

**THE ENVIRONMENTAL STAMP - FORM WITHOUT SUBSTANCE
OR SUBSTANCE WITHOUT FORM?**

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Abstract

The tax system regarding the registration / re-registration of vehicles in EU Member States is heterogeneous. Europeanization and globalization advocate for the environmental stamp likely to stop the ongoing development of the business environment and economic growth, and for the materialization of freedom of movement of workers. Thus, double taxation corroborated with excessive taxation of European re-registration of a vehicle used in another EU Member State (Overcharge) is likely to question the effectiveness of the single market in terms of free movement of goods. The policy directed towards the taxation of registration of a used vehicle in another EU Member State should be linked to the real purchasing power of Romanians, so that this environmental stamp respects the Romanian citizen.

Keywords: environmental stamp, double taxation, European Union, single market

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1. Environmental stamp history

The first regulation of this kind in Romania was introduced by Law no. 343/2006 for amending and supplementing Law no. 571/2003 regarding the Fiscal Code, which introduces for the first time the "special tax for cars and vehicles" through art. 214 index 1-214 index 3. It was entitled, abbreviated, first registration tax, as it was charged during first registration in Romania. In fact, from January 1, 2007 a new initial tax was introduced for all vehicles, after the amendment of Law no. 343/2006 by GEO No. 110/2006, the area of covered vehicles was restricted, exceptions and exemptions from this tax being established.

The "infringement" procedure initiated by the European Commission against Romania during March-December 2007 targeted two main claims: the discriminatory character of the first registration tax in case of second-hand vehicles already registered and sold by Romanian citizens and those purchased from another EU Member State, and also the exaggerated amount of the tax, which in some cases exceeds the residual value of the vehicle, and in some cases exceeds its own value. The pressure triggered by the infringement procedure led to the adoption of a new law- GEO No. 50/2008, correctly labeled in the literature as "an amusing solution" (Minea, (2009) : 55).

GEO No. 50/1998 for the establishment of the pollution tax for motor vehicles expressly repealed the provisions of art. 214 index 1-214 index 3 of Law no. 571/2003 regarding the Tax Code, entering into force on 01.07.2008. But this variant of the tax has not lived for a long time either, as the Court of Justice of the European Union found it arbitrary because the calculation of the tax did not account for the age of the vehicle and made discriminations on the basis of country of origin. The tax would be covered only by vehicles imported from Member States of EU other than Romania. Numerous and various discussions are related to the incompatibility between the regulations of the previous pollution taxes and the provisions of art. 110 of the Treaty establishing the European Union, and to the absence of a fiscal administrative act able to individualize it, considering that neither the calculation report of the tax, nor the calculation decision or the proof of payment receipt meet the legal requirements to be considered a fiscal administrative act (Papu, (2008) : 85).

In these conditions, they adopted Law no. 9/2012 on the tax for pollutant emissions from motor vehicles, effective from 10.01.2012, the application of which was suspended for certain categories of motor vehicles, twenty days later, due to uncertainties regarding its applicability in the context in which it remained dependent on the previous regulation which had already been rendered unlawful by the Court of Justice of the European Union. The quartering of the tax for polluting emissions for vehicles registered for the first time in Romania (art. 4, in conjunction with art. 3 and art. 8 of Law no. 9/2012 on tax for pollutant emissions from motor vehicles) proves the discriminatory nature of the tax, in terms of the tax regime applicable to them compared to the rest of motor vehicles, in general, and vehicles originating from a European country other than Romania in particular. Free movement of goods in the European Union requires in this respect an equal tax regime for already

registered vehicles in any Member State of the European Union, otherwise there would be practically a double taxation.

These taxes were found to be inconsistent with the Treaty establishing the EU, namely with art. 110 (ex art. 90 -, under which no Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products), art.28 and art.29 of the same Treaty on the free movement of goods within the EU. Moreover, the restrictions imposed by art.30 and art.34 of the Treaty establishing U.E. on taxes having an equivalent effect, and measures having equivalent effect to customs duties on imports and exports, and to quantitative restrictions on imports are likely to sanction any discrimination and protective measure, likely to contravene the European principle of free competition by discouraging imports from EU countries.

The current regulation, GEO no.9/2013 on environmental stamp for motor vehicles in conjunction with GD No. 88/2013 for approving the methodological norms for the application of the foregoing ordinance introduces a new apparent regulation of tax on pollutant emissions for vehicles registered in Romania after 2007, for which the transfer of ownership occurs.

2. National jurisprudence

The cause behind the entire national jurisprudence regarding the repayment of the amounts paid by way of first registration tax has been settled by the Court of Arad. Civil sentence no. 2563 of 7 November 2007 opened the way for admission solutions brought by natural or legal persons who had faced the abusive need to pay this tax.

The key element at the basis of the case mentioned was art.110 (ex art. 90) of the Treaty establishing the EU, which prohibited tax discrimination between imported products and those coming from the domestic market and which had a similar nature, while finding that the first registration tax on cars registered in other EU countries except Romania and re-registered in Romania. The re-registration of cars already registered in Romania, however, was not subject to tax payment.

Community principles influencing the application of the above reasoning: primacy of the Community law, the direct effect of European law (with reference to Article 110 of the Treaty establishing the EU) on domestic legal order (Calin, (2010): 90).

3. Compatibility of national legislation with EU legislation

No less than 230 million vehicles travel on European roads (Communication of the Commission to the European Parliament and the Economic and Social Council), :2). All these

are goods, means of ensuring the free movement of persons, of other goods, of services and capitals, giving substance to the European single market.

On the other hand, the taxes imposed on vehicles or on the transfer of ownership is an important budget resource for many EU Member States. A study in this regard proves that EU countries like Germany, France, Luxembourg, Sweden, United Kingdom, Czech Republic, Slovakia, Estonia and Lithuania do not charge such taxes, while the rest of the EU Member States (eighteen in number) set vehicle registration taxes, based on different criteria: price, engine capacity, year of manufacture, pollution levels etc (Lazar, 2007, : 421).

Unfortunately, very few steps have been taken at European level to harmonize legal regulations on registration taxes. Each Member State shall retain the right to set their own taxes and fees in this area, the operating principle being that of the sovereignty of EU member states in taxation field.

The only uniform regulation at European level is Council Directive 83/182/EEC on tax exemptions within the Community for certain means of transport temporarily imported from one Member State to another.

Subsequently, another legislative harmonization in the field has never been achieved. A Directive (2005/0130) remained in draft which, if it had been approved, would have been a true pioneer regarding taxation in this area in EU Member States, as it aimed at abolishing any first registration tax in all EU Member States by the end of 2015. Its provisions are reproduced in the text of the Commission's Communication to the European Parliament and the Economic and Social Council, entitled "Strengthening the single market by removing cross-border tax obstacles for cars" an act without legal force of its own.

4. The new regulation of the environmental stamp in Romania

The analysis of GEO No. 9/2013 on environmental stamp for motor vehicles established the way of calculation of the environmental stamp, taking into account a number of descriptors (the category of the vehicle expressed in terms of polluting norms, level and value of CO₂ emissions, and the type of fuel used). The rule is to pay the environmental stamp once, under the requirements detailed by art. 4.

The exceptions to the obligation to pay the environmental stamp are expressly provided and consider certain types of vehicles exempted due to a special consideration of the recipient (vehicles belonging to diplomatic missions, consular officiates and their members; specially modified vehicles for the disabled, vehicles for use by the armed forces, the state security forces, gendarmerie, border police and fire departments, those destined to ambulance services and medicine and the like); old vehicles recommend as historical or donated vehicles whose acquisition was financed through grants or programs for scientific and technical cooperation by institutions of education, health and culture, ministries, other government bodies, employers and trade unions representative at the national level, associations and foundations of public utility and so on.

The main problem we identified in the current Romanian regulation is the flagrant violation of the unique market in terms of the freedom of movement of goods. We believe that the environmental stamp is a measure having equivalent effect to restrictions on the import of used cars in other Member States of the European Union in terms of art. 28-34, not subject to any exception of those covered by art.36 of the Treaty on European Union.

Ensuring the free movement of goods is a prerequisite for the existence of the internal market. It is the first of the freedoms of movement, on which the EU was founded today. The restriction of the free movement of goods, of persons is an attack on the EU existence, on its guiding principles.

The admission of double taxation is another negative element contained in GEO regulation No. 9/2013 on environmental stamp for vehicles cars that has to be challenged. Thus, once a vehicle is registered in a EU Member State and is re-registered in Romania, it means that the Romanian State recognizes implicitly that although a registration tax was paid once, it ignores it, asking again for the payment of another registration tax, although the vehicle moves in the same unique European space which is considered without borders.

In addition, given the recent entry into force of the Treaty on Stability, Coordination and Governance in Economic and Monetary Union, with reference to art.9 of the mentioned regulation, maintaining such a stamp **is inconsistent with the objective of sustainability of public finances and increase of financial stability** in terms of the collection to the state budget of taxes / stamps inconsistent with law and subsequently of the refund based on court orders.

Analysis of art.4 letters c and d of GEO No. 9/2013 on environmental stamp for vehicles is likely to alert on other important legal issues. If art.15 of the Romanian Constitution guarantees the non-retroactivity of law, with the two express exceptions – the more favorable criminal law and contraventional law, **art. 4 of GEO No. 9/20003 provides the retroactivity of tax law**, while involving vehicles for which the court ordered restitution or registration without payment of special tax for cars and motor vehicles, of the pollution tax for motor vehicles or of the tax for pollutant emissions from motor vehicles . *Per a contrario*, if repayment of these taxes was not requested - an illegality which cannot be questioned given that the European Court of Justice ruled in this regard – the environmental stamp should no longer be paid. This gives rise to situations that defy legal logic, the principles of law and equity.

An important role is played by **the analysis of consumption types in Romania**, the vast majority of which have a low to medium level in terms of purchasing power. In these circumstances their preference for already used cars is understandable. The current regulation does not take into account the fact that, according to the general rule, owners of used vehicles do not afford to purchase a new car, less pollutant. Therefore the environmental stamp strikes like a new penalty unduly increasing the selling price of such a product, and hence the market price for a similar product.

Tabel no. 4.1.

New car registrations in the EU Member States the 2011-2012 fiscal year

| | Member States U.E. | The registrations of new cars in 2012 compared with 2011 (%) | Gross domestic product reported at purchasing power in the 2012 (100- average purchasing power in the EU Member States) |
|-----|-------------------------------|---|--|
| 1. | Austria | - 5,7 % | 129 |
| 2. | Belgium | - 14,9 % | 119 |
| 3. | Bulgaria | + 1,6 % | 46 |
| 4. | Cyprus | - 24,6 % | 94 |
| 5. | Czech | + 0,4 % | 80 |
| 6. | Denmark | + 0,4 % | 125 |
| 7. | Estonia | + 12,5 % | 67 |
| 8. | Finland | - 11,8 % | 114 |
| 9. | France | - 13,9 % | 108 |
| 10. | Germany | - 2,9 % | 121 |
| 11. | Greece | - 40,1 % | 79 |
| 12. | Hungary | + 17,6 % | 66 |
| 13. | Ireland | - 11,5 % | 129 |
| 14. | Italy | - 19,9 % | 100 |
| 15. | Latvia | - 2,9 % | 58 |
| 16. | Lithuania | - 8,0 % | 66 |
| 17. | Luxemburg | + 1,0 % | 271 |
| 18. | Malta | - | 85 |
| 19. | Holland | - 9,6 % | 131 |
| 20. | Poland | - 1,4 % | 64 |

| | | | |
|-----|---------------|----------|-----|
| 21. | Portugal | - 37,9 % | 77 |
| 22. | Great Britain | + 5,3 % | 109 |
| 23. | Slovakia | + 1,6 % | 73 |
| 24. | Slovenia | - 16,7 % | 84 |
| 25. | Spain | - 13,4 % | 98 |
| 26. | Sweden | - 8,2 % | 127 |
| 28. | Romania | - 18,7 % | 49 |

Source: Statistics Registrations of new cars in the EU, the European Automobile Manufacturers Association available at

http://www.acea.be/images/uploads/files/20130116_PRPC-FINAL-1212.pdf (accessed on 15.05.2013) and *G.P.D. Reported to purchasing power*, available at <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&plugin=1&language=en&pcode=tec00114> (accessed on 15.05.2013)

Besides the obvious purpose of creating a new budget source the idea to promote the purchase of new vehicles is meritorious. However, it is necessary to analyze new vehicle registrations in all EU Member States compared to the **purchasing power of these countries**.

We found that states that do not levy environmental taxes or stamps, or equivalent, are confronted with an increase in the number of new vehicle registrations while those Member States regulating such tax observed a negative increase in the number of new vehicle registrations. The very low level of purchasing power in Romania is an explanation for the low number of registrations of new cars. We consider that in terms of purchasing power Romania is the second lowest in the EU being exceeded only by Bulgaria. Under these conditions, the environmental stamp, as governed today, is disproportionate in relation to the purchasing power of the Romanians.

Romanian legislator is again "hampered" in an attempt to put into practice the principle 'the polluter pays'. We believe that we are facing an example of legal logic inconsistency, since it is irrational for the environmental stamp for vehicles with pollution standards of Euro 3 and Euro 4 to be higher than in case of non-Euro vehicles, Euro 1 and Euro 2, which are undoubtedly more polluting.

However, the analysis of new provisions shows a number of **positive elements**: a preference of the Romanian legislator for less polluting vehicles, taking into account CO2

emissions and compliance with the relatively new class of hybrid and electric vehicles (which are exempted from the payment of environmental stamp) the regulation of the eco-ticket from which anyone interested in buying new electric vehicles benefits (art. 15).

Conclusions

The tax system regarding the registration / re-registration of vehicles in EU Member States is heterogeneous. From this perspective, the literature emphasizes the need to restructure the taxation system (Uwe et al. (2010), : 10) and its harmonization in EU Member States

In these circumstances, observing the provisions of art.148 of the Romanian Constitution, which establish the primacy of the European law from the perspective of constituent treaties and of other binding European regulations, in relation to internal law, we believe that environmental stamp is unlawful and discriminatory.

A solution that we consider viable is the repeal of environmental stamp regulation and its integration in a way that respects the principle of neutrality in tax matters, namely its inclusion in a possible tax included in the price of fuel consumed. So, we are talking about turning the environmental stamp into a tax placed on motor vehicles. Repealing this regulation is directed towards the liberalization of trade with used vehicles and defragmentation of the European single market.

Europeanization and globalization advocate for the environmental stamp likely to stop the ongoing development of the business environment and economic growth, and for the materialization of freedom of movement of workers. Thus, double taxation corroborated with excessive taxation of European re-registration of a vehicle used in another EU Member State (Overcharge) is likely to question the effectiveness of the single market in terms of free movement of goods.

Moreover, policy directed towards the taxation of registration of a used vehicle in another EU Member State should be linked to the real purchasing power of Romanians, so that this environmental stamp respects the Romanian citizen.

So, paraphrasing Titu Maiorescu (and his article „În contra direcției de astăzi în cultura română”), we find that the current environmental stamp, namely regulation GEO No. 9/2013 on environmental stamp for vehicles are classic examples of "forms without substance", as only the apparent, the form is the one that wants to tend to legality, promoting a so-called care for the environment ... but they lack legal substance! The non-compliance of environmental stamp with the mandatory provisions of the Treaty on the Functioning of the EU, with the foundation of the single market, with the demand set by the domestic market, with Romanian consumer's purchasing power, is likely to deprive this regulation of its indispensable substance.

We are at a distance of seven years from the time when, under different names, the first registration tax, the pollution tax tried to find a place in the landscape of Romanian legislation unsuccessfully, as it was amended constantly by European and national law forums. Maiorescu's solution, to which we agree, is to give up these forms without substance, because "in time, the forms are completely discredited by the public opinion and delay even the substance ...".

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