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Press and Information

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Judgment of the Court of Justice in Joined Cases C-155/08 and C-157/08

X and E.H.A. Passenheim-van Schoot v Staatssecretaris van Financiën

AN EXTENDED RECOVERY PERIOD WHERE TAXABLE ASSETS WHICH HAVE BEEN CONCEALED FROM THE TAX AUTHORITIES ARE HELD IN ANOTHER MEMBER STATE IS IN ACCORDANCE WITH COMMUNITY LAW

In so far as the tax authorities have no evidence of the existence of such assets, an extended recovery period does not go beyond what is necessary to guarantee the effectiveness of fiscal supervision and to prevent tax evasion

In October 2000 the Special Taxation Inspectorate (Belgium) spontaneously forwarded to the Netherlands tax authorities information on financial accounts held in the names of Netherlands residents at Kredietbank Luxembourg (KB-Lux), a bank established in Luxembourg. In 2002, after examination of that information, X, who had been the holder of such an account since 1993, received an additional assessment containing adjustments in regard to wealth tax and income tax for the tax years from 1993 to 2001. A fine amounting to 50% of the additional amounts sought was also imposed on him (C-155/08).

After her husband died, Mrs Passenheim-van Schoot made a full disclosure in January 2003, on her own initiative, to the Netherlands tax authorities of balances held by herself and her late husband at a bank established in Germany. Until that time those balances had never been included in their tax declarations. At Mrs Passenheim-van Schoot's request, the Inspector granted her the benefit of the 'repentance' scheme and imposed no fine. However, he sent her additional assessments concerning the tax years from 1993 to 1997 (C-157/08).

X and Mrs Passenheim-van Schoot challenged the tax authorities' decisions. In their view, the extended recovery period laid down in the Netherlands legislation for taxable items held abroad was contrary to Community law. In that context, the Hoge Raad der Nederlanden (Supreme Court of the Netherlands), before which both cases had come on final appeal, asked the Court of Justice, in particular, whether Community law precludes the Netherlands legislation under which, in cases where savings balances and/or income therefrom are concealed from the tax authorities, the recovery period is 5 years if the savings balances are held in the Netherlands but is extended to 12 years if they are held in another Member State.

In today's judgment, the Court observes, first, that such legislation constitutes a restriction both of the freedom to provide services and of the free movement of capital, which is prohibited, in principle, by the EC Treaty.

The Court points out, however, in that regard that it has already held that the need to guarantee the effectiveness of fiscal supervision and the prevention of tax evasion constitute overriding requirements of general interest capable of justifying such a restriction. Although the extension of a recovery period does not, as such, strengthen the powers of investigation available to the tax authorities, it none the less enables them, in the event of discovery of taxable items held in another Member State of which they had no knowledge, to initiate an investigation and, where it emerges that those items have not been subject to tax, or that too little tax has been levied, to issue an additional assessment.

The Court holds that it must therefore be accepted that **the legislation at issue contributes to the effectiveness of fiscal supervision and to the prevention of tax evasion.**

The Court then assesses whether such legislation goes beyond what is necessary to attain those objectives.

It distinguishes two situations in that regard.

The first situation is where items which are taxable in one Member State and located in another Member State have been concealed from the tax authorities of the first Member State and the latter do not have any evidence of the existence of those items which would enable an investigation to be initiated. In that situation, the first Member State is unable to request the competent authorities of the other Member State to communicate to it the information necessary to establish correctly the amount of tax due.

In those circumstances, making taxable items which have been concealed from the tax authorities subject to an extended recovery period of 12 years does not go beyond what is necessary to guarantee the effectiveness of fiscal supervision and to prevent tax evasion.

Nor does Community law preclude, in this situation, the fine imposed for concealment of the foreign assets and income from being calculated as a proportion of the amount to be recovered and over that longer period.

The second situation is where the tax authorities of a Member State have evidence concerning taxable items located in another Member State which enables an investigation to be initiated. In that situation, the application by the first Member State of an extended recovery period which is not specifically intended to permit the tax authorities of that Member State to have effective recourse to mechanisms of mutual assistance between Member States and which commences once the taxable items concerned are located in another Member State cannot be justified.

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Languages available: ES CS DE EL EN FR IT HU NL SK

The full text of the judgment may be found on the Court's internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-155/08>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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