

## **Direct taxation: The European Commission formally requests the Netherlands to amend a rule not allowing taxpayers to show that gifts, donations or inheritances to foreign charities qualify for tax relief**

*The European Commission has formally requested the Netherlands to change a tax rule that does not allow its taxpayers to show that a gift, donation or inheritance made to a body established in another Member State or in another EEA State satisfies the requirements imposed elsewhere in the Dutch legislation for the grant of a tax benefit. The Commission considers this rule contrary to the freedom of movement of capital. The request takes the form of a reasoned opinion (the second step of the infringement procedure provided for by Article 258 of the Treaty on the Functioning of the EU (TFEU)). If there is no satisfactory reaction to the reasoned opinion within two months, the Commission may decide to refer the matter to the Court of Justice of the European Union.*

On the basis of Article 6.33, first paragraph, sub b, of the Income Taxation Law gifts, donations and inheritances to Dutch and foreign charities can qualify for tax relief, on condition that the charities have registered themselves with the Dutch tax authorities. The Commission considers that this system is unnecessarily restrictive, in that it does not allow for the possibility of tax relief in case the foreign charity has not registered itself in the Netherlands. This is confirmed by the Court in *Persche*, Case C-318/07 of 27 January 2009, where it held that nothing would prevent the tax authorities from requiring the taxpayer to provide such proof as they may consider necessary in order to determine whether the conditions for deducting expenses had been met.

The Commission's case reference number is 2005/2301.

For press releases on infringement cases in the taxation or customs field, including seven other press releases on charities, see:

[http://ec.europa.eu/taxation\\_customs/common/infringements/infringement\\_cases/index\\_en.htm](http://ec.europa.eu/taxation_customs/common/infringements/infringement_cases/index_en.htm)

For the latest general information on infringement measures against Member States see:

[http://ec.europa.eu/community\\_law/index\\_en.htm](http://ec.europa.eu/community_law/index_en.htm)