The Tax Harmonization

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9.1 Tax Harmonization in the European Legal System

9.1.1 The Notion of Tax Harmonization

A primary principle of EU taxation system is represented by the harmonization of taxes which is explicitly stated in the art. 113 TFEU (formerly art. 93 of the Treaty of Maastricht and art. 99 of the Treaty of Rome). In this rule it is defined the aim of the harmonization of the laws of the Member States in function to the turnover tax, the consumption tax and other indirect taxation to the extent that harmonization is necessary to ensure the establishment and functioning of the common market.

This rule is clearly intended to achieve a homogenous regulatory framework in the European Union which tends to harmonize the tax systems of the various

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Member States, reducing the specific aspects of each national system to some details or, at least, to marginal elements which do not affect the structure and the function of the taxes, so as to identify a methodological criterion for the European integration.

The tax harmonization is a process by which some States by mutual agreement or the EU institutions define the legal framework of a certain taxation through the adaptation of the essential structure of the tribute "according to a single model" (in line with the classic definition given by the doctrine).

Evidently the notion of tax harmonization is to be found in the following topics:

- the definition of an unitary taxation model
- the reduction of the diversity of each national law with respect to the unitary model.

The legal model imposed at an European level does not imply a real unification of the national tax laws, but requires the adoption of a legislative point of reference around which to implement the convergence of the domestic law of the various Member States.

The reduction of the diversity in the discipline regulations of the Member States is the logical counterpart of the adoption of a unitary tax, as it is to express the degree of compliance of national legislation with respect to the legal basis chosen as European parameter.

The tax harmonization can be achieved with reference to the qualifying structure of a tribute or to the individual segments of the discipline by the legal systems of taxation.

Just with regard to this distinction has been proposed repeatedly in the literature the distinction between "harmonization" and "approximation" of tax systems (also on the basis of textual indications given in the rules of the Treaty), assuming that the two legal institutions are aimed at pursuing a different goal: the harmonization would be finalised to reach the uniformity of national laws through the elimination of specific diverging provisions; the approximation would pursue a homogenous regulatory European framework through the revising of national tax legislations with respect to the structure of taxes.

In any case, it seems that this distinction cannot be indicative of an axiological difference between the two institutions, so as to draw a clear line of distinction between them, appearing on the contrary more correct to assume that both the harmonization and the approximation constitute (possibly) different modalities to achieve the same goal of the convergence of the national tax systems towards a single model defined at a European level.

9.1.2 The Implementation of Regulatory Instruments in the European Harmonization

The tax harmonization of the national taxes, while finding an explicit reference in the Treaty (mentioned in art. 113), is typically performed through normative acts attributable to the EU law, and therefore, by means of Regulations, Directives and acts of the soft law.

It should be noted in this regard that the act preferentially adopted for the harmonization of the national taxes is certainly represented by the Directive, such an act designed to establish the general principles and the basic structure of the tax and, at the same time, to leave the national law allowed to define the specific rules of the detailed implementation.

The rulemaking procedure to be adopted for fiscal harmonization (particularly in the area of indirect taxation) is specifically regulated in the Treaty; expressly it is provided for the use of the method of the prior consultation of the Parliament, which is mandatory but not binding on the Council. Evidently, in the belief of the European legislature, the tax harmonization is a very important phase of the integration process that calls into question some main characters of national sovereignty and therefore may not be entrusted solely to the judgment of an executive and intergovernmental branch, impregnated by assessments often connoted by only economic opportunities, but it has to go through the parliamentary debate, even if only on a consultative basis, which undoubtedly has the capability to operate the balancing of the involved legal values.

Moreover, it should be noted that under a procedural standpoint the scope of the principle of harmonization, as envisaged by the EU Treaty, appears unsatisfactory overall, because it does not include the adoption of the principle of qualified majority being on the contrary required the unanimity in the decision of the Council. The Commission, in the White Paper on completing the internal market, found that the harmonization of indirect taxes, which is considered essential for the completion of the process of European economic and trade integration, must be accelerated properly under the procedural point of view, since the principle of unanimity constitutes an often insurmountable obstacle for the effective implementation of the same principle.

9.2 The EU Harmonization of Indirect Taxes

9.2.1 The General Rules of the Harmonization of the Indirect Taxes

The principle of tax harmonization, as mentioned earlier, is explicitly established in the art. 113 TFEU with specific regard to the area of indirect taxation (and thus, in particular, relating to value added tax, excise duties and import duties).

The harmonization of indirect taxes is qualified as a primary value of the European unification process, since it is likely to have a decisive influence on the

functioning of the internal market (in this sense it can be assumed the prescription of art. 26 TFEU).

It is clear, in fact, how a disparity of taxes on commercial transactions and affairs between the different Member States should be to affect a regulatory framework where the economic sensitivity is most acute and, therefore, could easily lead to harmful tax competition, capable to generate competitive mechanisms driven so as to accentuate the centrifugal tendencies within the European community.

Consequently the attention of European legal order has been focused primarily on the area of indirect taxation, with specific reference to turnover taxes, excise duties and excise duties, given the suitability of these forms of taxation to change the price of a good or service to the consumer, thus altering the competitive neutrality of the market.

The harmonization of the various taxes has been made in different periods of time and in a heterogeneous manner, making essentially impossible to formulate a unitary reasoning on the process of harmonization of indirect taxation. Otherwise, it seems preferable to conduct a fractional analysis about the tax harmonization, broken down by the different sectors of taxation, on the basis of the principles laid down in the EU legal system.

9.2.2 The Harmonization of VAT

One of the primary aims of the program for the realization of the common market, as laid down in the Treaty of Rome establishing the European Economic Community, was definitely identified in the harmonization of the tax laws of the Member States with regard to taxation on the amount of business. Evidently, the reduction of fiscal imbalances on the price of goods and services that were circulating within the European common market was regarded as one of the main factors for the freedom of competition between economic operators in the European Union.

A common model of tax on turnover was determined by reference to the *Taxe sur valeur adjoteè* (TVA) applied in France and was elevated to the benchmark for a unified regulatory indirect taxation on consumptions in each Member State (Directive of 04/11/1967 n. 67/227).

In particular, it was established the principle that each Member State should apply "*to the goods and services a general tax on consumption exactly proportional to their price, whatever the number of transactions take place in the production and in the distribution process before the stage of taxation*" (art. 1 par. 1 of Directive no. 67/227).

The process of EU harmonization of VAT was then continued through a series of subsequent regulatory actions by the governing bodies of the European Union and can be ideally divided into three periods:

a) the first period since the establishment of the Economic Community up to 1992;

b) the second period that begins with the abolition of fiscal frontiers and coincides with the transitional arrangements for the taxation of trade between the Member States;
c) the third period in which the definitive system of intra Community trade entered into force.

During the first period, a decisive contribution to the harmonization of the laws of value added in the Member States has been done through the enactment of the Sixth Directive of 05/17/1977, which provides a detailed guidance on the formation of a uniform tax base. Subsequently other Directives have been formulated that have clarified the scope of the tax (among which it may be mentioned the Eighth Directive of 12/06/1979 no. 79/1072/EEC and the Thirteenth Directive of 11/17/1986 no. 86/560/EEC).

The second period of harmonization is characterized by the abolition of fiscal frontiers, as a stage of completion of the European Common Market, and involves for VAT purposes the intervention on the rates and on the tax base in order to establish uniform rules in the Member States and to facilitate the intra Community trade (Directive n. 92/77/EEC and then Directive. 95/7/EC). It is further confirmed the validity of the so-called "VAT transitory regime", which provides for a taxation in the State of destination of economic transactions and trade, as this discipline was considered easier to run than the so-called definitive scheme (which instead provides for a taxation in the State of origin).

In this period some secondary (or non-structural) profiles of the value added tax discipline are also regulated. Some EU acts have been enacted in order to regulate the special disciplines applicable to certain economic sector (Directive n. 94/5/EC which governs the application of the tax for used goods and antiques; Directive of 05/07/2002 no. 2002/38 on the subject of e-commerce and electronic services rendered by remote). On a procedural level some EU regulations were finalised in order to regulate innovative forms of fulfilment of the instrumental obligations (Directive of 12/20/2001 n. 2001/115 concerning the simplification of the emission, transmission and storage of invoices). Furthermore, in order to foster fiscal supervision and cooperation between administrations of different Member States it was adopted the Regulation 01/27/1992 n. 218/92 which provided for the establishment of a common system for the exchange of information by electronic means in relation to intra Community transactions.

It is also noted that the EU legislature has felt the need to reorganize the whole matter by adopting the Directive of 11/28/2006 no. 2006/112/EC (in force since 01/01/2007), which assumes great importance as it replaces some 33 previous Directives, becoming today the reference text on value added tax in the European framework.

The last phase of regulatory changes in VAT will progress since the adoption of the definitive system through the criterion for the taxation of intra Community trade in the State of origin. At this purpose, it seems inevitable to undertake an overall rethinking of the mechanisms of implementation of the tax, with particular regard to

the discipline of transactions between residents of different Member States, being difficult to operate specifically on the texts of existing legislation.

And in fact, one of the aspects of greatest sensitivity of the VAT regulation concerns the trade between persons resident in different Member States, since it poses the problem of identifying the place where to tax the transaction. As already observed, at the present stage in which the definitive system for the application of VAT in the country of origin has not yet entered into force on, it must apply the criterion of taxation in the State of destination. Therefore, until it will not be reached a sufficient degree of alignment of national legislation to the definitive system, the intra Community trade is governed according to that transition period in which the taxation is referred to the country where it is verified the final consumption.

The main aims of the VAT harmonization have been substantially pursued as the national regulations show a strong convergence at least for the structural elements of the value added tax. There are still differences related to tax rates and other elements of the discipline of the tribute that create diversity of application in the various States, but still do not seem to compromise the unitary model of reference.

In particular, the main characteristic of value added tax—which is detectable in each Member State—certainly could arise in the performance of tax neutrality with respect to the various stages of production or distribution, since the taxation was intended to be charged only to the final consumer and regardless of the number of transactions and of the circulation of the goods or services in the relations between economic agents (namely between entrepreneurs or professionals).

In this respect it may be noted a full compliance of the VAT harmonization with respect to the general principles of EU law. Indeed, the neutrality of VAT is one of the most significant applications of the principle of fiscal neutrality as a fundamental value for the establishment of a common market: the taxation, as a factor likely to produce distortion with respect to the natural ability to function of the market, is considered as an interference regarding the organization of the optimal competition between economic agents and thus an element to be attenuated and limited by law.

9.2.3 The Harmonization of Excise Duties

The excise duties are taxes on the production or manufacture or consumption of the products in the territory of a Member State. Therefore, like the value added tax, these taxes are able to affect significantly the circulation of goods and services in the European market and, thus, appear as factors that might alter the free unfolding of the competitive mechanism. It seems natural that such taxes have been the subject of a number of EU measures aimed at achieving a process of harmonization of the different national rules.

The aim pursued by the EU evidently consists in finding a tax structure common to all Member States so as to achieve a tax coordination in the European area, in order to avoid forms of harmful competition between countries (through the application of different rates on the same types of products) and, furthermore, to

cope with the impossibility of customs controls for trade within the European market, while safeguarding the national fiscal sovereignty.

The current general rules about the excise duties have been established in the Directive of 02/25/1992 n. 92/12/EEC which defined the general framework of the discipline of excise duties in order to standardize the rates and methods of application, and at the same time to decree the repeal of the excise and consumption patterns existing in national legislations and incompatible with the EU discipline.

It should also be noted that the harmonization involves a limited number of excise duties, namely:

- the excise tax on mineral oils and related products (Directive n. 92/81/EEC and n. 92/82/EEC);
- the excise tax on alcohol and alcoholic beverages (Directive n. 92/83/EEC and n. 92/84/EEC);
- the excise tax on tobacco products (Directive n. 95/59/EEC, n. 92/79/EEC, n. 92/80/EEC, modified by the Directive n. 2010/12/EU);
- the consumption tax on electricity (Directive n. 2003/96/CEE);
- the excise tax on natural gas (Directive n. 2003/96/CEE).

The harmonization concerns in particular some general features of the tribute discipline: the identification of the tax assumption, the taxpayers, the methods of applying the tax, the rules for the movement of the goods subject to the excise duties, the checks audits and investigations.

However, it remains a significant difference in the laws in force in the various nation-States with regard to the determination of the tax base, the fixing of rates and the identification of alternative schemes. In essence in the face of a single model, which acts as a regulatory parameter of the structure of the taxation, is accorded a wide discretion to the States for the definition of the concrete and specific level of taxation. Consequently, it is still possible to produce some tax asymmetries in the treatment of the transactions subject to the excise duties that can generate some distortions to the EU objective of free competition.

It must be observed that there are many existing excise duties in the Member States which have not been subjected to any process of harmonization and which are currently covered in a totally dissimilar and unique way in each national legislation.

At this purpose, the Directive n. 92/12/EEC allows the Member States to introduce other forms of indirect taxation to the same goods subject to excise tax. It is then admitted the possibility of establishing non-harmonized taxes, which respond only to the fiscal or extra-fiscal needs of the national order (unless they give rise to formalities connected with the custom procedures of the goods at borders).

Thus, the process of harmonization of excise duties, despite having made significant advances, is far from reaching at the final stage, having to be considered as a relevant cause of distortion of competition within the common market and even as a generator of protectionist practices by the Member States.

9.2.4 The Harmonization of Customs Duties

The matter of customs duties has been subject to a process of harmonization within the EU system that has produced a regulatory framework basically stabilized in the national legislation of the Member States.

Indeed the removal of customs borders to allow the free movement of goods and services within the European area constitutes a fundamental rule for the establishment of the common market, which finds also an explicit recognition in the Treaty (where the banning of customs duties or charges having an equivalent effect on goods entering and leaving the State is listed as the first among the key actions of the European Union which should preferably be pursued for the attainment of the European integration).

The harmonization of customs duties has been achieved with a series of regulatory measures and in particular:

European Customs Code, established by EEC Regulation of 10/12/1992 n. 2913, which defines the assumption, the taxpayers, the methods of determining the customs debt (quantity, quality and classification, price and value of the goods) and the specific customs regimes;

Implementing Provisions of the European Customs Code, arranged with the EEC Regulation n. 2.7.1993. 2454 (consisting of 915 articles and 113 attachments, lists and forms);

Common Customs Tariff, set out in Regulation EEC of 07/23/1987 n. 2658.

The unitary discipline provided by the European Union states that customs duties are imposed on goods coming from outside the EU and intended for consumption in the territory of the European Union (which constitutes the customs territory). Taxes are paid, levied and assessed by the customs offices of the Member States, but they are destined to flow into the EU budget as a typical source of income belonging to the latter.

The determination of the tax liability is realized through a single customs tariff that applies to all goods coming from countries outside the European Union; this is a policy that realizes the "customs union", which constitutes a further step than the abatement of the customs borders, capable to indicate a higher level of integration of the Member States in the trade relations with Extra EU countries.

By virtue of the process of harmonization, the customs barriers currently exist only at the borders with countries outside the European Union (and in any case in ports and airports) in order to allow the application of customs duties on goods coming from outside the European territories. Once crossed the borders with the European Union, the goods can move within the European market without any additional tax burden (and thus they are "cleared").

9.3 The Harmonization of Direct Taxes

9.3.1 The General Rules of the Harmonization of Direct Taxes

The harmonization of direct taxes is not subject to specific regulation in the European Treaties. The process of harmonization of the tax on income, involving relevant aspects of the fiscal sovereignty of the Member States, is not regulated expressly by the European norms.

Indeed, the loss of a decision-making authority on relevant portions of the taxable national basis in favour of arrangements defined by the EU and the consequent weakening compared to the choices of economic policy, is an event that is considered not readily absorbed by the Governments of the Member States. So, the harmonization of direct taxes represents one of the most consistent issues of the process of European integration of national tax systems.

At this purpose, it is significant that in the Treaty of Lisbon it is abandoned the rule, previously stated by the art. 293 of the Treaty of Maastricht (former art. 220 of the Treaty of Rome) that required negotiations between the Member States aimed at ensuring the abolition of double taxation within the European Union. It substantially means that it must be excluded the recourse to dense network of bilateral (or multilateral) agreements between the various Member States in order to solve the problem of the taxation of income generated in the international transactions within the European Union. The general aim of the harmonization of direct taxes and the specific aim to avoid double taxation within the European market is a task to be charged to EU bodies and institutions.

It is applicable to the harmonization of direct taxes, the general rule laid down by the art. 115 TFEU (former art. 94 Treaty of Maastricht and art. 100 Treaty of Rome), by virtue of which the Council, with an unanimous decision and with the previous consultation with the Parliament and the Economic and Social Committee, can establish some Directives for the approximation of the national legislations to the extent to develop the process of integration of the common market.

This rule has been interpreted as the axiological foundation of the use of recommendations and of soft law mechanisms addressed to Member States by EU bodies concerning the progressive approximation of the national provisions relating to the taxation of income (and especially to the taxation of business and savings). This *soft law* produces, evidently, a level of approximation of national legislation with a lower grade than the harmonization of indirect taxes (for which it was formulated the figurative definition of "elastic convergence").

It should also be noted that the need to start the harmonization of tax legislations, especially with regard to direct taxation, must be coordinated with the fundamental principle of subsidiarity; therefore the tax harmonization is to be regulated by European bodies with regard to transactions or operations carried out in the European territories which may actually affect the functioning of the common market; otherwise there is an exclusive competence of the individual Member States for the regulation of the taxation at an essentially domestic level.

The harmonization constitutes a mechanism to search for a uniform model only for the taxes common to the Member States, with the consequent inapplicability to special or atypical taxes of each State (if not solved in measures having an effect equivalent to the common tax). Similarly, because of the general protection of the European market, it was excluded the applicability of the principle to local taxes, which are territorially confined to a restricted community and thus appear overall to be unsuitable to affect the general freedom of movement protected by the EU law.

9.3.2 The Policy of the Harmonization of Direct Taxes Followed by the European Union

Since the Sixties many study groups organized by the EU institutions have examined the direct taxation as a possible subject of a program of tax harmonization.

In the Neumark Report of 1962, despite being excluded an opportunity to unify the structure of the tax systems of the Member States, it was called for the harmonization of direct taxation mainly in order to avoid possible forms of double taxation. In particular, it was proposed the hypothesis of a harmonized tax on companies and it was prefigured the approximation of the laws in relation to the taxation of the income of natural persons.

Later in the Memorandum on the harmonization of direct taxes in 1965 and 1966 with the Report Segre it was underlined the need to arrive at an approximation of the structure of direct taxation in the Member States in order to eliminate the differences in the treatment between residents and non-residents and to exclude forms of double taxation so as to achieve a real European capital market.

In 1970, with the Werner Plan, the harmonization of direct taxes was seen as a necessary step for the effective realization of economic and monetary union; thus were formulated a number of purposes related to the approximation of systems of direct taxation in the various national laws, which appeared fully consistent with the logic of a federal finance.

The intentions expressed in the various study groups did not produce concrete results and indeed were repeatedly disregarded in the EU regulations. So for a long time the subject of harmonization of direct taxes was largely set aside by the EU development policies.

At the end of the eighties the theme is taken up in the debate on the establishment of a monetary union: so with the Delors Report in 1989 the approximation (or at least the coordination) of direct tax systems of the Member States is regarded as a crucial step in the process of European integration.

So in 1990 the first two directives are issued on the subject of direct taxation (namely the Directive n. 90/434 concerning the operations of corporate organization and Directive n. 90/435 relating to the treatment of dividends between parent and subsidiary companies) and it was approved a multilateral Convention between the Member States (Convention n. 90/436 on the arbitration procedure for the elimination of double taxation).

Just a short time later, in 1992 the Ruding Committee, appointed by the Commission to identify the major distortions of tax with respect to the functioning of the common market, identifies the minimal aims of a program of the harmonization of direct taxes in the establishment of an uniform tax base, in the prediction of a range of tax rates to be applied on the profits of the enterprise and in the transparency of the incentives of a fiscal nature granted for investments made by businesses throughout the country.

The EU institutions also show considerable reservations about the implementation of the harmonization agenda outlined by the Ruding Committee, judging inopportune an interference about the political needs of individual States and considering the degree of maturity of European integration.

So the new regulatory initiatives in the field of direct taxation took at long time (13 years) after the Directives mentioned above. In 2003 there were issued two Directives concerning the fiscal discipline of the intra Community capital investment (namely the Directive n. 2003/48 on the taxation of interest paid to non-resident individuals and Directive n. 2003/49 concerning the taxation of interest and royalties paid between companies belonging to the same group and resident in different Member States).

Currently there is not any implementation of the proposals for Directives made at the time about other profiles of the harmonization of direct taxation (for example in terms of withholding taxes on dividends, coordination between corporate taxation and taxation of dividends, approximation of the tax rates and of the tax base, determination of business income, treatment of the fiscal losses, taxation of labour income earned by workers circulating in the European Union).

On a closer inspection it can be seen that the direct tax harmonization measures taken by the EU institutions typically involve the area of income flows generated in a cross-border dimension, covering a number of Member States (or at least between two of them). Legislative acts concerning the approximation of the direct taxation of income flows which remain within the single territory of a Member State, have not had a positive outcome (and thus remained at the stage of mere proposals formulas without becoming mandatory regulations).

It may therefore draw the conclusion that the harmonization of direct taxes currently employs a marginal degree, as typically intended to regulate certain income profiles of intra-Community nature and thus appearing to be unfit to regulate important aspects of the overall structure of direct taxation in the national laws. Clearly, the resistance of the nation-States to transfer the fiscal sovereignty on direct taxation in favour of the European Union represents a determinant brake towards the implementation of the policies of the European tax harmonization.

9.4 The Regulatory Framework of the Principle of Tax Harmonization Within the EU

9.4.1 The Determination of Taxation Models as a Qualifying Result of the Process of Tax Harmonization

The qualifying features of tax harmonization are to be found in the definition of an unitary model of taxation and in the reducing diversity of each national legislation with respect to the unitary model.

Therefore the principle of harmonization produces a configuration of the tax disciplines of the Member States that would be compatible with respect to the unitary and integrated taxation models defined at an European level.

It can be argued that the specific and qualifying effect of the process for tax harmonization achieved at an European level is the determination of a common tax model that operates as a benchmark for the taxation of economic activities in the European territory.

The model of taxation may assume different contents:

- it can be identified in the regulation of the integral prototype of a European tribute, whose essential legal structure is defined directly by the EU sources and becomes binding for the Member States;
- or it may consist in the determination of principles and general rules of the tax regulation, which are intended to outline the legal framework governing the national tribute.

The first type of tax model is essentially traceable to the more complex and advanced forms of tax harmonization, which cover the entire discipline of a tribute and are in any case aimed at defining the key elements of the tax structure (assumption, taxpayers, taxable base, tax rate). This model is typically found in the area of indirect taxation (as noted in the previous paragraphs): therefore, often in the literature the value added tax, the customs duties, and (sometimes) the excise duties are qualified as European tributes, with the aim to indicate that the definition of the tax is basically made through a legislation attributable to the EU institutions.

The second category of tax model can be ascribed to forms of sectorial harmonization, which are limited to segments of the discipline of a tribute and not aimed at defining the basic structure of the tax or fundamental aspects of the structure of taxation. This model of taxation can be observed especially in the area of direct taxation, where the European harmonization covers limited aspects of the fiscal discipline.

9.4.2 The Recessive Nature of the Principle of Harmonization in the EU Legal System

In the perspective mentioned above, the principle of harmonization is presented as a guiding principle with a "positive" content that is intended to establish a rule of gradual integration of the national tax systems and not a mere delimitation and foreclosure. Indeed the establishment of a common and unified model of taxation and the reduction of differences between the national laws are to be considered as factors of aggregation and homologation of the national legal systems with respect to the power of taxation.

In particular, the principle of harmonization provides for substantial indications in relation to the development of the national tax systems: the need to promote a co-ordination of the fiscal policies of the nation-States in order to overcome particularism and selfishness that have traditionally denoted the evolution of the legal systems of the States does not only respond to the aim of achieving faster the European integration, but it also seems to correlate with the purpose of encouraging the establishment of programs for the taxation of mobile factors of production more in line with the outlook marked by the globalization.

It can so be argued that the principle of harmonization arises in a logic of countertrend with respect to the principle of non-discrimination and to other general principles of EU law relevant to tax matters which are oriented (as observed in the previous chapters) to neutralize the potentially distortionary scope of the national taxation. In other words, the principle of harmonization expresses a "positive taxation", namely where the tax power exercised by the Member States shall be directed to unitary models and to purposes generally agreed and compatible with European aims, unlike the principle of non-discrimination and other general values that indicate instead a "negative taxation".

However, even the tax harmonization shows the common ideological background of the other general principles applicable to tax matters, detectable in the acceptance of the values of freedom and economic development of the common market acknowledged as the primary interest of the European Union. This is consistent with the clear propensity taken by the EU to identify safeguards and guarantees for a competitive structure of the market in the belief that trade and economic integration constitutes the main engine of a political and social integration.

Moreover it appears very significant on a symbolic level that the principle of harmonization plays a very recessive role, in comparison with the principle of non-discrimination and with other general values of EU law, showing itself as a value of less binding form and sometimes with a mere programmatic purpose.

First of all, this value may not be implemented directly by the legal interpretation, as it requires the necessary mediation of a legal act of derivate legislation. Unlike the other European principle (tax non-discrimination, prohibition of restrictions on EU freedoms, opening of customs barriers, prohibition of State aid) the tax harmonization may not be directly applied by the Member States and by the EU institutions, nor may find a direct application in the case law. It necessarily requires the definition of a model imposed in a legislative instrument

(Directive or Regulation) that expresses the options accepted in the specific discipline of a harmonized tax.

Therefore, the value of harmonization does not necessarily apply as the other values laid down in the Treaty, but it requires the formation of a political consensus in the EU institutions relevant to the enactment of the legislation rules. This means that, for the practical implementation of this value, it is required the principle of unanimity in order to ensure the acknowledgment of the fiscal sovereignty of each Member State.

It should also be noted that the tax harmonization has not a general character, as it can be traced primarily to a narrow legal context, identified with the area of indirect taxation; in fact it does not apply (having only a marginal relevance) to the most important sector of direct taxation.

In this perspective, the recessive tendency of the principle of tax harmonization and the primacy of the principle of non-discrimination (and other principles) are to confirm at the European level the existence of a "negative taxation", which is lacking of a positive connotation of the tax power, consistent with the ideological postulates assumed in the economical constitution of the European Union.