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## Indirect Customs Representative: No Joint and Several Liability for Import VAT

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Through the judgment in Case C-714/20 issued on 12 May 2022 [1], the Court of Justice of the European Union (CJEU) clarified that the indirect customs representative is liable, jointly and severally with the importer, only for customs duties relating to the goods and not for import VAT. This conclusion consolidates the EU jurisprudence on the subject, followed by the Italian Supreme Court at the national level.

The Italian Customs Agency notified various tax deeds to the importers of goods and to the freight forwarder who had acted as an indirect customs representative. The Italian Customs Agency found that the letters of intent attached to the import declarations were vitiated and could not be relied upon as they were based on the erroneous assertion that the importers were habitual exporters.

On this ground, the Italian Customs Agency requested the payment of duties and VAT from both the importer and the shipper. The joint request was based on a broad reading and application of the responsibility referred to in Articles 77 and 78 of Regulation 952/2013 (EU Customs Code) and Article 201 of Directive 2006/112/EC (VAT Directive).

Typically, the debtor of customs duties is the person who is required to pay the customs debt. The EU Customs Code also qualifies the indirect customs representative as a debtor. He acts in his own name but on behalf of another person. Thus, there is a joint and several liability between the importer and the indirect representative.

According to the CJEU, joint and several liability applies only to the customs debt and not to import VAT.

Notably, the EU Court held that VAT on imports has the nature of an internal tax and not a customs duty, which means that it is not possible to extend the customs joint liability to cases other than those expressly provided for by the letter of the law.

The CJEU excluded that Article 201 of the VAT Directive provides the joint and several liability of the indirect customs representative for VAT on imports. However, Member States may derogate from this exclusion by providing joint and several liability through an explicit and unambiguous legal provision in their national VAT legislation.

In the author's opinion, the CJEU applied EU principles and regulations correctly. Moreover, the

CJEU confirmed its case law on this matter[2], which the Italian Supreme Court also followed suit [3].

[1] CJEU, 12 May 2022, Case C-714/20, *U.I. (Représentant en douane indirect)*, ECLI:EU:C:2022:374.

[2] See, e.g., CJUE, 2 June 2016, Case C-226/12, *Eurofer*, ECLI:EU:C:2022:122.

[3] See, e.g., Italian Supreme Court, Decision No. 23674/2019.

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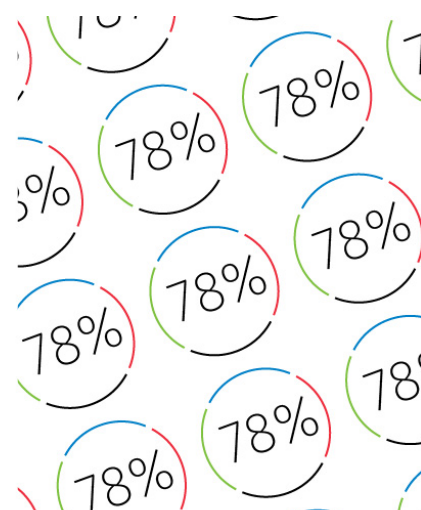
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This entry was posted on Wednesday, May 25th, 2022 at 2:37 pm and is filed under Customs and Excise, Italy, VAT
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