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Press and Information

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Judgment of the Court of Justice in Case C-318/07

*Hein Persche v Finanzamt Lüdenscheid*

**A TAX DEDUCTION FOR GIFTS TO CHARITABLE BODIES MUST NOT BE RESTRICTED TO BODIES ESTABLISHED IN THE NATIONAL TERRITORY**

*The donor's Member State must verify compliance with the conditions imposed on national charitable bodies.*

German law provides for the deduction for tax purposes of gifts to charitable bodies in Germany which satisfy certain requirements, whilst excluding that tax advantage for gifts to bodies established and recognised as charitable in another Member State.

In his tax return for 2003, Mr Hein Persche, a German national, nonetheless claimed a tax deduction in respect of a gift in kind, valued at about EUR 18,180, to the Centre Popular de Lagoa, in Portugal (a retirement home to which a children's home is attached). The Finanzamt (District Tax Office) refused the deduction sought on the ground that the beneficiary of the gift was not established in Germany and that Mr Persche had not provided a donation certificate in proper form.

The Bundesfinanzhof (the highest German court with jurisdiction in tax matters), sitting as the Court of final appeal in the case, asks the Court of Justice whether a Member State may make a deduction for tax purposes subject to the condition that the beneficiary is established in that State.

In its judgment of today, the Court of Justice examines the question whether a tax deduction for cross-border gifts comes within the compass of the free movement of capital guaranteed by Community law. In that respect, it points out that, where a taxpayer claims, in a Member State, the deduction for tax purposes of gifts to bodies established and recognised as charitable in another Member State, such gifts come within the compass of the Treaty provisions on the free movement of capital, even if they are made in kind in the form of everyday consumer goods.

Since the possibility of obtaining a tax deduction can have a significant influence on the donor's attitude, the inability in Germany to deduct gifts to bodies recognised as charitable if they are established in other Member States is likely to affect the willingness of German taxpayers to make gifts to such bodies. Such legislation constitutes, therefore, a restriction on the free movement of capital which is, as a rule, prohibited.

In the Court's view, that restriction is not justified. The Court observes that a Member State may, as part of its legislation on the deduction for tax purposes of gifts, apply a difference in treatment between national bodies recognised as charitable and those established in other Member States if the latter bodies pursue objectives other than those advocated by its own legislation. Indeed, Community law does not require the Member States to provide that foreign bodies recognised as charitable in their Member State of origin benefit automatically from the same recognition in their own territory.

The fact remains that, where a body recognised as charitable in one Member State satisfies the requirements imposed for that purpose by the law of another Member State and where its object is the promotion of the very same general public interests, so that it would be likely to be recognised as charitable in the latter Member State, the authorities of the latter Member State cannot deny that body the right to equal treatment solely on the ground that it is not established in its territory.

Moreover, the contested legislation is not justified by the need to safeguard the effectiveness of fiscal supervision. Indeed, nothing would prevent the tax authorities concerned from requiring the taxpayer to provide such proof as they may consider necessary to determine whether the conditions for deducting expenditure provided for in the legislation at issue have been met and, consequently, whether or not it is appropriate to allow the deduction claimed. The Court considers that it is not contrary to the principle of proportionality to constrain the donor's Member State, when a taxpayer claims the benefit of a tax deduction for gifts which he has made to bodies established in another Member State, to verify, or to have verified, whether the conditions imposed on national charitable bodies are respected.

Consequently, the Court rules that the **free movement of capital precludes legislation of a Member State by virtue of which**, as regards gifts made to bodies recognised as having charitable status, the benefit of **a deduction for tax purposes is allowed only in respect of gifts made to bodies established in that Member State**, without any possibility for the taxpayer to show that a gift made to a body established in another Member State satisfies the requirements imposed by that legislation for the grant of such a benefit.

*Unofficial document for media use, not binding on the Court of Justice.*

*Languages available: FR CS DE EN ES EL HU IT NL PL PT RO SK*

*The full text of the judgment may be found on the Court's internet site*

*<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-318/07>*

*It can usually be consulted after midday (CET) on the day judgment is delivered.*

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