Court of Justice of the European Union
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Press and Information

Judgment in Case C-82/12
Transportes Jordi Besora SL v Generalitat de Catalunya

The Spanish tax on retail sales of diesel and petrol is contrary to EU law

It is not appropriate to limit the temporal effects of this judgment since the Spanish Government and the Generalitat de Catalunya did not act in good faith in maintaining that tax in force for a period of more than 10 years

The Excise Duty Directive[1] concerns, inter alia, mineral oils such as petrol, diesel, heavy fuel oil and kerosene. That directive lays down the rules relating to the levying of excise duties in the EU in such a way as to prevent additional indirect taxes from improperly obstructing trade. However, the directive provides that mineral oils may be subject to indirect taxation other than the harmonised excise duty established by the directive where two conditions are both satisfied[2]. First, the tax must pursue one or more specific purposes. Secondly, that tax must comply with the tax rules applicable to excise duty or VAT so far as concerns the determination of the tax base and the calculation, chargeability and monitoring of the tax.

Relying on the option provided for in the directive, Spain established a tax on the retail sale of certain hydrocarbons (namely petrol, diesel, fuel oil and paraffin) ('the IVMDH'). That tax was intended to finance the new competences transferred to the Spanish Autonomous Communities in the field of health and also, where relevant, environmental expenditure. The IVMDH remained in force in Spain from 1 January 2002 to 1 January 2013, the date on which it was integrated into the harmonised excise duty on mineral oils.

Transportes Jordi Besora SL, a haulage company established in the Autonomous Community of Catalonia, paid, as final consumer, for the tax years 2005 to 2008, a total of €45 632.38 in respect of the IVMDH. Taking the view that the IVMDH was incompatible with the directive, that company sought a refund of the amount paid. Against that background, the Tribunal Superior de Justicia de Cataluña (High Court of Justice of Catalonia, Spain) asked the Court of Justice whether the IVMDH was compatible with the Excise Duty Directive.

In today's judgment, **the Court declares that the IVMDH is contrary to the Excise Duty Directive**.

The Court considers that such a tax does not have a specific purpose within the meaning of the Excise Duty Directive. According to the Court, to be specific a purpose must not be purely budgetary. In this case, the revenue from the IVMDH was allocated to the Autonomous Communities in order to finance the exercise by them of certain of their competences. However, the reinforcement of the autonomy of a regional or local authority through the grant of a power to generate tax income constitutes a purely budgetary objective that cannot, on its own, constitute a specific purpose. Moreover, the fact that the revenue from the IVMDH had to be allocated, in accordance with national legislation, to covering health expenditure is merely a matter of internal organisation of the budget of Spain and is, therefore, not sufficient for the tax to be regarded as

[1] Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ 1992 L 76, p. 1), as amended. Directive 92/12 has, as from 1 April 2010, been repealed and replaced by Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJ 2009 L 9, p. 12).
[2] Article 3(2) of the directive.

having a specific purpose. Otherwise, any purpose could be regarded as specific, which would deprive the harmonised excise duty established by the directive of all practical effect.

According to the Court, in order to be regarded as pursuing a specific purpose, the IVMDH would have itself to be directed at protecting health and the environment. This would, in particular, be the case if the proceeds of that tax had to be used for the purpose of reducing the social and environmental costs specifically linked to the consumption of the mineral oils on which that tax is imposed, so that there is a direct link between the use of the revenue and the purpose of the tax in question. However, the revenue from the IVMDH has to be allocated by the Autonomous Communities to health expenditure in general and not to health expenditure which is specifically linked to the consumption of the taxed hydrocarbons. Such general expenditure may be financed by the proceeds of all kinds of taxes.

Furthermore, Spanish legislation does not lay down any mechanism for the predetermined allocation of revenue from the IVMDH to environmental purposes. In those circumstances, the IVMDH could be regarded as itself directed at protecting the environment only if its structure – in particular, the taxable item or the rate of tax – were designed in such a way as to dissuade taxpayers from using hydrocarbons or to encourage the use of other products that are less harmful to the environment. That is not, however, the case here.

The Generalitat de Catalunya and the Spanish Government requested that the Court limit the temporal effects of the present judgment in the event that it should find the IVMDH to be contrary to EU law. They emphasise that the IVMDH has given rise to abundant litigation and that the obligation to refund that tax, the proceeds of which reached approximately €13 billion between 2002 and 2011, would jeopardise the financing of public health in the Autonomous Communities.

The Court points out that limiting the temporal effects of a judgment is an exceptional possibility that is available only when two criteria are fulfilled, namely, that those concerned should have acted in good faith and that there should be a risk of serious difficulties. In this case, the Court considers that it cannot be accepted that the Generalitat de Catalunya and the Spanish Government acted in good faith in maintaining the IVMDH in force for a period of more than 10 years. The Court concludes from this that it is not appropriate to limit the temporal effects of the judgment. The Court had already ruled, in 2000, on a tax with analogous features to those of the IVMDH[3]. Furthermore, in 2001, the Commission had informed the Spanish authorities that the introduction of such a tax would be contrary to EU law. Moreover, as early as 2003 (the year after the IVMDH came into force), the Commission had initiated an infringement procedure against the Kingdom of Spain concerning that tax.

The Court recalls that it is settled case-law that the financial consequences which might ensue for a Member State from a preliminary ruling do not in themselves justify limiting the temporal effects of that ruling. If it were otherwise, the most serious infringements would receive more lenient treatment inasmuch as it is those infringements that are liable to have the most significant financial implications for Member States. Furthermore, to limit the temporal effects of a judgment solely on the basis of such considerations would considerably diminish the judicial protection of the rights which taxpayers have under the fiscal legislation of the EU.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Press contact: Christopher Fretwell ☎ (+352) 4303 3355

[3] Case C-437/97 *EKW and Wein & Co*.