

Première partie – La fiscalité environnementale : une impossible question du droit fiscal international

Part One – Environmental Taxation: An Impossible Question of International Tax Law

Droit fiscal international de l'environnement et souveraineté fiscale nationale

International Environmental Tax Law and National Fiscal Sovereignty



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Si la dimension internationale des problèmes environnementaux explique logiquement que des engagements et des solutions soient recherchés au niveau mondial, l'outil fiscal se révèle juridiquement très mal adapté. Basé sur une souveraineté par définition nationale, il n'offre que des solutions établies dans un cadre national.

While the international dimension of environmental problems logically explains why commitments and solutions should be sought at a global level, the tax system is legally ill-suited to the task. Logically based on national sovereignty, it can only offer solutions established within a national framework.

Une grande partie des travaux portant sur le droit international et le droit fiscal de l'environnement se limite à une question de droit du commerce et de « simple compatibilité », car, « personne ne rêve encore d'une taxe mondiale » selon Nicolas Théry. Ce dernier reconnaît cependant entre parenthèses que « les prémisses d'une telle approche sont visibles, notamment dans le secteur aérien avec la taxe sur les billets d'avion et l'intégration de tous les vols arrivant ou quittant l'Europe dans le marché d'échange des quotas carbone »¹.

1. Intervention lors de la table ronde « Le droit fiscal de l'environnement : Continuité et ruptures », Colloque « Les mutations du Conseil d'État », *La fiscalité environnementale*, Paris, 17 juin 2009. Actes publiés à *Droit de l'environnement*, n° 173, 2010, p. 36. Membre de l'Inspection des finances, désormais Inspecteur, N. Théry était alors conseiller du directeur général « Environnement » à la Commission européenne.

Le droit fiscal international de l'environnement² est longtemps resté l'exemple même du droit fiscal non pas de l'environnement au sens de « pour l'environnement » (comme le doyen Pécour définit le droit de l'environnement) mais d'un droit fiscal contre

2. « Nous dire : le droit fiscal de l'environnement se définit d'autant plus logiquement ici comme l'ensemble des impôts, taxes et redevances » dont l'assiette est basée sur une nuisance environnementale » (définition de l'OCDE et de l'Eurostat) et non pas comme un droit fiscal ayant comme objectif explicite de protéger l'environnement, définition finale et seule définition scientifique valable défendue notamment par le professeur Robert Hering : voir R. HERRING, « La fiscalité de l'environnement : notion et état du droit positif en France », *Études de l'environnement*, 1984, n° spé., pp. 59 et s. ; R. HERRING, « Le droit fiscal de l'environnement : en croissance sur des fondements incertains », *RJEP*, avril 2011, n° 114, pp. 149-171 et « L'impact des politiques de l'environnement sur le droit fiscal : en vers plus », in Ch. BOUTIER (dir.), *L'environnementalisation du droit. Actes du colloque de Lyon en hommage à S. Caualat*, 1^{er} juin 2018, Paris, IFJD, 2020, p. 248.

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