By PwC Deutschland | 12. Juni 2013

Full inheritance tax exclusion for non-EU residents?

An ECJ advocate general has suggested the court extend its earlier rulings against lower personal allowances to heirs in other member states to residents in third countries.

The Inheritance Tax Act exempts the first €500,000 chargeable transfer by way of inheritance or gift between spouses if either the testator (donor) or the beneficiary is resident in Germany. If both are non-residents the personal allowance drops to a mere €2,000. The official justification for the distinction is that the high initial allowance is intended to ensure that a surviving spouse is able to maintain his or her customary standard of living. Accordingly, it need be given only once, in the country of residence. A Swiss resident widower has challenged this apparent discrimination in respect of a German property inherited from his deceased wife. He based his position on the ECJ case of *Mattern* (C-510/08, judgment of April 22, 2010) which held the distinction to be indeed discriminatory in a case involving the gift of a German property from a mother to her daughter, both of whom were resident in the Netherlands. However, the present case is slightly different in that it involves a transfer between residents of a non-member state (Switzerland) and a transfer by way of inheritance where the remainder of the estate – essentially cash balances – was exempt as a transaction between non-residents.

The ECJ advocate general on the case has now suggested the court hold the decision in *Mattern* be extended to transfers by way of inheritance between residents of non-member states. The German distinction is an infringement of the free movement of capital, the fundamental freedom not restricted to within the EU borders. The German government defended the distinction on the grounds of tax system coherence and the need to prevent abuse. The system coherence was felt to be threatened because in the present instance the high personal allowance for transfers to or from a resident went hand-in-hand with a tax liability on the cash balances. The need to prevent abuse argument was based on the premise that significant personal allowances should be granted only once, by the state of residence in order to avoid “double dips”. To this, the advocate general pointed out that the property charged was the major asset of the estate. Claiming the exemption of the cash was a justification for withholding a far higher personal allowance was, at the least, out of proportion. He then drew attention to the fact that the higher German allowance was available to German residents transferring or receiving foreign assets. In this case a correct charge to tax was largely dependent on the honesty of the taxpayer, so abuse prevention was clearly not the issue.

The ECJ case reference is C-181/12 *Welte*, opinion of June 12, 2013.

Schlagwörter

heir, inheritance tax, personal allowances