

# Trade in goods subject to excise duties which have been released for consumption in other Member States<sup>1</sup>

Analysis with reference to Directive 2008/118/EC and German excise law

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## Abstract

This article examines the legal provisions applicable in the European Union (EU) when goods are traded and/or moved between Member States and compares those provisions with German law on excise duties. A range of circumstances and interpretations is provided. Specific reference is made to the differences between goods moved for 'commercial' purposes and those moved by a private individual and the likely application or exemption of excise duties. Other examples are also provided of circumstances where duty is applicable and in cases where duty would be exempt.

## 1. Overview of the European Union (EU) legal provisions

Directive 92/12/EEC<sup>3</sup> drew a distinction between goods under duty suspension arrangements and those released for free consumption. However, unlike the German legislation on excise duties, this Directive did not define 'free consumption'. The harmonisation of excise duties led to the provision of duty suspension arrangements in order to realise the internal market. Their main purpose is to eliminate the intra-Community tax borders in trade with excise products. Although the majority of movements are made under duty suspension, the internal market also requires the remaining intra-Community movements to be taken into account in recognition of the fact that not all economic participants can claim duty suspension and in order to promote trade in goods which do not (or no longer) qualify for duty suspension. In addition, the competence to raise revenue lies with the individual Member States. Owing to this competence, the duties must ultimately be charged in the Member State where, for tax purposes, the excise product has been released for consumption and remained. Therefore, the 'country of destination principle' also applies to goods released for consumption.

The original provisions of Directive 92/12/EEC showed that trade was not the Community legislator's primary concern.<sup>4</sup> There was no clear distinction between the types of trade in goods released for consumption.<sup>5</sup> Directive 2008/118 (the Excise Directive) which repealed Directive 92/12/EEC does not contain any major amendments. However, its improved regulatory structure makes it easier to differentiate the various types of movements.<sup>6</sup> Art. 33 of the Excise Directive ('holding of goods in another Member State') regulates the important situation where goods released for free consumption in one Member State 'are held' for commercial purposes in another Member State. In contrast, Art. 32 ('acquisition by private individuals') underlines that acquisitions in another Member State by private individuals are subject to the 'country of origin principle', where the individual has acquired the goods for his/her own use and moved them into another Member State himself/herself. Duties are only charged once (that is, in the Member State where the goods were acquired). The third possible movement is regulated by Art. 36 Excise Directive (Distance Selling). The German regulation refers to mail order transactions

(‘Versandhandel’). The country of destination principle also applies to distance selling so that duty is charged (again) once the excise product has been delivered to the Member State of destination.

The Excise Directive provides the basis for claiming excise duty which is important where an irregularity occurs in another Member State during movement (see Art. 38 (1)). Previously, this had only applied to the movements of excise products under duty suspension to ensure the charging of duty in justified cases. When this legal concept was transferred to movements involving excise products released for consumption, the competence of Member States to charge taxation may have been the most important consideration. This is sometimes taken into account where an irregularity occurs in a Member State before duty has been charged. In accordance with the provision for excise products under duty suspension (see Art. 7 (4) Excise Directive) no (new) excise duty will be charged where goods are lost or destroyed under certain circumstances (see Art. 37 Excise Directive).

Arts. 34 and 35 of the Excise Directive establish the duties of the individuals involved and the accompanying document to be used. There have not been any amendments so it is still possible to use the simplified accompanying document under Regulation (EEC) 3649/92. The introduction of the Excise Movement and Control System (EMCS) only affects trade in goods under duty suspension (that is, not goods which have been released for free consumption).<sup>7</sup>

The country of destination principle has been transposed into German law having regard to the competence of individual Member States to charge duties under similar circumstances on excise goods which have already been released for consumption in another Member State and are generally dutiable. In accordance with the requirements of Community law, the German provisions distinguish between acquisition and holding for commercial purposes, acquisition by private individuals and mail ordering. With a few exceptions, the provisions are largely identical.

## **2. Duty charged on holding goods for commercial purposes (Art. 33 Excise Directive)**

### **2.1 Overview of the Directive**

The charging of duty is regulated in Art. 33 (1) Excise Directive. Duties are charged on excise goods which have already been released for consumption in one Member State and are being held for commercial purposes in another Member State where they are to be delivered or used. The method of movement is irrelevant for charging duty; it is the holding of the goods which is the crucial factor. In this respect, paragraph 2 underlines that the relevant German provisions determine the conditions for charging duty and the applicable duty rate.

Art. 33 (1) sub-para. 2 Excise Directive also provides a definition of ‘holding for commercial purposes’, absent in German excise law.

In addition, Art. 33 determines who is liable to pay duty (para. 3): where transit is carried out for commercial purposes (para. 4), excise goods are held on board a ship or aircraft travelling between two Member States (para. 5), or excise duties are to be reimbursed or remitted in the Member State where the goods were released for free consumption.

### **2.2 The structure of German regulations**

According to German excise law, excise products are subject to duty when they are acquired, released for consumption in another Member State, held in the tax territory for the first time or consumed.<sup>8</sup> With the exception of the provision in tobacco duty law (which reflects the existing duty labelling system), the respective paragraph 1 concerns an acquisition for commercial purposes whereas the catch-all criterion

of paragraph 2 concerns the initial holding or consumption for commercial purposes.<sup>9</sup> Therefore, national law follows Arts. 7 and 9 of the Directive 92/12/EEC rather than Art. 33 of the Excise Directive. According to the clearer wording of the new Directive, excise products which have already been released for consumption are subject to excise duty when they are held in another Member State for commercial purposes in order to be delivered or used there.<sup>10</sup>

### **2.3 Goods which have already been released for consumption in a Member State**

According to both the Directive and German law, goods are only subject to duties on release for consumption. It is not possible to determine the excise status of goods in another Member State by sole reference to German law, since it is the national law of the Member State in question which is relevant. The excise legislation of all Member States must respect the requirements of Community law (as is the case in Germany). The excise status is to be determined according to the Excise Directive since this forms the basis of harmonisation. Accordingly, a finding under Community law that energy products have been released for consumption in one Member State can influence the status of excise goods in other Member States.

The relevant provision in this respect is Art. 7 (2) of the Excise Directive. It defines the term ‘release for consumption’ which triggers the charging of duties according to paragraph 1. Accordingly, energy products which have departed from a duty suspension arrangement are deemed to have been released for consumption. This will be the case if goods are removed from the tax warehouse and there is no subsequent movement under a duty suspension arrangement or the latter ends with the registered consignee. This situation also includes consumption within a tax warehouse. The words ‘including irregular departure’ (Art. 7 (2) (a) Excise Directive) make clear that a release for consumption can also take place when moving the goods under a duty suspension arrangement if an irregularity has occurred in another Member State (Art. 10 (1) Excise Directive). If it is not possible to determine where the irregularity occurred, the irregularity (and with it, the release for consumption) will be deemed to have taken place in the Member State where it was detected (Art. 10 (2) Excise Directive). Similarly, energy products are deemed to have been released for consumption if they were produced outside a duty suspension arrangement (Art. 7 (2) (c) Excise Directive). An importation, including one which is unlawful (for example, smuggling) will also give rise to a release for consumption if the goods were not immediately placed under a duty suspension procedure.

Art. 7 (2) (b) Excise Directive also considers goods to have been released for consumption if they are held outside a duty suspension arrangement where excise duty has not been charged pursuant to the applicable provisions of Community and national law. At least under the German system of duty, it is highly contentious whether such a situation amounts to a release for consumption. According to, for example, Art. 7 (2) (a) Excise Directive, the holding of excise goods outside a duty suspension arrangement can only follow (that is, cannot trigger) a release for consumption. Rather, the provision appears to permit the charging of ‘additional’ duties if this is not possible using existing methods of taxation.<sup>11</sup> The fact that it is combined with the charging of duties appears to support this. The provision does not provide any new information about when the goods are released for consumption in another Member State. There is no comparable rule in national excise law. Finally, the requirement ‘free consumption in another Member State’ will always be met if excise goods enter the tax territory of another Member State directly and are not under the duty suspension procedure.

### **2.4 Holding for commercial purposes**

Although the term ‘holding’ is not defined, it is generally accepted within the context of the Excise Directive that it requires actual power of disposal over the goods.<sup>12</sup> As a rule, this also applies to goods which the person exercising the power of disposal is not actually aware of.

This view reflects the regulatory purpose of Community law. In particular, regulating the conditions under which duty is chargeable for holding goods which have already been subject to duty in another Member State serves to recognise the competence of individual Member States to charge duties and the related country of destination principle. The crucial element is the tax territory within which the dutiable consumption is to take place. It would be more difficult to make a clear designation if subjective elements also had to be considered because these can differ depending on the Member State concerned.

In general, German excise law ‘defines’ the element ‘for commercial purposes’ by distinguishing it from the ‘duty free’ introduction for private purposes (§ 20 BierStG). There is a commercial purpose if the requirements for an acquisition by a private individual are not met (§ 19 BierStG). By contrast, the Energy Taxation Act provides a separate criterion for levying duties in such cases (see § 16 (2) EnergieStG). Consequently, the German regulations also meet the Directive’s requirements. As in national law, the Directive also includes cases not covered by the provision relating to an ‘acquisition by private individuals’ (Art. 32 Excise Directive) and which are therefore not subject to the country of origin principle.<sup>13</sup> This is achieved by the definition of ‘held for commercial purposes’ introduced by Art. 33 (1) sub-para. 2 Excise Directive. Accordingly, goods are also held for commercial purposes if a private individual does not acquire excise goods for his/her own use but holds and moves them himself/herself.

### 2.5 Exceptions to ‘holding the goods’

An exception applies (largely for practical reasons), if the excise goods are ‘only’ moved through the tax territory. If transit is properly carried out, the country of destination principle will not apply either. It can also be deduced from the exception that ‘holding the goods’ does not require a link to excise duty law. For example, the ‘holding’ does not have to be for consumption and it would be sufficient if the goods were only held for transportation. On the other hand, Art. 33 (4) Excise Directive does require that the movement be made under cover of an accompanying document in accordance with Art. 34. This exception promotes the creation of an internal market, especially in the case of movements which pass through several Member States insofar as it avoids multiple duties and related duty relief.

Art. 33 (5) Excise Directive provides an additional exception for excise goods held on board a ship or aircraft making sea crossings or flights between Member States (see, for example, § 20 (2) sentence 2 no. 2 BierStG). The condition for this is that the goods are not to be offered for sale. Subject to these conditions, goods can be moved through a tax territory duty free. Where such exceptions apply, duties would be payable since the duty free regulations have been repealed.<sup>14</sup>

## 3. Excise duty on distance selling, Art. 36 (mail order transactions)

Mail order is another form of trade in excise goods which have been released for consumption in other Member States and is subject to the country of destination principle.<sup>15</sup> Accordingly, goods which enter the tax territory by mail order will also be subject to German duties.<sup>16</sup> Mail order transactions have not been separately regulated (see § 23 TabStG) owing to the special rules on tobacco duty. As a result, it should not make any difference to the competence to charge duty whether the excise goods were acquired from a trader within the tax territory or by a trader in another Member State, provided that the exception concerning the introduction of goods for private purposes does not apply (acquisition by private persons, for example, § 19 BierStG).<sup>17</sup>

In the national legislation, paragraph 1 describes who the distance seller is and paragraph 2 lists the requirements for levying duty. As with an acquisition for commercial purposes, duties are charged on a legal transaction between two persons, the essential difference being that the consignee is usually a private individual. Thereby, the intra-Community movement of goods is based on a commercial activity of the mail order seller and this is the factor which determines whether duty is chargeable.

### 3.1 Mail order sellers

In accordance with Art. 36 (1) Excise Directive, the German provisions require that the goods supplied be already released for consumption in another Member State. Furthermore, all regulations expressly require that the trader also be established in this Member State. A similar requirement is not found in Art. 36 (1). However, as in national law, Art. 36 (1) implies that the excise goods have been supplied from another Member State (that is, owing to the reference to an acquisition by a private individual established in another Member State). Arguably, these regulations suggest that a mail order transaction does not exist if the seller is established within the tax territory. Generally speaking, this might mean that the delivery to the end customer is not made from another Member State and that the goods have already been introduced from another Member State or are already being held for commercial purposes.

The mail order seller must deliver the goods to a private individual. According to the Directive, the individual cannot be an authorised warehousekeeper or a registered consignee since only small businesses can operate as such. Art. 36 of the Excise Directive clarifies the situation by stating that the individual in question is not allowed to carry out an independent economic activity. The purpose of the provision suggests that such a finding will not be sufficient by itself. Rather, there must be no connection between carrying on an independent economic activity and ordering the goods. Arguably, only this interpretation can ensure that the requirement of a private individual is really satisfied. The finding must be based on objective circumstances. The German regulations adopt a legal fiction: buyers who do not hold themselves out as being the customer whose intra-Community acquisitions are subject to the provisions of the VAT Act, are deemed to be private individuals (see, for example, § 21 (1) sentence 2 BierStG). The wording suggests that the circle of relevant individuals is wider since it is not only the objective circumstances which predominate: the buyer's conduct can also be of crucial importance. It is debatable whether this also applies in cases which already fall within the scope of regulations governing the acquisition and holding of goods for commercial purposes. Theoretically, this may be so if a trader orders goods from a mail order seller for their business but does not inform the latter of this fact. However, the parties themselves (in this case the purchaser) cannot determine whether one and the same intra-Community movement involves a mail order sale or acquisition. Taking the relevant Directives into account, it might not be possible to prove the existence of a mail order transaction.

The dispatch must be made by the distance seller who either performs the supply himself/herself or employs third parties to do so. The 'principal' in charge of the supply must be the mail order seller. Exactly how the supply is arranged is unimportant. The rules do not require that the goods be delivered to respective buyers as individual consignments or that the consignments involve a supply from another Member State.<sup>18</sup>

### 3.2 Competing regulations

The two regulatory areas affecting the intra-Community trade in goods released for consumption which are subject to the country of destination principle (that is, holding and acquisition for commercial purposes and mail order transactions), require that the dutiable goods physically cross borders. The classification of goods under tax law partly depends on the position of the consignee. In addition, there must be criteria relating to the prior holding of the goods which must reflect commercial purposes rather than consumption. This necessarily leads to the term 'holding' (technically formulated as a catch-all provision), which also applies to cases that satisfy the characteristics of a mail order transaction once they have been performed. At the same time, the compulsory requirement of a movement to a private individual (whether by the distance seller himself/herself or by a third party he/she employs) as part of the mail order transaction represents a holding for commercial purposes. This unavoidable overlap justifies the view that the rule on mail order transactions – which only affects a certain part of intra-Community movements – is the more specific.<sup>19</sup> The relevant provisions of the Directives also appear to point in this direction. Accordingly, the introduction 'without prejudice to Art. 36 (1)' (that is, the rule

on mail order transactions) in Art. 33 (1) (that is, regulating the holding and acquisition for commercial purposes) Excise Directive, suggests that this provision remains unaffected and therefore takes priority. The national regulations on excise duties provide similar clarification by referring to the fact that the catch-all provision on the acquisition for commercial purposes (see, for example, § 20 (2) BierStG) does not extend to cases of mail order transactions either.

#### **4. No duties in the case of complete destruction or irrevocable loss**

Prior to the Excise Directive, there were no rules governing the complete destruction or irrevocable loss of excise goods and such events did not have any effect under tax law. Now, however, Art. 37 (1) Excise Directive provides that if such events occur in the Member State of destination, excise duty does not become payable in this Member State. The rule ‘only’ affects new duties which may arise owing to a change in the competence to levy duties. This exception covers all intra-Community movements of excise goods which have been released for free consumption and could incur duties. This results from the reference to Art. 33 (1) (holding for commercial purposes) and Art. 36 (1) (mail order transactions) Excise Directive. Complete destruction may be due to the properties of the goods, unforeseeable events, force majeure or an authorisation issued by the competent authorities. It may also occur if the location of the loss cannot be determined (Art. 37 (1) sub-para. 2 of the Excise Directive). Here, it would be necessary to submit sufficient evidence to the competent authority of the Member State in which the loss was discovered. In this exceptional situation, the duty would only be charged if the loss were not discovered in the Member State of departure.

In German excise law (with the exception of the Act on Tobacco Duty) the provisions on acquisitions for commercial purposes or mail order transactions refer to a similar exception which prevents duties arising on release for consumption.<sup>20</sup>

Owing to this reference, the national law also suggests that excise goods will be deemed completely destroyed or irrevocably lost if they can no longer be used per se. This is only expressly stated in the exception to the charging of duties when goods are released for consumption (see Art. 7 (4) sub-para. 2 Excise Directive). Another relevant difference is that, according to national law, duties will not arise if the requirements of the exception are met (see § 20 (3) in conjunction with § 14 (3) BierStG: ‘Die Steuer entsteht nicht ...’). In comparison, the Directive provides that the excise duty will not be not chargeable (see Art. 37 (1) Excise Directive). The scope of the Directive is arguably more comprehensive since this wording also covers cases where the destruction or loss of goods has only occurred after the conditions for charging duty have arisen. In this case, duty would not be charged even if it was payable. On the other hand, the wording of the German provisions suggests otherwise – which would reflect the system of excise duty up to now. This shows that the timing of individual events can have serious consequences.

#### **5. Irregularities during the movement of excise goods released for consumption in other Member States**

Prior to the Excise Directive, a similar criterion for charging duties had only existed in relation to movements under duty suspension. However, Art. 38 Excise Directive transfers the legal concept underlying this rule to intra-Community movements which have already been released for consumption. The rule aims to ensure that there is also a change in the competence to charge duties if such goods are supplied for consumption to another Member State but the movement cannot be carried out properly. In these cases too, the country of destination principle applies. This is justified since even if the irregularity concerned falls within the scope of the applicable legal provisions (as in the case of a ‘regular’ movement) in the country of origin, it will no longer be possible to point to a consumption which justifies the charging of duties. As a result, this provision closes a gap in the legal regime.

## 5.1 Scope

The regulations apply to movements which would have given rise to duties had they properly been carried out.<sup>21</sup> This is the acquisition and holding for commercial purposes (see, for example, § 20 BierStG) and mail order transactions (see, for example, § 21 BierStG). Tobacco duty law does not deal separately with liability for duties in the event of irregularities, since this is already dealt with by the existing rule on liability (see § 23 (1) TabStG).

## 5.2 Irregularity

The event which triggers the charging of duties is the occurrence of an irregularity during movement. However, this must take place within the tax territory since, having regard to the country of destination principle, there would otherwise be no reason for changing the competence to charge duties. There is an irregularity if an event occurs which prevents the movement or part of the movement from being performed. Reference to the definition of an irregularity in relation to the movement under duty suspension ensures terminological uniformity (see, for example, § 22 (2) in connection with §13 (1) BierStG). It also ensures that (as with the movement under duty suspension) complete destruction or loss is not deemed an irregularity. Duty is chargeable when the irregularity occurs. This is systematically correct and acceptable provided duty has not become chargeable under 'normal' conditions. Owing to systematic reasons, additional duties might not be charged if the irregularity only occurs after a buyer has moved goods which they received outside the tax territory into the tax territory.

## 6. Acquisition by private individuals

In this case, the regulations will apply the country of origin and not the country of destination principle (as with acquisitions for commercial purposes and mail order transactions).<sup>22</sup> Within the Community, there is no change in the competence to charge duties in such cases. Accordingly, the Directive also provides that excise duties will only be charged in the Member State of acquisition (see Art. 32 (1) Excise Directive).

### 6.1 Own use

As a rule, national relief only applies to excise goods in free circulation in another Member State which are acquired by a private person. The acquisition must serve the individual's own use. In order to perform this assessment, the legislator has adopted the criteria listed in Art. 32 (2) Excise Directive.<sup>23</sup> The following aspects have to be considered: the position in commercial law; the reasons the owner has for holding the goods; the location of the goods; type of transportation documents accompanying the goods as well as the properties or quantity of the goods. Quantity tends to be used because it is generally easy to establish. Threshold quantities are established by the Customs Code Implementing Provisions and if they are exceeded, there is an irrebuttable presumption that the excise goods have been moved into the tax territory for commercial purposes.<sup>24</sup> This does not involve duty-free allowances since the overall circumstances may indicate an introduction for commercial purposes even though the stated quantities have not been exceeded. On the other hand, an introduction can also be made for private purposes, despite the fact that the threshold quantities have clearly been exceeded.

If the excise goods introduced into the tax territory are to be consumed by the private individual himself/herself, there is little doubt that the 'own use' requirement is satisfied. This is not the case where the goods are intended to be a present for a third person (souvenirs), since ultimately they are to serve the needs of a third person. Here, the question is whether consumption for 'own use' is the predominant reason for charging duties. If so, it would be impossible to pass the goods on to someone else – even if there was no consideration involved. However, if this really was the legislator's intention, it would

surely have been better expressed by reference to ‘own consumption’. However, neither the Directive nor national legislation contains such wording.

## 6.2 Moved into the tax territory ‘himself/herself’

The requirement ‘himself/herself’ is only satisfied if the private person has acquired the goods for his/her own use and personally moves them into the tax territory.<sup>25</sup> Having the goods moved does not justify applying the country of origin principle. However, this also means that excise goods in the form of household effects, which are moved from one residence to another, will attract duties if a forwarding company has been employed to perform the move.<sup>26</sup>

## 6.3 Legal consequences

According to the wording, excise goods are duty free. However, this is declaratory in nature and only serves to clarify matters since this ‘legal consequence’ does not result in any duty being charged. In the classical case, duty will be chargeable in the absence of a duty exemption. However, there is no reason to charge duties if a private individual moves goods into the tax territory which are intended for his/her personal use.

The comparable ‘duty exemption’ under energy taxation law is subject to more extensive restrictions partly due to road security considerations. If they are not complied with, duty will be chargeable in accordance with Art. 31 (4) Excise Directive. The other statutes on excise duty do not need a separate duty liability clause in the event that the ‘requirement for exemption’ is not met because such cases are already covered by the provisions governing acquisition and holding for commercial purposes.

## Notes

- 1 Translated into English from German by Christopher Dallimore, LL.B (Cardiff), Mag. Iur. (Trier), Dr. Iur. (Münster).
- 2 This analysis is based on the author’s comments in Bongartz & Schröer-Schallenberg 2011, *Verbrauchssteuerrecht*, and in Bongartz (Hrsg.), *Kommentar zum EnergieStG und StromStG*.
- 3 Council Directive 92/12/EEC on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products of 25 February 1992, O.J. L 76/1 was superseded by Council Directive 2008/118/EC concerning the general arrangements for excise duty and repealing Directive 92/12/EEC.
- 4 According to one study, the share of goods released for free consumption of the total volume of trade in excise goods is approximately 3%: see Jatzke 2009, *ZfZ*, p. 121.
- 5 Concerning the difficulties of interpretation, see Scheuer 2000, *ZfZ*, p. 255; Jarsombeck 2001, *AW-Prax*, p. 419.
- 6 Jatzke 2009, *ZfZ*, p. 121.
- 7 See Schröer-Schallenberg & Bongartz 2009, *Überblick über die Einführung von EMCS*, *ZfZ*, p. 161.
- 8 § 23 TabStG; § 149 BranntwMonG; § 20 SchaumwZwStG; § 29 iVm § 20 SchaumwZwStG; § 20 BierStG; § 17 KaffeeStG; § 15 EnergieStG; § 34 iVm § 15 EnergieStG. The terminology is not uniform in all Acts; the title to § 15 EnergieStG refers to a ‘Verbringen’.
- 9 For the details, see Bongartz & Schröer-Schallenberg 2011, *Verbrauchssteuerrecht*, pp. 102 f.
- 10 See Jatzke 2009, *ZfZ*, p. 121, who argues that Art. 33 (1) Excise Directive contains a standardised criterion for the incurrance of duties.
- 11 See Schröer-Schallenberg 2002, *Besitz einer verbrauchssteuerpflichtigen Ware als Anknüpfungspunkt für eine Steuerentstehung?*, *ZfZ*, p. 293.
- 12 See also judgment of the BFH of 10 October 2007 VII R 49/06, *ZfZ* 2008, pp. 85; 86.
- 13 See Jatzke 2009, *ZfZ*, p. 121.
- 14 Until 30 June 1999, Art. 28 of Directive 92/12 granted Member States corresponding duty free sales. After the expiry of the transition instrument, the Commission provided a procedure in a Communication (1999/C99/08, O.J. C 99/20) which could prevent the realisation of a criterion for the incurrance of duty in another Member State, see Jatzke 2009, *ZfZ*, p. 121.
- 15 According to Jansen 2010, *ZfZ*, p. 89 this instance of mail order selling involves a sub-category of the introduction for commercial purposes.

- 16 § 150 BranntwMonG; § 21 SchaumwZwStG; § 21 BierStG; § 18 KaffeeStG; § 18 EnergieStG.
- 17 Figuratively speaking, Schröder-Schallenberg 1993, ZfZ, p. 305 f., correctly describes the acquisition by private persons as holiday traffic (Reiseverkehr).
- 18 Judgment of the BFH of 14 April 2003 VII B 267/02, BFHE 202, p. 91, ZfZ 2003, p. 269 f.; decided differently by the lower court: see judgment of the FG Munich of 26 June 2002 3 K 5449/99.
- 19 Referring to the statutory reasons for § 11 KaffeeStG in the Excise Duties – Internal Market Act/‘Verbrauchersteuer-Binnenmarktgesetzes’ (BT-Drucks. 12/3432, p. 94) the BFH held that in cases of mail order transactions, the duty was only chargeable on delivery despite the fact that the goods were held for commercial purposes prior to delivery (BFH 24 November 2009 VII B 223/08, ZfZ 2010, pp. 136, 138).
- 20 § 149 (3) BranntwMonG; § 20 (3) SchaumwZwStG; § 20 (3) BierStG; § 17 (3) KaffeeStG; § 15 (2) a EnergieStG.
- 21 § 151 BranntwMonG; § 22 SchaumwZwStG; § 22 BierStG; § 19 KaffeeStG; § 18 a EnergieStG.
- 22 § 22 TabStG; § 148 BranntwMonG; § 19 SchaumwZwStG; § 19 BierStG; § 16 KaffeeStG; § 16 EnergieStG.
- 23 § 22 (2) TabStG; § 148 (2) BranntwMonG; § 19 (2) SchaumwZwStG; § 19 (2) BierStG; § 16 (2) KaffeeStG. These criteria have not been adopted by the Energy Taxation Act (Energiesteuerergesetz) owing to special restrictions.
- 24 Quantity thresholds: 800 cigarettes, 200 cigars, 400 cigarillos or 1 kg smoking tobacco, § 39 TabStV; 10 l spirits, § 38 BrStV; 60 l sparkling wine, § 33 SchaumwZwStV; 20 l intermediate products, § 44 SchaumwZwStV; 110 l beer, § 34 BierStV; 10 kg coffee or goods containing caffeine, § 23 KaffeeStV.
- 25 ECJ 23 November 2006 case C-5/05, ECR 2006, I-11075-11124, ZfZ 2007, p. 19 f.
- 26 Regarding this and similar special cases, see Scheuer 2000, ZfZ, p. 256, who also identifies a gap in the provisions concerning the introduction for private purposes.

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