The Congress of Local and Regional Authorities

Recommendation 438 (2019)
Fair distribution of taxes in transfrontier areas: potential conflicts and possibilities for compromise

1. Europe’s border regions are the laboratories of European integration. For 40 years, the Council of Europe has been at the forefront of promoting co-operation, of changing the perception of Europe’s internal borders as barriers, so that they are instead seen as bridges, opportunities for co-operation that can and do benefit citizens on either side of the border. Against this backdrop, the need to ensure an equitable distribution of the tax revenue generated by transfrontier workers on both sides of the border stands out as one of the major challenges to such co-operation.

2. The free movement of labour across borders is one of the strengths of European co-operation, all the more important in the light of the fact that a third of Europe’s citizens live in border areas. However, like any integration process, the free movement of labour leads to imbalances, particularly in terms of taxation.

3. Council of Europe member States generally apply the rule laid down in Article 15 of the Model Tax Convention on Income and on Capital of the Organisation for Economic Co-operation and Development, according to which workers pay tax at their place of work. The growth in cross-border working in recent years has highlighted the need to add to this principle the fair distribution of tax revenue, to the benefit of both the place of employment and the place of residence.

4. The European Union has no common policy on this, despite having underlined the desirability of establishing a common principle on cross-border taxation in European Commission Recommendation 94/79/EC of 21 December 1993 on the taxation of certain items of income received by non-residents in a Member State other than that in which they are resident. In the absence of a common approach, the adaptation of legal structures to meet the needs of transfrontier working remains the responsibility of the authorities of each country, which has led to a multiplicity of bilateral agreements.

5. In many cases, systems of tax retrocession or financial compensation have been adopted to cover the excess of expenses (such as those for schools and other infrastructure) borne by the place of residence. In other cases, no agreement has been concluded, leaving the local and regional authorities of the places of residence bearing costs much higher than those borne by the places of employment.

6. As a result, there are many situations in which the financing of public services in border areas is woefully inadequate as a result of this exclusive collection of taxes by the fiscal authority in the country of employment. This can cause serious tensions for the communities concerned and affect their ability to invest because of the budgetary pressure linked to demographic change, exacerbated by the labour needs of the neighbouring country.

7. The risk of further aggravation of such unbalanced cross-border development is a challenge for European decision makers. A line that divides rich and vibrant centres, where jobs and wealth are concentrated, from “dormitory suburbs”, which are characterised by impoverished communities, is unsustainable in the long run. The unequal distribution of the burdens and benefits of employment can only weaken interregional links on the European continent and undermine territorial cohesion.

8. In this context, it is necessary to organise and further the debate on tax policy in cross-border areas, knowing that the place of taxation is less relevant than the need for co-operation and agreement between the authorities concerned, and the need to identify new solutions to this problem.

9. For this debate to yield results, substantial progress needs to be made to improve knowledge and understanding of this issue, through extensive research and data gathering, based on common indicators.

10. Reconciling taxpayer expectations with the provision of sufficient resources for tax administrations will require a coordinated approach in order to avoid double taxation and grant taxation rights on both sides of the borders.

11. In view of the above, the Congress of Local and Regional Authorities of the Council of Europe,

a. bearing in mind:

i. the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106, Madrid Convention) of 21 May 1980, and its additional protocols (ETS Nos. 159, 169 and 206);

ii. Congress Resolution 363 (2013) on prospects for effective transfrontier co-operation in Europe;

iii. the report by the Foundation for the Economy and Sustainable Development of the Regions of Europe on the fair distribution of taxes and charges in cross-border areas (December 2018), and the seminar it organised in October 2018 in Geneva, which brought together stakeholders from the targeted area;

b. concerned about the problems that local and regional authorities are facing in financing essential public services, including education, kindergartens, social housing and communications infrastructure in certain border areas;

c. convinced that stronger relations and partnerships between dynamic centres and areas of residence are important preconditions for creating virtuous business cycles, environmental performance, territorial cohesion and social sustainability in the member States of the Council of Europe;
d. convinced of the viability of long-term cross-border strategies based on the sharing of the fruits of labour to develop common infrastructure;

e. concerned about the dynamics of tax competition between some member States and the need to ensure that certain regions and municipalities remain attractive places to live and work;

f. resolved to guarantee the principle of non-discrimination and to avoid double taxation,

g. recommends that the Committee of Ministers resolve to address this issue in its future work programme by conducting a comprehensive survey of the issues concerned, including the need for systematic data collection and the development of common indicators on the intensity and direction of labour flows, demographic trends, community burdens and the consequences of different tax rates;

h. recommends that the Committee of Ministers invite the governments of the member States to:

i. promote co-development as a common goal, with a view to promoting economic growth and the equitable distribution of the resulting tax revenues, and ensuring that they translate into an improved quality of life at local level;

ii. encourage the local and regional authorities in the places of employment of transfrontier workers to contribute to the financing of the local public services used by these workers in their places of residence;

iii. support the technical, scientific or linguistic training of their border populations to enable them to make better use of cross-border job opportunities;

iv. create the necessary conditions to foster a multilateral dialogue on taxation in a more collaborative and co-ordinated framework, bringing together all levels of government;

v. standardise the conditions under which expenses are borne by the budget of the country benefiting from the taxation of labour, in favour of the territories in which cross-border workers reside (such as in the form of a percentage of gross wages);

vi. harmonise the principles of burden-sharing between the countries which have borne the initial training costs of cross-border employees and the countries which collect the labour tax from these employees, without having contributed to the cost of their training;

vii. harmonise the taxation conditions for pensioners in border areas by fixing their place of residence, where the costs of aging are borne, as the place of taxation of their pensions;

viii. support the development of local groupings of cross-border co-operation as a means of addressing these issues.

2. “Le juste partage de la fiscalité et des charges en zone frontalière” exists only in French.