

Transport and Energy Taxation : Legal Prospects on the Transition towards Sustainable Road Passenger Mobility in Belgium

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Sustainable mobility is a major challenge for society and represents an inescapable issue for the development of Smart Cities. Indeed, transport sector generates negative externalities (1). The intensive use of modes of transportation increases situations of congestion and accident rate and incurs important costs in terms of infrastructure (2). In addition, it contributes to climate change, to air pollution and to noise pollution (3). Furthermore, oil importation weights negatively in the commercial balance and increases energy dependency. In a report of 2015, the OECD raises that Belgium made insufficient progress in the transport sector, with a greenhouse gases emissions augmentation of 20.5% between 1990 and 2012 (4). Without regulatory reform, it is expected that transport negatives externalities will rise further (5).

A solution to ensure the transition towards sustainable mode of transportation is the use of taxation. This contribution intends to critically analyze how the Belgian tax system addresses the challenge of transport sustainability. This article focuses on road passenger transport. This question is intrinsically related to the issue of renewable energy production, because in order to achieve a sustainable mobility, energies that fuel this transport also need to be sustainable. Therefore, both sectors will be studied.

The first part proposes general considerations on the notion of environmental taxes. Given the lack of clarity on this concept, confusion and misunderstanding arise. In order to appraise the current legal regime with accuracy and relevance, it is necessary to understand properly this notion. In this

context, two approaches are presented. The first one is objective and refers to the tax base. It is followed *inter alia* by the OECD and Eurostat, while the second one is based on the *ratio legis* of the measure. In order to point out their implications, both definitions are applied to several Belgian taxes including excises duties on energy, registration taxes and annual circulation taxes.

The second part analyses the current system around three axes, which correspond to three critical elements on the existing regime. The first relates to the consistency of the different instruments adopted. The Belgian tax regime is characterized, in the field of sustainable transport and renewable energy promotion by a number of inconsistencies. The measures adopted at different levels, whose division results from the federal nature of the State, sometimes take different direction, which can lead to inconsequence. This section points out two elements in particular: the favorable tax treatment of company cars and the preferential excise rate that, until recently, applied to diesel.

The second criticism concerns the current use of tax and non-tax incentive to promote environmental protection. Belgian authorities frequently follow an incentive approach, which translates into tax measures – under tax rebates, tax deduction and tax exemptions – and non-tax measures – through primes and subsidies for instance. Using these types of instruments deserves criticism. The main incentives in transport and renewable energy sectors are described before to present the major disadvantages of these measures, from an economic, a legal and a

budgetary point of view. Economic and legal literatures as well as several international authorities such as the OECD have underscored these elements.

The third – and last – criticism is about the incapacity of the current system to take into account the whole externalities from road passenger transportation. The transport sector causes numerous negative externalities that a vast literature has attempted to quantify and to correct (6). These include air pollution, noise pollution, climate change, congestion and accidents (7). Current tax measures do not allow to capture and to correct all these

negative effects. The main transport taxes, the excises duties and registration and annual circulation taxes do not allow tackle noise pollution, accident and congestion externalities. In this respect, it would be advisable to consider the adoption of congestion taxes and mileage taxes and the taxes differentiation based on the vehicle noise features or type (8).

It is concluded by a short presentation of several proposals in order to address the shortcomings of the current regime.

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