

# Editorial

## *Plea for a New Tax Package*

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When one looks at the situation regarding Tax Policy in the EU today there are a few important issues that appear which have not been convincingly treated and that we should start considering as a matter of priority. They cover different issues, from an institutional and policy point of view:

- generally speaking there is a need for a more economic vision of the scope of EU Tax Policy;
- on the institutional side, there is a need for an effective high level body on tax policy and for a ‘test’ for a correct application of the subsidiarity principle;
- on the tax policy side, there is a need for effective solidarity between Member States (members of a community) and for tax initiatives that could substantially improve the functioning of the internal market.

### 1 THE 1997 MONTI TAX PACKAGE

The introduction of the tax package in the mid-1990s was a new approach from an institutional point of view. The first ‘innovation’ was the formulation of a package of proposals with the common goal of improving tax neutrality in the functioning of the internal market. The Savings Directive, the Code of Conduct and the ‘Interest and Royalties’ Directive all aimed at making taxation more neutral, by avoiding double taxation or double non-taxation that both result in an inefficient allocation of resources in a single market. The main reason for substituting a package to a case-by-case approach was to maximize the possibility of having a political consensus around these proposals.

The linkages between tax policy, fiscal policy and economic policy provided the second innovative aspect of the new approach. The point was made that harmful tax competition was dismantling the ‘economic sovereignty’ of Member States and at the same time acting against the required fiscal consolidation and Member States’ attempts to make their tax system more employment-friendly.

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### 2 TWENTY YEARS LATER, SOME SIMILARITIES?

The current situation has some similarities with the economic and institutional context that prevailed in the mid-1990s:

- The need to fight against damaging forms of tax competition is still there.
- Public finances are still fragile, due to the adverse consequences of the crisis and due to the coming pressure of ageing. There is a need to consolidate public finances in a period of slow growth and fragile recovery. In such a situation, Member States should be able to reach the full potential of their tax revenue, without being harmed by tax fraud and tax evasion.
- It is also clear that the crisis has seriously affected the potential growth rate of the European economies. This must be reversed and removing tax obstacles to a well functioning internal market would contribute to this by enhancing competitiveness. The welfare of EU citizens would as a consequence increase.

### 3 THE METHOD: THE NEED FOR A TAX POLICY COMMITTEE

In terms of method, the Tax Package of 1997 was prepared by substantial discussions and work conducted within the Tax Policy Group (TPG) which was one of the most important and useful innovations of the ‘Monti Tax Package’ (chaired by the Commissioner and composed of personal representatives of each Finance Minister). In recent years, the TPG has lost in efficiency and leadership and today such a forum does not seem to exist anymore.

There is still a need for a dialogue, not only on tax administration issues, but at a more political level. This is especially true when tax policy has to be linked with broader issues on the fiscal and economic sides. At the same time it is extremely important that Member States play their role in the definition of the policy and its objectives.

Today, most of the issues relating to the linkages between tax policy, fiscal consolidation and structural reforms are discussed at the EPC. There are obvious

benefits in discussing tax policy issues in such a high level body notably in terms of consistency but there may be a lack of tax policy expertise. An alternative option could be to revive an idea briefly discussed in 2005 during the Luxembourg Presidency (supported by some Member States): the creation of a Tax Policy Committee. Such a Committee composed of ‘State Secretary or a personal representative of the Finance Minister’ could be chaired by one of the Member States representative for a period of say two years, the Secretariat would be done by the Commission services.

#### **4 ON THE SUBSTANCE<sup>1</sup>; THE MENU FOR A NEW TAX PACKAGE**

On the substance, one of the most urgent subjects of Tax Policy in an economic community like the EU would be to agree on a ‘*Principle of Solidarity*’ between Member States. Although the degree of administrative cooperation and mutual assistance in tax matters has made some limited progress, Member States still behave for most of their tax policy decisions as if they were independent competitors. Such a general behaviour, sometimes based on the idea of preserving tax sovereignty is totally misleading and does not contribute in the end to the agreed objective. Quite the contrary, this ‘benign neglect’ leads to more tax competition, more fiscal nationalism to the detriment of investment and job creation. ‘Benign neglect’ can result in tax proposals that just displace the tax base from one country to another, with a net negative effect on tax revenue from a global point of view. It is time to put into place a ‘Solidarity Principle’ which will result at the same time in:

- more cohesion between the different tax policies and tax administrations;
- a better and easier coordination of tax policies;
- an effective prevention of double taxation (fulfilling already agreed principles but also going well beyond what double tax conventions permit today) and double non-taxation;
- an easier resolution of disputes which could be integrated in an ‘EU Dispute Resolution and Arbitration Mechanism’.

In line with the creation of a Tax Committee, a *deep examination of the application of the principle of subsidiarity to tax policy* would be necessary as too often reference is made to this principle by Member States simply for refusing to discuss or agree some proposals.<sup>1</sup>

To help this process one might consider a series of economic and/or legal ‘tests’ to justify the reference made to subsidiarity. Some examples can be given for considering that in certain circumstances legislating at the EU level is justified:

- a proposal may be justified because it will eliminate substantial distortions of competition; or
- when a tax becomes ‘inattributable’ to a single jurisdiction (like customs duties at the time of the creation of the Customs Union or, some would say, like today Corporate Taxation based on transfer pricing); or
- when there is an overlapping of tax sovereignties resulting in double taxation or double non-taxation.

This would be even more natural as and when these circumstances could give rise to negative integration decisions by the EU Court of Justice.

#### **5 TAX POLICY, ECONOMIC GROWTH AND STRUCTURAL REFORMS**

As explained above, tax policy can contribute to improve the potential growth rate of European economies. Such a strategy includes various issues, like policies reducing the tax wedge on labour, support to R&D and entrepreneurship, changes in the tax mix to make it more growth-friendly. Most of them are discussed, but in a piecemeal approach. Tax policy could be made more efficient by bringing all these specific issues in a single forum. There is also a need for peer review of MS tax policies: such a practice could change the balance between ‘tax nationalism’ and ‘tax solidarity’.

In these days where the G-20 and the OECD are leading a very deep re-examination of many segments of the principles of international taxation and their application, the EU cannot limit its ambition to a simple ‘fight against fraud and evasion strategy’ without running the risk of hampering the single market and reducing its efficiency and potential. The EU must redefine its proper tax policy agenda in a ‘New Tax Package’ associating the initiatives suggested above with some more single market oriented proposals. It could include:

- A re-examination of the Code of Conduct scope and criteria taking into account recent discussions on substance and economic presence, patent boxes as well as older features like ‘impatriate regimes’.
- A tax policy debate on the debt bias in corporate taxation and innovative solutions (like the Italian ACE).
- A revised approach to the CCCTB making the system compulsory, taking into account comments made by stakeholders and improving the workability of apportionment for assets/intangibles and sales.
- A staged approach to a Multilateral Treaty for the prevention of double taxation and double non-taxation.
- Initiatives for removing cross-border tax obstacles to movements of workers and companies along the lines

<sup>1</sup> Even more so after the attribution in the Lisbon Treaty of new powers to National Parliaments in Protocol N° 2 on the application of the principles of subsidiarity and proportionality.

suggested in the study recently published by the Commission services.<sup>2</sup>

- A ‘European Citizen’ initiative for the elimination of obstacles and double taxation in the area of inheritance taxes.

<sup>2</sup> ‘Removing cross-border tax obstacles – Organization and practices in Member States’ tax administrations’ November 2014: [http://ec.europa.eu/taxation\\_customs/resources/documents/common/publications/studies/study\\_cross\\_border\\_tax\\_obstacles\\_executive\\_summary\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/common/publications/studies/study_cross_border_tax_obstacles_executive_summary_en.pdf).

Such a series of single market oriented initiatives coupled with the reinforcement of the fight against fraud and evasion, of which CCCTB would be a pillar, would improve competitiveness and constitute a major step in real economic integration of the European economies.

[pa.eu/taxation\\_customs/resources/documents/common/publications/studies/study\\_cross\\_border\\_tax\\_obstacles\\_executive\\_summary\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/common/publications/studies/study_cross_border_tax_obstacles_executive_summary_en.pdf).