Case C-510/08

Vera Mattner

v

Finanzamt Velbert

(Reference for a preliminary
ruling from the Finanzgericht Düsseldorf)

(Free movement of capital — Articles 56 EC and 58 EC — Gift tax — Land on which a building has been constructed — Allowance to be set against the taxable value — Different treatment of residents and non-residents)

Summary of the Judgment

Free movement of capital — Restrictions — Tax on gifts
(Arts 56 EC and 58 EC)

Article 56 EC in conjunction with Article 58 EC must be interpreted as precluding legislation of a Member State 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.

Where that national legislation makes 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.

That difference in treatment cannot be justified on the ground that it relates to situations which are objectively different. 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. There is no objective difference between those two classes of persons in regard to the detailed rules and conditions of charging gift tax which could justify a difference in treatment.

In addition, 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. That is all the more the case if 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.

Moreover, the risk of circumvention of 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 cannot justify a limitation of the allowance applicable to the taxable value, where that risk is purely hypothetical. 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 concerning gifts between persons who are not resident in that Member State exists just as much in the case of gifts involving a resident. Since, in order to prevent such split gifts, the national legislation 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, the application of a reduced allowance where the gift is effected between non-residents cannot be regarded as an appropriate means of attaining the objective of avoiding such circumvention.

Nor can the legislation at issue be justified by the need to preserve the coherence of the national tax system, since 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.

(see paras 28, 35, 38, 42, 44, 46, 48-51, 54-56, operative part)