CJEU clarifies conditions under which EU law may prohibit national tax exemptions

The Court of Justice of the European Union (CJEU) addresses whether a general and abstract exemption, to which a direct tax not harmonised at EU level is subject, can confer a selective advantage on its beneficiaries that is in breach of the rules on State aid.

SATURNINA MORENO GONZÁLEZ
Professor of Employment and Social Security Law,
University of Cantabria Academic Counsel, Gómez-Acebo & Pombo

The Grand Chamber of the CJEU (the 'Court'), in its judgment of 29 April 2025, in Case C-453/23, *Prezydent Maista Mielca*, has once again ruled on a question of particular importance for the tax law of Member States: under what circumstances exemptions provided for in laws governing non-harmonised taxes may be prohibited on the ground that they confer a selective advantage contrary to Article 107(1) of the Treaty on the Functioning of the European Union (TFEU).

The judgment responds to questions referred for a preliminary ruling by the Supreme Administrative Court of Poland in proceedings concerning the refusal to allow a company to benefit from the exemption provided in Polish

property tax for land, buildings and structures forming part of railway infrastructure where that infrastructure is made available to rail carriers. Although the company satisfied the conditions established by Polish law for benefiting from the exemption, the refusal was based on the grounds that the grant of that exemption would constitute unlawful State aid, as it had not been notified to the European Commission. The national court questions whether this exemption may confer a selective advantage on its beneficiaries and, if so, whether it is liable to distort or threaten to distort competition.

The most relevant contributions of the judgment concern the configuration of the reference framework for determining whether a tax measure constitutes a selective advantage.

Broad interpretations of selectivity are likely to encroach on the fiscal autonomy of Member States

The Court points out that the determination of the reference framework must follow from an objective examination of the content, the structure and the specific effects of the applicable rules under the law of the Member State concerned, without that normal or common tax regime being constructed on the basis of some provisions artificially taken from a broader legislative framework. Consequently, where the tax measure in question is inseparable from the general tax system of the Member State concerned, reference must be made to that system.

Outside the spheres in which EU tax law has been harmonised, it is the Member State concerned which determines, by exercising its own competence in the matter of direct taxation and with due regard for its fiscal autonomy, the characteristics constituting the tax, which define, in principle, the reference framework or the 'normal' tax regime, on the basis of which it is necessary to analyse the condition relating to selectivity. That determination of the characteristics constituting the tax includes the basis of assessment and the taxable event, but also any exemptions to which that tax is subject.

Therefore, in the Court's view, in principle, a general and abstract exemption to which a direct tax is subject is not to be classified as 'State aid'. In so far as that exemption is presumed to be inherent in the 'normal' tax regime, it cannot, as a general rule, confer a selective advantage. Such a finding is derived from the autonomy which the Member States are recognised as having in the area of direct taxation, as that autonomy means that those States have the possibility of making use of the tax classifications, and in particular of the tax exemptions, which they consider the most suitable for achieving the objectives of general interest pursued by those States, whether or not those objectives are tax-related. Where an exemption falls within the normal tax regime, the conditions for granting such a tax exemption (*e.g.*, compliance with a certain recruitment policy or certain environmental measures) are neutral from the point of view of competition, as the fact that some undertakings satisfy those conditions, while others do not, is not relevant in the light of the rules on State aid.

The importance of the principle of non-discrimination in the assessment of selectivity is emphasised

However, the Court highlights two situations in which such a tax benefit could be *a priori* selective:

— where the exemption forms part of a tax system structured according to manifestly discriminatory parameters intended to circumvent EU law;

— where the conditions established by the legislation for benefitting from the exemption are connected, in law or in fact, with one or more specific characteristics of the only category of undertakings capable of benefiting therefrom, those characteristics being inextricably linked to the nature of those undertakings or the nature of their activities (*e.g.*, undertakings which have a certain capital structure, which are active in a particular geographical or economic sector, which are smaller or which, on the contrary, have significant financial resources, or which do not employ any staff in the national territory).

On the basis of the foregoing, in the specific case before it — without prejudice to the national court's task of determining whether the exemption at issue constitutes a selective advantage — the Court finds that the exemption at issue cannot be separated from the general framework constituted by the Polish property tax regime applicable to all owners or holders of immovable property. That exemption is granted to all operators, whether economic or not, who own land, buildings or structures forming part of railway infrastructure where that infrastructure is made available to rail carriers. In the case of undertakings, the exemption applies irrespective of their sectors, economic activities, or legal forms. Consequently, the exemption appears to be based on a neutral criterion applicable to a disparate group of beneficiaries. The Court also points out that the framework within which the exemption is integrated pursues not only a budgetary objective but also an environmental one, intended to encourage the undertakings concerned to restore disused railway sidings and to use rail transport.

However, it is pointed out that, if the national court considers that the exemption at issue confers a selective advantage, it must assess whether it distorts or threatens to distort competition. In that regard, measures which, like the exemption at issue in the main proceedings, are intended to release an undertaking from the costs which it would normally have had to bear in its day-to-day management or in its normal activities distorts the conditions of competition.

In this judgment, the Court further clarifies the criteria to be borne in mind when assessing the general or selective nature of tax exemptions in the light of the EU's State aid rules. To that end, it seeks to provide additional guidance based on its previous case law on the subject (*e.g.*, *Gibraltar*, C-106/09 P; *Banco Santander*, C-53/19 P; *Engie*, C-451/21; *Apple*, C-465/20 P). The judgment also warns of the danger of broad interpretations of the condition of selectivity in the field of taxation, which are likely to encroach on the fiscal autonomy of Member States, and emphasises the importance of the principle of non-discrimination in the assessment of selectivity.