

Important ECJ ruling on tax duties of EU staff “Kolwager” Case

- **Gift tax** is covered by Article 13 of the [Protocol on Privileges and Immunities](#)
- The concepts of income tax, wealth tax and death duties in Art. 13 PPI constitute **autonomous** concepts of EU law that must be interpreted uniformly.
- EU staff who settle in another Member State in order to perform their duties, and subsequently transfer their residence, for personal reasons, to a third Member State, maintain their **tax-residence in the State of origin**.
- The conclusions are relevant for staff in **active service, as from the moment of retirement, Article 13 PPI no longer applies**.

The Case in brief:

In its preliminary ruling on [Case C-275/25, Kolwager](#), the European Court of Justice (ECJ) on 15 October 2026 decided on a request for clarification by the *German Bundesfinanzhof* on the precise scope of Article 13 of the PPI (protocol on privileges and immunities).

The applicant (EIB staff member) left his country of origin Austria in 1995 to settle in Luxembourg, in order to take up his duties there. After his marriage in 2010, he moved to Germany, while continuing to use his flat in Luxembourg. In 2013, he received a gift of 300.000 Euro from his brother in Austria. The German tax authorities want to tax him in Germany, his residence place, at a tax amount of 56.000 Euro. In Austria, where inheritance and gift tax do not exist, he would have to pay no tax.

The ECJ held that Article 13 PPI must be interpreted as applying to a tax on gifts. An official or other servant of the European Union who, in order to perform his or her duties, established his or her residence in the territory of a Member State other than his or her State of origin but who subsequently moved, for personal reasons, his or her residence to a Member State other than that in which he or she performs his or her duties, maintains his or her domicile for tax purposes in his or her State of origin.

Article 13 PPI

Article 13 of the Protocol on Privileges and Immunities (PPI) determines tax jurisdiction: it provides that EU staff members (and under certain conditions their spouses and children) remain tax residents in the Member State in which they were tax residents at the time of entering the service of the Union.

Despite the far-reaching ramifications of this provision, so far there has been little case law. Now, the ECJ in Case *Kolwager* clarifies two important questions.

Gift Tax

1. The wording of Article 13 PPI speaks about ‘income tax’, ‘wealth tax’ and ‘death duties’, so the question arose whether gift tax is also covered. In *Kolwager*, the Court answered this in the affirmative, holding that the Member State of fiscal residence, as determined under Article 13 PPI is also competent to tax donations.

Member States and the case law had so far maintained that the taxes listed in Article 13 PPI (income tax, wealth tax and death duties) were exhaustive, that their scope had to be determined by the tax law of the Member States, and that gift tax was not covered. This would have meant that gift tax had to be paid in the Member State of actual residence. The ECJ now holds that the terms income tax, wealth tax and death duties in Article 13 PPI are autonomous concepts of EU law, which must be interpreted uniformly, irrespective of how they are characterised in the Member States. According to the ECJ, the privileges, immunities and facilities enjoyed by officials and other servants must be interpreted in the way most favourable to the performance of the Union’s tasks.

From now on, colleagues should therefore declare gifts they receive to the tax authorities of the Member State of fiscal residence, determined in accordance with Article 13 PPI, and no longer to those of the Member State of actual residence.

Please note that this does not mean that the Member State of actual residence is completely out of the picture. Almost all Member States that levy a gift tax extend its scope to non-residents who hold immovable property in that Member State. In the case of a donation of immovable property, gift tax must therefore be paid both in the Member State where the property is located and in the Member State of tax residence. Most Member States allow the tax paid in the Member State where the property is located to be deducted.

As a concrete practical consequence, the ruling puts an end to the advantageous practice of donating movable property in Belgium. There, most donations in the direct line are subject to a flat tax of 3%, and “hand gifts” are even tax-free, so until now this was a way of reducing tax liability.

No additional tax residence when moving to another Member State

2. A second question addressed by the ECJ is whether, by moving to another Member State, a person can acquire an additional tax residence or change their tax residence, in addition to their domicile for tax purposes in the State of origin.

The ECJ takes the view that, as long as staff members are in the service of the Union, they remain tax resident in the Member State determined in accordance with Article 13 PPI. In our opinion, the condition of being “in the service of the Union” is equivalent to being *in active service*.

The judgment removes any doubt that a prolonged stay outside the place of employment, or the adoption of an additional residence in another Member State for personal reasons, cannot give rise to a new tax residence. To give a practical example: a staff member who is tax resident in France works in Brussels and has a second house in Italy, where his family lives and where he spends weekends, leave, etc. - Italy could previously have argued that this would create a tax residence in Italy. Following the judgment, it is now clear that the colleague is solely tax resident in France.

The ECJ recalls that the choice of residence is governed by Article 20 of the Staff Regulations, which requires an official of the European Union to ‘reside either in the place where he is employed or at no greater distance therefrom as is compatible with the proper performance of his duties’.

The Executive Committee