



ECJ confirms its case law and perspective on the concept of import VAT

1 Present legal situation

Basically, the German law provides for uniformity in the manner in which import customs duties and import VAT are incurred. For the incurrance and debt of import VAT the German VAT Act refers to the provisions for the incurrance and debt for import customs duties in the UCC (sec. 21 para. 2 of the German VAT Act). In recent years, the ECJ has increasingly refrained from linking the incurrance of import VAT with that of a customs debt in cases of unlawful conduct (most recently in the case C-571/15 – *Wallenborn* – judgment of 1 June 2017). In these cases, the reason for this always was that there was a breach of customs regulations, despite the goods not having entered the EU's economic network.

In the case C-26/18 – *Federal Express* – of 10 July 2019, the ECJ had to deal with circumstances as to where the subject goods entered the economic network of one particular Member State, after having first been brought into Union territory in another EU Member State. In this context, an infringement of customs rules occurred.

2 Facts of the case

The Plaintiff, who resided in Germany, brought his private vehicle, which was registered in Turkey, from Turkey to Germany, by land, via Bulgaria. The Plaintiff failed to convey the vehicle to an import customs office and present it to customs. This came to light during a subsequent police check of the vehicle carried out in Germany. The vehicle was also not subject to a customs suspensive procedure. Based on these infringements, the competent Main Customs Office in Münster held that the Plaintiff was liable for the payment of both import customs duty and import VAT. It argued that although the infringements committed by the Plaintiff appeared to have taken place in Bulgaria, they came to light in Germany. Due to the fact that



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import customs duties and import VAT amounted to less than EUR 10,000, both the import customs duties and import VAT were therefore deemed, in accordance with Art. 87 para. 4 of the UCC, to have been incurred at the place where the infringements were discovered, namely, Germany. Approximately one month after the police check, the Plaintiff exported the vehicle back to Turkey for the purposes of selling it there.

In the course of the Fiscal Court of Düsseldorf's proceedings, it raised doubts as to whether Art. 87 para. 4 of the UCC is covered by the reference made by Art. 71 para. 1 subpara. 2 of the VAT Directive respectively sec. 21 para. 2 of the German VAT Act. In this case, the import VAT would have been incurred in Germany. The Fiscal Court of Düsseldorf referred this question to the ECJ for a preliminary ruling.

3 ECJ decision

The ECJ upheld its earlier judgment of 10 July 2019 in the *Federal Express* case C-26/18. Accordingly, the place where import VAT is incurred is not deemed to be the place where goods are physically brought into the Union or the place where customs regulations are breached. Rather, it depends on where the goods entered the Union's economic network. The ECJ thus maintains its view that the rules of Union customs law on the incurrence and the debtor's liability for the customs debt are not to be comprehensively applied mutatis mutandis to import VAT.

4 Opinion

Basically, the ECJ's approach is comprehensible. Afterall, VAT should be charged on the actual final consumption of the goods. This cannot and must not depend on the rather coincidental place where the infringement occurred or where it came to light.

It is, however, surprising that the ECJ did not specifically answer the question raised by the Fiscal Court of Düsseldorf. Especially as the ECJ is known for often stoically answering the questions asked by referring courts, even when its factually specific answers are not particularly helpful in terms of their general application or even in the specific case. In its judgment, it does not go into any further detail as to whether the special determination of the place of incurrence of import duties in accordance with Art. 87 para. 4 of the UCC, is to be applied mutatis mutandis to import VAT. In the ECJ's view, this may not even be relevant for the specific case. However, it would have been helpful if it had explained its view in more detail. Although, the ECJ stated in its decision that the vehicle had definitely entered the German economic network, it did not provide any precise grounds for this finding. Unfortunately, some questions therefore remain open: Why, in the ECJ's view, did the goods enter Germany's economic network? Was this due to the fact that the owner and user of the vehicle had his place of residence in Germany? Since the vehicle was brought overland by driving from Turkey to Germany, it could also be argued that it first entered the Union via Bulgaria's economic network. Incidentally, the facts of this case are significantly different from those of the *Federal Express* case. In the latter, the goods were not transported by land but by air within the EU. Or does the Member State in which the goods entered the economic network depend on the place where the infringement was discovered? In this case, the import VAT could also have been levied by a Member State en route from Bulgaria to Germany, if the infringement had been discovered there. In this case, however, the place where the import VAT is incurred would again depend on the corresponding application of Article 87 para. 4 of the UCC, together with the value limit.