

News Flash

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ECJ Judgement: Liability of indirect customs representative to pay import VAT

Liability of indirect customs representative to pay import VAT

In this issue of our News Flash, we would like to briefly outline a recent case of the European Court of Justice (ECJ), which concerns the joint and several liability of the indirect customs representative for import of the goods and whether this person could be recognized as being liable for the payment of the import value added tax.

Who is the person liable to pay the import VAT?

In the case C-714/20 from 12th May 2022 ECJ is dealing with the question whether the Union Customs Code must be interpreted as meaning that the indirect representative is liable not only for customs duties, but also for import VAT merely as a result of being a “declarant” for customs purposes. At the same time, ECJ is dealing with the question, whether the Council Directive on the common system of value added tax must be interpreted as meaning that the liability of the indirect customs representative for the payment of the import VAT, jointly and severally with the importer, can be accepted where there are no national provisions explicitly and unequivocally designating or recognizing that representative as being liable for that tax.

The case concerns Italian company U.I. Srl that represented other importing Italian companies as an indirect customs representative and in this respect executed all necessary customs operations in its name on behalf of those importing companies, and submitted the corresponding customs declarations on the basis of powers of attorney.

The Customs Agency determined that U.I. Srl in its capacity as indirect customs representative of the importing companies was jointly and severally liable for payment of that tax with those companies, specifically under the Customs Code.

However, in Italian legislation, there is absence of the exact specification of the person liable/jointly and severally liable for payment of the import VAT.

How should the Customs Code and Council Directive on the common system of value added tax be interpreted?

In accordance with settled case-law in interpreting a provision of EU law, it is necessary to consider not only its wording, but also the context in which it occurs, and the objectives pursued by the rules of which it is part. Even though the declarant is the debtor and, in the event of indirect representation, the person on whose behalf the customs declaration is made is also a debtor according to the Customs Code, however, the context and objectives of the Customs Code show that it is aimed exclusively at customs debt and not also at import VAT.

Further, Council Directive on the common system of value added tax makes no reference to the provisions of the Customs Code in relation to the obligation to pay that tax, but provides that that obligation is imposed on the person or persons designated or recognized as being liable by the Member State into which the goods are imported.

In those circumstances it is for Member States to designate or recognize the person or persons liable for payment of import VAT using national provisions that are sufficiently clear and precise, in accordance with the principle of legal certainty.

It follows that any liability of the indirect customs representative for the payment of import VAT imposed by a Member State, jointly and severally with the person who has given him or her a power of representation and whom he or she represents, must be established, explicitly and unequivocally, by such national provisions.

ECJ ruled that Council Directive on the common system of value added tax must be interpreted as meaning that **the liability of the indirect customs representative for the payment of the import value added tax, jointly and severally with the importer, cannot be accepted where there are no national provisions explicitly and unequivocally designating or recognizing that representative as being liable for that tax.**

Summary

This ECJ case can potentially reduce the liability of indirect customs representatives for import by limiting their responsibility only for customs debt but not the import VAT, provided that there are no explicit provisions in national legislation that recognize this indirect representative as being the person liable to pay the import VAT. This case could be considered as positive news for indirect representatives as they are not allowed to claim the deduction of import VAT, if it is payable, because they do not use the imported goods for their own taxable transactions.

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