



Customs Flash Belgium

Clarifications on
when a movement
under suspension of
excise duties 'ends'
and treatment of
established
shortages

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The European Court of Justice Case C-64/15 brought clarifications to various concepts surrounding the movement of goods under an excise duty suspension regime, including most notably the concept of shortages (as understood in article 10 §4 of Directive 2008/118) and the precise moment at which a movement ends (as described in article 20 §2 of that same Directive).

The Court cleared up existing confusion on the scope of article 10 §4, which deals with situations whereby excise goods moving under a duty suspension arrangement have not arrived at their destination and no irregularity has been detected during the movement. Contrary to the interpretation applied in certain Member States, the court has now confirmed that this provision applies not only to situations where the total amount of goods moving under a duty suspension arrangement failed to arrive at their destination, but also where only part of those goods failed to arrive.

Therefore, in a situation where, for example, only 90% of the excise products moved under suspension arrived at their destination and no irregularities were detected during transport, then an irregularity surrounding the missing 10% will be deemed to have happened in the Member State of dispatch and at the time when the movement began. As a result, these missing goods are subject to the tolerated losses of that Member State and it is there that they will be released for consumption (and excise duties on the missing part exceeding the tolerated losses, if any, need to be levied). Contrary to this decision, it is currently seen that excise duties over missing quantities are occasionally levied by the Member State of arrival with the application of article 10 §2 of Directive 2008/118.

Relevant to the above, case C-64/15 further develops the concept of the “end” of an excise movement for goods under duty suspension arrangements.

According to article 20 §2 of Directive 2008/118, *the movement of excise goods under a duty suspension arrangement ends when the consignee has taken delivery of the excise goods.*

What then, of a scenario, such as in the case at hand, where the consignee discovers any shortages in the amounts delivered? Since he needed to have possession of the goods to make this discovery, does this mean that the movement had already ended (and the one having moved the goods under suspension of excise duties is released from his liabilities)?

For the situation above, the Court considers only the actual receipt of the goods to be the deciding factor in the end of a movement, and not the end of its transport. Hence, the mere act of simply unloading goods does not in itself end the movement. Furthermore, in order to actually take delivery of the goods, one must be in a position to know exactly how many goods have been received.

Consequently, the Court ruled that article 20 §2 must be interpreted as meaning that the movement under a duty suspension arrangement ends, in scenarios such as the one described above, when the consignee of the goods has found the shortages and not before.

What does it mean for you?

The percentage of tolerated losses in the movement of excise products under duty suspension is a decision that falls to each Member State, as is the determination of

applicable excise duty rates. Which rules must be applied when a shortage of excise products is discovered will depend on the moment where the irregularity was discovered. If the shortage is only discovered upon arrival (i.e. it is established at arrival that (a part of) the goods did not arrive at their destination), the tolerated losses percentage and excise duty rates of the Member State of dispatch will apply, and the latter Member State will be authorised to levy the excise duties due, if any.

Further under such scenario, as the movement under suspension only ends when the consignee has found the shortages, the one who has placed the goods under the excise duty suspension movement regime can be held liable for these excise duties.

What to do?

For companies acting in the transport of excise products, and facing shortages, it is important to assess which Member State's tolerated losses thresholds need to be applied and which Member State is entitled to claim the excise duties potentially becoming due. Deloitte's Customs and Global Trade (CGT) team can work with companies to go over their transportation of excise products in order to both identify and prevent irregularities. For more detailed information on how this decision could impact businesses, the below contacts are readily available to assist.

Contacts

If you have any questions concerning the items in this alert, please contact your usual tax consultant at our Deloitte office in Belgium or:

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