



Deloitte Legal Newsflash

Tax Dispute Resolution - Customs and VAT

Can customs authorities also claim VAT?

The Court of Justice of the European Union (CJEU) brought further clarity to situations where a certain Member State's customs authorities claim VAT in addition to customs duties. In each post-recovery case, one should check whether the Member State that can recover customs duties can also recover VAT.

General principles

VAT

"Directive 2006/112/EC of 28 November 2006 on the common system of value added tax" establishes the principles regarding VAT.

The VAT Directive provides that the import of goods is subject to VAT. The general principle is that when goods are imported, a VAT chargeable action occurs.

However, where imported goods are subject to customs duties, the VAT chargeable action would occur when the chargeable action for duties itself occurs regarding said goods. The chargeable action for customs purposes takes precedence.

Customs

"Regulation 952/2013 of 9 October 2013 laying down the Union Customs Code" defines the principles regarding customs.

A customs debt occurs after the violation of any obligations laid down in customs legislation regarding the introduction of non-Union goods into the

Union's customs territory, as well as their removal from customs supervision, or the movement, processing, storage, temporary storage, temporary admission or disposal of such goods within that territory.

The place where the violation occurs is by default where customs debt is triggered. A special rule applies if a customs authority establishes that a customs debt was incurred in another Member State, and the amount of import or export duty corresponding to that debt is lower than EUR 10,000. In that case, the customs debt will be deemed to have been incurred in the Member State that detected the violation.

The FedEx case

In its judgment of 10 July 2019 (Federal Express Corporation Deutsche Niederlassung v Hauptzollamt Frankfurt am Main, C-26/18, ECLI:EU:C:2019:579) the CJEU considered the situation in which several goods subject to import duties were transported from third countries through Germany to their final destination in Greece. It was established that breaches of customs law in Germany triggered a customs debt in its territory. However, the question was whether this also created a VAT debt in Germany.

The Court ruled that in addition to the customs debt, there may also be a requirement to pay VAT, because it may be presumed that the goods entered the economic network of the Union in the Member State where the particular violation triggering the customs debt took place. Consequently, it was presumed that the goods were consumed in that Member State, which is the action on which VAT is levied.

However, the Court adds that this presumption is rebuttable. If it is established that goods entered the economic circuit of the Union on the territory of a Member State other than the one where the customs debt triggering infringements were committed, the action triggering VAT takes place in that other Member State. In other words, it can be proved that goods have been brought into the economic circuit in another Member State, in which the goods' consumption is implied, therefore rendering that Member State competent in levying VAT.

In this case, it appeared that despite infringements of customs legislation on German territory, the goods were merely transferred from one aircraft to another in Germany. The goods in question were transported to their final destination in Greece and were consumed there. Accordingly, the Court ruled that the goods had entered the economic circuit in their final destination Member State, and that VAT was ultimately due in Greece.

Thus, in order to assume that goods have entered the Union's economic circuit in a Member State, the customs debt triggering violation in that Member State regarding those goods is not decisive. Where it is established that the goods were transported to another Member State, being their final destination and where they were consumed, the goods were introduced into the economic circuit in that other Member State. Therefore, the VAT on these goods is only payable in this other Member State.

Recent confirmation

A similar discussion occurred in the recent CJEU decision of 3 March 2021 (VS v Hauptzollamt Münster, C-7/20, ECLI:EU:C:2021:161). A German resident brought his passenger car from Turkey to Germany, where it was used. He passed through Bulgaria and other Member States, but it was in Germany where he was subjected to a customs inspection. During that inspection, it was discovered that the taxpayer had failed to bring the vehicle to an import customs office and present it to customs. The German administration claimed both customs duties and VAT. Given that the customs debt due was less than

EUR 10,000, the customs debt was established in Germany, despite the infringement taking place in Bulgaria (as per earlier mentioned Customs Regulation 952/2013). Once again, the question of whether a VAT debt was also due in Germany was raised.

The Court again rebutted the presumption that VAT is due in the Member State where customs debt is triggered. In the present case, it was in Bulgaria where there was a failure to comply with customs obligations. However, the vehicle was actually used in Germany. Accordingly, since the vehicle effectively entered the economic network of the Union in Germany, the VAT is due in that Member State.

What it means for you

By default, customs authorities recovering customs debt due to a violation of customs law can also claim VAT. However, this is not a given based on the CJEU's rulings.

It should be remembered that VAT on imported goods arises in the Member State in which it is established that the goods in question entered the economic network. The mere detection of a violation that triggers customs debt in a Member State is not enough to rightfully claim VAT in that Member State.

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