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Leen, A.R.

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B.J. Kiekebeld
ben.kiekebeld@nl.ey.com

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Forum

What an EU Tax Means (From Collective to Individual Net Positions)

Auke R. Leen, Assistant Professor of Economics, Institute for Tax Law and Economics, Faculty of Law, Leiden University, The Netherlands

1. Introduction

Before July, the proposal of the European Commission on European taxes must be there ahead of the start of decision-making on the multiannual financial framework (MFF) for the years 2014–2020.[1] For the EU, EU taxes, directly paid by the citizens to the Union, are required to make the Union less dependent on the direct contributions of the Member States. The cursed *juste retour* thinking, which goes hand in hand with them, has a destructive effect on policies with an added value for the whole of the EU. With an EU tax, too, a direct link between citizens and the EU is wrought. For the EU, over the years, the Union has evolved from a bond between states to a bond between states and the citizens thereof. But is quid pro quo thinking blameworthy, and what really involves a link between citizens and the EU? The paper gives an individualistic perspective on EU taxes: EU decisions are the collective decisions of individual citizens.

In section 2, we look at the history of the EU budget. Not solidarity but looking at the net positions made the start of the EU in 1957 possible. In the third section, firstly, we look at the quality of the regulatory process in view of EU taxes. Secondly, we make the *volte face* of looking at an EU tax not from a collective but from a individualistic perspective. For Knut Wicksell and James Buchanan, it is always necessary to look at costs and benefits together. *Juste retour* thinking was not only the workable thing for Member States in the past to do but also, for citizens, the natural thing to do in the present. In section 4, from an individualistic perspective, three guidelines are given that have to go hand in hand with the introduction of an EU tax. The article concludes that EU taxes, *mutatis mutandis*, put the EU back to the workable square one of the Union in 1957.

2. Collective Net Positions in the Past

Although we might have forgotten it, planting a national flag on expenditures and then setting up the balance between contributions to and expenditures from the EU may be the things to do. At the start of the Union from 1957 until the late 1960s, it was the institutionalized practice. Member States, it was generally accepted, would have been unable to agree otherwise.

The Treaty of Rome (Article 200) had separate scales for different categories of expenditures, national contributions, and voting rates. Conflicts of interests are the most natural thing in the world. The separate budgets and the specific burden sharing were the result of hard negotiations. Economic strength and financial resources, notions of national prestige and benefits, as the Member states saw them, determined the result. The goal was not to deny interests but to make use of them. There was an administrative budget, a social budget, and a separate budget for research and development of the European Atomic Energy Community. In addition, there were distinct budgets for development programmes in the former colonies and a separate budget of the European Investment Bank.[2]

In the 1970s, the Union got its own resources in the form of customs duties, agricultural levies, and a percentage of a harmonized tax base of the value-added tax. National contributions temporarily were almost entirely missing, and the EU had a largely undivided budget. Actually, the early eighties of the last century were, for the EU, the happiest years regarding the financial independence of the Member States. At least that should have been so. Financial wrangling between the states prevailed. Culminating in the famous *I want my money back* from Margaret Thatcher.

In short, as history shows, to think in costs and benefits might be something that works. To trust solidarity, on the other hand, is no solution. Although in the preambles of the Treaty of Rome and that of Lisbon, solidarity is confirmed and desired to be deepened, for current net contributors, however, it wrings that, given the structure of the present expenditures, a reciprocal solidarity is never to be expected. Conversely current net recipients do say that their solidarity will subside if the solidarity of the present net contributors falters.[3]

1 European Commission, 'The EU Budget Review', COM (2010) 700 final.
2 I.E. Druker, *Financing the European Communities* (Leiden: Sijthoff, 1975), 241–243.
3 Probably, as is said of love, we have to minimize the use of that scarcest of all resources. J.M. Buchanan, *Moral Science and Moral Order* (Indianapolis: Liberty Fund, 2001), 96.

3. From Collective to Individual Net Positions

3.1. European Taxes and the Quality of the Regulatory Process

Since 1967, revenues cannot, based on the budgetary principle of universality, be assigned to specific expenditures. The principle of separate budgets is largely abandoned. Although the budget officially is financed by own resources, the EU knows better. Not all of its own resources are truly equal. The EU speaks about the need for true own resources; the goal is a greater autonomy from the Member States. Expenditures with a real European added-value are under-supplied because they go under-financed. For Member States, it is not the answer to the question 'what does the EU achieve with its expenditures?'. It is the answer to the question 'what do we give and what do we get in return?'.

In 2006, the European Commission started the discussion about a fundamental reform – without taboos. The Commission plans the introduction of one or more EU taxes. For the European Parliament (EP), the requirement that the introduction of EU taxes would be put on the agenda was a condition *sine qua non* to its approval for this year's budget. Proposed taxes are financial sector taxation, auctioning of greenhouse gas emission allowances, an aviation charge, EU VAT, EU energy levy, and an EU corporate income tax.[4]

The problem is that the EU has more than a dozen criteria for the assessment of an EU tax. They can be grouped into budget, efficiency, equity, and political criteria. Moreover, the problem is that EU institutions do give a different meaning to each criterion and do also weigh them differently.[5] The criteria are no limitation at all; the quality of the legislative process is low. The spur of the moment probably decides.[6]

However, even if this problem is solved, what does it mean to introduce direct taxes? We look at the work of Knut Wicksell and James Buchanan to give us an idea of the individualistic perspective on direct EU taxes.

3.2. The Past: Wicksell and *Juste Retour*

Against the by then accepted view, Wicksell argued in 1896 that taxes in principle should never be assessed without the spending that goes with them.[7] Paying taxes is not, as Italian authors in the area of taxation wrote, similar to a hailstorm, of which the government must distribute the injury as fairly as possible. In that vision, it all comes down to a need for funds that are exogenously determined and are funded by minimizing the effects on the allocation.[8] Expenditures relate to the overall outcome for society, not to the direct benefit of a particular individual.[9] However, regardless of the technical difficulties of dividing the common benefit, to justify public expenditures, the latter must be done. 'If utility is zero for each individual member of the community, the total utility for the community cannot be other than zero.'[10] Wicksell starts and stays with the individual: there are individual net financial positions.

It will not work to leave the balancing act of costs and benefits to the government. For Wicksell, it became clear that the government lacks the knowledge thereof and is no benevolent ruler working for the general welfare. '[T]he members of the representative body are in the overwhelming majority of cases, precisely as interested in the general welfare as are their constituents, neither more nor less.'[11]

For Wicksell, there is only one way a budget can reflect the wishes of the individuals: change the rules. The advice of Wicksell, next to look at taxing and spending together, is to make a decision based on the principle of approximate unanimity and voluntary consent of those who are to be taxed.[12] A tax must become like a market price: each individual voluntary pays in order to get.

3.3. The Present: Buchanan and *Quid Pro Quo*

For Buchanan, it is also clear that income and expenditure, its relationship in public policy, should be assessed from an individualistic perspective.[13] The norm for collective decision-making should be equal to the final result on the market: voluntary consent. If so, the EU does what its citizens wants it to do, not what the EU itself wants to do. Public goods depend on the collective willingness of individuals to pay for them. The fiscal process is a *quid pro quo*.

What Buchanan adds to Wicksell's principle of approximate unanimity and voluntary consent is to apply it to a higher level of decision-making. When we apply Wicksell's rule to the daily level of political decision-making, there is an obvious danger:

4 European Commission, *supra* n. 1 (2010): Technical Annexes.

5 See, e.g., I. Begg et al., *Financing the European Union Budget* (Brussels: European Commission, 2008); P. Cattoir, 'Tax-Based EU Own Resources: An Assessment', *European Commission, Working Paper* 1 (2004); R. Doherty, 'Future Own Resources, External Study on the Composition of Future Own Resources for the European Parliament' (Brussels: European Parliament, 2007).

6 See, e.g., C.M. Radaelli, 'How Context Matters: Regulatory Quality in the European Union', Paper Prepared for PSA Conference, 5–8 Apr. 2004; W. Voermans, 'Concern about the Quality of EU Legislation: What Kind of Problems, by What Kind of Standards', *Erasmus Law Review* 02, no. 01 (2009).

7 K. Wicksell, *Finanztheoretische Untersuchungen: Nebst Darstellung und Kritik Des Steuerwesens Schwedens* (Jena: Fischer, 1896), 103 (Nabu Public Domain Reprint). For an English translation of the second part and in particular for this relevant part of the book, see K. Wicksell, 'A New Principle of Just Taxation', in *Classics in the Theory of Public Finance*, ed. R. A. Musgrave & A. T. Peacock (New York: Macmillan, 1967), 72–118.

8 The perfect tax would be the one proposed by Alain Lamassoure, MEP and chairman of the committee on budgets. He suggested an EU tax on every email of EUR 0.00001. The tax will have no impact on the behaviour of the average citizen (French MEP suggests EU tax on SMS and emails, euobserver.com).

9 See, e.g., Daniel Hannan (August 2010), a British Conservative MEP, who said that in view of the EU budget, we have to think in gross figures. Otherwise, you might as well argue that an income tax rate of, say, 20% is in fact zero, because we all get it back in roads, schools, and hospitals, <http://blogs, Telegraph.co.uk>.

10 Wicksell, *supra* n. 7, 77.

11 *Ibid.*, 87.

12 *Ibid.*, 87–97.

13 G. Brennan & J. M. Buchanan, *The Power to Tax, Analytical Foundations of a Fiscal Constitution* (Indianapolis: Liberty Fund, 1980), 33–35; J. Buchanan, 'Taxation in Fiscal Exchange', in *The Logical Foundations of Constitutional Liberty*, ed. J.M. Buchanan (Indianapolis: Liberty Fund, 1999), 141.

minorities have a strong blocking position they will probably exploit. Buchanan looks at the level where we determine the rules of the political game over a longer time period. This has the advantage that on general, for example, in constitutional meetings, people are more reasonable. Behind a veil of ignorance, the long-term horizon brings people to reason; they do not know what their long-term interests are. Short-term interests are often much clearer and more conflicting. Moreover, the proposals voted on will be different if a government knows that the decision is by simple majority as in a everyday political decisions or by a supermajority in a long-time framework.

4. The Individualistic Perspective on European Taxes

4.1. The Need for Multiple Earmarked Taxes and Expenditures

At present, the EU does not tax citizens directly. Also the citizens do not decide over new expenditures. The ideal of Wicksell and Buchanan is not achieved. Of course, to perform this for all expenditures, especially at the EU level, is impossible. What, however, is possible is to give guidelines and so improvements in the light of the ideal.[14]

A first improvement is that individuals, with an EU tax, see what they pay, rather than the hidden way in which they currently pay. Taxes, still, do not steer expenditures but at least they give the citizens information about the costs. The perspective changes from collective to individual net positions. The collective, organismic theory of the state tells us little about the affect to individuals. For instance, the average citizen of Sweden has little personal utility if the King of Sweden gets agricultural subsidies from the EU.[15] Citizens individually have to decide themselves if they do belong to the group of net contributors or recipients.

A second improvement is that, at elections, citizens, as proposed by the various political parties in the EP, could choose from a number of packages of taxation and expenditure. The chance grows that among them, there is one on which a consensus can be reached. As far as benefits are not to be attributable to a separate group, Wicksell prefers the capacity-to-pay principle. For specific benefits, those citizens should and in general are only willing to pay if they also benefit. A specific tax, to be paid by that group, is needed. The introduction of one EU tax will not be enough. But the Commission, too, envisages the possibility of introducing several EU taxes. Besides that, the Commission, too, speaks of the necessity of a package approach in view of expenditures and revenues.

In short, we should not contest the *juste retour* behaviour. We must use it. ‘It is not the business,’ says Wicksell, ‘of the science of public finance and of tax legislation to do away with the egotism of the social classes, but to assign it its proper place as a safeguard of legitimate particular interests’.[16] In sum, Wicksell and Buchanan argue for a system of earmarked taxes and expenditures.

4.2. The Advantage of the MFF

At present, given the democratic deficit, to introduce EU taxes would not be an improvement. The current Parliament is not a real parliament, and the European Commission is not a real government. It is not to be expected that the EP delivers a package agreed on by the citizens. The suspicion is that an European tax, indeed, increases the autonomy of the EU. This, however, in a democratic society, can never be an end in itself.[17] But the direction of the change in decision-making is clear; it should be in the direction of the unanimity rule.

Since 1988, an MFF exists for the EU budget. This framework has ended the annual wrangling over the budget. The MFF makes a reliable long-run planning of expenditures within available resources possible. The MFF embodies, so to speak, the constitutional level of decision-making. So fortunately we do not have to start from scratch in creating procedural constraints on political decision-making. The moment of choosing a new MFF is the opportunity for citizens to decide.

5. Conclusion: Back to Square One

The EU shows courage. With an EU tax, citizens have to pay directly to the Union. For centuries, the ultimate goal and wisdom of governments was to collect taxes from its citizens as invisible as possible. Indirect taxes, not direct taxes, were to be preferred. The current financing represents the old ideal. Customs duties provide 15% of the budget, and the remainder roughly comes from direct contributions of the Member States. The contribution depends on the Gross Domestic Product (GDP) of the Member State. Both revenues are unrelated to daily life.

The introduction of EU taxes, however, is only the beginning. A complete *volte face* is needed. On principle, an individual citizen should be able to choose at the elections, as proposed by the different parties in the European Parliament, between different packages of taxes and expenditures about the MFF. In a sense, the EU needs to go back to square one of its history: the transition period after the signing of the Treaty of Rome. We switch, however, from the judging by Member States of their collective net positions to individuals judging their individual net positions. In short, as history shows, to think in costs and benefits not only works for Member States but also for citizens. For a bond between citizens and the EU, it is the natural thing to do. ‘It would’, says Wicksell, ‘be strange indeed if taxation by interested parties should not result in taxation according to interest’.[18]

14 G. Schick & J. Märkt, ‘Braucht die EU eine eigene Steuer?’, *Deutsche Steuer Zeitung* 1, no. 2 (2002): 27–35.

15 Open Europe, another fifty examples of EU waste (2010).

16 Wicksell, *supra* n. 7, 118

17 F. Heinemann, P. Osterloh, & S. Mohl, *Reform Options for the EU Own Resource System*, ZEW Economic Studies, vol. 40 (Heidelberg: Physica-Verlag, 2008), 50.

18 Wicksell, *supra* n. 7, 77. Besides that, the wisdom of a MFF and sticking to the unanimity rule is probably the best advice a scientist can give. Other advice on taxation and expenditure is hard to give. Scientists do not know the preferences of individuals. The advice is limited to the institutional structure that is best suited to realize individual goals.

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