

Car taxation: infringement procedures against Greece, the Netherlands and Poland

The Commission has decided to send Greece and the Netherlands formal requests to amend their car registration taxation rules. Greece calculates the depreciation on second hand cars imported into the country in a way that does not respect Article 90 of the Treaty. The Greek rules do not guarantee that the registration tax will not exceed the residual tax on a vehicle of a similar age that was registered in Greece when new. The Netherlands imposes a registration tax on cars leased and registered abroad, which are intended to be used in the Netherlands by Dutch residents, in terms that do not respect the freedom to provide services. In addition, the Commission has decided to send Poland a formal request for information concerning the excise duty that Poland applies to cars when first registered in Poland. The excise duty rate increases according to the age of cars so that higher tax rates are applied only to imported second-hand cars. The requests to Greece and the Netherlands take the form of "reasoned opinions", the second stage of the infringement procedure laid down in Article 226 of the EC Treaty, while the "letter of formal notice" sent to Poland constitutes the first stage of the said procedure. If the Commission does not receive satisfactory responses from the Member States, it may ultimately bring the cases before the Court of Justice.

"The case law of the Court of Justice has helped to resolve some of the problems of tax discrimination that European citizens face when they move cars from one country to another" said Taxation and Customs Commissioner László Kovács. "However, many problems remain and the Commission as guardian of the Treaty is required to take action against Member States whose car taxation rules do not conform with the Treaty. At the same time, the Commission would prefer to assist Member States to adjust their car tax systems in order to make them compatible with the Internal Market. It is for this reason, that two days ago it adopted a proposal for a Directive dealing with car taxation rules".

Greece

Following the judgment of the European Court of Justice (ECJ) in the case *Commission v Hellenic Republic (C-375/95)*, Greece was obliged to amend its rules concerning the determination of the taxable value of second-hand cars for the purpose of the application of the registration tax due on cars registered for the first time in the Greek territory.

However, the Commission considers that the new Greek rules are still not in conformity with ECJ case law.

The Commission believes that, by adopting a system based on a single rule for depreciation which allows a depreciation of 7% for cars between six months and one year or 14% for a one-year old car, Greece infringes Article 90 of the EC Treaty. The Commission believes that this rule fails to guarantee that the amount of the registration tax due does not exceed the amount of the residual tax incorporated in the value of similar vehicles already registered in the Greek territory. The Court indicated in its judgement in the *Gomes Valente* Case (C-393/98) that a fixed scale of prices should reflect the true depreciation of vehicles with sufficient precision. The Court also held in that Case that discrimination between national and imported products is always prohibited under Article 90 of the EC Treaty, even if the discrimination arises in only a few cases.

Further aspects of the Greek legislation that the Commission contests concern the lack of transparency of the administrative procedure. The tax authorities do not disclose how they determine the taxable values of the cars. Furthermore, the taxpayer is obliged to pay a €300 fee for having the car inspected by a special Committee if he disagrees with the values determined by the tax authorities. The letter of formal notice and the complementary letter of formal notice that the Commission already sent to Greece have failed to resolve these problems.

The Netherlands

The Commission believes that the BPM (the registration tax in force in the Netherlands) impedes rental companies established in other Member States from offering their services to persons resident in the Netherlands. This is because vehicles rented and registered in other Member States by persons resident in the Netherlands may be used only for two days in the territory of the Netherlands, after which the car must be registered in this State and the whole amount of the tax is due.

The European Court of Justice already considered the tax treatment of vehicles rented and registered in one Member State which are in fact used by the lessee in another Member State, where the lessee is resident. In its judgment in case C-451/99 ("*Cura Anlagen*"), the Court took the view that an obligation to register the vehicle in the Member State of residence does not breach, *per se*, the provisions on freedom to provide services. However, the vehicle user must be granted a period of time within which to register the vehicle in the Member State of residence which is not so short as to be considered an unjustified obstacle to that freedom (in that case, a period of three days was considered as contrary to the EC Treaty freedom rules). The Court also considered that, in order to comply with the provisions of the Treaty, the imposition of a registration tax on the leased vehicle in the Member State of residence must be proportionate to the period during which the vehicle will be registered and used in that Member State of residence.

Poland

The excise duty rate applicable to cars less than two years old when registered for the first time in Poland is 3% or 13 %, depending on the engine capacity of the vehicle. Meanwhile, the excise duty rate applicable to second hand motor cars more than two years old when registered in Poland for the first time can be as high as 65 % in the case of cars that are at least seven years old at the date of their first registration in Poland.

The excise rate increase relates exclusively to the age of the vehicle. Consequently, the cars most heavily taxed are, by their very nature, imported second hand cars, including cars coming from other Member States. Their tax treatment compares unfavourably not only with motor vehicles produced in Poland, but also with motor vehicles of non Polish origin that were bought on the Polish market and registered in Poland when new.

In the Commission's opinion, the increase in tax rates for older cars registered for the first time in Poland is contrary to Article 90 as interpreted by the European Court in its case law.

Each Member State is free to establish a tax system which differentiates between certain products, even products which are similar, on the basis of objective criteria. However, such differentiation is compatible with Community law only if it is objectively justifiable. This condition seems not to be fulfilled in this case.

The latest information on infringement procedures concerning all Member States can be found at the following site:

http://europa.eu.int/comm/secretariat_general/sgb/droit_com/index_en.htm