

Principles of European Union Tax Law

Silviu-Ştefan Petriman

Bucharest Bar, Bucharest, Romania, silviuavocat10@gmail.com

ABSTRACT: As provided for in the Maastricht Treaty, Article 6 of the European Union is based on the following principles: freedom, democracy, respect for human rights and fundamental freedoms and the rule of law, principles common to the Member States of the European Union. Fundamental rights are the basis of the principles of law, the observance of which is ensured by the Community judicature. Parliament, the Council of the European Union and the European Commission solemnly proclaim the Charter of Fundamental Rights (at the European Council in Nice on 7-11 December 2000). Given that the European Union is stepping up its fight against tax evasion, which is also a cause of the budget deficit and a threat to fair competition, combating tax evasion is a key challenge.

KEYWORDS: tax law, the European Union, tax evasion, principles of law, budget deficit

Introduction

Fiscal policy in the European Union consists of two components: direct taxation, which remains the exclusive competence of the Member States, and indirect taxation, which affects the free movement of goods and the freedom to provide services in the single market. With regard to direct taxation, however, the EU has set harmonized standards for the taxation of companies and individuals, and Member States have taken common steps to prevent tax evasion and double taxation. In the field of indirect taxation, the EU coordinates and harmonises value added tax (VAT) and excise legislation. This avoids distortions of competition in the internal market, as a result of variations in indirect tax rates and systems that would give firms in one country an unfair advantage over others.

The main objectives of a coherent and coordinated fiscal approach are:

- Elimination of discrimination and double taxation;
- Prevention of involuntary cases of non-taxation and evasion;
- Reducing the compliance costs of falling under the provisions of several tax systems.

The EU's Fiscalis 2020 cooperation program runs from 2014-2020 and is based on previous multi-annual action programs in the field of taxation. The overall objective of the program is to improve the functioning of EU taxation systems through extensive cooperation between participating countries, their tax authorities and their officials.

The specific objective of the program is to support the fight against tax fraud, tax evasion and the implementation of EU tax law by:

- Ensuring the exchange of information;
- Supporting administrative cooperation;
- Provide assistance to participating countries in order to reduce bureaucracy for tax authorities and reduce compliance costs for taxpayers (Regulation (EU) No 1286/2013 of the European Parliament and of the Council of 11 December 2013 establishing an action program to improve the functioning of the tax systems in the European Union for the period 2014-2020 (Fiscalis 2020) and repealing Decision No 1482/2007 CE (<http://eur-lex.europa.eu>)). Taxation is essential for national sovereignty. Tax revenues allow governments to exist and function efficiently. In addition, tax legislation reflects the fundamental choices that EU countries make in important budgetary areas, such as education, health and pensions (Şaguna, Radu and Radu 2017, 169).

Legal acts of the European Union with applicability in the field of financial law and in the field of tax law

In the doctrine, the legal acts of the European Union with the applicability in the field of *financial law*, analysed as important are:

- Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council Text with EEA relevance;
- Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC Text with EEA relevance;
- Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU Text with EEA relevance;
- Council Regulation (EU, Euratom) 2017/1123 of 20 June 2017 amending Regulation (EU, Euratom) No 1311/2013 laying down the multiannual financial framework for the years 2014-2020;
- Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002;
- Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests;
- Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (Text with EEA relevance).

In doctrine, the legal acts of the European Union with applicability in the field of *fiscal law* analyzed as important are (Dobrilă 2019, 106):

- Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax;
- Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC;
- Council Directive 2009/132/EC of 19 October 2009 determining the scope of Article 143(b) and (c) of Directive 2006/112/EC as regards exemption from value added tax on the final importation of certain goods;
- Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State;
- Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States;
- Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax,
- Council Regulation (EC) No 1798/2003 of 7 October 2003 on administrative cooperation in the field of value added tax and repealing Regulation (EEC) No 218/92;
- Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax.

Principles of European Union Tax Law

1) The principle of respect for the rights of the defence

One of the most important principles that must be taken into account in the process of applying European law is the principle of the right to defense in its many aspects. Thus, from the point of view of the right to be heard, compliance with the principle is required both with regard to the hearing in proceedings where sanctions may be applied, even in administrative proceedings, and with regard to the hearing of witnesses on certain situations, when requested (Şaguna, Radu and Radu 2017, 172).

In another respect, the right of defense must also be ensured with regard to the right of assistance from national authorities and the right to legal assistance and representation in connection with which there is legal professional privilege. The principle of the right of defense must guide the entire proceedings before the Community judiciary.

2) The principle of res judicata

The principle of *res judicata*, a widely accepted principle, means that an action can be tried only once - *non bis in idem*. In practice, however, if a sanction is applied twice for the same act, in a different procedure, but according to certain rules, with entirely different purposes, the principle is considered to be respected.

3) The principle of legal certainty

It is a fundamental principle, according to which the application of the law to a specific situation must be predictable. The principle can be described as the obligation of public authorities to ensure that the law is easily established by those to whom it is applied, and that they can, not without reason, foresee its existence, as well as how it will be applied and interpreted.

The principle, as a measure, cannot be changed once it has been adopted by the competent authorities and is, as the Court of Justice has pointed out, an essential factor contributing to legal certainty and the stability of legal situations in the Community legal order for both Community institutions, as well as for persons whose legal and factual situation is affected by a decision adopted by these institutions.

4) The principle of equality

This principle, considered to derive from the nature of European law, presupposes first of all the exclusion of discrimination, namely equal treatment of the parties in identical and comparable situations. It is provided, by application, in the very texts of the Community Treaties. Thus, art. 141 TEC prohibits discrimination between the sexes, by applying the principle that women and men must receive equal pay for equal work, and art. 12 The TEC expressly prohibits discrimination on grounds of nationality. Other provisions prohibit discrimination in the free movement of goods, persons and capital. The principle of non-discrimination applies to all legal relationships which may be established within the territory of the Community, by virtue of the place where they were agreed or the place where they take effect.

5) The principle of loyalty (solidarity)

This principle enshrined in the Treaty and also promoted by the Court of Justice of the European Union, also called the principle of solidarity, is provided in art. 10 TEC, which provides that Member States shall take all appropriate measures, whether general or special, to ensure fulfillment of the obligations arising out of the Treaty or of the action taken by the institutions of the Community and that they facilitate the fulfillment of its tasks.

This principle, which is also considered to derive from the nature of Community law, shows that there are three obligations on the Member States: two positive and one negative. The first positive obligation is specified in the first part of art. 10 para. (1) of the EC Treaty, by the Member States, to take all appropriate measures, whether general or special, to ensure fulfillment

of the obligations arising out of the Treaty or of action taken by the institutions of the Community. The second positive obligation - provided - provided in the second part of par. (1) of Article 10 TEC - on facilitating the performance of Community tasks, concerns the duty of Member States to provide the Commission with the required information in order to verify that the measures they have taken comply with Community (European Union) law primary or secondary. The third obligation - negative - consists in the fact that, according to art. 10 para. (2) of the TEC, Member States must refrain from any measure which would jeopardize the attainment of the objectives of the European Union. These objectives are provided in art. 2 TEC, but this article also contains the means of achieving the objectives, through which, in turn, reference is made to the activities involved in this process, mentioned in art. 3 and art. 4.

Conclusions

The European Union has no tax prerogatives, so there are no taxes collected at European level, but the evolution of the single market determines the tax impact at Union level. Member States therefore establish their own tax system, in accordance with their own tax policy, with a view to the sovereignty of the Member State.

The EU's fiscal policy strategy is set out in the Commission Communication, entitled Tax Policy in the European Union.

The European Union considers that the means by which national policies and legislation are required to be harmonized are also specific to its fiscal policy.

References

- Dobrilă, Mirela Carmen. 2019. *Dreptul European al Afacerilor (European Business Law)*. Bucharest: Universul Juridic Publishing House.
- Regulation (EU) No 1286/2013 of the European Parliament and of the Council of 11 December 2013 establishing an action program to improve the functioning of the tax systems in the European Union for the period 2014-2020 (Fiscalis 2020) and repealing Decision No 1482/2007 CE. <http://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX%3A32013R1286>, accessed on June 17th, 2020.
- Șaguna, Dan Drosu; Radu, Daniela Iuliana and Radu, Marius Eugen. 2017. *Drept financiar-fiscal, Legislația Uniunii Europene (Financial-Fiscal Law, European Union Legislation)*. Bucharest: C.H. Beck Publishing House.