TAX HARMONISATION

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Tax harmonisation refers to the coordination of the taxation systems of European Union member states for the purpose of preventing any national tax measures that could have a negative effect on the functioning of the common market – that is to say, on the free movement of goods, services and capital, and that could distort competition. The Treaty on European Union lays down the legal standards that relate to taxes and these have not to date been modified. According to these standards, every member state has the right to retain its own tax system, and to bring in new forms of taxation, on condition that it harmonises some parts of these taxes (the tax rate, the tax base and so on) with the decision of EU bodies. The European Union has adopted a number of separate directives concerning the harmonisation of taxes, and a certain minimum of tax harmonisation has been achieved. Thus partial harmonisation of direct taxes has been accomplished, while the most has been achieved in the harmonisation of the system of indirect taxes, that is of VAT and excise taxes.

The legal foundation for the harmonisation of indirect taxation is defined in Articles 90 to 93 of the Treaty on European Union. These forbid tax discrimination capable of directly or indirectly favouring national products at the expense of the products of other member states. The harmonisation of sales taxes and excises is called for, as well as of other indirect taxes. The objectives in this area were achieved relatively quickly, and as early as the 1970s sales taxes that did not provide tax neutrality were replaced in the member states by valued added tax. The Sixth Directive (77/388/EEC)[1] is a fundamental EU document that is the legal basis for the harmonisation of VAT. This directive ensures the application of VAT to the same transactions in all the member states. An agreement was reached according to which member states apply the standard rate of VAT, which cannot be lower than 15%, and one or two reduced rates, which may not be lower than 5%. A common system of excise taxes was introduced in 1994, particularly relating to

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[1] This directive has been changed several times; an integral, revised wording was adopted in 2006, and is known as Council Directive 2006/112 EC.

sales of tobacco products, alcohol and alcoholic beverages, and fuels (mineral oils, coal, coke, natural gas and electricity). Considerable progress was made in harmonising excise taxes rates, the structure of excise taxes (the definitions of products, units of measurement and exemptions) and the movement of goods subject to taxation by excises among member states. An agreement about collaboration and the exchange of information among the tax authorities of the member states was also reached.

In the European Union, the domain of direct taxation, i.e., of the taxation of personal and corporate income, is still on the whole in the national sphere of influence, and the joint tax policy relates primarily to indirect taxes that have a direct effect on the functioning of the common market in the domain of the free moment of goods and the freedom to provide services. Direct taxation is not explicitly mentioned in the Treaty on European Union, so harmonisation of such taxes comes upon numerous obstacles. The European Union seldom deals with the taxation of personal income, and when it does, it endeavours to ensure equality in the sense of opportunity for work or investment in another member state. In the domain of the taxation of corporate income, the EU has two objectives: (1) to prevent harmful tax competition among member states and (2) to facilitate the free movement of capital.

Up to 1997 the system for harmonising direct taxation was very modest in the EU. Up to that time there were only directives concerning mergers and parent-subsidiary companies, which were primarily oriented to resolving double taxation issues. After 1997 the member states started a broad debate aimed at action to control the negative effects of tax competition. This action was oriented to the harmonisation of tax regulations in three areas: corporate taxation, savings-derived income taxation, and taxes on royalties between associated companies. Thus the tax package for controlling harmful tax competition adopted by the Council included:

• a Code of Conduct that bound the member states (1) not to introduce any new harmful tax measures, (2) to reinvestigate existing tax laws and abolish all harmful tax measures as soon as possible, (3) to inform each other of measures that the Code might comprehend and (4) to work towards the abolition of harmful tax competition in countries outside the EU

• an instrument for reducing differences in effective taxation of income derived from savings, the Savings Taxation Directive, was adopted in June 2003. According to this directive, all member states had to ensure exchange of information about interest payments on non-residents' savings

• an instrument removing withholding tax on interest and royalties among associated companies in different EU member states (the Interest and Royalty Directive, June 2003). In this directive the EU prescribes a common system for taxing interest and royalties so as to avoid the double taxation of such payments. Thus interest and royalties are taxed only in the member state in which the beneficial owner is domiciled, and not in the state in which they are earned.

As national tax systems are on the whole in the jurisdiction of the 25 member states, it is extremely hard to achieve total harmonisation of the system. The last enlargement of the EU additionally deepened tax differences in the Union. Thus, in spite of the introduction of a common market and economic and monetary union, there is still no genuinely common tax policy in the EU. This is largely the result of the views of member states, which think that the tax system is still one of the basic characteristics of national sovereignty, and which are unwilling to transfer their jurisdiction over this domain to the Union. Apart from that, in the EU the tax harmonisation decision-making procedure is still complex. For a consensus is required for making decisions about taxation at Union level. Only after consultations with the European Parliament and the Economic and Social Committee can the Commission send a proposal to the Council, which has to decide unanimously concerning proposals from the area of taxation. But since a system of this nature blocks the making of any decisions, in order to facilitate decision making about tax issues, the Commission has proposed the application of a close collaboration procedure. This would enable a group of at least eight member states to collaborate with the Commission in the making of decisions in a given tax area; any decision so made, after approval from the Council, would have the effect of a decision of a qualified majority. Member states are encouraged to apply recommendations that repeal harmful tax competition, without them being obliged to do so by binding legal regulations.

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