

Editorial

Twenty Years of the EC Tax Review

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The Neumark report draws attention on several occasions to taxes that affect citizens, including income tax, wealth tax, inheritance tax and taxes on motor vehicles, while also making a number of recommendations. However, the subject of citizens and taxation attracted little attention in the first fifty years of the EU, with the primary focus of cooperation being on economic matters. A Savings Tax Directive was adopted, and there has also been quite some ECJ case law on specific national schemes' compliance, or otherwise, with EU law. The Treaty of Maastricht widened European cooperation to include the second and third pillars, and also of course monetary cooperation. Another relevant development was the introduction of Citizenship of the Union. Since the Treaty of Lisbon came into force on 1 December 2009, Brussels has been devoting increasing attention to the citizens of Europe, including in the field of taxation. Tax obstacles for citizens in cross-border situations now need to be identified and resolved so that European citizens, too, can enjoy the full benefits of the single market.

The initiative to launch a periodical focusing on tax from a European law perspective dates back to 1991 in Rotterdam, when we at the Erasmus University also decided to set up a postgraduate programme in European tax law. In liaison with our colleague Leo Stevens and Kluwer publishers, we also examined the feasibility of an English-language journal, with the view being that we would need input from outside the Netherlands on the editorial front. Frans Vanistendael and Luc Hinnekens were immediately enthusiastic about the project, and over the years contributed greatly to the editing of the journal, as well as regularly contributing content. Not long after the start, they were joined by Albert Rädler, who died recently (see below), and Peter Elliot. Fred de Hosson, Editor-in-Chief of *Intertax*, was also a member of the editorial board, thanks to the subscription link between *Intertax* and *EC Tax Review*.

The first issue of the quarterly *EC Tax Review* appeared in 1992. The nineties was a decade in which developments in European tax law were still relatively limited. The Ruding report on the harmonization of corporate income taxation had been published in 1991, while the Merger Directive and the Parent-Subsidiary Directive came into force in 1992. Even back then, European Court of Justice case law was causing political and other forms of commotion from time to time, and gradually this resulted in European tax law attracting more and more interest in the Member States.

In the special 2002–2003 issue published to mark the journal's tenth anniversary, Frans Vanistendael, who chaired the editorial board for some fifteen years,

discussed developments in Europe during those first ten years. In response to these developments he wrote: 'This state of affairs may be very exciting for tax academics, very lucrative for tax practitioners, but is very unfortunate for the Secretaries of Finance in the Member States. Because of the absence of any comprehensive tax legislation at the European level the Court of Justice is forced to impose "negative tax harmonization" on the Member States i.e. singling out which tax provisions violate the basic treaty provisions with direct effect. European taxation and the national tax systems of the Member States are becoming increasingly and in an unbalanced way determined by the imperatives of a borderless society. In spite of this sorry situation the Member States are not ready to give up their veto power on tax matters. Like the permanent members of the Security Council of the United Nations they cling to the notion of fiscal sovereignty, thereby condemning themselves to inaction and in fact to a gradual loss of fiscal sovereignty'.

And now, ten years later, has there been much change? As far as positive integration is concerned, the Ecofin Council announced a package of measures in mid-2003 comprising the Savings Tax Directive, the Interest and Royalties Directive and the Code of Conduct. The Merger Directive and the Parent-Subsidiary Directive have meanwhile been amended, as too has the Interest and Royalties Directive. Proposals for a broader application of the Savings Tax Directive, however, have still to be accepted by the Ecofin Council.

A new Directive in the field of VAT was issued in 2006, while the place of service was substantially altered in 2010. Discussions in this area, however, are still ongoing, not least because of the Green Paper on VAT published by the European Commission in late 2010. It is now a question of waiting to see the concrete proposals that the Commission comes up with in its White Paper.

The modernized Community Customs Code was adopted a few years ago, but unfortunately has not yet taken effect. The Regulation implementing these rules still needs to be adopted before the modernized Code can apply (the finishing line in this respect is expected to be reached in 2013).

An aspect of quite some importance for the effective levying of taxation in the internal market is the issue of mutual assistance by the tax authorities of the Member States. The Directive of 1977 concerning mutual assistance in the field of direct taxation still needs amending. Although the Commission presented a proposal to this effect on 2 February 2009, this has not yet been approved. The Mutual Assistance Directive, which originally applied only to indirect taxation, was extended in 2001 to include direct taxation, with a further extension in 2010 to local taxation.

In the Commission's Communication of 23 May 2001 on 'Tax policy in the European Union - Priorities for the years ahead' (COM (2001) 260 final) the then EU Commissioner Bolkestein proposed seeking to harmonize the corporate tax bases, while excluding the possibility of harmonizing the applicable rates. Experience in the field of VAT will certainly have been a consideration in this respect. The difficulties involved in establishing and approving the European Constitution (the later Treaty of Lisbon) were one of the reasons why the proposal for a CCCTB Directive was not published until 16 March 2011. And will the CCCTB Directive actually cross the finishing line? In my view it is only through the enhanced cooperation provided for in Article 20 TEU that the CCCTB will in due course be implemented by a number of Member States, and the question then is whether other Member States will follow their example.

The new Treaty of Lisbon came into force on 1 December 2009. This has not resulted in any great changes to the tax world. The unanimity rule, for example, continues to apply in respect of tax regulations as the Member States do not wish to relinquish their fiscal sovereignty. The euro crisis, which is essentially a debt crisis, has in the past couple of years shaken Europe's very foundations. This has resulted in twenty-five Member States agreeing to a new treaty,

which they now have to ratify. Although a fiscal union is regularly mentioned, what is essentially meant is a budgetary union. The impact of this budgetary union on the tax world, for example, will become clear over the coming period. In recent years both the European Commission and the European Parliament have expressed a wish for greater powers for funding the EU's own spending. And there is certainly a significant role for taxes to play in this respect, with the European Commission's publication of proposals for a Financial Transaction Tax (FTT) representing an initial test case. However, several Member States are currently seeking to introduce a bank tax of their own, while there is no great enthusiasm for pursuing a Europe-wide tax of this nature.

To mark the twentieth anniversary of *EC Tax Review*, a seminar will be held at the start of the EATLP congress in Rotterdam on 31 May 2012. Algirdas Šemeta, the EU Commissioner for Taxation, will speak at this seminar, will also debate the topic of fiscal autonomy in a changing EU world. Other speakers at this seminar will include Professor Kai Konrad of the Max Planck Institute, Professor Frans Vanistendael (Emeritus Professor of Tax Law at KU Leuven and Academic Chairman of the IBFD), Professor Jaap de Zwaan (Professor of the Law of the European Union at Erasmus University, Rotterdam) and Krister Andersson (Chairman of the BusinessEurope Tax Policy Group). Emeritus Professor Han Kogels will moderate the seminar, while the congress itself is being sponsored by Kluwer Law International.

The Neumark report, which sought to establish the fiscal policy most suitable for European cooperation, was published fifty years ago and examined a wide range of tax-related topics. In this issue, the *EC Tax Review* editorial board has set itself the task of establishing, in the various contributions, how much has been achieved in the fifty years since Neumark. When considering the report, we have to realize that its primary focus was on the economic aspects. The contributions in this anniversary edition, however, will also examine developments since Neumark in the field of regulation, and of course in European Court of Justice case law. The latter has for many years been giving rise to heated discussions, and there will be no change in this respect over the coming period.

We hope that the articles in this theme issue will contribute on the one hand to a greater historical awareness of European developments in the fiscal field, while on the other hand also to the discussions on the fiscal way forward for Europe.

We were sorry to hear of the death on 25 February 2012 of Albert Rädler. Albert worked for many years as an academic and consultant in international and European tax law. His thesis examined the harmonization of direct taxation in the European Economic Community. In the early 1990s, he was a member of the Ruding Committee (Report on the Future of European Corporate Taxation, 1992).

Albert was a member of the EC Tax Review editorial board almost from the start and joined the Advisory Board in 2010. We are extremely grateful to Albert for his contributions to EC Tax Review over the years and for his commitment to our journal.

Editorial board.