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**„Economic integration and tax law harmonization in the EU "**

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**Table of abbreviations**

BEPS – Base Erosion and Profit Shifting

CCCTB – Common Consolidated Corporate Tax Base

CIS – Commonwealth of Independent States

ECHR – European Court of Human Rights

ECJ – European Court of Justice

ECU – Eurasian Customs Union

EEC – European Economic Community

EFTA – European Free Trade Area

EMCS – Excise Movement and Control System

EU – European Union

MNE – Multinational Enterprise

OECD – The Organization for Economic Cooperation and Development

PCA – Partnership and Cooperation Agreement

R&D – Research and Development activities

SAA – Stabilization and Association Agreement

SEED – System for Exchange of Excise Data

SME – Small and Medium Enterprise

TEEC – Treaty establishing the European Economic Community

TEU – Treaty on European Union

TFEU – Treaty on the Functioning of European Union

VAT – Value Added Tax

VIES – VAT Information Exchange System

## Introduction

For the moment the European Union (EU) which includes 28 states provides the best example of the high level economic integration association.[1] However, with the increasing economies around the world it becomes evident that despite the success and prosperity achieved by the model used by the EU as regards its member states integration and harmonization of their legislations, the EU still has a plenty of challenges ahead both at political and economic level. One of such challenges is tax law harmonization. Therefore, taking into consideration the overall purpose of the EU to level differences probably in all spheres of economy of its member states in order to accommodate one of its core objectives – the common (single) market which, in turn, strives for "Four freedoms" of the EU : free movement of goods, free movement of workers, right of establishment and freedom to provide services, free movement of capital it is clear that the elimination of dissimilarities of tax systems of the member states is a must.[2] According to Schön (2009) the taxes rights allocation between state of source and state of residence, as well as the question of the tax law harmonization, tax competition and its development are hot-button issues nowadays.[3] Hence, the tax harmonization itself does not constitute a final aim for the EU to achieve but it may become an instrument and good solution to the improvement of allocation of resources and taxes rights between the member states and lead to the implementation of the common market idea at a new level.

In this respect, the main goals of this research are to define the core of tax law and main methods of tax collection, to look into tax harmonization primarily as a matter of law, to give grounds for the EU tax harmonization and make its description in reliance on unification of VAT and excise duties, to analyze the issue of tax competition in the EU, its advantages, disadvantages and main problems.

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[1] Official website of the European Union < https://europa.eu/european-union/about-eu/countries/member-countries_en> accessed 1 March 2017

[2] Official website of the European Parliament <http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_3.1.1.html> accessed 1 March 2017

[3] Wolfgang Schön, "International tax coordination for a second-best world" *World Tax Journal* (2009) No 1

## 1. The core of tax law and taxation.

### 1.1. The definition of tax and main principles of tax collection in the EU.

Taxes are not only the main source of state's budget replenishment but they also serve the role of economic instruments which are intended to influence the market economy as well as to finance different governmental, social programs. It should be mentioned that the tax harmonization remains a trending topic not only in the EU but also in other countries, unions and common markets. Thus, for example, The Organization for Economic Cooperation and Development (OECD) for many years serve the base for the international dialog between the countries in the sphere of taxes. In general the members of the OECD are mostly European countries and other industrialized countries including US and Japan (total number of members is 30 states). As far as recently the question of tax harmonization is extensively discussed not only in the EU but all over the world (for instance, in the USA, the Commonwealth of Independent States (CIS), Eurasian Customs Union (ECU), etc.) the deliberating forum provided by the OECD since 1961 offers the countries a possibility to discuss and coordinate economic and social policies especially in international tax matters. The definition of tax according to the terminology of OECD is quite simple but precise: "tax is a compulsory unrequited payment to the government."[4] In turn, the definition delineated by Oxford business dictionary is broader and provides insight into what the tax is: "tax is the compulsory contribution to state revenue levied by the government on worker's income, business profits or may be added to the cost of some goods, services or transactions."[5]

As regards main principles of tax collection in the EU here I would like to make reference to fundamental ideas and goals that constitute grounds for the EU from the very beginning of its formation. The motivation to unite the independent nations into the tenacious economic union resulted in the elimination of barriers to cross-border trade, investment, business and work.[6] The European Union since its formal establishment took place in 1993 by virtue of Maastricht Treaty was destined to unify separate national economies of European states into one, common economy that would allow companies, enterprises which were based in Europe to conduct business, to employ staff and to assemble capital and resources on more efficient scale that

[4] The official website of OECD, <http://www.oecd.org/ctp/glossaryoftaxterms.htm> accessed 1 March 2017
[5] Oxford business dictionary, < https://en.oxforddictionaries.com/definition/tax> accessed 1 March 2017
[6] European Commission, *Towards a Single Market Act For a highly competitive social market economy 50 proposals for improving our work, business and exchanges with one another* (Brussel COM No 608, 2010) paras 1.2-1.6

consequently would lead to the effective economic growth and high living standards.[7] Even at the time of European Economic Community was created in 1957 through conclusion of Treaty of Rome the governments of signatory states endorsed the idea that living and working conditions in their countries might have been improved significantly by means of integration of their economies.[8] In 2009 the Treaty of Lisbon entered into force and the ideas of primacy of economic integration were supported again by the member states of the EU. According to Adolfo J. Martin Jimenez (2001) the economic integration in the EU involves two integration theories: positive and negative.[9] While "positive integration" is focused on legislative harmonization of member states national legal systems, the "negative integration" deals with the changes, exemptions and removal of particular member state's policies and practices that are incompatible with the EU law and, according to European Court of Justice (ECJ) prevent the integration of member states into a common market.[10] Many theorists hold up the EU as an example of negative integration because the EU's resources are modest compared with those under the control of the member states.[11]

The Treaty on the Functioning of the European Union (TFEU) states four fundamental freedoms that are vital for the implementation of internal (common) market purpose – the free movement of goods, services, workers and capital. As well as freedom of establishment these four principles are the cornerstone of the EU as political and economic union. Thus, for example, Art. 45 TFEU paras 1-2 state that "freedom of movement for workers shall be secured within the Union. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment."[12] Despite that Art.45 TFEU does not mention taxation, the ECJ in the Case C-204/90, Bachmann v. Belgium has interpreted it in order to preclude tax discrimination based on nationality. The case delt with the Belgian law that included provisions as to life insurance for workers. In particular, it stated that the deductions of life insurance premiums were only possible if such deductions were paid to Belgian insurance companies. The court held that such provisions of Belgian law violated the freedom of

[7] Rita de la Feria, Clemens Fuest, "Closer to an Internal Market? The economic effects of EU tax jurisprudence"(2011) Oxford University Centre for Business taxation < http://www.sbs.ox.ac.uk/faculty-research/tax/publications/working-papers/closer-internal-market-economic-effects-eu-tax-jurisprudence>accessed 2 March 2017

[8] ibid
[9] Adolfo J. Martin Jimenez, Towards Corporate Tax Harmonization in the European Community: An Institutional and Procedural Analysis (first published 1999, Kluwer Law International 2001) 2-4
[10] ibid
[11] Maarten P. Vink, "Negative and Positive Integration in European Immigration Policies" (European Integration Online Papers, 2002) < http://eiop.or.at/eiop/texte/2002-013a.htm> accessed 2 March 2017
[12] Consolidated version of the Treaty on the Functioning of the European Union [2008] OJ C326/2012

movement of workers because usually namely non-resident workers used to have life insurance provided by foreign insurance companies. Notably, in the case Case C-204/90 Bachmann v. Belgium the ECJ has ruled that it is forbidden for member state to use its tax system for the purpose of discrimination of nationals of other member states (incl. workers from other member states).[13] In the Case C-279/93 Finanzamt Köln-Altstadt v Schumacker the ECJ once again interpreted Art. 45 TFEU with the object to prevent residence-based tax discrimination.[14] Assuming that the most of the member states define the tax residence for private persons by reference to duration of their physical presence on the territory of the member state. For instance, in Slovakia an individual is deemed to be resident for tax purposes if he/she spends more than 183 days (more than 6 months) of the year in Slovakia.[15] In the Case C-279/93 Finanzamt Köln-Altstadt v Schumacker the ECJ set a precedent and held that member states that refused to provide tax benefits to nonresidents on the equal ground with a residents should have been liable for causing damage to non-nationals.

As it was already mentioned above the TFEU provisions provide EU's four fundamental freedoms which together with non-discrimination principle have "direct effect".[16] In addition with common principles which are also derive from TFEU: transparency, equal treatment, proportionality and mutual recognition all these principles formulate the basics for EU's functioning. However, as regards tax law there is a set of principles of particular specialty which may be widely used all over the world, including but not limited to the EU.

This set includes:

A. Principle of nationality of taxation.

B. Principle of equity and fairness.

C. Principle of neutrality of export and import of capital.

D. Principle of reciprocity.

E. Arm's length principle.

F. Principle of single taxation.

[13] Case C-204/90 Bachmann v.Belgium [1992] ECR I-249
[14] Case C-279/93 Finanzamt Köln-Altstadt v Schumacker [1995] ECR l-225
[15] Official website of the European Union, https://europa.eu/european-union/index_en accessed 4 March 2017
[16] Ruth Mason, Michael S. Knoll, "What is tax discrimination?" (2012) <http://www.jstor.org/journal/yalelawj> accessed 4 March 2017

A. The principle of nationality of taxation.

The principle of nationality of taxation presumes the balanced distribution of international taxation bases in accordance with nationality. In its turn, the nationality in this case means the concept of taxation of residents that should pay taxes in their states of residence in exchange of economic benefits which taxpayers used to obtain in countries of their tax residence.[17]

B. The principle of equity and fairness.

The principle of equity and fairness constitutes the mix of instruments of modern tax systems which sometimes may be considered as independent principles. Components of equity and fairness principle are as follows: a) generality of taxes (every individual should pay the necessary taxes and charges according to the law of his/her home-state or state of tax residence); b) proportionality of taxes (imposition of taxes which prevents citizens from the full realization of their constitutional rights is forbidden); c) equity and ability to pay principle (equality before the law with regards to the real taxpayer's ability to pay). Equity in this particular case shall mean the equal taxation for persons with equal income regardless of the source of such income. Also many national tax systems differentiate the equal principle as "horizontal equity" and "vertical equity" which in its turn presumes that higher tax rates should be imposed upon higher income; d) non-discrimination (the abolishment of any distinctions, exclusions, restrictions or preferences based on form of ownership, political views, sex, religion, race, color, descent or any other ground of discrimination);[18] Equity principle together with source country entitlement principle make a heavy use by many states in order to avoid double taxation. Despite the fact that modern tax laws are usually governed by residence and territorial principles states more often than not find a solution in concluding the bilateral treaties with a view to avoid double taxation between state of source and state of residence.[19]

C. The principle of neutrality.

The principle of neutrality assumes that generally the tax system should seek to be neutral so that decisions of the potential taxpayers are made on their economic viability and not for tax reasons.[20] In the EU the concept of tax neutrality has its wide application in the sphere of M&A and reflected in Directive 90/434/EEC on a common system of taxation applicable to mergers,

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[17] Peggy B.Musgrave, *Combining Fiscal Sovereignty and Coordination: National Taxation in a Globalizing World* (Oxford University Press, 2006) 167

[18] Ruth Mason, Michael S. Knoll, "What is tax discrimination?" (2012) <http://www.jstor.org/journal/yalelawj> accessed 4 March 2017

[19] Peter Harris,David Oliver, *International Commercial Tax* (first published 2010, Cambridge University Press) 114

[20] Jason Furman, "The Concept of Neutrality in Tax Policy" (2008) < https://www.brookings.edu/testimonies/the-concept-of-neutrality-in-tax-policy/> accessed 4 March 2017

divisions, transfers of assets and exchanges of shares concerning companies of different Member States (the Merger Directive) which was subsequently updated to Council Directive 2009/133/EC in 2009.[21] According to prof. Mäntysaari (2010) the main principle provided under Directive 90/434/EEC is tax neutrality which allows to perform cross border mergers and other types of restructuring without immediate tax consequences.[22] In case of domestic merger or if the provisions of the Merger directive have not been implemented by the state where M&A takes place the parties should rely on domestic law which may allow for tax neutrality.[23]

D. The reciprocity principle.

The reciprocity principle is one of the principles of international law and derives from the concept of sovereignty of states. In accordance with the aforesaid the treaties between the states should be concluded on the basis of reciprocity and equality of benefits and liabilities. The reciprocity principle constitutes the basis for international law, including but not limited to international tax law and implemented by the states in the view to reach common understanding and mutually beneficial international economic cooperation. In other words the reciprocity principle means exchange of tax privileges between countries where such an exchange is desired. For instance, relief is granted for foreign tax if the other country gives corresponding or equivalent relief. Furthermore it should be noted that the reciprocity principle as regards taxes is typically used by the member states of the EU in order to facilitate the cooperation with third states. Thus, for example, Ukraine and Poland have concluded the Convention on Avoidance of Double Taxation with respect to taxes on income and estate and prevention of fiscal evasion. where the parties enshrined the principal of reciprocity of taxes (Art. 24, 26) and envisaged the mechanisms and procedures for solving the potential issues (Art.26).[24]

E. Arm's length principle.

During the last decades the role of Multinational Enterprises (MNEs) in world trade has reached new level therefore the rules and legal mechanisms of taxation applied to MNEs require regular or even permanent upgrading. The global character of MNEs and the high level of integration of their subsidiaries and affiliates cause problems the tax administrations have never met before. OECD member countries seem to have found an approach that is likely to eliminate problems

[21] Directive 90/434/EEC on a common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States (the Merger Directive) OJ L225

[22] Petri Mäntysaari,*The Law of Corporate Finance: General Principles and EU Law (first published 2010,Springer) 256*

[23] Ibid 257

[24] Convention between Government of Ukraine and Government of the Republic of Poland on Avoidance of Double Taxation with respect to taxes on income and estate and prevention of fiscal evasion (1994) http://sfs.gov.ua/en/sts-activity/international-tax-relations/international-treaties--conventions--on-taxation/ accessed 4 March 2017

concerned taxation of MNEs and would minimize risks of misplaced double taxation. This approach called "separate entity approach" and is provided by OECD as the most reasonable method for achieving the abovementioned goals.[25] Thus, the "separate entity approach" stipulates that each individual group member in an MNE is subject to tax on the income arising to it (either on a residence or source basis).[26] In order to guarantee the correct application of the separate entity approach, OECD member countries have adopted the arm's length principle (ALP) that presumes that the parties to the transaction are deemed independent and equal. It stands to mention that arm's length principle and transfer pricing were the key points of Base Erosion and Profit Shifting (BEPS) project developed by OECD. The definition of arm's length principle is enshrined in para 1 Art. 9 of OECD Model Tax Convention.[27] As of today arm's length principle is deemed to be the most competent and recognized instrument used for transfer pricing in many countries. In its report for Transfer Pricing and Multinational Enterprises of 1979 OECD provided detailed analysis of the arm's length principle and outlined main instruments of the abovementioned principle: the arm's length principle is always related to specific transaction, likeness of transaction involved (comparison study of transactions made by MNE is a must), open market, private law based core of transaction, the functional analysis of the subsidiaries and affiliates of MNE involved.

F. The principle of single taxation.

Being a consequence of the equity and fairness principle, the principle of single taxation probably is the most problematic and controversial. According to Kleinbard (2011) single tax principle presumes each income of a multinational taxpayer's global income should be subject to tax somewhere only once, rather than either zero times or twice.[28] Definitely, the purpose of single taxation is to avoid double taxation by using the same well-known instruments: bilateral and multilateral treaties on avoidance of double taxation which preferably based on OECD Model Convention provisions. But with the single taxation principle some difficulties arose – in particular, non-taxation. Principle of single taxation firstly was mentioned at the beginning of 20$^{th}$ century as fundamental principle of tax law during the working on first model tax law conventions.[29] Even at that time lawyers in the field stressed the importance of avoidance of so-called "double non-taxation" that violates the principle of single taxation by means of evasion of taxes. In its legal nature double non-taxation is opposite to double taxation. The core of both

[25] OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations [2010] OECD Publishing, Paris
[26] OECD iLibrary < http://www.oecd-ilibrary.org/taxation/> accessed 4 March 2017
[27] OECD Model Tax Convention on Income and on Capital [2014] OECD Publishing, Art 9
[28] Edward D.Kleinbard, "Stateless Income" [2011] vol 11
[29] Vladimir Gidirim, *The basics of international corporate taxation* (first published 2016, Author) 207

problems is the same – the absence of uniform principles in international tax cooperation between the states. In the event of double taxation the scopes of tax laws of the states conflict and compete with each other. In case of double non-taxation the consequences of the absence of uniform regulation lead to boomerang effect: none of the parties impose taxes. According to Lang (2014) tax treaties usually provide two methods for the elimination of double non-taxation: the exemption method and the tax credit method.[30] In case exemption is used, the source state shall have the right to tax income arising in that state and the residence state exempts the income. If the tax credit system is used the residence state gives a credit for the tax paid in the source state.[31]

## 1.2. Main types of taxes. Direct and indirect taxes.

Ronald Reagan once said: "the taxpayer that is someone who works for the federal government but doesn't have to take the civil service examination."[32] Indeed, by now taxes compose an integral part of economies of every state and are the main source of governments revenues so every citizen at some point used to become an public servant who is working primarily in the interests of his/her state. According to the definition provided by Cambridge dictionary tax (from the Latin: taxo) is the amount of money paid to the government and calculated on taypayer's income ( private person or legal entiry) or costs of goods or services.[33]

The EU deals with the tax law issues through its main legal instruments: TEU, TFEU and Charter of the Fundamental Rights of the European Union.[34] Altogether these treaties compose the primarily law of the EU. In accordance with Art. 288 TFEU secondary law of the EU is regulations, directives, decisions, recommendations and opinions. It is important to note that tax law issues being recognized by the EU as sensitive policy which requires the adoption of legal acts regulating taxes by unanimity voting.[35] To be more specific, there are four directives devoted to taxes: 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 Directive 2009/133/EC of 19 October 2009 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares

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[30] Michael Lang, Jeffrey Owens, "The Role of Tax Treaties in Facilitating Development and Protecting the Tax Base" (2014) WU International Taxation Research Paper Series No 3
[31] Ibid 7-8
[32] Henry Hebeler, *Getting Started in A Financially Secure Retirement* (first published 2007, John Wiley & Sons 2007) 43
[33] Cambridge Online Dictionary, < http://dictionary.cambridge.org/> accessed 5 March 2017
[34] Charter of the Fundamental Rights of the European Union [2000] OJ C364/1
[35] Eur-Lex website, <http://eur-lex.europa.eu/summary/glossary/unanimity.html> accessed 5 March 2017

concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States which also known as “the Merger Directive” and was already mentioned above in this work; Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States; Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments.[36]

The last but not least legal act which concerns tax law (direct taxation, in particular) is European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. Thus, Art. 1 of the Protocol to the Convention deals with protection of property and sets forth that the state has a right “to secure the payment of taxes or other contributions or penalties.”[37] What is more, Art. 6 (Right to fair trial) and Art. 14 (Prohibition of discrimination) also have influence on tax law and secured by the European Court of Human Rights (ECHR).

Commonly the national law of the EU member states classifies taxes into two conventional groups: direct and indirect taxes. On practice such classification is likely to be a little bit misty and simulated.[38] Nonetheless, probably all the EU states recognize this approach as valid and implement it in national legislations. In addition to this is the fact that there are two different tax systems operating in the EU: global and schedular. A global taxation system (or world taxation system) is the most popular and often used model of taxation which presumes that the incomes of private persons and legal entities are always taxed in a unified manner. In a schedular tax system income is ranged into classes depending on its level and source. Thus, schedular type of taxation is used in Great Britain where the income is usually classified as business profits, employment income, compensation payments, etc. As far as comparative analysis of the abovementioned tax system requires detailed study and may appear a subject matter to sole research paper I would like not to go into details but focus on the global tax system as a system which is implemented by the majority of the member states.

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[36] 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 [2011] OJ L 345/8
Council Directive 2009/133/EC of 19 October 2009 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States [2009] OJ L 310/34
Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States [2003] OJ L 157/49
Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments [2003] OJ L157/38

[37] Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) Protocol 1 art 1

[38] Vladimir Gidirim, *The basics of international corporate taxation* (first published 2016, Author) 24

According to the Eur-lex.europa.eu which is the official website of the EU and therefore constitutes responsible source of information including but not limited to the legal acts of the EU, tax policy in the EU is divided into two types of taxation: direct and indirect.[39]

Direct taxation presumes that taxes should be paid directly by the taxpayer (individual or legal entity) to revenue services imposing taxes. It is worthwhile noting that despite the sufficiently high overall level of harmonization within the EU direct taxation remains to be the sole responsibility of member states. Nonetheless there are few harmonized standards according to which member states have are under obligations to take joint measures with the object to prevent tax evasion and double taxation. Additionally it is important to underscore that the basis of direct taxation is the general EU's principle of ability-to-pay which means that those who have more resources / higher income should pay more taxes compared to those whose resources / income are lower. Despite the fact that the "ability to pay" principle is one of the oldest concepts of taxation and is recognized all over the globe the EU's Community Law still does not provide clear legal basis for this principle to be applied.[40]

Indirect taxation is better harmonized sphere compared to direct taxation and that stands to reason. The thing is that harmonization of indirect taxes appeared to be the crucial mission for the EU as far as it concerns feasibility of implementation and efficiency of operation of the main goals of the EU – internal (common) market followed by free movement of goods and provision of services. Indirect taxes in the EU include two types of taxes: Value Added Tax (VAT) and excises (duties on alcohol, tobacco, energy). The issues of legal regulations and harmonization of indirect taxes will be discussed in section 2 para 2 of this work.

[39] Eur-Lex website, <http://eur-lex.europa.eu/summary/glossary/unanimity.html> accessed 5 March 2017
[40] Frans Vanistendael, "Ability to Pay in European Community Law" [2014] 23 EC Tax Review, Issue 3, 121–132

## 2. Economic integration as a main aspect of modern European tax law.

### 2.1. Approximation of tax laws of the EU member states as a method of elimination of tax barriers in the EU.

Approximation (or harmonization) constitutes the obligation of the member states to improve and adapt their national laws in accordance with the main concept of EU's legislation – acquis communautaire (hereinafter "acquis"). The "acquis" introduces the whole range of common rights and obligations that have binding effect on all EU member states. Work on the developing the "acquis" has never been stopped therefore it is always up to date and meets the conditions of modern time with the full understanding of actual EU's demands. Thus, for example, during the process of so called "big bang" enlargement of the EU which took place in 2004 and dealt with the simultaneous accessions of 10 countries in the EU (plus two more in 2007) the "acquis" at that time involved thirty one chapters consisting of spheres of law and economic matters that should have been negotiated between not only member states but candidates as well. For instance, the "acquis" in 2004 included apart from four fundamental freedoms the matters of company law, competition policy, consumers protection, agriculture, financial control, taxation, education, social policy and statistics, energy and others. During the next EU enlargement in 2013 the "acquis" was updated and involved thirty five matters instead of thirty two to be discussed between EU members. Thus, for example, "acquis" of 2013 brought up to the discussion the right of establishment, trans-european network items and veterenary policy. The example noted above provides evidence of permanent EU's developing as high integrated political and economic union. According to the Eur-lex website "acquis" is intended to cover the content, principles and political objectives of the EU treaties; declarations and resolutions adopted by the EU; legislation adopted in application of the EU treaties; justice and internal affairs matters; international agreements concluded by the EU and between its members in the field of the EU's activities; the case law of ECJ which concern common foreign and security policies.[41]

Harmonization of tax law in the EU is also directly connected with the concept of "acquis". Taxation is the permanent chapter of "acquis" that proclaims that the "acquis" on taxation covers both areas of direct and indirect taxation. However, indirect taxation is much better regulated compared to direct taxes. The "acquis" provides extensive regulation of VAT and excise duties including the scope, definitions and principles of VAT and excise duties on alcohol, tobacco and energy products. The sphere of direct taxes is less regulated. Nevertheless, direct taxes remain a

[41] EUR-Lex website, <http://eur-lex.europa.eu/summary/glossary/acquis.html> accessed 6 March 2017

subject of regulation by “acquis” that selectively covers several aspects of taxing income from savings of individuals and of corporate taxes.[42]

A noteworthy EU’s attempt to harmonize taxes was the adoption of the Code of Conduct for Business Taxation by the European Commission in 1998. However, it should be clarified that the Code of Conduct for Business transaction does not have binding effect and is advisory in nature. The adoption of the Code of Conduct was devoted to the positive effect of fair competition and required EU member states to keep from any harmful tax measures exclude any laws or practices which might have had any negative impact on fair competition. Generally, the code of conduct for Business Taxation of 1998 regulated legislative, regulatory, administrative tax measures which concerned the location of businesses within the EU.[43]

Following the adoption of the Code of Conduct for Business Taxation OECD initiated the creation of “Forum on Harmful Tax Practices” which was aimed to become a discussion platform for the member states and related to areas of harmful competition and tax heavens and eventually led to the formation of Model Tax Agreement on Exchange of Information in Tax Matters. Later in 2013 OECD published its Action plan regards project on Base Erosion and Profit Shifting (BEPS) focusing on international tax avoidance issues. The plan covered fifteen separate areas: digital economy; hybrid mismatch arrangements; controlled foreign companies regimes; financial payments; harmful tax practices; treaty abuse; permanent establishment status; transfer pricing and intangibles; transfer pricing and risks and other high risk transactions; data and methodologies; disclosure of aggressive tax planning; transfer pricing documentation; dispute resolution mechanisms; multilateral instruments.

All the abovementioned areas may be conditionally distributed into five groups:

a. Digital Economy.
b. Coherence (deals with removing gaps).
c. Transparency (tax reporting and disclosure).
d. Substance (approximatization of taxing rights).
e. Multilateral treaties (as a way to implement BEPS project).[44]

The BEPS project is likely to have a huge impact on taxation and international business for several reasons. Firstly, as far as the main goal of BEPS is global coordination the project

[42] The Official website of the European Commission <https://ec.europa.eu/info/index_en> accessed 6 March 2017
[43] Linda Senden, *Soft law in European Community law* (first published 2004, Hart Publishing 2004) 195
[44] PwC, “10 Minutes on OECD’s BEPS project” (PwC, December 2015) <http://www.pwc.com/gx/en/services/tax/tax-policy-administration/beps.html> accessed 6 March 2017

obliges states to implement essential amendments into their national laws and take specific measures (e.g to increase tax audits). Secondly, BEPS was strongly supported by G20. Moreover, according to the PwC Statistics analysis the countries involved into the BEPS project form more than 84 % of world's economy.[45]

As of today BEPS project has already finalized its recommendations and currently states are moving forward in implementing changes to their tax systems. For example, in February 2017 EU Parliament members put forward the EU Commission's amendments to the Directive 2013/34/EU concerning the disclosure of tax information. Such EU's activity is only one among many examples of EU's practical movement towards implementation of OECD BEPS project. What is more, many European states have already succeeded in implementation of BEPS requirements in their national laws. For instance, recently the Slovak republic adopted amendments to its tax laws therefore introduced and implemented the country-by-country reporting mechanism (CbC reporting) that became effective on 1 March 2017.[46]

Taking into consideration mentioned above, it seems that today's EU's strategy of approximation of taxation is on the right tack. By using different legal instruments (including soft law) EU is still able to succeed in implementing various difficult procedures, legislative initiatives and amendments to its legal acts.

### 2.2. Unification of VAT and excise duties as a way to tax law harmonization.

Article 113 of TFEU states as follows: "the Council shall, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, adopt provisions for the harmonization of legislation concerning turnover taxes, excise duties and other forms of indirect taxation to the extent that such harmonization is necessary to ensure the establishment and the functioning of the internal market and to avoid distortion of competition."

Ex facto by virtue of Art. 113 TFEU the EU is aimed to ensure the "the establishment and functioning of the internal market" by means of harmonization of specifically indirect taxes (including but not limited to VAT, excise duties and turnover taxes). In contrast TFEU does not

[45] ibid
[46] EY Tax Insights, The Latest on BEPS 2017 (Ernst & Young LLP, 30 January 2017) <http://taxinsights.ey.com/archive/archive-news/the-latest-on-beps-30-january-2017.aspx> accessed 6 March 2017

include any provisions regulating direct taxation. So it seems hard to escape the conclusion that for some reasons the sphere of direct taxation still remains within competence of national laws of member states (as it was already mentioned above in para 1.2 of this work). On other hand, after making short analysis of TFEU provisions related to harmonization of taxes it becomes clear why the procedure of negotiating on harmonization of several direct taxation acts was so difficult and timeconsuming. For instance, the negotiations and discussions between member states as regards the adoption of Directive on Cross-Border Mergers of Limited Liability Companies took more than twenty years.[47]

At the very beginning of the EU's foundation the importance of tax harmonization was recognized by the states. Thus, Art.93 of the Treaty establishing the European Economic Community (TEEC or Treaty Rome of 1957) enshrined the necessity of tax harmonization. At the same time it should be noted that unification of taxes appeared to be not the best solution for the member states. As far as unification of taxes provided one-for-all approach to taxation matters that for obvious reasons did not meet member states interests. However, the only sphere where the unification took place was customs duties. In accordance with Art. 23 of TEEC the unification should have been implemented through EC legislation. In this sense EC legislation meant regulations which had direct biding effect on the member states and replaced the national rules in particular matters. TEEC also prohibited import and export duties between member states (Art. 25 TEEC) and set the rules for imposing taxes on external borders of the European Community which also corresponded to the realization of unification policy in the sphere.

In regards to indirect taxes harmonization instruments have been applied. Since harmonization has been considered as the cautious policy of elimination differences in EC members national tax laws through adoption of directives with the reservation of EC members rights to implement the provisions of such directives into their national legislations in their own way, it turned out to be the most efficient approach to such a sensitive matter as taxation. The regulation of VAT was not an exception to the rules. According to Hamaekers (2003) the Sixth Directive of 1978 remains the most important VAT directive.[48]

[47] Fried,Frank,Harris, Shriver,Jacobson,"Memorandum on EU Directive on Cross-Border Mergers" (FriedFrank LLP, December 2009) < http://www.friedfrank.com/siteFiles/ffFiles/051220_eu_directive.pdf > accessed 7 March 2017>

[48] Hubert Hamaekers, "International Taxation Trends in Europe" International Bureau of Fiscal Documentation( Amsterdam, 2003) 42

Despite the fact that the sphere of indirect taxes is the most harmonized so far, the way to such high level approximation was not that easy. The process of transition to common approach to indirect taxation started with the approximation of national laws as regards turnover taxes. Before the Council of the European Union introduced VAT by the adoption of Directive 67/227/EEC in 1967, turnover taxes were of great importance, covered all goods related to foreign trade turnovers of EEC states and constituted one of the main sources of their budgets income. Moreover, turnover tax had a huge impact on levels of competition within the EEC. It also should be noted that till the beginning of 1970s there were two different indirect tax systems operating in the EEC: cumulative cascade system and just-launched VAT system.

With the adoption of Directive 67/227/EEC in April 1967 (hereinafter the “First VAT directive”) the European Commission obliged all member states to switch their national tax systems to VAT. The European Commission provided 3 years of transitional period till 1 January 1970 to member states to adopt VAT and leave the cumulative turnover tax behind. The first VAT directive introduced the concept of VAT and provided the member states with the general provision related to the implementation of VAT into their national tax systems. However, the first VAT directive appeared to be too superficial so the adoption of the Directive 67/228/EEC ( hereinafter the “Second VAT directive”) was a compulsory measure. The First and Second VAT directives were adopted simultaneously on 11 April 1967.

The adoption of following directives associated with VAT implementation delays in particular member states. Thus, in 1969 governments of Belgium and Italy announced that they would be able to implement VAT system not earlier than 1972.
The most important and full-fledged directive was Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value-added tax: uniform basis of assessment (hereinafter the “Sixth VAT directive”).[49]

The key aspects covered by the Sixth VAT Directive are as follows:

a. Introduction of common VAT system. VAT should be calculated on a uniform basis at every stage of production and distribution of goods, services.
b. Determination of taxable persons, goods, services and transactions.

[49] Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value-added tax: uniform basis of assessment [1977] OJ L145

c. Definitions of place of supply, taxable amounts, deductions. E.g. VAT amount which was already paid in previous periods may be deducted from the amount to be charged at present.
d. Zero percentage should be applied to exportations between member states. Importation matters remained within the competences of national laws.
e. Introduction of "destination principle" which presumed that while the seller applies zero rate, purchaser should apply the VAT rate specified by his/her national law.
f. Detection of minimum standard and reduced VAT rates.
g. Introduction the mechanism of VAT revenues to be transferred by member states to EU Commission.

It is notable that in spite of universally binding character of the Sixth VAT Directive, Title 10 of the directive provides the list of rather flexible provisions on exemptions that allowed member states after holding consultations with European Commission not to apply VAT rates to particular areas of economic activity ( for example, public postal services and hospital medical care activities).[50] Moreover, member states were entitled to adopt a special schemes and impose rates of taxation for their small undertakings and decide on the limits of such rates. However, further policy of the European Commission was directed at the elimination of exceptions and imposing VAT rates on all economic activities within EEC. During 1977-2006 the Sixth VAT Directive was amended by dozens of different directives. Most of those amendments were crucial and aimed to keep the Sixth VAT directive up-to-date. For instance, the amendments of 1993 set up the minimum VAT standard rate (15 % ) and reduced VAT rate (5 %) which are still used in the EU.

In 2006 the Sixth VAT Directive was substituted by Directive 2006/12/EC on the common system of value added tax which codified all the provisions from the Sixth VAT Directive as well as its amendments made during 1977-2006.[51] As of today Directive 2006/12/EC remains the main legal instrument regulating VAT matters in the EU and represents the highest level of tax law harmonization ever achieved by the EU.

However, as far as time moves on and new issues arise, the European Commission quite often announces new proposals that are likely to amend current Directive 2006/12/EC. A good

[50] ibid 9
[51] Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax [2006] OJ L347/1

illustration is proposal modernizing for cross-border business-to-consumer (B2C) e-commerce amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods.[52]

The proposal is likely to enter into force by adoption of the relevant directive in 2018 and aimed to help small businesses by setting new approaches to cross-border trade. For example, according to the proposal standard rules will be applied only to cross-border sales of more than 100,000 Euro. Other objectives of the proposal are focused on elimination of VAT fraud and ensuring fair competition within EU.

As it was already mentioned the sphere of excise duties is less harmonized compared to indirect taxation. Nevertheless, EU's law provides regulation to all types of excise duties: spirits and alcohol beverages, tobacco products, electricity by means of relevant directives. The distinctive feature of excise duties as taxes on consumption is that they are imposed alongside VAT. Moreover, excise duties play an important role in economies of member states as far as they make a possibility to impose high tax rates to specific categories of products which are also subjects to VAT. In comparison with excise duties VAT has fairly low rates. However, if member states rejected of imposing excise duties or made the rates on a par with VAT it would lead to rise in inflation rates.[53] One more peculiarity of excise duties is that they are flexible. That means that since excise duties are separate taxes they can be adopted or changed easily in accordance with different economic conditions. The last but not the least feature of excise duties is that they run an exclusive mission of reducing consumption of certain categories of products. Therefore they aim to reduce the consumption of tobacco and alcohol products due to health reasons while taxation of energy product is directly connected with environmental protection reasons. While the abovementioned approach to excise duties is admissible worldwide the EU presumes one more specific criterion for excise duties to be met. In more details it means that despite the fact that the regulation of excise duties including tax rates making falls under sole member state's responsibility the EU requires states to remain being committed to the principle of maintaining the common market. Consequently the structures of excise duties and their application methods should be harmonized between member states in order to not to disturb the internal market. This harmonization should eliminate any taxation interfering free movement of goods within EU's internal market. For the reasons mentioned above in 2008 the European Council adopted the Directive 2008/118/EC concerning the general arrangements for excise

[52] The Official website of the European Commission < https://ec.europa.eu/taxation_customs/business/vat> accessed 9 March 2017

[53] ibid

duty.[54] The preamble of the Directive 2008/118/EC states that its provisions aim to replace a previous Council Directive 92/12/EEC regulating issues on excise duties which has been substantially amended several times. Also provisions of Directive 2008/118/EC are focused on the importance of harmonization of excise duties as far as it is necessary for proper functioning of the internal market.

Art. 1 para 1 of the Directive 2008/118/EC defines 3 categories of excise duties and indicates relevant directives regulating them:

“This Directive lays down general arrangements in relation to excise duty which is levied directly or indirectly on the consumption of the following goods (hereinafter ‘excise goods’):

(a) energy products and electricity covered by Directive 2003/96/EC;
(b) alcohol and alcoholic beverages covered by Directives 92/83/EEC and 92/84/EEC;
(c) manufactured tobacco covered by Directives 95/59/EC, 92/79/EEC and 92/80/EEC.”

According to Art. 2, 3 of the Directive 2008/18/EC imposing of tax occurs either at the stage of manufacture if such manufacture takes place in the EU or at the stage of import of products if such products are imported into the EU from a third country. It should be noted that Directive 2008/18/EC allows member states to impose additional taxes on excise taxes goods. However, imposing additional / other indirect taxes must correspond to EU’s tax law rules. Moreover, Art. 1 para 3 states that any additional taxes levied by the member states should not constitute any grounds for complication of trade between member states.

Art. 1 para 3:

“Member States may levy taxes on:

(a) products other than excise goods;

(b) the supply of services, including those relating to excise goods, which cannot be characterized as turnover taxes.

However, the levying of such taxes may not, in trade between Member States, give rise to formalities connected with the crossing of frontiers.”

[54] Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC [2008] OJ L9/12

Taxation of energy products and electricity is covered by Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity.[55] It provides rules on taxation related to electricity, motor and heating fuels. Primary target of the Directive 2003/96/EC is to eliminate any distortions of trade and competition resulting from differences of national tax laws of the EU member states. Also Directive 2003/96/EC pursues aims to stimulate energy efficiency and environmental protection.

Main aspects and key items of the Directive 2003/96/EC are as follows:

a. Not every energy products are subjects to taxation. Thus, only products used for heating or as motor oil are subject to taxation.
b. Minimum levels of taxation related to on motor / heating fuels and electricity are provided.
c. Exceptions to general rules. For example, member states may apply special tax rates to energy products used for public services / works. Another illustration of exception provided by Directive 2003/96/EC is that diesel for commercial use and diesel for non-commercial use may be taxed differently by the member states.
d. Exceptions due to environmental and health policy reasons. Member states may apply zero rate to biofuels or fuels and electricity used to transport goods (train, metro, tram, etc.)
e. Member states are allowed to apply special reduced taxes to enterprises that put out an considerable effort to reduce energy consumption.
f. Transitional periods for implementation the provisions of Directive 2003/96/EC. Thus, transitional periods were granted to new members states which entered the EU in 2004, 2007.
g. Directive 2003/96/EC does not apply to dual-use energy products. For instance, products used for both heating and other purposes do not fall under the scope of the Directive.

[55] Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity [2003] OJ L283/51

Taxation on alcohol and spirits is regulated by two directives:

> Council Directive 92/83/EEC of 19 October 1992 on the harmonization of the structures of excise duties on alcohol and alcoholic beverages
>
> and
>
> Council Directive 92/84/EEC of 19 October 1992 on the approximation of the rates of excise duty on alcohol and alcoholic beverages.[56]

While Directive 92/83/EEC interprets the structure of excise duties on alcohol and provides the differentiation of alcohol spirits into the categories with different tax rate applied, Directive 92/84/EEC specifies rates to be applied to each category of alcohol spirits and deals with exceptions.

Main aspects and key items of the Directive 92/83/EEC are as follows:

a. Directive 92/83/EEC classifies alcohol drinks into three groups: beer; wine and other fermented drinks; spirits.

b. The calculation of taxes is based on number of hectoliter degrees Plato where 1 Plato is an equivalent to 0.4 per cent of alcohol by volume.

c. Member states may apply reduced tax rates to small independent breweries based in the EU.

d. Member states may apply reduced tax rate to wine or other fermented drink except beer if alcohol strength of such drink is not more than 8.5 per cent by volume.

e. The concept of single reduced rate means that single reduced tax rate may be applied by the member state to any alcohol drinks which alcohol strength does not exceed 15 per cent by volume. However, there is an exception to the rule: the discount provided by single reduced rate should not be more than 40 per cent from the standard tax rate applied to the same category of drinks.

[56] Council Directive 92/83/EEC of 19 October 1992 on the harmonization of the structures of excise duties on alcohol and alcoholic beverages [1992] OJ L316
Council Directive 92/84/EEC of 19 October 1992 on the approximation of the rates of excise duty on alcohol and alcoholic beverages [1992] OJ L316/29

f. The level of pure alcohol in strong spirits should be measure at the temperature of 20 degrees Celsius.

g. Member states may apply reduced rates to ethyl alcohol produced by small distilleries based in the EU.

Directive 92/84/EEC sets minimum excise duties on spirits and alcoholic beverages at the following levels.[57]

| Product | Rate expressed per | Minimum rate |
|---|---|---|
| Beer | hectolitre per degree of alcohol in finished product | 1.87 Euro |
| Wine | hectolitre of volume | 0 Euro |
| Intermediate products (e.g port wine) | hectolitre of volume | 0 Euro |
| Strong spirits | hectolitre of pure alcohol | 550 Euro |

Tax regulation on tobacco products is enshrined in Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco.[58] Directive 2011/64/EU codified 3 previous directives regulated tobacco tax matters: Council Directive 92/79/EEC of 19 October 1992 on the approximation of taxes on cigarettes and Council Directive 92/80/EEC of 19 October 1992 on the approximation of taxes on manufactured tobacco other than cigarettes and Directive 95/59/EC of 27 November 1995 on taxes other than turnover taxes which affect the consumption of manufactured tobacco.

Main aspects and key items of the Directive 2011/64/EU are as follows:

a. Directive 2011/64/EU provides regulation and general provisions of harmonization of manufactured tobacco which is classified into 3 categories: cigarettes; cigars and cigarillos; smoking tobacco (including tobacco for rolling cigarettes).

[57] EUR-Lex website, <https://ec.europa.eu/taxation_customs/business/excise-duties-alcohol-tobacco-energy/excise-duties-alcohol/excise-duties-alcoholic-beverages_en> accessed 11 March 2017

[58] Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco [2011] OJ L176/24

b. Cigarettes are subject to ad valorem tax and specific excise duty. Ad valorem tax is calculated on maximum retail selling price plus customs duties. Specific excise duty is calculated per unit of product. It should be noted that Directive 2011/64/EU obliges member states to make the rates of ad valorem and specific tax duties equal to all cigarettes.

c. Directive 2011/64/EU provides the concept of weighted average retail selling price which constitutes the basis for calculation of percentage of specific component of excise duty in the amount of total taxation of cigarettes and should be determined by 1 March of each year. The calculation of weighted average retail selling price should be performed in conformity with total value of all cigarettes released for consumption (retail selling price of all cigarettes divided by total number of cigarettes sold for consumption) and based on previous year's consumption level.

d. The percentage of specific component of the excise duty should not be less than 7.5 per cent and not more than 76.5 per cent of the total amount of taxation of cigarettes. In this case total amount of taxation consists of weighted average retail selling price, specific excise duty, ad valorem tax and VAT.

e. Overall excise duty which is imposed by the member states on cigarettes consists of the specific duty and ad valorem tax and must constitute no less than 57 per cent of weighted average retail selling price but in any way no less than 64 Euro per 1000 cigarettes.

f. Directive 2011/64/EU provided transitional periods for member states in order to make the increasing of taxation in that states more gradual. Thus, Art. 10 states that Bulgaria, Estonia, Greece, Latvia, Lithuania, Hungary, Poland and Romania shall be allowed a transitional period until 31 December 2017.

g. Directive 2011/64/EU allows member state to apply special calculations to tobacco products other than cigarettes. These calculations may be performed on the basis of ad valorem tax based on the maximum retail selling price of each product; specific duty (specifies a fixed sum per 1000 pieces or kilogram); combination of the abovementioned taxes.

h. Minimum rates for specific duty are following: 12 Euro per 1000 cigars or per kilogram; 40 Euro per 1 kilogram of tobacco used for rolling cigarettes; 22 Euro per 1 kilogram for other types of smoking tobaccos.

## 3. Enlargement of the EU and its tax aspects.

### 3.1. Brief overview and comparative analysis of national tax laws of the EU member states.

Enlargement of the EU often is a long-time process which includes the whole range of criteria the feasible member state should to comply with. To be more specific, the EU primary legislation constitutes that any country willing to become a member of the EU must meet the conditions laid down in Art. 6 (1) , Art. 49 of the TEU.

Art. 6 para 1 TEU states as follows:

"1. The Union recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.

The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.

The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions."[59]

Art. 49 TEU provides the regulation applicable specifically to states seeking to become a members of the EU:

"Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union. The European Parliament and national Parliaments shall be notified of this application. The applicant state shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the assent of the European Parliament, which shall act by an absolute majority of its component members. The conditions of admission and the adjustments to the Treaties on which the Union is founded, which such admission entails, shall be the subject of an agreement between the Member States and the applicant State. This agreement shall be submitted for ratification by all the contracting States in accordance with their respective constitutional requirements. The conditions of eligibility agreed upon by the European Council shall be taken into account"[60]

[59] Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union [2012] OJ C326/01
[60] ibid

Art. 6 para 1 of TEU proclaims that the Charter of Fundamental Rights of the European Union of 7 December 2000 is legally binding for all member states together with Lisbon Treaties which, in its turn, means that TEU, TFEU and Charter of Fundamental Rights of the EU are general treaties of mandatory nature which should be applicable not only to EU members but to all states seeking membership in the EU. To sum up, the Charter of Fundamental Rights of the EU constitutes 6 groups of general rights and freedoms: dignity, freedoms, equality, solidarity, citizens rights, justice. The provisions of the Charter aimed to be widely used by member states and candidates to EU membership when they are implementing the EU law. The Charter constitutes itself an instrument for EU states for effective realization of reforms and achieving high level harmonization with respect to fundamental rights, freedoms of the their citizens rather than single source of fundamental rights and freedoms. For this reasons, the Charter is in line with European Convention on Human rights.

Art. 49 of TEU deals with specific procedure which applies to states willing to become a members of the EU. Put it shortly, the procedure of EU's enlargements consists of 2 general steps: a) the state willing to become a member submits an application to the Council; b) After making consultations with EU Commission and Parliament and verifying whether the applicant state corresponds all the conditions of EU, the Council  may solely render its decision as regards granting EU membership. In practice applicants does not match conditions which are necessary for becoming a member of EU. For these reasons, applicants are used to conclude Stabilization and Association agreements (SAAs) with the EU. SAA is aimed to define the weaknesses, problems of applicants, provide possible ways of solution of such problems by means of different reforms, identify common objectives and cooperation conditions for both parties of SAA. The Commission is assigned functions of monitoring of compliance and implementation of the SAA by the applicant. The results of such monitoring the Commission publishes in its annual progress report. It is important to note that the process of "becoming a member of the EU" presumes active participation of the EU. Thus, for example, the EU has adopted Fiscalis and Customs Programmes which are aimed to promote cooperation between the EU and possible member states. In the 2013 the EU adopted Fiscalis 2020 programme which was a second attempt of the EU to achieve a new level of cooperation between national tax authorities of member states as well of third countries.[61] As of today such countries as Ukraine, Turkey, Serbia, Montenegro, Albania are active participants of Fiscalis 2020. As far as it is too early to dicuss any results of Fiscalis-2020 I would like focus briefly on already passed Fiscalis 2013.

[61] Regulation (EU) No 1286/2013 of the European Parliament and of the Council of 11 December 2013 establishing an action programme to improve the operation of taxation systems in the European Union for the period 2014-2020 (Fiscalis 2020) and repealing Decision No 1482/2007/EC [2013] OJ L 347/25

According to final report of the Commission "Final evaluation of the Fiscalis 2013 programme" the implementation of program achieved results in spheres of VAT, excise duties and direct taxation.[62]

As regards VAT taxation Fiscalis 2013 provided as follows:

a. the Computerized VAT Information Exchange System (VIES) which presumes the automatic exchange of information as to VAT between national tax administrations of member states. According to Council Regulation No 904/2010 on administrative cooperation and combating fraud in the field of value added tax member states are obliged to keep the information as regards VAT in electronic form and iautomatically provide required information to other member states.

b. Vies-on-the-Web System allowed the verification of VAT identification number at the special web site. The procedure of the VAT identification number is rather common than new for EU member states. However, before Vies-on-the-Web System has been implemented such verification used to be performed by national tax administrations, required a lot of time and money.

c. VAT Refund electronic procedure which became legally binding for the member states after the adoption of Directive of 12 February 2008 on 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.[63] VAT Refund electronic procedure was aimed to facilitate the procedure of VAT refunding and allowed businessed to address to national tax administrations directly regardless the state where the VAT had been imposed.

As regards excise duties:

a. Excise Movement and Control System (EMCS). According to EMCS member states were obliged to change the administrative submitting documents into electronic messages which should be sent by consignor to consignee through tax administrations of member states. The implementation of EMCS led to heavy costs but resulted in improvement of monitoring over movement of excise goods.

[62] Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions, *Final evaluation of the Fiscalis 2013 programme* (Brussels,Cm 0745,2014)

[63] 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 [2008] OJ L44/23

b. System for Exchange of Excise Data (SEED) consequently formed an integral part of EMCS and constituted a common database with excise numbers.

As to direct taxation Fiscalis 2013 introduced the system of common electronic forms which aimed to simplify the procedure of email queries between national administrations of member states. Consequently the Council adopted Directive 2003/48/EU on taxation of savings income in the form of interest payments which obliged member states to inform the states of residence of the taxpayer about his or her savings and interest payments in such a state. In 2015 the Directive 2003/48/EU was repealed by Council Directive 2015/2060.[64]

In order to get general insight about the level of harmonization of taxes in the EU brief comparative analysis of taxes of several EU member states comes useful. For example, Austria, Slovakia and Poland illustrate a natural multifacetedness of EU membership. Austria joined the EU in 1995 during the “fourth enlargement” and is rightfully considered an “old” EU member. Being one of the founders of the European Free Trade Area (EFTA) which subsequently became essential to formation of the European Economic Community (EEC) due to the free trade area between Austria and the EEC, Austria seems to be self-sufficient state with a stable economy. Slovakia and Poland serve an example of other, so called “young“ EU members that joined the EU during its largest enlargement in 2004. At the time of their accession both Slovakia and Poland had economic problems which led to solid contributions from the EU’s side.

[64] Council Directive 2015/2060 of 10 November 2015 repealing Directive 2003/48/EC on taxation of savings income in the form of interest payments [2015] OJ L301/1

In accordance with the official web site of the European Union only Austria contributed in EU budget.[65] In spite of the fact that the amount of spendings from Poland to EU seems to be the largest from the list, Poland has already consumed much more than Austria and Slovakia.

| State | Austria | Slovakia | Poland |
|---|---|---|---|
| EU member since | 1 January 1995 | 1 May 2004 | 1 May 2004 |
| Population | 8 576 261 | 5 421 349 | 38 005 614 |
| Population as % of total EU | 1.7 % | 1.1 % | 7.5 % |
| Gross domestic product (GDP) | 337.162 billion Euro | 78.071 billion Euro | 427.737 billion Euro |
| Total EU spending in a state | 1.787 billion Euro | 3.735 billion Euro | 13.358 billion Euro |
| Total state’s spending in EU | 2.529 billion Euro | 0.608 billion Euro | 3.718 billion Euro |

It goes without saying that one of the key peculiarities of the EU as association of states is the economic diversity of its members. Therefore hardly ever the unification may be applied and harmonization seems to be the only solution. Coming back to the question of harmonization of taxes I would like to refer again to the short comparative analysis of Austria, Slovakia and Poland from the perspective of tax residence criteria and levels of individual income tax, corporate tax and VAT.

[65] Official website of the European Union < https://europa.eu/european-union/about-eu/countries/member-countries_en> accessed 12 March 2017

**Austria.**

Tax residence in Austria means that person (individual) should be deemed as a tax resident if:

a) he or she has a flat/house in Austria;

b) he or she is living in Austria for more than 6 months in tax year[66].

In Austria tax year means calendar year.

In case if person is resident in Austria for less than 6 months in tax year and does not have any immovable property there such person should pay taxes only on income earned in Austria.

As regards legal entities, companies are deemed to be a tax residents if they have their effective management in Austria or are incorporated in Austria.

Individual tax rate in Austria is calculated on progressive rates and divided into 7 tax bands:

| Tax band | Annual income | Rate applied |
|---|---|---|
| 1. | up to 11 000 Euro | 0 % |
| 2. | 11 000 – 18 000 Euro | 25 % |
| 3. | 18 000 – 31 000 Euro | 35 % |
| 4. | 31 000 – 60 000 Euro | 42 % |
| 5. | 60 000 – 90 000 Euro | 48 % |
| 6. | 90 000 – 1 000 000 Euro | 50 % |
| 7. | over 1 000 000 Euro | 55 % |

As of 2017 corporate tax in Austria is 25 % which remains steady from 2006.

VAT is divided into two categories: standard rate 20 % and reduced rate 10 %.

Reduced rate applies to particular spheres and services such as tourism, agriculture, etc.

VAT registration in Austria is required if annual turnover goes beyond 30 000 Euro.

66 Official website of the European Union, <http://europa.eu/youreurope/citizens/work/taxes/income-taxes-abroad/austria/index_en.htm> accessed 12 March 2017

**Slovakia.**

The approach to tax residence in Slovakia is similar to Austrian one.

If person (individual) lives in Slovakia for more than 183 days (6 months) in calendar year he/she is recognized as permanent resident which means that such person should pay on his/her worldwide income in Slovakia. In person (individual) stays in Slovakia for less than 183 days he/she should pay only on income earned in Slovakia.[67]

Just as in Austria individual tax rate in Slovakia is calculated on progressive rate but divided into 2 tax bands:

| Tax band | Annual income | Rate applied |
|---|---|---|
| 1. | up to 35 022 Euro | 19 % |
| 2. | over 35 022 Euro | 25 % |

Corporate tax in Slovakia is 22% and remains stable since 2014.

Standard VAT rate is 20 %. Reduced VAT rate of 10 % applies to particular spheres and services (for example, medicine). What is more, some services are exempted from VAT at all (e.g postal and financial services).

Interesting to note that in contrast to many EU states Slovakia does not tax dividends which makes Slovakia attractive to foreign businesses.

[67] Official website of the European Union, <http://europa.eu/youreurope/citizens/work/taxes/income-taxes-abroad/slovakia/index_en.htm > accessed 12 March 2017

**Poland.**

Tax residency approaches in Poland and Slovakia are the same. However, polish tax law states that in order to be recognized a tax resident person (individual) should either live in Poland for more than 183 days in a year or have a centre of his/her vital interests in Poland or meet both conditions.

Individual tax rate in differentiated into 2 tax bands:

| Tax band | Annual income | Rate applied |
|---|---|---|
| 1. | up to 85 528 PLN | 18 % |
| 2. | over 85 528 PLN | 32 % |

As of 12 March 2017, 85 528 PLN is equivalent to 20 144 Euro.[68]

Corporate tax rate is 19% and remains stable since 2014.

Standard VAT rate is 23%. There are 2 categories of reduced VAT rate:

a. 8% applies to medicine and certain food goods, hospitality services.

b. 5% applies to certain food goods (e.g. bread), particular book publishers, milk products.

Special VAT rate of 3% applies to several kinds of agricultural products (e.g. fish farming), 0% applies to export of goods, international transport services, computer equipment for blind people.

As is clear from the abovementioned examples the harmonization is basically discernible in the sphere of indirect taxes. VAT is well harmonized despite the fact that member states used to impose different VAT rates on different kinds of products. Nevertheless, such harmonization seems to be the best option and consensus for all member states. Approach to excise duties is more or less the same in all member states besides the rates are different. The main common feature here – all member states used to tax tobacco, alcohol and energy products. It follows that the EC directives which were mentioned and analized above, so far remain to be the most powerful instrument of tax harmonization within the EU. However, approximation process of VAT and excise duties turned out to be considerably difficult. For example, Poland was forced to make significant amendments into its tax law legislation in order to become a member of the EU. The process of adapting of Polish tax law in accordance with the requirements of the Community

[68] Official website of National Bank of Poland, <http://www.nbp.pl> accessed 12 March 2017

started in 1990 and lasted more than 12 years.[69] For Poland harmonization of taxation field appeared to be complicated and continuous due to the fact that taxation is directly related to state's budget and as such effects all the sections of population. What is more, Poland's VAT was not consistent with the EU legislation so the process of VAT harmonization presumed large changes in Polish tax laws. In particular, EU required Poland to cancel 0% VAT rate to the list of goods and services which consequently would have led to different consequences connected with budget revenues matters. Furthermore, Sixth VAT Directive required Poland to integrate new terminology into its tax regulation.[70] For instance, according to the provisions of Sixth Directive Poland was obliged to enhance the scope of taxation of intangible property. According to the statistics provided by Karolak (2011) before becoming a full-fledged member of the EU Poland had to increase VAT rates on the wide range of goods and services.[71] Examples of some VAT rates changes are as follows:

| Name of good/service | VAT rate applied before entering the EU | VAT rate applied after entering the EU |
|---|---|---|
| Printing books, newspapers | 0% | 22% |
| Sale of new real estate property | 0% | 22% |
| Professional equipment for fire-fighters | 0% | 22% |
| Clothing, footwear, toys for children; restaurant services; building materials. | 7% | 22% |

However, it's worthwhile noting that due to the common understanding that such a sharp increase of VAT rates would inevitable influence business owners the relevant transitional periods was negotiated and granted to Poland. For instance, in 2002 Poland got approvals from

[69] Anna Kalorak,"Adaptation Process of a Polish Tax Law to European Union Norms – Harmonization of a Value Added Tax" [2011] Economics&Sociology Vol 4, 54
[70] Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value-added tax: uniform basis of assessment [1977] OJ L145, art 5-7
[71] Anna Kalorak,"Adaptation Process of a Polish Tax Law to European Union Norms – Harmonization of a Value Added Tax" [2011] Economics&Sociology Vol 4, 58

the EU as regards 5 years transitional period for restaurant services. Polish government explained the necessity of such transitional period by low income level of polish people.[72]

### 3.2. Tax competition in the EU and its main problems. Fair and harmful tax competition.

Tax competition remains a controversial question in the EU. On the one hand, tax competition seems to have positive effect. In this case competition shall mean the attempts of the member state to make its tax system and economy more attractive for investments. Apparently, the level of tax burden of the state together with such general aspects as stability, economic level and safety have a crucial impact on the level of its investment attractiveness. I other words, tax competition shall aim to make the state's economy more attractive for investments. Main question here is the methods used by the state in order to achieve investment attractiveness. Broadly speaking, main complexity of tax competition for member states deals with the fact that all of them are the parts of single economic integration – the EU. Therefore, states should find approaches to tax competition carefully otherwise they are likely to be accused of conducting unfair competition policy in relation to other members of the EU. But does tax competition itself correspond with the EU policy? At first sight, no. As far as the policy of the EU is generally focused on harmonization (or even unification) of national laws, law systems of the member states and formation of common approaches to the wide range of law and economic spheres tax competition seems to be opposite. However, as it was already mentioned in this research, harmonization of taxes in the EU is a challenging task due to the fact that taxes often consitute main sources of budget revenues of the member states so EU members simply do not want to make any changes to their tax regimes in order not to loose revenues to their budgets. What is more, due to different historical evolution of member states tax systems, their unification or long-range harmonization remains quite an undertaking. As practice shows only several aspects of taxes are more or less harmonized so far. VAT and excise duties serve the best examples. Turning back to the question whether tax competition complies with EU policy it should be noted that generally tax competition deals with corporate taxes because namely corporate income tax rates usually constitute a decisive factor for potential investors. Interesting to mention that despite the question of tax competition in the EU is hotly-debated topic nowadays, it has it origin from the end of 1980s when the implementation of the reforms towards financial market integration started.[73] First reduction in corporate taxes with the view to enhance tax

[72] ibid 59
[73] Enrique G. Mendoza, *Winners and losers of tax competition in the European union* [2003] Cambridge National Bureau of Economic Research, 2

attractiveness took place in the end of 1980s when the United Kingdom decided to cut corporate tax rates from 52% to 32%.[74] Later Ireland followed the example and reduced its corporate tax rate to 12.5% which as of today is much less than average corporate tax rate in other member states. Both these examples attracted a lot of attention and were widely criticized. Moreover, Ireland's tax policy again took a centre stage after European Commission ruled it decision in the case Apple vs Ireland where Ireland was accused of providing tax benefits and conducting selective tax treatment that are illegal according to the EU law.[75] Nevertheless, Irish example is rather an exception and one-side reporting illustration of unjustified tax treatment which in all kinds of ways is related to tax competition issue. However, there are also protagonists of the idea of tax competition within the EU. Thus, for instance, famous Dutch politician Frederik Bolkestein once said: "The priority is to reduce the tax burden EU wide. And don't even attempt to harmonize national tax systems across the board… the EU is already pledged to eliminate harmful tax competition, but a reasonable degree of tax competition would not be harmful at all: it would lead to a market-driven convergence towards lower tax rates."[76] Subsequently another question arises: what is that reasonable degree of tax competition? And what instruments does the EU law provide in order to allow member states to define thin borderland between fair and unfair (harmful) competition within EU?

According to Šemeta (2011) for member states it is highly important to focus on the quality of their tax systems.[77] In its turn, quality of tax systems itself defines the investment attractiveness of the state. There are 2 main instruments which together or independently may directly influence the quality of tax system: efficiency and neutrality. Efficiency in this case shall mean easy-to-use tax system which is transparent and understandable for investor. Neutrality shall mean imposing a one common tax rate to different types of economic activities or/and types of income. Such approach is likely to make tax system easy-to-understand because there is no need for investor to go into details which tax rate would apply to this or that economic activity. As far as it is highly important for investor to understand not only which taxes (direct or indirect) are to be imposed but also the structure and methods of operation of such taxes, neutrality may have a great impact on the quality of member state's tax system.

[74] ibid 3
[75] Official website of the European Commission, < http://europa.eu/rapid/press-release_IP-16-2923_en.htm > accessed 17 March 2017
[76] The Economist, <http://www.economist.com/node/498715> accessed 17 March 2017
[77] Algirdas Šemeta, "Competitive Tax Policy and Tax Competition in the EU" (2nd Taxation Forum of Diario Economico/OTOC, Porto, 2011) < http://europa.eu/rapid/press-release_SPEECH-11-712_en.htm?locale=en> accessed 18 March 2017

Besides such aspects of tax system of the state as quality, safety, overall state's economic level, etc. this is not to deny that tax rates play the most important role in making state attractive to investments. Together with abovementioned aspects the reduction of tax rates is aimed to create the most attractive tax environment for potential investors. The reduction of corporate income tax rates still remains the key way towards investment attractiveness. However, there are also tax incentives which constitute another way for the state to become attractive to the investors without getting into general reduction of tax rates. For example, tax incentives for small and middle sized enterprises (SMEs) have a great impact on investment environment of the state and could not be underestimated. According to Eurostat SMEs account 99% of all businesses in the EU and 67% of EU's workers are employed by SMEs.[78] Notwithstanding that the practice of providing tax incentives to SMEs is common practice for the EU, not every member state would deem it advisable to apply in their legislations. Thus, among Austria, Slovakia and Poland only latter provides several tax incentives to SMEs.[79] According to Polish law SMEs may be provided with tax credits in the amount up to 75% in case of investing in new technologies. Furthermore, level of tax rates depends on the size of undertaking and/or the geographical location of the project or the centre of undertaking's main interests. For instance, if the amount of investments exceeds 50 million Euro, the investor may be provided with the maximum tax credit in the amount of 950 thousand Euro.[80] What is more, according to Polish tax law, low tax rates may be applied if SMEs invest in specific economic regions of Poland. Generally these specific economic regions are areas with high unemployment rate and/or does not have extensive infrastructure. Therefore offering low tax rates state tries to encourage potential investors to invest in such problematic regions. However, in exchange for low tax rates SMEs should take an obligation to carry their business activities in a region for at least 3 years without changing ownership and numbers employed. Newly established micro-undertakings may also be granted with some tax allowances. For example, small companies with turnover less than 1.2 million Euro (including VAT) may come into alternative income tax payment program which allows such companies not to pay income taxes during first year since their establishment (or two years). However, according to the conditions of such alternative tax programs all the taxes are to be paid by the company during subsequent 5 years (or early). Also SMEs with a small turnover (up to 1.2 million Euro) may solely decide on the procedure of paying VAT – monthly or quarterly.

[78] Official website of Eurostat, <http://ec.europa.eu/eurostat/statistics_explained/index.php/Statistics_on_small_and_medium-sized_enterprises> accessed 18 March 2017

[79] Sören Martin Bergner, Rainer Bräutigam, Maria Theresia Evers, Christoph Spengel, "The Use of SME Tax Incentivesin the European Union" [2017] ZEW and University of Mannheim, 110

[80] ibid 111

A goods illustration of providing wide tax incentives to SMEs is Croatian experience. Joint the EU in 2013 and being the youngest EU member state so far Croatia makes concentrated efforts in order to raise investments. According to existing laws Croatia offers newly established SMEs a reduction of corporate income tax rates up to 100% for the period of 10 years.[81] Amount of the reduction depends on the size of investments, number of created jobs, region of main economic activity, undertaking's turnover. For example, corporate income tax rate may be equal to 0 for the period of 10 years in case if SME invested at least 3 million Euro and hired at least 15 employees. If the amount of the SME's investments is more than 1 million Euro and at least 10 jobs were created corporate income tax rate is calculated on the basis of 75% discount for the period up to 10 years. However, even if SME's investments come to a sum less than 1 million Euro and number of jobs created is only 5 or more it does not mean that such SME should pay corporate taxes in full. In this case 50% tax reduction applies. The same as Poland, Croatia does not leave behind macro-businesses. Thereby special tax reductions up to 50% apply to micro-undertakings which created at least 3 jobs and invested 50 thousands Euro or more.

Summarizing the above it is clear that member states are challenged by EU law which aims to assure due performance of undertaken duties: single market and globalization. Apparently tax competition itself does not comply with EU policy. However, this fact of non-compliance is no to say that there could be no tax competition within EU. It only means that member states should approach the issue of tax competition very carefully in order to gain "fair" competition instead of penalties for "harmful" competition. Art. 101, 102 TFEU constitute principles of competition which apply to undertakings within EU. The sphere of taxes is also a subject to the abovementioned rules. Nonetheless as far as taxes are still far from being well harmonized on supranational level and mainly remain to fall under competence of national laws, namely member states are obliged to comply with all EU norms as regards competition including but not limited to observation of the conditions of fair competition.

However it should be noted that since 2004 the EU has been working on establishment of unified system of tax regulation (including tax competition). In 2004 European Commission formed an expert group which aimed to work on the EU's initiative on creation a Common Consolidated Corporate Tax Base (CCCTB) which consequently should implement a single approach to

[81] ibid 92

corporate taxes within EU. But how does the creation of CCCTB correspond with the existing tax competition? This question is still on the agenda.

### 3.3. Common Consolidated Corporate Tax Base (CCCTB). Advantages and disadvantages. Key distinctions between CCCTB-2011 and relaunched CCCTB-2016.

In the EU where the level of economic integration becomes higher year by year and due maintaining of single market is the most important objective, member states face the difficulties in protection of their national tax bases in a manner which would comply with the EU law.[82] As of today only sphere of indirect taxes is more or less harmonized but corporate taxation is still out of EU law regulation. By introducing new single approach to corporate taxes CCCTB aim to become a unified instrument regulating corporate (indirect) taxes in all members of the EU. According to Schön (2009) the taxes rights allocation between state of source and state of residence, as well as the question of the tax law harmonization, tax competition and its development are hot-button issues nowadays.[83] Taking into consideration the apparent necessity of implementation new level of coordination of corporate taxation European Commission initiated the work on CCCTB in 2004. On the other hand the necessity for new type of corporate tax regulation derives from the fact that as of today corporate taxation remains one of the main forces for progress for the state's development. For this reason governments of member states used to put in place important steps in order to make their tax regimes more attractive for potential investors. The process of such "modification" of tax laws includes several instruments which singly or in combination are widely used by states. For example, tax incentives to SMEs which were already discussed in previous paragraph of this research constitutes one of such "modification" instruments. General reduction of corporate tax rate is another way for the state to make its tax regime more attractive.

The object of taxation for corporate tax in most EU member states is a private company. The taxation of the corporate group is confronted with the lack of conformity between the legal division and economic integration of the constituent entities (parent and subsidiary companies). According to the norms of the national law, there are several legal instruments for reducing the additional tax burden which is the consequence of synthetic division between members of the

[82] Michael Aujean, "Tax policy in the EU: between harmonization and coordination?" [2010] SAGE, 11
[83] Wolfgang Schön, "International tax coordination for a second-best world" *World Tax Journal* (2009) No 1

corporate group. For example, tax exemptions for intercompany dividends (credit or exemption methods) or loss compensation for the whole group of companies. Taking into consideration the principle of non-discrimination the question arises as to whether these methods could be applied in cross-border taxation. According to Miller (2014) companies established under the laws of EU member states find it difficult to obtain full advantage from the single market due to the absence of CCCTB.[84] In addition to the administrative obligation of making calculations in accordance with 28 tax regimes there are also issues concerned inter-coordination between these 28 regimes. Companies operating in more than one EU member state used to face different transfer pricing regimes and usually forced to use the benefits received in order to cover losses incurred in other member states and complicated tax claims resulted from cross-border mergers and acquisitions.
One of the fist initiatives provided by the CCCTB was the proposal to impose taxes according to the state of source. In practice it meant that group of companies operating in more than one member state should have the right to apply single system of calculations and tax regime to all its companies. In fact, it aimed to allow corporate groups which implemented CCCTB to choose one way of calculating the taxes for all their companies operating in the EU which consequently meant that corporate group had to deal only with one tax authority in the EU. Important to mention that CCCTB itself does not stipulate any tax harmonization of the corporate (direct) tax rates so even after implementing CCCTB member states would be in the position to set the level of their corporate taxes independently. According to research in the field one of the main obstacles for the corporate groups engaged in cross-border business activities within EU is the lack of capacity to compensate tax losses in one member state by means of benefits in another member state.[85] Statistically in 2001 over 81% of companies engaged in cross-border business in the EU suffered tax losses in one or more member states but most of that companies were unable to compensate incurred losses.[86] However, in spite of good purposes of CCCTB initiative it still did not receive an approval from the whole range of member states. Thus during the 13th meeting of CCCTB working group which took place in 2008 in Brussels 6 member states (Germany, Poland, Malta, Sweden, Ireland and Netherlands) dismissed CCCTB. Mentioned member states gave different reasons for such decision but all of that reasons have much in common. First of all, member states were discomfited with latest European Commission's initiatives which stated that in case of any collision arises with regard to the relationship between the CCCTB and the existing treaties on the avoidance of double taxation, the CCCTB provision should prevail. Also

[84] Angharad Miller, Lynne Oats, *Principles of international taxation* ( Bloomsbury Professional, 4th edition, 2014) 599
[85] Sven-Olof Lodin, Malcolm Gammie, *Home State Taxation* (first published in 2001, IBDF) 21
[86] ibid 22

member states concerned that the subsidiarity principle being one of the main principles of the EU may be violated.

Art. 5 para 3 TEU states: " Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.
The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol."[87]

Therefore member states raised concerns that such European Commission initiatives may violate subsidiarity principle and subsequently may negatively affect the state sovereignties of EU members. Moreover, some member states are simply skeptical about the implementation of the CCCTB because of its probable inefficiency. Despite that data and research provided by the European Commission appear optimistic, member states expressed concerns that in case of implementation of CCCTB they would be forced to manage two different taxation systems which inevitable would lead to the increasing of costs.

Some member states are passed about the fact that implementation of CCCTB is likely to reduce investment attractiveness of the EU. For instance, Ireland actively comes out against implementation of CCCTB for the abovementioned reasons. It is no secret that Ireland being a low tax jurisdiction in the EU is highly attractive for foreign direct investments. If CCCTB comes into effect there is a risk that harmonization together with consolidation of corporate tax rates would result in activity decay of overall investment climate of the EU.

Notwithstanding all the criticism of CCCTB-2011 framework which was presented in 2011, the European Commission continued to work on the improvement of CCCTB and consequently CCCTB was relaunched in 2016. The main innovation provided by CCCTB-2016 is that it constitutes a single set of rules for calculation of companies profit and will be mandatory for the largest corporate groups in the EU. Mandatory character of CCCTB-2016 is the most important

[87] Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union [2012] OJ C326/01

distinctive feature of relaunched framework if compared to CCCTB-2011. According to the European Commission, updated version of CCCTB became more competitive and easier for implementation by the member states. In addition to mandatory character the main principle set by CCCTB-2016 is gradual two-level mechanism of implementation: first step is common tax base and only afterwards consolidation should be realized.[88]

Besides CCCTB-2016 is likely to provide wide range of incentives to SMEs and companies investing in research and development activities (R&D). According to European Commission the implementing CCCTB-2016 by SMEs would allow them to continue to use just one system and one tax administration, even in case if such SMEs choose to expand their business activities into other member states. Moreover, European Commission believes that CCCTB-2016 would be highly interesting for R&D because it stipulates high-level deductions and list of benefits for research activities. For example, companies investing in R&D may be granted 100% tax deductions applicable to salaries of their workers in the first year of R&D regardless the deadline for completion of such R&D.[89]

In summary it is worthwhile noting that apparently there is clash of views of CCCTB in the EU. While European Commission insists on the necessity of implementation of CCCTB arguing that single set of rules of calculation taxes would only redound to advantage of all member states together with corporate groups, SMEs and researches. Despite the fact that European Commission gives promises that the introduction of CCCTB-2016 does not mean any kind of tax harmonization but only aims to make the conduct of businesses of corporate groups as well as other types of undertakings easier, some member states still hold to an opinion that implementation of CCCTB would inevitably lead to limitation of their state sovereignties and negatively affect the level of investment attractiveness. For the moment the CCCTB-2016 proposal requires to be discussed by EU members in European Council. So CCCTB perspectives of being adopted remain to be seen.

[88] Official website of the European Commission, <https://ec.europa.eu/taxation_customs/business/company-tax/common-consolidated-corporate-tax-base-ccctb_en > accessed 24 March 2017

[89] Official website of the European Commission, <Official website of the European Commission, <https://ec.europa.eu/taxation_customs/business/company-tax/common-consolidated-corporate-tax-base-ccctb_en > accessed 24 March 2017> accessed 24 March 2017

**4. Ukraine as possible candidate for EU accession. The question of reforming of tax system of Ukraine in accordance with EU legislation. Main requirements of the EU according to the EU- Ukraine Association Agreement.**

Ukraine was the first state among Commonwealth of Independent States (CIS) which concluded the Partnership and Cooperation Agreement between Ukraine and the European Communities and their Member States (PCA) on June 14, 1994.[90] The PCA was aimed to define the legal framework for subsequent economic, social, financial, civil scientific technological and cultural cooperation between Ukraine and the EU. The PCA became a first step towards regular bilateral dialogue between Ukraine and the EU on wide range of political and economic issues. In addition, by means of the PCA Ukraine and the EU determined main Ukraine's policy directions in order to adopt Ukrainian legislation to the EU's acquis communautaire. In the PCA Ukraine took obligations to initiate adaptations of its legal system to the law of the EU in the following spheres: investments, justice, energy, home affairs, trade, environment protection, transport, border cooperation, cooperation in areas of science, technology and space. On the other hand, the conclusion of the PCA signified the general directions of the EU's policy in regard of Ukraine which lied in supporting Ukraine in its efforts to develop its economy to the level of market economy, to strengthen protection of human rights and democracy. The PCA was concluded for the period of 10 years and automatically renewed in 2008. The implementation of the PCA led to upgrading of cooperation between the EU and Ukraine. Due to the PCA the EU and Ukraine annually hold EU-Ukraine Summits which stipulated meaningful participation of top officials of both parties: the President of Ukraine, the President of the European Council, the President of the European Commission and others. After Ukraine became a member of World Trade Organization (WTO) in 2008 the negotiations on feasible free trade area between Ukraine and the EU were launched. During the 12$^{th}$ annual Ukraine – EU Summit the parties agreed on negotiations on Association agreement to be started. As a result of effective collaboration, the ratification of Association Agreement by both Ukraine and the EU in 2014 moved the cooperation to a new level.[91] More recently Ukraine and the EU extended the effect of Association Agreement by conclusion Deep and Comprehensive Free Trade Agreement in January 2016.

[90] Official website of Mission of Ukraine to the European Union, <http://ukraine-eu.mfa.gov.ua/en> accessed 3 April 2017

[91] ibid

So far the cooperation between Ukraine and the EU in the sphere of adaptation and harmonization of taxes remain a sensitive issue. Chapter 4 of the Association Agreement is devoted to taxation matters. Thus, Art. 349 states that both Ukraine and the EU shall collaborate in order to gain effective governance in the tax area, with the object to the further enhancement of economic relations, trade, investment and fair competition.

In its turn Art. 350 underlines that transparency, exchange of information and fair tax competition are the main principles which form the basis to tax regulation in the EU and are enshrined in EU Treaties. Art. 351, 352 underscore the necessity of The main goal of the article of the further reforming of VAT administration in Ukraine and insist on gradual approximation of excise duties on tobacco products and cooperation between Ukraine and the EU from the perspective of rules and standards provided by the World Health Organization Framework Convention on Tobacco Control of 2003.While Chapter 4 of the Association Agreement provides general rules for the subsequent cooperation between Ukraine and the EU in regards of taxation, Annex XXVIII to this agreement specifies the list of directives Ukraine must implement into its national law. Moreover, Annex XXVII to the Association Agreement obliges Ukraine to implement the abovementioned directives within concrete time limits ( 2, 3 or 5 years since the Association Agreement entered into force). For instance, according to provisions of the Association Agreement Ukraine assumed obligations to implement Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC during 2 years from the date the Association Agreement came into effect. Among other directives which concerns different aspects of taxation and should be implemented (or have already been implemented) by Ukraine, the Association Agreement gives a special attention to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax and provides Ukraine a 5 years term to bring its national law in line with the abovementioned Council Directive.

In fairness it must be said that Ukraine has started to assume measures towards harmonization, approximation of its law system with the EU legislation well before the Association Agreement entered into force in 2014. In 2010 Ukraine adopted a new Tax Code and therefore brought its taxation legislation into compliance with general EU law standards, particularly in terms of general matters concerned common system of value added tax and general approaches to taxation of excisable goods. Broadly speaking, in the spheres of indirect taxation i.e VAT and excise duties Ukrainian law system is more or less harmonized with the EU acquis and in short term is likely to meet all requirements set by the Association Agreement. As regards excise duties and taxation of tobacco products Ukrainian law commonly repeats Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco. However, the diversity of terminology appears to be one of the main problems. According to Directive 2011/64/EU tobacco products are classified into 3 categories: cigarettes; cigars and cigarillos; smoking tobacco (including tobacco for rolling cigarettes). In its turn Tax Code of Ukraine differentiates tobacco products as raw tobacco, cigars, including cigars, cigarillos, cigarettes without filter, cigarettes with filter, smoking tobacco and tobacco substitutes. Apparently in order to make its legislation on taxation of tobacco products Ukraine should at least bring the terminology and definitions in line with the classification provided by the Directive 2011/64/EU on the structure and rates of excise duty applied to manufactured tobacco. As regards rates applied, the structure of taxes and approaches to taxation in Ukraine and the EU are generally the same but rates of taxes vary. For example, according to Directive 2011/64/EU overall excise duty which is imposed by the member states on cigarettes consists of the specific duty and ad valorem tax and must constitute no less than 57 per cent of weighted average retail selling price but in any way no less than 64 Euro per 1000 cigarettes. In Ukraine the tax rate applied to cigarettes constitutes 445 UAH (16 Euro) per 1000 cigarettes. As of today Tax Code of Ukraine does not provide any regulation as regards percentage of specific duty and ad valorem tax weighted average retail selling price but the relevant law is likely to be adopted till the end of 2017.

As regards VAT, standard rate of VAT in Ukraine is 20 %. Reduced rate of 7 % applies only to operations on import to the territory of Ukraine medicaments in accordance with the list of such medicaments ratified by the government. 0% VAT rate applies to several services listed in Art. 195 of the Tax Code of Ukraine (e.g. international transportation of passengers, delivery of goods to Duty Free Shops.).

According to the experts in the field of taxation the harmonization of Tax Code of Ukraine and other relevant laws with the law of the EU will result in improving the international investment attractiveness of Ukraine; upgrade of VAT system; compliance with the European classification of alcoholic beverages and tobacco products which therefore allow to tax excisable goods in the manner prescribed by the EU law; increase in tax revenues to the state's budget; effective prevention of smuggling of excisable goods which as of today is overriding problem in Ukraine; reduction of consumption of tobacco products by population.[92]

[92] Olena Makejeva, "Electronic VAT administration – European experience and Ukrainian realities" (2013) <http://www.ap-center.com/en/publikatsii/> accessed 3 April 2017.

It’s interesting to note that according to Global Competitiveness Report provided by World Economic Forum in 2016 Ukraine, being a poor country which gross income per person (7,450 US dollars in 2015) is much lower than in any member state of the EU, imposes one of the highest tax rates in Europe.[93] According to ranking of total tax (a combination of profit, labor, contribution, other taxes) Ukraine ranks 118 position with 52.9 % of overall tax rate which is more than in Austria (52 %), Sweden (49.4%), Estonia (49.3 %), Germany (48.8 %), Finland (40 %) and many others member states.

Taking into consideration the fact that the EU is Ukraine's largest trading partner (Ukraine- EU business relations cover more than 40% of overall trade of Ukraine) it goes without saying that Government of Ukraine should make every possible effort to implement all the necessary requirements listed in Association Agreement within shortest time period that undoubtedly will have positive effect on economy of Ukraine and take the Ukraine-EU business relations on a higher level.[94]

[93] Official website of World Economic Forum, <http://reports.weforum.org/global-competitiveness-report-2015-2016/competitiveness-rankings/> accessed 3 April 2017

[94] Official website of European Commission,< http://ec.europa.eu/trade/policy/countries-and-regions/countries/ukraine/> accessed 3 April 2017

**Conclusions.**

Tax harmonization appears to be the only option which allows the EU to coordinate essential differences between national tax systems of member states and mitigate the risk of unagreed changes in the national tax policies of member states that may negatively affect the internal market.

Tax law being recognized a sensitive sphere for regulation by the EU remains to fall under the competence of national tax authorities of each member state. The reason for that is not far to seek – due to the fact that in vast majority of countries taxation is the main source of budget revenues member states are interested to conduct tax regulations on their territories without any outside interference including any supranational policies carried by the EU. For this reason the idea of unification of tax law within the EU turned out to be impossible. At the same time the careful harmonization policy responds to this challenge quite successfully. For the moment tax harmonization in the EU deals mainly with VAT and excise duties matters.

So far the sphere of VAT illustrates the highest level of tax law harmonization ever achieved by the EU. By virtue of meticulous work carried by the EU since 1967 when the First VAT Directive was adopted till the enactment of Sixth VAT Directive in 1977 EU the new, supranational regulation of VAT was introduced and adopted by all the EU members. As of today tax law harmonization consists of common VAT system that stipulates the VAT is calculated on a uniform basis unexceptionally in all member states at every stage of production and distribution of goods, services; common terminology and definitions of taxable persons, goods, services and transactions; place of supply, taxable amounts, deductions eliminate the risks of misunderstanding between member states and simplify business dealings in the EU. By the implementation of 0% VAT rate to exportations within the EU the concept of internal market has been translated into reality. Setting of minimum standard 15% and reduced 5% VAT rates formed a general approach to VAT taxation in the EU and influenced directly national tax laws of member states without any negative effect to their competences in dealing with taxation matters.

Excise duties appeared to be the other sphere of taxes which is well harmonized within the EU. Introduction of common system of definitions and terminology as well as list of excisable goods and minimum tax rates for each category of goods simplified the taxation of tobacco, alcohol and energy products in the EU and appeared to become a compromise for member states in setting their own tax rates on the abovementioned goods. For example, member state is free to impose high taxes on tobacco products in its own discretion due to different reasons (whether to healthcare matters or necessity to raise tax revenues to national budget it does not matter). The only requirement set by the EU law lies in setting minimum tax of each category of excisable goods. It means that none of member states will be able to apply tax of 20 Euro per 1000 cigarettes due to the reason that minimum level of taxation provided on supranational EU level is 64 Euro per 1000 cigarettes.

What is more, the EU carries on the policy of tax harmonization not only through adoptions of relevant directives and regulations (e.g. Council Directive 92/84/EEC of 19 October 1992 on the approximation of the rates of excise duty on alcohol and alcoholic beverages or Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity) but also by virtue of implementing programs such as Fiscalis, BEPS-2020, Customs-2020, Europe’s program for SMEs (COSME) which generally might be of help not only to the EU members but to the third countries as well.

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**Annexes.**

The EU being a highly integrated political and economic union often faces difficulties on the way towards implementation of single market as its main purpose. As far as basic goals of implementation of free movement of capital, goods, services and people within the EU have been already achieved, the EU in the course of its policy making aims to apply internal market concept as one of its major economic instruments to the different spheres of economy such as energy, capital markets, taxation, etc. For a long period taxation remains one of the obstacles for the EU in implementing internal market in the sphere of cross-border activities within the union. What is more, in the process of further policy of economic integration by means of unification and harmonization of the national legislations of the member states, governments of the EU members states insist on the necessity to protect their national tax bases for the reason that for the vast majority of these member states taxes constitute the main sources of budget revenues. As of today conducting a policy of sensitive and selective tax harmonization seems to be the only option for the EU in order to avoid lack of conformity in cross-border trade and investment between its member states. After the EU achieved results in harmonization of indirect taxation which includes introduction of common rules applied to VAT and excise duties the problems of correlation between direct tax harmonization and tax competition derived.

**Annektieren.**

Die EU, die eine hochintegrierte politische und wirtschaftliche Union ist, steht häufig vor Schwierigkeiten auf dem Weg zur Umsetzung des Binnenmarktes als Hauptzweck. Soweit grundlegende Ziele der Umsetzung des freien Kapitalverkehrs, der Waren, der Dienstleistungen und der Menschen innerhalb der EU bereits erreicht sind, zielt die EU im Rahmen ihrer Politik darauf ab, das Binnenmarktkonzept als eines ihrer wichtigsten wirtschaftlichen Instrumente anzupassen Verschiedene Sphären der Wirtschaft wie Energie, Kapitalmärkte, Steuern usw. Die Steuer ist nach wie vor eines der Hindernisse für die EU bei der Umsetzung des Binnenmarktes im Bereich der grenzüberschreitenden Tätigkeiten innerhalb der Gewerkschaft. Darüber hinaus bestehen die Regierungen der EU-Mitgliedsstaaten in dem Prozess der weiteren Politik der wirtschaftlichen Integration durch Vereinigung und Harmonisierung der nationalen Gesetze der Mitgliedsstaaten auf die Notwendigkeit, ihre nationalen Steuerbemessungsgrundlagen zu schützen, weil für die Die überwiegende Mehrheit dieser Mitgliedsstaaten stellt die Hauptquellen der Haushaltseinnahmen dar. Die Politik der sensiblen und selektiven Steuerharmonisierung scheint heute die einzige Option für die EU zu sein, um eine mangelnde Konformität im grenzüberschreitenden Handel und Investitionen zwischen ihren Mitgliedsstaaten zu vermeiden. Nachdem die EU Ergebnisse zur Harmonisierung der indirekten Besteuerung erzielt hat, die die Einführung gemeinsamer Regeln für die Mehrwertsteuer und die Verbrauchsteuern einschließt, werden die Probleme der Korrelation zwischen der direkten Steuerharmonisierung und dem Steuerwettbewerb abgeleitet.