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The logic and issues of international regional tax integration.

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Abstract: The article is devoted to the issues of international regional tax integration. The international economic integration has two mainstreams: global and regional economic integration. The global tax integration is concerned only with double taxation matters while the regional tax integration aims at procuring of four fundamental freedoms of common market and goes far beyond the elimination of double taxation. The legal solution for both global and regional international tax integration can not be found on the base of traditional conflict of laws method (sometimes called collision technique). Only the substantive law instruments meet the needs of both types of tax integration. The experience of international regional tax integration shows the examples of integration (or community) tax law system formation which include both supra-national and national sources of law. The tax harmonization is usually started with indirect taxes and indirect taxes harmonization reaches the highest level. The tax harmonization covers the tax administration issues. The direct taxes are usually harmonized later and only with reference to selected issues. Taxes are part of sovereignty which is vested in particular state therefore supra-national entities do not have their own tax systems.

International economic integration including the tax integration is one of the hot topics in the contemporary academic world.

Generally speaking international economic integration has two mainstreams global and regional economic integration.

Taxes can constitute tariff and sometimes non-tariff barriers for free trade. Therefore global economic integration includes global tax integration, but only on a few issues. The international global tax integration is mostly concerned about the problem of multiple or double taxation in order to develop free trade around the World.

The idea of free trade is considered the most progressive since the beginning of the XX century. The idea of free trade implied the abolishment of tariff and nontariff barriers for the trade between the countries. By the beginning of XXI century the idea of free trade was recognised around the world, however the barriers for trade even in goods and services are becoming again the virtual practice of the states. According to the data of Global Trade Alert in 2009 there were 257 barriers registered and far less measures of liberalisation were identified. After crisis of 2008 the state practices around the world became rather protectionist than liberal.

Notwithstanding all the back steps the international global economic integration is in process and the beginning of XXI century does not look like the beginning of XX century in terms of global trade. With the recognition of the idea of free trade the tax burden in international trade in goods and service is considerably alleviated.[1] The most successful steps in this field were undertaken in the framework of General Agreement of Trade and Tariffs of 1947 which became part of the legal system of the World Trade Organisation. The burden of income and capital taxes was alleviated by the net of multilateral and bilateral tax treaties based on the models of international organisations: OECD Model tax convention on income and on capital and UN Model Convention.

The legal solution for the transboundary tax burden alleviation can not be found on the base of traditional conflict of laws method (sometimes called collision technique). The tax law of any particular state is a classical example of public law. Therefore, the courts and state authorities of one state nether apply tax law of other states. International global tax integration can use only substantive law instruments, like treaties and conventions. At the same time we do not have enough basis for «international tax law», because all international documents in international global tax integration refer to tax systems of particular states. International documents do not impose taxes and can not directly change tax regulation. They only can address to the sovereign will of the states to follow their

[1] Shashkova A.V. Financial & Legal aspects of doing business in Russia. Moscow. Aspect press. 2011

international obligations. Politically, states are reluctant to agree on fiscal matters. One of the reasons is that benefits of global tax integration are deferred far beyond any political mandate. The draw back to protectionists approach shows that global tax integration has limited and modest results.

In the regional economic integration taxation plays far more active and important role. Taxation plays an important role in economic integration of states. International regional integration of states is the contemporary way of creating interstate unions. Interstate unions in wide sense include communities, commonwealths, confederations and many other forms. Interstate unions are created by formally or virtually independent and sovereign states which give some of their powers to supranational authorities.

Interstate unions have a long history and even ancient forms of interstate unions like unias, empires, protectorates etc. could not become feasible without tax harmonization. Even now we can recognize the traces of former tax integration.

There are quite a few examples of international regional economic integration in the contemporary world and tax integration is always their inherent part. The contemporary examples include Andian Community,[2]South-African Economic Community,[3] European Union.[4] The issues of tax integration becoming more important for Russia due to its membership in the Eurasian Economic Union (EAEU).

The regional economic integration usually means that the states set closer economic and political relations due to the common interests, common problems or vicinity. There should be some true and naturally existing circumstances driving the economic integration and sometime making the economic integration inevitable. Therefore, the tax integration depends not only on political willingness, but on virtual conditions. In the case of regional economic integration states usually willing to include tax integration in their agenda and follow their

[2] http://www.comunidadandina.org
[3] www.sadc.int
[4] http://europa.eu/

obligations. International regional tax integration has some obvious incentive pushing it in motion.

The same as in the international global tax integration regional tax integration is achieved on the basis of the documents on substantive law (not the conflict of laws mechanisms). Substantive law documents include unified documents, treaties, recommendations, model laws etc. The regulation of the tax integration usually can be found in internal legislation of the states, in interstate documents and in the documents of the supranational institutions. The interrelation and hierarchy of these documents is complicated and ambiguous. In the tax law literature the whole system of those regulations is called integration tax law or community tax law.[5]

Usually, the contemporary regional economic integration goes through several stages. The most simple form of integration is the zone of preferential trade. The next stage is customs union. The third integration stage – common economic area (common market). The common market usually warrantees not only the freedom of goods movements but also freedom of services, capitals and labour movement. Once the common finance and monetary policy becomes feasible the development of regional economic integration can get to the stage of economic union and envisage the prospective of common currency. The economic union is considered to be the base for further political union with unified internal and foreign policy. Further economic integration may lead to foundation of confederation or even federation.

The tax integration comes to the scene on the stage of customs union. Above other issues in the agenda of tax integration are the taxes related to transboundary transactions – indirect taxes in the usual tax law terminology. The taxation of income and capital – direct taxes – are usually become an issue later and can never be totally harmonized.

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[5] See G. Tolstopyatenko Evropeyskoye nalogovoye pravo: sravnitelno-pravovoye issledovaniye. (The European tax law: comparative legal study) Moscow: Norma. 2001

The European Union (EU) including the previous steps of integration (European communities) give us a good example of tax integration development. We should remind here that European Union was initially based on three communities: The European coal and steel community (ECSC) (the time limit of the founding treaty expired in 2002), the European Economic Community (EEC) and the European Atomic Energy Community (EAEC or Euratom). The communities were incorporated in the European Union and constituted the «first pillar». The other two pillars are: the Common Foreign and Security Policy and Police and Judicial Co-operation in Criminal Maters.

Originally the integration tax legislation was within the European Economic Community. The legal system of contemporary European Union absorbed the integration tax law of EEC.f Some of the documents of EEC are still in force although new documents were adopted on the bulk of issues.

The integration tax law of European union besides the harmonization of taxes was amplified with the tax administration issues including mutual assistance of tax authorities. The sources of integration law of the EU include: the foundation treaties of the communities and the European union, regulations, directives, decisions of the supra-national authorities and the rulings of the European Justice Court (ECJ). In fact all the sources are involved in the integration of tax systems. The integration tax law includes the national tax legislation in a complicated interaction with the supranational documents. From the practical point of view in order to get an idea of VAT taxation of certain supplies first of all one should address the legal system (including legislation, rulings and other sources) of the member-state where the supply takes place (for example, Value Added Tax Act of the UK) and than to the directives and other sources of EU including the decisions of the ECJ. As we already noted above some of the directives originally issued within the EEC are in force and still a part of the EU legislation.

Originally in the EEC the integration tax legislation was one of the instruments for procurement of fundamental freedoms of common market:

freedom of goods movement; freedom of services movement; freedom of labor movement and freedom of capitals movement.

This orientation to procurement of four freedoms remained in the EU context. The same as on the previous stages of integration currently the priority is given to the freedoms of goods and services movement, therefore the most harmonized taxes are the indirect taxes.

The indirect taxes (turnover taxes, sales taxes, VAT and excises) were the first to be harmonized. The unified taxable base, principles etc. were defined very early. While harmonization of direct taxation is still does not go further selected issues.

The first documents on the harmonization of turnover taxation included: the Council Directive 67/227/EEC of April 1967 on the harmonization of legislation of member states concerning turnover taxes (the First directive), the Council Directive 77/388/EEC of 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 (Sixth Directive), the Council Directive 86/560/EEC of 17 November 1986 on the harmonization of the laws of the Member States relating to turnover tax arrangements for the refund of value-added tax to taxable persons not established in Community territory (Thirteenth directive).

In 2006 the new directive on VAT was adopted: the Council Directive 2006/112/EC on common system of value added tax.

The harmonization of excises was related to the removal of customs control within the EEC and the EU. Firstly, the integration tax legislation defined the excise goods, taxable base, minimum rates and the calculation methods. Further harmonization was structured with reference to particular excise goods categories.

The excises on tobacco, for example, were harmonized with the following documents: the Council Directive 92/79/EEC of 19 october 1992 on the approximation of taxes on cigarettes, Council Directive 92/80/EEC of 19 october 1992 on the approximation of taxes on manufactured tobacco other than cigarettes;

Council Directive 95/59/EC of 27 November 1995 on taxes other than turnover taxes which affect the consumption of manufactured tobacco.

In respect of taxation of alcohol there were the following documents: Council Directive 92/83/EEC of 19 October 1992 on the harmonization of the structures of excise duties on alcohol and alcoholic beverages, Council Directive 92/84/EEC of 19 October 1992 on the approximation of the rates of excise duty on alcohol and alcoholic beverages,

The excise taxation of mineral oils was harmonized also in 1992 by the Council directive 92/81/EEC of 19 October 1992 on the harmonization of the structures of excise duties on mineral oils and by the Council Directive 92/82/EEC of 19 October 1992 on the approximation of the rates of excise duties on mineral oils. In 2003 the Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity was adopted.

In 2008 the harmonization of excises came into the systematization faze and the new Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC.

The direct taxes are not so harmonized in the EU as indirect taxes. Only selected issues are covered by a limited number of directives. The main directives on direct taxation are: the Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, 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, the Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States, the Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments. The wording of the directives' names suggests how restricted is the scope of this integration legislation. It should be added however that some of the

harmonisation problems in the direct taxation are sorted out on the basis of the general principle of non-discrimination which arises from the foundation documents of the EU and widely applied by the ECJ, but it does not amount to unified tax base, calculation method and rates.

Nowadays there is an initiative on common consolidated corporate tax base which is discussed in the EU. However, no serious steps are undertaken right now and the main question is if the harmonisation of tax base is still feasible. In general the scarce number of issues already harmonised for direct taxation are closely related to freedoms of capital and labour movement. It might be the case that the full harmonisation of direct taxation is not required for procurement of four fundamental freedoms and therefore not supported by the member-states.

As we mentioned before the EU brought the new forms of cooperation (second and third pillar) and those included further cooperation of fiscal authorities of the member-states in the field of tax administration.[6] We can mention here the following documents:

the Council Regulation (EU) No 904/2010 of 7 october 2010 on administrative cooperation and combating fraud in the field of value added tax;

the Council Regulation (EC) No 2073/2004 of 16 November 2004 on administrative cooperation in the field of excise duties and the Council Directive 2004/106;

the Council Directive 2011/16/EU of 15 february 2011 on administrative cooperation in the field of taxation

the Council Directive 2010/24/EU concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures.

the Arbitration Convention of 23 July 1990 on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (Convention itself and the protocols). Convention re-entered into force in 2004.

The logic of the tax harmonization was elaborated from the experience of international regional economic integration and we could see it on the example of

[6] Shashkova A.V. Russian specifics of combating corruption. 2015 1(3) Kutafin University Law Review p. 51-68

the EU. The indirect taxation is the first area to be harmonized as the states are mostly interested in facilitating freedoms of movement of goods and services. The cooperation of fiscal authorities and other tax administration issues are addressed on the first stages in relation to indirect taxation, but the consistent basis for tax administration is considered once the deep political integration process is in place. The harmonization of direct taxation usually is an issue of less interest for member-states which is postponed for the later stages of integration.

This logic of tax harmonisation already can be identified and is likely to be followed within the development of international regional economic integration within the Eurasian economic union (which is in force since 1 January 2015).

The tax integration as a part of international regional economic integration can achieve a far advanced level. However, harmonisation of taxes will never amount to a supra-national tax system, for example, a tax system of the European Union. Tax is a part of sovereignty which is still vested in a particular state.