Answer-to-Question-_1_Part A

Introcution

Art. 5 TEU allows the EU to act outside its direct areas of competence (such as taxes) where the objective of the Treaties (Treaty on the European Union - TEU and TFEU - Treaty on the Functioning of the European Union) cannot be achieved by national laws (Principle of Subsidiarity, Art. 5(3) TEU).

Thefore, although as established in the case law Gilly/Saint Gobain, the lack of harmonizes rules on direct taxtion untike with indirect taxation, which is harmonised) the power of allocating taxing rights resides with individual Sates, even though EU Member States (MS)as part of their shares competence under Art. 4 TEU are required to esnrue their legislation complies with EU law under the principle of Supremicy (Costa v Enel).

This means where there is a conflict between national law and EU law, EU law takes priority (also over double taxation agreements (DTCs) - as established in the case law Avoir fiscal) which ensures that national law / DTCs do not infringe with EU provisions and in particular not with the fundamental freedoms of the EU, which are:

-Free movement of citizens (move and reside freely) - Art. 21 Treaty on the Functioning of the European Union (TFEU)
-Free movement of goods - Art. 28 TFEU
-Free movement of Workers - Art. 45 TFEU
-Freedom of Establishment (FoE) - Art. 49 TFEU
-Free movement of Services - Art. 56 TFEU
-Free movement of Caital (FMoC) - Art. 63 TFEU.

as established in various case laws such as Schumacker, Marks&Spencer, Itelcar, De Groot etc., which ensures EU law prevails (Erich Ciola) and Member States (MS) refrain from implementing any measues which could jeoparise the attinment of the EU objectives (Art. 4(3) TEU).

In Stauder case law it was also established that EU law should be interpreted applied in a uniform way. ALso, in EUropark Service it was etablsihed that where the matter in had falls within the remit of harmonizuation rules, the latter take priorit over primary law. Whereas, per Jacob/Jassus should the matter fall outside the remit of harmoniuation rules, primary law will apply.

It is also wirth mentioning that should a dispute arise and be brought before the Court of Justice (of the EUCJEU), lae latter wil l not give a ruling on the interpretation of DTs (however, it did ao in (Austria v Germany), becasue it was asked to act as an arbitrator), on hyptothetical situations, on interpretation of national laws or engage in fact findings. It might however, offer additioan interpretation if it feels appropriate to do so.

Having said all the above, just beasue a potential breach of a fundamental freeding is identified this does not automatically mean the measure must be withdrawn.

It might be justified and if justified, it could be deemed proportionate (art. 5(4) TEU - principle of proportionality) - see also Cases Cassis de Dijon / Gebhard).

Question 1

Facts

-ABC resident in A moved place of effective management to B
-MS A applied Exit Tax on value of assets leaving territory of A
-MS A allows for deferal of payment exit tax over 5 years
-MS A asks for interst if deferal of payment.

Freedom & Infringement
In this case the Freedom of Establishment, ARt. 49 TFEU or the Free movement of Capital (Art. 63 TFEU) could be infringed.
If two freedomws could be affected the aim and the purpose of the legislation must be taken into account (Case FII Group). The Free movement of capital is affected if the mere capital investment is concered, which is likely not the case here. The freedom of establishment is affected, if it is about the control or interst in a company, which is the case here as ABC Corporation moved the seat from MS A to B (Case law Impresso Pezarotti and Hornbach-Baumarkt).

ABC Coproation could suffer from a discrimiaton of the freedom of establishment. The exit taxes imposed by MS A restrict ABC from moving the place of effective managmenet to B. However, this restricton could be justified if it is proporitonate.

Justification & Proportionality

The imposed exit tax on ABC from MS A could be justified. It is important to note that the EU has via the ATAD Dirctive introduced exit taxation as a minimum standard in the EU, to harmonize to a minimum standard the rules for direct taxtion. Exit taxes can hinder a freedom, as they impose the payment of a tax, even though no actual sell of an asset (cash event) havs taken place, Thus it is a durden for the tax payer to pay exit taxes, if they have not actually sold the asset for cash. Art. 5 ATAD is the relevant norm for exit taxes. Thus exit taxes are justified. Expecially as the exit taxes from MS A also allow for the deferal of the payment over five years (in installments) - which is in line with ATAD. The justification is based on the balance allcoaiton of taxing right between MS (see e.g. Cases NGI and Hornbach-Baumarkt). The question may be if the imposition of interst on the exit tax is proportionate. Recently interst has been imposed on exit taxes by MS which has also been discussed in more recent case laws. The interst can be seen as proportioante under the Fiancne principle of time value of money. If MS A gets the taxes later, the value of the money (taxes) has changed. Therefore, intest claim on exit tax is proporitonate.

Revent cases concering the freedom of esablishment and exit taxation are: Verder LabTech, nattional Grid IndusHallaher and Commission V Germany (the later on the topic of the imidate payment of exit taxed or the deferral).

Concusion

test claim on exit tax is against the freedom of esablsihment but is Justified and proporitonate.

Question 2

MS B is obliged to accept the market value established by MS A. ATAD Directive Art. 6 defines the „market Value" as the amount for shich an asset can be echanged. For Tax purposes MS B must accept the Market value stiupuated from MS A. However, if the value of the asset may change in the future due to the actual sell of the asset, MS B is not obliged to accept the changed value (as seen in recent case law such as

NGI).

Queston 3
A similar situation has been observed the the NGI Case law. According to para. 58 of the case the CJEU stated that the host member State B must allow the the change in the value of the transferred asset (here loss) for tax purposes, if the change of value took place after the asset transfer, based on the principle of fiscal territoriality linked with a temporal compontent (caution, differently seen in the Case Law N)

Question 4
If the transfer took place to a third country, which is not a Member State of the EU, it could be argued an EU freedom has not been infringed. However, if A charges Exit taxes immediately, this will lead to great financial burden for ABC, as no actual Cash event took place. Thus ABC may not have the money to pay the exit tax.

--------------ANSWER-1-
ABOVE---

--------------ANSWER-2-
BELOW---

Answer-to-Question-_2_Part A

From: ADIT Student
TO: MS A
Subject: Memorandum on the compatibility of the planned group tax regime under EU law

To whom it may concern:

Introcution
Art. 5 TEU allows the EU to act outside its direct areas of competence (such as taxes) where the objective of the Treaties (Treaty on the European Union - TEU and TFEU - Treaty on the Functioning of the European Union) cannot be achieved by national laws (Principle of Subsidiarity, Art. 5(3) TEU).

Thefore, although as established in the case law Gilly/Saint Gobain, the lack of harmonizes rules on direct taxtion untike with indirect taxation, which is harmonised) the power of allocating taxing rights resides with individual Sates, even though EU Member States (MS)as part of their shares competence under Art. 4 TEU are required to esnrue their legislation complies with EU law under the principle of Supremicy (Costa v Enel).

This means where there is a conflict between national law and EU law, EU law takes priority (also over double taxation agreements (DTCs) - as established in the case law Avoir fiscal) which ensures that national law / DTCs do not infringe with EU provisions and in particular not with the fundamental freedoms of the EU, which are:

-Free movement of citizens (move and reside freely) - Art. 21 Treaty on the Functioning of the European Union (TFEU)
-Free movement of goods - Art. 28 TFEU
-Free movement of Workers - Art. 45 TFEU
-Freedom of Establishment (FoE) - Art. 49 TFEU
-Free movement of Services - Art. 56 TFEU
-Free movement of Caital (FMoC) - Art. 63 TFEU.

as established in various case laws such as Schumacker, Marks&Spencer, Itelcar, De Groot etc., which ensures EU law prevails (Erich Ciola) and Member States (MS) refrain from implementing any measues which could jeoparise the attinment of the EU objectives (Art. 4(3) TEU).

In Stauder case law it was also established that EU law should be interpreted applied in a uniform way. ALso, in EUropark Service it was etablsihed that where the matter in had falls within the remit of harmonizuation rules, the latter take priorit over primary law. Whereas, per Jacob/Jassus should the matter fall outside the remit of harmoniuation rules, primary law will apply.

It is also wirth mentioning that should a dispute arise and be brought before the Court of Justice (of the EUCJEU), lae latter wil l not give a ruling on the interpretation of DTs (however, it did ao in (Austria v Germany), becasue it was asked to act as an arbitrator), on hyptothetical situations, on interpretation of national laws or engage in fact findings. It might however, offer additioan interpretation if it feels appropriate to do so.

Having said all the above, just beasue a potential breach of a fundamental freeding is identified this does not automatically mean the measure must be withdrawn.

It might be justified and if justified, it could be deemed proportionate (art. 5(4) TEU - principle of proportionality) - see also Cases Cassis de Dijon / Gebhard).

Freedom & Infringement

The currently planned introduction of a group taxation regime by MS A could be against the freedom of estabhlishment, according to Art. 49 TFEU. For Companeis also Art. 54 TFEU is relevant, as their seat is treated same as natural persons. In this case the freedom of establishment is concerend and not the free movement of capital, as the later only deals with the mere invesmtent in a company, wich no interst to incluence the company, while the freedom of estabshliment is concerend if influence over a company is there (Lidl Belgium, Dickinger and Ömer, Cadbury Schweppes). The freedom of establishmen is infringed, as only national companies in MS A can benefit form the rules of group taxation, whiche internatonal companies, with subsidiaries outside of MS A cannot benefit from this regime.

Justification and Proportionality

However, the different treatment could be justified in the public interest based on the ground of a balance allocation of taxing powers and the fiscal princple of territoritality (Marks&Spencer, NGI,). The infringemnet of freedom of establishment cound aslo be justified based on the prevention of double dipping Marks&Spencer). However, inthe current case no such justification can be allowed as this infriment hinders the functining of the internal market. Groups of companies which are not only active withing the territory of MS A, but also in MS a and other MS are trated differently from companies only active in MS A.

Conclusion

The planned new legislation is agains the freedom of establishment and connot be justified by reasons of publish interest.

We hope the above helps in assessing the planned action. Please let us know in case of any questons.

Yours sincerely,

ADIT Student

--------------ANSWER-2-ABOVE---------------

--------------ANSWER-3-BELOW---------------

Answer-to-Question-_3_Part B

Introcution
Art. 5 TEU allows the EU to act outside its direct areas of competence (such as taxes) where the objective of the Treaties (Treaty on the European Union - TEU and TFEU - Treaty on the Functioning of the European Union) cannot be achieved by national laws (Principle of Subsidiarity, Art. 5(3) TEU).

Thefore, although as established in the case law Gilly/Saint Gobain, the lack of harmonizes rules on direct taxtion untike with indirect taxation, which is harmonised) the power of allocating taxing rights resides with individual Sates, even though EU Member States (MS)as part of their shares competence under Art. 4 TEU are required to esnrue their legislation complies with EU law under the principle of Supremicy (Costa v Enel).

This means where there is a conflict between national law and EU law, EU law takes priority (also over double taxation agreements (DTCs) - as established in the case law Avoir fiscal) which ensures that national law / DTCs do not infringe with EU provisions and in particular not with the fundamental freedoms of the EU, which are:

-Free movement of citizens (move and reside freely) - Art. 21 Treaty on the Functioning of the European Union (TFEU)
-Free movement of goods - Art. 28 TFEU

-Free movement of Workers - Art. 45 TFEU
-Freedom of Establishment (FoE) - Art. 49 TFEU
-Free movement of Services - Art. 56 TFEU
-Free movement of Caital (FMoC) - Art. 63 TFEU.

as established in various case laws such as Schumacker, Marks&Spencer, Itelcar, De Groot etc., which ensures EU law prevails (Erich Ciola) and Member States (MS) refrain from implementing any measues which could jeoparise the attinment of the EU objectives (Art. 4(3) TEU).

In Stauder case law it was also established that EU law should be interpreted applied in a uniform way. ALso, in EUropark Service it was etablsihed that where the matter in had falls within the remit of harmonizuation rules, the latter take priorit over primary law. Whereas, per Jacob/Jassus should the matter fall outside the remit of harmoniuation rules, primary law will apply.

It is also wirth mentioning that should a dispute arise and be brought before the Court of Justice (of the EUCJEU), lae latter wil l not give a ruling on the interpretation of DTs (however, it did ao in (Austria v Germany), becasue it was asked to act as an arbitrator), on hyptothetical situations, on interpretation of national laws or engage in fact findings. It might however, offer additioan interpretation if it feels appropriate to do so.

Having said all the above, just beasue a potential breach of a fundamental freeding is identified this does not automatically mean the measure must be withdrawn.

It might be justified and if justified, it could be deemed proportionate (art. 5(4) TEU - principle of proportionality) - see also Cases Cassis de Dijon / Gebhard).

Facts
-MS Z imposes environmental tax on companies which extraditct resourses
For companies which extract renewible resources the tax rate is half.

Infringement of a Fundamental Freedom
The current case could infringe either the fundamental freedom of Establishment or the free movement of Capital. In this case the freedom

of establishment is infringed per Art. 49 TFEU

State AidRules107-109 TFEU
According to Article 107, any aid grated by a MS, is imcompetibe if four criteria are fullfilled:

1. Granted from state resources
The aid must be granted from state rsources, which is the case if it is dirctly or indiretly granted from these resources), e.g. if it has lead to a lower income for the public budget.

2. Economic advantage for recipient
An Economic advantage is granted, if it has any effect (direct or indirect). In the Case GEMO the French government allowed slaughter houses the free collection of the corpuses, which was seen as an economic advantage granted and thus to be aid.

3. Effects/distorts competitoin and trade between MS
The measure must distort competition, which is to be the case if it does effect the trade between MS.

4. The measure is Selective
This is the main criteria. The measure is selective if it is trageted at a specific group to get a benefit. E.eg. in cases Autogrill, Santander the measure seemed to be applicable for everyone, whihle indeed the measure applied in reality more to companies involved in international foreign investment (see also case Paint Graphos). A measure can be selective ben where it concerns a whole economic sector (case Belgium v Commission).

Analysis
The measure from State Z gives an economic advantage to recipients (companies in renewable energy, the economic advantage is the reduced tax rate. The measure from State Z will distort competition between MS, as it will impact trade between MS. The measure from STate Z is granted frough state recousres, as the reduces tax rate will lead to a lower income for the public budget. The main question will be if this measure from State Z is selective. The measure is selective if it is trageted at a specific group to get a benefit. In this case the measure applies only to companies in the renewable energy sector. The renewable energy sector is not the entire energy sector, hwoever, could still be seens as a

sector for itself. However accoring to the case law Belgium v Commission a measure can be selective ben where it concerns a whole economic sector. Here the benefit will be granted only to companies that extract repidly-renewable resources, but companies which are involved in extration of resoruces and renerwable resource cannot beneit. Thereofre, the measure is selctive. Reasons for justification of the measure are not presented or aparent. Especially the measure is not compatible under Art. 107(2) TFEU. Resons under ARt. 107(3) TFEU (e.g. lit c - development of a certain economic area) have not been presented. Therfore the measure imposes unlawful aid under ARt. 107(1) TFEU. The Commission shall either review the aid, 108(1) TFEU or abolish or alter the aid (108(2) TFEU)).

Recent cases on State Aid Equin Luxembourg and Spanish Tax Leasing cases).

Conclusion

The measure from MS Z falls under the state aid provisoin of the EU and presents unlawefull state aid under Art. 107(1) TFEU.

--------------ANSWER-3-
ABOVE--

--------------ANSWER-4-
BELOW--

Answer-to-Question-_7_Part C

From: ADIT Student
TO: Whom ever this may concern
Subject: Report on Implementation of OECD/G20 BEPS Proejct in EU - specific measures and instruments chosen

Dear Sir or Madame,

We have been asked to prepare a report on the implementation of OECD/ G20 BEPS Proejct in EU, including the specific measures and instruments chosen.

Introduction - OECD BEPS Project

The OECD BEPS (base erosion and profit shiftig) report was published in 2013 and included 15 Action Points, with the recommendation for OECD countries to act on them. The issues inditified where to fight tax avoidance and evasion via an newly proposed set of rules, updated to the stand of development of the economy and taxpayers as stakeholders therein.

The OECD BEPS project has identifies critical areas to act as the digital economy, hybrid-mismatches, CFC rules, anti-abouse mechanisms, transfer pricing etc.

Measures and Instruments

The EU response to the OECD BEPS project where

-implementation of the Directive on Administrative Cooperation for automatic information Exchange (DAC 1-8).
-this includes tax rulings, Country-by-Country Reporting and the exchange of information on tax planning schemes.
-The CCCTB and BEFIT proposals
-The Anti-Tax Avoidance Directive (ATAD)
-and working on tax good governance.

ATAD

The ATAD Directive has introduced a new minimum level of protection, Art. 3 ATAD.

The ATAD Directive includes five new important rules, which are
-Art. 4 Interest limitation rule (BEPS Action 4)
-Art. 5 Exit taxation (not part of BEPS proejct)
-ARt. 6 General anti abuse rule (not part of BEPS proejct)
Art. 7 and 8 - Controlled Foreign Company Rules (CFC) (BEPS Action 3)
Art. 9 and 9a - Hybrid Mismatch Rules (BEPS Action 2).

The EU has also introduced ATAD II and III Directives. ATAD II focusing on hybrids and ATAD III (from 2021, not implemented yet)on shell companies.

DAC 1-8

The EU has also implemented severs Directives on Administrative Cooperation in the field of Taxation (DAC). DAC was implemented due to a lack of harmonization and the need for enhandes tax administrative cooperation to fight against tax fraud and evaion. DAC applies to all taxes, ecept VAT and Excise Duties. DAC allows tax administrations to exchange information foreseeably relevant (DAC preamble para. 9), which are not „fishing exhibitions" from tax authorities.

The following DAC Dirctives have been introduced:
DAC 1 - exchange of information - non-financial information shuch as employee income and directors fees
DAC 2- exchange of information on financial income (interest, dividends) - relevant for CRS
DAC 3 - Echange of cross border rulings and APAs
DAC 4 - Country-by-Country Reporting (based on BEPS)
DAC 5 - Beneficial owner informaton and anti money laundering via KYC-data
DAC 6 - reporting on certain tax structurings
DAC 7 - Reporting on informaton on sells on Platforms in EU
DAC 8 - reporting on crypto-asset holders in EU (effective 1.1.2026)

Pillar One and Two

More recently the OECD has introduced the Reports on Pillar One and Pillar Two. These reports are a further measure to fight tax avoidance and evasion in the age of a digital economy. Pillar one focuses on the apportionment of profits according to specific rules, to ensure every country gets their fair share of taxes. However, Pillar One could not reach agreement between states to be implemented yet. Pillar Two introduced a new minimum tax rate for every country. Pillar Two has been widely implemented (even though recent developments may lead to a roll-back, e.g. USA). Pillar two has been implemented by the EU through the GloBE directive, which has already been implemented from most Member States (MS), to ensure a minimum tax rate is being applied.

Conclusion

The via BEPS proejct has identifies issues on direct taxation have been implemented in the EU via the measure of Directives (in accordance to the competence of the EU in the field of direct taxation, Art. 4,5 TEU). There have been multiple measures been implemented by the EU following the BEPS proejct (as outlines above). Yet, further measures are expected to be seen to continue combating tax evasion and avoidance.

We hope this report clarifies the issue. Please let us know in case of any questions.

Yours sincerely,

ADIT Student

--------------ANSWER-4-ABOVE---------------

--------------ANSWER-5-BELOW---------------

Answer-to-Question-_5_Part C

Introduction
The latter will discuss if the fundamental freedoms may resolve economic and judicial double taxation.

Fundamental Freedoms
The EU primary law has fundamental freedoms, which are as follows:
-Free movement of citizens (move and reside freely) - Art. 21 Treaty on the Functioning of the European Union (TFEU)
-Free movement of goods - Art. 28 TFEU
-Free movement of Workers - Art. 45 TFEU
-Freedom of Establishment (FoE) - Art. 49 TFEU
-Free movement of Services - Art. 56 TFEU
-Free movement of Caital (FMoC) - Art. 63 TFEU.

Member States (MS) are bound the the fundamental freedoms, to ensure the functining of the EU internal market, Art. 26 TFEU. MS shall refrain from any kind of discrimination, e.g. on grounds of nationality (which is prohibited), Art. 18 TFEU.

Competence of the EU for Taxation

It is important to note that the EU does have competence for indirect taxation (Art. 4 TEU-Trety on European Union; Art. 3 TFEU). However, the EU does not have competence in the field of indirect taxation. But the in the filed of indirect taxation the EU may act under the principle of subsidiarity (Art. 5 (3) TEU), which gives the EU competence in areas which do not fall within its exclusive competence, if a purpose for the internal market can be better achieved at Union level. For diect taxation the EU may excercise the competence through EU secondary law e. g. via a Directive.

Economic and Judicial Double Taxaton

Economic double taxation is when the same taxable event is being taxed twice. Judicial double taxation arises when two different jurisdictions claim taxing rights on the same taxable income.

The power to allocate taxing rights is with the individual MS. However, MS as part of their shared competence under Art. 4 TFEU are required to ensure their legislation complies with EU laws under the principle of Supremacy (Costa v Enel Case).

Therefore, if a conflict ariges between national laws and EU laws (which could lead to double taxation), EU laws take priority. This is also the case if a double taxation agreement is applicalbe (Avoir Fiscal Case).

Positive/negative Integrarton and CJEU

THe EU may act via postiive integration - legislation (e.g. Directive like Parent-Subsidiarty directive) to resolve direct tax issues on potential double taxation or via negative integration, by the application of the EU fundamental freedoms. The correct application of the fundamental freedoms is being ruled on by the Court of Justice of the European Union (CJEU). The harmonization of EU direct tax law via the application of EU fundamental freedoms the negative integration.

THE CJEU however does not give judgement on Double Tax Agreements between States, as they do not fall under CJEU competence. However, in Austria v Germany the CJEU has acted as an elected Arbitrator in a DTA case.

If there is an infringement of a fundamental freedom which leads to an double taxation the CJEU may ask the MS to release the infringement, which can resolve the double taxation. An double taxation agreement (DTA) implemented can also serve as a ground of Justification of the infringement of a fundamental freedom, if the DTA effective resolves the double taxation.

Conclusion

Fundamental freedoms may resolve double taxation in many cases. However, their main objective is not to resolve double taxation, but to ensure the functioning of the internal market. Therefore, in many cases double taxation is not being resolved via the fundamental freedoms. If double taxation is being resolved via fundamental freedoms, this happens through negative integration from the applcaiton of these freedoms from the CJEU. A DTA serve as a justification of an infringement of a fundamental freedom, if double taxation is being resolved.