

**TRENDS IN RESOLUTION OF DISPUTES IN THE FIELD OF DIRECT TAXATION (review of the conference "Recent and Pending Cases at the Court of Justice of the European Union on Direct Taxation", Vienna, November 8–10, 2018)**

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The report on the scientific conference "Recent and Pending Cases at the Court of Justice of the European Union on Direct Taxation") is presented in the paper. The conference took place on November 8-10, 2018 at Vienna University of Economics and Business. Conferences on the EU Court of Justice decisions in the field of direct taxation have been held in Vienna annually since 2007. The most relevant topics at the 2018 conference were: increased understanding of state aid and the obligations of national courts to notify the European Commission; fiscal unity; taxation of dividends paid by non-residents; taxation of personal income; taxation of income from capital withdrawal; beneficial ownership issues; group taxation issues.

On 8-10 November 2018 the Vienna University of Economics and Business (Wirtschaftsuniversität Wien) held the annual conference "Recent and Pending Cases at the Court of Justice of the European Union on Direct Taxation".

Candidate of Law, Associate Professor of the Department of State and Municipal Law of the Omsk State University, deputy chief editor of the magazine "Law Enforcement Review" K.A. Ponomareva took part in the conference.

The sphere of direct taxation is sensitively perceived by the member states from the point of view of their sovereignty, which makes caution regarding the economic and political decision regarding tax competition in this area. This affects the processes of tax integration in the field of taxation of profits and incomes.

The EU Court quite rarely raises the question of interpreting the rules governing relations in the field of direct taxation. The object of its consideration in such cases becomes the conflict between fundamental freedoms and non-harmonized norms of national law. Thus, the subject of consideration of the EU Court is not a tax law (since the Court is not authorized to interpret national law or agreements to avoid double taxation), but the general provisions of EU law (freedom of movement, the right of access to the market, the principle of subsidiarity, the prohibition of discrimination and abuse of the right, freedom of competition).

Conferences devoted to cases of the European Court of Justice in the field of direct taxation have been held in Vienna every year since 2007. In addition, a similar conference is held annually in Vienna on the practice of the EU Court of Justice in the field of VAT. A large number of experts on the European and international tax law every year received mayut participate in this conference, in 2018 the number of participants was about 80 people. In total, representatives of 27 states took part in the conference.

The reports were presented by such EU tax law masters as M. Lang, E. Kemmeren, D. Smith, A. Rust, K. Staringer, R. Sudosky, D. Gutmann, and others. A separate panel was devoted to each state represented (the Netherlands, Belgium, Czech Republic, Italy, Spain, Germany, Sweden, Austria, Bulgaria, France, Hungary, Denmark). Traditionally, a large number of cases related to the Netherlands, Germany and Belgium.

The EU Court is the only judicial body authorized to interpret Union law, and the courts of member states have similar exclusive powers with regard to their national law. This mechanism seems to be unambiguous in theory, but the experience of the last 30 years indicates failures in its work. The EU Court is constantly forced to strike a balance between the interests of the domestic market and the member states. The fact that the EU Court is empowered to interpret only EU tax law, not national law, makes negative integration in the field of direct taxes difficult and chaotic, moreover, another level is involved - a network of double taxation treaties concluded between members.

Globalization and the growing role of national companies have strategic implications for national tax systems: investments will be placed not only where it is most productive, but also where the tax burden is lower. Ideally, the choice of location for the establishment of a company should not depend on the tax regime of a state, but in practice companies change the location of investments in order to avoid a high tax burden.

The basis for the consideration of tax cases by the EU Court is the essence of the internal market. The constituent treaties of the EU are aimed at establishing a common market and guaranteeing its operation for all member states of the Union. The fundamental freedoms enshrined in the founding treaties of the EU encompass the free movement of goods, services, capital and labor and constitute the foundation of the internal market. The starting point of the impact of basic freedoms on the taxation of profits and incomes is obvious: the domestic market covers a space without internal borders, in which, according to the provisions of the constituent agreements, free movement of goods, persons, services and capital is ensured.

Direct taxation has become a subject of supranational regulation relatively recently, has less impact on the functioning of the union economy than indirect and is therefore regulated at the level of integration associations only in certain aspects related to the implementation of four freedoms. Such aspects include the avoidance of double taxation of profits of subsidiaries in the case when the parent and subsidiary companies are residents of different Member States; taxation of capital gains arising in the conduct of cross-border operations for the reorganization of companies; the procedure for taxation of interest and royalties paid between parent and subsidiary companies of different Member States ; taxation of personal income from accumulated savings in the form of interest payments.

At this conference, we examine and discuss cases on the interpretation of the fundamental freedoms in respect of direct taxation that are currently pending at the CJEU or have recently been decided. We not only intend to analyse pending cases and their importance to the EU Member States and third countries, but also shed light on CJEU decisions which have been recently decided and discuss their background and relevance for the future.

The cases and their background were introduced to the audience by keynote speakers. Participants commented briefly on how the judgments will influence the domestic law of their respective home countries, how possible judgments might be implemented into the national legal systems or if there will be no need for legal adjustments at all.

The main problems in this regard in the practice of recent years are:

- movement towards the domestic market: avoidance of double taxation; further movement towards the economic integration of member states; issues of tax competition;
- problems of interaction 28 tax jurisdictions (disclosed in the classic case of the EU Court of Justice C- 371/10 National Grid Indus): distribution of tax rights among member states; tax coherence; principle of territoriality;
- about the open market economy and free competition (Article 119-120 of the Treaty on the Functioning of the European Union);
- effective distribution of production factors (Article 120 of the Treaty on the Functioning of the European Union);
- a number of principles of tax law: the principle of the ability to pay taxes (ability-to- pay principle) (Cases Schumacker, Bevola).

The most relevant topics at the 2018 conference were:

- broadening the understanding of state aid and the obligations of national courts to notify the European Commission (C-598/16 case, A-fonds);
- fiscal unity ( case C -399/16, X NV);
- taxation of dividends paid s non-residents (Cases C -56/17, Köln Aktienfonds Deka; C -575/17 b Sofina SA , Rebelco SA , Sidro SA ; C -470/16, Fidelity Funds);
- taxation income physical persons (Cases C -602/17, Sauvage and Lejeune; C -174/18, Jacob and Lennertz; C- 524/15, Menci; C- 125/17, Bisignani);
- taxation of income if the conclusion is, capital (Picart, C -355/16);
- questions of beneficial ownership (Cases C-116/16, C-117/16, T Danmark);
- group taxation (case C-650/16, Bevola, C-28/17, NN).

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