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By PwC Deutschland | 20 October 2026

ECJ Opinion: Exit tax and extent of deferment of payment

Following a request for preliminary ruling from Poland, the European Court of Justice (ECJ) again is asked to address the framework of exit taxation and its method of collection. In her Opinion, the Advocate General proposes that the ECJ decide that, for example, deferring the tax payment for a maximum of 5 years is necessary in light of the legitimate objective for effective collection of the exit tax with no need to await the actual disposal of the relevant assets.

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Background

AR is an Italian and US citizen. Since 1 January 2023, AR has been a Polish tax resident and has consequently been liable since then to income tax in Poland on all his income. AR intends to keep his tax residence in Poland until at least 1 January 2028, so that the total duration of his Polish tax residence will have been at least five years. After the cessation of his employment in Poland, AR intends not to engage in any further economic activity. He plans to move to Germany, where he owns immovable property, and to transfer his tax residency to Germany. In October 2024 he requested an advance tax ruling from the Polish the tax authority on various questions regarding a possible obligation to pay exit tax on his assets (here: shares held in various companies) at the time of his planned move from Poland to Germany.

The German rules

The case closely parallels the mechanics of Section 6 of the German Foreign Tax Act. Germany is obliged to tax built-in gains (the hidden reserves), if an asset or a business is transferred to another jurisdiction and also where a taxpayer's unlimited tax liability ceases through the taxpayer giving up his German residence/habitual abode because otherwise Germany would lose its right to tax. Since 2022 (when the permanent and unlimited deferral was abolished), the only options now available are to pay the assessed "exit tax" immediately (immediate payment), to apply for payment in seven annual installments (installment plan), or - if taking advantage of the so-called "return clause"- to apply for deferral of the tax until the taxpayer's return.

Opinion of Advocate General (AG) Juliane Kokott

The dispute in the present case concerns three aspects**: first**, whether unrealized capital gains arising abroad in the past, when the beneficiary was not yet taxable in Poland, may also be taken into account for exit taxation; **second**, whether, besides unrealized capital gains, unrealized losses are also to be taken into account; and **third**, for how long, if at all, any exit tax must be deferrable.

Conclusions of the AG on the questions referred

(1) Does the free movement of workers (Article 45 TFEU) prohibit levying an exit tax on capital gains on assets where those gains accrued abroad at a time when the taxpayer was not yet resident for tax purposes in the national territory?

The AG answers in the affirmative and confirms that Article 45 TFEU) precludes the Polish tax regime under which exit tax is payable on the transfer abroad on unrealized (built-in) capital gains where those gains accrued abroad at a time when the employee was not yet resident for tax purposes in the national territory. If all those workers had to fear that unrealized gains in the value of shares and other securities acquired would be

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taxed in full time and again whenever they transferred their place of residence and work across a border the advantages of the European internal market, in particular in the modern world of work, would be liable to be very significantly diminished, or even wiped out, for a large number of EU citizens.

(2) Is it possible to solely include in the exit taxation income from the taxpayer's assets which have made an unrealized capital gain whereas assets which have sustained an unrealized capital loss are excluded from the tax base?

Here, too, the AG views the failure to take unrealized losses into account as a restriction. Reason: The balanced allocation of the power to impose taxes among the Member States. In the preliminary ruling proceedings, the referring court also touched on avoidance of double counting of losses as a potential justification. It was argued that losses were liable to be taken into account twice if, initially, the Member State of exit counted unrealized losses when calculating the exit tax and, in the event of a subsequent disposal of the same asset concerned, the taxpayer could claim in the new host Member State capital losses which had meanwhile been realized. The AG does not consider this justification to be adequate and effective: Under the principle of fiscal territoriality, each of the Member States concerned is required to consider for tax purposes only those losses which are incurred within its fiscal jurisdiction. The principle of symmetry between the right to tax profits and the possibility of deducting losses must be upheld.

(3) Is it sufficient for exit tax to be deferred for a maximum of five years with payment in instalments or must the taxpayer be granted a longer and complete deferment until the effective disposal of his or her relevant assets?

Here, the GA argues in favor of the tax authority: Article 45 TFEU) does not preclude national tax legislation under which an exit tax may be deferred on request in such a way that it is payable wholly or partly in instalments within a maximum period of five years with no need to await the actual disposal of the relevant assets.

In particular, the ECJ has recognized that a five-year deferment of payment is perfectly capable of satisfying the proportionality requirements. A shadow would be cast over that legislation if, in the present case, the Court were to consider that a deferment of payment limited to five years is disproportionate. The AG considers that a maximum deferment of the exit tax by five years, together with payment in instalments, even in a case such as the present one, which concerns not an undertaking but a worker, satisfies the requirements of proportionality. This is not inconsistent with the landmark „*Wächtler judgment*" (judgment of 26 February 2019 C?581/17, see **blog post of 28 February 2029**), which has been cited on several occasions and where the ECJ recognizes in principle 'that the immediate collection of the tax at issue at the time when the taxpayer's domicile is transferred may, as a general rule, be justified by the need to ensure the effective collection of tax liabilities. According to the AG, deferment of payment, but for a limited period, is certainly also an appropriate means of achieving that objective.

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Note/Outlook: The ECJ's decision in this case is reportedly of fundamental importance for German exit taxation. The answers to questions two and three could provide some guidance. From a German perspective, the answer to question three, in particular, could be indicative and pointing the way.

Source:

ECJ, case reference **C?430/25 *Gena*** - Opinion delivered on 15 October 2026.

Keywords

exit tax, tax deferral