

## Remark | VAT, Customs and Excise Duties

### NI GA 33/2020 of 11 December on returnable packaging

21 December 2020

On 11th November 2020, the AEAT Customs and Excise Department published Information Note NI GA 33/2020 of 11th December on returnable packaging in relation to packaging that may be exported and subsequently re-imported into the customs territory of the Union, clarifying the formalities required for operators to benefit from the import duty exemption applicable on re-importation of such goods.

In defining the concept of "packaging", the Customs Department refers to the provisions of the Convention on Temporary Importation, celebrated in Istanbul on 26th June 1990, under which packaging means: "all articles and materials which serve or are intended to serve, in the state in which they are imported, to package, protect, stow or segregate goods, excluding materials (straw, paper, fibreglass, shavings, etc.) imported in bulk. Containers and pallets are also excluded (...)".

In addition, although the title of the Information Note refers to containers and returnable packaging, this Information Note also applies to "pallets", regardless of whether they are classified as packaging or containers.

In accordance with what is stated in the Note, the re-importation of this merchandise will be exempt from import duties when the requirements set forth in Article 203 and following of Regulation (EU) No. 952/2013 of the European Parliament and of the Council of 9th October 2013, establishing the Union's Customs Code and its implementing regulations, are met. In turn, Article 63 of Law 37/1992 regulating Value Added Tax and Article 18 of the VAT Regulation regulate the VAT exemption applicable to the re-importation of goods.

Insofar as, in the opinion of the European Commission, the authorities of the Member States are competent to establish the necessary conditions for the application of the exemption, a procedure has been designed according to which the holder of the packaging must have the corresponding authorisation granted by the Customs Department and the excise duty which, once granted, must be mentioned in the SAD for export and import regardless of whether or not the exporter/importer is the owner of the packaging.

If the authorisation is not in force, the number of the application for authorisation made shall be recorded.

Unless the goods transported are the packaging itself, using a specific heading for the goods covered by the authorisation on the customs export and free circulation declarations concerned is not necessary, provided that the units of packaging being imported or exported are identified.

For practical purposes, it is clarified that, in cases where goods are exported and, subsequently, empty packaging and/or wrappings are imported, the authorisation described implies that the holder of the authorisation declares that he is the exporter of the packaging and/or wrappings containing the goods covered by the SAD, so that the reference to the exporter contained in the SAD refers solely and exclusively to the goods and not to the packaging and/or wrappings.

For its part, in those cases where empty containers and/or packaging are exported and, subsequently, these containers and/or packaging containing the goods are imported, the said authorisation implies that the exporter of the containers and packaging is the holder of the authorisation, regardless of what is included in the SAD for export.

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