EUROPEAN PARLIAMENT 2009 - 2014

Committee on Petitions

24.06.2010

NOTICE TO MEMBERS

Subject: Petition 1921/2009 by Jörg Mittmann (German), on tax payments in three countries

1. Summary of petition

The petitioner, a German national employed by a Swiss company for which he worked for a period in Austria, indicates that, since he is resident in Germany he is required to submit his tax returns there. The Austrian authorities also required the submission of tax returns in respect of his period of employment in that country. The petitioner does not know which bilateral tax agreement applies to his situation. In respect of his period of employment in Austria, he has, years afterwards, received a refund in respect of taxes deducted in Switzerland, enabling him to pay the Austrian tax authorities. However, the latter then required payment of supplementary tax, together with interest for late payment. The petitioner argues that this is unfair since he himself did not benefit from the late payment of the tax. He had paid taxes in Switzerland over the period in question, and the amount in question had been retained by the Swiss tax authorities. His appeal to the Austrian authorities regarding the supplementary tax and interest payment was rejected. The petitioner is seeking the withdrawal by the Austrian authorities of their demands in this respect. Furthermore, he argues that, while it is becoming increasingly easy for companies to operate on a cross-border basis, the tax situation for cross-border workers such as himself is becoming increasingly complex. He is accordingly seeking simplification and clarification of the rules and mutual arrangements between the various national revenue authorities regarding the settlement of tax demands.

2. Admissibility

Declared admissible on 30 March 2010. Information requested from the Commission under Rule 202(6).

3. **Commission reply**, received on 24 June 2010

In 2000 and 2001, the petitioner, a German national who lives in Germany and has a Swiss employer, worked on a project assignment in Austria. He paid taxes in Switzerland, whereas, under the applicable double taxation agreements, he should have paid them in Austria. In addition to the taxes themselves, the relevant tax office in Austria also imposed on him penalties for the late filing of a tax return, interest on unpaid taxes and late payment penalties. The petitioner proposes that:

– the Austrian tax authorities should cancel the late filing penalties and the interest;

– the tax offices should reach agreement on who receives which taxes, and should mutually set off these taxes accordingly. Then he would not have had to pay any interest or late filing penalties because he would have paid his taxes on time.

Firstly, as a general observation, it should be pointed out that there is currently relatively little harmonisation at EU level in the field of direct taxation. This also applies to the issue of the elimination of double taxation within the EU, as no uniform or harmonisation measure designed to eliminate double taxation has yet been adopted with regard to natural persons as part of EU legislation. EU law likewise has no impact on the conclusion of double taxation agreements and the application and interpretation thereof in the individual Member States.

It should also be noted that, although the elimination of double taxation and related problems is one of the preconditions for the smooth operation of the internal market and in the absence of any unifying or harmonising measures at European Union level, Member States retain the power to define, by treaty or unilaterally, the criteria for allocating their powers of taxation, particularly with a view to eliminating double taxation (see judgment of the European Court of Justice in Case C-336/96 *Gilly*, paragraphs 24 and 30). This is achieved through the conclusion of double taxation agreements and their practical application to cross-border cases by the relevant authorities in the individual Member States.

In exercising that power, however, Member States are required, pursuant to the established case-law of the European Court of Justice, to fulfil their obligations as set out in the Treaty on the Functioning of the European Union (TFEU). In particular, Member States are not entitled to discriminate on the basis of nationality. Member States are also prohibited from imposing unjustified restrictions on fundamental freedoms. These principles apply, in particular, to migrant workers, including frontier workers. As for Switzerland, although it is not an EU Member State, it is bound by the relevant Agreement on the Free Movement of Persons of 21 June 1999 to grant to workers who are nationals of other Member States (including frontier workers) the same tax concessions as those granted to national workers (Article 9(2) of Annex I to the Agreement).

The disadvantages claimed by the petitioner do not constitute an infringement of his rights as a migrant worker. Instead, they are based on the fact that he or his advisers have, over a long period, misinterpreted the legal situation resulting from the allocation of the power to impose taxes pursuant to existing double taxation agreements. This misinterpretation is attributable solely to the petitioner. Even the allocation of the power to impose taxes does not, in itself, constitute an infringement of the rights of the petitioner in accordance with the above principles and in the absence of harmonisation.

As regards the petitioner's second request, the Member States (and Switzerland) are, in principle, free to agree on arrangements such as those referred to in the request. However, an obligation to do so may not be deduced from the principles of free movement (in this case, the free movement of workers). As has been said, such rules are, in principle, the responsibility of the States concerned.