THE TAXATION OF CROSS-BORDER PROFIT TRANSFERS AND ITS COMPATIBILITY WITH EUROPEAN LAW, WITH PARTICULAR REFERENCE TO SPAIN

Gloria Fernández Arribas
Montserrat Hermosín Álvarez

Synopsis: Inheritance and gift tax exists in most EU Member States, without in itself forming an obstacle to the exercise of fundamental freedoms. However, in Spain, inheritance tax legislation has been created as a result of the transfer of fiscal power to the Autonomous Communities. This has led to different tax regimes being applied to residents, goods or successors located within those Communities. This fact has caused the EU Court of Justice to ask whether the regime is discriminatory, and whether it affects EU citizens exercising their freedoms. The Court finds that applying Spanish State tax laws to residents, goods or successors in other EU countries, and failing to apply tax advantages available within Spain’s Autonomous Communities, constitutes the non-fulfillment of stipulations established in article 63 TFEU, of which one stipulation is the free movement of capital.

Key Terms: Free movement, inheritance and gift tax, discrimination, Autonomous Communities, residents, infringement procedure.

1 This study is part of Project SUCTRUE (Cross-border Inheritance in the European Union: Legal Issues and the Fiscal Regime), financed by Andalusia regional government’s Ministry of Economy, Innovation, Science and Employment (P11-SEJ-7089).

2 Montserrat Hermosín Álvarez, Associated Professor in Financial and Tax Law at University Pablo de Olavide.

3 Gloria Fernández Arribas, Associated Professor in International Public Law at University Pablo de Olavide.