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Direct taxation: The European Commission requests Spain to change its inheritance and gift tax provisions for non-residents or assets held abroad

The European Commission has requested Spain to amend its tax provisions on inheritance and gift tax that impose higher tax burden on non-residents or assets held abroad. The provisions are incompatible with the free movement of workers and capital. .

Inheritance and gift tax is a state tax which is basically regulated at state level. The State legislation is applicable throughout Spain except in the Autonomous Communities of the Basque Country and Navarre, which have their own legislation. In addition, the remaining Autonomous Communities, the so-called "common-territory" Autonomous Communities, have certain legislative powers allowing them to approve specific laws applicable in certain cases and subject to certain conditions and requirements specified in the legislation.

State Legislation will be the only one applicable in the case of limited tax liability and unlimited liability (*obligación personal*) where the testator is resident abroad or in cases of gifts of property located abroad and where the common-territory Autonomous Communities do not have legislative powers or have not exercised them and in the autonomous cities of Ceuta and Melilla.

According to the information available to the Commission, all the common-territory Autonomous Communities have exercised these legislative powers, with the practical result that the tax burden borne by the taxpayer is considerably lower than under state legislation. In addition, in most cases application of the legislation of the Autonomous Communities of the Basque Country or Navarre gives rise to a lower tax burden for the taxpayer than under state legislation.

The exercise by the Autonomous Communities of their legislative powers in respect of inheritance and gift tax gives rise to differences in the tax burden borne by taxpayers, depending on which legislation applies: state legislation only, state legislation together with the amendments made by the Autonomous Community that have legislative powers in respect of this tax and have exercised them, or the legislation of the Autonomous Communities of the Basque Country or Navarre. At present, application of the legislation of the Autonomous Communities gives rise to a substantially lower tax burden for the taxpayer. This can be seen as a natural consequence of tax decentralisation in this area. However, when carrying out this tax decentralisation, care must be taken to avoid undesired discrimination. The Commission considers that applying state legislation only in certain cases constitutes an obstacle to free movement of persons and capital under the Treaty on the Functioning of the European Union.

Background

The request takes the form of a reasoned opinion (the second step of the infringement procedure provided for in Article 258 of the Treaty). If there is no satisfactory reaction to the reasoned opinion within two months, the Commission may decide to refer the case to the Court of Justice of the European Union.

The Commission's case reference numbers is 2004/4090

For press releases on infringement cases in the taxation or customs field see:

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