

**Judgment of the Court (Grand Chamber) of 27 January 2009 (reference for a preliminary ruling from the Bundesfinanzhof (Germany)) — Hein Persche v Finanzamt Lüdenschheid**

(Case C-318/07) <sup>(1)</sup>

*(Free movement of capital — Income tax — Deduction of gifts to bodies recognised as charitable — Deduction restricted to gifts to national bodies — Gifts in kind — Directive 77/799/EEC — Mutual assistance by the competent authorities of the Member States in the field of direct taxation)*

(2009/C 69/11)

Language of the case: German

**Referring court**

Bundesfinanzhof

**Parties to the main proceedings**

*Applicant:* Hein Persche

*Defendant:* Finanzamt Lüdenschheid

**Re:**

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of the third paragraph of Article 5 EC, Article 56 EC and Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation (OJ 1977 L 336, p. 15) — National legislation under which the grant of the tax advantage for gifts to bodies pursuing objectives of public interest is conditional upon the donee being established in national territory — Applicability of the rules of the EC Treaty on the free movement of capital to gifts in kind, in the form of goods of daily use, made by a national of a Member State to bodies pursuing charitable objectives and having their seat in another Member State

**Operative part of the judgment**

1. 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 provisions of the EC Treaty relating to the free movement of capital, even if they are made in kind in the form of everyday consumer goods.
2. Article 56 EC 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.

<sup>(1)</sup> OJ C 247, 20.10.2007.

**Judgment of the Court (First Chamber) of 22 January 2009 (reference for a preliminary ruling from the Bundesfinanzhof — Germany) — STEKO Industriemontage GmbH v Finanzamt Speyer-Germersheim**

(Case C-377/07) <sup>(1)</sup>

*(Corporation tax — Transitional provisions — Deduction of the depreciation of holdings in non-resident companies)*

(2009/C 69/12)

Language of the case: German

**Referring court**

Bundesfinanzhof

**Parties to the main proceedings**

*Applicant:* STEKO Industriemontage GmbH

*Defendant:* Finanzamt Speyer-Germersheim

**Re:**

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of Article 56 EC — Corporation tax — Transitional provisions for the year 2001 prohibiting a company from deducting the depreciation in value of its foreign shareholdings

**Operative part of the judgment**

*In circumstances such as those of the main proceedings, in which a resident capital company has a holding of less than 10 % in another capital company, Article 56 EC must be interpreted as precluding a prohibition on the deduction of reductions in profit in connection with such a holding which enters into force earlier with regard to a holding in a non-resident company than with regard to a holding in a resident company.*

<sup>(1)</sup> OJ C 283, 24.11.2007.