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By PwC Deutschland | 30. April 2014

All fixed fuel tanks in commercial vehicles to be privileged as originals?

An ECJ advocated general has suggested the expression fixed fuel tank mounted by the manufacturer of a commercial vehicle be seen as encompassing all fixed fuel tanks that directly power the vehicle regardless of who assembled them.

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A German haulage business near the Dutch border mounted a second fuel tank on its lorries in order to double their range. To do this, it was necessary to shift the original tank. The customs administration intercepted a vehicle returning from Holland with full tanks and demanded excise duty on the entire load of fuel on board. Its argument was that neither tank was a fixed assembly built in by the manufacturer as the conversion had been done by a local workshop. Accordingly, the fuel carried did not meet the strict criteria for exemption as having been taxed in another member state and imported solely for use in powering the vehicle concerned. The referring court confirmed that this position conformed to German law, but doubted whether the EU Excise Duties Directive could be taken so literally. The ECJ advocate general on the case shares these doubts.

The advocate general points to the fact that the transport market is developing rapidly with an ever increasing range of options. One is therefore no longer able to assume a “standard” range of equipment and accessories for any given vehicle against which imports of fuel for other purposes can easily be established. He also points out that even “standard” fuel tanks are not necessarily built in by the manufacturer of the vehicle. Dislocated assembly and replacements/repairs were cited as examples. He therefore suggests reverting to the original purpose of the exemption in the directive of not taxing a second time the fuel intended to run the vehicle, whilst retaining the second taxation on fuel imported for potentially other uses or even for resale. He therefore suggests the court rule that the concept of fuel tanks affixed by the manufacturer be construed as applying to all fuel tanks permanently installed in the vehicle that are directly linked to its engine or other power supply.

The ECJ case reference is C-152/13 *Forstmann* opinion of April 30, 2014

Schlagwörter

commercial vehicle, fuel, tank