015, *Miljoen and Others* (C 10/14, C 14/14 and C 17/14, EU: C:2015:608)'. This hint must be read in the context of the paragraphs 52 and 53. In paragraph 52, the CJE holds that considering the *Société Générale* (C-17/14) ruling 'it *does not seem possible* [emphasis added] for the increase in commitments to customers to be linked to the actual receipt of the dividends'. But, according to the CJEU this is possible. In paragraph 53, it states '*that fact alone* does *not* support the conclusion that the situations of resident and non-resident dividend recipients *are incomparable* [emphasis added] in the light of the Netherlands legislation at issue in the main proceedings'. Subsequently, in paragraph 59 it holds that based on the *CPPBC* ruling 'that a non-resident company is *in a situation objectively comparable* [emphasis added] with that of a resident company as regards dividends from Netherlands sources'.[37] These paragraphs are worded in very general terms. Therefore, the author opines that it can be argued that the CJEU has (implicitly) repealed the *Société Générale* (C-17/14) ruling. The author would applaud the repeal, because it would create a level playing field. Resident and non-resident investors in shares in companies resident in the Netherlands would face the same tax treatment concerning the dividends they receive from these companies. This would contribute to more efficiency in the European and global capital markets and would contribute to the promotion of the internal market.

However, it could also be argued that the *Société Générale* (C-17/14) ruling still has limited relevance because the CJEU refers to this ruling in paragraphs 50–51 of the *XX* ruling.[38] Considering what the CJEU rules in the subsequent paragraphs 52–60, the author opines that for the comparison of tax burdens between resident and non-resident recipients of dividends only the deduction of a dividend included in the purchase price of the shares and the financing costs of the acquisition of the shares should not be considered.[39] In this reading, the *Société Générale* (C-17/14) ruling only has a limited negative impact on the efficiency in the European and global capital markets and the promotion of the internal market. The author would not applaud this reading.

[33] *See also* e.g., D. S. Smit in his annotation to CJEU 7 Nov. 2024, Case C-782/22 (*XX*), BNB 2025/23, paras 4 and 5.

[34] *See* CJEU 17 Sep. 2015, *supra* n. 3, para. 59.

[35] *See* s. 4.1 of this contribution.

[36] *See* s. 4.3 of this contribution.

[37] *See* s. 4.4 of this contribution.

[38] *See also* e.g., L. Mengelers in his annotation to CJEU 7 Nov. 2024, Case C-782/22 (*XX*) in NLF 2024/2789, paragraph with the heading '*Koerswijziging*' (in English: Change of Course).

[39] H. Vermeulen in his annotation to CJEU 7 Nov. 2024, Case C-782/22 (*XX*) in FED 2025/8, para. 7 argues that this position can be explained by considering CJEU 18 Sep. 2003, C-168/01 (*Bosal*). This ruling concerned financing costs incurred by a shareholder in respect of its foreign participation. The CJEU ruled that the shareholder's state of residence should take these financing costs into account in cases where, in a domestic situation, the shareholder would also be able to take these financing costs into account.

5.2 *XX* Ruling is in Line With CJEU's Settled Case Law in Respect of Taking into Account Business Expenses

With the (implicit) repeal or at least mitigation of the *Société Générale* (C-17/14) ruling, the CJEU brings the tax burden comparison between resident and non-resident dividend income recipients back to its settled case law.[40] The *XX* ruling is also in line with *N Luxembourg 1*.[41] With the *XX* ruling, the CJEU is back on track again. Concerning business expenses, which are directly linked to an activity that has generated taxable income in a Member State, residents and non-residents of that state are in a comparable situation. Expenses occasioned by the activity in question are directly linked to that activity and are accordingly necessary to carry out that activity. As regards dividend income, the *XX* ruling (implicitly) repeals or at least mitigates the CJEU decision that a direct link exists only in the case of expenses directly linked to the actual receipt of the dividends. The *XX* ruling clarifies that after the *Société Générale* (C-17/14) ruling, the CJEU, nevertheless, accepts that a direct link also exists if a national tax system allocates the dividends received to the change in the level of commitments to the customers of the companies receiving these dividends. This applies, for example, to pension funds, insurance companies and investment funds concluding unit-linked contracts. If such a direct link exists, resident and non-resident dividend income recipients are in a comparable situation concerning the calculation of the CIT base.

If this comparison leads to a higher tax burden for non-resident dividend income recipients than for resident dividend income recipients, this different treatment constitutes in principle a restriction of the free movement of capital.[42] Such a restriction cannot be justified by the need to safeguard the balanced allocation between the Member States of the power to tax nor by the need to preserve the coherence of the tax system.[43] The prevention of double deduction of expenses can be accepted as justification if Member States can demonstrate that expenses borne from dividends may be deducted a second time in the state of residence of the company receiving them.

The author concludes that the CJEU's reasoning in the *XX* ruling increases the efficiency in the European and global capital markets and contributes to the development of the internal market and should be welcomed from these perspectives.

[40] *See* ss 4.3, 4.4 and 4.6 of this contribution. *See also* e.g., Smit, *supra* n. 33, para. 5, Vermeulen, *supra* n. 39, paras 3 and 6–7, and Butler, *supra* n. 15, at 40–41.

[41] *See* CJEU 26 Feb. 2019, Joint Cases C-115/16, 118/16, 119/16 and 299/16 (*N Luxembourg 1 and others*), paras 173–179.

[42] *See* s. 4.2 of this contribution.

[43] *See* s. 4.5 of this contribution.

5.3 Impact of *XX* Ruling on National Tax Legislations of Member States

The *XX* ruling will have an impact on the national legislations of Member States whose national tax system allocates dividends received to the change in the level of commitments to the customers of the companies receiving these dividends. If they do not consider the change in the level of commitments to the customers deductible for non-residents receiving dividends from companies resident in that Member State, whereas it allows residents receiving such dividends a deduction for CIT purposes, they must adjust their national legislation. At least their national legislation must be interpreted and applied in line with the *XX* ruling. The non-resident recipient of the dividend income must be allowed the same deduction as residents can apply.

The author posits that in the Netherlands, Article 10a DWHTA in conjunction Articles 1c and 3(c) of the Executive Decree DWHT implementing the *Société Générale* (C-17/14) ruling should be adjusted to the *XX* ruling.[44] Though, such an adjustment may have limited impact because of what is referred to as 'the *Sofina* repair'.[45] As from 2022, because of this repair the refund of DWHT is restricted to the CIT due by taxpayers before prepayments like the DWHT are taken into account.[46] However, it could be argued that this repair itself is inconsistent with EU law. The system allows CIT taxpayers to carry forward the excess tax credit to future years, indefinitely, but only in a domestic setting, while in cross-border situations, the DWHT would be definitive. This different treatment still seems to be discriminatory under EU law.[47]

5.4 *XX* Ruling Tested Against Benchmarks

In this section, the author will test the *XX* ruling against the developed benchmarks.[48] The general benchmark is that the ruling should contribute to the development of the EU internal market. This general benchmark has been fleshed with the following more specific benchmarks:

[44] In Dutch: *Uitvoeringsbeschikking dividendbelasting* (Executive Decree DWHT).

[45] *See* CJEU 22 Nov. 2018, Case C-575/17 (*Sofina*). Compare in respect of the term Sofina repair also, e.g., Explanatory Memorandum, House of Representatives documents, meeting year 2021–2022, 35 927, no. 3 (in Dutch: *Memorie van Toelichting, Kamerstukken II* 21/22, 35 927, nr. 3), at 18–21, 32–33, 35, 37 and 39 and Q. W. J. C. H. Kok, *De vennootschapsbelasting in 2022*, Weekblad Fiscaal Recht (WFR) 2021/190, para. 8.

[46] *See* Art. 25(a(3–4) and Art. 25b CITA.

[47] *See also* e.g., Withholding Taxes, Losses and Territoriality Opinion Statement ECJ-TF 3/2025 on the decision of the CJEU of 19 Dec. 2024 in Case C-601/23, *Credit Suisse Securities (Europe) Ltd v. Diputación Foral de Bizkaia*, para. 44. Published on, https://taxadviserseurope.org/new_ahgency/wp-content/uploads/2025/10/ECJ-TF-3-2025-Credit-Suisse.pdf. This opinion statement has also been published in the journal European Taxation (volume 65), no. 11. Dissenting, e.g., the Dutch Tax Administration (in Dutch: *Belastingdienst*) 11 Apr. 2025, no. KG:040:2025:3. Smit, *supra* n. 33, para. 9.

[48] *See* s. 2 of this contribution.

creating a level playing field; establishing international tax neutrality; CLIN; satisfying the ability-to-pay and the direct-benefit principles; establishing an origin-based allocation of tax jurisdiction on income; and the realization of the SDGs 1, 8, 10, 16 and 17.

As already indicated above, the author opines that the *XX* ruling contributes to creating a level playing field because as a consequence of this ruling both residents and non-resident receiving dividend income can deduct the change in the level of commitments to the customers if the national tax system of the Member State in which the dividend paying company is a resident allocates dividend received to the change in the level of commitments to the customers of the companies receiving these dividends. This will increase the efficiency of the European and global capital markets. The ruling also contributes to the development of the EU internal market. However, unfortunately, the ruling leaves also room for discussion. It may not be completely clear whether the CJEU has repealed in full the *Société Générale* (C-17/14) ruling or that it only mitigates the effect of this ruling.[49] Therefore, the author calls upon the CJEU to clarify in a subsequent ruling that it repealed the ruling in full because a full repeal would contribute most to creating a level playing field, efficiency of the capital markets and the development of the EU internal market.

The *XX* ruling also enhances international tax neutrality because of the equal treatment of resident and non-resident dividend income recipients. Both are entitled to the same tax deduction. Therefore, resident dividend income recipients are no longer treated better than non-residents if the *Société Générale* (C-17/14) ruling has been repealed in full. Consequently, the relation between taxes (burdens) and public goods and services (benefits) is no longer disrupted to the disadvantage of transnational investment.

The ruling also strengthens the application of CLIN. Residents and non-residents are entitled to the same tax deduction. As a result, capital funds originating in the Member State concerned compete on equal terms in the capital market of that Member State, irrespective of the place of residence of the investor.

The ruling promotes also the application of the ability-to-pay principle and the direct-benefit principle. By means of granting non-residents the tax deduction, it is avoided that the change in the level of commitments to the customers of the non-resident dividend receiving company is not considered at all.[50] This could be the case if its state of residence would allocate those costs to the dividend received with the consequence that these costs should only be considered in the state of which the dividend paying company is a resident. If that state would not allow this deduction, inter alia because of the *Société Générale* (C-17/14) ruling, the non-resident dividend receiving company would be overtaxed. This result would not only be inconsistent with the ability-to-pay principle, but also with the direct-benefit principle. By means of allocating the tax deduction concerning the change in the level of commitments to the customers of the non-resident dividend receiving company to the state in which the dividend paying company is a resident (the source state), the tax deduction is allocated to the state that is also presumed to contributed to the increase of the dividend income recipient's wealth which gives this recipient the capacity to pay taxes (increase of ability-to-pay). This recipient is benefitting from the public goods and services provided by the source state which enables the recipient to receive the dividend income. Therefore, the recipient should contribute to financing the public expenses of the source state.

The ruling does not directly enhance the application of the principle of origin. The reason is that the tax system in the present case has not been based on the principle of origin, but on the principle of source. That is and should be a given for CJEU. As mentioned above, a Member State is competent to create its own tax systems. That is not a task of the CJEU which it, unfortunately, overlooked in the *Société Générale* (C-17/14) ruling.[51] In the Netherlands, the taxation of outbound dividends has been based on the fact that the dividend paying company is a resident in the Netherlands.[52] An origin-based allocation of tax jurisdiction would require allocation of tax jurisdiction on dividends to the state in which the profits have been produced, which is not necessarily the state in which the paying company is a resident. In so far the source state and the state of origin coincide, the author posits that the ruling would also enhance the application of the principle of origin because then the tax deduction is taken into account where the dividend income has been produced.

Finally, the author thinks that the *XX* ruling also contributes to a certain extent to the realization of several of the SDGs 1, 8, 10, 16 and 17. As the case may be, Member States must provide a tax deduction for the change in the level of commitments to the customers of a non-resident dividend receiving company. This will lower the tax burden in the Member State concerned. If the state of residence of the dividend income recipient applies a tax credit system for inbound dividends, the result of the ruling is that less tax credit needs to be granted. Consequently, the budget of that state will benefit from this lower taxation in the Member State concerned. These additional funds will be available for financing public goods and services in the state of residence of the dividend income recipient, which includes low- or middle-income countries. If so, the ruling may contribute in relation to these countries to reducing poverty, to promoting sustained, inclusive and sustainable

[49] *See* s. 5.1 of this contribution.
[50] Compare also, e.g., Smit, *supra* n. 33, para. 5.
[51] *See* ss 4.1 and 5.1 of this contribution.
[52] *See* s. 3 of this contribution.

economic growth, to reducing inequality among countries, to promoting sustainable development and to strengthening the means of implementation and revitalize the global partnership for sustainable development particularly in an area like financing for development. The author also posits that the equal treatment of resident and non-resident investors, especially if they are residents of low and middle income countries, in Member States concerning the tax deduction may contribute to the promotion of sustained, inclusive and sustainable economic growth, to the reduction of inequality among countries, to the promotion of sustainable development, and to strengthening the means of implementation and revitalize the global partnership for sustainable development particular in an area like financing for development.

In conclusion, the *XX* ruling satisfies almost all benchmarks and, therefore, it should be welcomed also from this perspective.

6 Conclusions

In this section, I will summarize the main conclusions and answer the two research questions.

The main conclusions are:

(1) The *XX* ruling (implicitly) repeals or at least mitigates the outlier ruling *Société Générale* (C-17/14).
(2) It may not be completely clear whether the CJEU has repealed in full the *Société Générale* (C-17/14) ruling or that it only mitigates the effect of this ruling. Therefore, the author calls upon the CJEU to clarify in a subsequent ruling that it repealed the ruling in full. A full repeal would contribute most to creating a level playing field, efficiency of the capital markets and the development of the EU internal market.
(3) With the (implicit) repeal or at least mitigation of the *Société Générale* (C-17/14) ruling, the CJEU brings the tax burden comparison between resident and non-resident dividend income recipients back to its settled case law.
(4) The *XX* ruling will have an impact on the national legislations of Member States whose national tax system allocates dividends received to the change in the level of commitments to the customers of the companies receiving these dividends.
(5) The *Sofina* repair in the Dutch CITA seems to be discriminatory under EU law.
(6) The *XX* ruling satisfies almost all benchmarks. It contributes to the development of the EU internal market, the creation of a level playing field, the establishment of international tax neutrality, CLIN, the realization of the ability-to-pay and the direct-benefit principles, occasionally to the establishment of an origin-based allocation of tax jurisdiction on dividend income and to a certain extent to the realization of some of the SDGs 1, 8, 10, 16 and 17.

The research questions of this editorial are:

(1) Did the CJEU in the *XX* ruling repeal its outlier ruling *Société Générale* (C-17/14)?
(2) And if so, should this repeal be considered contributing to the development of the internal market?

Based on the above the answers are:

(1) The *XX* ruling (implicitly) repeals or at least mitigates the outlier ruling *Société Générale* (C-17/14).
(2) This (implicit) repeal or at least mitigation of the outlier ruling *Société Générale* (C-17/14) should be considered contributing to the development of the internal market. The CJEU should clarify in a subsequent ruling that it repealed the *Société Générale* (C-17/14) ruling in full because a full repeal would contribute most to the development of the EU internal market.