

UNITED STATES EXPERIENCES WITH TAX COMPETITION: POTENTIAL ANSWERS FOR GERMANY AND THE EUROPEAN UNION?

Johanna Hey

Institute of Tax Law, University of Cologne/Germany

Tax competition among the European Member States is jeopardizing both tax revenues and the fairness and feasibility of national tax systems. On the one hand, tax rates on mobile tax sources are under massive downward pressure; on the other hand, Member States aiming to defend their tax revenues by heavy-handed anti-avoidance rules are in permanent conflict with the ECJ's interpretation of the fundamental freedoms.

The evaluation of tax competition is still very controversial. In my opinion it is – at least from a legal point of view – a threat to the fairness of tax systems, leading to schedularism, distorting economic decisions and causing complexity. In a first step, I seek to revise this point of view by studying the U.S. literature. Qualifying the idealistic liberal approach of tax competition from an outside point of view might help to convince Member States of the necessity of concerted actions. This leads to my next assumption, namely that Member States will fail to overcome the present distortions with unilateral measures.

It might turn out that there is no persuasive answer without a reform of the fiscal architecture of the European Union. To sustain fiscal power *and* sovereignty, Member States might be well advised to transfer some of their taxing power to the EU level. However, facing Member States' lack of enthusiasm for institutional changes, I want to concentrate on less far-reaching measures, such as limited approximation of certain areas of business taxation. For this purpose, it shall be analyzed to what extent U.S. tax policy can serve as a model. In a two-level approach, I aim to study both the U.S. defense measures against international tax competition and the system of state corporate income taxation. An examination of the U.S. apportionment procedure might help to estimate the value of recent harmonization initiatives of the EU Commission.