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

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Cover Page



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Propositions

Propositions relating to the dissertation “Taxation of cross-border inheritances and donations. Suggestions for improvement” by Vasileios Dafnomilis

1. The windfall justification should be regarded as the most convincing, complete and unique justification of death taxation as it explains why states consider it fair to tax incidental and unexpected receipts of wealth (“why to tax”) and at the same time to protect the family property when acquired by family members (“how to tax”). (chapter 2)
2. The ECJ case law on EU inheritance and gift taxation is a *sui generis* case law that has contributed the most to the so-called “negative harmonisation” of the EU Member States’ inheritance and gift tax systems. Although this case law builds on the concepts that the ECJ developed in its case law on personal income taxation, it correctly deviates from them in certain cases due to the different nature of inheritance and gift taxes from that of income taxes. This is, for instance, the case of the Schumacker doctrine whose application was rejected by the Court in inheritance and gift tax cases while it continues to apply to income taxes (albeit with certain exemptions). (chapter 3)
3. It can hardly be denied that an updated and watertight OECD IHTMTC would serve as a useful tool in dealing with some or most of the aspects of the selected problems of cross-border death and gift taxation. To this end, the update work requires a benchmark. Although the OECD IHTMTC does not have a concrete benchmark, if one reads between the lines of OECD IHTMTC and its Commentary, it could be argued that certain principles of death and gift tax laws can be identified. (chapter 4)
4. The non-application of the OECD IHTMTC to property valuation rules does not seem to contradict the objective of the model. Although this can give rise to double taxation of the cross-border inheritance and donation at hand, the application of different valuation rules by the Contracting States is a mere disparity between their tax systems that can only be addressed through harmonising legislation or coordination. (chapter 5)
5. The “one inheritance – one inheritance tax” concept suggested in the 2015 inheritance tax report of the EC’s expert group seems to be proportionate to the objectives to be achieved as it harmonises only those elements of EU Member States’ inheritance tax laws, which can give rise to tensions in cross-border situations i.e. the parallel application of different personal nexus rules in combination with situs taxation. (chapter 8)
6. Although some nowadays argue that death taxation should be abolished as being unfair, it still has an important function especially taking into account justifications such as the windfall and tax equality justifications.

7. Although inheritance tax issues feature among the top 20 problems faced by citizens and businesses when active across borders, it is a paradox that states and international organisations pay little attention to the problems of crossborder inheritances and donations.
8. According to the ECJ, in relation to direct taxes, the situation of residents and of non-residents is not, as a rule, comparable in the host EU Member State. This does not seem to be applicable in the case of inheritance taxes (that are also direct taxes): in *Welte* (C-181/12), the ECJ ruled that residents and non-resident beneficiaries are always comparable in the EU Member State of the objective nexus.
9. There should be no doubt about the definition of terms used by death and gift tax laws – either by a clear reference to concepts in civil law (family law, matrimonial property law and the law of succession) or by a *sui generis* definition within tax law.
10. International tax law students should not only focus on personal and corporate income taxes, but also on other types of taxes, including death and gift taxes.
11. The best way to explain the subject of a doctoral studies research in international tax law is to take a paper and a pencil and start drawing.
12. Scholars assume that the ancient Greeks borrowed their inheritance tax from the Egyptians. Nowadays, some chauvinistic Greeks would not agree with this proposition.