

FRI-2B.313-1-L-10

LEGAL TREATMENT OF INHERITANCE TAX¹¹⁶

Assist. Prof. Vanya Panteleeva, PhD

Faculty of Law

Department of Public Law,

University of Ruse "Angel Kanchev"

Tel.: +359 887 412 662

E-mail: vpanteleeva@uni-ruse.bg

***Abstract:** The paper reviews the legal treatment of inheritance tax according to the Bulgarian tax law and inheritance tax in other European Union member states. The main focus is on the similarities and differences between the inheritance tax treatment and the way of taxation in Bulgaria and in some EU member states. According to the Bulgarian tax law the inheritance tax is a constitutionally established legal fact (art. 17, par.1 of the Constitution of Republic of Bulgaria.). It is a local and direct tax and according to Art. 29, par. 1 from the Local Taxes and Fees Act, inheritance tax is levied on the estate of any Bulgarian citizen succeeding located within Bulgaria or abroad property, as well as on the estate located within Bulgaria succeeded by foreign citizens. In most EU member states the inheritance tax and donation tax are direct taxes and are collected from property that is transferred to another person's property. The both taxes are considered separately except some countries where there is one general tax.*

***Keywords:** legal treatment, inheritance tax, way of taxation, EU, similarities, differences*

***JEL Codes:** K340, K330*

INTRODUCTION

The inheritance tax has been known since ancient times and is defined as property tax. Since the beginning of civilization, property taxes have been a major source of revenue for most governments, and thus they are considered to be some of the oldest tax forms. They were used in Egypt, Babylon, Persia and China and in all ancient world. Most people were poor and lived in huts. Property taxation has been focused mainly on land and its production value (Carlson, R., 2004). For centuries, property taxes were basic taxes, but with the arising of income taxation and its development, they began to play a minor role.

Property taxes are characterized by the fact that they are the main form of income of local government bodies.

In Bulgaria, the revenues from property taxes goes to the municipal budgets, as their size is being determined by Ordinance of the Municipal Council under the conditions, in the order and within the limits of the law (Panteleeva, V., 2016)

EXPOSITION

According to the Bulgarian civil law doctrine, the inheritance is explained as an aggregation of property rights and liabilities of the ancestor. The inheritance as a concept of civil law is indivisible from the inheritance legal relation. The inheritance includes all assets and liabilities of the ancestor. (Tasev, H., 2004).

In tax law doctrine, the inheritance has a different content as in civil law. According to Art. 30, par. 1 from Local Taxes and Fees Act, the decedent's estate shall incorporate the movable and immovable things owned by the ancestor and the rights to any such things, as well as the ancestor's other property rights, receivables and liabilities at the time of the opening of the succession, save as otherwise provided by statute. Hence, as an object of taxation, the inheritance is with a narrower content than in civil law. The provision of Art. 30, unequivocally links the property to the inheritance legal relation. The tax is collected only for those properties which are descendable.

¹¹⁶ Presented a plenary report of October 26, 2018 with the original title: LEGAL TREATMENT OF INHERITANCE TAX.

The succession in Bulgaria is a constitutionally established and guaranteed legal fact (according to Art. 17, par.1 of the Constitution of Republic of Bulgaria.). With the opening of the of the succession, it passes into the patrimony of other persons- heirs and legatees. It is about movement of property. The increasing of economy power of heirs and legatees with the received property necessitate a regulation. This happens through inheritance tax (Kuchev, S., Kuchev, Y., 1997).

The inheritance tax is regulated by Local Taxes and Fees Act (Promulgated, State Gazette No. 117/10.12.1997, effective 1.01.1998, last amended and supplemented SG No. 1/3.01.2019, effective 1.01.2019). It is a local (goes to the municipal budgets) and direct tax.

According to Art. 29, par. 1 from the Local Taxes and Fees Act (LTFA), inheritance tax is levied on the estate of any Bulgarian citizen succeeding located within Bulgaria or abroad property, as well as on the estate located within Bulgaria succeeded by foreign citizens.

Analyzing the provision of Art. 29 from LTFA, we can find out the content of the inheritance tax and its elements.

First, we can define the object of taxation with inheritance tax. The tax is collected from Bulgarian citizen for inherited estate within Bulgaria or abroad as well as from foreign citizen for inherited estate located within Bulgaria. The LTFA makes an exception for stateless person, as they owe an inheritance tax for an estate of a Bulgarian citizen, if the said person have been permanently resident within the territory of Bulgaria. As mentioned above, the inheritance tax is collected for estate (movable and immovable things and the rights to any such things, as well as other property rights, receivables and liabilities) which passes in succession according to legal act or testament. The object of taxation is not the decedent's estate itself, but the value of this state.

Object of taxation is not the whole decedent's estate. According to Art. 38 from LTFA exempted from inheritance tax are:

- the estate of those who fell for the Republic of Bulgaria or in the line of duty, or who died in industrial accidents or natural disasters;
- the estate settled on the State and the municipalities;
- the estate settled on the Bulgarian Red Cross, the lawfully registered religious denominations in Bulgaria, the community centres (chitalishte) and other legal persons which are not merchants, with the exception of the non-profit organizations designated for pursuit of private-benefit activities;
- any ordinary household furnishings;
- any small farm implements;
- libraries and musical instruments;
- any works of art whereof the author is the ancestor, any of the heirs or a lineal relative thereof up to any degree of consanguinity, or a collateral relative up to the fourth degree of consanguinity;
- the ancestor's pensions payable;
- the estates of Bulgarian citizens located abroad, in respect of which inheritance tax has been paid in the respective State.

Exemption from tax for any ordinary household furnishings, any small farm implements and libraries and musical instruments applies only to lineal heirs, spouses, and siblings.

In the exposition is mentioned that object of taxation is the value of decedent's estate (movable and immovable and the rights to any such things, as well as other property rights, receivables and liabilities). In Art.33 from LTFA is explained the method of calculating the value of decedent's estate. Any decedent's estate, with the exception of such exempt from tax, is identified and valued in lev terms at the date of the opening of the succession, as follows:

- the corporeal immovables within the territory of the country: at the assessed value arrived at according to Annex 2 in LTFA;
- the foreign currency and precious metals: at the central exchange rate of the Bulgarian

National Bank;

- the securities: at fair market value or, where the fair market value cannot be established without considerable cost or difficulty, at face value;
- the transport vehicles: at the insured value;
- any other movable things and rights: at fair market value;
- the enterprises or participating interests in commercial corporations or cooperatives: at fair market value or, where determination of the said value requires considerable expense or causes difficulties, according to accounting data;
- the corporeal immovables within the territory of another Member State of the European Union or of another State which is a Contracting Party to the Agreement on the European Economic Area or of any other third country: at a tax value stated in a document issued for taxation purposes by a competent authority of the respective State, accompanied by an accurate translation into Bulgarian language performed by a sworn translator.

The assets of the taxable estate as determined according to the procedure established by Article 33 herein shall be debited with the following items:

- the liabilities of the ancestor at the time of opening of the succession, established in terms of legal grounds and amount, unless property exempt from inheritance tax is acquired against such liabilities; any payables to creditors, whereof the claims to the ancestors are extinguished by prescription and are unrealized within the six-month time limit for submitting a declaration, shall not be set off;
- the rights and receivables transferred by the heirs in favour of the State or the municipalities according to the procedure established by the law within the six month time limit for submitting a declaration;
- the funeral expenses up to the amount of BGN 1,000;
- any reliefs provided for by the law.

Second, we are focusing on the taxable persons according to the Local Taxes and Fees Act. Art. 31, par.1 says that: "Liability for inheritance tax shall apply to the legal or testamentary heirs as well as to the legatees". Par.2 (in force from 01.01.2005) exclude from the circle of taxable persons surviving spouse and lineal heirs without restraint.

Within six months after the opening of a succession, any taxable person- including surviving spouse and lineal heirs without restraint or the legal representative thereof are obligated to submit a declaration to the municipality exercising competence over the last fixed abode of the ancestor or, should the ancestor have been domiciled abroad, to the municipality exercising competence over the situs of the larger part of the estate of the ancestor within Bulgaria. For any heir or legatee other than a spouse, descendant, parent, or sibling, the six-month time limit for submission of the declaration shall begin to run from the day of learning that the succession has opened. Any declaration submitted in due course by one heir shall benefit the other heirs as well.

The heirs can make a renouncement of succession by a claim to a Regional court within the region where the place of opening of the succession. In this case, it is considered that the heir has never been entitled to the inheritance. Rejecting all the benefits of the inheritance, the heir is also released from all the duties that heighs on it. The renounced of succession heir is not obliged to pay the obligations of the deceased, nor does he owe an inheritance tax (Kuchev, S., Kuchev, Y., 1997).

The taxable estate is divided into portions, and each heir is allocated a portion according to the procedure established by the Succession Act.

Third, we are going to discuss the rate of the inheritance tax. It is determined by Ordinance of the Municipal Council separately in respect of each heir or legatee, as follows:

- applicable to siblings and the children of siblings: from 0.4 to 0.8 per cent per portion in excess of BGN 250,000;
- applicable to any persons other than such referred to in Item 1: from 3.3 to 6.6 per cent per portion in excess of BGN 250,000.

The tax is assessed and is communicated to each heir or legatee according to the procedure

established by the Tax and Social-Insurance Procedure Code.

For non-declaring of succession from heirs the legislator has provided an administrative-peanal liability. According to Art. 124, par.1 from LTFA, “.Any heir or legatee or a legal representative thereof, who fails to submit a declaration under Article 32 herein in due time, or who fails to declare or shall misdeclare any property acquired by succession, shall be liable to a fine of BGN 10 or exceeding this amount but not exceeding BGN 500.”

In most EU member states the inheritance tax and donation tax are direct taxes and are collected from property that is transferred to another person's property. The both taxes are considered separately except some countries where there is one general tax- Italy, France, Germany, Spain and Sweden.

The differences in the legal regulation of inheritance tax and donation tax in the EU member states are refer to the content of some of their elements such as subjects, tax base, tax rate, etc. As subjects of taxation may be constituted both natural persons and legal persons. The legislations of the EU member states separate the heirs in different groups and depending the group the rate of the tax is different (Cenova, L., 2012).

In the tax base is included the value of the decedent's estate (movable and immovable) which is acquired as a result of the transfer of title to the heir or the person who receives the donation from the ancestor or donor. The tax is levied either on the entire value of the property or the part of any person who receives the property.

According to the tax rates- progressive taxation is preferred. Tax rates are differentiated according to the degree of relation between the parties.

In some EU member states the revenues from the inheritance tax and donation tax goes to the state budget (France, Italy, Spain and Great Britain), others like Germany, goes to the budget of the province.

The inheritance tax and the donation tax are under the the jurisdiction of the EU member states and are not relevant to the EU tax system. Therefore, questions relating to the determination of an inheritance tax are not subject to Community law. The identification and collection of taxes is always considered a special manifestation of the sovereignty of each country. That is why the European legislator's intervention in this matter is very careful.

In Bulgarian Local Taxes and Fees Act lacks specific texts stemming from EU membership. An exception is paragraph 4 of Art. 38 according to which the exemption from inheritance tax applies where the estate is settled on identical or similar persons established in another Member State of the European Union or in a State which is a Contracting Party to the Agreement on the European Economic Area. In such case, exemption shall be contingent upon the presentation by the person of an official document, attesting the status or capacity thereof, which is issued or certified by the competent authority of the relevant State, as well as the legalized translation of the said document into the Bulgarian language.

CONCLUSION

Although our inheritance law is relatively liberal, we must not forget that, as an EU member state, we can take advantage of all the benefits provided by European law.

REFERENCES

Isenbaert, M. (2010). *EC Law and the Sovereignty of the Member States in Direct Taxation*, Doctoral Series, Vol.19, Amsterdam: IBFD, 2010, p. 904

Penov, S. (2011). *Pravoto na Evropeiskia sajuz I prekite danaci*. Sofia: Izdatelstvo Sibi (*Оригинално заглавие: Пенев, С., 2011. Правото на Европейския съюз и преките данъци. София: Издателство „СибИ“.*)

Stoyanov, P. (1994). Danachno pravo. Sofia: Izdatelstvo na Balgarskata academia na naukite (**Оригинално заглавие:** Стоянов, П., 1994. Данъчно право. Трето допълнено и преработено издание София: Издателство на Българската академия на науките.)

Cenova, L. (2012). Evropeisko danachno pravo. Sofia: Izdatelstvo Feneya (**Оригинално заглавие:** Ценова, Л., 2012. Европейско данъчно право. София: Издателство „Фенея“.)

Preporaka na Komisiyata ot 15.12.2011 otnosno oblekcheniata pri dvoynoto danachno oblagane na nasledstvata (2011). OB 2011 L 336, p. 81. URL: <https://eur-lex.europa.eu/legal-content/BG/TXT/PDF/?uri=OJ:L:2011:336:FULL&from=EN>

Настоящият доклад е публикуван с финансовата подкрепа на проект BG05M2OP001-2.009-0011-C01 „Подкрепа за развитието на човешките ресурси в областта на научните изследвания и иновации в Русенски университет "Ангел Кънчев"