



## Frequently asked questions on: Passenger car taxation

Free movement of goods, services, persons and capital are the fundamental freedoms underlying the European Union. In this context the European Commission has been working with Member States to dismantle any barriers impeding completion of the Internal Market and leading to serious inconveniences for cross-border movements which at times have also financial implications.

In case of VAT a great degree of harmonization has been achieved at the EU level. New motor vehicles are subject to VAT only in the Member State of destination and thus any double taxation is precluded.

However, non-harmonized passenger car related taxes remain great obstacles, which clearly necessitate a common action. This need has been long recognized by the European Commission. Whilst proposals for European legislation have been tabled before the Member States, the requirement of the unanimous vote in the Council obstructs any progress. Nevertheless, the Commission remains hopeful that Member States will at some point agree on harmonising measures which would facilitate the life of citizens who are moving within the EU.

Despite the absence of detailed rules, the European Court of Justice has taken up defending the common market values on the basis of the Treaty on the Functioning of the European Union (TFEU) (Consolidated version (Official Journal C 115 of 9 May 2008)) provisions, in particular Articles 45, 49, 56 and 110 TFEU. There is a vast Court case-law regarding **discriminatory taxation of used cars coming from other Member States** within the meaning of Article 110 TFEU. The Court has also ruled on the compliance of passenger car related taxes with freedom of movement of services, in particular in relation to taxation of **cars leased** in other Member States. Finally, there are judgements enforcing the rights of free movement of establishment and workers, which, under certain conditions, forbid Member States to require registration and taxation of **company cars** already registered in the company's Member State of establishment. Consequently, below are provided the most frequently asked questions together with concise answers based on the Court of Justice's case-law. These answers are based on the general principles of EU law, and thus in certain instances, given particular circumstances, the answers might differ.

1. [Can Member States levy car registration or pollution taxes, annual circulation or other taxes related to the use of motor vehicles within their territory?](#)
2. [Are Member States obliged to refund the residual tax when a car is taken out of the country?](#)
3. [Is it contrary to EU law if car taxation results in double taxation, i.e. when car registration or pollution tax has already been paid in another Member State?](#)
4. [Can the European Commission demand that Member States repeal such taxes?](#)
5. [Can Member States impose extremely high car registration taxes?](#)

6. [Can car registration taxes be considered as customs duties and thus be contrary to Articles 28-30 TFEU as they obstruct the free movement of goods within the Community?](#)
7. [When do car registration taxes, which are one-off taxes, discriminate against used cars coming from other Member States and thus conflict with Article 110 TFEU?](#)
8. [Can Member States be obliged to replace the car registration taxes with annual circulation tax?](#)
9. [Must Member State reimburse taxes collected in breach of EU law?](#)
10. [What procedure must the concerned parties follow in order to recover the taxes paid in breach of EU law?](#)
11. [Is there discrimination in terms of Article 110 TFEU if certain motor vehicles registered under a tax system previously in force were taxed more favourably or not taxed at all than the cars subject to a new system of taxation?](#)
12. [Can different tax rates be applicable to motor vehicles on the basis of their technical characteristics and environmental classification?](#)
13. [Do I have to register my motor vehicle in the Member State of my residence?](#)
14. [Am I supposed to drive my car myself during a visit in another Member State?](#)
15. [If my company is established in another Member State and it provides me with a company car, which I use in my Member State of residence, must it be registered in the latter Member State?](#)
16. [Am I obliged to pay the full amount of a car registration/pollution tax on a motor vehicle leased in another Member State?](#)
17. [Do car registration taxes give rise to "border crossing formalities" in the sense of Article 3\(3\) of 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 \(the Excise duty directive\), and are they consequently prohibited?](#)
18. [Can a Member State immobilise my motor vehicle if I have failed to pay the tax?](#)

**1. Can Member States levy car registration or pollution taxes, annual circulation or other taxes related to the use of motor vehicles within their territory?**

Yes.

There is no EU rule which prohibits the imposition of such taxes. This means that car taxation policy decisions fall within the discretion of Member States, who may unilaterally choose the level at which they wish to levy any taxes relating to motor vehicles' registration or use, or indeed whether they wish to do so at all.

Some Member States apply an exemption to motor cars which have been owned for a certain period of time by persons transferring their residence. These measures are discretionary and do not fall within the scope of EU law.

**2. Are Member States obliged to refund the residual tax when a car is taken out of the country?**

No.

No such obligation exists under EU law, although again certain Member States grant reimbursement on their own initiative.

**3. Is it contrary to EU law if car taxation results in double taxation, i.e. when car registration or pollution tax has already been paid in another Member State?**

No.

It may happen that the same car is taxed in several Member States following a series of changes of residence. However, in the absence of harmonisation at the Community level there are no common rules to deal with such situations; hence double taxation of car registration or pollution taxes on motor vehicles is not, as such, contrary to EU law. (See the EC Court of Justice's judgment in C-365/02, *Lindfors*)

**4. Can the European Commission demand that Member States repeal such taxes?**

No.

There is no EU rule on the basis of which the Commission can compel Member States to do such a thing.

**5. Can Member States impose extremely high car registration taxes?**

Yes.

There are no EU rules that regulate the level of car taxation. According to the Court of Justice, Article 110 TFEU does not serve to censure excessive tax levels and thus Member States can set the tax rates at the level they see fit (*C-47/88, Commission vs Denmark*).

**6. Can car registration taxes be considered as customs duties and thus be contrary to Articles 28-30 TFEU as they obstruct the free movement of goods within the Community?**

No.

Such charges may not be characterised as customs duties within the meaning of Articles 28-30 TFEU when they are applied systematically to both domestic and imported products. Such taxes may be

considered contrary to Articles 28-30 TFEU only if they produce the effect where the trade in the motor vehicles completely ceases or becomes insignificant (C-383/01, *Commission vs Denmark*).

**7. When do car registration taxes, which are one-off taxes, discriminate against used cars coming from other Member States and thus conflict with Article 110 TFEU?**

According to the settled case-law the Court of Justice, when tax is charged in relation to a motor vehicle's registration in that territory, and is hence applicable to both used and new motor vehicles, the amount of tax levied on a used motor vehicle must not exceed the residual tax in the value of a similar car registered on the domestic market as new.

This means that the tax which was paid in a particular Member State on a similar car when it was new must be reduced by the percentage of depreciation that car has undergone on that domestic market.

To establish this depreciation, certain Member States use fixed scales, which must respect this principle.

**8. Can Member States be obliged to replace the car registration taxes with annual circulation tax?**

No.

This is a tax policy decision of national governments who are free to choose which taxes on motor vehicles they wish to impose for budgetary, environmental or other reasons.

However, the latest Commission proposal suggested the introduction of such an obligation (see COM/2005/261/FINAL).

**9. Must Member State reimburse taxes collected in breach of EU law?**

Yes.

Article 110 TFEU has a direct effect; therefore, concerned persons may rely on it before the national judicial bodies.

**10. What procedure must the concerned parties follow in order to recover the taxes paid in breach of EU law?**

They must file their claim for reimbursement in accordance with the national procedural rules laid down for this purpose.

At the present there is no coherent set of substantive or procedural EU rules governing remedies for the enforcement of EU law. This means that the rights of the persons concerned which derive from EU law are safeguarded and enforced according to the procedures established by the national law. Such national rules must be equivalent to the rules governing similar domestic actions and they must be effective, i.e. they should not render the exercise of *EU law virtually impossible or excessively difficult* (Case 33-76, *Rewe-Zentralfinanz*).

**11. Is there discrimination in terms of Article 110 TFEU if certain motor vehicles registered under a tax system previously in force were taxed more favourably or not taxed at all than the cars subject to a new system of taxation?**

Article 110 TFEU is not designed to prevent Member States from introducing new taxes or from changing the rate or basis of assessment of existing taxes. However, although Member States have the power to make new tax arrangements, such powers are not unlimited. In this respect Article 110 TFEU would be deprived of meaning and purpose if Member States could introduce new taxes which had the purpose or the effect of discouraging the sale of imported products in favour of the sale of similar domestic products available on the domestic market which have been placed on the market before those taxes entered into force.

**12. Can different tax rates be applicable to motor vehicles on the basis of their technical characteristics and environmental classification?**

Yes.

Member States are not precluded, in principle, from introducing differential taxation on the basis of objective criteria in pursuit of policies compatible with the requirements of Community law. The tax system certainly must not discriminate against goods coming from other Member States.

**13. Do I have to register my motor vehicle in the Member State of my residence?**

Yes. There are harmonised provisions laying down the definition of Member State of residence in Council Directive 83/182/EEC of 28 March 1983 on tax exemptions within the EU for certain means of transport temporarily imported into one Member State from another.

As a general rule, the Member State of residence is the place where a person usually lives, that is for at least 185 days in each calendar year, because of personal and occupational ties, or, in the case of a person with no occupational ties because of personal ties which show close links between that person and the place where he is living. However, the normal residence of a person whose occupational ties are in a different place from his personal ties and who consequently lives in different places situated in two or more Member States shall be regarded as being the place of his personal ties, provided that such person returns there regularly. This last condition needs not be met where the person is living in a Member State in order to carry out a task of a definite duration. Attendance at a university or school shall not imply transfer of normal residence.

Proof of the place of normal residence can be given by any appropriate means, such as an identity card or any other valid document.

**14. Am I supposed to drive my car myself during a visit in another Member State?**

If a vehicle is not intended to be used essentially in a Member State on a permanent basis, or is not, in fact, used in that way, the charging of a registration tax would not be justified and the use of that vehicle should be exempted from such tax.

**15. If my company is established in another Member State and it provides me with a company car, which I use in my Member State of residence, must it be registered in the latter Member State?**

Only in case it is essentially used on a permanent basis in the Member State where you reside. In this regard it should also be noted that the obligation to register is not justified purely by the fact that the self-employed worker may additionally use the company vehicle for private purposes.

**16. Am I obliged to pay the full amount of a car registration/pollution tax on a motor vehicle leased in another Member State?**

No. The tax amount must be reduced in proportion to the duration of the lease contract, i.e. to the use of the car in the Member State of your residence. (C-451/99, *Cura Anlagen*)

**17. Do car registration taxes give rise to "border crossing formalities" in the sense of Article 3(3) of 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 (the Excise duty directive), and are they consequently prohibited?**

No.

Article 3(3) of the Excise duty directive gives Member States the right to introduce or maintain taxes which are levied on inter alia cars, provided, however, that those taxes do not give rise to border-crossing formalities in trade between Member States. The Court of Justice has ruled that, even in cases where a declaration of the car registration tax has to be submitted at the time of crossing a border, that formality relates not to that crossing, but to the obligation to settle the tax.

**18. Can a Member State immobilise my motor vehicle if I have failed to pay the tax?**

No. The temporary immobilisation of a motor vehicle in order to secure the settling of a tax liability is disproportionate (C-156/04, *Commission v Greece*).

For further information you are invited to consult our webpage on the European Court's of Justice case-law listing regarding passenger car related taxes.