

THE CARBON TAX: BETWEEN CONSENSUS AND CONTROVERSY

In our last newsletter, we had commented on the experts' conference of July 2-3, 2009 and on the round-table of July 9, 2009, headed by the former French Prime Minister Michel Rocard, on the implementation of a "Climate-Energy" tax.

The report of the experts' conference and of the round-table, also called "Rocard Report", was transmitted to the President and to the Prime Minister on July 28, 2009.

Since late August, the "Climate-Energy" tax, more commonly called the "carbon tax", has hit the headlines and has become the ubiquitous topic of the start of the new political season.

Between the successive outcries and political declarations of the last month, it seems necessary to reconsider the proposals of the experts, as reflected in the Rocard Report.

Indeed, in the frame of the *Grenelle de l'Environnement*, the implementation of a carbon tax lies within the commitment of France to divide its greenhouse gas emissions by four by 2050 compared to its emission rate in 1990.

Although the carbon tax appears to be a fiscal tool, it has nevertheless environmental grounds since the objective of the carbon tax is to lead households and firms to change their consumption habits in the coming years. Indeed, the taxation of polluting energies tends to induce them to use clean energies and less polluting equipments.

In this perspective, the Rocard Report highlights the items on which there is a broad consensus among the experts:

General principles of the carbon tax:

The Report states that the carbon tax shall apply to a long period of time, in a foreseeable way, but shall also be flexible in order to adapt to scientific progress that might occur in the coming years.

Regarding the tax rate, the Report suggests that it shall increase with the passing years to comply with the commitments made by France to reduce its greenhouse gas emissions. The carbon tax shall always be calibrated on the contemplated reductions of greenhouse gas emissions without only responding to tax return considerations.

On that point, the Rocard Report agrees with Fabienne Keller's information report on the French environmental tax system, made on behalf of the Senate Finance Committee and released on July 8, 2009, which sets out that "the efficiency of a carbon tax implies a progressive and predictable increase of its rate in order to allow behaviours' adjustments".

The Rocard Report also recommends a minimum scope for the tax carbon, including the transport industry (passengers and goods) – as such industry had the highest increase in greenhouse gas emissions between 1990 and 2007, housing and tertiary industries and finally the industrial installations that are not subject to the quotas of the European Union Emission Trading System.

In order to know who will have to bear this « tax on pollution », one should combine the scope of the carbon tax with the taxable amount proposed in the Report.

The taxable amount of the carbon tax:

Regarding the Rocard Report, the basis on which the carbon tax is assessed must be different from the one of existing taxes, particularly for fuel. Furthermore, the Rocard Report mentions that it must be determined with regard to the greenhouse gas emissions that are not covered by the European Union Emission Trading System.

The carbon tax rate

The Quinet Commission had issued a report on the “households’ purchasing power” in February 2008 that had initially argued for a value of €45 and had eventually suggested a lower value equal to €32 per CO₂ ton in 2010. Pursuant to the recommendations of the Quinet Commission, taken up by the Rocard Report, the tax shall increase every year by 5% above inflation to reach €100 per ton in 2030.

In its information report on the French environmental tax system, the working group of the Senate Finance Committee had stressed that the French authorities will need to build a lasting consensus around the carbon tax when it will be defined and implemented. In that respect, this working group had welcomed “the approach chosen by the Government, consisting in convening a conference of consensus headed by the former French Prime Minister Michel Rocard”.

However, the various governmental and presidential declarations of September put into question some of the carbon tax items, which were consensual for the experts but actually became controversial for the public opinion and the politicians.

In its report on the French environmental tax system, Fabienne Keller pointed out that, according to the ADEME (French Environment and Energy Management Agency), several polls have shown a real awareness of households concerning the climate consequences of our consumption patterns, which could facilitate the acceptance of the carbon tax. However, the polls that were released in the newspapers in early September have revealed that 2/3 of French people are against the carbon tax, seeing in this mechanism above all an increase in the polluting energies’ prices.

Indeed, the carbon tax rate is the main controversial issue. After several conflicting announcements by members of the Government, the French President has finally announced that the tax will be calculated on the basis of €17 per CO₂ ton.

And the reason why we mostly talk today of a “carbon tax” rather than of a “Climate-Energy” contribution is that electricity has been excluded from the scope of the tax, which will only apply to fossil energies (oil, gas, coal, LPG).

Furthermore, while the Rocard Report insisted that the transport industry shall be part of the minimum scope of the tax, the Government is now thinking about exempting the carriers and taxing, instead, their principals.

Finally, the question of the compensation of the tax has been raised for the households and the businesses. The French President has pledged that the tax revenues would be redistributed to the households, either in the form of a « green check » for those who are not taxed or through a reduction of their income tax for the others.

Insofar as businesses and companies are concerned, several mechanisms had been contemplated to limit or offset the potential loss of competitiveness incurred by the tax (lower social contributions, new aids for environmental investments). Finally, some consider that the removal of the business tax, at the same time as the entry into force of the carbon tax, will be a sufficient compensation.

Despite the debates and the uncertainties, one thing remains certain: the carbon tax

will come into force on January 1st, 2010. Some details will be clarified in the coming weeks in the context of the discussions of the Parliament on the 2010 Finance Act.

In an international context where environment is high on the list, in particular with the Copenhagen Conference to be held in December, we can anticipate that the carbon tax will still remain a ubiquitous topic for a long time

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Ichay & Mullenex Avocats is a French law firm focusing on all legal issues related to the new technologies and sustainable development in France and abroad. They are considered experts in intellectual property and Internet law, e-commerce, online gaming, data protection. Ichay & Mullenex Avocats also assists its clients on all issues related to financing, mergers & acquisitions, restructuring, etc. and advises them on their litigation and arbitration procedures.

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