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What Women and the Institutions of the EU Have in Common

Isabella M. de Groot (Amsterdam Centre for Tax Law (ACTL) of the University of Amsterdam) · Monday, October 5th, 2015

As a woman, I naturally think that women are wonderful creatures. We are sociable, charming, caring and (almost) always the radiant center of attention. But unfortunately we are accused of having a number of negative traits: apparently we give off conflicting signals, are unable to make decisions and keep raking up the past. In my opinion, we would then have that in common with the institutions of the European Union.

The Court of Justice of the European Union is well-known for its contradictory judgments. Take the “Marks & Spencer exception”, for example. In the Marks & Spencer case (C-446/03) the Court held that a Member State may refuse the deduction of losses incurred by a foreign subsidiary, unless the possibilities for loss set-off in the other Member State have been *exhausted*. It subsequently ruled in K (C-322/11) that a Member State does not have to permit the deduction of a loss on the sale of foreign real estate if *there are no* possibilities abroad for loss set-off in the first place. This is based on the Court’s view that a Member State is not obliged to adjust its legislation to that of another Member State to take account of possible adverse consequences arising from legislation of that other State. Yet if there is initially a possibility for loss set-off in the other Member State, but the term for this has expired, a Member State apparently does have to adjust its legislation to that of the other Member State!

And then we have the Council, which finds it extremely difficult to make decisions in the field of direct taxation. The unanimity requirement always gets in the way. The adoption of the EU Parent-Subsidiary Directive was in the first instance already a tough job: in 1969 the European Commission put forward a proposal, which – in modified form – was only passed in 1990! The last proposal to amend this Directive had to be split into two parts in April 2014, because no agreement could be reached on the general anti-abuse provision. Agreement on this was finally reached in January 2015, but on the other hand in May the negotiations on the amendment of the EU Interest and Royalties Directive ran aground.

And even if the consent of all 28 Member States is not required, there are still problems. Take the proposal for the Financial Transaction Tax, which dates back to February 2013. Even though the Member States switched to the watered down enhanced cooperation procedure – where only nine of them have to agree – the proposal is still on the table.

Finally, the European Commission appears to be particularly good at raking up the past. In 2011, it came up with the proposal for the introduction of a CCCTB. Unfortunately, this proposal has been gathering dust the last few years, but after four years the Commission has dusted it off, although

now under the motto: “tax avoidance can be combated by means of a common tax base” (COM(2015) 302 final). Also something that we women are good at: raking up the past in a completely different context.

So gentlemen, I advocate more women at the top in the field of EU tax law. Because, thanks to our common traits, we and the EU understand each other perfectly.

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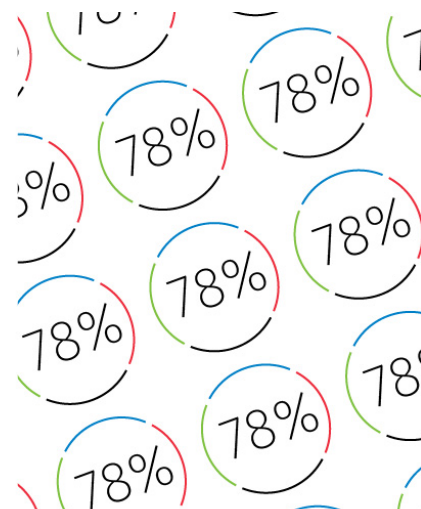
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