



CUSTOMS  
NEWSLETTER

## Court overturns customs practice: Provision of security in the amount of excise tax not required for suspension procedure

12 | 2025

### 1 Background

The excise tax suspension procedure allows, among other things, the transport of excise goods from one tax warehouse to another tax warehouse within the tax territory or in other Member States. As long as the goods are under excise tax suspension, no excise tax arises. However, the excise tax suspension procedure must be correctly commenced and terminated, in compliance with certain conditions. If a constitutive condition for the procedure is not met, excise tax will arise. In the opinion of the German customs authorities, all violations of the rules relating to the excise tax suspension procedure result in the excise tax being incurred. It is irrelevant whether the violation is a substantive one that affects the validity of the excise tax suspension procedure or merely a formal one, e. g. a violation of procedural rules. Such formal violations do not generally affect tax supervision, and there is no risk of uncontrolled, untaxed goods entering the economic cycle of the EU in these cases. In this context, the treatment of formal violations, in accordance with the principle of proportionality, is becoming increasingly relevant in ECJ case law (cf. *Vakaru Baltijos laivų statykla*, C-151/16; *Petrotel-Lukoil*, C-68/18). Formal violations should not lead to any excise tax arising.

This has now also been confirmed by the German Federal Fiscal Court (BFH) in its judgement of 24 June 2025 (ref. VII R 33/22). It dealt with the question of whether the provision of security, which does not correspond to the amount of the potentially arising excise tax, leads to the invalidity of the excise tax suspension procedure.



Dobrinka Atanasova  
Rechtsanwältin,  
Fachanwältin für Steuerrecht

+49 (0) 89 217 50 12-55  
dobrinka.atanasova@kmlz.de

## 2 Facts of the case

The plaintiff (Pl.) transported sparkling wine from its tax warehouse in Germany to the recipient's tax warehouse in Finland. The Pl. provided a security, in cash, for the transport of the sparkling wines in accordance with Sec. 11 para. 2 of the German Sparkling Wine Tax Act (SchaumwZwStG). The Main Customs Office (HZA) had previously determined the amount of this security. During a tax inspection, the HZA noted that the amount of excise tax arising with respect to the sparkling wines being transported was higher than the provision of security determined and paid for this purpose. The HZA therefore charged the Pl. the excise tax on sparkling wine for the transported goods. The Fiscal Court of Rhineland-Palatinate upheld the appeal. It stated that the excise tax on sparkling wine had not arisen due to the fact that a valid transport under excise tax suspension had occurred. It was held that the sufficient provision of security was not a constitutive requirement for a valid transport under excise tax suspension.

## 3 Decision of the BFH

The BFH confirmed the Fiscal Court's view. The transport of sparkling wines took place under excise tax suspension, meaning that the excise tax was not incurred. The provision of security, in the amount of the excise tax arising for the transported goods, is not a condition for the valid commencement of the tax suspension procedure as specified in Sec. 9 para. 1 SchaumwZwStG. The underlying EU law regulation in Art. 18 para. 1 of Directive 2008/118/EC does not require the security to correspond exactly to the amount of the potential excise duty on the goods being transported. Instead, the term 'risks', in this EU law regulation, covers all possible risks associated with the transport of goods in each individual case. This includes not only the risk of non-payment of excise tax, but also the possibility of default by the person liable for excise tax or theft of the goods. This also follows from the wording of the national regulation in Sec. 18 para. 3 sentence 1 of the German Sparkling Wine Regulation on the determination by the HZA of the amount of the cash security.

The responsible authority of the Member State of departure can only check the formal existence of a provision of security in the EMCS electronic transport procedure, not the amount of the security. Extending this check could otherwise significantly restrict the transport of excise goods within the EU (cf. also ECJ judgment *TanQuid Polska*, C-711/20). In any case, it is currently impossible to check the amount of the security because the electronic administrative document (e-AD) does not contain any information to this effect.

## 4 Impacts on practice

The BFH is putting a stop to the German customs administration's excise tax practices in terms of the above. Affected companies should appeal against excise tax assessments based on insufficient security and, if necessary, also apply for suspension of execution of these assessments. Overall, excise tax assessments based on formal violations should be analyzed more closely and, if necessary, appealed. The judgement extends beyond the scope of excise tax on sparkling wine, as the provision of security is also required in other excise duty laws (e.g. Energy Tax Act, Alcohol Tax Act). To ensure that the HZA carries out an appropriate risk assessment, companies should, nevertheless, regularly review the security to be provided and notify the HZA of any changes in transport that could lead to a need for adjustment. This can reduce the risk of excise tax being charged by the HZA.

It remains unclear whether the complete absence of security, when transporting goods to another Member State under excise tax suspension, leads to excise tax being incurred. This legal question will be addressed in the pending BFH case VII R 30/24. It will be interesting to see whether the BFH also rejects the excise tax arising in this case.