THE LEGAL FRAMEWORK OF THE EUROPEAN UNION COMMON TAX POLICY

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ABSTRACT:

This article deals with common tax policy within the European Union. The article takes a look legal framework of tax policy and the problems of tax harmonization, the legal basis for direct and indirect taxation.

Integration means common policies. Economic and political integration between the Member States of the European Union means that these countries have to take joint decisions on many matters. They have developed common policies in a very wide range of fields like agriculture, consumer affairs, competition, environment and etc. The creation of the internal market represents the main goal in terms of integration process in the European Union. The Union's internal market is defined in Treaty of Functioning of European Union (TFEU) as "an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured."

The integration in the area of the taxation was indivisible part of the integration efforts in Europe which culminated by the endorsing of Treaty of Rome in the 1957 and establishing of European Economic Community. The obligation of tax harmonization is incorporated in the Treaty of Rome which binds the member countries not to impose either directly or indirectly any kind of internal levies on other Member State's products higher than on domestic products. The coming of the Single Market at the beginnings removed most of the technical barrier to trade, such as differences in industrial standards, health and safety regulations, professional qualifications. The implementation of the four freedoms imposed a certain level of coordination from the Member States. Progress in removing barriers to trade within the EU, together with monetary union, have focused attention on aspects of the Single Market which are still incomplete: notably taxation. From the very beginning the main attribute of the EU economic area is the immense difference of member state's taxation systems. Due to unwillingness of member states, total integration has become a long and difficult process. Fear to lose their sovereignty, members are reluctant to integration. The mainly problem is linked with the diversity of member States' taxation systems. This situation can cause obstacles to smooth functioning of common market and market deformations, also enhanced that the common market and the market competition need a certain degree of tax harmonization. Several economic developments in the mid-1990s stimulated new initiatives in this field:

- the free movement of capital on both a European and global scale, which has made the taxation of capital increasingly difficult;

- the ability of companies to supply the whole Single Market from a single base, creating competition to attract inward investment through "tax breaks";

- tax avoidance (legal) and tax evasion (illegal) due to the complexity of tax systems and high tax rates

- high levels of unemployment, which have drawn attention to taxes on labour.

Taxes, as a source of revenue of any state, play a fundamental role in ensuring national sovereignty. It allows States to finance their policies and is therefore fundamental to the concept of sovereignty. Based on this idea, the European Union has abandoned the national tax policies to be imposed by the member states to the mandate of national governments. In other words, tax policy lies mainly within the competence of the Member States.

On the other hand, there is a limitation to the national tax legislation in order not to violate the provisions regarding free circulation of fundamental freedoms and competition rules by Member States. To restrict four freedoms from violation and barriers is above the national sovereignty of the member states. Therefore, the provisions of domestic law must be compatible with EU tax policy. The Member States could not impose any tax laws that would violate the primary legislation as well as the secondary legislation. The most obvious application of this is observed after the harmonization of the Member States' VAT introduced by the Sixth Directive. Following this harmonization, it was prohibited to bring any turnover tax with the same characteristics of VAT in force in the national level.

Tax matters have been included in the Treaties since the Union's beginnings. Nevertheless, they have remained closely linked to Member State sovereignty (along with police and military issues), protected by the unanimity requirement and a special legislative procedure which keeps tax matters firmly under the Council's control.

At the same time, the EU Treaties have specifically addressed the need for harmonization of domestic provisions on indirect taxation (turnover tax and value added tax, excise duties and other indirect taxes) because of their potential distorting effect on the single market. Harmonization of all major elements of value added taxation dates back to 1967, and harmonization of excise duties to the early 1970s. In 1967 directive the Commission recommended to all the member states to implement value added taxation system in to their national tax systems as the system of indirect taxation.

Harmonization of these is far more advanced than in the case of direct taxes, which are not mentioned in the treaties. However, the founding principle of the single market (specially free movement of services and non-discrimination) have brought direct taxes into the EU remit through the trade-off between national tax provisions and the single market. The European Court of Justice has had to decide on articulation between national tax provisions and single market, and in several cases it overruled such national tax provisions. Direct taxes are addressed in particular through the focus on the removal of tax obstacles and the prevention of tax competition. The most important harmonization directives adopted in connection of common market establishment are the Merge Directive and the Parent-Subsidiary Directive.

The legislative competences in the field of direct taxation is not directly addressed by European Union rules. However, a number of directives and the case law of the CJEU establish harmonized standards for taxation of companies and private individuals. Legislation on the company taxation has usually based on Article 115 of TFEU, which authorizes the Union to adopt directives on the approximation of laws, regulations or administrative provisions of the Member States which directly affect the internal market.

Article 65 of TFEU (free movement of capital) allows Member States to distinguish between taxpayers who are not in the same situation with regard to their place of residence or with regard to the place where their capital is invested.

Indirect taxes include value added tax (VAT) and excise duties on the sale or use of specific products (alcohol, tobacco and energy). Value added tax (VAT) is a general tax levied on all goods and services bought and sold for use or consumption within the European Union. VAT is calculated on the value added to goods and services by a trader at each stage of the production and distribution chain. The legal basis of VAT and excise duties is Article 113 of TFEU. EU legislative activities are aimed at coordinating and harmonizing VAT law and harmonizing excise duties with the purpose of ensuring proper functioning of the internal market.

Apart from specific tax provisions, a number of the provisions and principles of general application in EU Treaties are relevant to tax matters. Tax provisions chapter (Articles 110 to 113) of the Treaty on the Functioning of the European Union (TFEU), specifically provides for "the harmonization of legislation concerning turnover taxes, excise duties and other forms of indirect taxation to the extent that such harmonization is necessary to ensure the establishment and functioning of the internal market and to avoid distortion of competition". It also maintains a special legislative procedure whereby Council acts unanimously and the European Parliament is only consulted.

The chapter on the approximation of laws (Articles 114-118 TFEU) covers taxes which have an indirect effect on the establishment and functioning of the internal market, with fiscal provisions not subject to the application of the ordinary legislative procedure. In addition, tax harmonization can be realized through

directives only, according to Article 115 TFEU. Other relevant provisions regarding environment, competition, free movement of four freedoms also include tax components. Competition provisions, in particular the prohibition of state aid enshrined in Articles 107 to 109 TFEU, are relevant to tax policy.

Enhanced cooperation (Articles 326 to 334 TFEU) can be used in tax matters. The main feature of EU tax provisions with regard to the adoption of acts is the fact that the Council decides on a Commission proposal by unanimity, with Parliament being consulted. Provisions adopted in the tax field include directives approximating national provisions, and Council decisions. Firm in the conviction that retaining unanimity for all taxation decisions makes it difficult to achieve the level of tax coordination that Europe requires, the Commission submitted proposals for a move to qualified majority voting in certain tax areas. However, these were rejected by the Member States.

Furthermore, general principles of particular relevance in tax matters are: non-discrimination, proportionality, legal certainty or unjust enrichment. The principle of Union loyalty provided for by Article 4(3) TFEU contributes to ensuring the effectiveness and equivalence of EU tax provisions for EU citizens. It also serves to clarify the precise obligations of Member States when the Treaty itself does not do so. In particular, rights deriving from EU law must be equivalent to those governing equivalent national situations, and national tax cannot render the exercise of rights derived from EU law excessively difficult, or almost impossible.

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