Case C-676/21

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

9 November 2021

Referring court:

Korkein hallinto-oikeus (Finland)

Date of the decision to refer:

2 November 2021

Appellant:

A

Other party:

Veronsaajien oikeudenvalvontayksikkö

Subject matter of the main proceedings

Request for a preliminary ruling – Article 267 TFEU – Taxation of motor vehicles – Articles 28, 30, 34 to 36 and 110 TFEU – Export refund – Private vehicle – Restriction based on the duration for which a vehicle has been used – Free movement of goods – Assessment of motor vehicle tax on the basis of the duration for which a vehicle has been used in a Member State – Prohibition of discriminatory taxation

Subject matter and legal basis of the request for a preliminary ruling

In the case pending before the Korkein hallinto-oikeus (Supreme Administrative Court, Finland), which concerns motor vehicle taxation, the issue to be decided is whether the *Verohallinto* (Tax Administration) was entitled to refuse A's application for a refund of motor vehicle tax on the ground that, under Paragraph 34d(2) of the Autoverolaki (Law on motor vehicle tax), motor vehicle tax is not to be refunded in respect of a vehicle which was first brought into use at least ten years before the time of export.

The question to be examined in the proceedings is whether the fact the restriction applied to export refunds in respect of motor vehicle tax on the basis of the duration for which a vehicle has been used is incompatible with primary EU law, with the result that A should have been refunded the motor vehicle tax remaining payable on the value of the vehicle at the time of export.

Questions referred for a preliminary ruling

1. Can the provisions on the free movement of goods in Title II of Part Three of the Treaty on the Functioning of the European Union or Article 110 TFEU preclude legislation of a Member State under which, in circumstances such as those in the main proceedings, the motor vehicle tax included in the value of a vehicle within the meaning of the Autoverolaki (1482/1994) (Law on motor vehicle tax [1482/1994]) is not refunded to the owner of the vehicle where he or she exports the vehicle for use on a permanent basis in another Member State, and is it relevant in that connection whether the vehicle was intended to be used on a permanent basis primarily in the territory of the Member State which levied the motor vehicle tax and whether it was actually used on a permanent basis primarily in that territory?

2. If the intention of use of the vehicle and its actual use are relevant to the answer to the first question, how is such intention of use on a non-permanent basis and such actual use on a non-permanent basis to be demonstrated in so far as the duration for which a private vehicle is to be used in the Member State cannot be determined in advance?

3. If the refusal to grant an export refund within the meaning of the Law on motor vehicle tax constitutes a restriction on the free movement of goods in circumstances such as those in the main proceedings, can that restriction be justified by the objective of limiting the export of old vehicles which are often in poor condition and pollute the environment? Is the restriction of the export refund to vehicles less than ten years old to be regarded as being incompatible with EU law on the ground that motor vehicle tax is nevertheless levied on imported used vehicles irrespective of the duration for which they have been used?

Provisions of EU law relied on

Articles 28, 30, 34 to 36 and 110 TFEU

Case-law of the Court of Justice relied on

Judgment of 21 March 2002, *Cura Anlagen*, C-451/99, EU:C:2002:195, paragraphs 35, 40 and 71

Judgment of 23 April 2002, *Nygård*, C-234/99, EU:C:2002:244, paragraph 38

Judgment of 19 September 2002, *Tulliasiamies and Siilin*, C-101/00, EU:C:2002:505, paragraphs 61, 80 and 110

Judgment of 15 September 2005, *Commission* v *Denmark*, C-464/02, EU:C:2005:546, paragraphs 76, 78 and 79

Order of 27 June 2006, *van de Coevering*, C-242/05, EU:C:2006:430, paragraphs 27 and 29

Order of 22 May 2008, *Ilhan*, C-42/08, EU:C:2008:305, paragraphs 11 and 25

Order of 29 September 2010, *VAV-Autovermietung*, C-91/10, EU:C:2010:558, paragraphs 26, 27 and 30

Judgment of 26 April 2012, *van Putten and Others*, Joined Cases C-578/10 to C-580/10, EU:C:2012:246, paragraph 54

Judgment of 29 September 2016, *Essent Belgium*, C-492/14, EU:C:2016:732, paragraphs 101 and 104

Judgment of 19 September 2017, *Commission* v *Ireland*, C-552/15, EU:C:2017:698, paragraphs 84 and 108

Judgment of 17 December 2015, *Viamar*, C-402/14, EU:C:2015:830, paragraph 46

Provisions of national law relied on

Levying of motor vehicle tax on a used vehicle imported from another Member State

According to Paragraph 1(1) of the Law on motor vehicle tax, motor vehicle tax on, inter alia, passenger cars (category M_1) must be paid to the State before they are registered in the Motor Vehicle Register (‘the Register’) or brought into use in Finland, in accordance with the provisions of this Law.

According to Paragraph 4(1) of the Law on motor vehicle tax, the person who is entered in the register as the owner of the vehicle is liable to pay the motor vehicle tax.

According to subparagraph (5) of that provision, in the case where a vehicle is brought into use without having been registered, the person who brought it into use is liable to pay the tax. If the person who brought the vehicle into use cannot be identified or the tax cannot be collected from him or her, the owner of the vehicle brought into use is liable to pay the tax.

According to Paragraph 8a of the Law on motor vehicle tax, the motor vehicle tax on a vehicle taxed as a used vehicle in Finland is to correspond to the lowest

amount of motor vehicle tax remaining payable on a vehicle registered in Finland and considered to be equivalent.

According to Paragraph 11e(1) of the Law on motor vehicle tax, when determining the general retail value of a vehicle in Finland, account shall be taken of the available evidence regarding the factors determining the retail value of the vehicle in the motor vehicle trade, and regarding the value of the vehicle and the characteristics of the vehicle that affect its value, such as the make, model, type, drive system and equipment of the vehicle. In addition, the age, mileage and condition of the vehicle and other individual characteristics may be taken into account.

According to Paragraph 11d of the Law on motor vehicle tax, vehicles can be regarded as being equivalent if they are identical in terms of make, model and equipment. Where vehicles type-approved in different countries are compared, the vehicles must be technically equivalent from a factual perspective, in addition to the documented information.

Refund of motor vehicle tax upon export

According to Paragraph 34d(1) of the Law on motor vehicle tax, motor vehicle tax is refunded on application where a vehicle taxed in Finland is exported for use on a permanent basis in a country other than Finland (export refund).

According to subparagraph 2 of that same provision, the amount of tax that would be levied on an equivalent vehicle if it were taxed as a used vehicle at the time when it is exported from Finland is to be refunded. The tax refunded is not to exceed that which has been paid on the vehicle. Moreover, tax is not to be refunded in so far as the value of the vehicle or the tax payable on the vehicle has increased due to modifications or improvements in the equipment after taxation. The tax is also not to be refunded where the amount to be refunded would be less than EUR 500. Furthermore, tax is not to be refunded in respect of a vehicle which was first brought into use at least ten years before the time of export. The refund is conditional on the vehicle being in a roadworthy condition at the end of its use in Finland. It is also conditional on the vehicle having been taken out of use in Finland.

In the *travaux préparatoires* for the law by which the export refund system has been regulated, it is stated, inter alia, that it is proposed to insert in the Law on motor vehicle tax a provision that would allow for a refund of the motor vehicle tax remaining payable on the value of the vehicle when a used vehicle is exported for use on a permanent basis. The proposed amendment is necessary due to requirements under Community law, in so far as vehicles leased from another Member State for a fixed period of time are concerned. The refund of the motor vehicle tax remaining payable on the value of the vehicle when the leasing contract ends and the vehicle is returned for use in another Member State takes into account the duration of the leasing contract and the duration for which the

vehicle has been used in Finland. It can therefore be assumed that the refund system complies with the abovementioned requirements of Community law.

For passenger cars, the proposal would be in line with the motor vehicle tax refund system which was proposed by the Commission in its proposal for a directive (COM(2005) 261 final) and was intended to prevent double taxation of vehicles in different Member States.

The portion of tax to be refunded would be that remaining in the value of the vehicle at the time of export. If a higher amount of tax were refunded, this would constitute export aid prohibited under Community law. The granting of the refund requires that both the value of the vehicle and the portion of tax contained in the value be established. For reasons pertaining to Community law and administrative aspects, it is appropriate to apply to the determination of the value the same rules and methods as those for determining the value of imported used vehicles. This would ensure that the determination of the value of used vehicles upon import and that upon export would be mirror images of each other. Therefore, it is proposed that the value of the vehicle be based on the general retail value of the vehicle in the vehicle trade, as defined in the Law on motor vehicle tax. This is also justified in terms of equal treatment of the recipients of the refund.

It is also proposed that the export refund be limited to cases where the portion of motor vehicle tax remaining in the value of the vehicle exceeds a certain limit. It is proposed in the draft law that tax is not to be refunded if the amount to be refunded is less than EUR 1 000. The refund would also be conditional on no more than ten years having elapsed since the vehicle was first brought into use. In addition, the vehicle must be roadworthy. By its nature, motor vehicle tax is not a tax linked to the duration of use, but rather is based on the point at which a vehicle is brought into use and registered. The tax is not refunded if the use of the vehicle in the national territory comes to an end before the expiry of its expected useful life, for example because it has been destroyed. Therefore, it would also not be logical to grant a refund in the case of a low-value vehicle which is to be exported or a vehicle which is to be exported for scrapping. Furthermore, there would be no environmental justification for encouraging the export of older vehicles, because the problems associated with them would merely be transferred from one country to another.

Furthermore, the refund would be conditional on the vehicle being in a roadworthy condition at the end of its use in Finland and being registered for use on the road in a country other than Finland. By contrast, it would not be necessary for motor vehicle tax to have been paid in connection with the registration in another country. Roadworthiness could be demonstrated, for example, by the fact that the vehicle has successfully undergone technical inspections.

Succinct presentation of the facts and procedure in the main proceedings

1 On 20 July 2015, A imported a used BMW B3 Alpina passenger car into Finland from another Member State. The vehicle was first brought into use on 24 November 2004.

2 By motor vehicle tax assessment notice dated 5 October 2015, the tax administration levied motor vehicle tax of EUR 4 146.29 on the vehicle. The motor vehicle tax was determined on the basis of the taxable value established for the vehicle, in the amount of EUR 16 519.10, and a tax rate of 25.10%.

3 A sold the vehicle to a party in another Member State and applied to the tax administration for a motor vehicle tax refund on 7 August 2017. The vehicle was taken out of use in Finland on 21 August 2017.

4 By decision of 21 August 2017, the tax administration refused A's application for a motor vehicle tax refund. The decision was justified on the ground that, under Paragraph 34d(2) of the Law on motor vehicle tax, motor vehicle tax is not to be refunded in respect of a vehicle which was first brought into use at least ten years before the time of export.

5 A lodged an objection to the decision on the export refund in respect of motor vehicle tax. In the grounds for his objection, A asserted, inter alia, that the refusal to grant export refunds in the case of vehicles more than ten years old was discriminatory and contrary to the Treaty of Accession to the European Union.

6 By decision of 1 February 2018, the tax administration rejected A's objection. According to the grounds for the decision, A had not presented any ground under EU law on the basis of which export refunds must be paid in respect of his vehicle. No facts showing that the motor vehicle taxation imposed was discriminatory or contrary to EU law or the case-law of the EU Courts had been presented or had arisen in the case.

7 A brought an action against that decision before the Helsingin hallinto-oikeus (Administrative Court, Helsinki, Finland).

8 That court dismissed A's action by judgment of 6 March 2019 on the ground that A was not entitled to a refund of the motor vehicle tax. In its judgment, it stated that the provisions on export refunds in respect of motor vehicle tax and the applicable time limits apply in a uniform manner to all taxpayers and that the time limit for export refunds in respect of motor vehicle tax cannot therefore be regarded as an infringement of EU law.

9 A has challenged the judgment of the Administrative Court before the Korkein hallinto-oikeus (Supreme Administrative Court, Finland) and seeks, inter alia, a refund of the motor vehicle tax.

The essential arguments of the parties in the main proceedings

10 In his appeal before the Supreme Administrative Court, A has submitted that, in the context of the import and export of vehicles, taxation and refunds should be mirror images of each other, irrespective of the age of the vehicle. According to A, motor vehicle tax is levied on imported vehicles that are more than ten years old, as was the case with A's vehicle at issue in 2015. If no export refund in respect of motor vehicle tax is paid for vehicles which are more than ten years old, motor vehicle tax should not be levied on corresponding imported used vehicles either.

11 A takes the view that motor vehicle tax remained payable on his vehicle at the time of its export in 2017. Moreover, the vehicle was not of low value or due to be scrapped.

12 He submits that the refusal to grant export refunds in the case of vehicles over ten years old was discriminatory and contrary to EU law. The approach applied restricts trade and the free movement of goods between Member States.

13 The Veronsaajien oikeudenvalvontayksikkö (Tax Recipients' Legal Services Unit) argued before the Supreme Administrative Court that the principle of non-discrimination in EU law does not prevent the national legislature from laying down age-related rules for goods. It submits that the principle of non-discrimination is not intended to ensure that vehicles of different ages are treated equally for tax purposes or by the legislature. The age limit applicable to export refunds does not infringe the principle of proportionality.

14 The non-refund of motor vehicle tax is also not prohibited by the provisions on the free movement of goods or the provisions on customs duties and charges having equivalent effect, since it does not concern taxation in a cross-border situation.

15 EU law does not contain any legal principle requiring the national legislature to ensure that a non-harmonised national tax or charge is refunded when goods are sold to another Member State. Finland was therefore able to exclude from the export refund vehicles which had been registered more than ten years previously and on which motor vehicle tax had been paid, without any provisions of primary law precluding such an approach.

Succinct presentation of the reasoning in the request for a preliminary ruling

Questions referred

16 It follows from the abovementioned case-law of the Court on leased, hired, loaned and service vehicles that, without prejudice to the Treaties establishing the European Union, a Member State may levy motor vehicle tax on such a vehicle registered in another Member State without the amount of the tax having to be made proportionate to the duration for which the vehicle has been used in that

Member State, where the vehicle is intended to be used on a permanent basis principally in that Member State or is in fact used on a permanent basis there. Although the tax liability in those circumstances constitutes a restriction of a fundamental freedom, that restriction can be justified by the need for equal treatment of taxable persons.

17 By contrast, in cases where imported leased, hired, loaned or service vehicles are not intended to be used principally in the Member State concerned on a permanent basis or are not in fact used principally in that Member State on a permanent basis, the restriction on the fundamental freedom must be justified by another circumstance arising from the obligation to pay motor vehicle tax. In such cases, the principle of proportionality also requires that the amount of motor vehicle tax be made proportionate to the duration for which the vehicle has been used in the Member State concerned.

18 The abovementioned case-law of the Court does not contain any requirements concerning the duration for which the vehicle has been used.

19 In the present case, A acquired a used vehicle in another Member State of the European Union, which he brought to Finland and registered for use on the road in that country. After using the vehicle in Finland for approximately three years, he sold it to a party in another Member State. In connection with the registration, A was charged the full amount of motor vehicle tax on the vehicle without the purpose of use of the vehicle being determined first, as that circumstance was not relevant for the purposes of applying the Law on motor vehicle tax. Furthermore, the amount of motor vehicle tax levied upon export of the vehicle was not made proportionate to the duration for which it had in fact been used in Finland, since, under the Law on motor vehicle tax, motor vehicle tax is not refunded in respect of vehicles that are over ten years old at the time of export.

20 The Supreme Administrative Court takes the view that the case-law of the Court to date does not provide an answer to the question as to whether the principles outlined above in paragraphs 16 to 18 are also applicable in the case of a private vehicle which ceases to be used in the territory of a Member State because it is exported to another Member State for use on a permanent basis, and whether, in that case also, the amount of motor vehicle tax must be made proportionate to the duration for which the vehicle has been used in the Member State concerned, where the vehicle was not intended to be used principally in the Member State concerned on a permanent basis or was not in fact used principally in that Member State on a permanent basis.

21 Although the subject matter of the main proceedings concerns the question as to whether the limitation to a 10-year duration of use as provided for in the Law on motor vehicle tax in relation to export refunds in respect of motor vehicle tax is compatible with EU law, the Supreme Administrative Court takes the view that this case raises, to a wider extent, the fundamental question as to the levying of

motor vehicle tax and its proportionality, in particular in the light of the Court's case-law to date on vehicle taxation.

First question referred

22 In the case-law of the Court to date, the possibility for a Member State to levy taxes such as motor vehicle tax has been assessed in the light of the provisions of the founding Treaties on the freedom of movement of workers, the freedom to provide services and the free movement of capital.

23 In order for the question concerning private vehicles described above to be relevant in the first place, the Supreme Administrative Court states that it is first necessary to identify the provision or provisions of the Treaty which are relevant to the assessment of the possibilities for a Member State to exercise its fiscal sovereignty in respect of vehicles imported or exported as private vehicles.

24 Thus, the Supreme Administrative Court first asks whether the provisions on the free movement of goods in Title II of Part Three of the TFEU may preclude legislation of a Member State under which the motor vehicle tax payable on the value of a private vehicle is not made proportionate to the duration for which the vehicle has been used in the Member State concerned by means of a tax refund where the vehicle is exported in order to be used on a permanent basis in another Member State.

25 In its judgment in *Viamar*, the Court stated that Article 30 TFEU must be interpreted as precluding a practice by a Member State by which the registration tax collected upon import of motor vehicles originating from other Member States is not refunded when the vehicles concerned are re-exported to another Member State. However, unlike the present case, that dispute concerned vehicles that had never been registered for use on the road in the Member State concerned before being exported to another Member State.

26 The Supreme Administrative Court also refers to the Commission's Proposal for a Council Directive on passenger car related taxes (COM[/2005/]0261 final), which had as one of its objectives the improvement of the functioning of the internal market and which contained provisions for a refund system for registration tax in cases where registration tax has been paid in a Member State in respect of a passenger car which has subsequently been exported from the Union or brought into the territory of another Member State in order to be used on a permanent basis. The following is stated in the Explanatory Memorandum to the proposal (emphasis added):

'*Diverging passenger car related taxes can result in serious obstacles <u>for the free movement of</u> persons and <u>goods</u>.*

(…)

The Internal Market is intended to benefit the free movement of persons as well as the free movement of goods for personal and for commercial purposes. [Registration taxes] create obstacles to these freedoms.'

27 The Commission has since also addressed that issue in its Communication to the European Parliament, the Council and the European Economic and Social Committee – Strengthening the Single Market by removing cross-border tax obstacles for passenger cars (COM[/2012/]0756 final).

28 According to the understanding of the Supreme Administrative Court, it might be argued that the levying of motor vehicle tax without making the amount of the tax proportionate to the duration for which a vehicle has been used in a Member State is liable to restrict trade in used vehicles in the internal market, since, as a component included in its value, it affects the resale price of the vehicle. In the *travaux préparatoires* for the Law on motor vehicle tax, the restriction to be applied to export refunds in respect of motor vehicle tax on the basis of the duration for which a vehicle has been used was also expressly justified by the objective of limiting the export of older vehicles. The Supreme Administrative Court also states that, under Paragraph 34d of the Law on motor vehicle tax, the export refund in respect of vehicle tax is based on the fact that a vehicle taxed in Finland is exported for use on a permanent basis outside Finland – and not, for example, on the fact that the vehicle ceases to be used on the road in Finland.

29 On the other hand, it is stated in the case-law of the Court, in its judgment in *Tulliasiamies and Siilin*, that the motor vehicle tax provided for in the Finnish Law on motor vehicle tax is to be regarded as part of the general system of internal taxation payable on goods and must therefore be assessed in the light of Article 110 TFEU. In the light of that, and in view of the fact that, in accordance with the case-law, the same tax or charge cannot, according to the scheme of the Treaty establishing the European Union, be considered to be covered by both the concept of 'internal taxation' within the meaning of Article 110 TFEU and the concept of 'charges having equivalent effect' within the meaning of Articles 28 and 30 TFEU, the motor vehicle tax levied in Finland is not a charge having equivalent effect within the meaning of Articles 28 and 30 TFEU. For that reason, it might therefore also be argued that the compatibility of the non-refund of the motor vehicle tax with the Treaties establishing the European Union must be assessed against Article 110 TFEU and not against the provisions on the free movement of goods in Title II of Part Three of the TFEU.

30 With regard to Article 110 TFEU, the Supreme Administrative Court also states that, although the age limit for export refunds in respect of vehicle tax contained in the Finnish Law on motor vehicle tax formally applies to all vehicles that are over ten years old, irrespective of whether the vehicles were first registered in Finland or whether they were imported as used vehicles, it might be argued that the actual effects of the restriction concern vehicles which were not first registered in Finland. This is because, in the case where a vehicle first registered in Finland and used on the road in that country for ten years is sold to another Member State,

this undoubtedly constitutes a case of use on a permanent basis in Finland and therefore a situation in which motor vehicle tax can be levied in full in any event. From that point of view, it might therefore be assumed that the non-refund of motor vehicle tax is at least indirectly discriminatory vis-à-vis used vehicles imported from other Member States.

31 The Supreme Administrative Court takes the view that the above considerations would appear to support the interpretation that provisions of Member States on registration taxes, such as motor vehicle tax, may in certain circumstances be incompatible with the provisions on the free movement of goods in Title II of Part Three of the TFEU or with Article 110 TFEU where the motor vehicle tax payable on the value of the vehicle is not refunded to the owner of the vehicle when the vehicle is exported for use on a permanent basis in another Member State.

32 On the other hand, it might also be assumed on the basis of the case-law of the Court that the non-refund of motor vehicle tax in circumstances such as those in the present case is not incompatible with the provisions of Title II of Part Three of the TFEU or with Article 110 TFEU, at least not solely on the ground that the non-refund of the tax could lead to double taxation of the vehicle.

33 In its judgment in *Nygård*, the Court held that ‘as it stands at present, Community law does not contain any provision designed to prohibit the effects of double taxation occurring in the case of charges, such as that in issue in the main proceedings, which are governed by independent national legislation, and, while the elimination of such effects is desirable in the interests of the free movement of goods, it may nonetheless result only from the harmonisation of national systems …’.

34 That statement can be understood to mean that, as EU law stands at present, the negative effects of taxes levied on vehicles, such as motor vehicle tax, on the free movement of goods can be eliminated only by adopting measures to harmonise the laws of the Member States, as provided for in Article 113 TFEU. It was precisely for that purpose that the Commission submitted the abovementioned Proposal for a Council Directive on passenger car related taxes, which, however, was not adopted by the Council.

35 However, taking into account, inter alia, the case-law of the Court on leased, hired, loaned and service vehicles and the abovementioned judgment in *Viamar*, in which the refusal to refund registration tax, such as motor vehicle tax, was considered to be a charge having equivalent effect to a customs duty within the meaning of Article 30 TFEU, the Supreme Administrative Court takes the view that it cannot be ruled out that that provision or other provisions concerning the free movement of goods or Article 110 TFEU also apply to situations such as that in the present case.

36 In that context, the Supreme Administrative Court takes the view that it must also be considered whether, in the case of private vehicles, it can be assumed at all that

such a vehicle is not intended to be used primarily in the territory of a particular Member State on a permanent basis within the meaning of the case-law of the Court and is not in fact used on a permanent basis there.

37 On the one hand, it might be argued that a private vehicle imported from another Member State is, in principle, always intended to be used primarily in the importing Member State on a permanent basis. In that case, it might be assumed that the ownership of the vehicle at least gives rise to the presumption that the vehicle is intended to be used primarily in the Member State concerned on a permanent basis. Moreover, a private vehicle imported from another Member State no longer has a link with another Member State, as is the case, for example, with a vehicle hired or borrowed from a party in another Member State.

38 On the other hand, it might be argued that a presumption of intention to use a private vehicle on a permanent basis and of actual use of that vehicle on a permanent basis, as described above, leads to different treatment of the arrangements on which the possession and use of a vehicle may be based, depending solely on the legal form of the possession and use of a vehicle. This is because it is conceivable that, as in the case of leased, hired, loaned and service vehicles, a private vehicle may be intended for use on a non-permanent basis in the territory of another Member State, or that a private vehicle has not in fact been used on a permanent basis in the territory of a Member State. A private vehicle may also be imported with the intention to use it for a very short period of time or may in fact be used in the territory of the country concerned for only a very short period of time. In such cases, the levying of motor vehicle tax without taking into account the duration for which the vehicle has been used in the Member State concerned may be disproportionate.

39 Since it is unclear from the case-law of the Court to date whether the provisions of the Treaty establishing the European Union on the free movement of goods or Article 110 TFEU may, in the light of the foregoing, restrict the possibility for a Member State to levy registration taxes such as motor vehicle tax in the present context, the first question is referred for a preliminary ruling.

Second question referred

40 Unlike, for example, in the case of hired and leased vehicles, it is often not possible in the case of private vehicles to provide objectively verifiable evidence of the intention to use the vehicle on a temporary basis or of actual use on a temporary basis in advance. Therefore, the Supreme Administrative Court concludes that the duration for which the private vehicle has been used and the actual nature of its use must be assessed retrospectively on the basis of the actual duration for which the vehicle has been used and other relevant considerations.

Third question referred

41 If it is considered that the provisions on the free movement of goods in Title II of Part Three of the TFEU preclude, in principle, legislation of a Member State under which the portion of motor vehicle tax payable on the value of a vehicle is not to be refunded to the owner of a vehicle when he or she exports a vehicle which was not intended to be used primarily in the territory of the first Member State on a permanent basis, and which was not in fact used primarily in that Member State on a permanent basis, for use on a permanent basis in another Member State, the question arises as to whether the restriction in question can be justified on the ground that it is intended to limit the export of older vehicles.

42 In the explanatory memorandum to the Law on motor vehicle tax, the restriction of export refunds in respect of motor vehicle tax to vehicles that are less than ten years old was justified with the aim of '[limiting] the often environmentally harmful export of older vehicles or vehicles due to be scrapped'.

43 According to settled case-law of the Court, national measures that are capable of hindering intra-EU trade may inter alia be justified by overriding requirements relating to protection of the environment. However, such measures must be appropriate for ensuring attainment of the objective pursued and must comply with the principle of proportionality.

44 In the present case, it must therefore be assessed, first, whether the restriction of export refunds in respect of the motor vehicle tax to vehicles which were brought into use less than ten years before the time of export is a reasonable measure for achieving the abovementioned objective of environmental protection and, second, whether that measure complies with the principle of proportionality. The principle of proportionality requires that, in order for the measure to be justified, the objective cannot be attained without the restriction in question.

45 The Supreme Administrative Court states that the restriction of the export refund to vehicles registered less than ten years ago does not mean that, in practice, the refusal of the refund exclusively affects vehicles that are harmful from an environmental point of view, as also stated in the abovementioned explanatory memorandum to the Law on motor vehicle tax.

46 Second, the explanatory memorandum to the Law on motor vehicle tax does not explain why the objective relating to the export of older vehicles or vehicles due to be scrapped cannot be attained by another measure less restrictive of the free movement of goods, for example by refusing the refund in the case of vehicles that have been found to be actually harmful to the environment.

47 The Supreme Administrative Court also states that motor tax is levied on vehicles imported into Finland irrespective of when they were first registered in another Member State. The restriction on export refunds on the basis of the duration for which the vehicle has been used therefore has the effect that the taxation of

imported vehicles differs solely on the basis of the age at which the vehicle is used on the road in Finland.