



Reports of Cases

OPINION OF ADVOCATE GENERAL
KOKOTT
delivered on 5 September 2013¹

Case C-302/12

X

(Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands))

(Tax legislation — Motor vehicle registration tax — Freedom of establishment — Directive 83/182/EEC — Residences and use of a vehicle on a permanent basis in two Member States)

I – Introduction

1. The background to this request for a preliminary ruling is once again the Netherlands tax on cars and motorcycles, with which the Court has dealt on several occasions in recent years.²

2. In the present case, this Netherlands motor vehicle registration tax has been levied on a Union citizen who maintains a residence not only in the Netherlands but also in Belgium and uses her vehicle in both Member States. Both Member States are therefore claiming entitlement to charge their respective motor vehicle registration taxes. It will therefore have to be clarified in the present case to what extent that double charging of motor vehicle registration tax is compatible with EU law.

II – Legal framework

A – EU law

3. Article 1(1) of Council Directive 83/182/EEC of 28 March 1983 on tax exemptions within the Community for certain means of transport temporarily imported into one Member State from another³ provides, under the heading ‘Scope’:

‘Member States shall, under the conditions laid down below, exempt temporary imports from another Member State of motor-driven road vehicles ... from:

- turnover tax, excise duties and any other consumption tax,
- the taxes listed in the Annex hereto.’

1 — Original language: German.

2 — See, in this regard, Case C-114/11 *Notermans-Boddenberg* [2012] ECR; Joined Cases C-578/10 to C-580/10 *van Putten* [2012] ECR; order of 29 September 2010 in Case C-91/10 *VAV-Autovermietung*; order of 22 May 2008 in Case C-42/08 *Ilhan*; and the order in Case C-242/05 *van de Coevering* [2006] ECR I-5843.

3 — OJ 1983 L 105, p. 59

4. The individual exemptions for private vehicles are provided for in Articles 3 to 5 of Directive 83/182, with reference in each case to the ‘normal residence’ of the person importing or using the vehicle.

5. The definition of a person’s ‘normal residence’ in Article 7(1) of Directive 83/182 includes the following:

‘1. For the purposes of this Directive, “normal residence” means the place where a person usually lives, that is for at least 185 days in each calendar year, because of personal and occupational ties, or, in the case of a person with no occupational ties, because of personal ties which show close links between that person and the place where he is living.

...’

B – *National law*

6. In the year at issue, tax was charged on cars and motorcycles in the Netherlands under the *Wet op de belasting van personenauto’s en motorrijwielen* (Law on the taxation of cars and motorcycles) 1992 (‘vehicle tax’).

7. As the Court is aware from other cases,⁴ vehicle tax is due on registration of cars and motorcycles in the Netherlands vehicle register, as well as on first use on the public highway in the Netherlands of an unregistered car or motorcycle, or one not registered in the Netherlands, if that vehicle is actually made available to a natural or legal person residing or established in the Netherlands.

III – Main proceedings and procedure before the Court of Justice

8. The subject-matter of the main proceedings is a notice of assessment to vehicle tax issued to X in relation to a vehicle purchased and registered in Belgium in 2004.

9. X, a Belgian national, maintains a residence in both the Netherlands and Belgium and alternates between the two throughout the year. She also works as an orthodontist in the Netherlands.

10. In 2006, the Netherlands tax authority established that X was resident in the Netherlands and was driving a car on the public highway in the Netherlands that was registered only in Belgium. As a result, it charged the taxable person vehicle tax in the amount of EUR 17 315. Previously, X had already paid Belgian tax in the amount of EUR 4 957 when she registered her car in the Belgian vehicle register.

11. X challenged the charging of vehicle tax before the Netherlands authorities and courts. The Hoge Raad der Nederlanden (Supreme Court of the Netherlands), before which the dispute has now been brought, assumes from the findings of fact that X has a residence in both the Netherlands and Belgium and uses the vehicle on a permanent basis in both Member States. It is in those circumstances that it has referred the following questions to the Court of Justice under Article 267 TFEU:

‘(1) Is the exercise of powers of taxation by two Member States, in particular the imposition of a registration tax on a motor vehicle, unlimited in circumstances in which a citizen of the European Union lives, according to national laws, in two Member States, and in which that citizen actually uses — in both Member States and on a permanent basis — a motor vehicle that belongs to her?’

⁴ — See, in particular, *van Putten*, cited in footnote 2, paragraph 6.

(2) If the first question is answered in the negative, can the principle of proportionality have a remedial effect on the imposition of a registration tax in a case such as this, and, if so, does that principle then have the effect that one or both of the Member States is or are required to restrict the exercise of their powers of taxation, and how should any such restriction apply?

12. In the proceedings before the Court, written observations have been submitted by X, the Hellenic Republic, the Kingdom of the Netherlands and the Commission.

IV – Legal assessment

13. By its two questions, the referring court seeks in essence to ascertain whether EU law precludes the charging of a motor vehicle registration tax on account of first use of a vehicle in a case where a Union citizen is regarded, under national laws, as being resident in two Member States and uses her vehicle, which has already been registered and taxed in the other Member State, on a permanent basis in both Member States.

14. Although the questions referred give no indication of the provisions of EU law that are to be interpreted, it may be inferred from the grounds of the order for reference that the referring court is seeking an interpretation of primary law (see in this regard section 2 below). I share the Commission's view, however, that the Court should also look at the interpretation of Directive 83/182 (see in this regard section 1 below) if it is to give the referring court an answer which will be of use to it.⁵

1. The tax exemptions provided for in Directive 83/182

15. It must be examined first of all whether the applicant in the main proceedings does not anyway qualify, in relation to the Netherlands vehicle tax, for an exemption from tax under Directive 83/182.

a) Scope

16. That presupposes first of all that a motor vehicle registration tax such as the Netherlands vehicle tax in the present case does actually fall within the scope of Directive 83/182.

17. According to Article 1(1), that directive applies to turnover tax, excise duties and any other consumption taxes, as well as to the taxes listed in the annex to the directive, although value added tax, governed by EU law, is excluded from its scope in accordance with Article 2(2) of Directive 91/680/EEC.⁶

18. The annex mentions in respect of the Kingdom of the Netherlands only the motor vehicle tax ('Motorrijtuigenbelasting') provided for in the *Wet op de motorrijtuigenbelasting* (Law on the taxation of motor vehicles) of 21 July 1966, which is an annual tax that is not identical to the contested vehicle tax.⁷

5 — As regards the discretion available to the Court in this regard, see, inter alia, Case 35/85 *Tissier* [1986] ECR 1207, paragraph 9, and Case C-342/12 *Worten* [2013] ECR, paragraph 30.

6 — Council Directive 91/680/EEC of 16 December 1991 supplementing the common system of value added tax and amending Directive 77/388/EEC with a view to the abolition of fiscal frontiers (OJ 1991 L 376, p. 1).

7 — See Case C-297/05 *Commission v Netherlands* [2007] ECR I-7467, paragraph 12.

19. While the contested vehicle tax is not a turnover tax within the meaning of EU law if only because it covers solely motor vehicles and does not therefore have universal application,⁸ it could, however, be an excise duty or other consumption tax within the meaning of Article 1(1) of Directive 83/182.

20. Regrettably, the directive does not define those terms and there is no definition of them in the Court's case-law to date.

21. The term 'consumption tax' cannot, in the context of Directive 83/182, be understood as relating only to taxes on goods to be consumed immediately and not, therefore, to taxes on goods to be consumed on a permanent basis.⁹ That is so because the directive is concerned only with means of transport, which can be used on a permanent basis. Thus, for the purposes of Article 1(1) of Directive 83/182, consumption taxes have the general meaning of direct taxes charged on a vehicle as a result of its importation, which may in principle also include a motor vehicle registration tax.¹⁰

22. In order to answer the question of the extent to which such a tax is to be regarded as a consumption tax within the meaning of Article 1(1) of Directive 83/182, it is, however, necessary to differentiate between the different events giving rise to the chargeability of a motor vehicle registration tax. The vehicle tax in this case covers both the registration of a vehicle in the vehicle register and its first use on the public highway in the Netherlands without national registration. However, in so far as a motor vehicle registration tax is linked to the first use of a vehicle on the national road network, the chargeable event occurs when the car is used at the time of crossing the border. In such a case, the taxation is therefore the direct consequence of importing the vehicle.

23. The Court has correspondingly already found infringements of the obligations laid down in Directive 83/182 in two sets of proceedings for failure to fulfil obligations which concerned the charging of a motor vehicle registration tax on the use of a vehicle registered in another Member State.¹¹ The establishment of such an infringement presupposes that Directive 83/182 is applicable to motor vehicle registration taxes in so far as they are based on use of the road network. Furthermore, in another action for failure to fulfil obligations, the Court did not subscribe to the view taken by the Advocate General to the effect that consumption taxes and registration taxes are different in kind.¹²

24. Nor is the application of Directive 83/182 to motor vehicle registration taxes charged on first use of a vehicle precluded by the case-law of the Court of Justice concerning Directive 83/183/EEC¹³ which was adopted at the same time. As the Court has held, it is true that Article 1(1) of the latter directive, which is also concerned with turnover taxes, excise duties and other consumption taxes, does not apply to taxes charged not on account of importation as such but only on account of a vehicle's registration or use.¹⁴ The fact that the term 'consumption taxes' can in principle also include motor vehicle registration taxes is shown, however, by Article 1(2) of Directive 83/183, which expressly excludes from the scope of the directive taxes connected with the use of property, such as motor

8 — See my Opinion in Case C-385/12 *Hervis Sport- és Divatkereskedelmi* [2013] ECR, point 112 et seq., concerning Article 401 of Directive 2006/112/EC.

9 — See to that effect, however, the Opinion of Advocate General Mischo in Joined Cases 93/88 and 94/88 *Wisselink and Others* [1989] ECR 2671, point 43 et seq.

10 — See, to this effect, the Opinion of Advocate General Stix-Hackl in Case C-365/02 *Lindfors* [2004] ECR I-7183, point 56.

11 — See Case C-156/04 *Commission v Greece* [2007] ECR I-4129 and the judgment of 4 June 2009 in Case C-144/08 *Commission v Finland*.

12 — See the Opinion of Advocate General Jacobs in Case C-464/02 *Commission v Denmark* [2005] ECR I-7929, point 43, and the judgment in that case, paragraph 75 et seq.

13 — Council Directive 83/183/EEC of 28 March 1983 on tax exemptions applicable to permanent imports from a Member State of the personal property of individuals (OJ 1983 L 105, p. 64).

14 — See, inter alia, Case C-387/01 *Weigel* [2004] ECR I-4981, paragraph 47, and Case C-392/05 *Alevizos* [2007] ECR I-3505, paragraph 49; see also my Opinion in *Alevizos*, points 50 to 56 and the case-law cited.

vehicle registration fees. The restrictive view taken by the Court when defining consumption taxes within the meaning of Directive 83/183 may therefore be based on the simple fact that Article 1(1) expressly includes only consumption taxes which are ‘normally’ charged on importation. However, motor vehicle registration taxes are not by any means charged in all the Member States.¹⁵

25. Finally, it also cannot be inferred from the legislative process that motor vehicle registration taxes cannot be subsumed under the term ‘consumption taxes’ within the meaning of Article 1(1) of Directive 83/182 in so far as they are linked to the first use of a vehicle on the national road network. It is true that, while, in its proposal, the Commission had, initially, explicitly extended the scope to motor vehicle registration taxes,¹⁶ no such provision is retained in the directive that was adopted. However, first, this may be interpreted as meaning that the Council was not at that time in favour of including conventional motor vehicle registration tax, which was linked only to the registration of a vehicle. Second, Article 1(1) and (2) of a further Commission proposal expressly describes registration taxes as consumption taxes.¹⁷

26. Directive 83/182 therefore covers, as a consumption tax within the meaning of Article 1(1), a motor vehicle registration tax such as the Netherlands vehicle tax in so far as it is levied on first use of the vehicle on the national road network.

b) Conditions for exemption from tax

27. In addition, it is now necessary to examine whether, in a case such as that in the main proceedings, X qualifies for a tax exemption provided for in Directive 83/182.

28. All the tax exemptions provided for in Directive 83/182 as being applicable to private vehicles, which are set out in Articles 3 to 5, require the person importing the vehicle to have his normal residence in a Member State other than the Member State of temporary importation.¹⁸ X would therefore have to have her normal residence outside the Netherlands in order for one of those tax exemptions to be applicable in the present case.

29. According to the findings of fact set out by the referring court, however, X has a place of residence in both the Netherlands and Belgium. Indeed, a place of residence in the Netherlands is a condition for charging vehicle tax on first use.

30. However, these findings arrived at, on the basis of national law, with respect to vehicle tax are not decisive in relation to the place of normal residence relevant for the tax exemptions provided for in Directive 83/182. It must be pointed out in this regard that, for the purposes of Directive 83/182, there can be only one place of normal residence, as defined uniformly throughout the European Union¹⁹ by Article 7(1) of the directive. This is apparent from the definition of normal residence in Article 7(1) itself and also from the second subparagraph of Article 9(3) of Directive 83/182, which, in order ‘to avoid double taxation’, prevents any finding of two places of residence that might arise from the application of the special arrangements for the Kingdom of Denmark. Furthermore, the existence of only one place of residence within the meaning of the directive is consistent with the very purpose

15 — See the Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee of 14 December 2012, Strengthening the Single Market by removing cross-border tax obstacles for passenger cars (COM(2012) 756 final, p. 5).

16 — Article 1 of the Commission proposal of 30 October 1975 for a Council directive on tax exemptions for certain means of transport temporarily imported into one Member State from another (OJ 1975 C 267, p. 8).

17 — Article 1(1) and (2) of the Commission proposal of 10 February 1998 for a Council Directive governing the tax treatment of private motor vehicles moved permanently to another Member State in connection with a transfer of residence or used temporarily in a Member State other than that in which they are registered (OJ 1998 C 108, p. 75).

18 — See, in particular, Article 3(a)(aa), Article 4(1)(a)(aa) and Article 5(1)(a) and (b) of Directive 83/182.

19 — See Case C-9/92 *Commission v Greece* [1993] ECR I-4467, paragraph 8.

of Directive 83/182, as expressed in the first and second recitals of its preamble, of eliminating obstacles to freedom of movement resulting from taxation arrangements. As the Court has already held, ‘normal residence’ within the meaning of the directive therefore serves to circumscribe the Member States’ powers of taxation.²⁰

31. Although X is thus, from the point of view of national law, also resident in the Netherlands for the purposes of vehicle tax, the question whether she qualifies for a tax exemption under Directive 83/182 requires an examination of whether her normal residence within the meaning of Article 7(1) lies outside the Netherlands.

32. In conducting that examination, the referring court must assess all the relevant facts which characterise the particular case in the light of the criteria devolving from the case-law of the Court.²¹ Thus, for the purposes of determining the place of normal residence, both the occupational and personal ties of the person concerned to a given place, as well as the duration of those ties, must be taken into consideration.²²

33. If the referring court then finds that X has her normal residence within the meaning of Article 7(1) of Directive 83/182 in the Netherlands, a tax exemption under that directive is precluded. If it were to find otherwise, the referring court would have to examine the other relevant conditions governing the tax exemptions provided for in Articles 3 to 5 of the directive, and X would, if appropriate, be able to rely on the directive directly.²³

c) Interim conclusion

34. As a first step, therefore, the answer to the question referred is that EU law precludes the charging of a motor vehicle registration tax on account of first use of a vehicle in a case where a Union citizen is regarded, under national laws, as being resident in two Member States and uses her vehicle, which has already been registered and taxed in the other Member State, on a permanent basis in both Member States, in the event that her normal residence within the meaning of Article 7(1) of Directive 83/182 is not in national territory and the other conditions for a tax exemption under Directive 83/182 are satisfied.

2. Primary law

35. Should it be found that the conditions for exemption from tax under Directive 83/182 are not satisfied in the main proceedings or support only a partial exemption,²⁴ this raises the further question, from the point of view of EU law, as to whether the Kingdom of the Netherlands would be entitled to charge vehicle tax even though the applicant in the main proceedings has already paid registration tax in Belgium.

36. While it is true that the taxation of motor vehicles is in principle a matter for the Member States, they must none the less comply with primary EU law in this regard.²⁵ The Court has an abundant body of case-law — which, most recently, has been above all in the form of orders — concerning these obligations incumbent on Member States under primary law.

20 — See, to this effect, Case C-297/89 *Ryborg* [1991] ECR I-1943, paragraphs 13 to 16.

21 — See, to this effect, *Commission v Greece*, cited in footnote 11, paragraph 46.

22 — See in this regard, in detail, *Commission v Greece*, cited in footnote 11, paragraph 45 and the case-law cited.

23 — See Case C-389/95 *Klattner* [1997] ECR I-2719, paragraph 35, concerning Article 3 of Directive 83/182.

24 — See, in particular, in this regard Article 3 *in limine* and Article 4(2) of Directive 83/182.

25 — See, to this effect, *inter alia van Putten*, cited in footnote 2, paragraph 37 and the case-law cited.

37. It is settled case-law that it is not an infringement of Article 90 EC (now Article 110 TFEU) for a Member State, on determining that the person concerned has a place of residence within its territory, to require payment of a motor vehicle registration tax, irrespective of whether a similar charge has already been paid in another Member State.²⁶

38. In the past, however, the Court has repeatedly found infringements of fundamental freedoms by Member States in the charging of motor vehicle registration taxes.²⁷ It will now be necessary, therefore, to examine whether the charging of a tax such as the Netherlands vehicle tax infringes a fundamental freedom if the person concerned has already paid a registration tax in another Member State.

39. Since the charging of the vehicle tax is connected with X's work as a self-employed orthodontist in the Netherlands, I shall conduct that examination with reference to the freedom of establishment provided for in Article 43 EC (now Article 49 TFEU).

a) Restriction

40. Article 43 EC prohibits restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State. According to the second paragraph of that article, freedom of establishment includes the right to pursue activities as self-employed persons. As a Belgian national, X is therefore protected by freedom of establishment in relation to the pursuit of her activity as an orthodontist in the Netherlands.

41. Measures which prohibit, impede or render less attractive the exercise of freedom of establishment must in principle be regarded as restrictions on that freedom.²⁸ In principle, the fact that X has to pay vehicle tax for using the Netherlands road network constitutes such a restriction.

42. The Court has repeatedly held, however, particularly in relation to the free movement of workers provided for in Article 39 EC, that transferring an activity to another Member State does not have to be neutral as regards taxation. Any disadvantage by comparison with the situation prior to the transfer is not in principle contrary to Article 39 EC if there is nothing to indicate that the person concerned is at a disadvantage as compared with those already subject to such taxation.²⁹ Accordingly, a restriction arising from taxation in the host State can be found to exist only in the event that there is discrimination by comparison with a comparable, purely national situation. Since Articles 39 EC and 43 EC afford the same legal protection,³⁰ the same also applies to freedom of establishment applicable here.

43. In accordance with settled case-law, a Member State may therefore impose a registration tax on a motor vehicle registered in another Member State in a case where that vehicle is intended to be used essentially in the first Member State on a permanent basis or where it is, in fact, used in that manner.³¹ While the earlier case-law still considered this to be a justification for the restriction of a

26 — *Commission v Greece*, cited in footnote 11, paragraph 85 and the case-law cited.

27 — See, most recently, *VAV-Autovermietung*, cited in footnote 2.

28 — See, inter alia, Case C-577/11 *DKV Belgium* [2013] ECR, paragraph 31 and the case-law cited.

29 — See, inter alia, *Weigel*, cited in footnote 14, paragraph 55; *Alevizos*, cited in footnote 14, paragraph 76; and Case C-240/10 *Schulz-Delzers and Schulz* [2011] ECR I-8531, paragraph 42.

30 — See Case C-363/89 *Roux* [1991] ECR I-273, paragraph 23, concerning Articles 48 EEC and 52 EEC.

31 — *Van Putten*, cited in footnote 2, paragraph 46 and the case-law cited.

fundamental freedom,³² the Court has recently rightly made it clear that, in the absence of any difference in treatment, there is no discrimination in such a case, as ultimately all those who use a vehicle on a permanent basis in national territory, whether or not the vehicle is registered there, are treated in the same way.³³

44. Accordingly, the charging of vehicle tax does not constitute a restriction on X's freedom of establishment if, as the referring court with jurisdiction in this regard³⁴ has in fact already established, she uses her vehicle in the Netherlands on a permanent basis. Since, moreover, X's use of the vehicle is not limited in time by a hire contract,³⁵ she is in effect treated in the same way, from the point of view of the charging of the tax, as persons who use a vehicle on a permanent basis in the Netherlands on the basis of its registration there.

45. The foregoing is not contradicted by the referring court's finding of fact to the effect that X also uses her vehicle on a permanent basis in Belgium. It is settled case-law, first, that there is not necessarily a link between a person's place of residence and the place where his vehicle is used on a permanent basis.³⁶ Nor does the fact that a vehicle is used essentially on a permanent basis in a Member State mean that it is used there exclusively and without interruption. The Court has, for example, recognised a vehicle as being used essentially on a permanent basis in a Member State also if the person concerned uses his car every working day to travel to his workplace in another Member State and thus regularly uses the road network in the latter Member State too.³⁷

46. Finally, the double charging of motor vehicle registration tax by two Member States, as may be the case here, is not restricted by the principle of proportionality either. If a vehicle is found to be used essentially on a permanent basis and without any limitation in time in national territory, then, contrary to the view expressed by the referring court in the order for reference, the principle of proportionality does not have to be observed. According to the case-law, it has to be only where the charging of the tax requires justification, either because a vehicle is not intended to be used essentially on a permanent basis in national territory³⁸ or because its use is limited in time.³⁹ If, however, the vehicle is used on a permanent basis and without any limitation in time, then, as has already been stated,⁴⁰ there is, in the absence of any difference in treatment, *ipso facto* no restriction, with the result that the tax need not be assessed against the criterion of proportionality.

47. These rules established by the case-law on the compatibility of motor vehicle registration taxes with the fundamental freedoms may mean that a Union citizen is charged motor vehicle registration tax twice. Thus, in the present case, it is possible that, in addition to the tax on registration which she paid in Belgium, X also has to pay a tax in the Netherlands on first use of the Netherlands road network, particularly if that is where she maintains her place of normal residence within the meaning of Directive 83/182.

32 — See Joined Cases C-151/04 and C-152/04 *Nadin and Nadin-Lux* [2005] ECR I-11203, paragraph 41; Case C-232/03 *Commission v Finland* [2006] ECR I-27, paragraphs 44 to 47; and *van de Coevering*, cited in footnote 2, paragraphs 21 to 24.

33 — See, to this effect, *van Putten*, cited in footnote 2, paragraph 50, and *Notermans-Boddenberg*, cited in footnote 2, paragraph 27; to similar effect, see *Commission v Denmark*, cited in footnote 12, paragraph 78.

34 — See *Nadin and Nadin-Lux*, cited in footnote 32, paragraph 42.

35 — See, in this regard, *VAV-Autovermietung*, cited in footnote 2, paragraph 19 and the case-law cited.

36 — See *Nadin and Nadin-Lux*, cited in footnote 32; *Commission v Finland*, cited in footnote 32; and the order in Case C-364/08 *Vandermeir* [2008] ECR I-8087.

37 — See *Notermans-Boddenberg*, cited in footnote 2, paragraph 29 et seq.

38 — See *van de Coevering*, cited in footnote 2, paragraph 26 et seq.

39 — See *Ilhan*, cited in footnote 2, paragraph 18 et seq.

40 — See above, point 43 et seq.

48. Aside from the fact that such double taxation may be justified by the use of two national road networks, it is settled case-law that the disadvantages which could arise from the parallel exercise of tax competences by different Member States, to the extent that such an exercise is not discriminatory, do not constitute restrictions prohibited by the EC Treaty.⁴¹ Accordingly, even juridical double taxation, that is to say the taxation of the same transaction by two Member States, is in principle compatible with the fundamental freedoms.⁴² The Member States must therefore, *a fortiori*, be permitted to impose taxes that give rise only to economic double taxation, in this case of vehicle use, by two different Member States. The present case would not concern juridical double taxation, since the tax in the Netherlands would be charged in respect of use of the Netherlands road network while the tax in Belgium would be charged in respect of the vehicle's registration there.

49. That said, EU law does already make some provision for the limitation of double taxation resulting from motor vehicle registration taxes, in the form, as we have seen, of Directive 83/182.⁴³ If the vehicle is registered in the Member State of normal residence within the meaning of that directive, taxation on first use of the vehicle in another Member State would ordinarily be ruled out by the tax exemptions provided for in that directive.

50. In conclusion, charging X Netherlands vehicle tax would not therefore restrict the right of establishment guaranteed to her by Article 43 EC.

b) Interim conclusion

51. Consequently, in a situation such as that in the main proceedings, primary law does not prevent a Member State from charging a tax such as the Netherlands vehicle tax even though the taxable person has already paid a registration tax in another Member State.

V – Conclusion

52. I therefore propose that the Court reply as follows to the questions referred to it for a preliminary ruling by the Hoge Raad der Nederlanden:

EU law precludes the charging of a motor vehicle registration tax on account of first use of a vehicle in a case where a Union citizen maintains a residence in two Member States and uses her vehicle, which has already been registered and taxed in the other Member State, on a permanent basis in both Member States only in the event that her normal residence within the meaning of Article 7(1) of Directive 83/182 is not in national territory and the other conditions for a tax exemption under Directive 83/182 are satisfied.

41 — See, in particular, Case C-157/10 *Banco Bilbao Vizcaya Argentaria* [2011] ECR I-13023, paragraph 38 and the case-law cited.

42 — See Case C-128/08 *Damseaux* [2009] ECR I-6823, paragraph 26 et seq.

43 — See above, point 15 et seq.