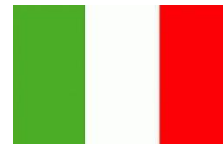
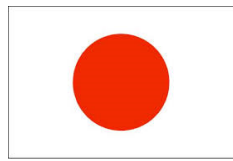


Tax Treaties vs. National Law Tax Credit vs. Deductibility: The *Société Céline* Case

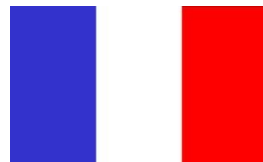
**CE, 12th March 2014, *Société Céline*,
n° 362528, A**

Facts and proceedings (I)

- The Céline Company collected **licensing fees** in Japan and Italy.
- Subject to **withholding tax** in Japan and Italy



- Determination of taxable profits and of the **corporation tax** payable in **France**?



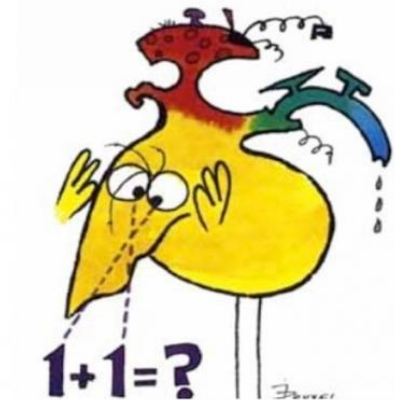
Facts and proceedings (II)

■ French-Italian and French-Japanese **Tax Treaties**

□ **Deduction** of Italian and Japanese taxes : NO 

□ **Tax credit** chargeable against French tax : YES 

■ Trouble : the Céline Company is **lossmaking...**



Facts and proceedings (III)



- Reporting the amount of the licensing fees **net of the withholding tax** paid in Japan and Italy.

- Legal basis invoked : CGI art. 39, 1, 4°

- French tax authorities' position



Issue

- Can a tax treaty **impede deduction** of the tax paid abroad, even in the case of a company which cannot use the treaty credit tax because of its **lossmaking situation**?


Tax Treaties Subsidiarity Principle (I)

- CE, Ass., 28th June 2002, *Sté Schneider Electric*, n° 232276

- Double taxation treaty **≠ direct basis** for tax

- Methodology :

-  ■ Step 1: is the tax decision valid **under national tax law**?

-  ■ Step 2 : Does the **tax treaty** stays in the way of the application of the law ?

Tax Treaties Subsidiarity Principle (II)

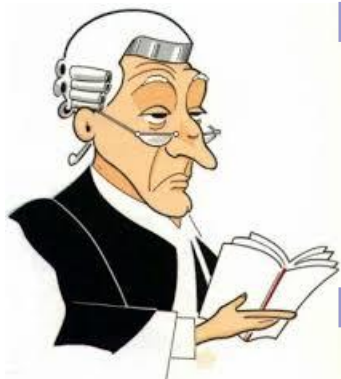
- What if National Tax Law **grants a deduction** ?
 - A Tax Treaty can lead to the **non-application** of this law without breaking the subsidiarity principle
 - CE, 12th June 2013, *Société BNP Paribas*, n° 351702 (provisions for impairment of shares)

➔ Application of this principles to the issue of deduction of taxes paid abroad

Principles set by the Céline Case (I)

■ The Judge's role :

- Observing whether taxes paid abroad are deductible in determining taxable profit in France under national law
- Applying clear provisions of a Tax Treaty precluding such a deduction



■ Even if :

- Treaty tax credit chargeable against French tax
- Lossmaking company

Principles set by the Céline Case (II)

- When **allocation** does not work, **deduction** does not take over if the Treaty precludes it



- Major condition : Treaty provisions must be **clear**

Principles set by the Céline Case (III)




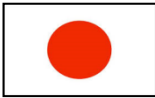
- Traditional interpretation rules of treaties

- No purely teleological interpretation based on the alleged « real inspiration » of double taxation treaties

- Leads to a double taxation situation...



Application to the Case

-   and   Tax Treaties expressly preclude deduction without reserving the case of lossmaking companies
- The Céline Company lost the case...



*Thank you for your
attention!*