Euro Tax Flash from KPMG's EU Tax Centre

European Commission Communication on Unanimity in Taxation

European Commission – Unanimity – Qualified Majority Voting - Tax Competition – Sovereignty – EU

On January 15, 2019, the European Commission issued a communication on extending qualified majority voting to all EU tax policies. The document suggests a progressive approach to phase out national vetoes on matters of taxation by the end of 2025 and replace the current unanimity rule with Qualified Majority Voting (QMV). Under Qualified Majority Voting, the European Parliament and EU Council are co-legislators on an equal footing, and a minimum of sixteen Member States, representing at least 65% of the EU population, must vote in favor of the legislation.

Background

Introducing qualified majority voting in the area of taxation is not a recent debate and the European Commission has consistently supported a move from unanimity since the 2002 Convention on the Future of Europe. However, the debate recently flared up again due to the perceived lack of progress on certain tax matters. In particular, proposals on a Financial Transaction Tax and, more recently, a Digital Services Tax have been stalled because unanimity was not reached among Member States. A move away from unanimity has also been high on the European Parliament's agenda, which explicitly called for a reform of the voting process in tax matters on several occasions.

Consequently, on December 20, 2018 the Commission launched a consultation on the possibility of reforming the EU decision-making policy that requires unanimity among Member States in the areas of EU taxation policy. Within the framework of the treaties of the European Community and the European Union, all tax decisions in the European Union are currently subject to a special legislative procedure with consultation. Under this special procedure, the Council must consult the European Parliament and receive its opinion. However, the Council is not required to consider Parliament's opinion. Instead, draft laws are adopted by the unanimous vote of the Council, which is contrary to democratic principles. Conversely, under the ordinary legislative procedure of the QMV system, the European Parliament and the Council are co-legislators on an equal footing and jointly adopt legislation. In addition, two conditions must be met for a proposal to pass in the Council. First, 55% of Member States must vote in favor of the legislation (which equates to sixteen Member States). Second, the proposal must be supported by Member States representing at least 65% of the EU population. Furthermore, a proposal can be blocked by a "blocking minority" if the blocking minority represents at least four Member States that represent more than 35% of the EU population.

European Commission Communication

The Commission believes the assertion of sovereignty and unanimity by Member States to block certain tax initiatives is a means of protecting specific national interests. As such, the European Commission believes that moving away from unanimity in taxation is essential for creating a fair taxation system in the European Union.

The European Commission published a roadmap laying out a suggested process for transition from the current special legislative procedure with consultation (unanimity) to the ordinary legislative procedure (QMV) in the area of tax matters. The Commission is suggesting a four-phased approach in the move away from unanimity in taxation.

As a first step, Member States would move to QMV for measures that improve cooperation and mutual assistance between Member States in combating tax fraud and tax evasion and in respect of administrative initiatives. Next, QMV would be adopted for matters in which taxation supports other policy goals including fighting climate change, protecting the environment and improving public health. The Commission suggests that the first two steps be adopted as soon as consensus can be reached, at which point a third step would be to transition to QMV to update EU tax rules that are already harmonized (e.g. VAT and excise duty rules). Finally, QMV would be adopted for major tax projects, many of which are already under consideration. Finding a harmonized solution for the Common Consolidated Corporate Tax Base and for the taxation of the digital economy would be a high priority if a QMV was adopted for such tax issues.

The change to QMV would be on the basis of the so-called "passerelle clause", which requires unanimous consent from the Member States and agreement by national parliaments. In that respect, the Commission did not follow calls from certain Members of the European Parliament to introduce QMV in cases where distortions of competition within the EU market are due to different tax rules and such distortions could not be removed in concertation with Members.

Next Steps

The Commission has invited EU leaders to engage in an open debate with the hope that they will endorse the proposed roadmap and quickly decide on moving to QMV for step 1 (on issues that have no direct impact on Member States' tax rates or tax bases) and on step 2 (where taxation supports other policy goals). The Commission further urges EU leaders to consider step 3 (areas where taxation is already largely harmonized) and step 4 (larger tax policy initiatives) by the end of 2025.

The use of the “passerelle clause” to switch to QMV requires the unanimous consent of the EU Member States, as well as agreement by national parliaments and the European Parliament. To this end, the European Council is invited to notify the national Parliaments of its initiative and seek the consent of the European Parliament, once the Commission’s roadmap has been approved.

EU Tax Centre comment

The roadmap proposed by the European Commission requires the unanimous agreement of the Member States and it remains to be seen whether the initiative will rally sufficient support, in light of the objections raised by certain Member States. Additionally, the issue of QMV may not be as high of a priority for the next Commission, which is due to take office on November 1, 2019, following the European elections of May 2019. In this respect, it remains to be seen if a concrete proposal will be made, as this is not the first time a change to the voting procedure on tax matters has been discussed.

Should you have any queries, please do not hesitate to contact KPMG’s EU Tax Centre, or, as appropriate, your local KPMG tax advisor.

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