

Assessment of 100 million due to incorrect import value confirmed by the Swiss court

Companies involved in supplies of goods to Switzerland should check their Swiss customs reporting further to a recent case of the Federal Administrative Court on determination of the import VAT value.

Contacts

Patricia More

Partner, Indirect Tax
PwC Geneva
patricia.more@ch.pwc.com
+41 58 792 95 07

Kristyna Kaniova

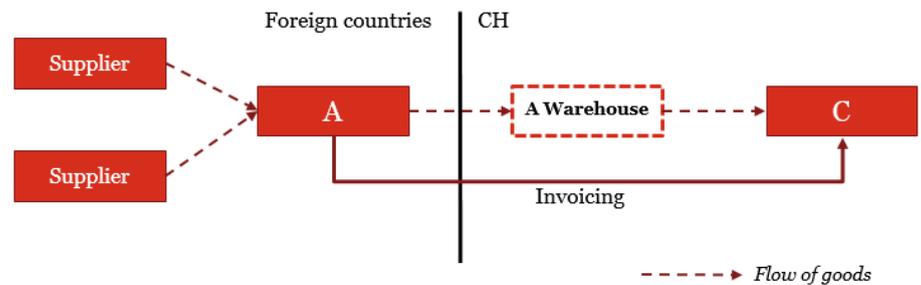
Manager, Indirect Tax
PwC Geneva
kristyna.kaniova@ch.pwc.com
+41 58 792 92 34

Hans-Frederic Andersen

Senior Consultant, Indirect Tax
PwC Geneva
andersen.hans-frederic@ch.pwc.com
+41 58 792 91 97

Background

A., a purchasing company of C. group established outside of Switzerland however, registered for Swiss VAT purpose, was acquiring goods from foreign third party suppliers. The goods were shipped to a Swiss warehouse of A from where those were subsequently sold to C. (a Swiss established and VAT registered distribution company of the C. group), or other third party customers.



For customs clearance, the import value of the goods declared by A. was based on the price invoiced by the foreign suppliers to A. (i.e. on the purchase price). Further to their investigation, the Swiss Federal Customs Authorities (“SFCA”) claimed that A. underestimated the import VAT base, which should have been the sales price to C. minus 10%.

Position of the Federal Administrative Court

The Court held in its decision A-2675/2016 dated 25 October 2016, that the purchase price paid to the foreign suppliers by A. was not relevant to determine the import VAT value. This was due to the fact that the transport from abroad was partially supported by A., which means the latter already abroad had the power to dispose of the goods and therefore the transaction with the foreign suppliers should no longer be relevant to determine the import VAT value. The Court also held that the import value could not be the value of the sale from A. to C. since the transactions were occurring after the import, and storing the goods in the Swiss warehouse of A. The Court then however concluded that the import value should be the market value that C. would pay.

According to article 54, al.1, let. g of the Swiss VAT law, the market value is the price to be paid to an independent supplier in the country of origin. A. was therefore convinced that the imported value declared was in line with the Swiss VAT law. However, the Court held that the price to be considered is not the one that A. paid to the supplier in the country of origin of the goods but the price that C. would have paid to third-party suppliers in this country for similar goods. On this ground, and to the extent that the Court considered that it could not be determined which price would be paid by C. in the country of origin, it held that the SFCA were entitled to consider indeed that such price would be the price paid by C. to A. minus 10%, according to deductive method developed in the Swiss Federal Tax Authorities’ guidelines which however do not have binding character. Thus, the initial position of the SFCA was confirmed by the court even though based on different arguments.

This decision resulted in **an adjustment of more than CHF 100 million** and late

payment interest of CHF 924,854 for A.



Outcome

We are of the opinion that neither the position of the Court nor the deductive method developed by the Swiss Federal Tax Authorities in their guidelines are in line with the Swiss VAT law or with the Customs administrative guidelines which only refer to the price paid by the importer in such case.

It could also be inferred from the reasoning of the Court that the deductive method would not be applicable in case exclusively the foreign suppliers would be handling the transport of the goods up until the Swiss warehouse of the recipient.

As the company was fully entitled to deduct input VAT, and due to the fact that customs duties in Switzerland are calculated based on weight of the imported goods, the valuation of the VAT import value had no impact on A's liability as such. The main impact of the decision is however the late payment interests arising from the adjustment performed by the SFCA which has been confirmed by the Court and do amount to a substantive cost for A.

An appeal has been lodged against the decision, and as the position held by the Federal Administrative Court could be considered as not in line with the Swiss VAT law, we can only hope that the Federal Supreme Court will not confirm this controversial judgement of the Federal Administrative Court.

Recommended action

Companies importing goods from abroad to their Swiss warehouses, from where subsequent sales to Swiss customers are carried out should review their practice in order to assess the potential risk and monitor further developments. Provided that the Federal Supreme Court confirms the position of the SFCA, such businesses would notably be impacted if they are involved in the transport of the goods.