



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Customs Policy, Legislation, Tariff
Director

Brussels,
TAXUD/A2/ECF

CHAP(2013)00238

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Modtaget i arkivet, den 13/2-13

Subject: Your letter of 13 November 2012 regarding VAT on magazines

Ref. (2013)00238

Dear Ms. Færch,

By the above-mentioned letter, you refer to my Directorate a number of questions for which I hope I provide adequate answer here below. I note your questions are asked in the prospect of the introduction of a bill that would waive the exemption from VAT on printed publications imported into Denmark. This exception waiver would in turn result in the imposition of an administration fee of 160 DKK charged by the Postal services to private individuals at the moment of the delivery.

In relation to the first question in your letter, you are concerned about whether small consignments are subject to customs formalities that would justify the payment of a fee. Customs formalities are all the operations that need to be carried out in order to comply with the customs legislation. In this connection, customs legislation includes, inter alia, the Community Customs Code and its implementing provisions, the Common Customs Tariff and legislation setting a system for reliefs. The legislation on VAT is not part of the customs legislation.

Depending on the type of goods, the customs procedure under which the goods are placed and other factors, such as whether those goods are exempted from the payment of customs duties or not (pursuant to Regulation 1186/2009¹, goods of negligible value are exempted from the payment of customs duties), customs formalities could be more or less complex. However, even in the event that goods are exempted from customs duties, customs formalities need to be observed, a declaration has to be made and accepted and other relevant formalities must be respected. In addition, in cases where imports of negligible value are also excluded from VAT, pursuant to Council Directive 2009/132²,

¹ Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty, OJ L 324 of 10 December 2009.

² Council Directive 2009/132/EC of 19 October 2009 determining the scope of Article 143(b) and (c) of Directive 2006/112/EC as regards exemption from value added tax on the final importation of certain goods.

has no bearing on the obligation to subject those goods to the necessary and pertinent customs formalities.

Having said this, I would like to draw your attention to the fact that Chapter 3 of Title VII of the Customs Code implementing provisions³ ('CCIP') sets out the conditions for customs declaration made out orally and by any other act. In this regard, Article 237 of the CCIP ("postal traffic") states that printed matter shall be considered to have been declared to customs for release for free circulation at the time when it is introduced into the territory of the Union provided they are not liable for import duties. The declaration of those goods shall be considered to have been accepted when the goods are delivered to the consignees. Moreover, these goods are exempt from the need to issue entry summary declarations (see Article 181c letter (c) of the CCIP). As a result, the necessary customs formalities for importation of printed matter of commercial or non-commercial character are met by the physical entry into the customs territory of the Union.

In your second question you ask whether a customs clearance fee can be charged if only import VAT has to be paid. In our view, a customs clearance fee could only be charged for processing the customs declaration. Yet, as stated above, printed matter would be considered to have been declared by crossing the frontier and the declaration accepted when the goods are delivered to the recipient. No other formalities become necessary. Conversely, a fee for the administrative costs entailed for collecting the VAT on behalf of the final consumer does not constitute a customs clearance fee (customs handling fee for processing the import declaration) nor a customs fees for that matter.

By answering to your second question, I believe I have also provided an answer to your last question, where you ask whether a custom clearance fee is in reality to be considered as a customs fee. Nevertheless, I may indicate in this connection that customs fees cannot be charged for the clearance of import goods during the official opening hours of the competent customs offices, as stipulated in Article 30 of the Modernised Customs Code⁴. Article 30 applies to charges imposed by customs authorities and those acting on their behalf in the exercise of governmental authority. The only exception to this rule is the possibility to levy charges so as to recover costs where specific services are rendered. Article 30 provides examples to that effect. In the absence of a service rendered, the fee would be deemed contrary to Article 30 and a charge having an equivalent effect to a customs duty prohibited by the Treaty on the Functioning of the European Union⁵.

I trust this has answered your questions,

Yours sincerely,



Mirosław Zieliński

Director

³ Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, OJ L 253 of 11 October 1993.

⁴ Regulation (EC) No. 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code, OJ L 145 of 04 June 2008.

⁵ See, inter alia, *Joined Cases 37/73 and 38/73 Diamantarbeiders v Indiamex* [1973] ECR 1609, *Case C-126/94 Société Cadi surgelés et al v Ministre des Finances et al* [1996] ECR I-5647, *Case C-426/02 Commission/Greece* (not published).