Downloaded from Blogs on 03.11.2026 06:13h

By PwC Deutschland | 03. Juni 2025

ECJ referral: Physical entry of goods into the economic network of the Union

The Supreme Tax Court has asked the European Court of Justice (ECJ) for a preliminary ruling regarding the entry of a sailing boat into the economic network of the Union. One of the questions referred to the ECJ is whether a means of transport enters the economic cycle of the Union if it is not used as such in a Member State but rather a service (here: maintenance and repair work) is carried out at the boat.

Downloaded from Blogs on 03.11.2026 06:13h

Applicable provisions in the Union Customs Code (UCC)

Article 124 Extinguishment

(1) Without prejudice to the provisions in force relating to non-recovery of the amount of import or export duty corresponding to a customs debt in the event of the judicially established insolvency of the debtor, a customs debt on import or export shall be extinguished in any of the following ways:

(k) where, **subject to paragraph 6** (clause of abuse), the customs debt was incurred pursuant to Article 79 and evidence is provided to the satisfaction of the customs authorities that the goods have not been used or consumed and have been taken out of the customs territory of the Union.

(6) In the case referred to in point (k) of paragraph 1, the customs debt shall not be extinguished in respect of any person or persons who attempted to cheat.

According to **Article 5 No. 33 UCC** "presentation of goods to customs" means the notification to the customs authorities of the arrival of goods at the customs office or at any other place designated or approved by the customs authorities and the availability of those goods for customs controls.

Case of dispute

Anyone who lives in Switzerland and crosses the border to Germany in a car with a boat trailer and sailing boat in tow to use the boat in Germany for its intended purpose and then return to Switzerland usually has no problems with customs. The situation was different though in a case recently decided by the Supreme Tax Court.

The plaintiff is resident in Switzerland. In 2017, he took a sailing boat registered to him in Switzerland by car on a boat trailer from Switzerland to Germany without having customs clearance carried out at the border. During a customs inspection in Germany, he stated that he wanted to have repair and maintenance work carried out on the boat in Germany. The main customs office then assessed customs duty and import VAT based on an estimated customs value of the imported sailboat.

The tax court of first instance found that the customs debt was incurred because the plaintiff had not submitted an explicit notification of presentation or an (explicit) customs declaration for the sailboat when crossing the border. However, the tax court had doubts as to whether import VAT had also been incurred. Although a service had been provided at the sailboat, it was - from a VAT point of view - a separate transaction and different from the import. However, the tax court had left this issue unanswered because both the customs debt and any import VAT incurred had been extinguished pursuant to Art. 124 (1) letter k of the UCC.

Decision (reasons for referral to the ECJ)

Downloaded from Blogs on 03.11.2026 06:13h

In the opinion of the Supreme Tax Court, the key question is if the sailboat indeed entered the economic network of the Union (economic cycle of the Union) since it was the subject of a service (repair and maintenance). Furthermore, it is relevant whether the sailboat was used within the meaning of Article 124(1)(k) of the UCC. In this case, the customs debt incurred for the sailboat due to the failure to present the goods to customs (i. e. the sailboat) would not have been extinguished.

As a result, the Supreme Tax Court referred the following questions to the ECJ for a preliminary ruling:

1. *Does a means of transport enter the economic cycle of the Union if it is not used as such in a Member State but rather a service (here: maintenance and repair work) is provided to it?*

2. *Is Article 124(1)(k) of the Union Customs Code to be interpreted as meaning that a non-Union good is used within the meaning of that provision if only maintenance or repair work is carried out in the customs territory of the Union and good is subsequently re-exported?*

In the case of dispute, the customs debt was incurred pursuant to Article 79(1)(a) UCC because the plaintiff brought the sailboat - a non-Union good - into the customs territory of the EU without formal presentation (Article 139(1), Article 5 No. 33 UCC). The presentation did also not take place through an expression of will.

However, the Supreme Tax Court has doubts as to whether import VAT was incurred in addition to the customs debt because the sailing boat was not actively used for the supply of goods or services (e.g. for passenger transport) but only a taxable service was provided to the sailing boat and which therefore itself remained inactive.

Based on this, import VAT could have been incurred for the sailboat in addition to the customs debt because the sailboat was brought to Germany without being in the admission procedure under customs law for a temporary use. However, according to established case law, the ECJ also requires that the goods have entered the economic cycle of the Union in order for import VAT to be incurred. This is because only then may the goods have undergone consumption, that is, the act on which VAT is levied.

In its judgment *Hauptzollamt Braunschweig* (*Lieu de naissance de la TVA - III*) of 18 January 2024 - **C-791/22** para. 30, the ECJ essentially based the entry into the economic cycle on the fact that the goods are part of a transaction subject to VAT. This condition could also be fulfilled in the case of dispute if it is sufficient for the goods - in this case the sailing boat – if they are the subject of a taxable transaction merely by providing a service **to** it (and not **by** it).

Source:

Supreme Tax Court judgment VII R 17/22 of 18 February 2025 – published on 30 May 2025.

Downloaded from Blogs on 03.11.2026 06:13h

Schlagwörter

customs clearance, import VAT