The field of tax integration at a glance

http://www.oecd.org/tax/administration/

- Aggressive tax planning
- Consumption tax
- Dispute resolution
- Exchange of information
- Fiscal federalism network
- Global relations in taxation
- Public finance and fiscal policy
- Tax administration
- Tax and crime
- Tax policy analysis
- Tax treaties
- Transfer pricing
A very generic view on company taxation

1. The firm perspective:
   • Firm location
   • Incorporation
   • Multinational enterprise (MNE)

2. The state perspective:
   • Revenue
   • Economic growth
   • Fairness

Yet, not so much integration of the two perspectives – lack of an integrative framework
Some simple guiding questions for today

1. Why to coordinate? -> Deteriorating tax revenue; aim: efficient (company) taxation; horizontally and vertically fair tax burden

2. How to coordinate? -> (1) Tax harmonization, but rent-seeking and expropriation of citizens/companies; (2) fiscal competition, but distortion of tax system

3. What to coordinate? -> (1) Tax burden at different locations; interrelation of tax burden of mobile and immobile factors; (2) MNE, tax arbitrage, aggressive tax planning (ATP), principal place of incorporation

4. The special situation in the European Union -> (1) Intra European trade; (2) four freedoms of the European Treaty

5. Sharing rules for tax revenue -> (1) But what are efficient and fair sharing rules?; (2) How can a consensus be reached when there is an unanimity rule in place between the member states?
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<td>Opening</td>
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<td>ATP by MNE’s: OECD action plan</td>
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<td>Tax competition within the EU – The economics and empirics of tax competition: a survey of the literature</td>
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<td>Tax competition within the EU – Is the CCCTB - directive a solution</td>
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PART I

Speakers:
Dr. Achim Pross
Dr. Hendrik Vrijburg

Chair:
Prof. Dr. Arnaud de Graaf
Erasmus School of Law
Company tax integration in the EU

Dr. Achim Pross
Head of the International Cooperation and Tax Administration Division of the OECD Secretariat

Rotterdam, Erasmus University Rotterdam, 11th of June 2013
OECD ACTION PLAN ON BASE EROSION AND PROFIT SHIFTING

Dr. Achim Pross
Head of International Cooperation and Tax Administration Division, OECD

Foundation European Fiscal Studies and Erasmus Law Review
Conference on “Company tax integration in the EU”
11 June 2013, Rotterdam
Outline

I. Background - Why BEPS?
II. What is at stake?
III. What are the key pressure areas?
IV. Next Steps
I. WHY BEPS?
A third of UK’s 700 biggest businesses pay no corporation tax

By GWYNETH REES

Nearly a third of the UK’s 700 biggest businesses paid no corporation tax in the 2005-2006 financial year, an official study has revealed.

A third of the tax bills paid less than £0.1 million each in tax. And of the tax paid by these businesses, two-thirds came from just three industries - banking, insurance and oil and gas - while the alcohol, tobacco, car and real estate sectors paid only a few hundred million pounds each.

But nobody pays that...

G.E. Strategies Let It Avoid Taxes Altogether

By DAVID KODENSHI

Published: March 24, 2011

General Electric, the nation’s largest corporation, had a very good year in 2010. The company reported worldwide profits of $14.2 billion, and said $5 billion of the total came from its operations in the United States.

Background

• **G20, 19 June 2012, Los Cabos**
  “...We reiterate the need to prevent base erosion and profit shifting and we will follow with attention the ongoing work of the OECD in this area…”

• **G20 Finance Ministers Meeting, 4-5 November 2012, Mexico City**
  “...We also welcome the work that the OECD is undertaking into the problem of base erosion and profit shifting and look forward to a report about progress of the work at our next meeting…”

• **UK – Germany Joint Statement, 5 November 2012**
  “... Britain and Germany back the OECD – BEPS initiative of the OECD …”

• **Australia, Statement of David Bradbury, 22 November 2012**
  “Although there is a long way to go, it is clear that momentum to address these issues is building and that the focus of multilateral attention is now squarely on addressing situations of ‘double non-taxation’.”

• **France, Statement regarding the release of the Colin-Collin Report, 18 January 2013**
  “Conformément aux préconisations du rapport, le gouvernement entend agir résolument, au sein du G20, de l’OCDE et de l’Union européenne, pour adapter les règles internationales de l’imposition des bénéfices aux réalités de l’économie numérique, notamment en faisant évoluer la définition de l’établissement stable. ... Cette initiative « BEPS » offre une occasion historique pour la France et ses partenaires de promouvoir des avancées rapides en ce domaine.”
BRICS joint Communiqué, 18 January 2013

“We express our concern at the erosion of the tax base ... We commit to prevent the base erosion and profit shifting through cooperation amongst ourselves and with other countries.”

G20 Finance Ministers Meeting, 15-16 February 2013, Moscow

“... we welcome the OECD report on addressing base erosion and profit shifting and acknowledge that an important part of fiscal sustainability is securing our revenue bases. We are determined to develop measures to address base erosion and profit shifting, take necessary collective actions and look forward to the comprehensive action plan the OECD will present to us in July.”

Frans Weekers, Dutch State Secretary of Finance, 11 March 2013

“It is good that not only within the European Union but also at the OECD – in the context of the BEPS project – and the G8/G20 the combating of tax evasion and avoidance is high on the political agenda.”

G20 Finance Ministers Meeting, 18-19 April 2013, Washington

“We welcome the progress made in the development of an action plan on tax base erosion and profit shifting by the OECD and look forward to a comprehensive proposal and a substantial discussion at our next meeting in July.”
• Tax rates on foreign income – often very low / issue of double non-taxation;
• Separation of place of economic activity and place where profits are reported for tax purposes;
• Increasing importance of intangible assets;
• Principles of international taxation often developed in the 1920s:
  – Less cross-border activity;
  – Changes to business models, e.g. globalisation of value chains, „digital economy“;
  – Built on the assumption that profits are taxed in the other country.
Globalisation and taxation
Simplified representation of a global value chain

Decomposition of gross exports

Source: OECD
II. WHAT IS AT STAKE?
What is at stake?

• Doing nothing is not an option:
  – Increased possibilities for mismatches;
  – Increased competitive distortions;
  – Additional disputes and increased uncertainties for business;
  – Use of anti-avoidance measures may decide who will grab a part of the taxable income (“First in time, first in line.”);
  – Tax rates → Race to the bottom;
  – Danger of undermining voluntary compliance by other taxpayers.
What is it not about?

• No blaming / no finger-pointing:
  – Not about blaming business; if we want different results we need to look again at the system
  – And not about blaming particular countries either.
III. WHAT ARE THE KEY PRESSURE AREAS?
Key pressure areas

Hybrid Mismatch Arrangements
Availability of preferential regimes
Digital economy
Anti-avoidance measures
Related party debt-financing
Transfer pricing
Intangibles
Financing
Six key pressure areas

1. International mismatches in entity and instrument characterisation including, hybrid mismatch arrangements and arbitrage;

2. Application of treaty concepts to profits derived from the delivery of digital goods and services;

3. The tax treatment of related party debt-financing, captive insurance and other intra-group financial transactions;

4. Transfer pricing, in particular in relation to the shifting of risks and intangibles, the artificial splitting of ownership of assets between legal entities within a group, and transactions between such entities that would rarely take place between independents;

5. The effectiveness of anti-avoidance measures, in particular GAARs, CFC regimes, thin capitalisation rules and rules to prevent tax treaty abuse;

6. The availability of harmful preferential regimes.
IV. NEXT STEPS
Countries currently working on the project…
OECD Committee on Fiscal Affairs
Action plan

• Development of a comprehensive action plan on BEPS with proposals to develop:
  – Instruments to put an end to or neutralise the effects of hybrid mismatch arrangements and arbitrage.
  – Improvements or clarifications to transfer pricing rules to address specific areas where the current rules produce undesirable results from a policy perspective.
  – Updated solutions to the issues related to jurisdiction to tax, in particular in the areas of digital goods and services.
  – More effective anti-avoidance measures, as a complement to the previous items.
  – Rules on the treatment of intra-group financial transactions, such as those related to the deductibility of payments and the application of withholding taxes.
  – Solutions to counter harmful regimes more effectively, taking into account factors such as transparency and substance.
• In addition:
  – Set deadlines to implement actions needed to address BEPS;
  – Identify the resources needed and the methodology to implement these actions.

• Work prepared by CFA Bureau + chairs of the working parties

• Close cooperation with EU

• Consultation with business and civil society

• Schedule:
  – Adoption at CFA Meeting in June 2013
  – Submitted to G20 Finance Ministers Meeting in July 2013 and G20 Leaders' Summit in September 2013
Further information:
http://www.oecd.org/ctp/beps.htm
Company tax integration in the EU

Dr. Hendrik Vrijburg
Erasmus School of Economics

Rotterdam, Erasmus University Rotterdam, 11th of June 2013
The effects of “excessive” company tax practices on the welfare of EU countries

- Dr. H. Vrijburg
A public debate without guidance

- March 25, 2013, “De Tax Free Tour!” VPRO

- Result: a lot of emotions, angry public, a few solid arguments. A thorough conceptual framework is completely missing
  - Revenues are foregone!
  - It is unfair: the small entrepreneurs do have to pay!

- During this talk: all countries levy a source-based “classical” corporate tax
Why a corporate tax?

- To what should we compare the current tax system?

- First-best:
  - Talent-tax as in Tinbergen, 1970.
  - Lesson 1: No corporate tax
  - Lesson 2: government not interested in taxing firms!

- Second-best: only with doubtful assumptions a corporate tax is optimal
  - Mintz (1995) Corporate tax not a benefit tax
  - Huizinga and Nielsen (1997): Taxing pure rents owned by foreigners
Why a corporate tax?

- Corporate tax = third-best solution to a huge informational problem of the government
  - It is a withholding tax

- Backstop-function: the corporate tax ensures that the government can tax individual income (a.o. de Mooij and Nicodeme, 2008)

- Conclusion:
  - the only correct argument for having a corporate tax is equity! Not revenue! Not taxing the MNEs!
Tax competition 1.0

- Zodrow and Mieszkowsky (1986) and Wilson (1986)

- A long list of stylized assumptions is (reader friendly) in the paper. Crucial:
  - The government cares only about the well-being of its own citizens
  - The government is restricted in using a source-based tax on mobile capital
  - This causes a positive externality upon other countries!

- **Strong result:** tax rates and public revenues are too low from a social welfare perspective
... is this the whole story? No!

1. There is no tax evasion and/or avoidance, just a constrained government.

2. There is no redistribution in this model, so why use the capital tax? And what does the welfare cost that is measured represent?
Some numbers..

- Sørensen (2000, 2004) includes many of the arguments from the tax competition 1.0 literature within a CGE model.
  - Welfare gain of tax coordination among EU countries: (0.1 - 0.32 percent of GDP).
  - Compare with welfare gain other EU reforms: in range 0.5-1.9 percent of GDP
  - Replace the corporate tax system with the CCCTB
  - No welfare gain at all!
  - Paper profit-shifting is replaced by real investment re-allocations!
Tax competition 2.0: avoidance appears in the model

- Dharmapala, 2009 for an excellent discussion

- Slemrod and Wilson, 2009: tax havens are parasitic
  - Some firms can relatively easily evade the tax by paying for “concealment products”
  - Government has to fight evasion and raise statutory rates

- Hong and Smart, 2010: in praise of tax havens
  - Domestic firms are owned by “rich” entrepreneurs
  - International firms create jobs and are owned by the public
  - The government wants to redistribute
  - Avoidance solves an informational problem
Discussion

- Hong and Smart: ad-hoc modeling, domestic entrepreneurs inelastic
- Slemrod and Wilson: all firms are identical! Avoidance is just random nuisance
- A.o. Keen (2001): efficiency calls for preferential taxation in some cases
- What about equity?
  - Of course: when all firms evade, welfare goes down
  - But, when on average those with a low redistributive weight evade..??
Conclusion

- Whereas the public and politicians seem to know, economists don’t know yet

- Theoretically: we still have not figured out what the total contribution to redistribution is of taxing MNEs

- Firms are not identical at all. The corporate tax is not flexible enough to be efficient

- Key: the resources spend on evasion must be compared with the gains (more redistribution with low distortions). Is the cost worth it?
Discussion
Coffee break
PART II

Speakers:
Jaap Walter Tilstra LLM
Dr. Thushyanthan Baskaran

Chair:
Prof. Dr. Klaus Heine
Erasmus School of Law
Company tax integration in the EU

Jaap Walter Tilstra LLM
European Commission

Rotterdam, Erasmus University Rotterdam, 11th of June 2013

www.europesefiscalestudies.nl
Company Tax Integration in EU

ATP by MNEs – Impact on Domestic Enterprises

Jaap Tilstra
European Commission
OUTLINE

1. Background
2. Recent Developments
   1. Action Plan & Recommendations
   2. CCCTB
   3. Platform for Tax Good Governance
3. What is next?
4. Concluding observations
1. Background - Action Plan 6 December 2012

A. Better use of existing instruments and Commission initiatives to be progressed, actions 1-6 (e.g. Administrative Coop, Savings, VAT Forum)

B. New Commission initiatives, actions 7-13 (e.g. Recommendations, Platform, Code of Conduct, standard forms, TIN portal)

C. Future initiatives and actions to be developed
   1. Short term - 2013 (14-20, e.g. review directives, taxpayers' Code)
   2. Medium term – 2014 (21-31, e.g. EU TIN)
   3. Longer term beyond 2014 (32-34, e.g. joint audits, access to databases)
1. Background - Action Plan 6 December 2012

- COM Recommendations on ATP and 'tax havens'
- Amendment / Review of Corporate Tax Directives
- New impetus on the Code of Conduct
- Platform for Tax Good Governance
1. Background - Recommendations

- Complex, artificial arrangements that exploit mismatches in cross border situations creating double non-taxation or artificially relocating tax base to other countries
- Internal market requires common EU approach. As a first step, Recommendations in two specific areas:
  1. A common definition of non-compliant 3rd countries and joint actions, C(2012) 8805
  2. Take a common stance against artificial arrangements and double non-taxation, C(2012) 8806
2. Recent developments – Action Plan & RECs

- COM initiatives discussed by Council
  - WPTQ discussions on 27 February and 10 April
  - Informal ECOFIN Dublin 12/13 April (G5 initiative pilot AEoI)
  - Letter Minister Noonan and Commissioner Semeta of 24 April on 7 key priorities
  - High level WP 2 May
  - ECOFIN Council Conclusions 14 May 2013
- European Council 22 May
- EP – 3 May, Report on fight against tax fraud, tax evasion and tax havens
- European Semester - many CSRs in on the need to improve tax collection
2. Recent developments – CCCTB

• Subsequent to bilateral meetings between IE Presidency and MS on CCCTB, the High Level Working Party (HLWP) discussed on 13 March, 2013, orientations for further work

• General consensus amongst the Member States to conduct further technical work on a step-by-step basis, concentrating in the first instance on the tax base, consolidation could be envisaged as appropriate in due course.

• Compromise text drafted by IE Presidency and discussed at the Working Party on Tax Questions on 24 May

• Agreed orientations included in “End of Presidency report” from ECOFIN to the European Council – High Level WP 7 June → COREPER → ECOFIN
2. Recent developments – Platform for Tax Good Governance

- Commission Decision on 23 April → Call for Applications (8 May)
- Member Organisations appointed on 22 May, published on 4 June, first meeting 10 June
- Members represent all MS, business, tax practitioners and civil society (observers & outside experts)
- Agenda, meeting doc's and minutes to be published on dedicated web-site
- Main tasks: assist COM in preparing report and developing further initiatives in wider area of tax good governance, ATP and double-taxation
- Approximately 3 meeting per year, next meeting in autumn
3. What is next?

- European Council (14/15 March 2013) recalls need to tackle tax evasion.
  - "Close cooperation with the OECD and the G20 is needed to develop internationally agreed standards for the prevention of base erosion and profit shifting. To this end the EU will coordinate its positions."

- Initiative on Digital Economy
- Corporate Tax Directives
- Directive on Administrative Cooperation
- Savings Tax Directive + Negotiation mandate
- Dialogue with CH
- CCCTB under LT Presidency
4. Concluding observations

- EC work anchored around internal market (cross border):
  - Remove restrictions, and
  - Prevent abuse (ECJ)
- International debate lead by G20 (political guidance), G8 (political support) and OECD (technical implementation).
- EU debate lead by European Council (political guidance) and EC (technical translation) and MS (technical implementation)
- In EU also institutional issues: competency & unanimity
- Concerns regard international taxation benefitting multinationals, burden suffered by civilians and domestic enterprises: fairness of tax systems
- Back to concerns over mobile income (generators) → digital economy, global businesses and intangibles
- Targeted technical solutions also require political commitments re. implementation. CCCTB would ensure collective implementation.
Company tax integration in the EU

Dr. Thushyanthan Baskaran
Georg-August University Göttingen

Rotterdam, Erasmus University Rotterdam, 11th of June 2013
Discussion
Coffee break
PART III

Speakers:
Maarten de Wilde LLM
Anna Sting LLM

Chair:
Prof. Dr. Han Kogels
Erasmus School of Law
Company tax integration in the EU

Maarten de Wilde LLM
Erasmus School of Law
Loyens & Loeff N.V.

Rotterdam, Erasmus University Rotterdam, 11\textsuperscript{th} of June 2013
Company tax integration in the EU

“Tax competition within the EU – Is the CCCTB-directive a solution?”

Maarten de Wilde (dewilde@law.eur.nl)
EUR / Loyens & Loeff N.V. / UvA
11 June 2013
Introduction

1. Issue: ‘Tax competition within EU’


3. Issue resolved?
Ad 1. The Issue

“Tax competition within the EU”
Tax competition within EU

• Tax competition?
  – A matter of diverging average effective tax rates (‘AETRs’) and investment location decisions of multinational enterprises (‘MNEs’)

• Problematical?
  – Differentiating between ‘fair tax competition’ and ‘harmful tax competition’
MNE responses to AETR diffs.

- MNE responses
  - Tax-induced shifting of real investment
  - Tax-induced shifting of ‘paper’ investment

- Tax law: only latter problematical
  - ‘Fair’ tax planning
  - ‘Unfair’ or ‘aggressive’ tax planning
Country responses to AETR diffs.

- Country responses
  - Tax-induced competing for real investment
  - Tax-induced competing for ‘paper’ investment

- Tax law: only latter problematical
  - ‘Fair’ tax competition
  - ‘Unfair’ or ‘harmful’ tax competition (‘HTC’)

Addressing HTC in EU

- Work done in EU addressing HTC
  - ‘Code of Conduct’
  - ‘Peer pressure’ ‘soft law’ approaches

- Seems to have been successful
  - EU Member States’ HTC measures have been pushed back
  - Focus Code of Conduct Group is shifting:
    - Third countries’ HTC practices
    - Addressing ‘disparities’ / ‘mismatches’
Ad. 2 The suggested solution

“The CCCTB-Directive”
CCCTB – The Solution?

• Q rephrased
  – Would CCCTB provide incentives for artificial tax base shifting within EU potentially reinvigorating undue tax competition responses of EU Member States?

• CCCTB: “A comprehensive solution”
  – Coordinated approach would resolve many issues
  – Remaining disparity would be ‘tax rate differential’

• Q: Arbitrage potentials under ‘sharing mechanism’?
Sharing mechanism: arbitrage?

- ‘Sharing mechanism’
  - ‘Formulary apportionment’
  - ‘Fair geographical approximation of corporate profit’
  - \[ \text{Share Group Member A} = \left( \frac{1}{3} \text{Sales}^A + \frac{1}{3} \text{Payroll}^A + \frac{1}{3} \text{No of employees}^A + \frac{1}{3} \text{Assets}^A \right) \times \text{CCCTB} \]

- The idea
  - Locating firm inputs at origin (supply side)
  - Locating firm outputs at destination (demand side)

- If mechanism does that
  - Hypothesis: profit shifting & tax rate competition would revolve around ‘fair’ shifting of real inputs and outputs
Ad. 3 The issue resolved?

“Potentials for artificial tax base shifting and undue tax competition”
Sharing mechanism: peculiarities

- Using common international tax law concepts to establish nexus.

- Using factor allocation approaches inconsistent with inputs at origin and outputs and destination.

- Risk: potential for arbitrage through ‘factor manipulation’.

- Problem: factor manipulation seems to fall outside CCCTB-GAAR.
Potentials for ‘factor manipulation’

• ‘Labour factor manipulation’ through ‘payroll group members’

• ‘Sales factor manipulation’ through ‘beneficiary group members’

• ‘Sales factor inflation’ through ‘beneficiary group members’ engaging into ‘shareholding-revenues-carrousels’
‘Payroll group member’

- Payroll factor allocation (1/3 * EU-wide tax base)
  - ‘Group member’ ‘wage payor’, or;
  - ‘Group member’ “Control and Responsibility”

- ‘Payroll group members’
  - Payroll factor mobility because of payroll group member mobility
‘Beneficiary group member’

- Sales factor allocation (1/3 * EU-wide tax base)
  - Re portfolio investments (‘PIs’) and hedge transactions
  - ‘Group member’ “Beneficiary”

- ‘Beneficiary group members’
  - Sales factor mobility because of beneficiary group member mobility

- US experiences
‘Sales factor inflation’

- Sales factor allocation \((1/3 * \text{Tax Base})\)
  - Re “exempt revenues”
  - ‘Group member’ “Beneficiary”

- ‘Beneficiary group members’
  - ‘Sales factor inflation’ through ‘shareholding-revenue-carrousels’
  - Circular streams of exempt dividends and capital contributions
    - Effect on tax base calculation? No, participation exemption
    - Effect on tax base sharing? Yes
    - Nb. Financing of circular streams with intra-group debt across water’s edge perhaps even tax-deduction for intra-group interest
Time will tell but... 

- Risk: substantial parts of EU-wide tax base potentially mobile as of entry into force CCCTB

- Tool: EU Member State may only dispose of a single instrument to affect MNE ‘paper’ investment location responses: tax rate reduction

- Effect: ‘race to bottom 2.0’?
So, perhaps…

- Introduction: ‘factor presence tests’
  - Payroll: location of work performed / wages paid
    - Inspiration: Article 15 OECD MTC
  - Sales: location of customer / gross receipts
    - Inspiration: VAT remote seller rules, VAT place of supply rules

- Exclusion from sales factor: gross receipts from PIs and hedge transactions
  - Inspiration: Multistate Tax Commission

- Inclusion in sales factor: only gross receipts that contribute to taxable income production
  - Inspiration: US State Income Taxation
Company tax integration in the EU

Anna Sting LLM
Erasmus School of Law

Rotterdam, Erasmus University Rotterdam, 11th of June 2013
Legal Obstacles to Company Tax Integration in the EU

Thoughts from a European Public Lawyer

EFS Conference June 11th, 2013, Anna Sting, LLM, ESL. Department of Intl. and European Union Law
Outline

• Introduction

• Benefits of Tax Integration in the EMU

• Legal Obstacles

• Solutions

• Conclusions
Why Tax Integration is Good for the EMU

• Economy:
  • Enhance competition
  • Improve growth and job market
  • Promote accessibility/ attractiveness of Internal Market
Why Tax Integration is Good for the EMU

- **Oversight:**
- (Fiscal) transparency
- Reduction of tax fraud and evasion
- Oversight on tax revenue → control of macro-economic imbalances
Why the EMU is not Good for Tax Integration

- Financial and debt crisis political climate
- Other topics on agenda
- National political power games
Why the EMU is not Good for Tax Integration

- Rising of Populism
- Taxes target people’s money - loss of electorate?
- Who gets the tax-revenue?

Lack of Solidarity
Legal Obstacles

• Lack of legal base or:
• Lack of *specific* legal base:

  – **Unanimity requirement** (no flexibility)
  – Only Directives
  – Only harmonisation, not regulation
  – Special legislative procedure: less debate in EP?
Legal Obstacles

• Subsidiarity (ex.: CCCTB)
  – National fiscal autonomy?
  – National Parliaments’ yellow and orange card
  – Union to “better achieve legitimate aim”? (one extra tax system)

• Proportionality
Other Obstacles

- Allocation of tax revenue in times of crisis
- Political climate
- Sensitivity for electorate
- Extra costs of new system
Solutions I

• Subsidiarity as such no longer an issue:
  – Degree of economic integration in EU
  – Towards economic union
    • Banking Union
    • Transfer Union
    • Fiscal Pact, ESM
  – Central level always appropriate?
Main Problem

Art. 115 TFEU

Without prejudice to Article 114, the Council shall, acting **unanimously** (...) issue directives for the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the internal market.
The Debt Crisis and Tax Integration

Obstacle  Chance
Solutions II: EU Framework

• New tools after anti-crisis reforms
  – Macro-economic imbalances procedure
  – Drafting of budgetary plans in accordance with EC
  – Enhancement of country-specific recommendations
  – More transparency of fiscal planning (EC control on realistic tax revenue estimates)
Solutions II: EU Framework

• Enhanced cooperation
  – (see Parliament’s ECON Committee)
  – Approved for financial transaction tax

• Open Method of Coordination
  – Crisis: prominent European Council
  – Euro-Plus Pact
  – Already on agenda: tax havens outside EU

• Treaty Change
Solutions III: NON- EU

• Traditional bilateral and multilateral treaties
  – Franco-German green paper

• Intergovernmental treaty solutions
  – Not entirely new: Schengen
  – Precedent set by ESM, Fiscal Compact
  – Involvement of institutions
  – Legalisation of approach by “Pringle” Case
Courts on IGTs

CJEU in Pringle (Judgement of the Court of 27 November 2012, NYR)

“artt. 4(3), 13 TEU and artt. 2(3), 3(1)(c) (...), do not preclude the conclusion between the Member States whose currency is the euro of an agreement such as the European Stability Mechanism (...) or ratification of that treaty”
Courts on IGTs

German Constitutional Court (BVerfG, 2BvE 4/11 of June 19th, 2012)

ESM Treaty is a treaty which is “complementary to EU primary law or is otherwise closely related to the law of the European Union”

→ De facto Union Law?
Dangers of IGTs

• Multi-speed Europe

• Democratic accountability: No amendment procedure while de facto Treaty change

• Lack of procedural safeguards (i.e. Parliamentary involvement)
Unsurmountable Obstacles?
Conclusion: Reality Check

- Treaty Change
- Intergovernmental Treaties
- Existing EU framework
Thank you!

Any questions?

Stay in touch: sting@law.eur.nl
Discussion
Foundation European Fiscal Studies and Erasmus Law Review thank you for your presence and wish a good journey home

Closure and drinks

More information about our activities can be found at our website:

www.europesefiscalestudies.nl