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# Tax Alert

## Luxembourg

### Gifts to foreign charitable bodies are now deductible in Luxembourg

Following the judgement rendered by the European Court of Justice (ECJ) in case C-318/07 Hein Persche vs. Finanzamt Lüdenscheid on 27 January 2009, the Luxembourg tax authorities issued a new tax circular on 20 July 2009 allowing the tax deduction for gifts made to foreign charitable bodies.

#### ECJ's decision

The ECJ stated that gifts made to bodies established and recognised as charitable in another member state fall within the scope of the free movement of capital, even if they are made in kind in the form of everyday consumer goods. The ECJ further pointed out that a member state's legislation constitutes a restriction on the free movement of capital if a deduction for tax purposes is allowed only in respect of gifts made to charitable 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.

#### New tax circular

The Luxembourg tax authorities allow gifts made to charitable bodies established in the Grand Duchy to benefit from tax relief. Under the new tax circular, in principle, taxpayers may also claim the tax deduction of gifts made to charitable bodies established in another European Union member state or in the European Free Trade Association (Iceland, Liechtenstein, Norway and Switzerland).

To benefit from this tax deduction, taxpayers have to precisely mention on their income tax return form or their tax refund application form the name of the charitable body, the payment date as well as the amount paid. The Luxembourg tax authorities may also request relevant supporting evidence such as a bank transfer or a certificate issued by the charitable body. In addition, taxpayers have to eventually provide a special declaration (enclosed in the tax circular in French, English and German) which has to be completed by the foreign body.

However, this tax deduction is not automatically granted as the Luxembourg tax authorities may check whether the foreign charitable body satisfies the conditions required by its national legislation for the grant of tax advantages.

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