not always clear to the general public – and even to member states themselves – when inheritance tax laws are discriminatory. In addition, there may be many cases of discrimination that have not reached the Court, in particular because court cases may involve high costs for taxpayers.

The principles are, therefore, designed to assist member states in bringing their inheritance tax provisions into line with EU law and should also make EU citizens more aware of the rules that member states must respect when taxing cross-border inheritances. The principles are drawn from case law and demonstrate how inheritance tax rules should avoid discrimination with regard to, for example, the geographical location of the assets (different valuation methods for foreign assets), the residence of the deceased or the heir (lower personal allowances for foreign residents) and with regard to businesses (availability of tax allowances only if employees are local). The principles complement, but do not replace, the Commission's ongoing infringement actions against those member states that apply inheritance tax rules that infringe EU law.

NEXT STEPS

In conclusion, the Commission believes that it has, in its package, set out effective, efficient and proportionate solutions to the double-taxation and discrimination problems that can arise when inheritances are received across borders. Small changes in member states' rules to make them more coherent with each other could deliver real benefits for hundreds of thousands of people across Europe. This is what we aim to achieve.

The Commission will now launch discussions with member states to encourage them to change their national laws in the direction outlined. In three years, the Commission will present an evaluation report showing how the situation has evolved, and will take appropriate follow-up steps, including proposing legislation, if necessary. It will also monitor the number of inheritance tax complaints it receives from citizens.

More information on the Commission's proposed measures to tackle cross-border inheritance tax problems can be found at ec.europa.eu/taxation_customs/taxation/personal_tax/inheritance/index_en.htm

JOIN THE DISCUSSION
What do you think? Email your opinion to editor@step.org

1 ec.europa.eu/taxation_customs/resources/documents/taxation/personal_tax/inheritance/com_2011_864_en.pdf
2 ec.europa.eu/taxation_customs/resources/documents/taxation/personal_tax/inheritance/c_2011_8819_en.pdf
3 ec.europa.eu/taxation_customs/resources/documents/taxation/personal_tax/inheritance/working_paper_en.pdf

COMMENT
TIMOTHY LYONS QC

RECOMMENDATIONS – AND THEN?

For many individuals, including those responsible for small or medium-sized businesses, the internal market can be a dangerous place. As well as increased commercial risks, there are risks and difficulties in relation to indirect tax, direct tax, property law and succession law. So far as tax is concerned, Commissioner Šemeta refers to the possibility of a 'crippling' burden. He is right to do so. For some businesses survival will be at stake.

Discriminatory taxation is one risk. Even more devastating is the risk of double taxation, or worse, multiple taxation. It is good to see the Commission recognises it. In relation to business taxes, double-tax conventions can often be relied upon to minimise, although by no means eliminate, the problems. Much more difficult to deal with are issues that arise in relation to gift and inheritance taxes.

The owners and heirs to family businesses, in particular, may all face intractable difficulties in these areas. Often they are wrapped up in novel problems on questions of property or succession law.

Yet, in an internal market, there ought not to be discriminatory taxation. Neither ought there to be double or multiple taxation. Advocate General Colomer once said: 'The fact that a taxable event might be taxed twice is the most serious obstacle there can be to people and their capital crossing internal borders.'

What he would have said about multiple taxation in the context of inheritance and gift taxes can only be guessed at.

The Courts can help fight discriminatory taxation, but when it comes to double taxation they have so far proved themselves less powerful (although the extent to which the Court of Justice of the European Union accepts double taxation may be worth testing). Nevertheless, if courts' rulings on discriminatory taxation are to be effectively enforced and double taxation is to be eliminated, continuing resolute action by the EU Commission will be vital.

Many people, including many business people, will therefore be grateful to the EU Commission and to Commissioner Šemeta for pushing discriminatory and double taxation of inheritances up the agenda and for publishing proposals for measures to tackle inheritance tax problems.

Given the national sensitivities involved it is, perhaps, inevitable that the proposals do not take legislative form. But legislation of some kind may well be necessary. The issues that the Commission is now addressing have been aired for a long time. They were raised in particular at the time of the Ruding Committee report in March 1992 but have yet to be resolved.

It is good to see, therefore, that the Commission proposes to keep attention focused on these issues by publishing a report on the state of play three years after adopting the Recommendation. What will follow that? No doubt many members of STEP would be delighted to make suggestions. Their clients are unlikely to be as patient as the member states would hope.

Timothy Lyons QC TEP is a member of the STEP EU Committee and the Cross-Border Estates Committee. He is a member of the expert group assisting the Commission in its review of the functioning of the *EU Savings Tax Directive*