JUDGMENT OF THE COURT (Second Chamber)

22 April 2010 *

In Case C-510/08,

REFERENCE for a preliminary ruling under Article 234 EC from the Finanzgericht Düsseldorf (Germany), made by decision of 14 November 2008, received at the Court on 24 November 2008, in the proceedings

Vera Mattner

v

Finanzamt Velbert,

THE COURT (Second Chamber),

composed of J.N. Cunha Rodrigues, President of the Chamber, P. Lindh, A. Rosas, U. Lõhmus and A. Ó Caoimh (Rapporteur), Judges,

* Language of the case: German.

Advocate General: P. Mengozzi,
Registrar: B. Fülöp, Administrator,

having regard to the written procedure and further to the hearing on 11 February 2010,

after considering the observations submitted on behalf of:

— Finanzamt Velbert, by F.-D. Rilinger and G. Köhler, acting as Agents,

— the German Government, by M. Lumma and C. Blaschke, acting as Agents,

— the Commission of the European Communities, by R. Lyal and W. Mölls, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion, gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 39 EC, 43 EC, 56 EC and 58 EC relating to freedom of movement for workers, freedom of establishment and free movement of capital.

2 The reference was made in the course of proceedings between Ms Mattner and Finanzamt Velbert (Velbert Tax Office, 'the Finanzamt') (Germany) concerning the calculation of the gift tax due on the gift of a piece of land in Germany on which a house had been built.

Legal context

European Union law

3 Under Article 1 of Council Directive 88/361/EEC of 24 June 1988 for the implementation of Article 67 of the Treaty (article repealed by the Treaty of Amsterdam) (OJ 1988 L 178, p. 5):

'1. Without prejudice to the following provisions, Member States shall abolish restrictions on movements of capital taking place between persons resident in Member

States. To facilitate application of this Directive, capital movements shall be classified in accordance with the Nomenclature in Annex I.

2. Transfers in respect of capital movements shall be made on the same exchange rate conditions as those governing payments relating to current transactions.'

4 The capital movements listed in Annex I to Directive 88/361 include, under heading XI, personal capital movements, among which are gifts and endowments.

National legislation

5 The Law on inheritance and gift tax (Erbschaftsteuer- und Schenkungssteuergesetz), in the version published on 27 February 1997 (BGBl. 1997 I, p. 378), as last amended by the Law of 10 October 2007 (BGBl. 2007 I, p. 2332), which was applicable at the material time, ('the ErbStG') provides as follows:

'*Paragraph 1* Taxable events

(1) Inheritance tax (gift tax) shall apply to

1. acquisitions on death;

2. gifts *inter vivos*;

3. ...

(2) Unless provided otherwise, the provisions of the present law governing acquisitions on death shall apply also to gifts ...

Paragraph 2 Personal liability to tax

(1) Liability to tax arises

1. in the cases referred to in Paragraph 1(1), points 1 to 3, where the deceased at the date of his death, the donor at the date of making the gift or the acquirer at the date on which the tax arises ... is a resident, in relation to the entirety of the assets.

Persons regarded as residents are

(a) natural persons having a permanent residence or their habitual residence within the country,

(b) German nationals who have resided abroad continuously for not more than five years and do not have a permanent residence within the country.

...

3. in all other cases, in relation to an acquisition which consists of assets within the country within the meaning of Paragraph 121 of the Law on valuation [(Bewertungsgesetz, "the BewG")].

...

Paragraph 14 Taking into account of previous acquisitions

Multiple acquisitions of assets from the same person within ten years are aggregated in such a way that the earlier acquisitions are added to the latest acquisition at their earlier value. From the tax for the total amount there is deducted the tax which would have been chargeable for the earlier acquisitions according to the personal circumstances of the acquirer and on the basis of the provisions in force at the time of the latest acquisition. In lieu of the tax in accordance with the second sentence, the tax actually payable for the earlier acquisitions included in the calculation is to be deducted, if it is greater. …

Paragraph 15 Tax classes

(1) According to the personal relationship between the acquirer and the deceased or donor, the following three tax classes are distinguished:

Tax class I:

1. …

2. children and step-children …

...

Paragraph 16 Allowances

(1) Exempt from tax, in the cases provided for in Paragraph 2(1), point 1, are acquisitions

1. ...

2. by children within the meaning of tax class I, point 2, ... in the amount of EUR 205 000;

(2) In lieu of the tax-free amount under subparagraph (1), in the cases provided for in Paragraph 2(1), point 3, a tax-free amount of EUR 1 100 applies.

...

Paragraph 19 Tax rates

(1) Inheritance tax is charged according to the following percentages:

Value of the taxable acquisition … not exceeding EUR	Percentage in tax class I … …
52 000	7 … …
256 000	11 … …

…'

6 Paragraph 121 of the BewG, in the version of 1 February 1991 (BGBl. 1991 I, p. 230), as last amended by the Law of 13 December 2006 (BGBl. 2006 I, p. 2378), headed 'Assets within the country', provides:

'Assets within the country comprise:

…

2. immovable property within the country;

…'

The main proceedings and the question referred for a preliminary ruling

7 By a notarised act of 23 May 2007, Ms Mattner, a German national who has lived in the Netherlands for more than 35 years, acquired by gift from her mother, who is also a German national and has lived in the Netherlands for more than 50 years, a piece of land on which a house had been built, in Düsseldorf (Germany), worth EUR 255 000.

8 By a tax notice dated 24 January 2008, the Finanzamt claimed gift tax in the amount of EUR 27 929 from Ms Mattner in respect of the gift she had received. That figure was obtained by deducting an allowance of EUR 1 100 from the value of the land and applying a rate of 11% to the resulting taxable value.

9 By decision of 23 May 2008, the Finanzamt dismissed Ms Mattner's objection to the tax notice.

10 Ms Mattner brought proceedings in the Finanzgericht Düsseldorf (Finance Court, Düsseldorf), seeking to obtain the benefit of the EUR 205 000 allowance applicable to gifts to children where the donor or the donee is resident in the national territory at the date of the gift.

11 The referring court considers that Paragraph 16(2) of the ErbStG restricts the free movement of capital within the meaning of Article 56(1) EC, in that the amount of the allowance in question depends on the place of residence of the donor or the donee. Thus in the case pending before that court, if Ms Mattner or her mother were resident in Germany, Ms Mattner would have been able to claim the allowance of EUR 205 000 provided for in Paragraph 16(1)(2) of the ErbStG, as a result of which the taxable value would have been limited to only EUR 50 000 and the tax due would, in view of the 7% rate applicable under Paragraph 19(1) of the ErbStG, have been EUR 3 500 instead of EUR 27 929.

12 The referring court is not convinced that that restriction on the free movement of capital is justified, since in its view the situation of a person with unlimited tax liability in Germany to whom land in Germany has been transferred without payment and that of a person with limited tax liability in that State to whom a similar transfer has been made are objectively comparable.

13 The referring court observes that the Bundesfinanzhof (Federal Finance Court) has admittedly, in a judgment of 21 September 2005, held that in principle the differences between taxpayers who have unlimited liability to inheritance tax and those who have limited liability to that tax are so significant that the national legislature is not obliged to treat those two classes of taxpayers in the same way when granting them personal allowances. While the former are subject to inheritance tax on the entirety of the assets transferred, the tax liability of the latter extends only to ‘assets

within the country' as defined in Paragraph 121 of the BewG. The taxable value to which the allowance is to be applied therefore differs considerably, as a general rule, depending on whether liability to tax is unlimited or limited.

14 However, the referring court is uncertain whether such considerations can apply in the case of gift tax, since in that case only the assets gifted are subject to tax, and the taxable value is therefore no different whether the taxpayer has unlimited or limited tax liability. It also considers that the different treatment of taxpayers according to whether they have unlimited or limited tax liability does not appear capable of being justified by an overriding reason in the general interest.

15 The referring court is also uncertain whether Paragraph 16(2) of the ErbStG is compatible with Articles 39 EC and 43 EC, in that the consequences of the tax legislation concerning gifts are among the considerations which a national of a Member State may take into account when deciding to make use of his freedom of movement in accordance with the EC Treaty.

16 In those circumstances, the Finanzgericht Düsseldorf decided to stay the proceedings and refer the following question to the Court for a preliminary ruling:

'Are Articles 39 EC and 43 EC and Article 56 EC in conjunction with Article 58 EC to be interpreted as precluding a national provision of a Member State on the charging of gift tax which, where land within the country is acquired by a non-resident person, provides for an allowance of only EUR 1 100 for the non-resident acquirer, whereas on the gifting of the same land an allowance of EUR 205 000 would be granted if the donor or the acquirer were resident in the Member State in question at the time of the gift?'

Consideration of the question referred

17 By its question the referring court asks essentially whether Articles 39 EC, 43 EC, 56 EC and 58 EC must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which provides that, for the calculation of gift tax, the allowance to be set against the taxable value in the case of a gift of immovable property in that State is smaller where the donor and the donee are resident in another Member State on the date of the gift than the deduction which would have applied if at least one of them had been resident in the former Member State on that date.

18 According to settled case-law, Article 56(1) EC lays down a general prohibition on restrictions on the movement of capital between Member States (Case C-11/07 *Eckelkamp and Others* [2008] ECR I-6845, paragraph 37; Case C-43/07 *Arens-Sikken* [2008] ECR I-6887, paragraph 28; and Case C-67/08 *Block* [2009] ECR I-883, paragraph 18).

19 In the absence of a definition in the Treaty of 'movement of capital' for the purposes of Article 56(1) EC, the Court has previously recognised the nomenclature which forms Annex I to Directive 88/361 as having indicative value, even though that directive was adopted on the basis of Articles 69 and 70(1) of the EEC Treaty (later Articles 69 and 70(1) of the EC Treaty; articles repealed by the Treaty of Amsterdam), it being understood that, in accordance with the introduction to that annex, the list it contains is not exhaustive (see, inter alia, Case C-513/03 *van Hilten-van der Heijden* [2006] ECR I-1957, paragraph 39; *Eckelkamp and Others*, paragraph 38; *Arens-Sikken*,

paragraph 29; and *Block*, paragraph 19). Gifts and endowments appear under heading XI, 'Personal capital movements', of Annex I to Directive 88/361 (Case C-318/07 *Persche* [2009] ECR I-359, paragraph 24).

20 Like the tax charged on inheritances, which consist in the transfer to one or more persons of assets left by a deceased person and likewise fall under that heading of Annex I to the directive (see, inter alia, Case C-256/06 *Jäger* [2008] ECR I-123, paragraph 25; *Eckelkamp and Others*, paragraph 39; *Arens-Sikken*, paragraph 30; *Block*, paragraph 20; and Case C-35/08 *Busley and Cibrian Fernandez* [2009] ECR I-9807, paragraph 18), the tax treatment of gifts, whether they are gifts of money, immovable property or movable property, therefore comes under the Treaty provisions on the movement of capital, except where their constituent elements are confined within a single Member State (see, to that effect, *Persche*, paragraph 27).

21 A situation in which a person resident in the Netherlands makes a gift to another person also resident in the Netherlands of land in Germany cannot be regarded as a purely domestic situation.

22 Consequently, the gift at issue in the main proceedings constitutes a transaction which is a movement of capital within the meaning of Article 56(1) EC.

23 In those circumstances, since there is nothing in the order for reference which could connect the dispute in the main proceedings with freedom of movement for workers or freedom of establishment, there is no need to consider whether Articles 39 EC and 43 EC apply (see, to that effect, *Busley and Cibrian Fernandez*, paragraph 19).

24 It must therefore be examined, first, whether, as submitted by Ms Mattner in the main proceedings and the Commission of the European Communities in its written observations before the Court, national legislation such as that at issue in the main proceedings constitutes a restriction on the movement of capital.

25 It follows from the Court's case-law on inheritance that national provisions which determine the value of immovable property for the purposes of calculating the amount of tax payable when it is acquired as a gift not only may be capable of discouraging the purchase of immovable property in the Member State concerned but may also have the effect of reducing the value of a gift by a resident of a Member State other than that in which the property is located (see, to that effect, *Jäger*, paragraph 30; *Eckelkamp and Others*, paragraph 43; and *Arens-Sikken*, paragraph 36).

26 In the case of gifts, it follows from that case-law that the measures prohibited by Article 56(1) EC as being restrictions on the movement of capital include those whose effect is to reduce the value of a gift by a resident of a Member State other than that in which the property concerned is located and which taxes the gift of that property (see, by analogy, *van Hilten-van der Heijden*, paragraph 44; *Jäger*, paragraph 31; *Eckelkamp and Others*, paragraph 44; *Arens-Sikken*, paragraph 37; and *Block*, paragraph 24).

27 In the present case, national provisions such as those at issue in the main proceedings, in so far as they provide that a gift of immovable property located in the Federal Republic of Germany qualifies for a smaller allowance against the taxable value where the donor and the donee reside in another Member State than would apply if one of them were resident in German territory, with the result that gifts in the first category are subject to gift tax that is higher than the tax payable on the second category of gifts, have the effect of restricting the movement of capital by reducing the

value of a gift which includes such property (see, by analogy, *Eckelkamp and Others*, paragraph 45).

28 Where those provisions make the application of an allowance against the taxable value of the immovable property concerned dependent on the place of residence of the donor and the donee on the date of the gift, the greater tax burden on the gift between non-residents constitutes a restriction on the free movement of capital (see, by analogy, *Eckelkamp and Others*, paragraph 46).

29 Next, it must be examined whether the restriction on the free movement of capital that has thus been found to exist may be justified in the light of the provisions of the Treaty.

30 The Finanzamt and the German Government submit essentially that a gift from a non-resident donor to a non-resident donee and a gift involving a resident, whether as donor or donee, are objectively different situations. While in the former case the donee is subject in Germany to limited tax liability relating solely to the assets in Germany, in the latter case he is subject in that State to unlimited tax liability relating to the entirety of the assets transferred, regardless of where the property is located. In accordance with Case C-279/93 *Schumacker* [1995] ECR I-225, different treatment of that kind does not constitute discrimination for the purposes of Articles 56 EC and 58 EC, since it is in principle for the Member State in whose territory an unlimited tax obligation arises to assess all the personal characteristics of the taxpayer.

31 In this respect, it should be recalled that, under Article 58(1)(a) EC, Article 56 'shall be without prejudice to the rights of Member States ... to apply the relevant provisions of their tax law which distinguish between taxpayers who are not in the same

situation with regard to their place of residence or with regard to the place where their capital is invested.'

32 In so far as that provision of Article 58 EC is a derogation from the fundamental principle of the free movement of capital, it must be interpreted strictly. It cannot therefore be interpreted as meaning that all tax legislation which draws a distinction between taxpayers on the basis of their place of residence or the Member State in which they invest their capital is automatically compatible with the Treaty (see *Jäger*, paragraph 40; *Eckelkamp and Others*, paragraph 57; and *Arens-Sikken*, paragraph 51).

33 The derogation in Article 58(1)(a) EC is itself limited by Article 58(3) EC, which provides that the national provisions referred to in paragraph 1 of that article 'shall not constitute a means of arbitrary discrimination or a disguised restriction on the free movement of capital and payments as defined in Article 56.'

34 A distinction must therefore be drawn between the unequal treatment permitted under Article 58(1)(a) EC and the arbitrary discrimination prohibited under Article 58(3) EC. According to the case-law, in order for national tax legislation such as that at issue in the main proceedings – which, for the purposes of calculating gift tax, distinguishes as to the amount of the allowance applicable to the taxable value of immovable property located in the Member State concerned according to whether the donor or the donee resides in that State or they both reside in another Member State – to be regarded as compatible with the Treaty provisions on the free movement of capital, the difference in treatment must concern situations which are not objectively comparable or be justified by overriding reasons in the general interest. In order to be justified, moreover, the difference in treatment between those two categories of gifts must not go beyond what is necessary in order to attain the objective of the legislation

in question (see Case C-319/02 *Manninen* [2004] ECR I-7477, paragraph 29; *Eckelkamp and Others*, paragraphs 58 and 59; and *Arens-Sikken*, paragraphs 52 and 53).

35 Contrary to the submissions of the Finanzamt and the German Government, that difference in treatment cannot be justified on the ground that it relates to situations which are objectively different.

36 According to the case-file submitted to the Court, the amount of the tax on gifts of immovable property in Germany is calculated pursuant to the ErbStG on the basis both of the value of the property and of the family relationship, if any, between the donor and the donee. Neither of those criteria depends on the place of residence of the donor or the donee. Consequently, as regards the amount of gift tax payable in respect of immovable property in Germany which is the subject of a gift, there cannot be any objective difference justifying the unequal tax treatment of the situation in which neither person resides in that Member State and that in which at least one of them resides there. Ms Mattner's situation is therefore comparable to that of any donee who acquires immovable property in Germany by gift from a person resident in Germany with whom there is a family link, and also to that of a donee residing in Germany who makes that acquisition from such a person who is not resident there (see, to that effect, *Jäger*, paragraph 44; *Eckelkamp and Others*, paragraph 61; and *Arens-Sikken*, paragraph 55).

37 The German legislation in principle regards both the recipient of a gift between non-residents and the recipient of a gift involving at least one resident as taxpayers for the purposes of charging gift tax on gifts of immovable property in Germany. Only with respect to the allowance applied to the taxable value does that legislation, for the purposes of calculating the tax on gifts of immovable property in Germany, apply

different treatment to gifts between non-residents and gifts involving a resident. By contrast, the determination of the class and rate of tax, laid down in Paragraphs 15 and 19 of the ErbStG, follows the same rules for both categories of gifts (see, by analogy, *Eckelkamp and Others*, paragraph 62, and *Arens-Sikken*, paragraph 56).

38 Where national legislation places on the same footing, for the purposes of taxing immovable property acquired by gift which is located in the Member State concerned, non-resident donees who have acquired the property from a non-resident donor, on the one hand, and non-resident or resident donees who have acquired it from a resident donor and resident donees who have acquired it from a non-resident donor, on the other, it cannot without infringing the requirements of European Union law treat those donees differently in connection with that tax as regards the application of an allowance against the taxable value of the immovable property. By treating gifts to those two classes of persons in the same way except in relation to the amount of the allowance the donee may benefit from, the national legislature accepted that there is no objective difference between them in regard to the detailed rules and conditions of charging gift tax which could justify a difference in treatment (see, by analogy, *Eckelkamp and Others*, paragraph 63, and *Arens-Sikken*, paragraph 57).

39 It must be examined, finally, whether the restriction on the movement of capital which is the result of legislation such as that at issue in the main proceedings may be objectively justified by an overriding reason in the general interest.

40 In the first place, the Finanzamt submits that if the ErbStG provided in such a case for the application of the same allowance to gifts between non-residents and gifts involving a resident, Ms Mattner would be able, by making use of the same tax advantages in her Member State of residence, in which she has unlimited tax liability, to benefit from multiple allowances.

41 On this point, the Court has already held, in its case-law on the free movement of capital and inheritance tax, that a national of a Member State cannot be deprived of the possibility of relying on the provisions of the Treaty on the ground that he is profiting from tax advantages which are legally provided for by the rules in force in a Member State other than his State of residence (Case C-364/01 *Barbier* [2003] ECR I-15013, paragraph 71, and *Eckelkamp and Others*, paragraph 66).

42 In any event, the Member State in which the immovable property which is the subject of the gift is located cannot, in order to justify a restriction on the free movement of capital arising from its own legislation, rely on the possibility, beyond its control, of the donee benefiting from a similar allowance by another Member State, such as that in which the donor and the donee resided on the date of the gift, which might wholly or partly offset the loss incurred by the donee as a result of the smaller allowance when calculating the gift tax payable in the former Member State (see, by analogy, *Eckelkamp and Others*, paragraph 68, and *Arens-Sikken*, paragraph 65).

43 A Member State cannot rely on the existence of an advantage granted unilaterally by another Member State – in this case the Member State in which the donor and the donee reside – to escape its obligations under the Treaty, in particular under the Treaty provisions on the free movement of capital (see *Eckelkamp and Others*, paragraph 69, and *Arens-Sikken*, paragraph 66).

44 That is all the more the case if, as the German Government submitted at the hearing, the Member State in which the donor and the donee reside applies a smaller allowance than that granted by the Member State in which the immovable property which is the subject of the gift is situated, or sets the value of that property at a higher figure than that determined by the latter State.

45 Moreover, it appears from the case-file submitted to the Court that, in calculating the tax on gifts, the national legislation at issue in the main proceedings purely and simply excludes the full-rate allowance where the donor and donee are not resident in the Member State in which the property gifted is situated, without taking into consideration the possible grant of a similar allowance in another Member State, such as that in which the donor and the donee reside, or the method of determining the value of the property in the latter Member State.

46 In the second place, the Finanzamt and the German Government submit that the national legislation at issue in the main proceedings, by essentially treating inheritances and gifts in the same way, is intended to ensure that the persons concerned do not have the possibility of circumventing the tax provisions on inheritance by making multiple simultaneous gifts or by transmitting the entirety of a person's assets by means of successive gifts over a period of time. That, in particular, is the aim of Paragraph 14 of the ErbStG, which provides in essence that gifts between the same persons during a period of 10 years are to be aggregated for the purposes of applying inheritance and gift taxes.

47 The Finanzamt and the German Government therefore submit that, even if it is conceded that in the present case the gift relates only to a single parcel of land, it is legitimate for that legislation, in order to determine the reduction applicable to a gift between non-residents, to be based on the principle that the donor still has assets, in her Member State of residence or in other States, which she transferred to Ms Mattner at the same time, or which she might subsequently transfer to her, without it being possible to subject them to gift tax in Germany. There is no reason why a Member State such as the Federal Republic of Germany, which exercises its right of taxation with respect solely to certain individual assets, should grant an allowance appropriate to the transfer of the entirety of the assets. It is thus not for that Member State but for the Member State in which the donor and Ms Mattner reside to take account, in the context of unlimited tax liability, of the personal situation of Ms Mattner.

48 In this respect, it does not appear from the case-file submitted to the Court that Ms Mattner, in the present case, received other assets as gifts from the same donor during the period of 10 years prior to the gift at issue in the main proceedings, so that the risk of circumvention which could arise from the existence of earlier or simultaneous gifts between the same persons is purely hypothetical and cannot therefore, in a case such as that in the main proceedings, justify a limitation of the allowance applicable to the taxable value.

49 Moreover, as regards possible future gifts, although the Member State in which immovable property which is the subject of a gift is located is indeed entitled to make sure that the tax rules relating to inheritance are not circumvented by split gifts between the same persons, the risk of circumvention alleged to exist in the present case concerning gifts between persons who are not resident in that Member State exists just as much in the case of gifts involving a resident.

50 It should be observed here that Paragraph 14 of the ErbStG, which is intended to prevent such split gifts by aggregating, for the purpose of calculating the tax due, the gifts effected during a 10-year period, provides with respect to gifts involving a resident not for the application of an allowance at a lower rate but, at most, for the full-rate allowance laid down for such gifts to apply only once to the taxable value produced by the aggregation of the gifts in question.

51 It follows that the application of a reduced allowance such as that laid down by the national legislation at issue in the main proceedings where the gift is effected between persons who are not resident in the Member State in which the property which is the subject of the gift is located cannot be regarded as an appropriate means of attaining the objective of that legislation.

52 In the third place, at the hearing, the German Government referred to the need to preserve the coherence of the German tax system, submitting that it is logical to reserve the tax advantage resulting from the application of the full allowance to the taxable value of a gift to taxpayers who have unlimited tax liability in the Member State in which the property which is the subject of the gift is located, since that system, by taxing the worldwide assets of the taxpayer, is less advantageous overall than the system applicable to taxpayers who have limited tax liability in that State.

53 On this point, it should be recalled that the Court has indeed held that the need to preserve the coherence of a tax system may justify a restriction on the exercise of the fundamental freedoms guaranteed by the Treaty. However, for such a justification to be accepted, a direct link has to be established between the granting of the tax advantage concerned and the offsetting of that advantage by a particular tax charge (see *Manninen*, paragraph 42, and Case C-182/08 *Glaxo Wellcome* [2009] ECR I-8591, paragraphs 77 and 78).

54 In the present case, it suffices to state that the tax advantage resulting, in the Member State in which the immovable property which is the subject of a gift is located, from the application of a full allowance to the taxable value where that gift involves at least one resident of that State is not offset in that State by any particular tax charge in the context of gift tax.

55 The legislation at issue in the main proceedings cannot therefore be justified by the need to preserve the coherence of the German tax system.

56 The answer to the referring court's question is therefore that Article 56 EC in conjunction with Article 58 EC must be interpreted as precluding legislation of a Member

State, such as that at issue in the main proceedings, which provides that, for the calculation of gift tax, the allowance to be set against the taxable value in the case of a gift of immovable property in that State is smaller where the donor and the donee were resident in another Member State on the date of the gift than the allowance which would have applied if at least one of them had been resident in the former Member State on that date.

Costs

57 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

Article 56 EC in conjunction with Article 58 EC must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which provides that, for the calculation of gift tax, the allowance to be set against the taxable value in the case of a gift of immovable property in that State

is smaller where the donor and the donee were resident in another Member State on the date of the gift than the allowance which would have applied if at least one of them had been resident in the former Member State on that date.

[Signatures]