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Article

Inheritance Taxation in Europe

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Inheritance Taxation in Europe

Rules regarding the estate of deceased persons exist in all OECD countries, which can collectively be referred to as succession law. These regulations cover a broad range of aspects that arise with the death of a person. For a detailed compilation of the most important aspects, see DICE table on "Succesion law in Europe: Inheritance and inheritance tax, 2014" (DICE Database 2015). This article focuses on how much inheritance tax has to be paid – as in most countries there is a tax on inheritance.[1]

In a first step, this article discusses the differences in national inheritance taxation laws in Europe and, in a second step, looks at a regulation by the European Union (European Parliament and European Council 2012), which can be seen as a first step towards a harmonisation of succession law in Europe.

National regulation – taxes

As stated above, most European countries have a tax that arises when the estate of a deceased person is transferred to his/her heirs. The amount of tax to be paid heavily depends on the affiliation to different heir-categories. In all countries the tax level increases with a decrease in the degree of family relationship; and the threshold increases with higher degrees of family relationship. The heirs are therefore grouped according to their degree of family relationship in up to four categories. For each category there are different progressive tax rates and different thresholds. For example, spouses and children (in most cases Category 1) are completely exempt from taxation in a majority of cases, whereas for heirs with no family relationship to the deceased, the tax rate can be up to 48 percent (Luxembourg). For a detailed compilation, see DICE table on "Inheritance Taxation, General Characteristics, 2013" (DICE Database 2013).

Cross-border issues

Succession law is a policy area where there has been no harmonisation to date and less coordination between European countries too. In most cases this is not a problem, as only the national law applies. But with free movement in the EU and a growing number of persons owning estates in different countries, there are more cases featuring cross-border issues. A study conducted by the European Commission (2009) states that about ten percent of successions in Europe have an international or European dimension, and therefore have the potential to raise cross-border issues.

A highly problematic cross-border issue occurs when a deceased person owns estates in different countries and heirs are taxed in both countries. This residence-source conflict (Næss-Schmidt et al. 2010) results from the fact that an heir is taxed for total estate s/he inherits according to the regulation where the deceased was resident, and the heir is also taxed according to the regulations of the country where the estate is located.

Some national regulations tackle this problem by allowing unilateral relief for foreign paid taxes. Additionally, there are a number of bilateral inheritance tax treaties in Europe. But as of 2010, there were only 33 out of 351 possible bilateral solutions. Overall the revenues generated by inheritance taxation are relatively low compared to other tax revenues (in OECD average about 0.5 percent of total tax revenues). But, as shown above, there can be huge differences on individual levels.

In addition to the problem of double taxation, cross-border issues lead to additional costs. It is often unclear which national jurisdiction is responsible for a case with cross-border issues. If a person lives in a country where s/he is not a national, both jurisdictions can claim responsibility for the case. Decisions about succession or being an heir in one country may also not be recognised in another country (Bost 2013).

EU regulation

To facilitate cases with cross-border issues, the European countries (except Denmark, UK and Ireland)[2] agreed on a regulation (European Parliament and European Council 2012). The main benefit of the regulation is that only one jurisdiction will be responsible for a succession case in the future. This will be the jurisdiction where the deceased was a "habitual resident". Habitual residence is determined by the state in which the person spent the most time in the years preceding his/her death and was

[1] There are two types of taxes in cases of inheritance: inheritance tax (a tax paid by the recipient of the heritage) and estate tax (a tax paid by the transferor). For simplicity's sake, both are summarized under the term inheritance tax in this article.

[2] These countries opted out.

most closely connected to (European Parliament and European Council 2012). But the successor can also state in a will that the law where s/he is national should apply to his/her case. The court responsible will attest the heirs as legal heir, and this status has to be accepted in all other European countries (European Certificate of Succession).

This regulation leads to lower costs in succession cases, as there is less bureaucracy and more certainty about the applicable law in succession cases with cross-border issues.

But the regulation by the EU does not address problems of double taxation, and can therefore only be seen as a first step towards a succession law that does not hinder free movement and free investment within Europe.

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