

# CJEU: Fines for Failure to Declare Assets Abroad Can Be Disproportionate

## News

Thomas Wahl

On 27 January 2022, the [CJEU declared](#) Spanish legislation, which allows the imposition of high fines if a Spanish tax resident failed to comply with mere obligations to declare or purely formal obligations regarding his/her overseas assets, not in line with the principle of free movement of capital ([Case C-788/19, \*Commission v Spain\*](#)).

Under Spanish legislation, Spanish taxpayers who fail to declare or who make a partial or late declaration of assets and rights that they hold abroad are liable for additional assessment of the tax due on the amounts corresponding to the value of those assets or of those rights, including where they have been acquired during a period that is already time-barred. Furthermore, the residents are faced with the imposition of a proportional fine and specific flat-rate fines in such cases.

The judges in Luxembourg acknowledged that the Spanish legislation is appropriate to attain the objectives pursued, i.e. to guarantee the effectiveness of fiscal supervision and to prevent tax evasion and avoidance. In this context, the CJEU pointed out that, despite the existence of mechanisms for the exchange of information or administrative assistance between the Member States, tax authorities principally have less information available on assets held by the tax residents abroad than on those located in the state's territory. However, the CJEU found that the Spanish legislation in question goes beyond what is necessary to achieve said objectives and reprimands mainly three issues:

- The tax authorities' power to make an additional assessment of the tax due without that assessment being subject to any time limit, which undermines the fundamental principle of legal certainty;
- The imposition of a proportional fine of 150% of the tax calculated on amounts corresponding to the value of those assets or those rights held overseas, which can be cumulated with flat-rate fines and which gives the non-compliance with declaratory obligations a highly punitive nature;
- The imposition of flat-rate fines in cases of assets abroad, whose total amount is not capped and is disproportionate to the penalties imposed in respect of similar infringements in a purely national context.

The CJEU concluded that the Spanish legislation is a disproportionate restriction on the free movement of capital. The ruling follows an infringement action brought by the Commission against Spain.

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