company established in the Netherlands and which therefore, as a sub-subsidiary, similarly to [the] respondent [MSA Nederland], has no access to the fiscal unity regime with — exclusively — its grandparent company, or to (ii) the situation of a sub-subsidiary established in the Netherlands which, with its parent company/intermediate holding company established in the Netherlands, has elected to form a fiscal unity with [its] (grand)parent company established in the Netherlands and whose activities and assets therefore, in contrast to those of [the] respondent [MSA Nederland], are consolidated for tax purposes?

2. In answering the first sentence of Question 1, does it still make a difference … whether the foreign intermediate holding company concerned, if it does not operate in the Netherlands through a subsidiary but through a permanent establishment, had been able to elect — as regards the assets and the activities of that Netherlands permanent establishment — to form a fiscal unity with its parent company established in the Netherlands?

3. If and to the extent that the first sentence of Question 1 must be answered in the affirmative, can such a restriction then be justified by overriding reasons in the general interest, more particularly by the need to preserve tax consistency, including the prevention of the unilateral and bilateral double use of losses …?

4. If and to the extent that Question 3 must be answered in the affirmative, should such a restriction then be considered to be proportionate …?

Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 28 January 2013 — Hauptzollamt Köln v Kronos Titan GmbH

(Case C-43/13)

(2013/C 123/14)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Hauptzollamt Köln

Defendant: Kronos Titan GmbH

Question referred

Does Article 2(3) of Council Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity, [1] in relation to the taxation of energy products other than those for which a level of taxation is specified in the Directive, require the application of a rate of tax which national law specifies for the use of an energy product as heating fuel, provided that that other energy product is also used as heating fuel? Or, in cases where the other energy product — in circumstances where it is used as heating fuel — is equivalent to a particular energy product, can the rate of tax specified by national law for this energy product be applied, even in the case where the rate of tax is the same irrespective of whether it is being used as motor fuel or as heating fuel?

(1) OJ L 283, p. 51.

Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 28 January 2013 — Hauptzollamt Krefeld v Rhein-Ruhr Beschichtungs-Service GmbH

(Case C-44/13)

(2013/C 123/15)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Defendant and appellant: Hauptzollamt Krefeld

Applicant and respondent: Rhein-Ruhr Beschichtungs-Service GmbH

Question referred

Does Article 2(3) of Council Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity, [1] in relation to the taxation of energy products other than those for which a level of taxation is specified in the Directive, require the application of a rate of tax which national law specifies for the use of an energy product as heating fuel, provided that that other energy product is also used as heating fuel? Or, in cases where the other energy product — in circumstances where it is used as heating fuel — is equivalent to a particular energy product, can the rate of tax specified by national law for this energy product be applied, even in the case where the rate of tax is the same irrespective of whether it is being used as motor fuel or as heating fuel?

(1) OJ 2003 L 283, p. 51.