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Review Article

LEGAL ANALYSIS OF ENVIRONMENTAL TAXES

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Olivera Lončarić Horvat

Faculty of Law, University of Zagreb, Croatia

Abstract. *Environment protection is not only the basic presumption for living in a healthy environment but also an important human right. The issue has been given much attention since the second half of the 20th century and it is now incorporated in the constitutions of many contemporary states, including the Republic of Croatia. In this paper, the author discusses the environment as a public good by analyzing taxes and subsidies as the major fiscal instruments for funding this public good. In that context, taxes are the preferential choice. Further on, the author explores the legal and taxation possibilities of eco-taxation, and provides a legal assessment of environmental taxes from the aspect of tax-law principles. Finally, the author discusses the position and the role of environmental taxes in the legal system of the European Union.*

Key words: *environment, public goods, environmental taxes, subsidies, Pigou, Baumol, Oates, tax-law principles, eco-friendly tax system, European Union.*

INTRODUCTION

Environment protection[1] is one of the major contemporary problems which are probably most difficult to solve. There is an increasing number of opinions that the future of

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Corresponding author: Olivera Lončarić Horvat, LL.D.
Faculty of Law, Trg maršala Tita 14/I,10000 Zagreb, Croatia
Tel: +385 1 45 64 303 • E-mail: dekanat@pravo.hr

[1] Broadly speaking, environment protection implies "a range of external factors which affect life of an individual or a community" (Hoppe & Beckmann, 1989). It comprises: a) *the social environment,* which includes interpersonal relations, social and economic system, and social institutions); b) *the natural environment,* which includes flora and fauna, microorganisms, soil and waters in man's living environment; and c) *the man-made environment* resulting from man's creative undertakings (including material goods, residential and industrial premises, machinery, vehicles, infrastructure, cultural monuments, etc).
The term "environment protection" appeared in the scientific literature about 50 years ago, when it was first used by the American biologist Rachel Carson in 1962 in her popular book "The Silent Spring". Yet, even before introducing this term, environment protection has always present, most frequently in the form of a natural

mankind largely depends on resolving this problem. For this reason, environment protection may be regarded as one of the most significant assignments of the human species.

In the past couple of decades, environment protection has been widely recognized as a significant issue, which may primarily be attributed to the citizens' increasing environmental awareness as well as to the alarming pollution and degradation of natural resources. Namely, the natural foundations of human life (such as: soil, air and water) have already sustained considerable changes given the fact that the extensive pollution has already modified their inherent natural properties. Yet, environment protection cannot be confined only to individual segments or elements of nature. Nature is a very complex mechanism whose operation involves interaction between its numerous constituent parts. Thus, the term "natural environment" actually implies the environmental system (Klopfer, 1989, p. 4) which entails the cyclic law of nature whose balance may be upset by any slight "intrusion" into the system.

Environment protection is necessarily related to the fiscal policy of each state, which is primarily put into effect by means of public revenues and expenditures. The state policies on public revenues (in particular, tax policy) and public expenditures have a direct impact on the decisions of every single individual: a consumer, a manufacturer, an investor, a rich or a poor person alike. By means of taxes and (indirectly) public expenditures, the state exerts a significant influence on individual decisions in terms of choosing the products and services to buy, the type of activity and the location where it will be performed, as well as decisions concerning the personal aspects of one's family life and the number of children. By exerting an impact on the citizens' economic powers, the fiscal policy inevitably has a bearing on their attitude towards nature.

The environment protection policy requires adequate funding which is provided by means of fiscal policy. The theoretical basis and justification for including the fiscal policy (and thus the state) into environment protection may primarily be found in the modern theory on public goods.

1. NATURE AS A PUBLIC GOOD

Apart from the goods in private ownership which individuals are entitled to freely dispose of, use and exclude another from their use, there are public goods or **"***social goods"* (German: "*öffentliches Gut", "freies Gut*"). They are indivisible goods which may

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and instinctive response of both individuals and the society as a whole to resolving some current and latent environmental problems. In the prehistoric society, for example, human beings used to select cubs of some animal species and to shoot the sick or old animals, which may only be interpreted as a measure aimed at controlling their population rate and providing the environmental stability.

Eventually, this role was gradually assumed by the state, which started developing an environment protection framework and measures for combating the progressive deterioration of the environment. Thus, one of the first recorded measures introduced by the state was the provision against air pollution by which English King Edward I prohibited the use of specific kind of coal. Later on, another significant state measure was the establishment of the first national parks in the American states in the 18th century in an endeavor to prevent the ecological imbalance caused by the European immigration. In 1845, Prussia adopted an act obliging the economic entities and entrepreneurs to exercise due care in performing their activities in respect of the neighbouring estates and nature. Two years later, in 1847, as an aftermath of the catastrophic air pollution in London, Great Britain adopted the first Air Pollution Protection Act.

not be subject to private ownership because they may not be bought and sold on the market, nor exchanged for some economic counter-performance or acquired in any other way. Public goods may be used by everyone and their use, maintenance and restoration do not depend on the economic power of their users.[2]

Natural goods, i.e. man's immediate natural environment, may be equaled with the public goods in terms of their intrinsic characteristics and functions. Therefore, it is a duty of the state to "manage" them in an economical manner, just as it is done with the public goods. It is highly important given an increasing shortage of the natural environment, which has been reflected lately in the deficiency of this type of public goods. *Inter alia,* it is a result of an increasing disproportion between the natural environment capacities and the number of its users, which is constantly and progressively growing.

When it comes to private goods, their potential deficiency or excessive demand and supply is regulated by the market prices. Namely, the prices in the market economy are indicators of the relations between the supply and demand of these goods; in case of their imbalance, the market prices may shortly or in the long run reestablish the balance.

Yet, as far as natural goods (as a type of public goods) are concerned, the market mechanism does not work. Given the fact that the use of nature and natural resources is free of charge, it inevitably leads to their excessive use or consumption. This extensive consumption of "the only free production factors open to all" (Hardin, 1970, p. 30) ultimately results in "the tragedy of the commons" (Hardin, 1970, p. 30).

Given the fact that the natural environment assets (as a type of public goods) have no specific owner or market price, individuals are tempted to use and treat them unreasonably, inconsiderately and excessively. Thus, the use and consumption of natural goods is generally aimed at satisfying each individual's personal interests only.

For this reason, the state is the only one which may introduce relevant measures in this area in order to substitute the free market mechanism which is applied to private property goods. When it comes to public goods/property, by the force of the law at its disposal, the state may exercise control over the supply and demand, and make them largely comply with the common/public rather than individual/private interests. The state is not only entitled but also obliged to resort to such an intervention which is primarily aimed at preserving and protecting the natural environment, running a sound environmental policy and providing the financial resources for its management.

At first, the state primarily performed this duty by applying administrative instruments (such as: appeals, proscriptions, licences, urban planning, etc) and criminal sanctions. As environmental problems turned to be more diverse and multifaceted, the modest range of state instruments was growing less and less efficient. Eventually, it urged scientists to explore other options and find ways to make the intervention of the state more efficient in terms of protecting the natural goods.

The most significant research results in this field were achieved in the 1920s by Arthur Cecil Pigou, a British economist and theoretician in welfare economics. Starting from the

[2] The most frequently cited illustration of a typical example to explain the term "public good" is the metaphor of a *lighthouse* or a *church tower clock*. They are both objects of common rather than individual consumption and the information they provide may be concurrently used by a number of individuals without any interference or exclusion of another from using them. The most significant contribution to the study of the public goods has been given by Musgrave (1959; Chapter 1, 2 and 4) and Buchanan (1968; Chapter 2 and 3).

concept of the public goods, Pigou pointed out that, in addition to the widely recognized administrative and other instruments, the state environment policy should also include fiscal instruments such as taxes and subsidies.[3]

2. FISCAL INSTRUMENTS AS INSTRUMENTS OF ENVIRONMENTAL POLICY

a. Taxes

In spite of being the most significant form of public revenues, taxes are not necessarily levied and collected only for the purpose of exercising fiscal goals. Considering their economic effect, taxes are frequently used for accomplishing some non-fiscal goals (e.g. economic, social, ecological and other goals) where their fiscal effect is immaterial.

The ideological forefather of environmental taxes, the economist Arthur Cecil Pigou, points out to the necessity to internalize the social community costs resulting from individual consumption or use, which an individual regards as *external costs.* In other words, by means of taxes, these *external* costs shall be turned into *internal* costs. Thus, Pigou pointed out to the major analytical problem in environmental economy which was subsequently termed "the *external effect" (externality)*. The "external effect" comes into play when "the activity of one economic entity exerts a positive or a negative impact on the economic position of another entity, whereby the activities are supported by a counter-performance (such as: payment, remuneration)" (Nowotny, 1987, p. 33). It is defined as "external" because it appears outside the "internal" effects governing the relations of business entities on the market. Whenever the external effect is negative, irrespective of whether there is a technological or a pecuniary effect involved, it always causes detrimental consequences to another or to the society as a whole, which are eventually reflected either in additional production costs or in consumption.

Given the fact that there is no market for natural goods, the negative "external" effect of polluters of the natural environment may be transformed into a monetary equivalent which would exert an impact on the polluter's decision to reduce or prevent environment pollution by changing his technology or production tools.

Being most competent to regulate this area, the state is required to provide for the protection of public goods (in this case, natural goods) and to assume the role of the market in terms of regulating and controlling the relations between the polluters and the natural environment. The role of market prices (which are used in the free market to regulate and control the relations among market participants) is now assumed by fiscal instruments such as environmental taxes (in most cases).

The effect of applying environmental taxes is consistent with the state environment protection policy which is implemented both as part of the state's constitutional obligation and as part of applying some other non-market measures.[4] One of the consequences of

[3] In his book "Wealth and Welfare" (London, 1912), which was published in 1920 under the title "Economics and Welfare", Pigou argues in favour introducing environmental taxes.

[4] These instruments imply legislative and statutory acts, such as: the Environment Protection Act; acts on the establishment and management of national parks, special reserves, forest-parks, etc; acts imposing statutory limitations to the entrepreneurial freedoms and ownership rights for the purpose of protecting nature and human environment; acts on the protection of arid agricultural land; acts on the protection against air and noise

applying environmental taxes is a change in the tax payer's conduct; thus, wishing to preserve the economic power which he had prior to being charged with this tax liability, the polluter (tax payer) may decide to reduce the emission of harmful substances. To this effect, he changes the technological process, installs devices or starts using the machinery which either reduces or prevents the harmful emission. As a rule, due to the economic rules underlying the tax payers' conduct, the marginal costs of innovation in the technological process in conjunction with the marginal costs for reducing or preventing the harmful emissions are equal to the savings which a tax payer makes by paying less tax. In that way, the environmental tax exerts an influence on the tax payer to safeguard his/her own economic interest by concurrently "safeguarding a higher public interest of the society at large, as well as his/her own individual interest as a member of that society to live in a healthier and more natural environment" (Lončarić-Horvat, 1982, p. 329).

From the financial standpoint, environmental taxes fall into the category of taxes which generate fewer revenues than expected. Namely, given the operation of economic rules, the introduction of environmental taxes into the fiscal system is soon reflected in the change of the tax payer's conduct, which eventually results in his exemption from any further obligation to pay this tax.

A significant problem that emerges in the course of introducing the environmental tax is related to determining its optimal value. In order to do this, it is necessary to establish the exact amounts of damage stemming from the operation of different economic sectors and forms of production. As it is hardly viable, the solution is found in establishing the average marginal amount of damage caused by all producers (rather than by specific ones) operating in one branch of economics (Lončarić-Horvat, 1982, pp. 329-330).

The important issue of determining the optimal amount of environmental taxes and other charges was further studied in the 1980s by the American economists William J. Baumol and Wallace E. Oates (Baumol – Oates, 1971, p. 42). Their standpoint is substantially different from Pigou's point of view.

According to Pigou, the amount of environmental taxes should correspond to the net marginal damage which has been caused by a tax payer's harmful activity. On the other hand, Baumol and Oates assert that the amount of environmental taxes should be based on the political decision on the level (standard) of quality of the natural environment.

Further on, we will look into some examples which illustrate the two opposing standpoints and their essential elements.

1. Pigou

Pigou presumes that each manufactured item of some product causes damage to the natural environment amounting at 10 monetary units. This amount equals the marginal damage caused by the producer who is considered liable for the damage. The amount of the effected damage is determined in proportion to this amount. However, after the producer is induced to install a protection device, the pollution is reduced and so is the amount of tax he is obliged to pay. In case of retaining the same tax rate of 10 monetary units, which equals the amount of net marginal damage before installing the protection

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pollution; the Criminal Code provisions on the criminal offences involving the violation of environment legislation as well as the provisions on the development of the human environment, etc.

device, the pollution or damage to the environment would be "excessively" reduced. In that case, speaking in economic terms, the marginal benefit of reducing the emissions would be larger than the marginal costs of reducing the emission; in other words, the environment pollution would necessarily be reduced but it would incur disproportionately larger costs.

Therefore, in order to determine the optimal environmental tax rate, it is necessary to establish the scope of damage which would be caused by production in optimal circumstances. However, this rate is most unlikely to be determined in a near future.

2. Baumol - Oates

In his theoretical study, Pigou starts from the individual responsibility of the environment polluters, from the calculation of economic costs and benefits, and from the distribution of costs of environment pollution to the polluters. On the other hand, Baumol and Oates base their standpoint on the political decision on the level (standard) of quality of the natural environment. The environmental tax rate is not established in proportion to the damage caused by an individual but according to each country's environmental standard.

The advantage of the Baumol-Oates model as compared to the Pigou's model is that it may be easily adjusted to the existing legal instruments. However, one of its major drawbacks is that taxes whose amounts/rates are established on the basis of each state's environmental standard may result in either excessive or lenient taxation.

b. Subsidies

Apart from taxes, subsidies[5] are fiscal instruments which are also applied in the state environment protection policy. Due to their inherent characteristics, subsidies may be qualified as state-provided benefits (premium) which are allocated to subsidize the good behaviour of economic entities which do not cause any environmental damage in performing their regular activities.

In Pigou's opinion, there is no significant difference between the effect of subsidies and the effect of taxes. It is explained by the fact that an economic entity (polluter) does not ultimately mind how he would avoid being taxed for excessive emission, i.e. whether he has achieved the optimal level of emission by using a "cleaner" technological process or whether his revenues have been increased (by applying the same process) by the amount of state subsidy provided as a reward for good behaviour. From the point of view of the issuer's ability to pay, his economic power in both cases remains unchanged. On the one hand, by reducing the emission, the polluter reduces the costs of paying pollution tax and, thus, reduces his production costs whereas, on the other hand, he receives a subsidy which increases his revenues.

[5] Subsidies are a specific kind of state expenditures which are allocated by the state to private entities in the form of monetary benefits; in return, the private entities are required to exercise a specific kind of conduct in lieu of receiving a counter-service on the market; (see: Schmölders, 1965, p. 223).

c. Taxes vs. Subsidies

In order to accomplish environmental goals and objectives, the contemporary societies apply both fiscal instruments. After comparing their effects and efficiency in practice, we may agree with the common opinion of economists and lawyers alike, both of whom give preference to taxes.

The reasons are quite convincing. Taxes used as environmental policy instruments are safer and take a faster effect than subsidies because they directly burden the polluters (tax payers). Namely, the better the polluter's relation to nature, the lesser amount of tax he will be levied by the state.

In an attempt to obtain the largest possible amount of subsidy, tax payers often employ production processes which excessively pollute the natural environment.

As compared to subsidies, environmental taxes are more equitable because they burden the polluter only. The reduced pollutions results in reducing the tax burden, which ultimately motivates tax payers to use nature more rationally. Unlike taxes, subsidies burden the citizens because they are paid out of the total fiscal funds collected from all citizens.

3. Environmental Taxes in the Legal System of the European Union

The European Union is a form of supranational integration of 27 states. It has a significant impact on the legislation of each Member State, the result of which is a termination or restriction of state competences in some areas of state administration.

In the field of environment protection policy, the EU member states are both independent and restricted to some extent. In line with the subsidiarity principle, some problems in this area may be regulated independently by each state but only providing that the problem may not be regulated more efficiently at the EU level.

The Member States are competent to levy environmental taxes and other charges but they are also obliged to make their tax regulations comply with the EU regulations.

The Treaty Establishing the European Community is one of the documents which prescribes two restrictions. The first provision imposes a limitation that environmental taxes and charges shall not burden the export, import and transportation of goods (products). This limitation is a result of the fact that the EU is essentially a customs union which covers the entire exchange of goods between the Member States; thus, the provision prohibiting the Member States to pay "customs tariffs and all charges giving equivalent effect" applies to all trade in goods (Treaty Establishing the EC, Art. 23). Yet, the Treaty also envisages some exceptions from this rule and specifies the reasons for such a decision; thus, the imposed limitation on the import, export and transport of goods may be justified on the grounds of "protection of health and life of humans, animals or plants" (Article 30 of the Treaty Establishing the EC).

The European Court acted in line with these exceptions in the case known as "the Walona prohibition on waste import". Upon the merits of this specific case, the Court held the payment of environmental charges on the import of waste was allowed because, in principle, waste must be taken care of in the region where it has been generated.

The second important provision imposes a limitation that products originating from other Member States and third countries shall not be discriminated against. Yet, it is still possible to discriminate products by applying environmental charges in different ways:

- exempting the domestic products from being charged with environmental taxes[6]
- applying different tax rates, subject to the requirements which can be met by domestic producers only[7]
- levying taxes subject to the criteria which are different for domestic or imported goods[8]
- applying different methods of charging (paying) environmental taxes[9]

The elements of environmental taxes (as well as other taxes) are regulated by the primary EU legislation as well as by an increasing number of rulings of the European Court.

The rules of the primary EU legislation impose limitations which are most frequently worded as proscriptions, which the Member States are obliged to observe in the implementing and applying these rules. However, in many cases and particularly when it comes to environmental taxes, the limitations imposed by the primary EU legislation are made more lenient in the decisions of the European Court, or they are not applied at all in specific circumstances. It is primarily a result of the specific nature of environmental charges, which are primarily aimed at exerting an impact on shaping a more humane and rational taxpayers' relation towards nature. These taxes do not primarily serve a fiscal or some other non-fiscal purpose, as it is the case with a vast number of other public charges.

The harmonization of the legal system with the EU framework requires a solid understanding of the EU legal doctrine as well as the vast body of case law provided in the decision of the European courts. It is actually the prerequisite for the harmonization of national provisions with the provisions of the European Union.

4. LEGAL ANALYSIS OF ENVIRONMENTAL TAXES

a. Assessment of environmental taxes from the aspect of taxation principles

While economists are still debating on the environment protection instruments (embodied in taxes and other public charges), lawyers are primarily interested in the problems

[6] Pursuant to the teleological interpretation of Article 90 of the Treaty Establishing the European Communities, this type of discrimination refers only to the type of product and not to the manner of its application. Thus, the exemption from paying the environmental tax on the use of crude oil in public transaction (and not on the oil itself as a product) is not considered to be a discriminatory measure, nor is it a measure which is in contravention of the EU provisions.

[7] In that context, the European Court of Justice issued the decision (EuGH of 9.5.1985, Rs112/84) in reference to a special French excise tax on passenger cars rated as motor vehicle of higher horsepower (at more than 16 CV). The fiscal horsepower (set forth for taxation purposes) was stipulated in such a way that this tax burdened only foreign manufactureres. Moreover, the application of higher environmental tax rates shall not be based on the requirements which are to be met by foreign products only.

[8] Yet, this form of discrimination is allowed in exceptional circumstances.Namely, the application of diverse criteria is allowed in case there are environmental issues involved; for example, if the environmental tax is related to the specific fact such as the quantity of harmful substances emmitted in the course of production of a certain produce in a Member State, whose quantity is either difficult or almost impossible to establish. Such as provision is considered justifiable, particularly after adopting the 1992 Treaty of the European Union, which stipulates that one of the goals of the EU is the exercise of a stable, non-inflational and ecologically sustainable economic development.

[9] For example, a state may allow for the delay in paying environmental tax which is allowed only in respect of the domestic products. However, if the revenue from the environmental tax levied on an economic entity as compensation for the provided services (particularly of environmental nature), then its is not regarded as a subsidy or finansical aid, nor is it regarded as a disturbance of competition on the market.

concerning "eco-taxation" (making taxation eco-friendly) and particularly the issue whether environmental taxes are in compliance with the taxation principles. In tax law, there are two major problems arising in disputes on environmental taxes and their adequacy from the aspect of tax-law.

The first problem is how to make the environmental taxes (which are primarily aimed at changing the tax payers' conduct) comply with the ever-more prominent need "to make tax law more consistent with its original fiscal role" (Lang, Rainer & Van der Bellen , 1995, p. 3).

Namely, by providing fiscal charges (which are primarily aimed at ensuring the revenues for satisfying the needs of the state), the fiscal burden may be most fairly distributed among its citizens. This is so becuse such fiscal charges are largely based on the principle of economic power.

The principle of economic power has been recognized for over two centuiries (Messerschmidt, 1986, str. 65) as the basic principle of tax equity and thus as "the highest standard for comparing the equity of taxation in bearing the tax burden" (Tipke &Lang, 1944, p. 77).

The second problem pertains to the constitutional limitations on environmental taxes.

One of the basic constitutional principles in modern states is the guarantee of citizens' equality in exercising their constitutional rights and performing their constitutional duties. In constitutional law, the citizens' equality in terms of performing their constitutional duty to participate in providing for the public needs is ensured by applying the principle of taxation according to their economic capacity.

In that respect, the primary issue is the extent of applying environmental taxes, which are not only inconsistent with this principle but also "stifle" the economic activities which are the basic source of taxation (on products and services). It follows thereof that environmental taxes are legally inadmissible because they violate the constitutional principle prohibiting the suppression of any economic activity whereas their goals have been estimated to be socially valuable and justifiable.

In addition, such an effect is contrary to the fundamental rights and freedoms guaranteed to the EU Member States, which have also become part of the constitutions of the states pursuing the EU membership. Above all, these are the freedom to choose ones' profession and the right to property (ownership right). The observance of these constitutional rights does not withstand the discrimination in the market competition; nor does it tolerate the application of taxes (such as environmental taxes) which may exert a negative impact (which is artificial rather than driven by market forces) on the competition among the economic entities or the competition within a specific economic branch as a whole.

b. Tax-law options for instituting eco-taxation

Despite the deficiencies underlying environmental taxes, the contemporary legal science asserts that the "eco-taxation" is still legally admissible under the following circumstances: (1) if there are statutory limitations on the application of environmental taxes; (2) if the principle of fiscal neutrality is observed; and (3) if the environmental tax rate is subject to the possibility of substituting the object of taxation and the current level of technological development of the society.

(1) In legal science, the application of environmental taxes is justified by the need to equate the major values and the substance underlying the principle of taxation according to the economic power, which is applied in most taxes and which ensures fairness in the distribution of tax burden (on the one hand), and the principle of protection of the natural environment (on the other hand). Even though there is a substantial difference between the two principles, their role in accomplishing these goals may be equally valuable. Namely, given its value and significance for accomplishing the general public goals, the equitable distribution of tax burden (which ensures taxation equality) may be equaled with the environmental protection and care for the natural environment.

However, given the fact that the environmental taxes violate the constitutional provisions on taxation equality and fairness (envisaged in Art. 51 of the Constitution of the Republic of Croatia, 2010) as well as the principle governing the freedom of trade and entrepreneurship (Art. 49 of the Constitution of the Republic of Croatia, 2010), a standard and permanent application of environmental taxes may not be legally justifiable even though their goals may be regarded as generally valuable and, thus, socially justifiable.

These taxes may be legally justifiable only providing that they are used as a temporary solution. In that case, the constitutional provision on the inadequacy of environmental taxes may be justified/ by their "educational" impact on the environment polluter.

As long as the tax payer is burdened with this environmental tax, the tax payer's costs are increased by the amount of the imposed environmental tax due to the fact that his production activities or services cause damage to the natural environment. If there are no time limits in applying environmental taxes, the tax payer is not motivated to change his attitude towards nature given the fact that he would still be paying the environmental tax in spite of reducing the pollution and damage to the environment.

However, if the environmental tax is imposed for a period of five years for example and subsequently substituted by a prohibition to perform a specific economic activity[10] which is harmful to the natural environment, the tax payer is motivated in the course of this period to change his conduct to the natural environment by switching to some other natural resources, technology and production materials. In that case, after the period of applying the environmental tax has expired, the tax payer will not be subject to the prohibition measure, which further implies that he will be able to carry on performing his economic activity.

Just like other taxes, environmental taxes may be combined with a tax privilege (relief) and/or tightening the tax rate. While tax privileges (as a form of subsidy) are used to reduce the tax burden on each tax payer who meets the specified requirements,[11] imposing higher tax rates has the opposite effect – to increase the tax burden.[12] Both tax measures are contrary to the principle of tax equity, which implies the distribution of tax burden according to the tax payers' economic capacity. Considering that the principle of tax equity (which is unfeasible in environmental taxes) is substituted by an equally valuable

[10] The prohibition measure is a constitutional duty of the state envisaged in Article 70 of the Croatian Constitution, which reads: "The State shall guarantee a healthy living environment."

[11] In environmental privileges, the tax basis of the capital revenue tax is (for example) reduced by the amount of environmental investments.

[12] For example, it may imply a failure to recognize the expenses on the use of a motor vehicle and to deduce them from the tax basis of the income tax.

and significant principle of environment protection and care, both tax privileges and higher environmental tax rates are equally acceptable from the legal point of view.

(2) In the course of introducing an environmental tax, special attention is paid to the principle of fiscal neutrality, which implies ensuring of the existing tax burden rate at the moment of introducing a new tax into the system. This principle is exercised by decreasing the income stemming from non-environmental taxes to an extent which is anticipated to incur an increase of public revenues as a result of charging environmental taxes. To be more specific, this principle is exercised by reducing the capital-gains tax to the extent which is expected to provide the income from charging the environmental tax, or by increasing the non-taxable part of the income (the existential minimum, which is not subject to taxation) in case of tax payers paying personal income tax.

(3) It should be possible to substitute the tax-burdened object by some other taxation object, particularly given the fact that the poverty-stricken population is frequently deprived of this option. For example, citizens of modest income and below-average economic power will not have the opportunity to exchange a car with a traditional motor (using lead petrol, which is subject to the environmental tax) for a modern and thus more expensive "eco-friendly" car (using leadless petrol).

(4) The efficiency of environment taxes depends on the actual technological development in the given society. A lower technological development of the society implies a lower efficiency of environmental taxes. For example, the desired environmental goals will not be accomplished if the citizens' financial standing does not allow for the use of the so-called "ecological gas" or for substituting a non-ecological vehicle by a modern "eco-friendly vehicle", or if the society does not have a well-developed network of public transport.

5. CONCLUSION

Environmental taxes may be legally justified in spite of being inconsistent with the essential taxation principles (on tax equity and economic power) and the contemporary constitutional provisions (on the prohibition of suppressing the economic activity). Given the fact that their primary objective and efficiency is closely related to environment protection, their legal analysis is considered to be equally valuable and socially significant as the aforementioned tax-law and constitutional principles. Yet, their legal recognition does not necessarily imply that they are to be used without any adjustment as a prescribed environmental policy instrument aimed at solving increasingly serious environmental problems. Environmental taxes must undergo some change and their application must be subject to statutory limitations (time limits). If this change is insufficient, in order to provide for environment protection, the state will be obliged to resort to a more stringent measure: to prohibit any further use of a natural resource, to ban the use of a specific technology or, ultimately, to prohibit the exercise of a specific economic activity.

The European Union, whose environmental policy is aimed at accomplishing high environmental protection standards, makes allowances to its Member States to apply both administrative and market instruments in running their national environmental policies. However, in case an environment protection problem may be resolved more efficiently at the EU level, it is the Union that decides on the instruments and procedures for solving the specific problem.

The efficiency of environmental taxes and other environmental policy instruments largely depends on the current development of the society. In other words, the success of the environmental policy depends not only on the capital assets which the society or the majority in the society may dispose of but primarily on the citizens' education, environmental awareness and ethical relationship towards nature.

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PRAVNA PROSUDBA EKOLOŠKIH POREZA

Olivera Lončarić Horvat

Očuvanje okoliša kao osnove zdravog života, je od značajnih ljudskih prava. Od polovice prošlog stoljeća pridaje mu se posebna pažnja, pa se to pravo danas nalazi u ustavima mnogih suvremenih država, uključujući i Republiku Hrvatsku. U radu se razmatra prirodni okoliš kao javno dobro. Analiziraju se porezi i subvencije kao fiskalni instrumenti za njegovo financiranje. Prednost se daje porezima. Ispituju se porezno pravne mogućnosti ekologizacije poreznog sustava. Daje se ocjena ekoloških poreza sa stajališta poreznih načela. Razmatra se mjesto i uloga ekoloških poreza u pravnom sustavu Europske unije.

Ključne riječi: *prirodni okoliš, javna dobra, ekološki porezi, subvencije, Pigou, Baumol, Oates, porezno-pravna načela, ekologizacija poreznog sustava, Europska unija.*

Translated by: Gordana Ignjatović