



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Direct taxation, Tax Coordination, Economic Analysis and Evaluation
Direct Tax Policy & Cooperation

Brussels, 10.04.2014

PUBLIC CONSULTATION PAPER

Consultation on cross-border inheritance tax problems within the EU

Period of consultation: From **10/04/2014** to **03/07/2014**

Note: The European Commission (Directorate General for Taxation and the Customs Union) has launched this public consultation in order to collect information on the progress made in EU Countries in tackling cross-border inheritance tax problems since the Commission's adoption of a Communication and Recommendation on the subject on [15 December 2011](#). The Commission services would like to obtain stakeholders' feedback on current problems with inheritance taxes in cross-border situations and on the solutions included in its 2011 initiative and, if appropriate, suggestions for any other feasible solutions to improve the current situation or to remedy the current problems.

Important notice: this document is a staff working paper of D.G. Taxation and Customs for discussion and consultation purposes. This document does not necessarily reflect the views of the European Commission and should not be interpreted as a commitment by the Commission to any official initiative in this area.

The parties concerned are invited to submit their contributions no later than **03/07/2014**.

You can access the public consultation under:

http://ec.europa.eu/taxation_customs/common/consultations/tax/index_en.htm

Comments may be provided by letter, fax or electronic mail to the following address:

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1. What is the aim of this public consultation?

On 15 December 2011 the Commission adopted¹ a Communication on Tackling cross-border inheritance tax obstacles within the EU in which it stated that appropriate solutions must be found to address cross-border inheritance tax problems; as more individuals now cross borders within the EU to work and live and invest, more inheritance tax problems are likely to arise. The Commission stated that in 2014 it will review the state of play of cross-border relief for inheritances taxes within the EU and prepare a report. Together with the Communication the Commission adopted a Recommendation suggesting how EU countries could, via some adjustments to their national provisions for relief for foreign inheritance taxes, ensure comprehensive relief from double taxation of inheritances in the Internal Market. The Commission also described its on-going efforts to tackle discriminatory taxation of inheritances and, in this connection, it published a Working document setting out how inheritance taxation systems should be designed so as not to breach EU law.

To this end the Commission would via this public consultation primarily like to obtain information about the legislative and administrative developments in inheritance taxation in EU countries since 2011. The Commission is also interested in receiving any new information stakeholders may like to provide² on cross-border inheritance tax problems which have arisen in practice, why the problems arose and which EU countries were involved. Finally, the Commission would like to obtain your views on the solutions to double taxation that it proposed in its Recommendation as well as on any other feasible solutions.

On the basis of the above information the Commission would be in a position to assess whether cross-border inheritance tax problems persist within the EU and to evaluate the impact of its Recommendation on EU Countries' inheritance tax rules and practices.

2. Who is being consulted?

All stakeholders – citizens, EU countries, tax administrations, intergovernmental, non-governmental and business organisations, tax practitioners and academia – are invited to provide their views on this matter.

3. Background

¹ http://ec.europa.eu/taxation_customs/taxation/personal_tax/inheritance/index_en.htm

² In 2010 the Commission launched a public consultation dedicated to cross-border inheritance tax issues. (http://ec.europa.eu/taxation_customs/common/consultations/tax/2010_06_inheritance_en.htm). The main aim of the 2010 public consultation was to obtain stakeholders' input on the existing cross-border inheritance tax problems within the EU, the extent of these problems and to explore with them possible solutions and the need for EU action. Stakeholders' contributions to the public consultation fed into the Commission's impact assessment accompanying the 2011 inheritance tax initiative. The current (2014) public consultation is being conducted in order to evaluate how the tax treatment of cross-border inheritances in Member States has evolved since the adoption in 2011 of the Commission Recommendation on unilateral tax relief for cross-border inheritance taxation and to identify whether the problems continue to occur and if so, whether these would justify the need for further EU action.

The Commission has been working for some time on inheritance tax problems. It initially focused on the inheritance tax problems that can arise in the case of transfers of businesses even when there is no cross-border dimension. In a Communication on the transfer of small and medium-sized enterprises of 1998 (98/C 93/02)³ the Commission noted that double taxation can be a major problem for the transfer of business assets other than land when the business operates with branches in more than one EU country. Since then the call to eliminate tax obstacles to transfer of businesses has been periodically repeated.

In 2010 the Commission consulted the public on possible approaches to tackling cross-border inheritance tax obstacles for citizens and SMEs within the EU. The Commission received contributions from 232 stakeholders which were summarized in a report⁴. The contributions generally confirmed the existence of cross-border inheritance tax obstacles within the EU and stated that there was a strong need to tackle the instances of discrimination and the unresolved problems of double taxation of cross-border inheritances, mainly due to the very few tax treaties on cross-border bequests. Stakeholders viewed existing unilateral relief mechanisms as incomplete or not-available in many instances. The deficiencies are due to the numerous mismatches between tax systems due to the different characterisations of transfer of assets under civil laws and the divergent definitions of taxable events and taxable person. Around half of the opinions on the suggested approach to solve double taxation problems concerned solutions at EU level ranging from an EU model double taxation relief provision, to the establishment of common rules to determine the basis of taxation. A third of the respondents viewed the extension of the treaty network within the EU as a sufficient solution, whilst about a quarter of the respondents expressed preference for the application of unilateral relief mechanisms. The latter were considered to be a more realistic solution compared to the one requiring the extension of the treaty network.

In December 2010 the Commission adopted a Communication⁵ on removing cross-border tax obstacles facing EU citizens where amongst other plans it announced its intentions to present proposals to tackle cross-border inheritances taxation problems. After assessing the impact⁶ of various possible options, the Commission in 2011 presented the specific initiatives mentioned above⁷.

In the 2011 Recommendation⁸ regarding relief for double taxation of inheritances the Commission asked EU countries to consider modifying their existing domestic rules for relieving double inheritance taxation such as by introducing credit for tax paid in another EU Country or exempting certain items of foreign property from the domestic tax base. The Commission also recommended an order of taxing rights (i.e. which state has the primary right to tax the inheritance) based on the standards commonly accepted in

³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1998:093:0002:0021:EN:PDF>

⁴ http://ec.europa.eu/taxation_customs/common/consultations/tax/2010_06_inheritance_en.htm

⁵ COM(2010)769

⁶ http://ec.europa.eu/taxation_customs/resources/documents/taxation/personal_tax/inheritance/impact_assessment_en.pdf

⁷ http://ec.europa.eu/taxation_customs/taxation/personal_tax/inheritance/index_en.htm

⁸ 2011/856/EU

international tax practice. If all EU Countries that impose inheritance tax were to introduce the changes proposed in the 2011 Recommendation, their national inheritance taxes when levied together on the same occasion and on the same taxpayer would not lead to double or multiple taxation. In this way national inheritance tax systems would remain non-harmonised at EU level yet would at the same time be more or less compatible from the perspective of a citizen receiving a cross-border bequest or a donation. The Commission discussed these solutions with EU countries and received generally positive feedback. The Commission also co-organised with the Society of Tax and Estate Practitioners (STEP)⁹ a conference in November 2012 on its 2011 initiative and received useful comments and broad support for its ideas.

The Working paper on principles for the design of non-discriminatory inheritance tax systems¹⁰ that was published at the same time as the Recommendation was based on the judgments since 2003 in which the Court of Justice of the European Union had found EU Countries' inheritance tax laws discriminatory. The objective of the Working Document was to provide guidance to EU Countries in bringing their inheritance tax provisions into line with EU law and to make EU citizens more aware of the rules which Member States must respect when taxing cross-border inheritances.

The Commission in 2011 took the view that a Recommendation would be a solution proportionate to the scale of the problem since not all Member States impose inheritance tax and since most of the EU Countries in question already have some form of national relief from double taxation of inheritances. The Commission hoped that EU Countries would implement the 2011 Recommendation as the Recommendation did not require them to give up substantial tax revenues.

4. Questions submitted to the stakeholders concerned

The Commission services would like to receive contributions regarding the way in which the principles of its 2011 Inheritance tax Recommendation and Working Paper have been implemented in the legislative and administrative practice of EU Countries together with any information that the public would like to provide on current problems, views on the principles proposed and other feasible solutions.

Any factual information you provide will be most welcome as it will help to support the Commission services' evaluation of the existing cross-border inheritance tax obstacles and the need for any future action in the area. [See also Specific Privacy Statement]

Please note that you are not required to answer all the questions. If one or more questions are not within your area of interest or if you would prefer not to respond, please move on to the next question.

⁹ http://ec.europa.eu/taxation_customs/taxation/gen_info/tax_conferences/inheritance_tax_conference/index_en.htm

¹⁰ SEC(2011) 1488 final

QUESTIONNAIRE

I. General identification of the stakeholder¹¹

Name:

Surname:

OR Name of organisation:

State of residence/ establishment:

State of tax residence (if different):

Are you:

- An individual
- Tax administration of a Member State
- Expert/tax adviser/tax practitioner/lawyer
- An interest representative (association/professional organisation/trade unions)
- An academic
- Other (please specify what is your interest in this matter):

.....

If you are an interest representative, are you registered in the EU interest representatives' registry?

Yes

No

If applicable, you may indicate your identification number as referred to in the previous question in the registry:

Do you agree to the publication of your response?

Yes

No

Do you agree to the publication of your name and other personal data?

¹¹ Please see the Specific Privacy Statement.

Yes

No

1. Cross-border bequests within the EU and taxation issues encountered¹²

a) Have you yourself encountered or are you aware of any specific problems resulting in cross-border double taxation of inheritances or donations in the EU in recent years?

Yes

No

Please provide the year, details on the number of cases, type of tax issues, amounts and Member States involved (please limit your answer to max. 500 words):

b) Have you encountered or are you aware of any specific problems of discrimination experienced by somebody who has received a bequest within the EU in recent years (through a donation or an inheritance) with a cross-border element (i.e. liquid assets invested abroad, real estate abroad, a person who is resident or domiciled in one country receiving a donation or inheritance from another country)?

Yes

No

Please provide details whilst mentioning the number of EU cross-border bequests, the year in which the bequest has been received, the Member States and the type of issues involved (please limit your answer to max. 500 words):

2. Efficiency of EU countries' existing tax relief measures and implementation of the principle of the 2011 Commission's Recommendation on relief for double taxation of inheritances

a) Have the tax rules on cross-border inheritances been amended in your country (-ies) since 15 December 2011 when the Commission Recommendation on relief for double taxation of inheritances was adopted?

Yes

No

If so, please provide details on how your Member States' rules were amended, whilst providing reference to the national law/ administrative measure and its relevant provisions:

¹² We would like to obtain information about cases which have not yet been communicated to us in response to our 2010 public consultation. This information would allow us to evaluate how the problems have evolved since.

b) Do the amendments of the cross-border inheritance tax rules in your country in any way follow the principles of the Commission's Recommendation on relief for double taxation of inheritances?

Yes

No

If the Commission Recommendation has been followed in whole or in part, please provide details, such as country name and law/administrative measure:

c) Are you aware of any plans in your country to amend its rules on the taxation of cross-border inheritances?

Yes

No

If so, please provide details:

3. Your views on the principles included in the 2011 Recommendation regarding relief for double taxation of inheritances

a) Do you consider the Commission's recommendation to EU countries to give up or reduce inheritance tax if the inheritance is more closely connected with another country is a proportionate and sufficient solution?

Yes

No

Please – if you wish – comment in more detail about the approach of the Commission (please limit your answer to max. 500 words):

Explanation: The Commission has proposed that EU countries in which immovable property and business property of a permanent establishment is situated should, as the country with the closest link, have the primary right to apply inheritance tax to such property. In respect of movable property the Commission has proposed to favour the personal links that the deceased or the heir may have with its EU country over the link that the movable property has with the EU country where it is located. The EU country where such movable property is situated should, therefore, exempt the property from its inheritance taxation if such taxation is applied by the EU country with which the deceased and/or the heir has a personal link. In respect of the personal link the Commission has proposed to favour that which the deceased person had with its state rather than the link of the heir.

b) Do you agree with the use of the tie breaker rule proposed by the Commission to establish which personal link is closer and thus to determine the country having priority right to tax (Article 4.4 of the 2011 Recommendation)?

Yes

No

Please, if you wish, comment in more detail about the tie breaker rule as proposed in the 2011 Recommendation (please limit your answer to max. 500 words):

Explanation: The Commission has proposed to solve potential conflicts of many personal links to several EU countries on the basis of a mutual agreement procedure involving tie-breaker rules to determine the closest personal link. The tie breaker rule is to some extent based on Article 4.2 of the OECD Model Tax Convention on Income and Capital. The tie breaker rule assumes that the person has closer links with one of two or more states, if that person has a permanent home available in one of those states. If that person has such homes available in more than one states, then the priority is given to a country with which his/her personal and economic relations are closer. If the above cannot help then the decisive factors would be the habitual abode (where the person usually lives) and, finally, the nationality.

c) Do you agree with the period of ten years as the time for using a possible tax credit as proposed in Article 5 of the 2011 Recommendation?

Yes

No

Please comment in more detail about the period of application of the double tax relief as proposed in the 2011 Recommendation (please limit your answer to max. 500 words):

Explanation: The Commission has proposed a period of 10 years to use the tax relief since the timing for the application of inheritance tax may differ in the EU countries involved and cases with cross-border elements may take significantly longer to be resolved compared to domestic inheritance tax cases. The Commission has considered that in cross-border inheritance tax cases citizens deal with more than one legal and/or tax system and therefore EU countries should allow claims for tax relief for a reasonable period of time.

d) In your opinion, does your country need to change its national legislation to grant relief from double taxation on inheritances in the way set out in the 2011 Recommendation or would it be sufficient to change its administrative practices or interpret existing relief provisions in a more flexible way?

Please comment in more detail and indicate the state to which your comment relates (please limit your answer to max. 500 words):

e) Do you think that the solutions proposed in the Commission's Recommendation and Working paper are sufficient to tackle the cross-border tax problems of SMEs or are there other – more targeted solutions needed for any such problems? Please comment in more detail (please limit your answer to max. 500 words):

4. Other possible solutions to the problems related to property donated or inherited across borders within the EU

a) Would you like to propose further possible solutions to the tax problems involving property donated or inherited across borders within the EU?

Yes

No

If so, please provide details of your solution whilst outlining its advantages and disadvantages for EU countries and taxpayers (please limit your answer to max. 500 words):

b) How should your suggested solution(s) be implemented e.g. by EU legislation or by changes in national laws by each EU country? (please limit your answer to max. 500 words):

c) Can you recommend any best practices in any EU countries or non-Member countries in the area of avoidance of double taxation on cross-border donations/successions? (please limit your answer to max. 500 words):

d) Do you have any other comments or thoughts to share as regards the avoidance of double taxation of cross-border donations/successions? (please limit your answer to max. 500 words):