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THE EXCISE DUTY OF IMPORTED CARS – LEGAL PROBLEMS

Summary. The work presents legal problems of secondhand car excise duty imposed in Poland. Additionally, the current results of statistical investigations referring to the number of cars imported from abroad were presented in this article.

AKCYZA NA SAMOCHODY SPROWADZANE Z ZAGRANICY – PROBLEMATYKA PRAWNA

Streszczenie. W opracowaniu przedstawiono problematykę prawną, związaną z podatkiem akcyzowym wprowadzonym w Polsce na używane samochody sprowadzane z zagranicy. Dodatkowo zaprezentowano aktualne wyniki badań statystycznych, które dotyczą liczebności samochodów sprowadzanych z zagranicy.

1. EUROPEAN UNION COMMON MARKET FOR SECOND-HAND CARS

On 1st May 2004 Poland became a member of the European Union, which denoted the necessity to accept EU common legal rights and proceedings. As far as the area of transport is concerned, a few regulations have been cancelled as well. They include such changes as ban on registration of automotive vehicles that do not meet the Euro II standard which defines the combustion gas emission and annulment of 22% VAT on purchasing a second-hand car. The above alterations have resulted in significant increase in number of second-hand cars introduced to the territory of the Polish Republic from other EU states. Appropriate data referring to distribution of second-hand vehicles, obtained from the information published by customs offices, are presented in figures № 1 and № 2.

It is worth mentioning that from the point of view of Polish administration the only limitation of this avalanche-like increase in inner European “import” of second-hand cars appeared to be imposing the progressive excise duty on them. As a consequence January 2006 appeared to be the first month when the second-hand car trade between Poland and other united countries had noticeably decreased. The reason for this fact is the so-called ecology payment which has been compulsory since the beginning of 2006.

The analysis of statistical data indicates that April 2006 was the month when the number of second-hand cars conveyed to Poland rose again. It seems that this situation was caused by considerable reduction in charges for vehicle cards, which was introduced on the 15th April. Another period when the turnover on the second-hand market is growing has begun recently due to new

regulations passed by the Minister of Finance on 1st December 2006. The regulation withdrew the rate of excise duty on second-hand cars from abroad.

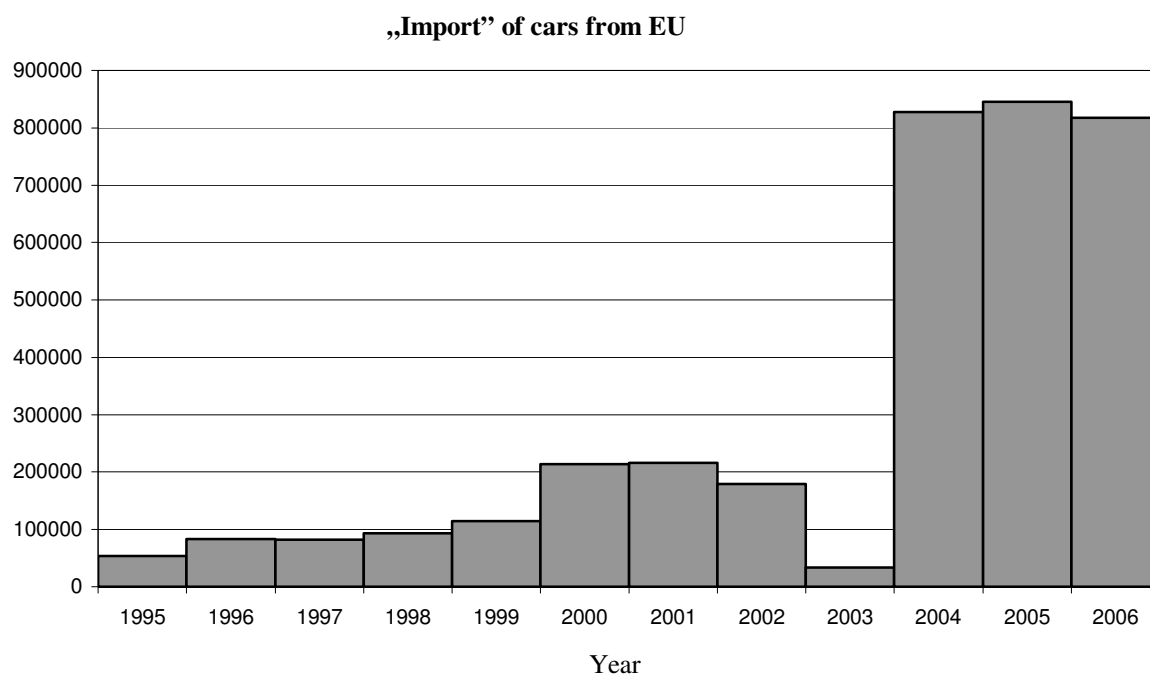


Fig. 1. „Import” of cars from EU in 1995÷2006

Rys. 1. „Import” samochodów z UE w latach 1995÷2006

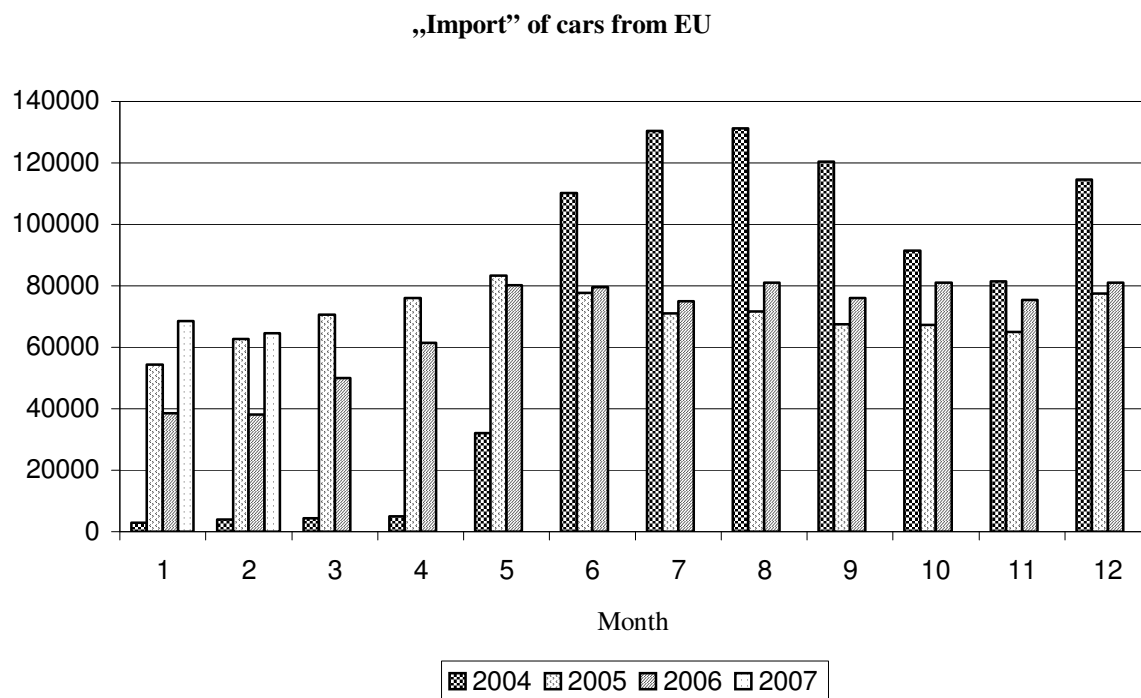


Fig. 2. „Import” of cars from EU in following months 2004÷2007

Rys. 2. „Import” samochodów z UE w kolejnych miesiącach 2004÷2007

2. THE DIVERGENCES BETWEEN POLISH AND EUROPEAN UNION LEGISLATION CONNECTED WITH PURCHASE OF SECOND-HAND FOREIGN CARS TO BE REGISTERED IN POLAND

Articles № 14 paragraph 2 and № 23 of the European Union Establishing Treaty (further EC) enable free flow of goods including automotive vehicles among member countries. It denotes ban on customs fees on imported cars. However, according to the act of 23rd January 2004 referring the excise duty in Poland, any person who purchases a vehicle from EU country is due to pay the above duty. This tax is compulsory for all buyers willing to register a foreign second-hand car in Poland for the first time, which is stated in article № 80 of the mentioned act.

Before 1st December 2006 the excise duty rates on cars were relevant to their engine capacity and date of production. For vehicles with engines of up to 2,0 litre capacity they amounted as follows:

- one- and two-year-old cars	3,1%
- three-year-old cars	15,1%
- four-year-old cars	27,1%
- five-year-old cars	39,1%
- six-year-old cars	51,1%
- seven-year-old cars	63,1%
- eight-year-old cars	65,0%

For vehicles with engines of more than 2,0 litre capacity the excise duty rates were as follows:

- one- and two-year-old cars	13,6%
- three-year-old cars	25,6%
- four-year-old cars	37,6%
- five-year-old cars	49,6%
- six-year-old cars	61,6%
- seven-year-old cars	65,0%

Since 1st December 2006 the excise duty on imported cars does not depend on the age of the vehicle. It only amounts to 3,1% for cars equipped with engines up to 2,0 litres and 13,1% for cars with engines bigger than 2,0 litres.

According to EU law each member state can create its domestic regulations provided that those regulations do not discriminate goods which were manufactured in other united countries. It should be explained here that EU law is based on the rule of priority, which simply means that EU legal regulations are superior to legal systems of member countries. This rule was formulated in 1964 by European Economic Council. Poland did not belong to that organisation, though. Forty years later it appeared that Polish regulations legalised the discrimination of imported goods, which was banned in EU. Before 1st December 2006 the amount of excise duty on imported cars could reach up to 65%. It meant that the tax was much higher than on similar cars registered in Poland. As a result of the above discrimination numerous summons were placed in Polish courts of justice because many customers protested against high excise duties on cars which had been bought abroad.

In one of cases a tax-payer accused the decision of the Executive Director of Customs Office in Warsaw, which had dismissed the customer's claim on returning the excise duty. The Warsaw Regional Administrative Court applied afterwards to European Tribunal of Justice for delivering the so-called pronouncement on the issue of general terms of supervising the transfer of goods which are subject to excise duty.

Article № 25 of EC provides that export and import duties as well as equivalent payments are banned between member countries of EU and according to article № 28 of EC the same ban refers to quantity limitations as far as import of export of products are concerned. What is more, article № 90 says that none of EU member states is allowed to impose directly or indirectly any domestic taxes on imported goods which would be higher than taxes imposed directly or indirectly on similar products made by native manufacturers. European Economic Community stated under article № 3 of Council directive 92/12/EEC that member countries hold the right to impose or maintain taxes provided that those taxes do not result in increase of formalities connected with transferring goods abroad to other member countries.

On 21st September 2006 the General Advocate Representative of the European Tribunal of Justice admitted that Polish law discriminates customers who buy second-hand cars abroad and bring them from other countries. This opinion was then acknowledged by the European Tribunal of Justice in its pronouncement issued on 18th January 2007. The sentence indicates that the tax imposed by the law of excise duty does not stand for import duty or equivalent payment according to article № 25 EC since it is not imposed on personal vehicles for the reason that they cross the border. Article № 90 EC opposes the amount of excise duty which outstands the amount of tax imposed on second-hand cars purchased in another member country and included in the market price of similar vehicles which had been registered earlier in the member country that imposes the tax.

The European Tribunal of Justice has not limited the validity of its sentence in time. It means that Polish regulations had contradicted the EU law since 1st May 2004, i.e. since Poland entered the Union.

Taking the opinion of the European Tribunal of Justice by the Warsaw Regional Administrative Court pronounced its sentence of 6th March 2007 which cancelled the decision of the Customs Office that imposed the excise duty of 65% on the customer unjustly. The Warsaw Regional Administrative Court explained that the above sentence was based on the sentence of European Tribunal of Justice which stamped the discrimination of the automotive vehicle purchased in another EU country. However, it was simultaneously stated that customs offices are allowed to verify the value of cars introduced to Poland from abroad according to their own procedures.

A question rises whether such attitude of the Polish court of law presented in the above sentence does not allow too much freedom as far as methods of assessing the value of cars brought from abroad are concerned. In order to obtain the answer to this question it is worth analysing the activity of administration organs. The Ministry of Finance is due to return the excise duty but claims that the amount of money to be returned should depend on the value of the car in Polish marketing conditions. It must involve proper verification of the value of vehicle that was declared in the customs office in comparison with current prices of certain makes and models which are obligatory in Poland at the moment of crossing the border. Unfortunately, the customer who has found a more profitable offer abroad may appear a loser because of this regulation. The main purpose of purchasing second-hand vehicles abroad is looking for a bargain which denotes considerably reduced prices. The Minister of Finance announces that suitable charts will be created in order to define actual prices of cars in the period when the excessive rates of excise duty were in force, i.e. from May 2004 until December 2006. The charts have not been published so far and therefore it is recommended to use Audatex or Eurotax charts that are used by vehicle experts or take advantage of special charts used by Treasury Bureau to complete documents referring to vehicle trade.

Article № 10 of excise duty law provides that the basis to be taxed should be the amount of money to be paid by the buyer. Article № 82 defines the duty rate more exactly. The price of purchase is visible on the invoice or another document of agreement to sell and buy. Only in such cases when the amount of purchase cannot be quoted it is possible to define it with reference to the market price. The matter is being worked out nowadays.

All customers who have been refused to return the overpaid excise duty may apply to customs offices once more. The pronouncement of the European Tribunal of Justice is a premise to renew such procedures. The regulations do not define deadlines for applying but customers should submit their claims as soon as possible.

The legal basis to solicit the overpaid excise duty is the regulation of Tax System whose article № 75 gives the tax-payers the right to apply for acknowledging the overpay.

Customers who contend for return of overpaid duty must give the price of purchase. The price of the vehicle should be given in Polish currency. The exchange rate should be calculated according to the rate which was valid in the original tax declaration.

The person who claims the return of overpaid excise duty does not have a right to claim any interest for the time from the day when the duty was paid. Yet it is possible to claim the overpaid tax refund together with due interest in case the tax bureau has not returned the money within two months after the client applied for the acknowledgement that he or she had overpaid the excise duty. Certain situations like the above may occur and there is also a possibility to prolong the deadline in specific

circumstances. The regulations referring to paying back the overpaid taxes are listed in article № 77 of the Tax System. The interest is due from the date of application to the date of money transfer.

In case the customs office proves that the buyer has paid an underestimated or miscounted duty intentionally, the treasury code provides relevant punishment under article № 56 which states that any tax-payer is liable for a fine or imprisonment up to two years if he or she submits false information, exposing the State Treasury to financial loss in tax payment.

Another doubt involving second-hand vehicle trade and registration in EU countries may appear because of regulations referring to the issue of vehicle cards. The regulation announced by the Minister of Infrastructure on 28th July 2003 stated that the cost of vehicle card equalled 500,00 zł if the second-hand car was bought abroad where it had been registered and 75,00 zł when the car was registered in Poland. The above regulation was valid until 15th April 2006 when the Minister of Transport & Building introduced uniform payments of 75,00 zł regardless of the place of registration. A question remains, however, whether those customers who paid the higher rate are allowed to apply for return of the difference between the latter which is much lower. In this hitherto prevailing pronouncements the Constitutional Tribunal has not answered this question directly. It pronounced on 17st January 2006 that such overpayment bears the stamp of another tax. This pronouncement resulted in consequent alterations to the regulations mentioned above and the uniform lower rate was introduced on 28th March 2006. Moreover, the European Tribunal of Justice received a customer's inquiry about tax discrimination in this particular case. If the pronouncement appears disadvantageous for the Polish tax office, all buyers who have already paid the higher rate will have the right to solicit the return of the difference between those two amounts of payment.

In conclusion it is worth underlining that there are essential divergences between Polish and EU legal regulations in the area of vehicle trade and registration. It is necessary to revise our Polish regulations and adapt or conform them to the EU legal system. Otherwise our state will be exposed to unprofitable pronouncements issued by the European Tribunal of Justice.

Literature

1. *The Penal Treasury Code of 10 September 1999* (OJ 99.83.930 of 15 October 1999).
2. *The European Tribunal of Justice case-law of 18 January 2007* (C-313/06).
3. *The Polish Law on Excise Duty of 23 January 2004* (OJ 04.29.257 of 26 February 2004).
4. *The Warsaw Regional Administrative Court case-law of 6 March 2007* (III SA/Wa254/07).
5. *Order of the Minister for Finance on the lowering of the rates of excise duty of 22 April 2004* (OJ 04.87.825 of 26 February 2004).
6. *The Polish Law on Tax System of 29 August 1997* (OJ 05.08.60 of 29 August 1997).
7. *The Treat of European Community of 30 April 2004* (OJ 04.90.864/2 of 30 April 2004).
8. *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* (OJ L 076, 23/03/1992 P. 0001 – 0013).
9. *Order of the Minister for Infrastructure on the height of payments for vehicle card of 28 July 2003* (OJ 03.137.1310 of 6 August 2003).
10. *Order of the Minister for Transport & Building on the height of payments for vehicle card of 28 March 2006* (OJ 06.59.421 of 10 April 2006).

Received 19.03.2007; accepted in revised form 25.05.2007