

Excise Duty: gaining legal certainty

Indirect Tax

01 September 2017

Is UK law and HMRC policy in relation to certain duty points and suspension restrictions in line with EU law, following a landmark decision by the European Court?

The European Court (CJEU) decision in *C355/14 Polihim-SS' EOOD* has confirmed a simple but significant principle – that *excise duty is a tax on consumption* – meaning that the UK's current approach is brought into question.

In looking at what a tax on consumption means, *Polohim* builds on previous case law to state that, whilst excise goods have a liability to duty following production or importation, there is a structure of duty-suspension (that is tax warehouses) which enables the duty liability to be suspended. That duty, as a tax on consumption, should be suspended as near as possible to the (final) consumer.

Furthermore, *Polohim* determines that 'so long as the goods in question remain in the tax warehouse of an authorised warehousekeeper, there can be no consumption, even if those goods have been sold by that authorised warehousekeeper'.

Until now, the UK has commonly taken a different approach by imposing arbitrary duty points and restrictions upon duty suspension. This decision is welcomed because it provides taxpayers with clarity and legal certainty. We now wish to see HMRC recognising and implementing EU law as it has been interpreted by the CJEU.

Going forward

Having only recently obtained this legal certainty, there are questions over its retention or evolution as we leave the EU. Whilst abiding by EU law must continue as normal until exit day, it may be that HMRC will look to drive the duty point further back through the supply chain for alcohol products, as with oil and tobacco products.

Our thanks to Alan Powell for his contribution to this article.