



UCC – the customs representation of a non-established company can only be indirect

French Customs Authorities disclosed precise information early September 2019 regarding the representation of non-established operators for customs clearance purposes.

Pursuant to article 5 § 15 of the Union Customs Code (UCC), *“the customs declarant is the person who lodges a customs declaration, a temporary declaration, an entry summary declaration, an exit summary declaration, a declaration or a re-export notification in his own name or the person on whose behalf such a declaration or notification is lodged”*.

The customs declarant must be established in the customs territory of the Union, according to article 170§2 UCC.

The declarant can however be represented, in accordance with article 18 UCC which provides for two categories of representation:

- Direct representation, in which case the customs representative acts in the name and on behalf of others while fulfilling custom formalities, or
- Indirect representation, in which case the representative acts in his own name but on behalf of others while fulfilling custom formalities.

The type of representation has consequences on the customs and import VAT debt, as in case of indirect representation, both the custom declarant and the person for whom the customs declaration is made are jointly and severally liable for the debt. Where directly representing, a representative is not jointly liable.

According to French authorities, it results from a joint interpretation of articles 5, 18 and 170 UCC that a non-established importer or exporter cannot be represented under direct representation.

They will have to appoint a indirect representative for customs clearance, which will then be jointly liable for the debt, as well as a tax representative for all VAT formalities.

DS Avocats Customs & Trade team is at your disposal to provide you with any additional information.

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