

By PwC Deutschland | 09.09.2022

ECJ: Place of import of transport vehicle and payment of import VAT

Following up on a preliminary request from the Hamburg Tax Court the European Court of Justice (ECJ) had to decide on the place of importation for VAT purposes of a transportation vehicle purchased in Georgia which was brought into the EU in breach of customs legislation. The ECJ held the place of importation to be Germany, that is where the owner of the car resides and where the car is ultimately in use.

Background

In a request for a preliminary ruling from the Hamburg Tax Court the ECJ is asked whether import VAT is correctly due in Germany in circumstances where a Georgian national (T) who has been resident and registered in Germany for several years, purchased and registered a vehicle in his name and later, in March 2019, drove the vehicle from Georgia to Germany via Turkey, Bulgaria, Serbia, Hungary, and Austria without conveying and presenting it to a customs office upon entry into the EU. In Germany, T used the vehicle, which came to the attention of a control team of the customs office on 28 March 2019 during an inspection. In May 2019, the local customs office claimed from T customs duties and import VAT. During the proceedings, T decided to challenge only the decision setting the amount of import VAT.

Thus, the referral from the Hamburg Tax Court to the ECJ was made to determine the place of import of a means of transport registered in a third country and imported into the EU in violation of customs legislation by answering the following questions:

- (1) Is the place of import located in the Member State in which the customs offence was committed, and the means of transport was first used as such in the EU, or is it located in the Member State in which the person who failed to comply with customs obligations resides and uses the vehicle (i. e. Germany)?
- (2) If the place of importation should be located in a Member State other than Germany, a corresponding application of a fictitious competence pursuant to Article 87 (4) of the Union Customs Code (UCC), dealing with the place where the customs debt is incurred, would have to be considered.

ECJ decision

The ECJ refers to the judgment of 3 March 2021 (case **C-77/20**, *Hauptzollamt Münster*, paragraphs 34 and 35) where the ECJ decided that a specific vehicle, imported in breach of customs legislation, must be regarded as having entered the economic network of the Member State in which the taxable person resides, where that vehicle had actually been used in that Member State, even if, when travelling from a third country to that Member State, that vehicle had physically entered the customs territory of the EU via another Member State. As a result, import VAT had become chargeable in that first Member State.

In the present case, it is apparent, but subject to verification by the referring court, that T, when travelling from Georgia to Germany in March 2019, drove his car via Bulgaria, then through Serbia, Hungary, and Austria. T resides in Germany, where he used that vehicle from March 2019 and, at the very least, until October 2020. Since the vehicle entered the economic cycle of the Union in that Member State, it was consequently imported into Germany in accordance with Articles 30 and 60 of Directive 2006/112.

Indeed, as is apparent from the judgment of 10 July 2019 (case: **C-26/18**, *Federal Express Corporation Deutsche Niederlassung*), goods may be considered to have entered the economic network (cycle) of the EU in the territory of another Member State, despite its de facto transfer to that Member State, if the item was 'intended for consumption' in that Member State. Hence, the transport through the EU countries as in the case of dispute only served to bring the vehicle to the Member State of its destination to use it there on a

permanent basis. In this context, the user's place of residence may serve as an indication of such use.

Given the answer to the first question, there was **no need for the ECJ to answer the second question**.

Source:

ECJ, decision of 8 September 2022 (case: C-368/21, *Hauptzollamt Hamburg*).

Keywords

import VAT, motor vehicle, place of taxation