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Inheritance tax personal allowances inhibit freedom of capital movement

The ECJ has held that the principle of freedom of capital movement precludes the German system of granting higher personal allowances on capital transfers where at least one of the parties is resident.

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German inheritance (and gift) tax personal allowances vary by degree of kinship between €500,000 (spouses) and €20,000 (unrelated persons). However, the allowance drops to €2,000 regardless of kinship in all cases where both testator (donor) and heir (beneficiary) are not resident in Germany. A Swiss-resident widower has protested against this distinction in respect of his inheritance of a German property from his deceased Swiss-resident wife.

The ECJ has now held that capital transfers by gift or inheritance fall under the freedom of capital movement – as in *Mattner*, C-510/08 judgment of April 22, 2010, a case involving a gift of a German property from a Dutch-resident mother to her Dutch-resident daughter – notwithstanding the real estate object of the transfer. The restriction of the personal allowance to a purely nominal amount for transfers between Swiss residents was therefore in breach of the TFEU unless it could be justified by overriding considerations. The German government sought to justify it with the contention that residents and non-residents were not in comparable positions. In particular, it was for the state of residence to grant personal reliefs on the basis of a person's overall position. The court, though, rejected this argument, partly because the German legislation treated the two groups identically in all other respects (valuation, rates and class of kinship) and partly because the higher allowances were only excluded where both parties to the transaction were non-residents. There was no justification for a difference in treatment between transfers between non-residents and transfers between a resident and a non-resident. The court also rejected the other part of this argument, that the higher personal allowance available to residents compensated for the tax on their inheritance of other assets. Rather, there was no link between the two aspects, as the personal allowances were unaffected by relative amounts. Finally, the government argued that the curtailment of the personal allowance for non-residents was necessary in the public interest due to the difficulties for German authorities in verifying Swiss death certificates. This argument was also rejected, the court pointing out that there was the same difficulty with any foreign death certificate and that the authorities were clearly able to surmount it in the event of a German-resident heir.

The ECJ case reference is C-181/12 *Welte*, judgment of October 17, 2013.

Keywords

capital transfer, inheritance tax, personal allowances