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TAX HARMONIZATION IN THE EUROPEAN UNION

Abstract

Issues that will be treated in this paper refer to tax harmonization in the European Union. One of the main preconditions for European integration is the harmonization of taxes, respectively the harmonization of national tax systems of countries that aim to integrate into the European common market.

European Union legal base is known as the acquis communautaire or shortly the EU acquis. It includes principles and political objectives of the treaties; EU legislation and the jurisprudence of the Court of Justice; declarations and resolutions adopted within the European Union; various acts adopted in the field of justice, home affairs, foreign and security policy; Community's international agreements as well as agreements concluded between member countries in the areas of EU activity.

The research methodology, which will be used in this paper is quantitative analysis. Some of the methods that will be used in this paper are: the descriptive method and comparative method.

This paper aims to present the challenges facing fiscal policies with the aim of harmonizing national legislation with EU legislation regarding fiscal policy. The appropriate application of fiscal policy in a country means more

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fiscal, instutitional and financial stability.

Key words: **fiscal system, tax harmonization, acquis communautaire, european common market, european integration**

Introduction

The case of study in this paper is the harmonization of taxes in the European Union, with particular emphasis on the aspiration of states for EU membership, making adaptation of EU rules. Acceptance of the *"acquis communautaire"* means the adaptation of national legislation to EU norms and their implementation from the moment of accession to the EU.

In the area of taxation, the *Acquis*, refers to indirect taxes: VAT and Excise, while in the area of direct taxation, some issues from individuals savings and corporation tax.

The EU's fundamental objective was to create a common European Market that would guarantee the free movement of goods, services, individuals and capital known as the four fundamental freedoms of the market, the functioning of which, the national competition between the states of the variety should not be distorted and in this respect, any damage caused by taxes, such as for example, double taxation and any other possible barriers, should be eliminated.[3]

Tax harmonization is a process of eliminating obstacles and differences between tax systems of different states included in the European Union.

Through tax harmonization, tax discrimination that is caused by national products to the detriment of national products of other member states is also prohibited. Full tax harmonization between the 28 member states in the EU is difficult to achieve, due to the accession of new EU states that have a different structure compared to that of old member states: the new member states rely More in indirect taxes, while the old ones (including Norway) have higher shares of direct taxes.

The European tax right as an international right

Although at first glance, European tax law appears to be an international right, which means that it must be treated separately in the member states, it (International Tax Law) still causes legal confusion in the European Union and separately member states.

[3] EUR-Lex Acces to European Union Law, http://eur-lex.europa.eu/summary/glossary/tax_harmonisation.html (accessible on: 06.04.2017)

International Tax Law regulates legal relations of foreign citizens dealing with taxes. Here we can also see a link to International Commercial Law and International Private Law. With the growth of international trade and the movement of people across the border, the need for the European Union's linkage with other international organizations (WTO, GATT, WIPO)[4], In order to avoid citizens and enterprises double taxation. Thus, the European Union had to harmonize not only within the union with member states by linking the double tax relief conventions, but also with the above-mentioned international organizations.

Sources of the European tax law

If we deal with further researches into European tax law we can see that it derives from the European Conventions and the European Union regulations. Then it can be said that, European tax law is divided into: primary and secondary tax law.

Primary Tax Law of the European Union is the right the one derived from the EU Conventions and the Convention on the Functioning of the EU [5];

Secondary Law is the right derived from legal acts issued by the bodies of the Union, Regulations, Directives, Decisions, etc.

While the first are directly applicable and unanimously, these latter require harmonization of the right to tax in the member states of the European Union.

The understanding of tax harmonization

The tax system of different states is conditioned by the changes and dynamics of economic, political and social development, and so the normative adjustment of this problem varies. Each country has its own tax system which differs not only by the number of tax forms, but also on the elements of tax forms, tax rates, etc. When talking about tax harmonization, it is necessary to clarify the importance of harmonizing tax systems, with particular emphasis on tax harmonization. This is because every state has its own history, economic development, surface, population, per capita income, political system, economic structure, economic resources and many other factors that directly or indirectly affect the construction of the tax system of a state. We are witnessing recent

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4 Arif Riza, *E Drejta e Organizatave Ndërkombëtare dhe Organizatat Ndërkombëtare*, Pristina, 2012, ISBN 978-9951-19-012-1, p. 252-253

5 Article 110 of the European Union Convention or the former article 90

developments in information and communication technology, regional and global integration, free movement of goods, services, people and capital. All of this updates the coordination in the area of taxation. It is about harmonization of tax systems between states, with particular emphasis on the states of the European Union.

Regarding the notion of tax harmonization, there are many different definitions. In the European Union, the concept of approximation of the law means the process of harmonization of national legislation with EU laws. The process of harmonization of legislation is a special obligation of any country that aims to be a part of the European Union. Therefore, what is required is the approximation of domestic legislation, national laws, rules and procedures should be effective and compatible with the EU legal framework. Moreover, tax harmonization is a process aimed at avoiding national tax measures that may adversely affect the functioning of the common market; in the movement of persons, goods, services, capital and competition. More specifically, the Treaty of 1992 on the creation of the European Community in Article 3a states that: “its purpose is to establish a common trade policy”.[6]

The Treaty on the Functioning of the European Union (the Lisbon Treaty) prohibits Member States from imposing internal (whether direct or indirect) taxes on the products of other member states on those they assign to similar domestic products them. It also prohibits them from imposing any tax on products of other member states with the aim of indirectly protecting their own domestic products. Thirdly, it is stipulated that in the case of products exported to other member countries, no member state is allowed to impose re-payments of domestic taxes which would exceed their local taxes for those products directly or indirectly.[7]

The ultimate aim of tax harmonization is to provide economic efficiency with particular emphasis on promoting the common European market.

Tax harmonization in the European Union

The need for tax harmonization originally originated in the EU. Harmonization of taxes comes from the Articles 14 and 95 of the EC Treaty. The EU legislation and practices recognized as the ***acquis communautaire,***

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6 Bedri Peci, *Shkenca mbi financat dhe e drejta financiare,* (Pristina: University of Pristina “Hasan Pristina”, 2017), p. 246

7 Republika e Kosovës – Presidenti, *Tryeza tematike për tregti, industri, dogana dhe tatime, tregun e brendshëm, konkurrencë, mbrojtje të konsumatorit dhe atë shëndetësore Kosova 2020*, (Pristina: GIZ, 2013), p. 194, http://www.president-ksgov.net/repository/docs/TRT_4_ALB.pdf , (accessible on: 02.04.2017)

covers the rights and obligations of member states in all areas. Tax systems of contemporary states vary greatly or slightly between themselves and there can not be found the same two tax systems. For this reason we can talk separately about the tax system of each state eg. Germany, Belgium, Japan, etc. The EU has issued several separate Directives on the harmonization of certain taxes. There has been some achievement in the partial harmonization of direct taxes, but mostly there has been a shift in the harmonization of indirect taxes, VAT and excise duties. The EU's Sixth VAT Directive enabled Member States to apply the standard VAT rate of 15% and one or two percentage points lower than 5%.

The legal basis for the harmonization of taxes are Articles 90-93 of the EU-Establishment Agreement. These directives prohibit tax discrimination, which would be directly or indirectly caused by national products to the detriment of national products of other member states, thus attempting to harmonize the turnover tax of excise and other taxes in circulation. Among other things:

A common approach has been reached for the application of excise duties on tobacco, alcohol and energy products;

It is forbidden to impose import and export customs duties and taxes with the same effect between member states;

Agreement on cooperation and exchange of information between states was reached;

Agreements for the elimination of double taxation.

Concerning the harmonization of direct taxes, the achievements are smaller and the income tax and profit tax are still within the national states.

In the field of profit tax of joint stock companies, the EU has two purposes:

Avoiding harmful tax competition between Member States and

Free movement of capital.[8]

In the 27 EU member states plus Croatia, indirect taxes, direct taxes and social contributions today have more or less the same share in total tax revenue: each of them accounts for about 13% of Gross Domestic Product.[9]

The lowest share of direct taxes was recorded in Lithuania (only 17.4% of the total), Bulgaria (18.8% of the total), Slovakia (19.1%), Estonia (19.9%) and Czech Republic (20.8%): all these countries have adopted a flat system. The Nordic countries, the UK, Ireland, Belgium and Italy all have high direct taxation shares (between 62.7% and 34.9% of total tax revenue). As for social

[8] Bedri Peci, *Tax Harmonization in the function of promotion of the European common market,* (Pristina: E drejta-Law, 2010), p. 46-51

[9] Hutsebaut, Martin*, Politikat tatimore sipas këndvështrimit evropian*, (Luksemburg: Eurostat, 2012), p.8

contributions, the view is more diverse: here we find old and new member states among the top 5. An important feature is that France and Germany have a high share of social contributions (over 39%) and a relatively low share of direct taxes (below 30%). Most of the new member states have shares above the average of 27 EU member states. The European Union has been very active in the area of indirect taxation by setting minimum rates for VAT (6th Directive). Efforts have also been made to harmonize corporate tax (rates and tax base), but so far only limited progress can be made with respect to the issue of corporate tax base.[10]

Bulgaria and Romania have been the most successful in reforming and harmonizing their tax system with the EU. Membership of new states has deepened the differences in the EU. The new EU states high tax rates take as an incentive to absorb foreign investment, while old states are reluctant to lower high tax rates.

Even after the application of the single European common market there is still no real common tax policy.

Tax harmonization in regional countries and the case of Kosovo

Western Balkan countries face numerous financial problems, due to low employment rates, low financial discipline and the way of equality and efficiency in tax matters.

In the communist states, the tax system was characterized by the small number of taxpayers, the lack of protection of taxpayers, the tax was paid in the form of contributions, etc. After the fall of communist systems, the centralized economy was replaced by a market economy based on supply and demand. In the 90s, transition[11] began in Balkan countries. The Balkan states are characterized by the fact that they have applied three forms of taxation:

1. Personal Income Tax; 2. Corporate Income Tax and 3. Value Added Tax (VAT). Another characteristic is that all Balkan states have aspirated to join the European Union. Any country that wishes to become part of the EU is obliged to have adopted the EU *acquis* and practices by the time of accession and be able to implement them effectively. Another feature is the greatest effort to promote taxation and reduce the tax rate.

In the Balkan countries in the process of reforming tax systems, among

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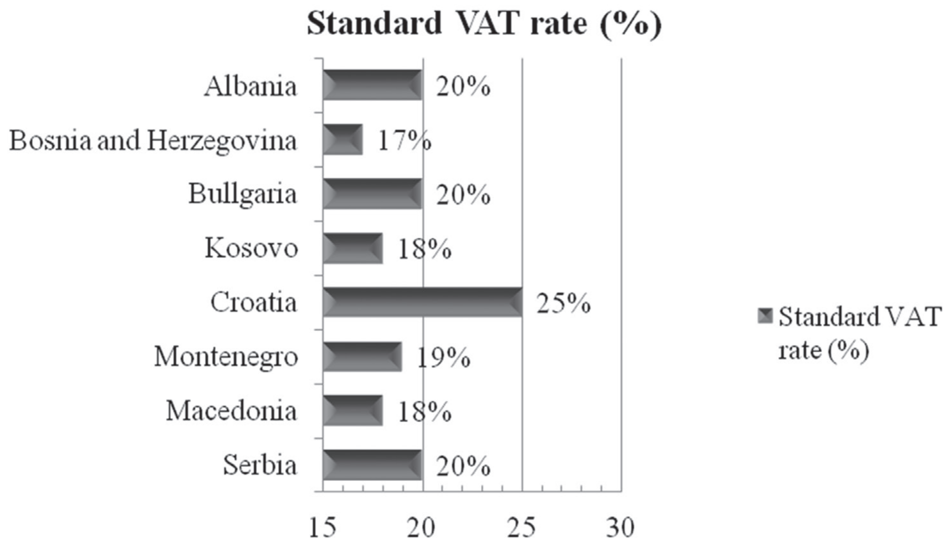
[10] Simeana Beshi, *Konkurrenca në tatimin e korporatave brenda Komunitetit Evropian dhe në të drejtën e Komunitetit Evropian,* Reforma, Nr. 5 / 2017, Gjilan, p. 157-158

[11] Transition – Gradual transition from an economic-social system to another system by maintaining some substantive elements from the previous system

others, two trends need to be distinguished: a) The trend of lowering tax rates to the main taxes with a special emphasis on corporate income tax and b) Aspiration and actions of all Balkan states for EU membership by adapting EU rules.[12]

Standard VAT rate in: Albania, Bosnia and Herzegovina, Bulgaria, Kosovo, Montenegro, Macedonia and Serbia



Source: http://ec.europa.eu

If we compare Kosovo with other countries in the region, in terms of the VAT rate, we see that it is Croatia, which has its highest 25%. After Croatia, Albania, Bulgaria and Serbia applying the same VAT rate, 20%. Bosnia and Herzegovina is the country that offers the lowest rate of Value Added Tax with only 17%. Albania applies a similar VAT rate to European Union countries, such as Austria, Great Britain, France, Slovakia and Bulgaria. Luxembourg is from the EU countries that is applying the lowest VAT rate of only 17%, a rate which by 2014 was 14%. Behind them comes Malta with 18%, Cyprus and Germany with 19%. All other countries apply a VAT rate of over 20%, with the highest VAT rate of 27% applied by Hungary.[13]

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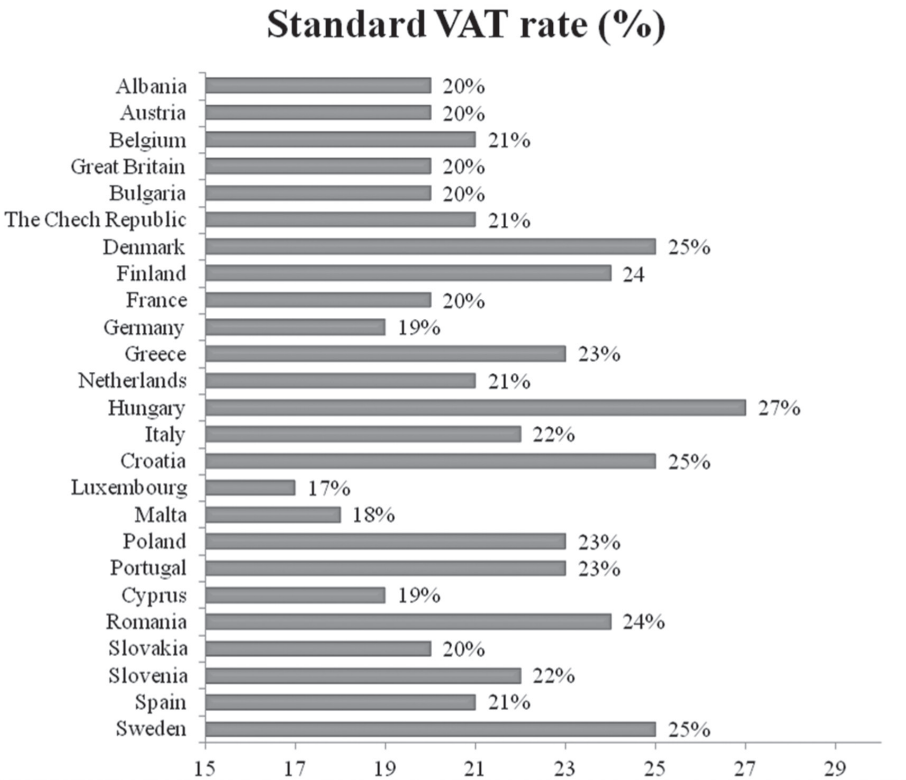
[12] Bedri Peci, *Tax Reforms in the Balkan Countries – Kosova case,* (Pristina: Thesis Kosova, nr. 2,2009), p. 53

[13] Open Data Albania, *Tatimi mbi Vlerën e Shtuar TVSh në Shqipëri, vendet e rajonit dhe BE,* http://open.data.al/, (Accessible on: 05.04.2017)

The standard VAT rate in Albania and EU countries



Source: http://ec.europa.eu[14]

Tax Rates of the Countries of the Region:

Country	Profit and corporation tax	Income tax	VAT
Kosovo	10%	4-8-10%	18%
Montenegro	9%	12%	17%
Macedonia	10%	10%	18%
Serbia	10%	10-20%	18%
Croatia	20%	15-45%	23%
Bulgaria	10%	10%	20%
Greece	25%	0-40%	19%
Romania	16%	16%	19%

Source: http://www.mfa-ks.net/

[14] European Commission, *VAT Rates Aplies in the Member States of the European Union,* http://ec.europa.eu (accessible on: 02.04.2017)

The level of tax rates in the Republic of Kosovo is among the lowest in these countries, especially from EU member states and we can say that it is a fiscal policy that Kosovo institutions have applied in harmony with the country's standard and economic development because it is known that Kosovo is behind these EU countries in terms of sustainability and economic development. The countries of the region that are EU members also have a higher rate than our country.[15]

In the first postwar years, Kosovo faced an unprecedented and rapid tax intervention, based largely on the experiences and practices of other countries, especially the European Union countries, and in disagreement with the post-war situation and real needs of post-war Kosovo which in many sectors had to start from the beginning. From 1999 until 2007, UNMIK was the creator of the fiscal system and fiscal policy in Kosovo, almost all copied from other countries, both from the transition countries and from the EU member states. While addressing the financing problem in Kosovo, during the UNMIK administration period, 1999-2007, the impression is obtained that despite all the statements of the international factor for institutional, administrative, financial and fiscal assistance, successes are missing. Even during this time, Kosovo remains the most underdeveloped region not only in the Balkans but also in Europe.

Fiscal policy is closely related to the monetary policy, which mainly has its own supply of money economy. Within the fiscal policies, a special role in the economy is also represented by taxes, which represent the largest share of revenues within a country.[16] The main objective of the tax is to finance state spendings. All other objectives, such as structural policies or redistribution of revenues, are secondary.[17] Kosovo as well as other countries in the region has reformed its tax system, reducing rates, redefining the tax base and amending the positive laws. Yet much remains to be done. Efforts should be made to fill legal gaps, tax harmonization with the EU and regulation of international tax relations.

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15 Burim Haliti, *Politikat Fiskale në Kosovë dhe harmonizimi i tyre me vendet e rajonit dhe të BE-së*, http://www.academia.edu/, p. 6-7, (Accessible on: 15.03.2017)

16 Roger LeRoy Miller and Robert W. Pulsinelli, *"Modern Money and Banking",* second edition, 1989, (USA: McGraw-Hill, Inc., Usa, 1989), p. 497-502

17 Michael Lang, Peter Melz, Eleonor Kristoffersson, Thomas Ecker, *Value Added Tax and Direct Taxation: Similarities and Differences,* (Holland: IBFD 2009), p. 107

Conclusions

Undoubtedly, the tax system has a significant impact on the economic development of the national states and their macroeconomic stability. Taxes, as a financial revenue collection instrument, are also of major importance for the normal functioning of contemporary states.

What awakens the debate on this topic is precisely their harmonization. Member States, on the occasion of their accession to the EU, carry their financial sovereignty and accept the EU right as a supernational right which has priority in implementation in relation to their national rights even in the case of taxes, respectively tax legislation.

The EU's fundamental objective was to create a common European Market that would guarantee the free movement of goods, services, individuals and capital and that these are recognized as the four fundamental freedoms of the market. Regarding the rules of competition, for the proper functioning of the common market in this market, competition between companies should not be distorted, and in this respect any tax-related damage, such as double taxation, should be eliminated.

However, there are numerous contradictions between states, differences between tax systems, tax forms, tax rates of different states and consequently we can not talk about full tax harmonization. This is due to the structural differences between the old states and the new member states of the European Union.

We can say that the harmonization of national legislation with that of the EU should be done taking into account the economic development and living standards of the citizens of that country. Kosovo on harmonization of tax rates with the countries of the region and the EU should also consider these features.

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