

Re:

Preliminary ruling — Hof van beroep te Gent — Interpretation of Articles 12 EC, 17 EC, 18 EC, 56 EC and 58 EC — National legislation on the calculation of duty payable in respect of the acquisition, through inheritance, of immovable property which does not allow for deduction, from the value of the immovable property, of mortgage-related charges relating to that property on the ground that the testator, at the time of death, was resident in another Member State

Operative part of the judgment

The combined provisions of Articles 56 EC and 58 EC must be interpreted as precluding national legislation, such as that at issue in the main proceedings, concerning the assessment of inheritance and transfer duties payable in respect of an immovable property situated in a Member State, which makes no provision for the deductibility of debts secured on such property where the person whose estate is being administered was residing, at the time of death, not in that State but in another Member State, whereas provision is made for such deductibility where that person was, at that time, residing in the first-mentioned Member State, in which the immovable property included in the estate is situated.

(¹) OJ C 56, 10.3.2007.

Judgment of the Court (Third Chamber) of 11 September 2008 (reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands)) — D.M.M.A. Arens-Sikken v Staatssecretaris van Financiën

(Case C-43/07) (¹)

(Free movement of capital — Articles 73b and 73d of the EC Treaty (now Articles 56 EC and 58 EC respectively) — National rules concerning inheritance duties and transfer duties which do not provide for the deduction, in the assessment of those duties, of overendowment debts resulting from a testamentary parental partition inter vivos where the person whose estate is being administered was not residing, at the time of death, in the Member State in which the immovable property included in the estate is situated — Restriction — Justification — None — No bilateral agreement for the prevention of double taxation — Consequences for the restriction of the free movement of capital of a lower level of compensation to prevent double taxation in that person's Member State of residence)

(2008/C 285/10)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: D.M.M.A. Arens-Sikken

Defendant: Staatssecretaris van Financiën

Re:

Preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Articles 56 EC and 58 EC — National rules on the calculation of inheritance duty payable on immovable property which do not allow for deduction, from the value of immovable property, of debts associated with the testamentary partition in the case where the testator was resident in another Member State at the time of his death — Method of comparison applicable for the purpose of determining the amount of inheritance duty in the case where the testator was resident, at the time of his death, in the Member State in which the immovable property is situated — Bilateral convention designed to prevent double taxation

Operative part of the judgment

- Articles 73b and 73d of the Treaty (subsequently, Articles 56 EC and 58 EC respectively) must be interpreted as precluding national rules, such as those at issue in the main proceedings, concerning the assessment of inheritance duties and transfer duties payable in respect of an immovable property situated in a Member State, which, for the assessment of those duties, makes no provision for the deductibility of overendowment debts resulting from a testamentary parental partition inter vivos where the person whose estate is being administered was residing, at the time of death, not in that State but in another Member State, whereas provision is made for such deductibility where that person was residing, at the time of death, in the first-mentioned Member State, in which the immovable property included in the estate is situated, in so far as such rules apply a progressive rate of taxation and in so far as the combination of (i) the failure to take into account such debts and (ii) that progressive rate could result in a greater tax burden for heirs who are not in a position to rely on such deductibility.
- The answer set out in point 1 of the operative part of this judgment is not affected by the fact that the rules of the Member State in which the person whose estate is being administered was residing at the time of death provide unilaterally for the possibility that a tax credit may be granted in respect of inheritance duties payable in another Member State on immovable property situated in that other State.

(¹) OJ C 69, 24.3.2007.