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Info Rapide

Opinion in Case C-552/15

European Commission

v

Ireland

Summary

Advocate General Szpunar considers that Irish legislation demanding payment of the full amount of registration tax on imported motor vehicles where those vehicles are not intended to be used on a permanent basis in Ireland is contrary to the freedom to provide services. Ireland has also breached EU law by refusing to pay interest on repaid amounts of registration tax and charging a €500 administrative fee for the refund procedure.¹

Facts

The Commission has referred Ireland to the Court of Justice considering that Irish rules on vehicle registration tax infringe the freedom to provide services.

Irish legislation requires importers of vehicles to discharge, on registration, the entire tax applicable for permanent registration. This requirement applies to all imported cars regardless of the intended and actual duration of their use in the State and includes cars that are hired or leased from abroad for pre-determined, limited periods of time.

The Irish authorities introduced the possibility to obtain a subsequent refund of excess tax paid, but such a refund may only be granted following an inspection and exportation of the vehicle at issue. There is no provision for interest to be paid on excess tax which has been retained and a €500 fee is charged for the refund procedure.

The Commission considers that Ireland's system for taxing the registration of motor vehicles imposes a disproportionate cash-flow and financial burden on Irish residents seeking to import hired or leased cars for pre-determined, limited periods of time. In the Commission's view, the national rules make it considerably more difficult and costly to hire and lease cars from other Member States than it is to hire or lease cars from companies in Ireland. Consequently, it considers that the Irish tax infringes the freedom to provide services and has referred the matter to the Court of Justice.

Opinion

First, the Advocate General recalls the Court's case law in which it has ruled that "where a motor rental or leasing contract has been entered into for a fixed period, the mere possibility of repayment of part of the tax after the motor vehicle has been exported from the territory of the Member State is not sufficient to ensure compliance with the principle of the freedom to

¹In response to the Commission's reasoned Opinion, Ireland amended its legislation so that interest would be paid on the part of the repaid tax when the motor vehicle is exported and that the administrative fee would be reduced to €100. This amendment to the legislation entered into force on 1 January 2016 and the Commission therefore considers that Ireland failed to comply within the prescribed period.

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provide services” where there is an obligation to pay an amount of tax which takes no account of the planned period of use. (39)

In the Advocate General’s view, “the very levying in cross-border situations of tax in an amount which is known beforehand to exceed, potentially significantly, the amount due, is bound to discourage service recipients from using cross-border services and service providers from providing them.” (42) As such, Advocate General Szpunar considers that **“there is no doubt that not only the non-repayment of tax unduly levied, but also the obligation to pay the full amount of the tax where the motor vehicle is not intended to be used and is not actually used on a permanent basis in the State of taxation, constitutes a restriction of the freedom to provide motor vehicle rental and leasing services”** which is prohibited under EU law. Such a restriction can be justified only by imperative requirements in the general interest, provided that they are proportionate to the aim. (43)

The Advocate General notes the aims of the Irish registration tax is to compensate for the public costs of the use of motor vehicles, in particular the environmental and social costs, and the costs of road maintenance and traffic control. These aims do constitute, in his view, imperative requirements in the general interest. (48, 49) However, these aims can be attained by means of a tax calculated having regard to the planned period of use of the motor vehicle in Ireland. Therefore, if the period of use is known in advance then the levying of tax in an amount based on use on a permanent basis is disproportionate to the aims and restricts the freedom to provide services. (52)

Finally, the Advocate General considers that Ireland has also infringed the freedom to provide services by refusing to pay interest on repaid amounts of registration tax and by charging €500 for the refund procedure. (68) In his view, “the obligation to repay taxes levied in breach of EU law lies with the Member States under that law” and they cannot make fulfilment of that obligation conditional on the financing of the costs of repayment by taxable persons. “That is even more the case where the Member State organises the system for levying the tax in such a way that repayment of part therefore is inevitable in certain situations. (66)