



Judgment of the Court in Case C-275/25 | [Kolwager] ¹

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The Court clarifies the conditions for determining the domicile for tax purposes of officials and other servants of the European Union

A, a member of staff of the European Investment Bank (EIB), left Austria in 1995 to settle in Luxembourg, in order to take up his duties there. After his marriage in 2010, he moved to Germany, while continuing to use his flat in Luxembourg. In 2013, A's brother, who resided in Austria, gifted him a sum of money.

The German tax authority imposed tax on that gift. It found that A had established an additional domicile for tax purposes in Germany, in parallel to his domicile for tax purposes in Austria, and that that domicile in Austria was thus fictitious. A challenged that decision before the German courts, relying on the Protocol on the privileges and immunities of the European Union, ² according to which officials and other servants of the European Union are to maintain, subject to certain conditions, their domicile for tax purposes in their Member State of origin, namely Austria in the present case.

The German Federal Fiscal Court asked the Court of Justice if the rule relating to the domicile for tax purposes provided for by the Protocol applies also to gift tax. ³ If that were to be the case, the national court also wished to know whether a member of staff of the European Union who settled in a Member State in order to perform his or her duties, and subsequently transferred his or her residence, for personal reasons, to another Member State, maintains his or her domicile for tax purposes in his or her State of origin.

In its judgment, the Court of Justice holds that the rule set out in the Protocol, according to which the officials and other servants of the European Union are to maintain their domicile for tax purposes in their State of origin, applies to gift tax.

It states that the concepts of 'income tax', 'wealth tax' and 'death duties', expressly referred to in the Protocol, constitute autonomous concepts of EU law. Even though gift tax is not expressly referred to in the Protocol, that tax shares essential features with death duties and income tax, in so far as it is imposed on the gratuitous transfer of assets or the enrichment resulting from such a gratuitous transfer of assets.

The Court points out also that excluding gift tax from the scope of the Protocol would lead to officials and other servants of the European Union who have left their State of origin having two domiciles for tax purposes: one in their State of origin, in the application of the taxes and duties expressly referred to in the Protocol, and the other in the Member State where they are actually resident, in the application of gift tax. Such an interpretation would run counter to the objective pursued by the Protocol, which is to allow the tax situation of officials and other servants of the European Union to be determined in a simple and predictable manner in order to promote the attractiveness of the EU institutions.

Furthermore, such an interpretation would also run counter to the objective of neutrality of the privileges and immunities provided for by the Protocol, which presupposes the maintenance of the domicile for tax purposes in the State of origin as well as of that State's taxing power. In addition, the existence of two domiciles for tax purposes in different Member States, one in respect of death duties and the other in respect of gift tax, would risk allowing the circumvention of the death duties of the State of origin by means of a gift subject to the State of residence's more advantageous rules.

As regards the second question of the German court, the Court of Justice finds that an official or other servant of the European Union who settled in another Member State in order to perform his or her duties, and subsequently transferred his or her residence, for personal reasons, to a third Member State, **maintains his or her domicile for tax purposes in**

the State of origin, in accordance with the provisions of the Protocol. Domicile for tax purposes is independent of the place of residence of the person concerned. Furthermore, the Court recalls that the Staff Regulations of Officials of the European Union and the Staff Regulations of the EIB require officials and other servants to reside at or near their place of employment.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice of the European Union about the interpretation of EU law or the validity of an EU act.

The General Court has jurisdiction to deal with requests for a preliminary ruling coming exclusively within the following areas (1) the common system of value added tax (VAT), (2) excise duties, (3) the Customs Code, (4) the tariff classification of goods under the Combined Nomenclature, (5) compensation and assistance to passengers in the event of denied boarding or delay or cancellation of transport services, or (6) the system for greenhouse gas emission allowance trading. The Court of Justice has jurisdiction to deal with all other requests for a preliminary ruling.

Neither the Court of Justice nor the General Court decides the national dispute itself. It is for the national court or tribunal to resolve the case in accordance with the ruling by the Court of Justice or by the General Court, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice. The presentation of the facts and the legal context refers to the relevant period and is based on the case files.

The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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¹ The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

² [Protocol \(No 7\) on the privileges and immunities of the European Union](#).

³ More specifically, the first sentence of the first paragraph of Article 13 of the Protocol.