

## **C-527/06 Renneberg v Staatssecretaris van Financiën, judgment of 16 October 2008**

**Facts:** The applicant was a Dutch national who was residing in Belgium. Throughout the period of his residence in Belgium, he received income from his work in the Netherlands. He had applied for a deduction of the negative income relating to his Belgian house in respect of his income tax in the Netherlands, but was refused this. Under national law, in order to benefit from the tax advantage, the applicant had to be resident in the Member State, which the applicant no longer was. The question for the Court was whether Art. 45 TFEU worked to prevent such a result.

**Held:** Firstly, as the applicant was in receipt of a salary from his employer, he was a worker under Art. 45 TFEU, and so was guaranteed free movement. The national law in this case, conditioning receipt of the tax advantage on residence, meant that the treatment of non-resident taxpayers was less advantageous than that of resident taxpayers. Such a disparity could not be justified by the possibility open to each State of determining the criteria for taxation on income and the connecting factors for the allocation of fiscal jurisdiction, particularly since that possibility would have to respect the freedom of movement, and in particular the principle of national treatment of nationals of other Member States.

As such, the Court held that differential tax treatment in respect of a tax advantage between residents and non-residents could constitute discrimination where there was no objective difference between the situations of the two which would justify that difference. Given that the applicant's status was comparable to that of a national, he would therefore need to be treated in an equivalent way. Thus, the difference in treatment was discriminatory and inconsistent with Community law.