Dear Sir/Madam,

The CFE Fiscal Committee has prepared an Opinion Statement on issues concerning the deduction of import VAT on the import of goods, arising from the decision of the Court of Justice of the EU in the case of C-187/14 *Skatteministeriet v DSV Road A/S*.

In its decision, the Court of Justice took the view that a haulier had no entitlement to deduct VAT incurred on the import of goods it was transporting for its customers. The Court took the view that the mere fact that the haulier transported the goods was not sufficient to mean that the goods were “used” for the purposes of the haulier’s taxed transactions, and therefore did not give rise to a right to deduct import VAT under Article 168 of the Principal VAT Directive 2006/112/EC. The CFE believes this is a sensible view, since it would be distorting of the VAT system to allow a haulier to recover import VAT on the import of goods belonging to another when the owner will not be using them for purposes that confer a right of deduction.

However, an even more restrictive view has now been taken by HMRC in the United Kingdom in HMRC Brief 2/2019. HMRC would appear to be taking the view that it is only the owner of the goods who can deduct the VAT charged on the import of the goods and the owner needs to have paid that import VAT in order to secure that right. A similar approach has been taken by the Slovak authorities in a reference to the Court of Justice in C-621/19 *Weindel Logistik Service SR v Finančné riaditel’stvo Slovenskej Repuvliky,* lodged on 20 August 2019. However, the CFE do not consider that the owner of the goods will always be the “consignee or importer”. Similarly, a commissionaire or agent who contracts in his own name and is treated as both receiving and making a supply may never obtain ownership of the goods. For these reasons, it is considered that a test that purely focuses on ownership is unduly restrictive, and a right of recovery should exist in these cases.

It is possible that some other Member States may also take this restrictive view, and the CFE believes a broader view is to be preferred, and is consistent with the long-term European Union policy of trying to stimulate imports of foreign goods to be processed in the EU and subsequently exported from the EU, as reflected with inward processing and similar reliefs. Restricting the right of deduction on imports is likely to discourage people from sending goods to the Union. Indeed, the CFE would suggest that this is a reason why a less restrictive interpretation is to be preferred.

The CFE Tax Advisers Europe considers that these are issues that warrant review by both the Commission and the States concerned.

We invite you to read the Opinion Statement, and remain at your disposal for any queries you may have.

Kind regards,

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