

ECJ Decision on Spanish obligation to provide tax information: (Model 720): Commission v Spain- C-788/19

The European Court of Justice has handed down its decision in case C-788/19 Commission v Spain, concerning a taxpayer's obligation to provide tax information, holding that the elements of the Spanish legislation requiring Spanish tax residents to declare overseas assets or rights are contrary to EU law in that the legislation's restrictions on the free movement of capital are disproportionate.

The case was referred to the ECJ by the European Commission, which had commenced infringement proceedings against Spain in February 2017 after receiving a large number of complaints by taxpayers in relation to the legislation.

The ECJ held that the legislation went beyond what is necessary to achieve its objectives to guarantee the effectiveness of fiscal supervision and to prevent tax evasion and avoidance in three respects:

- 1) That failure to comply or partial or late compliance with the legislation resulted in taxation of the undeclared income corresponding to the value of those assets as 'unjustified capital gains', with no possibility, in practice, of benefiting from limitation.
- 2) That failure to comply or partial or late compliance with the legislation resulted in a fine of 150% of the tax calculated on amounts corresponding to the value of those assets or those rights held overseas, applied concurrently with the flatrate fines.
- 3) That failure to comply or partial or late compliance with the legislation resulted in flat-rate uncapped fines which were disproportionate to the penalties imposed in respect of similar infringements in a purely national context.

The Court held that those aspects of the legislation were disproportionate in light of its objectives, and that the fines imposed were of a highly punitive nature, constituting a disproportionate interference with the free movement of capital. Spain was ordered to pay the Commission's costs in bringing the application, and must now amend its legislation in line with the ECJ decision.

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