



Global Trade News Alert

Belgium

Compulsory excise duty exemption on energy products used for cogeneration of heat and electricity

Introduction

On 7 March 2018, the Court of Justice of the European Union (CJEU) issued a judgment (Case C-31/17 – Cristal Union) relating to the compulsory tax exemption for energy products used for electricity production, even when these products are used in a cogeneration unit.

Facts

A French company operates a unit for the combined generation of heat and electricity, fuelled by natural gas. The entire volume of natural gas used for these purposes was taxed with excise duties by the French authorities, given the absence of a broad cogeneration exemption in France (optional for member states).

However, the company felt that at least a portion of the gas should have been exempt from excise duties, based on the mandatory exemption relating to consumption of energy products for electricity production, as foreseen under article 14(1)(a) of the Energy Taxation Directive (ETD).

The company brought the case to the Council of State, which referred the following question to the CJEU for a preliminary ruling:

"Do energy products used for the combined generation of heat and electricity fall exclusively within the scope of the power to exempt conferred by Article 15(1)(c) of Directive 2003/96 or do they also fall, as regards the portion of those products used to generate electricity, within the scope of the compulsory exemption provided for by Article 14(1)(a) of that directive?"

The Court ruled that Article 14 (1)(a) of the ETD should be interpreted as meaning that the compulsory exemption applies to energy products used for electricity generation, even when such products are used for the cogeneration of heat and electricity in accordance with article 15(1)(c) of the ETD.

What does it mean for you?

The consequences of the judgment will differ depending on whether or not the EU Member State of consumption provides for a specific excise exemption for cogeneration, as foreseen under article 15 (1) (c) ETD, in its national legislation.

For EU Member States providing for this exemption (such as Belgium) this judgment should not have any impact on the excise duty position of companies operating a cogeneration installation. However, to remain compliant with national excise legislation, administrative measures may be required.

For EU Member States where a specific exemption for cogeneration purposes would not apply (or only apply to a limited extent), companies operating a cogeneration plant in these Member States would have the opportunity to reduce their excise duty burden, and could possibly apply for a refund.

What to do?

Companies active in cogeneration of heat and electricity should assess the opportunity to benefit from a full exemption of excise duties, at least for the portion of energy products used for electricity production.

Deloitte's Global Trade Advisory team is readily available to assist or provide additional information regarding the above.

Contacts

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