1. *Articles 56 EC and 58 EC do not preclude legislation under which a Member State denies non-resident taxpayers who hold the major part of their wealth in the State where they are resident entitlement to the allowances which it grants to resident taxpayers.*

2. *Articles 56 EC and 58 EC do not preclude a rule laid down by a bilateral convention for the avoidance of double taxation such as the rule at issue in the main proceedings from not being extended, in a situation and in circumstances such as those in the main proceedings, to residents of a Member State which is not party to that convention.*

(1) OJ C 289 of 29.11.2003.

JUDGMENT OF THE COURT

(First Chamber)

of 15 September 2005

in Case C-495/03 Reference for a preliminary ruling from the Hoge Raad der Nederlanden in Intermodal Transport BV v Staatssecretaris van Financiën (1)

(Common Customs Tariff — Tariff headings — Classification in the combined nomenclature — Heading 8709 — 'Magnum ET120 Terminal Tractor' — Article 234 EC — Obligation of a national court to refer a question for a preliminary ruling — Conditions — Binding tariff information issued for a third party by the customs authorities of another Member State concerning a similar vehicle)

(2005/C 271/09)

(Language of the case: Dutch)

In Case C-495/03: reference for a preliminary ruling under Article 234 EC from the Hoge Raad der Nederlanden (Netherlands), made by decision of 21 November 2003, received at the Court on 24 November 2003, in the proceedings between **Intermodal Transport BV** and **Staatssecretaris van Financiën** — the Court (First Chamber) composed of P. Jann, President of the Chamber, K. Lenaerts, K. Schiemann (Rapporteur), E. Juhász and M. Ilešič, Judges; C. Stix-Hackl, Advocate General, R. Grass, Registrar, gave a judgment on 15 September 2005, the operative part of which is as follows:

1. *Article 234 EC must be interpreted as meaning that when, in proceedings relating to the tariff classification of specific goods before a national court or tribunal, a binding tariff information relating to similar goods issued to a person not party to the dispute by the customs authorities of another Member State is submitted, and that court or tribunal takes the view that the tariff classification made in that information is wrong, those two circumstances:*

   — *cannot result, in respect of a court or tribunal against whose decisions there is a judicial remedy under national law, in the court or tribunal being under an obligation to refer to the Court questions on interpretation;*

   — *cannot, in themselves, automatically result, in respect of a court or tribunal against whose decisions there is no judicial remedy under national law, in the court or tribunal being under an obligation to refer to the Court questions on interpretation.*

   A court or tribunal against whose decisions there is no judicial remedy under national law is, however, required, where a question of Community law is raised before it, to comply with its obligation to make a reference, unless it has established that the question raised is irrelevant or that the Community provision in question has already been interpreted by the Court or that the correct application of Community law is so obvious as to leave no scope for any reasonable doubt. The existence of such a possibility must be assessed in the light of the specific characteristics of Community law, the particular difficulties to which its interpretation gives rise and the risk of divergences in judicial decisions within the Community; the existence of the abovementioned binding tariff information must cause that court or tribunal to take particular care in its assessment of whether there is no reasonable doubt as to the correct application of the combined nomenclature in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 2261/98 of 26 October 1998, taking account, in particular, of the three criteria mentioned above.

2. *Heading 8709 of the combined nomenclature must be interpreted as not covering a vehicle equipped with a diesel engine having an output of 132 kilowatts at 2 500 revolutions per minute and automatic transmission with four forward gears and one reverse gear, fitted with a closed cab and a fifth wheel allowing a lift height of 60 centimetres, which has a maximum carrying capacity of 32 000 kilograms, a very small turning circle and is designed for moving semi-trailers on industrial premises and in industrial buildings. Such a vehicle is neither a works truck used for the transport of goods nor a tractor of the type used in railway stations, within the meaning of that heading.*

(1) OJ C 21 of 24.01.2004.