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DEBATE/DISCUSSION: THE CIRCULAR ECONOMY FROM A LEGAL PERSPECTIVE. THE TAX SYSTEM AND LABOUR REGULATION IN THE CONTEXT OF ENVIRONMENTAL SUSTAINABILITY/ LA ECONOMÍA CIRCULAR EN PERSPECTIVA JURÍDICA. SISTEMA TRIBUTARIO Y REGULACIÓN LABORAL ANTE LA SOSTENIBILIDAD AMBIENTAL

French Taxation Poorly Suited to the Circular Economy

Una fiscalidad francesa poco adaptada a la economía circular

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ABSTRACT

This article aims to examine taxation in relation to the circular economy in France and assess whether the French tax system incentivises or hinders the transition towards circularity. In this context, despite the adoption of the "polluter pays" principle, the article highlights a fiscal framework that remains largely unsupportive of the circular economy, as demonstrated – among other examples – by the inadequacy of the private copying levy, the VAT Compensation Fund and the limited scope of tax incentives for innovation. Beyond simply identifying the barriers to circularity, the article proposes a series of reflections intended to offer insights into how France might shift from a tax system ill-suited to the circular economy to one that actively promotes its advancement.

KEYWORDS: circular economy; taxation; incentives; European Union; circularity; waste management; global sustainability and resilience; GHG emissions.

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RESUMEN

El objetivo de este artículo es analizar la fiscalidad de la economía circular en Francia e intentar comprobar si el sistema fiscal francés incentiva o desincentiva la transición hacia la circularidad. En ese sentido, habiendo asumido el principio de «quien contamina paga», se observa la existencia de una fiscalidad hostil en el tratamiento tributario de la economía circular como se puede inferir, entre otros, de la inadecuación de la compensación por copia privada o del Fondo de compensación del IVA, así como de las medidas fiscales de apoyo a la innovación. Más allá de la mera identificación de los obstáculos a la economía circular, se proponen unas reflexiones para intentar proporcionar algunas claves para que Francia pueda pasar de una fiscalidad inadaptada a la economía circular a otra que sea realmente incentivadora.

PALABRAS CLAVE: economía circular; fiscalidad; incentivos; Unión Europea; circularidad; gestión de residuos; sostenibilidad global y resiliencia; emisiones de GEI.

1. Introduction

Does French taxation favour the circular economy? Regrettably, the answer to this question can only be negative. Although it accounts for a significant share of public revenue (almost €70 billion, or 2.2% of the GDP), French environmental taxation does not appear to foster the development of a circular economy. Several reasons underpin this disappointing conclusion.

However, before examining them, it is worth recalling that the "polluter pays" principle, which underpins the logic of the circular economy, is not enshrined in the French constitutional framework. While Article L. 110-1 of the French Environmental Code does refer to it, stating that "the costs resulting from pollution prevention, reduction and control measures must be borne by the polluter", the principle is not expressly mentioned in the Environmental Charter. Despite former President Jacques Chirac's intention to enshrine it in the Charter, the "polluter pays" principle was ultimately replaced with a more general and imprecise obligation for any person to contribute to the remediation of environmental damage (Article 4). Even if largely symbolic, this omission is indicative of the nature of French taxation, which tends to follow a financial rationale rather than an environmental one.

To support this assertion, one could point to taxes on polluting activities whose effectiveness in advancing the circular economy remains questionable. More significantly, however, there is a need to highlight the existence of clearly "disincentivising" fiscal measures, recently criticised by the National Institute for the Circular Economy – a leading think tank on issues relating to the economy and resource conservation.

2. The "polluter pays" principle as embodied in the General Tax on Polluting Activities (TGAP), yet insufficient to promote the circular economy

In France, the application of the "polluter pays" principle in the 1990s led to the creation of a multitude of sector-specific taxes with highly disparate bases and regulatory frameworks. Alongside genuine taxes, a range of levies and parafiscal charges of varying effectiveness were introduced, intended to generate the resources required to remedy the environmental damage caused by polluting activities. By way of example, particular mention may be made of:

- The tax on the storage of municipal solid waste, established by Law 92-646 of 13 July 1992 concerning waste disposal and classified installations for the protection of the environment.
- The tax on the disposal of special industrial waste, established by Law 95-101 of 2 February 1995 aimed at strengthening environmental protection.
- The parafiscal tax on base oils, from which used oils are derived, established by Decree 86-549 of 14 March 1986 for the benefit of the National Agency for the Recovery and Disposal of Waste (ANRED).
- The parafiscal tax on air pollution, established by Decree 85-582 of 7 June 1985 and collected by the Air Quality Agency.
- The tax on noise pollution reduction, established by Law 92-1444 of 31 December 1992 on combating noise, which later evolved into the tax on aircraft noise pollution (amending the Budget Law of 30 December 2003).

Given the lack of consistency across these various taxes, France ultimately implemented the "polluter pays" principle through a general tax that has been in constant evolution (A), composed of several elements intended to encompass all types of pollution (B), while maintaining a unified legal regime (C).

A. The evolving architecture of the TGAP: sign of adaptability or source of instability?

In the late 1990s, following the report by Nicole Bricq[1], these individual levies were merged into a new, overarching tax established by Article 45 of Law 98-1266 of 30 December 1998 on the 1999 budget, and codified in Article 266 sexies of the Customs Code: the General Tax on Polluting Activities (TGAP). Its purpose was to operationalise the "polluter pays" principle and incentivise polluters to change their behaviour. Initially presented as the natural framework for a future ecotax, the TGAP was intended to apply universally across all polluting activities and to simplify environmental taxation, particularly in relation to the ap-

plication of the "polluter pays" principle. However, this objective has not been achieved.

- To begin with, the definition of pollution remains relatively imprecise. It is based primarily on Article L. 124-2 of the Environmental Code, which lists various forms of environmental harm without offering a clear definition[2]. This list functions as a kind of catch-all, highlighting the conceptual challenges inherent in defining the environment – resulting in a mere juxtaposition of unrelated elements without any coherent conceptual framework. Although frequently criticised, this vagueness does offer the advantage of allowing for ongoing adaptation to new forms of pollution.

- It is this feature that explains the numerous developments in the TGAP over time. Initially, the tax primarily targeted municipal solid waste storage facilities, aircraft operations, the supply of lubricants and certain types of air pollution. In 2000, however, it was extended to cover three additional polluting activities: the manufacture of detergents, mineral extraction and classified installations for producing antiparasitic products (subsequently removed in 2008). Conversely, in 2005, the TGAP on noise, which had taxed airline operators, was replaced by a tax specifically targeting aircraft noise pollution. Later, in 2007, a TGAP was briefly introduced for producers of printed advertising materials. In 2021, the "lubricants" component of the TGAP was abolished and, finally, in 2024, the "waste" component was expanded to include radioactive metallic waste. While this continual adaptation to emerging forms of pollution may reflect contemporary challenges, it nevertheless creates an impression of instability and a lack of legal certainty and predictability.

- Another source of concern is the destination of revenue generated by the TGAP. Whereas parafiscal taxes were originally earmarked explicitly for pollution control and to finance environmental agencies, this is no longer systematically the case. Depending on the period, these agencies may have received a portion of TGAP revenue – but not all of it. Following the reform of TGAP collection procedures, the principle of assigning the proceeds to environmental expenditure has been abandoned, with funds now redirected to the state's general budget. This represents a regression compared to the original arrangement.

B. Current components of the TGAP

Given that pollution arises from a range of sources, the TGAP comprises several components in an effort to adapt the "polluter pays" principle to differing circumstances.

Component I: TGAP on waste storage and treatment

The TGAP is payable not only by operators of hazardous or non-hazardous waste storage or thermal treatment facilities requiring authorisation as classified installations for the protection of the environment (ICPE), but also by those who transfer waste to another state, either directly or via third parties. By contrast, the tax does not apply to facilities used exclusively for waste generated by the operator itself, nor to the reception or transfer of waste to another state when it is intended for material recovery.[3] The tax is calculated based on the weight of waste received or transferred, with the rate per tonne varying according to the type and characteristics of the facility (non-hazardous waste storage plants, non-hazardous waste thermal treatment plants and similar, hazardous waste thermal treatment plants and hazardous waste storage plants).

Component II: TGAP on emissions of polluting substances into the atmosphere

This component of the TGAP is one of the mechanisms available to France to meet its targets for reducing atmospheric pollutant emissions, in line with Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe. This tax is levied on any operator of an installation requiring authorisation or registration as an ICPE with a maximum thermal capacity of 20 MW or more, or with a municipal solid waste thermal treatment capacity exceeding 3 tonnes per hour. The tax is calculated on the weight of specific substances[4] released into the atmosphere, with rates varying according to the nature of the substances emitted.

Component III: TGAP on the supply or use of aggregates

The aggregates component of the TGAP applies to businesses that supply or use these materials, which are defined according to four cumulative criteria: size,[5] origin,[6] characteristics[7] and intended purpose. This component is calculated based on the volume of product supplied or used, expressed in tonnes, according to a uniform rate per tonne.

Component IV: TGAP on the supply or use of detergents

To combat pollution of groundwater and watercourses – caused by the proliferation of algae that can suffocate and eliminate other forms of aquatic life – a "detergents" component was added to the TGAP. The tax is applicable to any person who, in the course of their economic activity, supplies or uses detergents in France, including laundry auxiliaries, fabric softeners and conditioners. The tax is based on the net weight of the relevant preparations or products, with the rate (per tonne) varying according to their phosphate content. However, this tax remains far from dissuasive for industry – primarily because it raises just €50

million, and more importantly because businesses are able to pass the cost on to their customers. It is therefore understandable that the legislature opted for a partial ban on these phosphates,[8] which proves more effective than relying on taxation alone.

C. A TGAP with multiple components but a single legal framework

Although the TGAP comprises several components, it is worth noting that these are subject to a harmonised regime.

The TGAP is declared, audited and settled in accordance with the rules, guarantees, privileges and penalties applicable to revenue taxes (VAT).[9]

Moreover, since 2021, and following its alignment with VAT mechanisms, the TGAP has been collected by the Directorate General of Public Finances (DGFiP). This reform has significantly simplified tax declaration procedures.

From 2024 onwards, TGAP rates have also been indexed to inflation, resulting in annual increases. Article 104, I-B of the 2024 Budget Law amends Article 266 novies, 1 bis of the Customs Code, which establishes the indexation rules for the various components of the tax. As of 1 January each year, the rates are adjusted in line with the annual change in France's consumer price index (as set out in Articles L. 132-1 and L. 132-2 of the Goods and Services Tax Code).

Ultimately, this brief overview demonstrates that the TGAP effectively embodies the "polluter pays" principle and penalises the most polluting companies. The revenue it generates – nearly €1.3 billion – is far from negligible. However, its impact on the development of the circular economy is minimal: beyond the fact that it can be passed on to the end customer, it suffers from the significant drawback that the proceeds are no longer earmarked for environmental initiatives, but are instead absorbed into the general state budget. This lack of specific allocation represents a step backwards compared with the original system in place prior to 1999.

3. Fiscal measures to support the circular economy still in need of improvement

In addition to environmental and energy-related taxes, it is regrettable that the general tax system often proves hostile to the development of a circular economy (A). For this reason, the National Institute for the Circular Economy (INEC) advocates a revision – or even the abolition – of certain taxes (B).

A. A tax system hostile to the circular economy

Certain taxes and fiscal measures act as barriers to the circular economy, as illustrated by the following three examples:

1. The inadequacy of the private copying compensation scheme

The digital levy (RCP) is a charge introduced in several countries, including France, to compensate authors, performers, producers and publishers for the private reproduction of their works by individuals. This private copying compensation, set out in Article L. 311-3 of the Intellectual Property Code, applies primarily to storage devices such as hard drives, USB sticks, smartphones and the like, which can be used to copy copyright-protected content. It is a fixed charge, independent of the retail price, with a rate that depends on the storage capacity of the device. Traditionally, the levy applied only to new devices. However, it is regrettable that, since 1 July 2021, refurbished tablets and smartphones have also been subject to the levy, albeit at a separate and reduced rate. The National Institute for the Circular Economy rightly argues that applying the digital levy to refurbished devices is both illegitimate and outdated in the era of streaming – and, above all, that the product has already "paid the tax" when first sold as new. This measure has resulted in price increases of up to 10% for smartphones and has weakened the competitiveness of French refurbishment businesses, both in comparison with foreign competitors and with new products.

2. The inadequacy of the VAT Compensation Fund

In relation to VAT, there is a structural issue with the operation of the VAT Compensation Fund. At present, regional and local authorities, being non-taxable entities, are not entitled to deduct the VAT incurred on their purchases of goods and services. To address this, the state reimburses these authorities via the VAT Compensation Fund for the VAT they have paid on the purchase of capital goods. The problem is that reimbursements made through the Fund relate primarily to the VAT incurred on the acquisition of new goods, not second-hand goods. Similarly, if a regional or local authority chooses to lease an asset rather than purchase it, it cannot claim a VAT refund through the Fund. As a result, from a fiscal perspective, regional and local authorities are strongly incentivised to acquire new goods – despite the Public Procurement Code requiring them to implement a sustainable procurement policy.

3. The inadequacy of tax measures supporting innovation

Although the overall tax treatment of businesses in France is often criticised as unattractive and detrimental to competitiveness, there is one notable exception: the Research Tax Credit (CIR). This scheme is intended to encourage companies to engage in research and development (R&D) by covering a portion of the expenses incurred. Depending on the amount of R&D expenditure, the applicable rate is 30% for expenses up to €100 million and 5% for any amount exceeding that threshold.[10] The credit is deducted directly from corporation tax (or from income tax in the case of sole traders). In terms of basic research, applied research and experimental development, the scope of the Research Tax Credit appears broad and is regarded as a key factor in France's attractiveness to investment.

However, this perception does not hold true in the context of support for the circular economy. It is regrettable that sustainable development and the circular economy are not taken into account. Indeed, the only expenditure eligible under the Research Tax Credit is the purchase of "new" equipment. As a result, there is no incentive for companies to use second-hand or refurbished equipment. The same applies to depreciation: Article 244 quater B of the General Tax Code states that depreciation allowances apply only to "assets created or acquired new and directly allocated to scientific and technical research operations, including the design of prototypes or pilot installations".

In the same vein, it is worth noting that very few of the fiscal measures supporting entrepreneurship – such as the "young innovative company", "young academic company" or "young growth company" schemes – are directed towards circular economy activities, as these measures incorporate few, if any, environmental impact criteria. Too often, the eligibility conditions outlined in Articles 44 sexies et seq. of the General Tax Code tend to exclude circular activities, which are not considered sufficiently "innovative" in scientific or technological terms.

Nevertheless, it is important to acknowledge recent progress in adapting fiscal policy to support sustainable development, even if this progress is not directly connected to the circular economy. Law 2023-1322 of 29 December, relating to the 2024 Budget, introduced a Green Industry Investment Tax Credit (C3IV)[11] to encourage the domestic production of technologies necessary for the energy transition. The measure is designed to enable companies to undertake new industrial projects in key sectors for the energy transition, such as battery manufacturing, solar panels, wind turbines and heat pumps. In these four sectors, the tax credit – set at a rate of between 20% and 40% – applies to investments in both tangible assets (land, buildings, infrastructure, equipment and machinery) and intangible assets (patent rights, licences, know-how and other intellectu-

al property rights) essential for business development. Although the total tax credit is capped at €150 million per company,[12] the measure is clearly aimed at supporting sustainable development. The French government expects it to generate nearly €23 billion in investment and create 40,000 direct jobs in France by 2030. While the C3IV represents a promising step in the right direction, it overlooks the circular economy by focusing exclusively on energy production rather than considering the full life cycle of products. As the National Institute for the Circular Economy has pointed out, the scope of the measure should be broadened to include companies investing in the recycling and reuse of wind turbines, photovoltaic panels, batteries and heat pumps. In conclusion, the Green Industry Investment Tax Credit may be regarded as "an interesting initiative, but an incomplete one, as it fails to account for the 'resource' cost involved".

B. Some avenues for reflection

In light of the preceding observations, the proposals put forward by the National Institute for the Circular Economy – namely, to abolish the digital levy on refurbished smartphones and tablets, and to extend the Research Tax Credit to second-hand and refurbished devices – are fully deserving of support.

1. Desirable VAT adjustments in favour of a circular economy

In many respects, VAT appears to be the tax with the greatest potential for modernisation to improve the fiscal treatment of the circular economy by encouraging businesses to adopt circular practices.

- First, to promote greater adherence by regional and local authorities to sustainable development requirements and to the logic of the circular economy – by considering the full life cycle of products, as mandated by the Public Procurement Code – it would be appropriate to revise the operation of the VAT Compensation Fund. Specifically, the time has come for this Fund to permit reimbursements of VAT on leasing expenses for capital goods, as well as on the purchase of second-hand goods. Such a reform would help level the playing field, countering the current advantage enjoyed by new products over refurbished ones.

- Next, a reduced VAT rate of 5.5% should be applied to repair services covering household appliances, footwear and leather goods, clothing and home textiles, and bicycles. Without artisans – such as cobblers, repairers and tailors – even eco-designed products cannot be repaired. To foster the repair sector, it should benefit from a reduced VAT rate. Council Directive (EU) 2022/542 of 5 April 2022 amending Directives 2006/112/EC and (EU) 2020/285 as regards rates of value added tax explicitly opens up this possibility for "the supply of repairing services of household appli-

ances, shoes and leather goods, clothing and household linen (including mending and alteration)".

- Finally, a further proposal would be to introduce a reduced VAT rate of 5.5% for eco-designed or refurbished manufactured goods. Currently, these products are subject to the same tax treatment as new, less sustainable alternatives – which often have the added competitive advantage of being less expensive. To encourage consumers to make more sustainable purchasing choices, the implementation of favourable VAT treatment would represent a decisive incentive.

2. Reforming water taxation

A final point that highlights the limited consideration given to the circular economy within French taxation is the case of water-related taxation. In France, responsibility for the protection of water resources and aquatic environments lies primarily with the water agencies (formerly known as basin agencies), which oversee and safeguard these ecosystems. These agencies are public administrative bodies operating under public law and under the authority of the state. As defined in Article L. 213-8-1 of the Environmental Code, their mission is to promote the balanced and sustainable management of water resources and aquatic environments, ensure the supply of drinking water, control flooding and support the sustainable development of economic activity. The six agencies operating across mainland France are funded through water charges, which generate €2.2 billion annually – more than the revenue from the General Tax on Polluting Activities. These charges, governed by Articles L. 213-10 et seq. of the Environmental Code, consist of seven[13] categories and primarily concern pollution of domestic origin, pollution from non-domestic sources (industry and agriculture) and the abstraction and storage of water. At first glance, they appear to follow a "polluter pays" approach – yet in practice, this logic proves rather limited. What is taxed is water consumption, not actual pollution. As a result, under the domestic pollution charge, households account for 48% of the total revenue collected, simply because water consumption is the sole criterion used in its calculation – regardless of any real contribution to pollution. In recognition of this inconsistency, Law 2023-1322 of 29 December 2023 changes the name of the "domestic pollution charge" to the "drinking water consumption charge"[14] (alongside an "efficiency charge" – for the efficiency of drinking water networks – and a charge for the efficiency of collective sanitation systems). This new terminology better reflects the reality that the so-called domestic pollution charge is, in fact, only marginally linked to actual water pollution.

4. Conclusion

In France, taxation in support of the circular economy remains in its infancy: it prioritises innovation and the production of renewable energy, to the detriment of any real consideration of product life cycles. This disappointing reality underscores the need for more substantial efforts to ensure that taxation becomes a true lever for advancing the circular economy.

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Notes

1 N. Bricq, Pour un développement durable: une fiscalité au service de l'environnement, Paris, A.N., *Doc. parl*, XIe Législ, 1000, 23 June 1998, p. 175.

2 Article L. 124-2: "For the purposes of this chapter, environmental information shall mean any available information, regardless of its format, relating to:

> 1. The state of elements of the environment – in particular, air, atmosphere, water, soil, land, landscapes, natural sites, coastal or marine areas and biodiversity – as well as the interactions between these elements;
>
> 2. Decisions, activities and factors, especially substances, energy, noise, radiation, waste, emissions, discharges and other releases, that may affect the state of the elements mentioned in point 1, as well as decisions and activities aimed at protecting those elements;
>
> 3. The state of human health, safety and living conditions, buildings and cultural heritage, insofar as they are or may be affected by the environmental elements, decisions, activities or factors mentioned above;
>
> 4. Cost–benefit analyses and economic assumptions used in connection with the decisions and activities mentioned in point 2;
>
> 5. Reports prepared by or on behalf of public authorities regarding the implementation of environmental legal and regulatory provisions."

3 In addition, the TGAP does not apply to operations involving:

- waste from construction and insulation materials containing asbestos or asbestos fibres;
- waste generated by natural disasters;
- waste received by co-incineration plants;
- waste prepared as solid recovered fuel, whether combined with other fuels or not, for the generation of heat or electricity;
- waste subject to the "special energy tax" provided for in Article L. 312-1 of the Goods and Services Tax Code (CIBS) for amounts collected on energy products other than electricity;
- waste that does not decompose, combust or undergo physical or chemical reaction, does not biodegrade and does not damage other materials it comes into contact with in a way that may cause environmental pollution or harm human health;
- waste for which material recovery is prohibited or disposal is mandatory.

...

4 In particular: sulphur oxides, hydrochloric acid, nitrous oxide, nitrogen oxides, non-methane hydrocarbons, solvents and other volatile organic compounds, arsenic, selenium, mercury, benzene, polycyclic aromatic hydrocarbons, lead, zinc, chromium, copper, nickel, cadmium, vanadium, etc.

5 The law sets a maximum size criterion, whereby only materials whose largest dimension does not exceed 125 millimetres are subject to the TGAP component. In contrast, extracted materials exceeding 125 millimetres in size are not subject to the tax.

6 Materials occurring naturally in the form of mineral grains or derived from crushed or fractured rock.

7 Natural sands or gravels and similar materials.

8 Decree 2007-491 of 29 March 2007 prohibiting the use of phosphates in certain detergents.

9 Companies liable for the TGAP must submit an electronic annual declaration (Form 2020-TGAP-SD) to the tax authority. This may coincide with the VAT return: the CA3 filed in April for companies under the standard quarterly regime, or the CA3 filed in May for companies under the standard monthly regime. For companies under the simplified real regime, the TGAP declaration aligns with the CA12 or CA12A return filed in May or within three months following the end of the financial year (if not aligned with the calendar year). In all other cases (e.g., non-VAT-registered companies), the deadline is 25 April.

10 Article 244 quater B of the General Tax Code.

11 Article 244 quater I of the General Tax Code.

12 The ceiling rises to €200 million for investments in regional aid zones and €350 million for investments in outermost regions.

13 Non-domestic water pollution charge, domestic water pollution charge, charge for the modernisation of sanitation networks, diffuse pollution charge, charge for the abstraction of water resources, charge for water storage during low-flow periods, charge for the protection of aquatic environments, etc.

14 Article L. 213-10-4 of the Environmental Code.

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