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ECJ: Domicile for tax purposes of officials and other servants of the EU

In a most recent judgment, the European Court of Justice (ECJ) clarifies the conditions for determining the domicile for tax purposes of officials and other servants of the European Union.

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A, a member of staff of the European Investment Bank (EIB), left Austria in 1995 to settle in Luxembourg, in order to take up his duties there. After his marriage in 2010, he moved to Germany, while continuing to use his flat in Luxembourg. In 2013, A's brother, who resided in Austria, gave him a sum of money. The German tax authority imposed gift tax. It found that A had established an additional domicile for tax purposes in Germany, in parallel to his domicile for tax purposes in Austria, and that the domicile in Austria was thus fictitious. The Supreme Tax Court asked the ECJ if the rule relating to the domicile for tax purposes provided for by the Protocol applies also to gift tax.

In its judgment, the ECJ answered in the affirmative. It states that the concepts of 'income tax', 'wealth tax' and 'death duties', expressly referred to in the Protocol, constitute autonomous concepts of EU law. Even though gift tax is not expressly referred to in the Protocol, that tax shares essential features with death duties and income tax, in so far as it is imposed on the gratuitous transfer of assets or the enrichment resulting from such a gratuitous transfer of assets.

The Court also notes, that an official or other servant of the European Union who settled in another Member State in order to perform his or her duties, and subsequently transferred his or her residence, for personal reasons, to a third Member State, maintains his or her domicile for tax purposes in the State of origin, in accordance with the provisions of the Protocol. Domicile for tax purposes is independent of the place of residence of the person concerned.

Source: ECJ, judgment of 15 October 2026 **C?275/25** *Kolwager*. – Press release **No. 148/26**.

Keywords

state of residence