

## Prof. Michael Lang on recent tax developments in the European Union

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### *Is tax law harmonized within the European Union?*

The Member States are still competent to introduce tax legislation. However, EU legislation exists as well: VAT law is harmonized as far as the tax base is concerned. And in direct taxation there are just some single pieces of legislation, e.g. the parent subsidiary directive or the merger directive.

### *Is the European Commission trying to increase the level of harmonization?*

The European Commission is working on a draft directive for a "Common Consolidated Corporate Tax Base" (CCCTB). The idea is that companies which are operating throughout Europe should be able to opt for a harmonized tax base: The same rules should be applicable on them in all Member States. However, the tax rate shall still be determined by the Member States. This initiative should reduce compliance costs for companies.

### *Will this directive be implemented?*

The European Commission can only propose such measures. The final decision is taken by the Council. The Council consists of all the Finance Ministers of the EU Member States. Consensus between them is needed before European legislation is passed. Therefore one single Member State can veto such a measure.

***Is it possible that such measures are implemented just for some Member States?***

This is not only possible, but in the case of the CCCTB much more realistic: "Enhanced co-operation" requires the approval of a minimum of 9 Member States. Right now around 20 Member States publicly say that they support the CCCTB project. Countries like the UK and Ireland and some of the CEE countries have mentioned that they are not in favour of the CCCTB. So the CCCTB rules will probably only be applicable in some EU countries.



***How soon will that happen?***

Nobody knows if it will ever happen. In any case, it will take some more years before such legislation comes into effect.

***What is the role of the ECJ in tax law?***

The ECJ is competent to interpret European legislation. Besides the existing directives, the ECJ has to interpret the European Union Treaty. Most important are the freedoms. In interpreting the freedoms the ECJ puts limits to the Member States' tax legislation.

***Could you explain this in more detail?***

The freedoms do not permit the Member States to treat intra-Community cross-border situations worse than internal situations. On the one hand, benefits for mere internal situations have to be extended to intra-Community cross-border situations. On the other hand, special rules for cross-border situations may only be applied if they can be justified. This lead to the result that Member States had to limit the scope of CFC rules and exit taxes.

***The freedoms are only applicable for intra-Community-situations?***

There is one freedom, the free movement of

capital, which is applicable in relation to third countries as well. Although the ECJ tends to limit the scope of this freedom there are situations where third-country-relations must not to be treated worse compared to internal situations. Especially in relations to countries where information is exchanged it might be difficult to defend discriminatory rules.

***Can you give an example?***

Recently the European Court of Justice held that donations to foreign charitable institutions have to be deductible if donations to domestic charitable institutions are deductible. If the charitable institution is residing in a third country and information is exchanged, there are good reasons to believe that these donations have to be deducted from the tax base as well.

***Coming back to VAT: Why is the degree of harmonization in the area of VAT higher than in direct taxes?***

The first VAT directives have been passed when the European Union (at that time: European Economic Community) had just six members. Today we have 27 members. Therefore achieving agreement is much more difficult today!

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