The Quest for a New Fiscal Policy:   
comparing Europe and Central Asia

by Marco Greggi[[1]](#footnote-0)

The world is experiencing an unprecedented series of shocks to the pillars on which international taxation has been built for decades, if not for centuries. States are in search of a new paradigm for taxation and a common understanding on how cross border wealth should be taxed.

Taxation worldwide has always been connected with the territory of the state imposing such duties. This pillar has been called by academics and scholars “Principle of territoriality” and was arguably developed in Europe V Centuries ago. It comes from the understanding of the sovereign nature of the power of the state, which can be exercised in line of principle only within the territory ruled by the state itself as it would conflict with one of the other peers.

In general terms, a state is free to decide how to arrange the law and how to regulate the relationship with the citizens and foreigners only within the boundaries of the land ruled by it.

This is very true for several disciplines and taxation is no exception to this: in order for a fee to be charged the individual or the asset taxes should exist within the territory of the respective state. This would be the case of an individual who is resident in a country, or an asset owned by a foreigner which is located in the territory of the state taxing it.

Extraterritorial reach of the law has yet become more and more frequent in recent times, where states argued that on some occasions the principle should be extended also in broader areas.

This conclusion has very often been achieved under the aegis or with the supervision (and approval) of supranational organization, most notably the UN.

In the recent past there were times where countries intervened (for good or bad, it’s not of this paper to decide) in selected areas claiming that there were extraordinary reasons founded in international law to make that choice.

For instance, the US led intervention in Africa in the nineties was justified on human rights conditions and the necessity to provide assistance to populations in distress in a scenario where the countries of the case were unable to achieve this goal.

Human rights, fundamental rights and similar principles have often been used in the past to allow the outreach of the power of the state, although never in the field of taxation.

From a political standpoint, some states advocated in the past some sort of extraterritorial outreach of their interest sphere, unilaterally extending their legitimization to intervene in other jurisdictions.

Yet only in very limited circumstances these situations affected taxation, which has always been connected to the state.

From a cultural standpoint, perhaps only the islamic foundations of taxation might constitute a variation to this European understanding of the duty to pay taxes to the state someone belongs to.

Apparently, according to the Holy Book, each worshiper belonging to the umma is supposed to pay an annual tax on the wealth owned, with a percentage of 10% of it.

This duty to pay the tax (Zakat) is embedded in the religious belief and constitutes a part of it: as a consequence it does not matter the country a believer is resident in, or belong to, as this duty to pay persists.

On the other side of the world, we have the extraterritorial outreach that some countries, most notably the US, are in the position to impose due to their extraordinary position in the global international community.

When the FATCA legislation was passed, eventually imposing all the states to disclose information concerning qualified taxpayers to the US, that was made possible due to the quasi-monopoly of the US of international trade, and the influence of the American administration of the financial business worldwide.

Not complying with the US rules in the matter would have taken the state of the case off the grid in terms of business possibilities and payment means.

Only in recent years international organizations have advocated the necessity to overhaul the traditional legal system based on state to state relations, in favor of a more comprehensive strategy: a global approach such as to the one pursued by the OECD in the BEPS project and then with the Pillars (I and II) solution.

In the framework of these project, the OECD insisted on two points: (1) the necessity to introduce commonly accepted rules by all the states as the bilateralism is not adequate anymore to face the global challenges posed by international tax avoidance, evasion and aggressive tax planning, and, on the other side, (2) that the inclusive forum sponsored by the OECD is the proper arena to achieve this result.

In the field of international taxation the UN has always been a late comer, dealing with an incumbent who has been having the grip and managed the agenda for decades in advance.

Central Asia and Europe, in some ways, stand in the middle of this complex scenario.

Europe, in general, and the European Union, in particular, are desperately trying to overtake what academics normally call the “Westphalian Principle” according to which each state is the ruler of the territory it occupies.

The European Union has achieved this goal via a sophisticated and complex system of Treaties and regulations affecting the states member of the common european project.

In the past, European policy has always been based on indirect taxation and customs duties. In this respect the Union was able to achieve a common position and a common policy in terms of customs (which reverberates on the WTO working agenda) and an harmonized system of VAT - the consumption tax with the most significant impact - in the old continent.

In the field of direct taxation, most notably income taxes and corporation taxes, the efforts by the European Union were not rewarded by success as states are always over- jealous of their tax sovereignty.

As a matter of fact, a possible surrender of the power to tax in favor of the Union would entail a loss of independence of the states from a financial standpoint, as for many of them the currency has been already lost in favor of the Euro currency.

It is for this reason that in recent times Europe has turned its attention to more specific, sophisticated aspects of international taxation.

More precisely, the EU has invested in tax transparency and on the necessity to make tax-related data more accessible and in a timely manner to the Tax administrations. Likewise, the EU has insisted on the necessity to disclose information and on the improved relationship between the Tax office and the taxpayers. Long story short: the latest and more significant efforts have been added on aspects pertinent to the procedure rather than to the substantive law.

It is hard to understand why this decision has been made: arguably this was because the necessary unanimous consensus to pass legislation on taxes in Europe was impossible to be achieved in other, more substantive, areas.

In any case, whatever the step has been taken, it was in a way homogeneous with the OECD recommendations in the matter, and in line with the policy commitment taken in the OECD ruled arena.

It could be argued, in many ways, that the European agenda in the field of taxation has been somehow eroded, or incorporated, by the OECD agenda in the matter, with the European commission in the position to implement two guidelines that have already been decided elsewhere.

This is not a positive scenario as the lack of democratic control and accountability within the OECD is well known, and in this scenario it would have an impact on the decision by sovereign states. Yet in the current historical moment it seems that the policy agenda in the field of taxation has been somehow conquered by international organizations whose activity is not clear from a democratic and constitutional perspective.

Would an alternative be possible ? The answer might be positive, should the UN claw back the policy space that has surrendered in the past.

The Central Asian situation is way more complicated than this.

From a tax standpoint, Central Asia appears to be in a point where Europe has been decades ago, as some sort of economic integration is in progress, but the steps taken from a fiscal standpoint are far from being significant.

First of all, the starting point is different: when the Union project was tabled in Europe for the first time, the states had long standing traditions of independence and war, with no one prevailing on the other form for a significant time. In Central Asia no significant war has ever raged between states, and all of the countries were once members of the Soviet Union, thus of some sort of supra-national entity.

The common legal background, although under Russian dominance, was lost at the end of the eighties and from that moment a sort of *diaspora* seems to have prevailed.

States are eager to claw back their culture, heritage and traditions.

This decision is quite obviously a positive aspect deserving a positive evaluation.

Yet in a purely tax perspective might be counterproductive, in the sense that the need for an independency might act as a countervailing force to those agendas, urging some sort of fiscal approximation between states.

Actually many states in Central Asia have a dynamic and promising export sector (of natural resources, but not only): yet the country to country interactions within Central Asia are poor. In other words, the best business partners for Central Asian countries are to be found in China, Russia, EU, not in the other neighborhood states.

Thai lack of regional commerce might be derived from several factors, some of them of fiscal nature.

It is therefore essential for Central Asia now, as it was for Euroe in the past, to stimulate a common policy agenda in the field of taxation that might promote the regional exchange of products, goods and services.

Such a policy would increase the economic independence of the region and determine a win-win scenario for all the countries involved.

Such an agenda should be inspired by the very same principles Europe has built her: free circulation of goods, persons, capitals within the region: a strict application of the principle of non discrimination and eventually a supra national jurisdictional authority with the power to decide on possible controversies that might emerge.

Experience teaches that the case law of the Court of Justice of the European Union has proved to be one of the most effective converging vectors of the tax law in the Union, which has been enacted thanks to a strict application of the Rule of Law principles by all the states involved and to their commitment to abide by the decision of the Court.

It is not wrong to say that such a Court would work in Central Asia as well, and its jurisdiction on tax matter might be acceptable also by states that are jealous of their prerogatives that have rediscovered only in a (comparatively) recent time, and are for several justifiable reasons, reluctant to surrendered.

1. Marco Greggi is Professor of Tax Law at the University of Ferrara, Italy. [marco.greggi@unife.it](mailto:marco.greggi@unife.it). [↑](#footnote-ref-0)