

The compatibility of the tax on cars and vehicles established by the Fiscal Code with Community law



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Romania's imminent accession to the European Union has made Romanian lawmakers more careful in dealing with the customs duties and other charges having similar effect. In harmonizing its legislation, Romania had to consider that the European Union is based upon a customs union that covers all trade in goods and which involves the prohibition between Member States of customs duties on imports and exports and of all charges that would have a similar effect, and the adoption of a common customs policy in their relation with third parties.

However, it seems that this aim has not yet been achieved in its entirety. Lately, a potential contradiction has been outlined between the principles of the customs union that become mandatory on accession to the European Union and the provisions of the Fiscal Code that establish, in its Articles 2141 to 2143, a special tax for cars and vehicles. This tax comes into force starting January 1, 2007, and is calculated according to the age and the cubic capacity of the car's/vehicle's engine and is applicable when the car/vehicle is first registered in Romania.

Apparently, this special tax was intended to ensure environmental protection. But in that case it should apply to all the cars/vehicles in Ro-



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mania (including those that were not first registered in Romania). Instead, it is only applicable when the car/vehicle is first registered in Romania. It is clear that this special tax will mainly hit the segment of imported second-hand cars/vehicles, being at the same time inapplicable to the cars/vehicles that are of the same age and with similar pollution effects that already exist on the Romanian market. Therefore, as far as second hand cars/vehicles are concerned, the tax discriminates against imported ones.

This discrimination amounts to incompatibility with the customs union principles. Article 25 of the EC Treaty prohibits customs duties on imports and exports between Member States and charges having an equivalent effect.

The prohibition also applies to customs duties of a fiscal nature. In addition, Article 90 of the EC Treaty stipulates that no Member State is permitted to impose a tax, directly or indirectly, on the products of other Member States of any kind that exceeds those taxes imposed directly or indirectly on similar domestic products. Furthermore, no Member State shall impose any internal taxation on the products of another Member State whose nature would afford indirect protection to other products.

Having in mind the provisions of the EC Treaty, an importer of second-hand cars/vehicles from other Member States could challenge the imposition of the special tax in the Romanian Courts. Several legal arguments could be advanced by such an importer during the proceedings, such as: the contradiction of the national legal provision with the EC Treaty, the supremacy of Community law over national law or the direct effect of the Articles 25 and 90 of the EC Treaty within the domestic system of law. Direct effect means that the rights conferred on individuals by some pieces of Community legislation can be enforceable in national courts without the need of a transposition measure taken by the respective Member State.

The national court is entitled to apply such principles and grant an award accordingly. The claimant could also ask the national court to seek guidance on the interpretation of Articles 25 and 90 of the EC Treaty from the European Court of Justice by way of a preliminary ruling, on the basis of which the national courts would apply the Community law to the case at hand.

It is expected that after accession the Romanian courts will be confronted with numerous cases invoking the direct application of the Community laws and that the preliminary ruling procedure will contribute in a fundamental way to fashioning the very relationship itself between the Romanian and the Community legal systems. ■