

ECJ Preliminary Ruling Request: *Finanzamt Köln-Süd* (Case C-627/22) – Finanzgericht Köln Submits Referral on Denial of Voluntary Tax Assessments for Swiss Residents

16 January 2023

Report from Andreas Perdelwitz, Principal Associate, IBFD

The Finanzgericht Köln made reference to the Court of Justice of the European Union (ECJ) on 4 October 2022 for a preliminary ruling in the case *AB v. Finanzamt Köln-Süd* (Case C-627/22) on the denial of voluntary tax assessments for Swiss residents.

The Finanzgericht Köln requested the ECJ to answer the following question:

"Are the provisions of the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, which entered into force on 1 June 2002 ([the Agreement on the Free Movement of Persons](#); the AFMP), in particular articles 7 and 15 of the AFMP, read in conjunction with article 9(2) of Annex I to the AFMP (right to equal treatment), to be interpreted as precluding legislation of a Member State under which employees who are nationals of an EU or EEA Member State (including Germany) and who reside (with their place of residence or habitual abode) in Germany or in EU/EEA States may voluntarily apply for an assessment of income tax that takes into account income from employment that is taxable in Germany (voluntary assessment), in particular in order to receive an income tax refund allowing for expenses (income-related expenses) and crediting German wage tax withheld as part of the tax deduction procedure, but that right is denied to German and Swiss nationals residing in Switzerland?"