THE TAX POLICY WITHIN THE EUROPEAN UNION: CONCEPTS, INSTITUTIONS, TRENDS AND CHALLENGES

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Abstract
At the basis of conceiving the tax policy of an European Union member state, one must consider, on the one hand, fulfilling the government's own requirements, and on the other hand, achieving the objectives set by the EC Treaty. At present, the European Union has a quite harmonized and coordinated tax policy in the indirect taxes field, and partially in the direct taxes field, based on the free movement principle of goods, services, capital and labour; thus, although the member states have the freedom to set operation rules of their own national tax systems, this freedom is conditioned by the compliance with the priority objectives of the founding treaties of the European Union. The member states should avoid adopting discriminating tax measures (which could lead to a disadvantageous treatment for the persons, goods and services or capitals coming from other member states). Sometimes, the restrictions regarding free movement on the internal market are generated by the differences between the national tax systems, so that a certain degree of tax harmonization at the European Union level is necessary. The tax harmonization can be achieved either spontaneously (by means of the forces of the market), by means of active actions at the level of the European Union (the implementation of common policies, the coordination of the policies, the harmonization of the legislation, etc.) or by means of the passive actions of the European Court of Justice (the interdiction of certain types of conduct of the member states that do not comply with the norms of the European Union). In the absence of the tax harmonization, negative effects can occur, such as: the erosion of the national tax bases, provision of public services and goods at a sub-optimal level, unwanted changes in the structure of the taxes which are levied in the member states, and distortions in assigning resources at the level of the single market.

Key words: *tax policy, harmonization, tax competition, public institutions*

JEL classification: H30, G18, H71

1. Introduction

The tax policy is one of the few instruments which can still be used by the governments of the states which are part of the European Union in order to influence the national economies. By means of the Stability and Growth Pact , which has been adopted within the European Council of Dublin in 1996, the use of this instrument has somewhat been constrained, because by means of this agreement, the member states oblige themselves to provide the increase of coherence between the objectives of the tax policy and the issue of providing the long-term sustainability of the public finances, in order to limit the excessive budgetary deficits. The concept of European tax policy has been discussed for the first time within the Treaty of Rome regarding the establishment of the European Economic Community (EEC). Although there is no single pattern, certain features of this tax coordination are encountered in all national administrations of the states, which are part of the EU in the process of conceiving, adopting and implementing the community policies (Jinga I., 2005).

According to Moldovan, I si Popa, R.A. (2012) the severity of the crisis from 2007 induced strong feelings of panic in the financial markets and to reduce the negative effects on the real economy, governments of many countries resorted to massive intervention and without precedent, in order to support markets. Following interventions to reduce the impact of the crisis, budget deficits in many countries increased considerably. Basically, the global financial crisis

was converted in 2010 - 2011, in a sovereign debt crisis in various economies, especially those in the euro area, affecting their capacity to recover. Monetary policy became more important in managing the budget deficit.

Building the tax policy of a state is an ample endeavour, which must take into account several aspects, depending on the target aimed at: the consolidation of the public finances, achieving and maintaining the macroeconomic balance, supporting the economic development, etc. Taxes and other tax take-offs can change the phases of the social reproduction process, according to the objectives that the public authorities aim at. The policy in the tax field is an important part of the economic policy, as all tax decisions taken by the governments of the European Union member states can cause effects both at national and community level. Building a coherent and functional network of multilateral tax agreements with the purpose of mitigating the existing differences between the tax systems of the European Union states, can elude the risk of distortions in achieving intra-community commercial flows; however, in the case of removing the barriers standing in the way of the capital flows, this form of tax coordination cannot provide a correct and effective allocation of the resources at the level of the entire European Union.

2. The tax competition in the European Union

The tax policy at the European Union level can be studied from two points of view, depending on the way it is considered - as a federation or as a confederation.

If it is considered that EU is a federation, and the tax policy is considered to be that of a federal state, performed by three types of administrative bodies (federal, state and local), then we can define the EU tax policy in a similar way to the national one: the EU fiscal policy is the entirety of the regulations regarding the setting and levying taxes, charges and other tax resources of the European Community. It is obvious that the European Union does not have the responsibility of creating taxes, as this responsibility belongs to the member states, but its role is to follow the selection and procurement of the financial resources which are at the disposal of the Community, i.e. the customs charges on the external EU products, agricultural taxes, excises, a certain percentage of the VAT, calculated on harmonized bases.

Considering that the European Union is structured as a confederation, i.e. a union of independent states, we note that the tax policy at the EU level shall no longer follow the same objectives as the tax policy of a nation. In this state, we define the community tax policy as an entirety of national tax policies, performed in a coordinated manner within a well-defined area, in order to achieve the reconciliation of the taxes pertaining to the member states, and provide a smooth operation of the common market.

In order to build an integration and a full economic union, the European institutions have built a set of juridical norms completing and mediating the materialization of the provisions of the European Union Treaty, forming into what we call the community tax law. By community tax law we thus understand the coherent entirety of juridical norms elaborated by the EU institution with the purpose of achieving the community control regarding the national taxation of the member states (and of the acceding countries), achieving the tax harmonization policy at the level of all the member states, and implementing the legal mechanisms regarding these aspects (The Treaty of Rome). The compliance with the discipline rules prepared in the tax and budgetary field contributes to the general improvement of the public finances quality, and helps the member states release the budgetary resources which can be used for financing the actions in the socio-cultural field and for supporting innovation and investments. Considering the above-mentioned issues, it is obvious that the taxation issue is currently the topic of heated discussions both among theoreticians, and politicians.

We have shown that the European Union does not have the responsibility of creating or levying taxes and charges. Thus, the tax policy power lies with the member states that, depending on the constitutional or administrative structure of the government, can transfer it from the central level to the regional or local level. According to article 269 of the EC Treaty, the EC budget must be financed and completely made up of own funds, which are greatly dependent on the capacity of the member states to contribute with resources. (European Commission, 2001). Thus, we can state that the EU role regarding taxes, charges and other contributions is only a subsidiary one, as the subsidiarity principle is, as matter of fact, one of the main EU principles. The juridical basis in the taxation field is article 3 of the EC Treaty, which provides the removal, among the member states, of the excises and other measures with equivalent effects, and the provision of an undistorted competition on the common market (European Parliament Fact Sheets, 2014). On the European Union internal market, the taxes and charges must not affect the free circulation of the goods and services, and also must not distort competition. If on a single market the mobility of the factors increases, the manufacturers and residents tend to turn to the regions where taxation is reduced. Only a single European taxation could avoid the occurrence of distortions and rivalries among the national tax regimes (Gruescu, Nanu, 2001). In order to meet this purpose, they needed to perform the tax harmonisation process among all EU member states, a process whose development is quite slow because of the variety and complexity of the problems in the tax field.

The mobility of production factors allows the use of taxes as levers in attracting the mobile tax bases. Thus, the public authorities to be found in different regions or countries are motivated to reduce the taxation level for a series of mobile production factors, as they are engaged in a "tax competition". If there is a market providing the movement freedom of the goods, services, capitals and workforce, the tax competition can occur in the case of taxes on goods and services, taxes on the incomes of the companies, and taxes on the incomes of the natural persons. In order to reduce and

remove the distortions which could be caused by the taxation of goods and services on the competition at the single market level, as early as the beginning of the 70s, the members states have set a series of measures in order to harmonize the respective taxes. At present, the progress achieved in harmonising the indirect taxes is significant, but for the other categories of taxes, they are significantly diversified. The manifestation of the tax competition phenomenon (especially regarding the taxation of the capital and incomes of the juridical persons) was the nodal point of the discussions on the harmonization of incomes.

Depending on the objectives aimed at, the tax competition is manifested depending on the optics of the governments of the countries enforcing it, and it especially refers to:

- attracting direct foreign investments which have a major importance in creating jobs in the European Union countries;
- attracting the portfolio investments, useful for financing the economic activities, in order to consolidate the financial markets and achieve comparative advantages in providing financial services;
- attracting the financial within-the-firm financial flows, which can be directed towards one's own tax jurisdiction by attracting those corporate functions which are useful for the international transfer of profits;
- attracting higher skilled labour;
- attracting the buyers (indirect taxpayers) to be found in the cross-border areas and not only, especially those interested in the products that include VAT or excises, if there are significant differences between them.

The tax competition at the EU level can be considered as a competition between the tax jurisdictions of the member states, in which each of them wants to become more attractive tax-wise for all the categories of direct or indirect taxpayers. In order to obtain such an appreciation from the investors, one must aim at several qualitative and quantitative parameters: the acceptability of the taxation levels by choosing lower levels as compared to those used in other tax jurisdictions; granting facilities under several forms (exonerations, discounts or deductions) when the taxation bases are set; the flexibility and transparency of the regulations and tax calculation methods; adequate infrastructure and smooth operation of the tax management and administration both locally and centrally; granting facilitations regarding the environmental conditions or regarding the provision of the optimal infrastructure for building or developing businesses.

Such instruments promoted by the local and central administrations can positively influence the increase of the capital and labour, as each taxpayer is interested in benefiting from the most profitable opportunities in order to achieve the highest performance of the incomes before or after taxation. In their search for such opportunities, taxpayers leave their national states of residence, thus penalising those tax systems with high taxation marginal rates and/or bushy regulations, which translates into an increase of the taxation base and implicitly of the total collections in the host countries.

In the last years and especially during the time before the crisis, at the EU level, the instances of transferring the fiscal tasks within EU have increased by means of more and more diversified manners, like form and nature. Such trends have also been favoured by the amplification of the international capital flows, financial innovations, regulation of the financial markets, and the new opportunities created for tax evasion, resulting in the reduced capacity of achieving the public financial resources, and reporting tax deficits for certain member states (Chilarez D., Ene G.-S.).

3. The institutions of the European Union with responsibilities in the taxation field. Aligning the national fiscal legislations within the EU

In order to achieve the community objectives in terms of tax policy, EU has created, by means of its treaties, institutions exerting their competences under completely different conditions than those under which the regular institutions of international law operate. It has been intended that the community institutions be completely independent of the national authorities of the member states. Considering the above, O. states that the institutional structure of EC has the following features (Manolache O., 2006):

- combined functions - which are held by at least three of the community institutions: the Community, the Council and the Parliament, which are of several types, as they could not clearly be reconciled with the traditional distinction among the legislative, executive, legal and consultative powers (in this respect, the Commission can be distinguished, which is known as the community executive);
- the polycentric structure - the main centre around which the institutions gravitate is in Brussels, but other centres can also be found in Luxembourg, Strasbourg or Frankfurt;
- divided loyalty - because the ideal possibility of forming and conceiving the community institutions, so that their loyalty would be directed towards one single cause - the community interest - has proved to be impracticable for reasons related to principle and pragmatism; in this direction, the situation of the institutions is different: The Commission is only subject to the community interest, the Council represents the interests of the states, and the Court of Justice is asked to assess, with a total and absolute objectivity, all the litigations submitted to it for settlement;

- separation of powers - principles which are applied to the community institutions, as they are completely independent, although they have mixed functions.

Article 7 of the CE Treaty mentions the institutions which perform the missions entrusted to the Community", so with responsibilities also in the taxation field, i.e.: a European Parliament, a Council, a Commission, a Court of Justice, and a Court of Accounts.

In the taxation field, the European Parliament has the following responsibilities (Manolache O., 2006):

- decisional legislative responsibilities: resulting from the principle laid down by article 192 align. (1), i.e. to participate in the process leading to adopting community acts.
- inquiry and ombudsman responsibilities: according to article 193 of the EC Treaty, the European Parliament can form a temporary inquiry commission "so that it would examine accusations regarding offences or the defective administration in enforcing the community law".
- supervision and control responsibilities: the supervision and control function is exerted by the Parliament especially regarding the Commission, and it is provided by articles 197 align. (2) and (3), 200 and 201 of the EC Treaty.
- consultative responsibilities: these are not expressly provided by the Treaty, but one can interpret that article 189 also refers to the exertion of consultative, supervision and control responsibilities.

The European Council is the community institution to which numerous responsibilities have been granted by means of the EC treaty. These also refer to achieving the objectives regarding the fiscal policy in the European Union. Thus, article 202 provides the following: The Council provides the coordination of the general economic policies of the member states; it holds the decision power; by means of the acts it adopts, it grants the Commission the responsibilities of enforcing the norms set by the Council. The Council can subject the practice of these responsibilities to certain forms.

In certain specific cases, it can also reserve its rights to directly exert execution responsibilities. The mentioned forms must answer to the principles and norms previously imposed by the Council, unanimously taking decisions, at the proposal of the Commission and with the prior approval of the European Parliament.

The European Commission is the community executive body with important tax responsibilities. The EC Treaty stipulates in article 210 the main responsibilities by means of which the Commission "provides the operation and development of the common market", i.e.:

- watches over the enforcement of the dispositions of the Community treaty and action taken by institutions in virtue thereof;
- makes recommendations or permits in the matters which are the subject of the EC treaty if these are expressly provided, or if the Commission considers them to be necessary;
- holds its own decision power and participates in the process of preparing the documents of the Council and European Parliament;
- exerts the responsibilities granted by the Council for enforcing the norms established by it.

The task of guaranteeing that the law is enforced on the entire territory of the Community according to the treaties lies with the European Court of Justice, headquartered in Luxembourg. The sentences of the Court state that "they have contributed to the consolidation of the Community, providing the protection granted by the community law, and at the same time, the compliance therewith both by the citizens and by the national governments" (Leonard D., 2001).

So, the competence of the Court of Justice, in relation to the taxation in the EU area, is to guarantee that, in interpreting and enforcing the community treaties, the law is complied with. This competence of the Court is restricted to only acting within the powers which have been granted to it by the Treaty of Nice, so that neither the competence to settle proceedings brought in court by natural or legal persons, nor the competence to solve the proceedings for cancelling the exclusively national decisions are covered by these powers. I share the opinion according to which the unusual role of the Court of Justice, as compared to the several international bodies, resides in the fact that it acts in a very different environment than the one in which the respective traditional bodies are found.

The tax policy extensively influences the saving, consumption, investments, labour and implicitly the operation manner of the markets of goods, services, capital and labour. The reforms launched by the European Council have had the role to make sure that the differences between the tax systems of the member states, which have become even more visible since the introduction of the Euro currency, do not disturb and do not fragment the single market, and do not prevent the effective allocation of resources. The national taxes and charges, the social security contributions specific to each state now also have other purposes than simply operating on the national market, and must be assessed in light of the different criteria, variable as importance from one EU member state to another.

Only by means of a close coordination of the national tax policies can one achieve a balance between different tax systems and the unencumbered right of free movement and stability in the European Union.

In our opinion, these are a few of the most significant problems that EU is facing in adopting the tax policy action:

- problems generated by the economic globalization and technological development phenomenon:
- the need to increase the effectiveness of the tax administration in the member states;
- the extension of the community area by the accession of the new states;
- the demographical references characterising the community area;
- the global economic crisis during 2008-2011.

During the latest centuries, major progress has been made in aligning the national tax legislation in the VAT and excises field, so that both the norms of establishing the taxation base, and the procedures for the collection and administration of the respective taxes have greatly been harmonized. Also, by means of directive 92/77/CEE regarding the harmonization of the legislations of the member states regarding the turnover taxes, the minimum standard level of the value added tax has been set, and by means of directive 92/79/CEE regarding the closeness of the cigarette duties, the directive 92/82/CEE regarding the minimum levels of the excises for mineral oils, and directive 92/84/CEE regarding the closeness of the excises level for alcohol and alcoholic drinks, the minimum levels of the harmonized excises have been set;

In the field of the direct taxes, the main harmonization measures have been adopted with the purpose of facilitating the activity of the multinational companies in the European Union. Thus, by means of directive 90/434/CEE regarding the common tax regime applied to mergers, splits, transfer of assets and exchanges of shares among the companies from different member states, they have tried to remove the tax-related difficulties caused by the restructuring and reorganization processes of the multinational companies. By means of directive 90/435/CEE regarding the common tax regime which is applied to the parent-companies and their branches from different member states, they have intended to remove the situations in which the cooperation between the commercial companies from different member states was disadvantaged (by means of the aspects regarding the distributed profit), in relation to the cooperation between the commercial companies from the same member state. The obstacles to be found in the case of a transnational operation of interest or royalty payments, inside a group of commercial companies located in different member states, have been removed by means of directive 2003/49/CE. The arbitration convention 90/436/CEE mentions the procedures for settling the litigations resulting from the enforcement of the transfer prices and from the transfers of profits among commercial companies which are members of the groups.

We assess that the view according to which achieving a total harmonization is not necessarily required, under the conditions of maintaining certain manifestation conditions for the tax competition, is correct. Thus, a full harmonization can cause a vulnerability of the national tax policies, which are thus in the impossibility of defending themselves from the oscillations of the economic climate, and especially from the effects of the economic and financial crisis. Because of the difficulties that the global economy is facing, a topic under discussion is the one of the active implication of the state into the economic and social life, in order to mitigate the effects of existing or potential imbalances, especially by using the tax policy as a lever by means of which macroeconomic stabilization would be achieved. During the latest crisis, "many states have considered it necessary to increase the maximum taxation levels per income, adopting one of the following approaches: either the enforcement of new taxation levels for the very high incomes, or the levy of temporary taxes for urgent budgetary deficit situations" (KPMG, 2012).

4. Conclusions

Due to the current economic and financial circumstance available globally, the competition among states has increased, in order to attract foreign investments with an economic potential by using the tax policy as an instrument of bringing them into their tax jurisdictions and by enforcing lower taxation levels. Within the European Union, for those states which are less developed or have recently become EU members, the preservation of a certain level of independence in the tax policy might be a good choice in the medium term, so that it would be enough time to achieve a tax consolidation, especially at present, when the tax sustainability of the public finances has become a major priority. Thus, the tax harmonization process mainly implies the selection of common taxation levels, which must be set at a level considered to be "reasonable" for all member states. Obviously, this level would become smaller than the high levels available in the developed states and higher as compared to those currently used by the less developed states. Thus, reactions are caused in both categories of states. The developed states would find themselves in the position to resize their public expenses, i.e. decrease them, while the less developed ones would give up the advantages of the lower taxation rates, as they would no longer be equally attractive for the foreign investments, and becoming at the same time very burdening for their own taxpayers. Thus, the countries with large marginal taxation rates are no supporters of the tax competition, and the less developed states are constantly developing a competition in creating and using taxation levels as attractive as possible for foreign investments.

Under the circumstances of a tax competition within national limits, by decreasing the taxation rates, the

tax policy could cause the increase of competitiveness, and could have beneficial effects for the business development, because taxpayers would retain a more consistent part of the earned incomes, which can allow an increase of the taxation base and also of the collected charges in the future. The reversed situation is however not valid, as the sustainability limit of the tax pressure according to the theory presented by means of Laffer Curve is well-know. This can be a development factor for the European economies, by increasing the mobility degree of the production factors, because investors would seek to benefit from the advantages of the tax system with lower levels, while staying on the EU territory.

The tax competition can contribute to the limitation of the trend regarding excessive taxation and ineffective spending of the public financial resources, stimulating the increase of the budgetary effectiveness by means of using fewer resources and implicitly by decreasing the vulnerability of the taxpayers towards the pressure exerted on them by the state. At the same time, the possibility of the taxpayers to freely transfer their capitals allows them to better protect themselves from governmental abuses or corruption.

The reason for creating the "four freedoms'' within the single European market must not be used in the sense of removing the tax competition, in favour of a complete harmonization of the national tax systems. We cannot compare tax competition to market competition in an actual sense. If the supply and demand law dominates in terms of market competition, the tax competition is only one of the aspects of the competition among countries, as a result of both certain budgetary constraints, and political, economic and social interests. We consider that the total harmonization would be beneficial up to certain limits, as the unification reduces the regional but also global tax competition, which would be a disadvantage for the European tax system.

5. References

[1] **Chilarez D., Ene G-S**., Harmonization and fiscal competitiveness in European Union, http://www.strategiimanageriale.ro/images/images_site/articole/article_3a5744edeef192e0d12f8e9a8446293c.pdf

[2] **Gruescu R., Nanu R.,** Economic and Monetary Union, Craiova University Reprography, 2001

[3] **Jinga I.,** Internal Coordination in European Union, in RRDC nr. 2/2005

[4] **Leonard D.,** European Union Guide, Editura Teora, Bucureşti, 2001

[5] **Manolache O.,** Community Law Tractate, Edition 5, Editura All Beck, Bucureşti, 2006

[6] **Moldovan, I and Popa, R.A.,** Challenges of the economic science against the economic crisis, Theoretic and Applied Economics ECTAP, Volume XIX (2012), No. 4(569), pp. 131-140, http://store.ectap.ro/articole/716_ro.pdf

[7] **European Commission**, Tax policy in the European Union, Priorities for the years ahead, Brussel, 2001, Tax policy in the European Union

[8] **European Parliament**, European Parliament Fact Sheets, 2014, Fiscal policy and taxation UE

[9] **KPMG-Global**, http://www.kpmg.com/Global/en/services/Tax/Pages/default.aspx

[10] *** The Treaty of Rome (EEC Treaty), 25 March 1957, enforced on 1 January 1958