

JUDGMENT OF THE COURT (Grand Chamber)

27 January 2009 (\*)

(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)

In Case C-318/07,

REFERENCE for a preliminary ruling under Article 234 EC from the Bundesfinanzhof (Germany), made by decision of 9 July 2007, received at the Court on 11 July 2007, in the proceedings

**Hein Persche**

v

**Finanzamt Lüdenscheid,**

[...]

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

- 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.**