Less Agreement for More EU? The Commision QMV Proposal

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Introduction
The new European Commission that is taking shape shall inherit quite a heavy file of initiatives to pursue in the next five years. Certainly, this is the case in the area of taxation.

Some of these proposals are on the waiting list for years. For example, the Common Consolidated Corporate Tax Base (CCCTB) was first put on the table eight years ago, in 2011. After five years of fruitless discussion, the proposal was relaunched in 2016 with the suggestion that it be implemented in two steps. In 2019, the EU is still considering the first step.

Other proposals might be on the table for a shorter time, but their adoption cannot afford delays. This is the case with the digital tax package that the Commission put forward (only) in March 2018. It seeks EU wide agreement on how to tax the digital economy, amidst an ongoing discussion at international level. The longer it takes to find such agreement at EU level, the less the impact of such EU agreement has on the international debate.

Remarkably a proposal tabled most recently, in January 2019, targets the root causes of the proposals piling-up: the decision-making procedure in the tax area. And it seeks to be the catalyst in EU tax policy as a whole.

The QMV Proposal

On 15 January 2019, the European Commission published a Communication with a view to changing the way EU tax law is adopted. Unanimity would no longer be required. Qualified majority vote (QMV) should suffice for adoption of new legislative proposals.

In fact, today, taxation is the sole remaining area of EU policy where decisions can only be taken if unanimously agreed by Member States. The special legislative procedure applies, to the effect that a legislative proposal launched by the Commission is determined by the Council of the EU alone. The Council can take such a decision unanimously.

In the above special legislative procedure, the European Parliament must be consulted but does not have decisive powers. However, in the ordinary legislative procedure, the European Parliament has decisive powers together with the Council.

With this background, the Commission's proposal envisages the gradual transition from the current unanimity-requiring EU tax legislative process to the ordinary legislative procedure for EU tax matters. As a result, the Council would share its legislative power with the Parliament. Furthermore, a decision at Council level would be taken if it consented by the so-called "qualified" or "double majority", i.e.:

1. 55% of Member States voting; and
2. Such Member States representing 65% of the European population.

While under the special procedure, it is sufficient for a single Member State to veto a proposal to block its adoption, the ordinary procedure may only be blocked if:

1. At least four Member States veto it; and, in addition,
2. They represent at least 35% of the European population.

The Commission suggests a four-staged approach for the implementation of the QMV proposal starting from the tax issues that in principle attract consent by Member States and progressing towards the most controversial questions. The four stages are identified as follows:

- Stage 1: Initiatives relevant to mutual cooperation and administrative assistance against avoidance and evasion in the tax area
- Stage 2: Initiatives where taxation is used to promote other priorities
- Stage 3: Initiatives to update harmonized areas of EU taxation
- Stage 4: Major and urgent tax initiatives

Why Agree to Agree Less

The QMV proposal is undoubtedly a very ambitious one. It pursues to overhaul the exercise of EU competences in the tax area and therefore multiply the potential of these competences. And yet it does not touch upon these competences.

The challenge lies with the fact that Member States have, until now, stubbornly, fought to protect their sovereign decision-making in taxation, to the maximum possible extent. Should the QMV proposal be adopted, single Member States will not be able to veto a decision.

It may not be a matter of competences, but there is a clear impact on the power of Member States to influence EU policy. Yet, it is of critical importance that the EU takes up this challenge. This is because, first, the QMV promises a more democratic EU tax legislator. It acknowledges a real say to the Parliament, the EU institution directly elected and best representing the people of the EU.

Second, the ordinary legislative process is more efficient than the special one in leading to timely decisions. And history has a series of examples where a wrong decision or action was proven preferable to a complete lack thereof. If the EU is to affect the international developments in tax, it must first ensure it can take decisions.

Third, QMV is highly likely to have a positive impact on the quality of EU tax legislation itself. Less impediments in reaching a decision preach less need for compromise and thus more robust solutions.

Conclusion

To conclude, the QMV proposal is urgent and is one to congratulate the outgoing Commission for. The tax area evolves incessantly at global level and the EU cannot afford to take its time for each and every decision.

If we agree that we want the EU to be a leading player in the global arena, we must give the EU the necessary tools. And taking decisions is the indispensable feature of any leader.