

# ECJ Decides on Aggregation and Higher Tax Rates on Interest on Bonds and Debt Instruments If Paid by Non-Resident Banks: *Autoridade Tributária e Aduaneira (Imposition des intérêts provenant d'obligations and de titres de créance)* (Case C-312/22) (Direct Tax)

12 October 2023

Report from IBFD Knowledge Centre

On 12 October 2023, the Court of Justice of the European Union (ECJ) gave its decision in *FL v. Autoridade Tributária e Aduaneira* ([Case C-312/22](#)) based on a number of grounds.

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

1. Article 56 [EC](#) must be interpreted as precluding legislation of a Member State which subjects interest income received by taxpayers of that Member State to a progressive tax rate of up to 40% where that interest income is derived from bonds and debt instruments issued by an entity of another Member State or of a third State such as the Swiss Confederation and paid by such an entity, whereas, where such interest income derives from bonds and debt instruments issued and paid by an entity in their Member State of residence, it is taxed at a lower definitive rate of 20%.
2. Article 2(4) of the [Agreement between the European Community and the Swiss Confederation](#) providing for measures equivalent to those laid down in [Council Directive 2003/48/EC](#) on taxation of savings income in the form of interest payments, read in conjunction with Article 1(2) thereof, must be interpreted as precluding legislation of a Member State subjecting interest income received, from 1 July 2005, by taxpayers of that Member State who have opted for the voluntary disclosure procedure or otherwise declared that interest income to the tax authorities of their Member State of residence, in so far as it is not excluded from the retention under Article 1(2), to a progressive tax rate of up to 40% where that interest income is derived from bonds and debt instruments paid by a Swiss paying agent, whereas, where the same interest income is paid by a resident paying agent, it is taxed at a lower definitive rate of 20%."

For a previous TNS regarding the case, see [Portugal-1, News 1 August 2022](#).

A more substantial report containing details of the ECJ's decision will be published in the ECJ Case Law collection in due course.

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