

# ECJ Advocate General Opines on 10% Inheritance Tax Exemption for Real Property Rented out for Residential Purposes: *BA* (Case C-670/21) (Direct Tax)

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On 9 February 2023, Advocate General Collins of the Court of Justice of the European Union (ECJ) gave his opinion in the case of *BA v. Finanzamt X* ([Case C-670/21](#)) on the 10% inheritance tax exemption for real property rented out for residential purposes. In this case, the Advocate General concluded that article 63(1) of the [Treaty on the Functioning of the EU \(TFEU\)](#) is to be interpreted to the effect that it does not preclude national legislation which, for the purposes of calculating inheritance tax, treats the value of real estate property leased for residential use in a Member State or in a State of the European Economic Area more favourably than property located in a third country put to the same use in order to promote the availability of affordable rental housing in the European Union and in the European Economic Area, provided that national legislation is appropriate to achieve the objective pursued and there are no less restrictive yet equally effective measures to attain that goal.

The Advocate General further concluded that article 63(1) of the TFEU is to be interpreted to the effect that it precludes national legislation which, for the purposes of calculating inheritance tax, treats the value of real estate property leased for residential use in a Member State or in a State of the European Economic Area more favourably than property located in a third country put to the same use in order to ensure the effectiveness of fiscal supervision, where there exists a legal framework for the exchange of relevant information between the competent tax authorities.

A more substantial report containing details of the Advocate General's reasoning will be published in due course.