

Tax & Legal Weekly Alert

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Clarifications regarding movement of goods under suspension of excise duties and treatment of shortages

Case C-64/15 – “BP Europa SE against Hauptzollamt Hamburg-Stadt” brought clarifications to various concepts surrounding the movement of goods under an excise duties suspension regime, including the ‘shortages’ concept and the precise moment at which such movement ends.



Clarifications regarding movement of goods under suspension of excise duties and treatment of shortages

The Court clarified the scope of article 10 (4) of Directive 2008/118, which deals with situations where excisable products moving under a suspension regime have not arrived at their destination and no irregularity has been detected during the movement. Contrary to the interpretation of certain Member States, the Court concluded that this provision applies not only to situations where the total amount of products moving under an excise duties suspension regime failed to arrive at their destination, but also where only part of those goods failed to arrive.

Therefore, under a scenario where, for example, only 90% of the excisable products moving under suspension regime arrived at their destination with no irregularities detected during transport, then it would be deemed that irregularities for the missing 10% occurred in the Member State of dispatch and at the time when the movement began. As a result, missing products are subject to the tolerated losses of that Member State, and they will need to be released for consumption there (excise duties on the missing part exceeding the tolerating losses, if any, will also need to be levied there). Contrary to this decision, excise duties are occasionally charged over missing quantities by the Member State of arrival with the application of article 10 (2) of Directive 2008/118.

Relevant to the above, the Court has also concluded that only the actual reception of the goods is to be the deciding factor in determining the end of a movement, and not the end of the transport.

What does it mean for you?

The rules that apply when a shortage of excisable products is discovered depends on the moment when the irregularity was discovered. If the shortage is only discovered upon arrival, the tolerances losses percentage and excise duties rates of the Member State of dispatch will apply, and that Member State is entitled to levy the excise duties due, if any.

What to do?

If you deal with excisable products, and face shortages, you must assess which Member State's tolerated losses thresholds need to be applied and which Member State is entitled to claim the excise duties that may be due.

For further questions regarding the aspects mentioned in this alert, please contact us.

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