



# **PREPARING FOR MEMBERSHIP**

## **INFORMATION SHEET No. 12**

### **CUSTOMS DEBT**

#### **WHEN AND HOW MUST A SECURITY BE LODGED IN ORDER TO COVER A CUSTOMS DEBT?**

1. Where goods are released which are or might become liable to import duties, a security must or may be requested according to the customs rules (Arts 189-192 CC). The security may consist of a cash deposit, a guaranteed cheque, the cession of a claim, or a guarantee by a person accepted by the customs authorities (Arts 193-197 CC).

#### **HOW, WHEN, WHERE AND BY WHOM IS A CUSTOMS DEBT INCURRED?**

2. A customs debt for goods liable to import or export duties may be incurred by (Arts 201-212 CC)
  - placing them under a customs procedure,
  - their unlawful introduction into or removal from the customs territory,
  - their unlawful removal from customs supervision, or
  - non-compliance with customs provisions.
3. A customs debt is incurred at the time when (Arts 201-211 CC)
  - the customs declaration is accepted,
  - the goods are unlawfully introduced into or removed from the customs territory,
  - the goods are unlawfully removed from customs supervision,
  - the act not complying with the customs provisions is committed, or
  - the obligation that has not been fulfilled should have been met at the latest.

4. The debtors are (Arts 201-211 CC)

- the declarant,
- the representative acting in his own name,
- the person acting in the name or on behalf of another person without being empowered to do so (Art. 5 (4) CC),
- the person providing wrong information for a customs declaration where national law provides for this,
- the person who unlawfully introduced or removed goods into or from the customs territory,
- the person who participated in the unlawful introduction or removal,
- the person who received or acquired unlawfully introduced goods and was aware or should reasonably have been aware of this,
- the person who removed goods unlawfully from customs supervision,
- the person who participated in the unlawful removal from customs supervision and was aware or should reasonably have been aware of this,
- the person who acquired or held goods unlawfully removed from customs supervision and who was aware or should reasonably have been aware of this,
- the person responsible for fulfilling the obligations arising from temporary storage or the customs procedure concerned,
- the person who consumed or used goods in a control type I free zone or a free warehouse,
- the person who participated in the consumption or use of goods in a control type I free zone or a free warehouse and was aware or should reasonably have been aware that this was unlawful,
- the last person known to the customs authorities to have been in possession of goods that were unlawfully consumed, used, or have disappeared from a control type I free zone or a free warehouse.

**WHEN ARE VAT AND EXCISE DUTIES DUE FOR IMPORT GOODS?**

5. The importation of goods is subject to VAT. However, the tax is not chargeable for goods that are intended to be :

- Placed in temporary storage (Arts 37 – 53 CC),
- Placed in a free zone or a free warehouse (Arts 166 – 181 CC),
- Placed under the customs warehousing arrangements (Arts 98 – 113 CC),
- Placed under the inward processing suspension system (Arts 114 – 129 CC),
- Destined for drilling or production platforms,
- Placed under temporary importation with total duty relief (Arts 137 – 144),
- Placed under the external or internal transit procedure (Arts 91 – 97, 163 – 165 CC).

The time at which VAT becomes chargeable is the moment when

- The goods are introduced into the Community or
- The goods cease to be covered by the above-mentioned arrangements, or
- A customs debt is incurred or would be incurred if the goods were liable to import duties.

For intra-Community acquisitions of goods special rules apply for the payment of VAT and these provisions are outside the scope of these Information Sheets.

6. Harmonised rules exist with regard to excise taxes for

- Mineral oils
- Alcohol and alcoholic beverages, and
- Manufactured tobacco

Where such products are imported, excise duty becomes chargeable at the time they are released for consumption.

Customs suspension arrangements are (Arts 84, 166 CC) :

- External transit,
- Customs warehousing,
- Inward processing (suspension system),
- Processing under customs control,
- Temporary importation, and
- Free zones, free warehouses.

**HOW ARE IMPORT AND EXPORT DUTIES PAID AND HOW IS A CUSTOMS DEBT EXTINGUISHED?**

7. Where a customs debt is incurred, it is entered in the accounts by the customs authorities and communicated to the debtor (Arts 217-219, 221 CC).

If initially no duty or a lower duty than that legally due has been entered in the accounts, the customs authorities recover the missing duty (Art. 220 (1) CC). They waive, however, post-clearance recovery if (Art. 220 (2) CC)

- the incorrect entry in the accounts results from an error on their part or on the part of another administration involved in the duty assessment, and
- the error could not reasonably have been detected by the debtor, and
- the person liable has acted in good faith, and
- the provisions governing customs declarations have been respected.

8. A customs debt is extinguished when (Arts 222-234 CC):

- the duty has been paid,
- the prescription period has expired,
- the duty is remitted,
- the customs declaration is invalidated,
- the goods are seized and confiscated before their release.

## **UNDER WHICH CIRCUMSTANCES CAN IMPORT OR EXPORT DUTIES BE REPAID OR REMITTED?**

9. Import or export duties may be repaid or remitted where (Arts 235-242 CC)
- duties paid or entered in the accounts were not legally due or should not have been entered in the accounts,
  - the customs declaration is invalidated,
  - the import goods were defective or did not comply with the import contract and are re-exported,
  - the debtor is in a special situation so that it would be inequitable to make him bear a loss which he would not normally have incurred.

Arts 899 – 904 CCIP define certain situations in which import or export duties may or may not be repaid or remitted. A repayment or remission is always excluded where the particular circumstances result from deception or obvious negligence on the part of the person concerned (Art. 899 CCIP).

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[http://europa.eu.int/comm/taxation\\_customs/law\\_en.htm#customs](http://europa.eu.int/comm/taxation_customs/law_en.htm#customs)

[http://europa.eu.int/eur-lex/en/consleg/main/1992/en\\_1992R2913\\_index.html](http://europa.eu.int/eur-lex/en/consleg/main/1992/en_1992R2913_index.html)(for Customs Code)

[http://europa.eu.int/smartapi/cgi/sga\\_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31993R2454&model=guichett](http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31993R2454&model=guichett) (for Customs Code Implementing Provisions)

<http://customs.business-line.com> (Malta Customs Web site)

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