

Presumptions within EU Law and National Tax Systems, with Special Reference to Italy and Belgium

Presumptions represent a category traditionally considered only from the **national point of view**, within the framework of the theory of proof. According to a tradition which dates from Roman law, they are classified into legal and factual presumptions depending on the source (the law rather than the judge) and the former are moreover distinguished into irrebuttable and rebuttable presumptions depending on the possibility to give proof to the contrary. Notwithstanding the general discipline is included in the civil legislation, presumptions **in the field of taxation** have peculiar features and functions, especially in view of the deficit of knowledge suffered by the Tax Administration when assessing the relevant fiscal facts realized by the taxpayer. Even in this field they have been traditionally framed within a merely national point of view, by considering their consistency with certain Constitutional principles (such as the ability to pay principle, the principle of equality, the right on a fair trial), as the analysis of the Italian and Belgian tax systems makes clear.

However, the wide use of tax presumptions by the national legislator with the aim of simplifying the collection of taxes and preventing tax avoidance on one side, and the increasing role of **EU law** in the matter of taxation as well as its impact on national legislation even through the rulings of the ECJ on the other side, give rise to the demand of considering the same concept in the light of EU law in order to find out shared solutions which can render national tax systems consistent with the latter.

The originality of the perspective chosen (the relation between tax systems different in level, namely the national one and the European one), allows us to gather the **different role assigned to the category** at EU level, where the focus is rather on the effects of the national tax presumption relating to the effectiveness of EU law than on the structure of the mechanism in terms of rationality, reasonableness, consistency with the rule of experience. As a consequence, the core of the thesis is on national tax presumptions, while presumptions included in EU law become relevant only when investigating whether the principle adopted by the ECJ in the evaluation of national tax presumptions are in line with the criteria adopted by the EU legislator in introducing presumptive provisions.

Main issues

Is there a EU model of tax presumptions, i.e. a EU notion of presumption which is autonomous from the national one?

EU law does not contain a complete and coherent set of rules of evidence, and most of all relating to (tax) presumptions, being this matter covered by the national procedural autonomy. The concept of presumption has therefore to be evicted from the national systems of the EU Member States. Among those, we consider in detail Italy and Belgium when dealing with tax presumptions and the national approach to them.

Which is the role of presumptions within EU law and the EU approach to national tax presumptions?

Are there any constantly applied principles by the ECJ when ruling on national tax presumptions in different tax matters?

Are the principles applied by the ECJ in line with the criteria followed by the EU legislator when establishing presumptions?

Notwithstanding the evaluation of the consistency of national presumptive measures with EU law suffers from the different degree of harmonization reached within the different tax matters, the judgment of the ECJ appears to be always marked by the safeguard of the primacy and effectiveness of EU law, in a functional perspective and irrespective of the examination of the structure or the reasonableness of the presumption in terms of correspondence to the *id quod plerumque accidit*.

What is the impact of the EU approach to presumptions on the protection of the European taxpayer within national tax systems, with particular reference to Italy and Belgium?

From the relevant ECJ case law certain guidelines can be evicted for the Member States in order to prevent them from breaching EU Law and also for the purpose of underling Italian and Belgian tax provisions not in line with those criteria. On the other hand, limitations resulting from EU law to national sovereignty (as well as judicial and administrative practices) with regard to tax presumptions inevitably affect the degree of protection granted to the European taxpayer.