The facts of the cases:

C-115/16:

A number of capital investment companies resident in a third country incorporated several companies in Luxembourg and Denmark with a view to acquiring T Danmark (a large Danish service provider). They included the claimant in the main proceedings, N Danmark 1 (resident in Denmark, now trading as N Luxembourg 1).

The acquisition of T Danmark was financed in part by loans granted by the capital investment companies to N Danmark 1. Those loans were granted as a particular type of corporate bond, namely Preferred Equity Certificates (PECs) issued by N Danmark 1. A PEC is a financial instrument which is broadly similar to an interest-bearing corporate bond and the purchasers therefore become the lenders to the PEC issuer. Interest on the PECs was paid/credited to the capital investment companies from the date of issue (21 December 2005) to the summer of 2008. N Danmark 1 ultimately used the money borrowed from the third-country capital investment companies to acquire approximately 80% of the share capital of T Danmark.

C Luxembourg (resident in Luxembourg) was subsequently incorporated (in April 2006) by the Luxembourg companies previously incorporated. During a share swap in the spring of 2006, all shares in N Danmark 1 were transferred to C Luxembourg, which thus became the sole parent company of the Danish company. A Luxembourg Holding (a subsidiary of the capital investment companies), also resident in Luxembourg, became the indirect owner of C Luxembourg in the spring of 2006 and its direct owner at the end of 2007.

In April 2006, the PECs were transferred first from the capital investment companies to A Luxembourg Holding and then, on the same day, by A Luxembourg Holding to C Luxembourg (the parent company of N Danmark 1), which thus became the owner of the PECs.

Payments in connection with the transfer of the PECs were made on each occasion by entering into agreement on an interest-bearing loan of equal amount. C Luxembourg and A Luxembourg Holding have unlimited tax liability in Luxembourg. The interest on the PECs is paid by N Danmark 1 to C Luxembourg, which uses these interest payments to service its interest payments to A Luxembourg Holding, which in turn uses the payments to service its interest payments to the capital investment companies.

In the period from 2006 to 2008, C Luxembourg and A Luxembourg Holding reported further six-figure yearly operating expenditure (i.e. in addition to interest expenditure). That expenditure included salaries, rents, office running costs and consultancy fees. In 2007 and 2008, both companies employed an average of one or two part-time employees. They are registered at the same address, which is also used by companies with a direct connection to one of the capital investment companies.

Aside from the one-off contributions received from N Danmark 1 on 6 December 2006 in connection with interest and repayments, no other liquidity was channelled to the companies. Apart from its shareholding in N Danmark 1, C Luxembourg's only other asset is its claim pursuant to the PECs issued by N Danmark 1.

None of the capital investment companies is resident in an EU Member State or in a State with which Denmark has concluded a DTC. According to information provided by the claimant during the

hearing in the main proceedings, they qualify under tax legislation as transparent entities. N Danmark 1 has stated that the overwhelming majority of the ultimate investors behind the capital investment companies are resident in countries with which Denmark has concluded a DTC.(Double Taxation Convention)

C-118/16

X Denmark A/S (applicant in the main proceedings before the referring court) is part of the X Group. The X Group is a global company which employs a total of 12 500 staff — 600 of whom are employed in Denmark — and which has subsidiaries in more than 70 countries. In 2005, the group was taken over by a syndicate of capital investment companies.

These investment companies hold 100% of the shares of the uppermost company in the group (X S.C.A.), which is resident in Luxembourg, and are regarded as transparent for tax purposes. According to the referring court, the investors in these tax-transparent capital investment companies are thus, for tax purposes, ultimately direct shareholders in the uppermost company in the group, X S.C.A.

According to information provided by X Denmark A/S, these shareholders are resident in a number of countries within and outside of the European Union as well as within and outside of countries with which Denmark has entered into a DTC. (Double Taxation Convetion)

X S.C.A. is the group's ultimate parent company. Due to its nature as a general investment firm, X S.C.A. was entitled to be registered as a 'société d'investissement en capital à risque' (SICAR).

This means that the company is exempt from income tax on earnings originating from the company's investments in securities (i.e. dividends and capital growth). A SICAR is also exempt from the rules on compulsory tax retention upon distribution of dividends. X S.C.A. holds 100% of shares in X Sweden Holding AB (X Sweden Holding). X S.C.A. was not engaged in any business operations other than ownership of and the loan to X Sweden Holding.

X Sweden Holding, in turn, holds 97.5% of shares in a Swedish company (X Sweden), which for its part holds 100% of shares in X Denmark A/S. The sole activity of X Sweden Holding consists in being the holding company of X Sweden. On 27 December 2006, X Sweden Holding took out a loan from its parent company, X S.C.A. The company's interest expenses in connection with that loan for the fiscal years 2007, 2008 and 2009 were deducted from the company's taxable income.

In the fiscal years 2007-2009 — in accordance with the specific Swedish rules on adjusting earnings for tax purposes within a group in Chapter 35 of the Swedish Law on income tax (Inkomstskattelagen) — X Sweden made intra-group transfers to its parent company, X Sweden Holding. The intra-group transfers are tax deductible for the company making the payment and taxable for the recipient company.

Under a loan agreement of 27 December 2006 X Denmark received a loan for 501 million euros (EUR) from its parent company, X Sweden. X Denmark did not retain any tax at source for the annual interest credits for 2007, 2008 and 2009, given that X Denmark considered the lender X Sweden to be the 'beneficial owner' of the interest. In its tax returns, X Denmark deducted the interest from its taxable income.

Since 1 January 2005 the claimant in the main proceedings (C Danmark I) has been the uppermost parent company in the Danish branch of the American C Group, whose ultimate parent company is C USA.

The group's principal activities are the manufacture and distribution of products that are sold in over 100 countries, and overall the group employs over 10 000 people worldwide. Production in Denmark began several decades ago and today the business has over 500 employees in Denmark. The Danish branch of the group has subsidiaries in a number of EU and EEA countries and Switzerland, most of which are sales companies.

Until the end of 2004 C Danmark II was the uppermost Danish parent company. That company was directly owned by C Cayman Islands. At the end of 2004 the group was restructured and as part of this two Swedish companies (C Sverige I und C Sverige II) and C Danmark I were interposed between the shareholding of C Cayman Islands in C Danmark II.

As a result of this, C Cayman Islands now holds 100% of the shares in a Swedish holding company (C Sverige I), which holds 100% of another Swedish holding company (C Sverige II), which in turn holds 100% of the shares in C Danmark I, which in turn holds 100% of the shares of C Danmark II and thereby became the new uppermost parent company in the Danish branch of the group.

The restructuring involved two loans of EUR 75 million and EUR 825 million respectively between C Cayman Islands and C Sverige I as well as two loans of EUR 75 million and EUR 825 million respectively between C Sverige II and C Danmark I. The loan agreements between C Cayman Islands and C Sverige I were concluded on completely identical terms as those concluded between C Sverige II and C Danmark I.

Since under the then-prevailing Swedish tax law there was no taxable net income to be taxed in Sweden and no tax at source was levied on the outbound interest either, the interest paid by C Danmark I was ultimately 'passed on' without reduction to C Cayman Islands via the Swedish companies.

The Swedish tax authorities have provided the Danish tax authorities with various pieces of information about C Sverige II and C Sverige I, which showed that neither company had any employees. They had identical addresses to the office address of another Swedish company (C Sverige III), which did not include any separate office premises for C Sverige II or C Sverige I. Any post for C Sverige II and C Sverige I was opened by C Sverige III's three employees. C Sverige II and C Sverige I did not have separate telephone numbers. The rent was paid by C Sverige III. No internal invoices were issued between the companies for any wages or administrative costs, and C Sverige II and C Sverige I had not concluded a tenancy agreement and did not bear any costs for the use of the premises.

C Sverige II and C Sverige I carried out no activities other than holding shares in the subordinate company, and in the years 2004 to 2006 they had no turnover or employees. In the case of both C Sverige II and C Sverige I the business consisted of relatively few, substantial accounting transactions, consisting mostly of interest entries. The director of C Sverige III was also the director of C Sverige II and C Sverige I, had access to the companies' bank accounts and was also responsible for the companies' production of annual reports and filing of tax returns.

C Danmark I stated that C Cayman Islands paid a dividend of EUR 140 million to the parent company, C USA, which is resident in the United States; the finance authorities dispute this however.

Under the double taxation convention entered into between Denmark and the United States, tax at source is not levied on interest in Denmark if the beneficial owner is resident in the United States, which the ultimate parent company C USA indisputably is.

On 30 October 2009 the Danish tax authority adopted a decision holding that neither C Sverige II nor C Sverige I were to be regarded as the 'beneficial owner' of interest from C Danmark I under the Interest and Royalties Directive and the Nordic Double Taxation Convention.

C-299/16

Z Denmark is a Danish industrial company, 66% of whose shares were acquired by a capital investment company, A Fund, in August 2005. In connection with the acquisition — on 27 September 2005 — A Fund provided a loan to Z Denmark at an interest rate of 9%.

In 2006, Denmark decided to introduce taxation at source for outbound interest payments. On 28 April 2006, A Fund established Z Luxembourg in Luxembourg and transferred the debt claim against Z Denmark to that company. In connection with the transfer, A Fund also granted a loan to Z Luxembourg at an interest rate of 9.875%. By agreement of 21 June 2006, A Fund transferred its shares in Z Denmark to Z Luxembourg.

According to the information provided by the referring court, the annual financial statements of Z Luxembourg for 2007 and 2006 showed that the company's activities consisted solely of the investment in Z Denmark. The annual financial statements show that in 2006 the company had a negative result amounting to EUR 23 588 and in 2007 a positive result amounting to EUR 15 587. The item 'Tax on Profits' showed an amount of EUR 3 733 for one year (presumably 2007).

Z Denmark repaid the loan referred to in the previous paragraph on 1 November 2007. On the same day, Z Luxembourg also repaid its debt to A Fund, including the interest accrued.

A Fund consists of five capital investment companies, four of which are organised as tax-transparent (under Danish tax law) (6) limited partnerships on Jersey.
There are approximately 70 direct investors in the four transparent investment companies, including pension funds, financial institutions, fund of funds, investment funds and firms, ordinary companies and private individuals.

These shareholders are resident in a number of countries within and outside the European Union as well as within and outside countries with which Denmark has entered into a DTC. A Fund (No 5) Limited, Jersey, is organised as a non-tax-transparent company and holds around 0.6% of A Fund.

In its decision of 10 December 2010, the SKAT (the Danish finance authorities) did not regard Z Luxembourg as "beneficial owner" of the interest for the purposes of Directive 2003/49 and the Danish-Luxembourg DTC.