

Master's thesis within EC tax law

Title Transfer of European Companies
Author Jesper Svensson
Supervisor Björn Westberg
Tutor Anna Bärebring
Date 08/04/2004
Subject terms EC Tax Law, international tax law, company tax law, Societas Europaea, exit taxation, taxation obstacles

Abstract

On October 8, 2004 a new form of incorporation is introduced in the EU: *Societas Europaea*, abbreviated SE. The idea behind these companies is to create a uniform limited-liability company for the whole Union, to facilitate for cross-border economic activity. The Council Regulation which constitutes the framework for the SEs – the SE Statute – does, however, contain a number of provisions that refer to national legislation, which means that an SE registered in one Member State will not be identical with one registered in another Member State.

In order to achieve the goal of an efficient internal market, the European Commission has pointed out a number of tax obstacles that need to be removed. It regards issues such as dividend taxation, taxation of cross-border business re-organisations etc. The original aim was to introduce a common tax regime for the SEs, but that could not be achieved. The preamble of the SE Statute states that as regards taxation of SEs, that is a matter of national legislation. Thus, SEs registered in Sweden will be subject to Swedish corporate tax.

One of the features of the SE Statute is that SEs are allowed to transfer their registered office from one Member State to another. This phenomenon is unknown to Swedish law, and such a transfer will therefore be considered as if the company would cease to exist, which triggers a final taxation of all of the company's assets. This so-called "exit taxation" is analysed in this thesis, the question being if it is acceptable under the EC Treaty provisions on freedom of establishment (article 43 EC).

Article 43 explicitly prohibits restrictions to freedom of establishment for nationals of one Member State in another Member State. The European Court of Justice has established that those provisions also apply for nationals wanting to leave their country. In a number of cases, the Court has held that EC law on principle does not accept national measures that are liable to render less attractive the exercise of those Treaty freedoms. Such measures can be justified if they comply with certain criteria. Given the explicit transfer provisions of the SE Statute, however, it appears unlikely that the Court will consider the Swedish exit taxation justifiable.