State aid and eco-taxes: bundling of eco-taxes for State aid assessment (1)

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Eco-taxes in the European Union

Several Member States have introduced taxes on energy products in order to create an incentive to reduce the consumption of energy, and thereby also the emissions of greenhouse gases into the atmosphere. These so-called eco-taxes are often levied on certain types of emissions such as CO₂ or on the consumption of energy.

Many Member States have found it necessary to introduce a tax relief for the most energy intensive consumers, notably the manufacturing industry, in order to protect their competitiveness.

These exemptions usually give rise to state aid issues since they relieve energy intensive undertakings from a tax burden, which other companies have to bear. Some Member states have however designed tax exemptions as general measures whereby they fall outside the scope of the state aid rules. This possibility has however been limited. In its decision in the case Adria-Wien Pipeline GmbH (2), the Court clarified the criteria of selectivity in the context of energy taxation, confirming Commission practice. The ruling demonstrated that special tax treatments targeting energy intensive companies are always selective if the service sector is excluded.

The exemptions that do not qualify as general measures have to be assessed and approved under the environmental guidelines (3), which set out several options for such aid to be compatible with Article 87(3)(c) of the Treaty. All of them aim at maintaining an incentive on beneficiaries for reducing their emissions targeted by the tax, respectively their energy consumption. This can be achieved by environmental agreements between companies and the State or by a mechanism ensuring that undertakings receiving a tax reduction still pay a significant proportion of the tax.

The Swedish eco-taxes

The Commission started to investigate the core of the Swedish energy tax system after taking a decision in December 2002 on a CO₂ tax reduction (4). During the investigation the Commission found that the CO₂ tax only constituted one part of the Swedish energy tax system and that a broader investigation had to be carried out in order to assess the compatibility of a number of exemptions with the Treaty.

The cornerstones of the Swedish environmental energy tax system are the CO₂ tax and the energy tax, both of which are levied on fossil fuels. Apart from the tax levied on fossil fuels, the energy tax is also levied on electricity. There are also several other taxes, which have an environmental objective but which are aimed at reducing certain distinct types of emissions such as sulphur.

As many other Member States Sweden found it necessary to introduce exemptions from the eco-taxes to certain energy intensive consumers. The current exemption from the energy tax was introduced in 1993 and gives a full exemption from the energy tax used for heating in production processes to companies in the manufacturing sector. Since the same year, the manufacturing industry also benefits from a 75% reduction from the CO₂ tax for fuels used in production processes.

The Commission’s assessment

A priori the construction of the Swedish energy tax would not comply with the community rules on state aid. The Swedish companies have neither entered into environmental agreements nor do they pay a significant proportion since they pay no energy tax at all.

However, the Commission accepted the Swedish argument that the CO₂ tax and the energy tax and counterparts given by the benefiting companies should be seen as one.

The energy and CO\textsubscript{2} taxes are both being levied on fossil fuels used for heating purposes. Since the two taxes are levied on the same basis, they are in practice functioning as one tax with two components. The provisions for collection and chargeability as well as the control provisions are identical and both taxes are presented together to the taxpayers for the purposes of their tax return.

Not only the CO\textsubscript{2} tax, but also the energy tax, has an environmental steering effect on the consumption of fuels. Therefore both taxes are to be regarded as economic instruments for achieving environmental protection objectives and in particular CO\textsubscript{2} reduction \(^{(1)}\). In order to achieve the desired steering effect, the Swedish Government, over the years, has adjusted the tax levels of either the energy tax or the CO\textsubscript{2} tax.

Further, the Commission noted that the adding of all taxes levied on a fuel was in line with EU policy in the field of energy tax. Council Directive 92/82/EEC of 19 October 1992 on the approximation of the rates of excise duties on mineral oils \(^{(2)}\), which allows Member States to add all the different taxes levied on a fuel. In addition, Article 4(2) of the new Energy Tax Directive \(^{(3)}\) allows member states to add all indirect taxes levied on the quantity of energy products.

By adding the two taxes Sweden complied with point 51(1) b, second indent in the environmental guidelines since the undertakings would still pay a significant proportion of the taxes. Thus, the undertakings will still have an incentive to reduce their energy consumption.

**Conclusion**

This case clearly sets out the difficulty in assessing exemptions from eco-taxes especially in the context of the wider system of energy taxation in a Member State. It has indeed to be considered that some Member States may have introduced for national reasons parallel taxes and exemptions thereof forming components of one tax for the same purpose. However, this reasoning has to be strictly limited to cases of strong evidence. Similar cases will probably be rare, given the multi-purpose nature of most national taxation systems.

The Swedish case itself shows already the limits of applicability of the above described reasoning. Indeed, the Commission opened proceedings as regards the full exemption of the Swedish electricity tax for the manufacturing industry. The Swedish argument to apply the same reasoning as for the CO\textsubscript{2} and energy taxes has not been accepted, first because the taxes do not cover the same commodities, second because the taxes pursue different purposes.

Over the last years, a growing number of energy tax exemptions underwent State aid scrutiny. This field may gain a new momentum since the new directive on energy products is adopted. This directive will lead to the introduction of energy taxes in some countries and to partial overhaul of established energy taxation systems in other Member States. While the directive will contribute to reduce tax competition in this field, state aid control will not be superfluous in the future. The directive grants a number of possibilities for tax exemptions which will in many cases constitute State aid.

\(^{(1)}\) The CO\textsubscript{2} tax rates depend on the CO\textsubscript{2} content of the fuel. The energy tax rates are not directly related to the CO\textsubscript{2} content of a fuel, but the Commission considers in the Swedish circumstances that there is a strong direct relation between fuel use and CO\textsubscript{2} emissions.
