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By PwC Deutschland | 21 May 2026

General Court: Transport of acquired goods with subsequent transfer to private individuals free of charge not exempt from tobacco tax

In two combined requests for a preliminary ruling from the Berlin-Brandenburg Tax Court, the General Court of the EU decided that the purchase of tobacco products by a private individual in one Member State for the purpose of transferring them free of charge to a third party in another Member State is not eligible for exemption from tobacco tax as being for “personal use”.

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Background

Tobacco tax, introduced by the Tobacco Duty Act (TDA), includes excise duty on manufactured tobacco. Tobacco products that a private individual purchases for personal use in other Member States where they are put into free circulation and transports them into the tax territory himself (for private purposes) are, under specific circumstances, exempt from tax (Section 22 TDA). According to Section 39 (2) of the Tobacco Duty Regulation (TDR) the passing on of tobacco products, even if free of charge, is not deemed to be for own use.

A and B, the applicants in the main proceedings, are two private individuals who were checked by German customs officials on their arrival from Poland while they were transporting tobacco products bearing the Polish tax mark. **A** was checked in August 2022 while he was transporting 800 cigarettes. He stated to the customs officials that he was not a smoker and that he was transporting those cigarettes for an acquaintance. **B** was checked in April 2023 while he was transporting 400 cigarettes and 200 items of heated tobacco. When questioned by customs officials, he stated that the cigarettes were intended for his personal consumption, whereas the heated tobacco was intended for his daughter's personal consumption.

Decision

In its decision, the General Court found that the German regulation is compatible with EU law. EU regulations do not preclude national legislation according to which the concept of 'own use' does not include the acquisition of manufactured tobacco products by a private individual in one Member State with a view to passing them on to a third party free of charge in another Member State, irrespective of the quantity of those products intended to be passed on.

It is necessary, when interpreting a provision of EU law, to take into account the wording of that provision in its context and the objective pursued by Directive 2008/118, namely the fight against fraud, tax avoidance and possible abuse. In general, the Directives providing for tax exemption in case of "personal use" constitute exceptions to the general system of taxation and must therefore be interpreted strictly.

In light of that objective, Member States must be able to contain those risks by means, inter alia, of appropriate and proportionate measures enabling them to determine whether excise goods transported from one Member State to another by a private individual were acquired by the latter for his or her own use.

In that regard, although the movement of excise goods for commercial purposes is subject to strict digital traceability by means of electronic administrative documents, the transport of those goods by a private individual is characterized by an exemption from all administrative formalities. To remedy that lack of documentary follow-up, Article 32(2) of Directive 2008/118 and Article 32(2) of Directive 2020/262 set out factors that the Member

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States are to take into account in determining whether excise goods acquired and transported by a private individual are intended for that private individual's own use. Those factors include the quantity of goods transported (namely, for cigarettes, 800 items) and the reasons for holding them.

Therefore, a broad interpretation of the concept of 'own use', as covering the passing on of goods free of charge between private individuals, would present a substantial risk of tax avoidance in so far as certain instances of passing on could give rise to consideration, whether direct or indirect, which the tax authorities would find impossible, or at least extremely difficult, to verify or detect. Thus, a broad definition of the concept of 'own use' would create an environment conducive to the circumvention of the arrangements provided for.

In those circumstances, the concept of 'own use' must be interpreted as being limited to the acquisition and transport of excise goods, such as tobacco products, intended for **strict personal use by the private individual who acquired them**.

Source:

General Court of the EU, judgment of 20 May 2026 **Joined Cases** T?685/24 *Jelgratz* and T?686/24 *Buchgint*.

Keywords

private use