



Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

22 November 2018*

(Reference for a preliminary ruling — Free movement of capital — Restrictions — Tax legislation — Inheritance tax — Sustainably managed woodland — Exemption — Protection of wooded areas)

In Case C-679/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Hof van beroep te Antwerpen (Court of Appeal, Antwerp, Belgium), made by decision of 21 November 2017, received at the Court on 4 December 2017, in the proceedings

Vlaams Gewest, represented by the Vlaamse regering in the person of the Vlaamse Minister van Begroting, Financiën en Energie,

Vlaams Gewest, represented by the Vlaamse regering in the person of the Vlaamse Minister van Omgeving, Natuur en Landbouw,

v

Johannes Huijbrechts,

THE COURT (First Chamber),

composed of R. Silva de Lapuerta, Vice-President, acting as President of the First Chamber, J.-C. Bonichot (Rapporteur), A. Arabadjiev, C.G. Fernlund and S. Rodin, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Mr Huijbrechts, by A. Visschers and P. Heeren, advocaten,
- the Belgian Government, by P. Cottin, J.-C. Halleux and C. Pochet, acting as Agents, and G. Van Calster, advocaat,
- the European Commission, by A. Armenia and W. Roels, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

* Language of the case: Dutch.

gives the following

Judgment

- 1 This reference for a preliminary ruling concerns the interpretation of Article 63 TFEU.
- 2 The reference has been made in proceedings between Vlaams Gewest (Flemish Region, Belgium), represented by the Vlaamse regering (Flemish Government, Belgium) in the person of the Vlaamse Minister van Begroting, Financiën en Energie (Flemish Minister for the Budget, Finance and Energy, Belgium) and in the person of the Vlaamse Minister van Omgeving, Natuur en Landbouw (Flemish Minister for the Environment, Nature and Agriculture, Belgium), and Mr Johannes Huijbrechts concerning the exemption from inheritance tax he seeks for woodland in the Netherlands.

Legal context

- 3 Article 15 of the Vlaams wetboek der successierechten (Flemish Code of Inheritance Tax, ‘the Code of Inheritance Tax’) provides that inheritance tax is to be determined on the basis of the taxable value of all the deceased’s property, wherever situated, after deducting the debts.
- 4 Article 55 *quater* of the Code of Inheritance Tax, now Article 2.7.6.0.3 of the Vlaamse Codex Fiscaliteit (Flemish Code of Taxation), provides that real property regarded as ‘woodland’ within the meaning of the Belgian legislation is to be exempt from inheritance tax if it the subject of a sustainable management plan in accordance with the criteria laid down by the Flemish legislation and approved by the Flemish forestry authorities.
- 5 Article 13 *bis* of the Bosdecreet (Decree on woodland) of 13 June 1990, in the version applicable to the facts of the main proceedings, provides:

‘Inheritance tax which would have been due on the amount exempted under Article 2.7.6.0.3 of the Flemish Code of Taxation is deemed to be granted as a subsidy. The subsidy is deemed to be granted over 30 years at the rate of 1/30 per year, counting from the opening of the succession which is the subject of the exemption.

The subsidy is deemed to be granted on the following conditions, which must be satisfied during the period of 30 years mentioned in the first paragraph:

- (1) the property must continue to maintain its woodland character in accordance with Article 3 of this decree;
- (2) the property must continue to satisfy the conditions laid down in the second indent of Article 2.7.6.0.3 of the Flemish Code of Taxation;
- (3) the management actually carried on must be in accordance with the approved management plan.

In the event of non-compliance with those conditions, the landowner or person entitled to the usufruct of the woodland is required to repay the subsidy for the remaining part of the period for which it is deemed to be granted. ...’

- 6 The second paragraph of Article 41 of the Decree on woodland provides that the Flemish Government is to establish ‘criteria for sustainable management of woodland’ and to determine, in accordance with Article 7 of the decree, the ‘woodland governed by those criteria’.

The dispute in the main proceedings and the questions referred for a preliminary ruling

- 7 By her will of 24 May 2012 Mrs Oyen, who resided in Belgium, designated Mr Huijbrechts, resident in the Netherlands, as specific legatee of the parcel of land ‘Klein Zundertse Heide’ in Klein Zundert (Netherlands). That estate, of approximately 156 hectares, includes a woodland area subject to the Netherlands legislation on the protection of natural sites and to sustainable management requirements in accordance with the plan established for that purpose by the Netherlands authorities.
- 8 On the death of Mrs Oyen on 1 April 2013, Mr Huijbrechts accepted the legacy, and it is common ground that the succession was subject to Belgian law.
- 9 Mr Huijbrechts applied to the Belgian authorities for exemption from inheritance tax on the property in question under Article 55 *quater* of the Code of Inheritance Tax, which exempts from inheritance tax ‘woodland’ subject to a sustainable management plan approved by the Flemish forestry authorities.
- 10 That application was rejected on the ground that the property was situated in a Member State other than the Kingdom of Belgium.
- 11 Mr Huijbrechts brought an action before the Rechtbank van eerste aanleg van Antwerpen (Court of First Instance, Antwerp, Belgium) against the decision to reject his application, arguing that Article 55 *quater* of the Code of Inheritance Tax was inconsistent with the free movement of capital, in that it does not apply to sustainably managed woodland situated in the territory of a Member State other than the Kingdom of Belgium.
- 12 The court allowed the action, finding, first, that the estate in question had been the subject of a sustainable management plan that corresponded to that required by Belgian law for the exemption laid down in Article 55 *quater* of the Code of Inheritance Tax and, second, that Mr Huijbrechts had produced an attestation equivalent to that also required by that provision. The court considered that the different tax treatment of woodland situated in the territory of Member States other than the Kingdom of Belgium constituted a restriction of the free movement of capital, and that the restriction could not be justified, since the assistance of the Netherlands authorities could be sought for monitoring compliance with the sustainable management criteria.
- 13 The Belgian authorities appealed against that court’s judgment to the Hof van beroep te Antwerpen (Court of Appeal, Antwerp, Belgium), which decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
 - ‘(1) Does a situation in which [a person] inherits a woodland area located abroad, which is managed in a sustainable manner, and which is not exempt from inheritance tax under Article 55 *quater* of the [Code of Inheritance Tax], whereas [a person] who inherits a woodland area within the country which is managed in a sustainable manner is exempt from inheritance tax under Article 55 *quater* of the [Code of Inheritance Tax], constitute an infringement of the free movement of capital as laid down in Article 63 TFEU?
 - (2) Do the interests of the Flemish woodland area within the meaning of Article 55 *quater* of the [Code of Inheritance Tax] constitute an overriding reason in the public interest which justifies rules under which the application of an exemption from inheritance tax is limited to woodland areas in Flanders which are sustainably managed?’

Consideration of the questions referred

- 14 By its questions, which should be considered together, the referring court essentially asks whether Article 63 TFEU must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which grants a tax advantage for inherited woodland on condition that it is the subject of sustainable management as defined by national law, but restricts that advantage to woodland situated in the territory of that Member State.
- 15 Under Article 63(1) TFEU, all restrictions on the movement of capital between Member States and between Member States and third countries are prohibited.
- 16 According to settled case-law, the tax treatment of successions falls within the TFEU provisions on the movement of capital, except in cases where their constituent elements are confined within a single Member State (judgments of 17 January 2008, *Jäger*, C-256/06, EU:C:2008:20, paragraph 25, and of 27 January 2009, *Persche*, C-318/07, EU:C:2009:33, paragraph 27).
- 17 In the present case, the documents before the Court show that the legacy at issue in the main proceedings was bequeathed by a person resident in Belgium to a taxpayer resident in the Netherlands and relates to an estate consisting of woodland situated in Netherlands territory.
- 18 That situation is therefore within the scope of Article 63(1) TFEU.
- 19 With reference to inheritance tax, it follows from settled case-law that the fact that the grant of tax advantages is made subject to the condition that the property inherited is situated in national territory constitutes a restriction of the free movement of capital prohibited in principle by Article 63(1) TFEU (judgments of 17 January 2008, *Jäger*, C-256/06, EU:C:2008:20, paragraph 35, and of 18 December 2014, *Q*, C-133/13, EU:C:2014:2460, paragraph 20).
- 20 Moreover, it should be recalled that, under Article 65(1)(a) TFEU, ‘the provisions of Article 63 shall be without prejudice to the right of Member States ... to apply the relevant provisions of their tax law which distinguish between taxpayers who are not in the same situation ... with regard to the place where their capital is invested’. However, Article 65(3) TFEU provides that the national provisions referred to in Article 65(1) are not to constitute ‘a means of arbitrary discrimination or a disguised restriction on the free movement of capital and payments as defined in Article 63 [TFEU]’.
- 21 A distinction must therefore be drawn between unequal treatment permitted under Article 65(1)(a) TFEU and arbitrary discrimination prohibited under Article 65(3) TFEU. According to the case-law, in order for national tax legislation such as that at issue in the main proceedings which, for the purposes of calculating inheritance tax, distinguishes between assets situated in another Member State and those situated in the territory of a region of the Kingdom of Belgium to be compatible with the provisions of the Treaty on the free movement of capital, the difference in treatment must concern situations which are not objectively comparable or be justified by overriding reasons in the public interest (judgment of 17 January 2008, *Jäger*, C-256/06, EU:C:2008:20, paragraph 42) and must not go beyond what is necessary to achieve the objective pursued by the measure at issue (judgments of 14 September 2006, *Centro di Musicologia Walter Stauffer*, C-386/04, EU:C:2006:568, paragraph 32; of 17 January 2008, *Jäger*, C-256/06, EU:C:2008:20, paragraph 41; and of 27 January 2009, *Persche*, C-318/07, EU:C:2009:33, paragraph 41).
- 22 To assess whether the different treatment concerns situations which are not objectively comparable, account must be taken of the object and content of the national provisions at issue in the main proceedings (judgment of 18 December 2014, *Q*, C-133/13, EU:C:2014:2460, paragraph 22 and the case-law cited).

- 23 In the present case, it follows expressly from the wording of Article 55 *quater* of the Code of Inheritance Tax, now Article 2.7.6.0.3 of the Flemish Code of Taxation, and from the order for reference that the tax exemption in that provision pursues an environmental objective, namely the sustainable management of forest and woodland in the territory of the Flemish Region of the Kingdom of Belgium.
- 24 In addition, according to the Belgian Government, the object of the exemption is to avoid the fragmentation of woodland that might result from sales for the purpose of paying inheritance tax.
- 25 Such an environmental objective consisting in the sustainable management of forest and woodland cannot, as a matter of principle, be limited solely to the territory of a region of a Member State or to the national territory of a Member State, since a woodland area may form only a single block or complex even if it extends to the territory of several Member States and, from a legal and administrative point of view, falls within their jurisdiction.
- 26 Effective protection and sustainable management of forest and woodland are typically a cross-border environmental issue entailing common responsibilities for the Member States (see, by analogy, judgments of 12 July 2007, *Commission v Austria*, C-507/04, EU:C:2007:427, paragraph 87, and of 26 January 2012, *Commission v Poland*, C-192/11, not published, EU:C:2012:44, paragraph 23).
- 27 To distinguish between adjoining parts of a single wood or forest according to whether they are located in the territory of the Flemish Region of the Kingdom of Belgium or in that of the Kingdom of the Netherlands is artificial and does not correspond to any objective difference.
- 28 Consequently, a taxpayer who inherits forest or woodland in the territory of a Member State bordering on the Flemish Region of the Kingdom of Belgium, which he can show to be the subject of sustainable management corresponding to requirements such as those laid down by Article 55 *quater* of the Code of Inheritance Tax, now Article 2.7.6.0.3 of the Flemish Code of Taxation, is, from the point of view of the tax exemption at issue in the main proceedings, in a comparable situation to a taxpayer who inherits forest or woodland which is the subject of a sustainable management plan in accordance with that provision and is situated in the territory of that region (see, by analogy, judgments of 14 September 2006, *Centro di Musicologia Walter Stauffer*, C-386/04, EU:C:2006:568, paragraph 40, and of 27 January 2009, *Persche*, C-318/07, EU:C:2009:33, paragraphs 48 to 50).
- 29 It follows that the different tax treatment thus found creates a restriction of the movement of capital within the meaning of Article 63(1) TFEU.
- 30 Such a restriction may nonetheless be accepted if it is justified by an overriding reason in the public interest and complies with the principle of proportionality, in that it must be appropriate for securing the attainment of the objective it pursues and must not go beyond what is necessary to attain it (judgment of 27 January 2009, *Persche*, C-318/07, EU:C:2009:33, paragraph 52).
- 31 The Belgian Government submits that the restriction of the exemption to woodland in the Flemish Region is justified by considerations of the protection of the environment, in particular the need for sustainable management of woodland and nature in the Flemish Region of the Kingdom of Belgium, where wooded areas are in great demand especially because of population density, industrialisation and the presence of good arable land.
- 32 It should also be recalled that protection of the environment is one of the essential objectives of the European Union (judgment of 11 December 2008, *Commission v Austria*, C-524/07, not published, EU:C:2008:717, paragraph 58 and the case-law cited).

- 33 In the present case, the grant and maintenance of the tax exemption provided for in Article 55 *quater* of the Code of Inheritance Tax, now Article 2.7.6.0.3 of the Flemish Code of Taxation, are indeed subject to compliance with environmental requirements for a period of 30 years.
- 34 However, in so far as enjoyment of the tax exemption is also conditional on the forest or woodland inherited being in the territory of the Flemish Region of the Kingdom of Belgium, the exemption is not an appropriate measure for attaining the objectives it pursues, since sustainable management of a wooded area situated on the adjoining territories of two Member States, such as that at issue in the main proceedings, is a cross-border environmental issue that cannot be confined to the territory of one of those Member States alone or a part of it.
- 35 The Belgian Government further submits that the restriction of the exemption to woodland in the Flemish Region is justified by the difficulty of ascertaining whether, in Member States other than the Kingdom of Belgium, woodland in fact complies with the requirements laid down in the national legislation for the grant and maintenance of the exemption, and by the impossibility of ensuring that actual compliance with those requirements is monitored for 30 years, as required by that legislation.
- 36 It is true that the need to guarantee the effectiveness of fiscal supervision constitutes an overriding reason in the public interest capable of justifying a restriction of the exercise of the freedoms of movement guaranteed by the Treaty. However, such a restriction must comply with the principle of proportionality, in that it must be appropriate for ensuring the attainment of the objective pursued and must not go beyond what is necessary for attaining it (judgment of 27 January 2009, *Persche*, C-318/07, EU:C:2009:33, paragraph 52).
- 37 In this respect, it is settled case-law that the existence of practical difficulties in determining whether the conditions for obtaining a tax advantage are satisfied cannot justify the categorical refusal to grant them. The competent tax authorities of a Member State can request the taxpayer concerned to provide the relevant documentation to enable them to verify compliance with the requirements concerning the sustainable management of woodland in the territory of another Member State, in order to assess whether the conditions for the application of the tax exemption in question are satisfied (see inter alia, by analogy, judgments of 14 September 2006, *Centro di Musicologia Walter Stauffer*, C-386/04, EU:C:2006:568, paragraph 48; of 25 October 2007, *Geurts and Vogten*, C-464/05, EU:C:2007:631, paragraph 28; of 17 January 2008, *Jäger*, C-256/06, EU:C:2008:20, paragraphs 54 and 55; and of 27 January 2009, *Persche*, C-318/07, EU:C:2009:33, paragraphs 53 to 55).
- 38 Thus national legislation such as that at issue in the main proceedings which categorically prevents the taxpayer from providing proof that inherited woodland is subject to a sustainable management plan, drawn up in accordance with the legislation of the Member State in which it is located and corresponding to identical requirements to those laid down in Article 55 *quater* of the Code of Inheritance Tax, cannot be justified on the ground of the effectiveness of fiscal supervision (see, to that effect, judgments of 10 March 2005, *Laboratoires Fournier*, C-39/04, EU:C:2005:161, paragraph 25; of 14 September 2006, *Centro di Musicologia Walter Stauffer*, C-386/04, EU:C:2006:568, paragraph 48; and of 27 January 2009, *Persche*, C-318/07, EU:C:2009:33, paragraph 60).
- 39 As to the impossibility alleged by the Belgian Government of verifying compliance in a Member State other than the Kingdom of Belgium with such a plan for 30 years, as required by the legislation at issue in the main proceedings for woodland in the territory of the Flemish Region, it follows from the foregoing, however, that that argument cannot validly be put forward in the abstract and presumes that the tax authorities of the Member State of taxation show that it is really not possible for them to obtain, during that period, the necessary information from the competent authorities of the Member State in which the woodland is located.

- 40 In the event that the Member State in which the woodland is situated grants a tax advantage of the same kind as that at issue in the main proceedings, subject to equivalent conditions, in particular a management plan comparable to that laid down by the Belgian legislation, it cannot be excluded from the outset that the Member State of taxation may, in the framework of the mutual assistance established by EU law, be able to receive the information needed to verify that the conditions for granting and maintaining the tax advantage provided for in that legislation are satisfied (see *inter alia*, to that effect, judgment of 27 January 2009, *Persche*, C-318/07, EU:C:2009:33, paragraph 68).
- 41 In any case, there is nothing to prevent the tax authorities concerned from refusing the exemption at issue in the main proceedings if the evidence they consider necessary for a correct determination of tax is not provided (see *inter alia*, to that effect, judgment of 27 January 2009, *Persche*, C-318/07, EU:C:2009:33, paragraph 69 and the case-law cited).
- 42 As to the question raised by the Belgian Government in its written observations of whether that analysis applies also to woodland situated in the territory of a third country, it must be stated that not only is an answer to that question unnecessary for resolving the main proceedings, it is also legitimate, in any event, for a Member State to refuse to grant a tax advantage if, in particular because that non-member country is not under any international obligation to provide information, it proves impossible to obtain the necessary information from that country (judgments of 18 December 2007, *A*, C-101/05, EU:C:2007:804, paragraph 63, and of 27 January 2009, *Persche*, C-318/07, EU:C:2009:33, paragraph 70).
- 43 In the light of the above, the answer to the questions referred is that Article 63 TFEU must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which grants a tax advantage for inherited woodland on condition that it is the subject of sustainable management as defined by national law, but restricts that advantage to woodland situated in the territory of that Member State.

Costs

- 44 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

Article 63 TFEU must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which grants a tax advantage for inherited woodland on condition that it is the subject of sustainable management as defined by national law, but restricts that advantage to woodland situated in the territory of that Member State.

[Signatures]