



30.1.2015

NOTICE TO MEMBERS

Subject: Petition 0393/2013 by F.T. (British), bearing 750 signatures on new Spanish legislation which mandates the reporting of assets and rights held abroad

Petition 0478/2013 by Patrick Le Cam (French), on Spanish tax legislation

Petition 0566/2013 by Anthony Valcke (Belgian), on behalf of EU Rights Clinic and Abusos Urbanísticos NO, on new Spanish legislation which mandates the reporting of assets and rights held abroad

1. Summary of petition 0393/2013

The petitioner questions whether Law 7/2012 and Royal Decree 1558/2012, recently adopted in Spain, are in line with EU Treaties and legislation. These regulations establish new reporting obligations for assets and rights held outside of Spain, aiming to prevent and fight tax fraud but which impact very heavily on the very large expatriate community which is very ill-equipped to comply with the excessively strict reporting measures. The petitioner expresses concern that the reporting format established is flawed. Firstly, the petitioner states that it violates the principle of non-discrimination as it does not recognise different kinds of 'wealth'. Secondly, the petitioner worries that the financial service companies in charge of receiving the information returns may not be able to properly protect the data from internet fraudsters. In addition, the petitioner denounces that penalties for minor errors are disproportionate. More broadly, the petitioner also denounces that this new legislation violates the rights to privacy and to free movement of persons and capital. The petitioner underlines that efforts to prevent and identify fiscal abuses are necessary and welcome, but argues that, in order to do so, Spain should build on the EU Savings Directive and other international tools for the exchange of information. Lastly, the petitioner notes the urgency of this situation as the asset reporting deadline is 30 April 2013.

Summary of petition 0478/2013

The petitioner, a French national residing in Spain, is protesting against Spanish Law 7/2012 of 29 October 2012, which, adopted as part of a set of fiscal measures, requires people to declare any assets they hold abroad and to pay a special tax. He complains that this legislation introduces unlawful double taxation and is also hampering the mobility of citizens within the European Union.

Summary of petition 0566/2013

The petitioner questions three new legislative instruments adopted in Spain which require all residents to declare assets worth in excess of €50,000. According to the petitioner and the association it represents, these new rules discriminate against non-Spanish EU citizens residing in Spain and also unjustifiably restrict the free movement of capital in the internal market. In addition, the petitioner alerts that the reporting obligations are far too extensive and intrusive, as well as difficult to comply with, and that penalties for incorrect or incomplete information are therefore disproportionate. The petitioner further points out that efforts to prevent and identify fiscal abuses are better served through other measures.

2. Admissibility

Petition 0393/2013 declared admissible on 11 November 2013.

Petition 0478/2013 declared admissible on 15 November 2013.

Petition 0566/2013 declared admissible on 19 November 2013.

Information requested from Commission under Rule 216(6).

3. Commission reply, received on 31 January 2014

The Commission has received a large number of complaints concerning the obligation, imposed by the Spanish authorities on persons liable for tax in Spain, to declare overseas assets of more than EUR 50 000, in an effort to fight tax evasion.

Similar to the petitions addressed to the European Parliament, the complaints questioned the compatibility of the Spanish measures with EU law. In particular, as regards the administrative difficulties faced by those submitting the foreign-assets' declarations and the size of the fines in case of delay, which vary from those relating to domestic investments. Certain data protection concerns were also raised.

It should be noted that the Commission's concerns do not relate only to other EU nationals residing in Spain, but also to any Spanish resident who invests in another EU Member State.

As further information is required from the Spanish authorities before the Commission can reach a final position, the Commission has contacted Spain on the matter in the framework of the EU Pilot project. Spain has provided extensive information, which is currently being analysed by the Commission. Further clarification of some of the issues will probably be needed before a definitive conclusion on the compatibility of the rules can be reached.

Conclusion

Further to other complaints received on the matter, the Commission is currently analysing the EU law compatibility of the manner in which the obligation to declare overseas assets has been imposed on Spanish tax residents. If it is concluded that the rules (or some of them) are incompatible with EU Law, the Commission will request Spain to modify the regulation (or some aspects of it). In so far as the Commission is taking action as a result of the complaints received, no separate investigation will be undertaken stemming from the petitions in subject.

4. Commission reply (REV), received on 29 August 2014

The Commission previously informed about its pending analysis and the contacts it undertook with the Spanish authorities to clarify some aspects of the Spanish regulations imposing an obligation on persons liable for tax in Spain to declare certain overseas assets. The Commission anticipated that further contacts were most likely still to be made before a definitive conclusion on the compatibility of the rules could be reached.

In the meantime, the Commission has requested Spain to provide further clarification on some of the issues and the Spanish authorities responded with a second extended reply. Subsequently, a meeting was held between the services of the Commission and representatives from Spanish Ministry of Finance, which addressed this topic. Though some of the aspects of the relevant Spanish regulation seem to have been fully covered and clarified, the investigation and analysis is still ongoing in respect of some aspects. A definitive conclusion on the compatibility of the rules is therefore still pending and may require further information and/or clarification on the application of the rules to be requested from the Spanish authorities.

5. Commission reply (REV II), received on 30 January 2015

Petitions 393/2013, 478/2013 and 566/2013

The Commission informed the Parliament both in its communications to date and at the Petitions committee meeting of 11 November 2014 about its preliminary contacts with the Spanish authorities under the EU Pilot procedure on the recent Spanish rules which impose an obligation on persons liable for tax in Spain to declare certain assets they own located abroad¹.

In the light of the extended information received from the Spanish authorities, the services of the Commission can already conclude that the obligation imposed on residents² in Spain to declare some of the assets located abroad³ seems to be justified by the need to ensure tax collection, proper fiscal supervision or prevent tax avoidance. The Court of Justice of the EU (CJEU) has recognized the latter as legitimate grounds for restricting the EU fundamental freedoms.

¹ 2013 was the first year in which such declaration had to be submitted.

² Both companies and natural persons (e.g. Spanish citizens tax resident in Spain or any other EU citizens tax resident in Spain).

³ The list of assets to be declared is limited, including three categories of assets (bank accounts, securities and life insurance contracts/rights, and immovable property)

However, national measures restricting the fundamental freedoms must be proportionate¹. In the light of the case-law of the CJEU, the Commission services have doubts whether that test is met by the penalty regime and some of the consequences drawn by the Spanish rules from the failure to properly comply with the declarative obligation.

If the Spanish authorities do not adequately address the concerns communicated to them, the Commission services could envisage proposing the opening of a formal infringement procedure. However, any formal decision of the Commission cannot be anticipated at this stage.

On 16 December 2014 the petitioners, who are also complainants, have been informed of the above preliminary findings of the Commission services and of the intended further steps. They were given the opportunity to submit their views and were requested to inform the Commission services on their experiences in respect of the practical application of the Spanish penalty regime at stake.

¹ See, inter alia, C-383/10 *Commission v Belgium*, paragraph 49