

ROADMAP	
TITLE OF THE INITIATIVE	<b>Initiative on cross border inheritance taxes</b>
TYPE OF INITIATIVE	X CWP      • Non-CWP      • Implementing act/Delegated act
LEAD DG – RESPONSIBLE UNIT	TAXUD/D.2
EXPECTED DATE OF ADOPTION	Month/Year: June 2011
VERSION OF ROADMAP	No: 1      Last modification: October 2010

This indicative roadmap is provided for information purposes only and is subject to change.  
It does not preclude the final decision of the Commission on whether this initiative will be pursued  
or on its final content and structure.

A. Context, problem definition
<p>(i) What is the political context of the initiative?</p> <p>(ii) How does it relate to past and possible future initiatives, and to other EU policies?</p> <p>(iii) What ex-post analysis of the existing policy has been carried out and what results are relevant for this initiative?</p>
<p>i) Within the Internal Market, EU citizens should be able to move and operate freely across borders. EU Member States' inheritance tax rules as applied in cross-border situations may be increasingly hindering EU citizens from being able to exercise fully these freedoms. The problems concern the discriminatory application of Member States' inheritance tax rules in cross-border situations and the risk that currently exists of unrelieved double or even multiple taxation of a single inheritance by several Member States, which could lead to an excessively high rate of overall taxation.</p> <p>ii) In a Communication of 2006 on "Coordinating Member States' direct tax systems in the Internal Market"<sup>1</sup>, the European Commission suggested that appropriate co-ordination and co-operation between Member States can enable them to attain their tax policy goals and protect their tax bases, while ensuring elimination of discrimination and double taxation and reducing compliance costs. The Commission said that it is considering initiatives in several areas, including inheritance tax, in this context.</p> <p>The Commission on 14 October 2009 presented a legislative proposal for a Regulation dealing with cross-border successions and wills<sup>2</sup>. Whether adopted or not, this Regulation will not reduce the number of situations where citizens taking advantage of the Internal Market are exposed to double taxation or to discriminatory rules on inheritances.</p> <p>In addition, the Commission has been considering the problems that Member States' inheritance tax regimes could create for SMEs since 1994<sup>3</sup>. In several Communications it has pointed to the important role played by Member States' inheritance tax rules in the transfer of business and has called upon Member States to establish transfer-friendly tax systems.</p> <p>iii) There is no existing EU-wide legislation in the area of inheritance taxation. The Court of Justice of the European Union (CJ) was never asked to examine the inheritance tax rules of EU Member States before 2003 but since then the CJ has ruled in six out of eight cases examined that national inheritance tax rules of the Member States in question breached EU rules. The CJ found this to be the case because the laws in question provided for less favourable rules where either the assets or the beneficiaries were located outside the Member States under examination. It appears from this recent increase in court cases, from the complaints and enquiries that the Commission receives, that cross-border inheritance tax issues are becoming a matter of increasing concern to EU citizens. This conclusion could also be supported by the replies to the public consultation on actual cases of double taxation and the contributions that the Commission has so far received to the ongoing inheritance tax public consultation.</p> <p>In addition, inheritance taxation was one of the two main subjects discussed in early September 2010 at a high-level international conference, the 64<sup>th</sup> Annual Congress of International Fiscal Association (IFA). The General Report on this subject concluded that further coordination would be required at EU level. The possible solutions discussed at the conference could be also useful for the present impact assessment work.</p>

<sup>1</sup> COM(2006) 823 of 19 December 2006

<sup>2</sup> Proposal for a Regulation of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession, COM(2009)154 fin. of 14 October 2009.

<sup>3</sup> Most recently, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: "Implementing the Lisbon Community Programme for Growth and Jobs. Transfer of Business – Continuity through a new beginning" COM (2006) 117 of 14.03.2006.

What are the main problems which this initiative will address?
<p>The problems are the potential <b>discriminatory application</b> by EU Member States of their inheritance tax rules in cross-border situations and the potential for <b>unrelieved double or even multiple taxation</b> of a single inheritance by one or more Member States. These problems can deter individuals from exercising their right to move freely within the Internal Market to live or take up work or retire. They may also negatively affect the transfer of businesses on the death of owners.</p> <p>The majority of EU Member States have specific inheritance taxes and those which do not have specific taxes may tax inheritances in another way. In addition, the significant differences in the civil and tax law legislation of the Member States in the field of inheritance can mean double, or even multiple, taxation by several Member States in the case of cross-border inheritances. Even though the CJ concluded that Member States are under no obligation to eliminate the double taxation of inheritances that may arise due to the interaction of two Member States tax systems, international double taxation is a major obstacle to cross-border activity and investment within the EU. As inheritance tax rates tend to be high, the application of inheritance taxation by two or more Member States can potentially lead to an inordinately high total tax bill. Furthermore, there is no comprehensive solution to this problem, because EU Member States generally have inadequate domestic mechanisms to relieve cross-border double taxation and there are few bilateral conventions between Member States in this area. There are, in fact, only 38 bilateral or multilateral double inheritance tax treaties between EU Member States out of a possible total of 351. Furthermore, the currently existing bilateral mechanisms do not necessarily include a binding option to eliminate double taxation and may not deal with inheritances which involve taxation rights for more than two countries (e.g. assets located in one country, testator lived in another prior to death and beneficiary lives in a third country). In addition, tax treaties can quickly become out of date, as tax laws change in the contracting Member States.</p> <p>As more EU citizens move around the Internal Market to find work, marry or retire, it is likely that any cross-border inheritance tax problems that exist will increase. In this context statistical data collected by the European Commission show that there is more cross border ownership of property<sup>4</sup> and more international marriages in recent years than ever before. The steadily increasing tendency in migration and cross-border ownership of assets within the EU was also highlighted in the external study on cross-border inheritance tax obstacles in the EU (see E below).</p>
Who will be affected by it?
All EU citizens, businesses and other entities subject to inheritance taxes are potentially affected. SME organisations <sup>5</sup> have pointed to the particularly damaging effects of inheritance taxes, and double inheritance taxes, on small businesses. Factually, citizens and businesses in cross-border relations would be affected.
<p>(i) Is EU action justified on grounds of subsidiarity?</p> <p>(ii) Why can Member States not achieve the objectives of the proposed action sufficiently by themselves? (Necessity Test)</p> <p>(iii) Can the EU achieve the objectives better? (Test of EU Value Added)</p>
<p>i) Yes. At very least, it is appropriate for the Commission, as guardian of the proper application of the EU Treaties, to examine CJ case law in the area of inheritance taxation and to draw principles from the decisions adopted that would provide greater legal certainty for the benefit of taxpayers, tax authorities and national courts within the EU. In addition, it is appropriate for the Commission, which has responsibility for ensuring the smooth functioning of the Internal Market and promoting the general interest of the Union, to investigate the impact of the lack of mechanisms to prevent double taxation of inheritances and propose action if warranted.</p> <p>ii) and iii) An EU-wide examination of the potential and actual discrimination and double taxation problems in the area of the taxation of inheritances appears necessary in view of the growing number of CJ cases in this area, the complaints and replies received to the above mentioned public consultations, and also in view of the inadequacy of Member States' national and bilateral solutions to double inheritance taxation problems. Nevertheless, it may well be the case that the result of the Commission's analysis of all possible options might demonstrate that it would be sufficient for Member States to take unilateral action to eliminate discrimination and double taxation.</p>
<b>B. Objectives of the initiative</b>
What are the main policy objectives?
In order to ensure that citizens would be not be subject either to discriminatory application of EU Member States'

<sup>4</sup> Study in comparative law on the rules governing conflicts of jurisdiction and laws on matrimonial property regimes and the implementation for property issues of the separation of unmarried couples in the Member States, 30 April 2003

<sup>5</sup> See, for example, position paper for Conference "transfer of Ownership in Private Business – European Experiences", 25-26 March, 2010: [http://www.ownershiptransfer2010.org/wp-content/uploads/2010/03/transferofoownership\\_newsletter4\\_en.pdf](http://www.ownershiptransfer2010.org/wp-content/uploads/2010/03/transferofoownership_newsletter4_en.pdf)

inheritance tax rules, nor to unrelieved double taxation in cross-border situations, the Commission initiative could aim at
<ul style="list-style-type: none"> <li>• drawing principles from the recent CJ decisions concerning discriminatory aspects of EU Member States' inheritance tax rules and, on that basis, inviting all EU Member States to bring their inheritance tax rules (and related rules such as the tax rules applicable to gifts, donations, estate duties, transfer taxes etc.) into line with these principles;</li> <li>• analysing and drawing attention to the extent of cross-border double taxation of inheritances and the problems that can ensue for EU citizens exercising their right to move freely within the Internal Market and presenting realistic and practical options for solutions to Member States.</li> </ul>
Do the objectives imply developing EU policy in new areas?
No. The Commission has already, in its Communication of 2006 on "Coordinating Member States' direct tax systems in the Internal Market" set out general EU tax policy coordination objectives and referred to the possibility of an initiative on inheritance tax.

C. Options
<p>(i) What are the policy options being considered?</p> <p>(ii) What legislative or 'soft law' instruments could be considered?</p> <p>(iii) How do the options respect the proportionality principle?</p>
<p>i) and ii) The policy options to be examined in the impact assessment could include:</p> <p><b>Do nothing</b> - the continuation of the current situation of no guidance to Member States and no mechanism to relieve double taxation.</p> <p><b>Guidance on interpretation of CJ case law on abolishing of discriminatory features of the legislation of Member States</b> that apply inheritance taxes. A second option would be to go no further than providing guidance (i.e. "soft law") to EU Member States on the interpretation of CJ case law in the field of inheritances and its impact on the laws of the different EU Member States that apply inheritance taxes and drawing up a set of principles that should govern the design of inheritance tax systems. <b>Guidance on abolishing discrimination as set out above in B and recommending solution(s) to the problem of double taxation of inheritances</b> A third option could be to address both problems of discrimination and problems of double taxation. The Commission could provide the evidence of, and outline the problems caused by, discriminatory features of Member States' inheritance tax systems and by double taxation. On that basis it could provide guidance on the principles flowing from the case-law on inheritance taxes. It could also examine the mismatches between different national rules that cause double taxation in order to see how they could be made to interact coherently with each other.</p> <p><b>Guidance on abolishing discrimination as set out above in B combined with a binding EU solutions to eliminate double taxation on inheritances</b> A fourth "soft plus hard law" option would be to present the guidelines suggested above concerning the design of Member States' inheritance tax systems in a non-discriminatory way and combine this with the adoption of an EU-wide binding instrument to eliminate double taxation. The precise type would have to be discussed in the Impact Assessment.</p> <p><b>Solution to eliminate the problem of double taxation of inheritances via a "soft law" option outlined in C or by a legislative instrument as set out in D</b> A fifth option could be to only address double taxation problems and leave the discriminatory issues to be solved by infringement actions.</p> <p>iii) Providing guidelines to Member States on the implications of those cases and assisting Member States in bringing their systems into line with those principles is surely preferable from Member States' point of view to Commission legal action against incompatibility. As regards the options to address the shortcomings of existing mechanisms to resolve double inheritance tax problems, the proportionality of each option in terms of the objectives will be further assessed in the impact assessment report, so that the Commission initiative will not go beyond what is necessary.</p>

D. Initial assessment of impacts
What are the benefits and costs of each of the policy options?
The initiative in all cases except in the case of the "do nothing" option should contribute, in varying degrees, to improving the proper functioning of the Internal Market for both citizens and businesses, including SMEs. Guidance on the relevant case law should also assist the functioning of tax administrations. The possible budgetary impacts on Member States of introducing a mechanism or improving existing mechanisms to eliminate double taxation will be considered in the framework of the impact assessment work.

<p>Could any or all of the options have significant impacts on (i) simplification, (ii) administrative burden and (iii) on relations with other countries, (iv) implementation arrangements? And (v) could any be difficult to transpose for certain Member States?</p>
<p>i) and ii) The guidelines on the basis of CJ decisions proposed should clarify the obligations imposed by EU law. In this sense it should enhance simplification for taxpayers and for Member States' tax administrations. The amendment of Member States' legislation in order to bring them into line with EU law could involve a burden on tax administrations. The purpose of the guidelines would be to help them in this process and minimise the burden. The introduction of mechanisms to relieve double taxation would involve an administrative burden. The impact would be different depending on which option is adopted. However, there could be corresponding benefits from increased movement of citizens and companies.</p> <p>iii) The impact on relations with third countries would have to be assessed from the perspective of the application of the free movement of capital principle.</p> <p>iv) Not relevant</p> <p>v) Not possible to say at this time. Depends on solution decided.</p>
<p>(i) Will an IA be carried out for this initiative and/or possible follow-up initiatives? (ii) When will the IA work start? (iii) When will you set up the IA Steering Group and how often will it meet? (iv) What DGs will be invited?</p>
<p>i-iv) Yes, the IA work has already started. The IA Steering Group was set up in April 2010 and has met so far two times. The Group is continuously being kept continuously updated and consulted. DGs who are participating: JLS, ECFIN, MARKT, LS, SEC GEN, ENTR. EMPL was invited and is being kept in the loop.</p>
<p>(i) Is any of options likely to have impacts on the EU budget above €5m?</p> <p>(ii) If so, will this IA serve also as an ex-ante evaluation, as required by the Financial regulation? If not, provide information about the timing of the ex-ante evaluation.</p>
<p>Not relevant.</p>

#### E. Evidence base, planning of further work and consultation

<p>(i) What information and data are already available? Will existing impact assessment and evaluation work be used?</p> <p>(ii) What further information needs to be gathered, how will this be done (<i>e.g. internally or by an external contractor</i>), and by when?</p> <p>(iii) What is the timing for the procurement process &amp; the contract for any external contracts that you are planning (e.g. for analytical studies, information gathering, etc.)?</p> <p>(iv) Is any particular communication or information activity foreseen? If so, what, and by when?</p>
<p>i) The Commission services already have information on the inheritance tax rules in Member States derived from several different sources, such as the database of the International Bureau of Fiscal Documentation (IBFD), the Taxes in Europe Database (<a href="http://ec.europa.eu/taxation_customs/taxation/gen_info/info_docs/tax_inventory/index_en.htm">http://ec.europa.eu/taxation_customs/taxation/gen_info/info_docs/tax_inventory/index_en.htm</a>) and others.</p> <p>ii) and iii) In December 2009 (under the Framework Contract No TAXUD/2008/CC/09) an external study was launched on inheritance taxes in EU Member States and possible mechanisms to resolve problems of double inheritance taxation in the EU. The final version received in August 2010 was published as a reference document to the ongoing inheritance tax public consultation. <a href="http://ec.europa.eu/taxation_customs/common/consultations/tax/2010_06_inheritance_en.htm">http://ec.europa.eu/taxation_customs/common/consultations/tax/2010_06_inheritance_en.htm</a></p> <p>iv) Yes. Issue of a press release, mail to Member States and stakeholders, publication on websites and in newsletters, on:</p> <ol style="list-style-type: none"> <li>(1) launch, in April 2010, of public consultation on real double taxation problems in the Internal Market</li> <li>(2) launch, in June 2010, of public consultation on options for solutions to inheritance tax problems</li> <li>(3) finalisation of study in August 2010</li> <li>(4) adoption of proposed initiative, accompanied by the Impact Assessment Report, in 2011.</li> </ol> <p>Articles for interested journals, for publication under the name of the Commissioner/DG/Director/HOU, may also be prepared around any or all of above dates.</p>
<p>Which stakeholders &amp; experts have been or will be consulted, how, and at what stage?</p>
<p>A public consultation on actual cases of double taxation, including double taxation of inheritances, run until the end of June 2010. Its outcome is being currently analyzed.</p>

A public consultation on problems related to cross-border inheritance tax within the EU, and possible solutions to these problems, was launched in June 2010. At the request of several stakeholders, the deadline has been extended to 22 October 2010. See at [http://ec.europa.eu/taxation\\_customs/common/consultations/tax/2010\\_06\\_inheritance\\_en.htm](http://ec.europa.eu/taxation_customs/common/consultations/tax/2010_06_inheritance_en.htm).

In September 2010, in the margins of the above mentioned IFA Congress, the taxation services of the Commission held an expert meeting with practitioners and academics on the relevant issues and possible solutions.

At least one other meeting with practitioners and academics could be foreseen.

The issue could be also discussed with Member States' representatives at an upcoming meeting of the relevant working party.