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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES  
COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES  
CÚIRT BHREITHIÚNAIS NA gCÓMHPHOBAL EORPACH  
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HOF VAN JUSTITIE VAN DE EUROPESE GEMEENSCHAPPEN  
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TRIBUNAL DE JUSTIÇA DAS COMUNIDADES EUROPEIAS  
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EUROPEISKA GEMENSKAPERNAS DOMSTOL

Press and Information

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Judgment of the Court of Justice in Case C-527/06

*R.H.H. Renneberg v Staatssecretaris van Financiën*

**CALCULATION OF TAXABLE INCOME IN THE MEMBER STATE OF  
EMPLOYMENT MUST, IN CERTAIN CIRCUMSTANCES, TAKE INTO ACCOUNT  
NEGATIVE INCOME RELATING TO A DWELLING LOCATED IN THE MEMBER  
STATE OF RESIDENCE**

*That is the case where that negative income, that is to say, the difference between the rental value of the dwelling and the mortgage interest paid, cannot be taken into account in the State of residence and where the major part of the taxpayer's taxable income derives from salaried activity pursued in the State of employment*

Mr Renneberg, a Netherlands national, transferred his residence from the Netherlands to Belgium. During 1996 and 1997 he lived in Belgium in his own dwelling which he had acquired in 1993 and which had been financed with a mortgage loan from a Netherlands bank

In 1996 and 1997, Mr Renneberg was employed by the Netherlands municipality of Maastricht. During those two years, he received his entire work related income in the Netherlands.

With regard to the taxation of his income in the Netherlands for the tax years 1996 and 1997, Mr Renneberg applied, unsuccessfully, for deduction of the negative income relating to his Belgian dwelling. That application for deduction related to the difference between the rental value of the dwelling and the interest paid on the mortgage.

Unlike persons working and residing in the Netherlands, Mr Renneberg, who works in the Netherlands while residing in Belgium, is not entitled under Netherlands legislation to have the negative income relating to his immovable property in Belgium taken into account in determining the basis of taxation of income obtained in the Netherlands.

In those circumstances, the Hoge Raad der Nederlanden, before which an appeal was brought, asks the Court of Justice whether the freedom of movement for workers precludes a situation in which a non-resident of the Member State of employment in which he derives the major part of his taxable income cannot, for the purposes of determining the basis of assessment for income tax, deduct negative income relating to a dwelling in another Member State, whereas a resident of the Member State of employment may do so.

First of all, the Court dismisses the argument that it is a purely internal situation. Any Community national, irrespective of his place of residence and his nationality, who pursues salaried activity in a Member State other than that of his residence, falls within the scope of Community law.

Furthermore, the Court refers to case-law which states that the Treaty provisions on freedom of movement for persons are intended to facilitate the pursuit by Community nationals of occupational activities of all kinds throughout the European Community, and preclude measures which might place them at a disadvantage when they wish to pursue an economic activity in the territory of another Member State.

That case-law applies to measures which might place Community nationals at a disadvantage when they pursue an occupational activity in a Member State other than that of their residence. This includes, in particular, Community nationals wishing to continue to pursue an economic activity in a given Member State after having transferred their residence to another Member State.

In the present case, the treatment of non-resident taxpayers is less advantageous than that of resident taxpayers.

In accordance with established case-law, in the absence of unifying or harmonising measures at Community level, the Member States retain competence for determining the criteria for taxation on income and capital with a view to eliminating double taxation. In that context, the Member States are free to determine the connecting factors for the allocation of fiscal jurisdiction in bilateral agreements for the avoidance of double taxation.

Nevertheless, **that allocation of the power of taxation does not mean that the Member States are entitled to impose measures that contravene the freedoms of movement guaranteed by the Treaty.**

The Court holds that, in the present case, the refusal by the Netherlands tax authorities to allow Mr Renneberg to make a deduction is not the result of the choice made in the Convention for the avoidance of double taxation between Belgium and the Netherlands to allocate the power to tax immovable property of taxpayers falling within the scope of the Convention to the Member State in whose territory the immovable property concerned is located, but depends in reality on whether or not those taxpayers are residents of the Netherlands.

To the extent that, although residing in a Member State, a person such as Mr Renneberg derives the major part of his taxable income from salaried employment carried out in another Member State without receiving significant income in his Member State of residence, he is, for the purposes of taking into account his ability to pay tax, in a situation objectively comparable, with regard to his Member State of employment, to that of a resident of that Member State also pursuing a salaried activity there.

**Community law therefore requires that, in principle, in a situation such as that of Mr Renneberg, negative income related to a dwelling in the Member State of residence be taken into account by the tax authorities of the Member State of employment for the purposes of determining the basis of assessment of taxable income in the latter State.**

*Unofficial document for media use, not binding on the Court of Justice.*

*Languages available: FR DE EN ES EL HU IT NL PL PT*

*The full text of the judgment may be found on the Court's internet site*  
<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-527/06>

*It can usually be consulted after midday (CET) on the day judgment is delivered.*

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