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Introductory Notes to the Monographic Study by Luca Costanzo "Interessi finanziari e potestà impositiva nell'Unione europea. Profili ricostruttivi e dinamiche evolutive"

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1. Overview of the Monograph

The book *Interessi finanziari e postestà impositiva nell'Unione europea (*edited by *Wolters Kluwer*, part of the series *Il diritto tributario d'Europa*) explores the possibility of creating an independent taxing power for the European Union, which would depend on changing the EU Treaties. This could mark a major step in the ongoing effort to develop a unified financial and fiscal system for all EU Member States.

Building a distinct European fiscal identity is a complex process that involves many factors. These include the Union's shift from mainly regulating the market to actively shaping public policy, as seen in instruments such as *Next Generation EU*. The process also involves aligning constitutional protections for taxpayers in Member States while gradually moving toward a more federal political system within the Union.

The study takes both a historical and forward-looking approach to analyzing the EU's evolving fiscal and financial system. It examines key changes in the balance between States' fiscal sovereignty and the fiscal powers the EU might claim as a supranational body, which is constantly evolving.

A central theme of the monograph is the development of a European financial interest, which is increasingly driving changes in the EU's tax system and legal institutions. However, this financial interest is not fixed; it is subject to ongoing negotiation, shaped by the fiscal priorities of Member States and the economic principles of the Single Market.

This framework is further complicated by the growing recognition of a minimum standard for protecting taxpayers' rights at both the European and international levels. This is reflected in the ongoing dialogue between national and EU courts, which interpret key legal texts within the multilevel legal system.

The analysis aims to explore the legal and regulatory changes underlying these developments and to propose a coherent framework supporting the argument for giving the EU original tax powers. This

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would go beyond simply harmonizing national tax policies and would involve a more substantial transfer of fiscal authority to EU institutions.

2. Structure of the Study

The study is organized into four main chapters, preceded by an introduction and followed by a conclusion. Below is a brief outline of the key themes and areas of focus in the work.

2.1. The first chapter explains how the European Union (EU) developed its own financial resources, which are not entirely reliant on the contributions of Member States. This shift marked the EU's growing financial independence but also created tensions with national governments, especially concerning their control over public finances and taxpayer protection.

The chapter further examines how the EU's financial powers have led to a more organized budget process, which is guided by annual budget decisions and a Multiannual Financial Framework. This system is essential for funding and carrying out EU policies.

Recent legal changes have increased the EU's own financial resources and set up institutions like the European Public Prosecutor's Office to safeguard these resources. However, this has sometimes caused conflicts with national legal systems, especially regarding the protection of individuals' rights under national tax laws. The chapter also discusses the *Taricco* case, which highlights conflicts between national legal principles and EU regulations.

2.2. The second chapter explores how the financial interests of the European Union (EU) are shaped by its legal framework and the rulings of the Court of Justice.

A key topic is "negative tax integration," which refers to the way national tax laws are assessed in relation to the EU's fundamental freedoms, such as the free movement of goods, services, people, and capital within the Single market. This process also involves protecting taxpayers' rights, which are considered part of the EU's broader legal system, including the EU Charter of Fundamental Rights, the constitutional traditions of Member States, and the European Court of Human Rights. The chapter argues that the Court of Justice is increasingly acting as a "judge" of tax laws, using methods similar to those of national constitutional courts.

The chapter concludes that fiscal integration, essential for European unity, needs a more coherent system that balances the protection of financial resources, the expansion of public policies, and the safeguarding of citizens' rights. However, it also notes that the current approach, which relies on the Court's rulings ("negative integration"), is not enough to fully define the EU's financial and fiscal interests.

2.3. Chapter 3 of the research looks at how the European Union (EU) aims to align the tax policies of its member States in a "positive" way. This is done through intergovernmental agreements, based on the procedures set out in Articles 113 and 115 of the Treaty on the Functioning of the European Union (TFEU). The goal is for these tax policies to help the EU Single market function properly, covering both direct and indirect taxes.

One section of the chapter focuses on how the EU tries to prevent the misuse of national tax systems. Specifically, it addresses practices like "tax rulings," in which governments give favourable tax treatment to multinational companies, which can distort competition in the market. The European Commission often challenges these practices, seeing them as illegal State aid. This is part of the EU's wider effort to harmonize tax rules and reduce harmful tax competition among member States.

However, the research also points out some limitations of this approach. The requirement for unanimity (agreement from all member States) in decision-making can make it hard to make significant progress in harmonizing tax policies. Additionally, EU case law has not been very strong in challenging State aid, which means it may be difficult to oppose certain national tax measures. The chapter suggests that a more effective solution could be to create new EU "own resources" (funds controlled directly by the EU) and explore more innovative methods for improving tax integration across the EU.

2.4. Chapter 4 of the research explores the EU's efforts to develop a more effective tax system, examining both progress and challenges in creating a unified European tax framework.

The chapter first discusses the EU's own resources, focusing on Value Added Tax (VAT). VAT is a key example of tax harmonization, with significant progress made. However, issues persist, such as the lack of full uniformity in VAT implementation across member States. This has led to the need for coordination mechanisms, like the MOSS system and reverse charge technique, which can pose risks to both the EU's financial interests and those of individual countries. The research also looks at how EU case law has influenced VAT rules and examines proposals to reform VAT, helping the EU transition from a regulatory body to a more centralized political entity.

Another area of focus is the taxation of the digital economy, particularly the digital services tax. The research reviews international initiatives, such as the OECD's BEPS project (2013), aimed at tackling tax avoidance by multinational companies, and the EU's own digital tax proposal. However, due to changing international circumstances, the EU proposal has not been fully implemented, and attention has shifted to a multilateral solution.

The research also examines the European corporate tax proposal, which aims to standardize tax rules for large companies across the EU. This effort dates back to the 2011 CCCTB (Common Consolidated Corporate Tax Base) proposal and has since been updated in various drafts, including the Business in Europe: Framework for Income Taxation (BEFIT). These efforts aim to harmonize corporate tax bases and rules for distributing taxes among member States, adapting to new forms of wealth and modernizing the EU tax system.

The study also looks at the Global Minimum Tax (GMT), which the EU recently adopted as part of an international agreement to prevent tax avoidance by multinational corporations, particularly in the digital economy. The chapter explores how the GMT and digital tax proposals are connected, and how these reforms could improve tax policies for EU corporations and digital income.

Finally, the research notes that recent EU tax innovations aim not only to create rules for member States but also to make tax systems more interconnected. This reflects a growing recognition of the supranational nature of economic activities and the need for a cohesive, EU-wide tax system. The combination of corporate tax reforms and the global minimum tax is seen as a significant step toward greater fiscal cohesion in the EU.

3. Concluding Remarks

The conclusion of the research reflects on the future potential of the European Union (EU) developing its own taxing power. The idea is to create a system where the EU has greater control over finances and can balance the fiscal interests of its member States while ensuring protection for European taxpayers.

The research highlights that the EU has made progress in harmonizing tax policies, particularly in fighting aggressive tax avoidance and addressing differences in national tax systems. This is especially important in direct taxation. However, the full realization of a European taxing power is still far off. This is mainly due to the requirement for unanimous agreement from all member States, as well as their reluctance to give up some of their national sovereignty in tax matters.

Despite these challenges, the study shows that there have been significant changes in recent years, driven by both EU reforms and international agreements. These changes have led to more coordinated tax policies across EU member States, creating a shared legal space for taxation within the Union.

While the EU does not yet have full taxing authority, tax policies are increasingly harmonized and coordinated. This reflects a shift toward greater financial autonomy for the EU, as well as changes in its role in economic planning, financial intervention, and legal policy.

The conclusion emphasizes that the EU is progressing towards a more unified tax system, which is both complex and coherent. However, this process needs to respect the autonomy of national tax systems and avoid hasty steps. Ultimately, the success of European taxation will depend on the agreement of all member States to grant the EU the power to manage taxes, which would require changes to the EU's founding treaties.