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Car tax: European Commission asks France for information on “malus tax”

The Commission has formally requested France to provide information on the “malus tax” due when cars are registered in France for the first time. According to the Commission, the method of calculating the flat-rate depreciation on second-hand vehicles brought into France from another Member State may constitute discrimination against such vehicles. The Commission does not object to the “malus tax” as applied to new vehicles, nor to its intended purpose. The request was made by letter of formal notice, which is the first step in the infringement procedure provided for in Article 226 of the EC Treaty. If the Commission does not receive a satisfactory response from France within two months, it may proceed with the second stage of the procedure (a reasoned opinion) and ultimately bring the case before the Court of Justice to have the provision objected to amended.

The Commission supports initiatives that help to protect the environment. However, such developments must be in compliance with the relevant Community provisions, in particular the principle of non-discrimination against products from the other Member States (Article 90 of the EC Treaty).

France has adopted legislation introducing a “malus tax”, due when the most highly polluting passenger cars are registered in France for the first time.

The Commission does not object to this scheme as applied to new vehicles, nor to its intended purpose. However, it does object to one of the provisions in the legislation and is requesting France to adapt it in line with the reasoning set out below.

The Commission takes the view that the method used by France to take account of the depreciation on second-hand vehicles which are brought into France from another Member State and are subject to this tax (a 10% reduction in the tax for each year following initial registration) may discriminate against such vehicles and does not comply with Article 90 of the EC Treaty.

This is because, according to the Commission, a flat-rate linear depreciation of 10% per year does not reflect the actual depreciation incurred, particularly over the first few years. In addition, applying one single criterion (and disregarding other criteria, such as mileage) does not enable account to be taken of above-average use, which would lead to greater-than-usual depreciation. Lastly, France has made no provision for people to challenge the application of this flat-rate method of calculation by referring to the actual depreciation on the vehicle as evidenced by an expert report, for example.

The European Court of Justice (ECJ) has consistently held that Member States are not prohibited from levying a tax on the registration of second-hand cars from the other



Member States, provided that the tax is in compliance with Article 90 of the EC Treaty (principle of non-discrimination).

The Court has also ruled that registration tax paid on a new vehicle forms a part of its market value and that Member States must take the actual depreciation on the car into account when calculating such tax on second-hand vehicles brought in from another Member State.

Lastly, the Court has held that the direct effect of Article 90 implies that private individuals may challenge the compatibility of national rules laying down the taxation criteria. Such a possibility is in any event subject to the condition that the criterion or criteria on the basis of which the scale is calculated are brought to the knowledge of the public.

The Commission's case reference number is 2008/4221.

The Commission points out that the objective of infringement proceedings under Article 226 of the EC Treaty is to have national provisions not complying with Community law amended for the future. Where taxpayers wish to obtain reimbursement of taxes levied in contravention of Community law, they must enforce their rights before the competent national courts, as appropriate.

For information on EU activities in the field of car taxation see:

http://ec.europa.eu/taxation_customs/taxation/other_taxes/passenger_car/index_en.htm

For the press releases issued on infringement procedures in the field of taxation or customs see:

http://ec.europa.eu/taxation_customs/common/infringements/infringement_cases/index_en.htm

For the latest general information on infringement measures against Member States see:

http://ec.europa.eu/community_law/index_en.htm

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