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**EUROPEAN UNION TAX CODE ARGUMENTS**

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**SUMMARY**

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## Summary

**Key words:** law, fiscal, unification, VAT, code, European, sovereignty, dangers, transfer pricing, human rights, tax wars, European Union Court of Justice, tax.

The scope of the present thesis is to explore the means for the unification of the tax legislations of the member countries of the European Union. The first part of the paper focuses on presenting the objectives of the current research. The objective is to analyze the way in which the achievement of a unique European tax legislation is necessary, but is possible as well. In addition, another objective of these research is to check the fact if it is desirable to use a unique set of tax rules in all the European Union member states.

From the beginning it must be said that the European Union represents, by priority, an economic structure, even though it has extended its competences towards another aims. Even in this situation, the true origins of the European Union are not allowed to be forgotten. The consequence is that an exam is required to be delivered in order to check if the economic objectives are fulfilled. Furthermore, a substance analysis is to be taken about tax element which help the development of the key pillars of the European Union.

The first part of the papers presents an overview picture of context in which the European Union was born in the complicated maelstrom at the end of the Second World War. Such a remark was necessary to underline the fact that in time the European Union played an essential role in the history of Europe by promoting a peace and prosperity climate. For the protection of these privileges a brief analysis of the way in which the primary objectives of the European Union are fulfilled is an imperative.

After a brief introduction in the tax reality of the European Union, the first part makes a detailed presentation of the research methods used in the present paper. The

description of the research methods, the research design and the research focus follows to offer an accurate picture of the objectives of the present paper and a large description of the informations which can be transformed in reality. For exemple, in the research methods I have underlined the fact that the documentation sources of the present papas are based on elements which come from the practical experience of the European Union, such as the preliminary rulings of the European Union Court of Justice or European Commission communications.

In connection, the paper doesn't ignore the fact the points of view issued by popular experts (ex: Rita de la Feria) in the area of the European tax law, to be as closed as possible to the current situation of the European Union. As a conclusion, I can say that the present paper has as a background a strong research which supports the idea that the implementation of an European Union tax code is possible.

The second part of the paper presents a specific description of the European Union history, with a particular interest in the reasons that emerged in the common market. In the complicated European landscape after de the Second World War, the main question was which were the compulsory spets to avoid a similar disaster. The answer was that an economic unification and coordination of the european states.

The first unification choice was around a military project, but it was rejected due to fears of rebirth of the German militarism, especially apart of France. The second choice was around an economic project enabled to enhance the cooperation between the states with a particular interes in the field of commercial transactions. In the end, this was the most suitable choice for the european states which helped them to overtake the impass.

Furthermore, the second part makes an interesting parallel between the tax unification of German states in the 19<sup>th</sup> century. The idea of the parallel is to prove that a fiscal unification of the European Union is possible and can lead to political and military unification. In accordance to the present paper research objective it was usefull to present the situation of the XIX century Germany because many similar features can be tracked with the present unification process of the European Union. Another reason is that Germany is founding member of the European Union.

Looking at this example, I think that the European Union can follow the same path as the German states in the XIX century. But with priority must be solved the problem of the tax unification which will enhance the economic cooperation and the commercial transactions between European countries. From this point of view, I consider that the full tax unification has a considerable chance of success.

The third part of the paper tackles the institutional framework of the European Union together with the fundamental freedoms of the European Union and their connection with the tax picture of the European Union. The institutional framework must be known because each European institution has particular features that are going to be involved in the unification process. From the above description it results that the European Commission and the European Union Court of Justice play a key role in the area. The two institutions were and are involved in a process of tax unification which is limited to a defensive action of the main European values around the four fundamental freedoms.

In this context, I realised a presentation of the four fundamental freedoms and of the way in which the life of the European Union was influenced by them. The necessity to present the four fundamental freedoms comes from the fact that a protection for them can only come from a superior level which can be translated into a unique European tax legislation under the umbrella of a European tax code.

In addition, the third part contains a detailed description of the main legislative instruments of the European Union in search of the ways in which a European tax code can become operational. The scope of these analyses is to search the way in which an European tax code can become operational. As it is widely known, the main European legislative instruments are the directives and the regulations. Taxes are a difficult terrain because each regulation has to respect the unanimity rule which makes the harmonisation process to be very difficult.

With this in my mind, I have decided to explore the possibility of regulations through new means, such as the "soft law" regulations. "Soft law" regulations don't have

a compulsory legal value, but a recommendation one. Even in these context, “soft law” regulations have the ability to assure a european tax law consolidation.

The fourth part of the paper is concerned on underlining the tax sovereignty of the European Union in its battle with the member over competences in the tax field. The problem of competences transfer from the member states to the European Union represents the most difficult obstacle in the way of tax unification. In the present paper, I have offered explications in relation to the notion of sovereignty and to the way in which the transfer sovereignty can be transferred to the European Union, without to affect the member states identity. By the transfer of competences a situation which will provide advantages to the member states will be created.

Meanwhile, the fourth part presents the process of the tax harmonization in the case of direct and indirect taxes. The tax reality in the member states which is also true for the European Union is that these area is divided between two great categories: direct and indirect taxes. The direct taxes are represented by the company tax, income tax and security taxes. The indirect ones are represented by the value on added tax, excise and custom duties. The last taxes category is mentioned in the founding treaties of the European Union, because these taxes represent a source of own revenues for the Union.

Even tough the direct taxes are not mentioned in the treaties, they have received a particular attention from European Union Court of Justice case law. The assessment process is the result of a variety of cases from the European Union Court of Justice case law and administrative practice of the European Commission. Court’s case law has indicated that in the field of the direct taxes the member states are free of movement as long as through their actions the don’t harm the four fundamental freedoms. These type of action, where the Court and the Commission played a semnificative role, is called “negative integration”.

But for all the actions in the direction of the “negative integration”, the cooperation and unification process between the member states and European Union are only in an early stage, a situation that must be changed for being updated to the new european and international financial challenges. In parallel, the assesment includes has a

section dedicated to the indirect taxes. At this level, in spite the obstacles that arise from the unanimity vote rule, some european regulations were adopted.

In the present, we have a full unification in the area of custom duties which represented the first major objective of the Union since it's foundation. As a effect of the 1985 White Paper which proposed the completion of the internal market, the main categories of indirect taxes (VAT and excises) were assigned to play a key role. In the paper body I have underlined the fact that these objective was not touched because of the lack of politcall will from the member states. As a consequence, at the present moment the VAT and excises area is regulated through directives, a situation that enables us that in these area we are faced with a halfharmonization process.

The achivements in the area of indirect taxes can be called “positive integration”, even though it is not a full integration. Bu these achivements can be seen as a signal that a common european project it is possible and necessary. Also the result obtained can be used as a point of reference during discussions about a future European tax code. In the context of the paper, the fourth part represents the backbone for the debate over a common tax policy.

The fifth part main concern is targeting the list of elements identified as dangers for the European Union financial security. The European Union proved to be a succesfull player which in short amount of time proved to be an important player, it must be accepted that these statut cannot be mantained without to identify the major risks targeted against it. In this context, the fifth part seeks to search, explore and to provide the solutions to counter the principal dangers targeted against the European Union financial interests.

Menaces for the European Union financial security the paper are the transfer prices, tax heavens, the failure of the BEPS and CCTB projects or the lack of cooperation between tax authorities of the member states. What it is important is the fact that all the menaces identified are connected between. In this context it is required to deal with them in a global manner, not in a individual one. For exemple, the transfer prices are a problem because the CCTB project it is still not avabile because of political divergences among

member states. The fifth part contains a general presentation of way in which the transfer pricing issue reflected in the case law of European Union Court of Justice.

Meanwhile, in a connected way must not be forgotten the problem of tax heavens and of the lack of administrative cooperation apart from member states. The existence of possibility to transfer profits to a jurisdiction where tax burden is not existing means that the time has come to take it serious the discussion related to tax unification. For instance, in the paper I have presented a series of examples where the common action of the member states proved the truth of the facts mentioned above. I pointed out that it depends of the member states will of cooperation to get rid of the above mentioned dangers.

Related to the lack of administrative cooperation, my intention was to underline that this aspect encourages tax evasion and tax fraud, elements in direct connection with the diminishing of European Union own budget revenues. The phenomena of tax evasion drags many of the European Union resources, as it is pointed in the statistics of the European Commission. This phenomena is sustained by the fact that although the European Union member states share a common, there are still 28 different tax systems. For example, in the case of intracommunity VAT system I have presented scenarios which are possible because the VAT system it is only a transitory one.

Another element emphasised is the fact the lack of cooperation between member states creates a harmful tax competition inside the European Union. The key to these problems is the efficient and urgent implementation of the BEPS and CCTB projects. Beside the fact that the implementation of this projects will lead to the defense of member states own budgetary resources, as well as those of the Union, this aspect will help at the connection of the European Union to the international efforts to fight tax evasion and money laundering which are spearheaded by the OECD.

Because of the significant impact at the EU – US political relationship, I couldn't have ignored problems generated by the state aids granted by some European countries (Luxembourg, Ireland, the Netherlands) to the great American companies that operates on the European soil. Presenting the battles that involved the European Commission, on one hand, and Google, Amazon, Apple and Starbucks, on the other

hand, my idea was to point out how a menace can evolve if it is not tackled with the proper instruments. I said that it is a mistake to grant to the member the uncontrolled possibilities in the area of state aid and after that the European Commission to have the unpleasant job to check the incompatibility or not with the European law. This thing is dangerous because it can destroy the domestic and foreign financial security of the European Union. Furthermore, this thing risks to extend at the level of diplomatic relations. A good example being the fact that the inquiries performed against the great American companies generated protests from the US State Department.

The conclusion of the fifth part is that a European Union tax code cannot be operational unless it tackles the above mentioned difficulties. The tackle must be in direct connection to the domestic and foreign realities of the European Union. My personal view is that the multitude of problems and dangers directed against the European Union financial interests can be solved only by an European tax code.

The sixth part, also the last one, presents the human fundamental rights interaction with the European tax legislation. At the present moment, the human rights are part of the European legal system of values. After the entry into force of the Charter of Fundamental Freedoms in 1.12.2009, the activity of the Court expanded considerably. In this context, the human rights system interacted with the tax system. This means that the project of an European tax code cannot ignore the system of human rights.

In accordance, I have decided to present the most relevant preliminary rulings of the Court of Luxembourg, such as *Fransson*, *WML* and *Berlioz* in order to attain an overview picture of the way in which the human rights system can be merged with problems as tax evasion or the lack of administrative cooperation of the member under the umbrella of a European tax code.

Also, the sixth part contains a presentation of the tax wars between member states which unfolded in the last three years before the Court of Luxembourg. For instance, the conflicts between Austria and Germany, two of the most important member states, generate consequences which are mandatory to be taken into account. The avoidance of such conflicts must represent a top priority at the European level which can be solved only through a common project of unification.

In the end, the paper summarizes the conclusions of the aspects debated. The idea of the conclusions is that the member states should transfer more competences to the European Union in order that the last one to be an important player in the international stage. Another aspect of the conclusions is that the enforcement of a unique European tax is necessary and of a common tax policy that can assure an efficient control and fair share of the European public resources.

Another conclusion is that although an European tax code is difficult to realize because of the political obstacles, it represents a reality imposed by the present times, but also a responsibility related to the European Union's past. For example, after the 1985 White Paper and the elimination of borders control in 1993, the problem of completing the European tax system is still unsolved, although the deadline should have at the beginning of 2000s.

In the end, it is important to say that a tax unification will produce benefits for both the member states and the European Union. The tax unification it is possible from the technical point of view, it is useful for all the involved actors and has a fundament for launching, but it depends also of political will of the member states to transfer their competences to a supranational structure.