



Indirect customs representative is not jointly liable for import VAT

Case C-714/20 of the Court of Justice of the EU (ECJ) is of particular interest to forwarding agents.

In this decision, the ECJ stated that under Union Customs Code, an indirect customs representative is liable, jointly and severally with the importer, only for customs duties and not for import VAT.

Article 201 of the EU VAT Directive does not provide for joint and several liability either.

In order to make an indirect customs representative jointly and severally liable for import VAT payment, the national legislation should explicitly provide for it.

Background

In order to file an import declaration in the EU, the declarant must be established within the EU. Therefore, in order to import in the EU, a non-EU business has an option to appoint an indirect customs representative that is established in the EU who would import goods on behalf of the non-EU business. The indirect customs representative compared to a direct customs representative, acts in its own name and if the indirect customs representative is indeed established in the EU, the indirect customs representative is able to import the goods in the EU on behalf of the non-EU company. Acting in an indirect capacity means that the indirect customs representative is held jointly liable for the import duties to be paid when importing goods in the EU for the non-EU business. This liability is based on Article 77 (3) of the Union Customs Code (UCC) that provides that the declarant shall be liable to pay duties due on import. In the event of indirect representation, the person on whose behalf the customs declaration is made is also liable. Article 84 of the UCC provides that where several persons are liable for payment of the customs duty, they shall be jointly and severally liable for payment of the customs duty. Consequently joint and several liability for payment of customs duties applies in case of indirect representation.

Import VAT is payable by any person or persons designated as liable by the EU Member State (MS) of

importation according to Article 201 of the EU VAT Directive. Normally, the invitation to pay the import VAT is sent by the Customs to the same person who receives the payment request for the customs duties.

The indirect representative is generally a payer of import duties towards the Customs and charges those duties from the business it is representing, however, the problem arises if their principal goes bankrupt, disappears or refuses to pay the duties payable. The Customs can go back several years and request the payment of import taxes many years after the goods are imported into the EU. Acting as an indirect customs representative consequently involves major risks. Therefore, they are not easy to find or only at high cost.

The ECJ decision could potentially diminish the liability of an indirect customs representative by limiting it to the customs duties. This would be good news to forwarding agents, however, the extent of their liability also depends from the national legislation.

No joint liability for import VAT under the EU law

On 12 May 2022, the ECJ gave its decision in *Case C-714/20 (U.I. Srl v Agenzia delle Dogane e dei monopoli – Ufficio delle dogane di Venezia)*.

UCC

According to para. 48-52 of the judgement, the joint and several liability of Article 84 UCC does not apply to import VAT. The ECJ rules that Article 77(3) of the UCC must be interpreted as meaning that, on the basis of this provision alone, the indirect representative is only liable for the customs duties due for the declared goods and not also for the import VAT due for the same goods. Joint liability only applies to the customs duties not to VAT according to Article 77 (3) of UCC.

Consequently, the indirect customs representative cannot become jointly liable for the payments of import VAT only on basis of the UCC.

EU VAT Directive

Article 201 of the EU VAT Directive 2006/112/EC must be interpreted as meaning that the liability of the indirect representative for the payment of import VAT cannot be recognized, jointly and severally with the importer, in the absence of national provisions which, explicitly and unambiguously, designate or recognize it as being liable for this tax.

Consequently, the EU VAT Directive does not provide for joint and several liability of the forwarder either. According to the judgment, the forwarding agent is not jointly liable for the import VAT if there are no national provisions which explicitly state the liability of the forwarder.

Conclusions and consequences for the practice

It follows from the decision that to make an indirect customs representative jointly and severally liable for the payment of import VAT, the national legislation is required which explicitly and unambiguously provides for this liability.

Consequently, according to the ECJ, the Customs is not allowed to request the indirect customs representative to pay import VAT unless the local laws of this country explicitly provide for such liability.

Practical implications

The legislation of each MS should be analyzed on the light of the ECJ judgement to evaluate whether its legislation provides sufficiently clear provisions for joint liability of the indirect customs representative for the payment of import

VAT. If those provisions do not sufficiently clearly establish the liability of the indirect customs representative for the import VAT, then the Customs cannot charge those duties from the forwarding agent.

Grant Thornton's international indirect tax team and digital advisory team can assist you in your VAT refund claims as well as in any other VAT / customs matters, compliance and update of your systems and processes. Please contact us if you would like to discuss your options and possibilities.





Contact

Do you have questions or do you need more detailed information? Please do not hesitate to contact us.

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