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Security deposit in the full amount of tax due not required for initiation of suspension procedure

In a recent decision, the Supreme Tax Court held that the transport of sparkling wine under suspension of the due tax to another Member State is not hindered if the demand for security previously determined by the main customs office and paid by the sender does not cover the full amount of the valid state tax for sparkling wine that may arise.

Definition and purpose of duty suspension procedures

EU law and German law in many cases require the consignor to provide security before a transit procedure with tax suspension can be initiated to ensure that tax revenues are not lost despite the close tax supervision that continues to apply when such a procedure is initiated.

The 'duty suspension arrangement', as defined in Article 3 No. 6 of Council Directive (EU) 2020/262 laying down the general arrangements for excise duty (Excise Duty Directive), means a tax arrangement applied to the production, processing, holding, storage or movement of excise goods whereby excise duty is suspended.

Similar to the "old" conditional tax under Section 50 Fiscal Code, the tax suspension procedure postpones the chargeability of tax until the goods are close enough to the consumer. It thus serves the purpose of consumption-related taxation and tax control. It is a feature of the arrangement for excise duty suspension that the excise duty on the products is not yet payable, even though the chargeable event for taxation purposes has already taken place.

Case of dispute

In several cases, the plaintiff transported sparkling wine from its tax warehouse in Germany to a tax warehouse in another Member State. For this purpose, it opened a procedure for suspension of the tax electronically in each case.

To cover potential tax risks arising from the transport of goods subject to excise duty, the main customs office had earlier set a security, which the plaintiff had provided, and which was used as a so-called continued cash security for the transports carried out.

However, the amount of security did not cover the full amount of tax in the event the tax would actually arise and become payable. For this reason, the main customs office assessed sparkling wine tax against the plaintiff in the amount of the difference between the sparkling wine tax that might become payable and the security provided.

Decision

The Supreme Tax Court confirmed the decision of the tax court of first instance and rejected the appeal by the main customs office because it did not consider the provision of security in the exact amount of tax that might be incurred to be constitutive for the effective initiation of tax suspension proceedings.

The fact that the provision of security in the amount of the potential tax is not a prerequisite for the effective initiation of the tax deferral procedure is further confirmed by the fact that, according to Article 18 (4) of the Excise Duty Directive, the Member State of dispatch may waive the obligation to provide the guarantee, i. a. in respect of movements

which take place entirely in its territory.

According to Article 21 (1) Excise Duty Directive a movement of excise goods shall be considered to take place under a duty suspension arrangement only if it takes place under cover of an electronic administrative document processed in accordance with paragraphs 2 and 3. The consignor then submits a draft electronic administrative document to the competent authorities of the Member State of dispatch, which is then verified electronically. If the information contained therein is correct the competent authorities of the Member State of dispatch shall assign to the document a unique administrative reference code and shall communicate it to the consignor.

In that Directive it is also stated that, during a movement under a duty suspension arrangement, the consignor may, using the computerized system, change the destination or the consignee of the excise goods to one of the various destinations mentioned. For that purpose, the consignor shall submit a draft electronic change of destination document to the competent authorities of the Member State of dispatch using the computerized system. However, requirements regarding the provision of a guarantee are not included in the specific section on "Procedures for the movement of excise goods under suspension of excise duty", the Supreme Tax Court said.

Source:

Supreme Tax Court, decision of 24 June 2025 VII R 33/22 - published on 16 October 2025.

Schlagwörter

Collaterals / Sicherheiten, excise duty, suspension of payment