



European Commission
Directorate - General for
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Unit D2 - Direct Tax Policy & Corporation
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16 November 2010

Dear Sir or Madam,

Re: Possible approaches to tackling cross-border inheritance tax obstacles within the EU

FEE (Fédération des Experts-comptables Européens) is pleased to comment on the public consultation paper on possible approaches to tackling cross-border inheritance tax obstacles within the European Union.

Before commenting on the six key questions put forward by the Commission FEE would like to emphasise the importance of the topic and welcome a debate on the tax issues related to cross-border inheritance cases in the EU.

An increasing number of citizens of EU Member States are taking advantage of the possibility to work and take up residence in any EU Member State as well as running a business in any EU Member State. As a consequence, more and more often testator and heirs are resident in different Member States, or real estate, permanent establishments of a business or other assets of a property are located in a Member States other than the country of residence of the testator and the heirs. There is also an increasing number of cases where the testator or the heirs maintain a residence in more than one Member State.

Whereas in the area of income taxation there is a comprehensive network of treaties for the avoidance of double taxation, such a network does not exist for inheritance tax. Only a few treaties are in place between Member States in the area of inheritance tax. Therefore, frequently a double taxation occurs in cross-border inheritance cases. Unilateral measures like tax credits provided in domestic law often do not avoid double taxation, e. g. because of different concepts of taxation (e.g. taxing the estate as such versus taxing the heirs, or in cases of dual residence). Especially SMEs and family-owned businesses often suffer from dual (or potentially even multiple) inheritance tax burden. In countries where inheritance tax is levied, the European Commission should encourage a relief for SMES.

Therefore, in the view of FEE the lack of harmonisation of national inheritance tax legislation and the lack of a treaty network are significant obstacles to the cross-border movement of people and investments, especially for family-owned businesses. The importance of this problem is underlined by the fact that international ramifications of estate tax was one of the main topics discussed and analysed in depth at the 2010 IFA Congress¹.

Response to the Questions

- 1) *Have you any information on cross-border inheritance tax problems in the EU that you would like to provide?*

Please refer to the introductory remarks above.

- 2) *Which or which combination of the above outlined approaches do you consider as most appropriate to tackle any cross-border inheritance problems that exist? Why do you prefer that option?*

FEE encourages Member States to enter into bilateral tax treaties on inheritance tax. As a consequence of different approaches of domestic law (tax on estate or taxation of the heir, taxing resident and non-resident individuals, different scope of inheritance tax, different valuation methods to determine the tax base for property inherited), unilateral measures in domestic legislation often do not eliminate double taxation in the same way as treaties do, e.g. by providing for a tiebreaker rule in cases of dual residence and by assigning exclusive taxation rights with regard to certain types of property.

Bilateral inheritance tax treaties will not solve all situations were more than two Member States are involved. However, to introduce an EU-wide binding mechanism (e.g. a directive) to eliminate double taxation of inheritances would probably be difficult due to the requirement to obtain unanimous consent from all 27 Member States (although, if adopted, a directive would be the most effective tool to deal with this issue). The problem of double taxation may, however, not receive the same level of interest in different Member States since some Member States do not even have an inheritance tax regime.

- 3) *Would you prefer a completely different solution and if so what solution do you suggest?*

FEE does not suggest any solution other than those described in the consultation document.

¹ Congress Cahiers of the International Fiscal Association – Vol 95b (2010): “Death as a taxable event and its international ramifications”

4) *What, if anything else do you think could be done at European level to overcome any difficulties that exist in the area of inheritance taxes?*

Referring to our answer to question 2) FEE encourages the development of an EU model inheritance tax treaty which could be used by Member States as a basis for bilateral inheritance tax treaties to be concluded. Such a model should be developed under the leadership of the European Union. By such model treaty some deficiencies of the quite old OECD model treaty on inheritance tax could be avoided. There could for example be a uniform approach as to the definition of residence for inheritance tax purposes as well as uniform tiebreaker rules in case of dual residence. Moreover, instead of tax credits such a model agreement could provide for an exclusive allocation of the right to tax with regard to certain types of property, e.g. real estate and business property. This would especially help to solve most of the problems family-owned SMEs are facing (see below).

5) *Do you have knowledge of cross-border inheritance tax problems faced by SMEs and, if so, do you think that the above mentioned or different solutions are needed for any such problems?*

Especially for family-owned SMEs inheritance tax represents a problem as the business property inherited cannot easily be made liquid. The heirs frequently do not have other funds available to finance inheritance tax assessed on the business which often represents the main if not the sole asset of a family. In extreme cases the existence of the business can be endangered and families can be forced to sell or liquidate the business. This has (potentially) severe damaging consequences on the economy as a whole. Therefore, FEE encourages a solution that avoids cash-flow problems caused by lengthy refund procedures, i.e. to eliminate double taxation on business property by allocating the exclusive right of taxation only one country.

Also, as mentioned above, a bilateral approach to avoid double taxation of inheritances will not solve all situations where more than two Member States are involved.

6) *Do you have any other comment or thoughts to share with regards to cross-border inheritance tax issues?*

FEE believes that double taxation does also incur in relation to gifts and donations. This is often a serious impediment when transferring a family-owned SME from one generation to the next. Our comments above therefore apply mutatis mutandis also to gift tax.²

Any measure adopted to avoid double taxation in inheritance tax cases should therefore also apply to gifts and donations, since gifts and donations to family members or family trusts are often nothing else but transferring property at an earlier stage that would be transferred in an inheritance case anyway; such advanced transfers are also more beneficial to the economy and society as a whole and should be facilitated. Inheritance and gift tax should therefore be treated in the same manner.

² Please refer to FEE publication: "Keeping it in the Family – SME Family Business Succession. Planning for yourself, your business and the next generation." June 2000.

FEE also suggests to address discriminatory rules in domestic legislation of EU Member States as to the granting of tax exemptions, valuation of property or tax free amounts to taxpayers resident in another Member State. Some Member States domestic legislation does not seem to be always in line with ECJ judgments in the area of inheritance tax (see ECJ C-510/08 “Mattner”).

FEE’s ID number on the European Commission’s Register of Interest Representatives is 4713568401-18. For further information on FEE’s name, country of origin, legal form, size, field of activities and cross-border activity, please refer to footnote 3.³

For further information on this letter, please contact Ms Petra Weymüller from the FEE Secretariat at +32 2 285 40 75 or via email at petra.weymuller@fee.be.

Yours sincerely,



Hans van Damme
President

³ FEE is the Fédération des Experts comptables Européens (Federation of European Accountants). It represents 43 professional institutes of accountants and auditors from 32 European countries, including all of the 27 European Union (EU) Member States. In representing the European accountancy profession, FEE recognises the public interest. It has a combined membership of more than 500.000 professional accountants, working in different capacities in public practice, small and big firms, government and education, who all contribute to a more efficient, transparent and sustainable European economy.

FEE’s objectives are:

- To promote and advance the interests of the European accountancy profession in the broadest sense recognising the public interest in the work of the profession;
- To work towards the enhancement, harmonisation and liberalisation of the practice and regulation of accountancy, statutory audit and financial reporting in Europe in both the public and private sector, taking account of developments at a worldwide level and, where necessary, promoting and defending specific European interests;
- To promote co-operation among the professional accountancy bodies in Europe in relation to issues of common interest in both the public and private sector;
- To identify developments that may have an impact on the practice of accountancy, statutory audit and financial reporting at an early stage, to advise Member Bodies of such developments and, in conjunction with Member Bodies, to seek to influence the outcome;
- To be the sole representative and consultative organisation of the European accountancy profession in relation to the EU institutions;
- To represent the European accountancy profession at the international level.

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