Court of Justice of the European Union
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Press and Information

Judgment in Case C-578/10 to C-580/10
Staatssecretaris van Financiën v L.A.C. van Putten, P. Mook and G. Frank

In the case of a cross-border short-term loan of a vehicle free of charge, a national registration tax must be calculated according to the duration of use

EU law precludes such a tax where it is charged in full and without exception on first use of the vehicle on national territory although the vehicle in question is not intended to be used essentially in that State on a permanent basis or is not, in fact, used in that way

In the Netherlands, a registration tax ('vehicle tax') is charged on cars and motorcycles when the vehicle is registered. Where those cars or motorcycles are registered in another Member State and made available free of charge to a person residing in the Netherlands, that tax is due on first use of that vehicle on the road network in the Netherlands.

Mrs van Putten and Mr Mook are both Dutch nationals resident in the Netherlands. Mrs van Putten used her father's car, registered in Belgium, on a temporary basis for private purposes and Mr Mook borrowed the car of a family member resident in Germany. Mrs Frank is German and lives in the Netherlands. She used the car of a friend who lives in Germany.

In the course of checks, officials of the Netherlands tax authority found that Mrs van Putten, Mr Mook and Mrs Frank had borrowed cars registered in other Member States and were using them on the road network in the Netherlands without having paid vehicle tax. When, in a subsequent check, they were stopped again in the same circumstances, the Netherlands tax authority levied taxes amounting to €5955 for Mrs van Putten, €1859 for Mr Mook and €6709 for Mrs Frank.

As their complaints against those decisions were dismissed by the tax authority, they brought proceedings in the courts of the Netherlands. The Hoge Raad der Nederlanden (Supreme Court of the Netherlands) before which the cases came on appeal, has asked the Court of Justice whether vehicle tax – which takes no account of the duration of the use of that vehicle on the road network in the Netherlands and is charged without the persons concerned being able to invoke any right to exemption or reimbursement – is compatible with EU law.

First of all, the Court finds that loans of a vehicle free of charge for cross-border use constitute movements of capital within the meaning of Article 56 EC.

Next, the Court recalls that taxation of motor vehicles has not been harmonised at European Union level and that the Member States are thus free to exercise their powers of taxation in that area provided that they do so in compliance with European Union law.

It follows from the Netherlands legislation that, in the case of a loan free of charge for cross-border use of a vehicle not registered in the Netherlands, the person liable for the vehicle tax is the person who actually has the vehicle at his disposal, which amounts to taxing that type of loan. On the other hand, that type of loan is not subject to that tax where the vehicle is registered in the Netherlands. The Court takes the view that this apparent difference in treatment according to the State where the loaned vehicle is registered makes cross border loans of vehicles free of charge less attractive and therefore constitutes a restriction on the free movement of capital.

Finally the Court considers whether the situation of a resident of the Netherlands who uses on the road network in the Netherlands a vehicle registered in that country and made available to him free

of charge is objectively comparable to that of a resident of the Netherlands who uses, on the same conditions, a vehicle registered in another Member State. On that point, the Court finds that, while it is true that the owners of vehicles registered in the Netherlands have already paid vehicle tax when the vehicle was entered on the vehicle register in the Netherlands, those vehicles are intended to be used essentially in that Member State on a permanent basis or are, in fact, used in that way.

It is settled case-law that a Member State may impose a registration tax on a vehicle registered in another Member State where that vehicle is intended to be used essentially in the first Member State on a permanent basis. In the present case, the persons concerned had to pay the full amount of the vehicle tax, without any account being taken of the duration of the use of the vehicles concerned and without the users of those vehicles having been able to invoke any right to exemption or reimbursement, although it is not apparent from the documents submitted to the Court that those vehicles are intended to be used essentially in the Netherlands on a permanent basis or that they are, in fact, used in that way.

It is for the Hoge Raad to assess the duration of the loans and how the loaned vehicles have in fact been used. If the vehicles which are not registered in the Netherlands are intended to be used essentially in the Netherlands or if they are, in fact, used in that way, there is not actually a difference in the treatment of a person who resides in the Netherlands and uses such a vehicle free of charge and a person who uses a vehicle registered in that Member State on the same conditions, since the latter vehicle, which is also intended to be used essentially in the Netherlands on a permanent basis, was already subject to vehicle tax on its first registration in the Netherlands. Consequently, in those circumstances, the charging of vehicle tax on first use on the road network in the Netherlands of vehicles which are not registered in the Netherlands, is justified in the same way as the tax due on the registration of the vehicle in the Netherlands is, provided that the tax takes account of the depreciation of the vehicle at the time of that first use. On the other hand, if the vehicles at issue in the main proceedings were not intended to be used essentially in the Netherlands on a permanent basis or were not, in fact, used in that way, there would be a difference in treatment and the charging of the tax concerned would not be justified.

The Court therefore rules that EU law precludes legislation of a Member State which requires residents who have borrowed a vehicle registered in another Member State from a resident of that State to pay – on first use of that vehicle on the national road network – the full amount of a tax normally due on registration, without taking account of the duration of use and without that person being able to invoke a right to exemption or reimbursement where that vehicle is neither intended to be used essentially in the first Member State on a permanent basis nor, in fact, used in that way.

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.

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Pictures of the delivery of the judgement are available from "Europe by Satellite" ☎ (+32) 2 2964106