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Taxation of cross-border inheritances and donations: suggestions for improvement

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Universiteit Leiden

Taxation of cross-border inheritances and donations. Suggestions for improvement

Vasileios Dafnomilis

Taxation of cross-border inheritances and donations. Suggestions for improvement

Belastingheffing van grensoverschrijdende nalatenschappen en schenkingen. Voorstellen tot verbetering

PROEFSCHRIFT

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de graad van doctor aan de Universiteit Leiden,
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	prof. dr. T Lyons QC (City University of London, UK)

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PREFACE

My decision to write a doctoral thesis on cross-border death and gift taxation was not taken lightly. I believe fate led me to this; fate accompanied by luck and interesting coincidences. During my bachelor studies at the Aristotle University of Thessaloniki, the chapter of the laws of succession of the Greek Civil Code was one of the most interesting ones to me. After graduating in 2012, I did not practice succession law as a trainee lawyer in Athens, but intuition told me that I had not finished with that topic. One year after graduating, I enrolled for the postgraduate programme on EU law studies at the University of Athens, to attend the 'European tax law' course. I was struck by how fascinating and dynamic this field of law can be as it combines the theoretical concepts of EU law with the mechanics of tax law. Under the excellent supervision of the inspiring course instructor, Associate Professor dr. Rebecca-Emmanuela Papadopoulou, I wrote a master thesis on the negative integration of taxes within the EU, with particular focus on death taxes.

I knew I wanted to deepen my knowledge of European tax law and of how inheritance and gift taxes worked in practice. In August 2014, Leiden University and ITC Leiden launched its Advanced LL.M. in European tax law programme. I met Professor dr. Sjoerd Douma, the then director of the programme, who in December 2014, asked me to consider preparing a doctoral thesis in international taxation, with him as supervisor. He was perhaps the first person who believed in me when I moved to the Netherlands and I would like to thank him for his unwavering support.

That same year, the EC Tax Review journal published an article of mine which was broadly based on my master thesis. It caught the eye of Professor dr. Frans Sonneveldt, the main instructor of the Estate Planning course in the Advanced LL.M., who encouraged me to attend the course. Death and gift taxation from an international and EU point of view was an area of law I wanted to specialise in further. I thank Professor Sonneveldt who inspired me to present this doctoral thesis, and gave me the benefit of his profound knowledge of this discipline.

I would also like to thank several people who have contributed to the completion of this thesis. They include my colleagues from PwC's Dutch Tax Knowledge Centre and especially, Professor dr. Ad van Doesum and Mariska van der Maas, who have supported my academic aspirations from the first, allowing me to combine my work as tax advisor with my academic work. Also, my PwC and UvA colleague, Professor dr. Hein Vermeulen, for being such a supportive friend and colleague through all these years. My thanks also go to the members of the Estate Planning group of PwC and especially Mitra Tydeman-Yousef who helped me understand some practical problems of cross-border death taxation. Finally, I thank the members of the manuscript committee for reading my manuscript and for their valuable comments, and the Foundation for Education and European Culture which has supported my studies since 2014.

Special thanks go to my friends and especially to Konstantina, Dora, Marthe and Serieke for all their unwavering support during all these years and to my family in Greece, without whose support I could never have achieved this. I would also like to thank my in-laws for their great interest in my progress. Above all, I would like to thank my husband, Stephan, for his unconditional support and ability to make me smile, especially when I needed it most.

Vassilis Dafnomilis,
Leiden, May 2021

TABLE OF CONTENTS

Preface / V

List of abbreviations used / XVII

PART I: INTRODUCTION TO DEATH AND GIFT TAXATION AND THE PROBLEMS OF CROSS-BORDER DEATH AND GIFT TAXATION

CHAPTER 1
Scope, purpose, structure and methodology used in this study / 3

1.1 The current situation / 3
1.1.1 The problems of death taxes in a domestic setting / 4
1.1.1.1 The interaction of death taxes with other types of taxes / 4
1.1.1.2 The difficulty of the public to grasp the justifications of death taxes / 4
1.1.1.3 The nature and design of death taxes / 5
1.1.2 The problems of death taxes in a cross-border setting / 5
1.2 The purposes of this study / 7
1.2.1 Description and systemisation of the law as such / 7
1.2.2 Suggestion of separate and holistic solutions / 8
1.3 Structure of this study / 8
1.4 Methodology used in this study / 10
1.4.1 "Legal-dogmatic research" / 10
1.4.2 Adding to the research in this area and the applicable approach / 12

CHAPTER 2
Death taxes and taxes on gifts / 13

2.1 Key features of death taxes and taxes on gifts / 13
2.1.1 Inheritance and estate taxes / 13
2.1.2 Other types of taxes levied upon death / 15
2.1.3 Taxes on gifts / 15
2.2 Establishment of tax jurisdiction / 16
2.2.1 Inheritance and estate taxes / 16
2.2.1.1 The personal nexus / 16
2.2.1.2 The objective nexus / 18
2.2.2 Other types of taxes levied upon death / 18

2.2.3 Taxes on gifts / 19
2.3 History of death taxes and revenue trends / 19
2.4 Justifications of death taxation / 21
2.4.1 The ability-to-pay-taxes justification (the theory of value) / 24
2.4.2 The windfall justification (the accidental income theory) / 27
2.4.3 The tax equality justification / 30
2.4.4 The diffusion-of-wealth justification / 31
2.4.5 The sluice justification / 32
2.4.6 The work stimulating justification/incentive to work justification / 32
2.4.7 The wages-for-work justification / 33
2.4.8 The justification of less pain / 33
2.4.9 The profit justification (the benefits theory and the co-heirship theory) / 34
2.4.10 The belated fee justification / 35
2.4.11 The financing of the probate costs / 35
2.4.12 Penalty for the deceased's tax evasion (the back-taxes theory) / 36
2.4.13 The substitution for not imposed taxes justification (apart from tax evasion) / 36
2.4.14 A means for the abolition of the intestate inheritance / 37
2.5 Conclusion of Chapter 2 / 37

CHAPTER 3
The starting point of this study / 39

3.1 The problems of cross-border death and gift taxation / 39
3.1.1 Double or multiple taxation / 39
3.1.1.1 Variety of concepts determining the personal nexus between a person and a state / 39
3.1.1.1.1 Residence / 40
3.1.1.1.2 Domicile / 42
3.1.1.1.3 Nationality / 43
3.1.1.2 Assessment of the personal link with a different person (donor-based and donee-based taxes) / 44
3.1.1.3 Different taxable persons / 45
3.1.1.4 Different types of taxes / 45
3.1.1.5 Connection with civil law / 46
3.1.1.5.1 Determination of critical terms by civil law / 46
3.1.1.5.2 Private international law rules / 47
3.1.1.5.3 The EU Succession Regulation / 48
3.1.1.6 Qualification issues / 50
3.1.1.7 Divergent valuation rules / 50
3.1.1.8 Divergent debt deduction rules / 50
3.1.1.9 Situs taxation / 51
3.1.1.10 The ineffectiveness of the unilateral double taxation relief / 52
3.1.2 Double or multiple non-taxation / 53
3.1.2.1 Jurisdictional double or multiple non-taxation / 54

3.1.2.1.1 Variety of concepts determining the personal nexus between a person and a state / 54
3.1.2.1.2 Assessment of the personal link with a different person (donor and donee base) / 55
3.1.2.1.3 Connection with civil law / 55
3.1.2.1.4 Qualification issues / 55
3.1.2.1.5 Situs taxation / 56
3.1.2.1.6 Application of different types of taxes / 56
3.1.2.2 Unilateral double tax relief by the state of the personal nexus / 57
3.1.2.3 Unilateral abstention of the state of the objective nexus from taxing / 57
3.1.2.4 Double or multiple non-taxation as a result of tax abuse / 57
3.1.3 Discriminatory treatment of cross-border inheritances and donations / 58
3.1.3.1 Introduction / 58
3.1.3.2 Examples of discriminatory inheritance and gift tax provisions / 58
3.1.3.2.1 Tax deductions for certain liabilities and debts / 58
3.1.3.2.2 Subjective tax exemptions / 58
3.1.3.2.3 Objective tax exemptions / 59
3.1.3.2.4 Valuation rules / 59
3.1.3.2.5 Tax rates / 59
3.1.3.2.6 Filing deadline / 59
3.1.3.2.7 Payment deadline / 59
3.1.3.2.8 Payment requirements / 60
3.1.3.2.9 Penalties and fines / 60
3.1.4 Administrative difficulties / 60
3.1.4.1 Introduction / 60
3.1.4.2 The example of Mr D's beneficiaries / 61
3.1.4.2.1 Problems arising in the state of the objective nexus / 62
3.1.4.2.2 Problems arising in the state of the personal nexus / 63
3.2 Confirmation of the selection of the problems / 64
3.2.1 The OECD IHTMTC / 64
3.2.1.1 An overview of the OECD IHTMTC provisions / 64
3.2.1.2 The objectives of the OECD IHTMTC / 67
3.2.1.3 Why states do not often conclude inheritance and gift tax treaties / 69
3.2.2 The 2015 inheritance tax report / 70
3.3 Addressing the problems at different levels / 71
3.3.1 The national level / 71
3.3.2 The OECD level / 71
3.3.3 The EU level / 72
3.3.3.1 Double or multiple taxation / 72
3.3.3.2 Double or multiple non-taxation / 73
3.3.3.3 Discrimination / 74
3.3.3.4 Administrative difficulties / 75
3.4 Conclusion of Chapter 3 / 76

PART II: SEPARATE SOLUTIONS TO THE PROBLEMS OF CROSS-BORDER DEATH AND GIFT TAXATION

CHAPTER 4
Separate solutions at the OECD level / 81

4.1 Introduction / 81
4.2 The four elements of the proposed inheritance and gift tax / 82
4.2.1 ***Mortis causa* or *inter vivos* taxation / 82**
4.2.2 The levying of the tax on windfalls / 84
4.2.3 The definition of critical terms by civil law / 85
4.2.4 The ability-to-pay-taxes justification / 86
4.3 Conclusion of Chapter 4 / 86

CHAPTER 5
The provisions of the OECD IHTMTC and its Commentary that can be improved / 89

5.1 Double or multiple taxation / 89
5.1.1 Narrow scope and subsidiary taxing rights (Articles 1,4, 7 and 9A and 9B) / 90
5.1.2 Multiple taxation (Articles 1 and 4) / 92
5.1.3 The tiebreaker rule for individuals (Article 4(2)) / 95
5.1.4 Overlaps with the OECD ICTMTC (Article 2) / 97
5.1.5 Estate and inheritance taxes (Articles 2 and 9B) / 100
5.1.6 Inheritance/estate/gift taxes and income/capital gains taxes (Articles 2 and 9B) / 101
5.1.7 Lack of common valuation rules (Articles 9A and 9B) / 103
5.1.8 Conflicts of qualification (Articles 3 and 5-7) / 105
5.1.9 The special features of the law of the Contracting States (Article 1) / 107
5.1.10 Mutual agreement procedure (Article 11) / 109
5.2 Double or multiple non-taxation / 110
5.2.1 Overlaps with the OECD ICTMTC (Article 2) / 110
5.2.2 Conflicts of qualification (Articles 3 and 5-7) / 112
5.2.3 Termination of the tax treaty (Article 16) / 113
5.3 Discriminatory treatment of cross-border inheritances and donations / 115
5.3.1 Introduction / 115
5.3.2 The OECD IHTMTC's nationality non-discrimination provision / 116
5.4 Administrative difficulties / 117
5.4.1 Introduction / 117
5.4.2 The OECD IHTMTC's nationality non-discrimination provision (Article 10) / 118
5.5 Conclusion of Chapter 5 / 118

CHAPTER 6
The suggested improvements to the OECD IHTMTC / 121

6.1 Double or multiple taxation / 121
6.1.1 Narrow scope and subsidiary taxing rights (Articles 1,4, 7, 9A and 9B) / 121
6.1.1.1 Primary taxing rights / 121
6.1.1.2 Subsidiary taxing right provision / 122
6.1.1.2.1 Taxation based on nationality / 123
6.1.1.2.2 Taxation based on links with beneficiaries / 124
6.1.1.2.3 Extended domicile / 124
6.1.2 Multiple taxation (Articles 1 and 4) / 127
6.1.2.1 Introduction / 127
6.1.2.2 Enhancing the effectiveness of the model in multiple taxation situations / 128
6.1.2.2.1 Nationality as a subsidiary criterion (Article 4) / 128
6.1.2.2.2 Conclusion of a multilateral tax convention (Article 1) / 130
6.1.3 The tiebreaker rule for individuals (Article 4(2)) / 131
6.1.3.1 The two aspects of the OECD IHTMTC's tiebreaker rule that can be improved / 131
6.1.3.2 Proposed amendments / 133
6.1.3.2.1 Specific tiebreaker rule / 133
6.1.3.2.2 Specific tiebreaker rule and broadening of the scope the general tiebreaker rule / 135
6.1.3.2.3 Update of the general tiebreaker rule / 136
6.1.4 Overlaps with the OECD ICTMTC (Article 2) / 137
6.1.4.1 Introduction / 137
6.1.4.2 Article 2(1)-(3): transition from an exhaustive to an indicative list / 137
6.1.4.3 Article 2(4): addressing the parallel application of an income tax and an inheritance and gift tax treaty / 140
6.1.5 Estate and inheritance taxes (Articles 2 and 9B) / 142
6.1.6 Inheritance/estate/gift taxes and income/capital gains taxes (Articles 2 and 9B) / 143
6.1.6.1 Introduction / 143
6.1.6.2 Bridging the gap between inheritance/gift taxes and other types of death taxes and taxes on gifts / 144
6.1.6.2.1 Taxes covered (Article 2) and "in relation to the same event" (Article 9B) / 144
6.1.6.2.2 A "comprehensive treaty" and a "consolidated treaty" / 144
6.1.6.2.3 The income tax treaty practice / 145
6.1.7 Conflicts of qualification (Articles 3 and 5-7) / 146
6.1.7.1 Conflicts of qualification due to the interpretation of the treaty rules / 146
6.1.7.1.1 The defined terms – Article 3(1) of the OECD IHTMTC / 147

6.1.7.1.2 The insufficiently defined terms – the term "immovable property" / 148
6.1.7.1.3 The undefined terms – update of Article 3(2) of the OECD IHTMTC / 150
6.1.7.2 Conflicts of qualification due to differences in treaty application to the facts / 150
6.1.7.3 Conflicts of qualification due to differences in domestic law classifications / 151
6.1.8 Mutual agreement procedure (Article 11) / 152
6.1.8.1 The importance of the procedure / 152
6.1.8.2 Inclusion of arbitration clause / 153
6.2 Double or multiple non-taxation / 154
6.2.1 Overlaps with the OECD ICTMTC (Article 2) / 154
6.2.2 Conflicts of qualification (Articles 3 and 5-7) / 155
6.2.2.1 Conflicts of qualification due to the interpretation of the treaty rules / 155
6.2.2.2 Conflicts of qualification due to differences in treaty application to the facts / 155
6.2.2.3 Conflicts of qualification due to differences in domestic law classifications / 156
6.2.3 Termination of the tax treaty (Article 16) / 157
6.2.3.1 Double non-taxation before the lapse of the minimum application period / 158
6.2.3.2 Double non-taxation after the lapse of the minimum application period / 159
6.3 Discriminatory treatment of cross-border inheritances and donations / 160
6.3.1 Introduction / 160
6.3.2 Suggested improvements to the OECD IHTMTC's nationality non-discrimination provision / 160
6.4 Administrative difficulties / 161
6.5 Conclusion of chapter 6 / 162

CHAPTER 7
Separate solutions at the EU level / 165

7.1 Double or multiple taxation / 165
7.1.1 EU fundamental freedoms and juridical double taxation of inheritances / 166
7.1.2 The EC's recommendation 2011/856 regarding relief for double taxation of inheritances / 167
7.1.2.1 Introduction / 167
7.1.2.2 The innovative aspects of the recommendation / 170
7.1.2.2.1 Broad scope / 171
7.1.2.2.2 Double or multiple taxation / 171
7.1.2.3 The aspects of the recommendation that could be improved / 172
7.1.2.3.1 Unrelieved double or multiple taxation / 172
7.1.2.3.2 The tiebreaker rule / 173

7.1.2.3.3 The mutual agreement procedure / 174
7.1.3 Conversion of the EC's recommendation to an EU Directive / 174
7.1.4 A combination of a treaty-based and an EU law solution / 177
7.1.4.1 Multilateral convention for the avoidance of double taxation of estates, inheritances and donations (treaty-based solution) in the form of an EU Directive / 177
7.1.4.2 Extension of the scope of the Council Directive 2017/1852/EU (EU law solution) / 178
7.2 Double or multiple non-taxation / 179
7.3 Discriminatory treatment of cross-border inheritances and donations / 180
7.3.1 The "EU compliant inheritance and gift tax" / 180
7.3.2 The OECD IHTMTC and the EU fundamental freedoms / 181
7.3.3 Two important issues arising from the Court's case law / 182
7.3.3.1 The non-application of the Schumacker doctrine / 183
7.3.3.1.1 Subjective tax exemptions by the EU Member State of the objective nexus / 184
7.3.3.1.2 Subjective tax exemptions by the EU Member State of the personal nexus / 186
7.3.3.1.3 Proportionate subjective tax exemptions: a fair solution? / 186
7.3.3.1.4 Objective tax exemptions / 188
7.3.3.2 Neutralisation / 190
7.4 Administrative difficulties / 192
7.4.1 The Council Directive 2011/16/EU / 192
7.4.2 The Council Directive 2010/24/EU / 193
7.4.3 The Council Directive 2017/1852/EU / 193
7.5 Conclusion of chapter 7 / 194

PART III: A HOLISTIC SOLUTION TO THE PROBLEMS OF CROSS-BORDER DEATH AND GIFT TAXATION

CHAPTER 8
A holistic solution to the problems of cross-border death and gift taxation / 199

8.1 The three solutions of the EC's expert group / 199
8.2 Introduction to the "one inheritance – one inheritance tax" concept / 201
8.2.1 Introduction / 201
8.2.2 The objectives of the concept / 203
8.2.2.1 The three primary objectives / 203
8.2.2.2 The underlying objective / 204
8.2.3 A concept consistent with subsidiarity and proportionality / 205
8.2.3.1 The subsidiarity principle / 206
8.2.3.2 The proportionality principle / 206
8.2.3.2.1 A concept proportionate to the objectives to be achieved / 206

8.2.3.2.2 A concept proportionate to EU Member States' fiscal sovereignty and international tax law principles / 208
8.2.4 The legal form of the concept / 209
8.2.5 Taxes covered / 210
8.2.6 Application to a cross-border inheritance / 212
8.3 The two steps of application of the concept / 213
8.3.1 Step one: the deceased's habitual residence as a connecting tax criterion / 213
8.3.1.1 The assessment of the habitual residence at the deceased / 214
8.3.1.2 Interpreting habitual residence / 215
8.3.1.2.1 Habitual residence: an EU autonomous term / 215
8.3.1.2.2 Three interpretation approaches / 217
8.3.1.2.3 Habitual residence under the EU Succession Regulation / 218
8.3.1.2.4 Habitual residence under the concept / 219
8.3.2 Step two: single taxation / 222
8.3.2.1 Taxation by the EU Member State of the deceased's habitual residence / 223
8.3.2.2 Taxation by any other EU Member State / 223
8.4 Application of the concept to the problems of this study / 224
8.4.1 From "obstacles" to "problems" / 224
8.4.2 An EU Directive implementing the "one inheritance – one inheritance tax" concept / 226
8.4.3 Enforcement mechanisms against discrimination / 227
8.4.3.1 Survey on the domestic rules on death and taxes on gifts / 227
8.4.3.2 Creation of an inheritance and gift tax forum / 228
8.4.3.3 Infringement procedure / 228
8.4.3.4 Introduction of compulsory rules / 228
8.5 Conclusion of chapter 8 / 229

PART IV: SUMMARY AND CONCLUSIONS

CHAPTER 9
Summary and conclusions / 233

Appendix I: A new version of the OECD IHTMTC / 245

Appendix II: Proposal for Council Directive on a multilateral Convention for the avoidance of double or multiple taxation of cross-border inheritances and gifts / 259

Appendix III: Proposal for an amendment to the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union / 269

Appendix IV: Proposal for Council Directive implementing the "one inheritance – one inheritance tax" concept / 273

SAMENVATTING (SUMMARY IN DUTCH)

Table of reference materials / 291

Table of case law / 301

Index / 303

Curriculum Vitae / 309

LIST OF ABBREVIATIONS USED

AG	Advocate General
DAC	Directive of Administrative Cooperation
EC	European Commission
EEA	Agreement on the European Economic Area of 2 May 1992
EU	European Union
ECJ, CJ	European Court of Justice (before 1 December 2009) or Court of Justice of the European Union (per 1 December 2009)
ECOFIN	Economic and Financial Affairs Council configuration / The council of ministers
MLI	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting or Multilateral instrument
PE	Permanent establishment
OECD	Organisation for Economic Cooperation and Development
OECD IHTMTC	OECD Model Tax Convention for the avoidance of double taxation with respect to taxes on inheritances, estates and gifts
OECD ICTMTC	OECD Model Convention on Income and Capital
Para./paras.	Paragraph/paragraphs
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UK	United Kingdom
US	United States

PART I: INTRODUCTION TO DEATH AND GIFT TAXATION AND THE PROBLEMS OF CROSS-BORDER DEATH AND GIFT TAXATION