

Kluwer International Tax Blog

The Contents of Highlights & Insights on European Taxation

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Highlights & Insights on European Taxation

Please find below a selection of articles published this month (March 2025) in [Highlights & Insights on European Taxation](#), plus one freely accessible article.

Highlights & Insights on European Taxation (H&I) is a publication by Wolters Kluwer Nederland BV.

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(comments by **Edwin Thomas**) (H&I 2025/63)

The non application of Regulation 883/2004 (paragraph 31)

The CJ first ruled that a tax advantage which reduces, under certain conditions, the amount of

income tax, that allowance does not constitute a family benefit within the meaning of Article 1(z) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems ('Regulation No 883/2004'). Therefore, Article 67 of Regulation 883/2004 is not applicable (paragraph 31).

Practically, this means that the conditions on which certain expenses are deductible from the income tax in an EU Member State (or a Member State of the European Economic Agreement, because Regulation 883/2004 is also applicable in Norway, Iceland and Liechtenstein) belongs fully to the competence of EU Member States. That aforementioned deduction, therefore, is not governed by EU law.

Article 18 TFEU is also not applicable (paragraph 32)

The CJ ruled that – in general – parents/tax subjects with children who have not exercised their right to free movement are not comparable to parents/tax subjects with children who have actually exercised their right to free movement (paragraph 32).

The right of Union citizenship (Articles 20 and 21 TFEU)

The CJ ruled that this right comprises the following rules:

- a national of a Member State who has exercised, in his or her capacity as a Union citizen, his or her freedom to move and reside within a Member State other than his or her Member State of origin, may rely on the rights pertaining to Union citizenship, in particular the rights provided for in [Article 21\(1\) TFEU](#), including, where appropriate, against his or her Member State of origin (paragraph 37);
- national legislation which places certain nationals at a disadvantage simply because they have exercised their freedom to move and to reside in another Member State constitutes a restriction on the freedoms conferred by [Article 21\(1\) TFEU](#) on every citizen of the Union (paragraph 38);
- The opportunities offered by the TFEU in relation to freedom of movement for citizens of the Union cannot be fully effective if a national of a Member State could be dissuaded from availing of them by obstacles resulting from his or her stay in another Member State because of legislation of his or her State of origin which penalises the mere fact that he or she has availed of those opportunities, which is particularly important in the field of education (paragraphs 39 and 40);
- As a main rule, EU law offers no guarantee to a citizen of the Union that the exercise of his freedom of movement will be neutral as regards taxation. This given the disparities in the tax legislation of the Member States. This rule also applies to a situation where the person concerned has not himself or herself made use of the right of movement, but claims to be the victim of less favourable treatment following the exercise of a family member's freedom of movement (paragraph 43);

- Unfavourable tax consequences for a taxable parent with a dependent child who has exercised his or her freedom of movement constitute a restriction on freedom of movement within the meaning of [Article 21 TFEU](#), where they result from the exercise of that freedom by that child. The fact that those unfavourable consequences have thus materialised, not for the child who has exercised his or her right to free movement but for that parent, whether or not that parent has exercised that right, is thus irrelevant for the purpose of establishing the existence of a restriction on freedom of movement under [Article 21](#) the effects of that restriction may be relied on, not only by the Union citizen who has exercised his or her freedom of movement but also by the Union citizen on whom that first citizen is dependent and who, therefore, is directly disadvantaged by the effects of that restriction (paragraph 49 and 50).

The extension of the scope of the free citizenship

In this procedure, the scope of the free citizenship is extended from the situation where the tax subject and/or his or her spouse is confronted with the negative effects of free movement within the EU to a situation where a tax subject is confronted with negative effects of free movement of Union citizens who are dependent on that tax subject. In this case, the negative effects of free movement of children on the tax position of their parents constitute an infringement of the right to free movement based on the free citizenship. Future proceedings will tell whether also the free movement of other persons than children can lead to an infringement of the right to free movement based on the free citizenship.

The remaining questions after this ruling

The right to free citizenship, as meant in [Articles 20](#) and [21](#) of the TFEU, is restricted to nationals of the EU Member States. Citizens of, for example, the European Economic Area (EEA, comprising of Norway, Iceland and Liechtenstein), Switzerland, United Kingdom and other third country citizens are not entitled to the form of free citizenship as meant in [Articles 20](#) and [21](#) TFEU. The nuance here is that the EEA countries are part of the Schengen zone.

The essence of this ruling is that free cross border movement into another EU country by an EU citizen (the right to free citizenship), who is dependent on his or her parents (hereinafter: the ‘dependent person’) can be attributed to his or her parents, when this cross-border movement of this child leads to negative fiscal consequences for his or her parents.

In my opinion, the following questions are still not answered:

- Can the right to free citizenship be invoked when the dependent person has migrated into an EU Member State, but the parents (EU citizens) live in a non-EU Member State?
- Can the right to free citizenship be invoked when the dependent person has migrated into an EU Member State, but the parents (non-EU citizens) live in an EU Member State?
- Can the right to free citizenship be invoked when the dependent person has migrated into an EU

Member State, but the parents/EU citizens reside in one of the areas named in [annex II](#) of the TFEU like, for example, Aruba?

- Can the right to free citizenship be invoked when the dependent person has migrated into an EU Member State, but the parents/EU citizens reside in one of the EEA Member States (Norway, Iceland and Liechtenstein) and/or Switzerland and/or United Kingdom and or another third country?

In short: A very interesting ruling, the scope of which will hopefully become known in the near future.

Edwin Thomas

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