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INDIRECT TAXATION OF EVENTS BEYOND THE CONTROL OF THE TAXPAYER IN CRUCIAL TAX AND CUSTOMS JUDGMENTS OF THE COURT OF JUSTICE

Abstract

Indirect taxes are shaped in such a way that the final customers bear their economic burden. The scope of taxation is usually delineated to cover all goods (and services) reaching the afore-mentioned final consumers. One may assume that the aim of a lawmaker is that goods (or services) supplied to the consumers should not remain untaxed. However, the intensity of pursuing this aim differs between VAT, excise duties, and customs duties. A scientific question that the rules outlined above bring about is whether it is acceptable – under the general principles of the European Union law perceived through a number of tax (customs) cases – to impose duties on a person or to deprive a taxpayer of rights owing to tax-relevant facts that have been entirely out of the control of this person or this taxpayer (customs debtor). Although the position of the Court of Justice towards this issue is not homogenous, the author of this article claims that situations that are wholly beyond the scope of control of a diligent person should not affect the tax (customs) situation to the detriment of such a person.

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Keywords

VAT – excise duties – customs duties – scope of taxation – awareness

Introduction

It is the crucial feature of indirect taxes that one can distinguish between a taxpayer in a legal sense and a taxpayer in an economic sense of this word. As a matter of principle, it is the former who is responsible for remitting tax to authorities, but it is the latter who must bear an economic burden of the tax.[1] The economic burden of the indirect tax, as a matter of principle, is shifted onto final consumers of goods, though this process is an economic one rather than a legal requirement and is subject to the interplay of supply and demand for taxed goods. Although taxpayers can attempt to shift the economic burden of all taxes onto other persons, in the case of indirect taxes, this shifting is desired by the legislator.[2] This allows policy-makers to use indirect taxes for social (e.g. reduced VAT rates applicable to medical services or food), environmental (e.g. taxing motor fuels), health (e.g. imposing duties on cigarettes and alcoholic beverages) or other objectives via differentiated rates, exemptions etc.

In certain cases, the attainment of policy objectives requires shaping widely the personal scope of taxation (potentially encompassing even final customers when the legislator wants to avoid the presence of untaxed goods in a given territory). In all cases, economic operators who are taxpayers from a purely legal perspective, in fact, act as mere tax collectors[3] though their scope of liability is far broader than that of the tax collector in the legal meaning of this word.

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[1] This feature of value added tax (VAT) is mentioned in the case-law of the Court of Justice – see, for instance, *Banca popolare di Cremona Soc. coop. arl v. Agenzia Entrate Ufficio Cremona*, Case C-475/03, Judgment of 3.10.2006, para. 28.

[2] See, for instance, E. Wojciechowski, "Systemy podatkowe", in M. Weralski (ed.), *System instytucji prawno-finansowych PRL*, vol. III, *Instytucje budżetowe*, Wrocław – Warszawa – Kraków – Gdańsk – Łódź: Ossolineum, 1985, p. 122.

[3] See, for instance, *E. sp. z o.o. sp. k. v. Minister Finansów*, Case C335/19, Judgment of 15.10.2020, para. 31.

The features of indirect taxes outlined above result in situations where both economic operators and final consumers may – sometimes to their astonishment – fall into the personal scope of taxation when they had no real chance of verifying their tax situation. The question underlying this article is whether taxing persons who did not have such a chance is in line with the general principles of the law of the European Union (EU). The analysis is based on selected judgments of the Court of Justice in tax (and customs) matters.

I. Overview of Taxable Events and Problems with Establishing Tax-Relevant Facts

1. VAT

Primary taxable transactions in the EU VAT system are as follows:

- supply of goods (domestic, intra-Community, and export),
- supply of services as well as,
- intra-Community acquisition of goods and importation (art. 2(1) of Directive 2006/112/EC of the Council of 28 November 2006 on the common system of value added tax (the VAT Directive)).[4]

The key feature of this tax is the right to deduct input VAT which means that goods and services bought by a taxpayer affect this taxpayer's amount of tax to be remitted to tax authorities (art. 168 et seq. of the VAT Directive).

Involvement in fraudulent schemes (such as missing trader fraud and carousel fraud) may sometimes impair a taxpayer's right to deduct. Similarly, zero-rated transactions, intra-Community supplies in particular, are prone to risks connected with VAT fraud.

2. Excise Duties

Excise duties are chargeable at the time of release of goods for consumption (art. 7(1) of Directive 2008/118/EC of the Council of 16 December 2008

[4] OJ L 347, 11.12.2006, p. 1–118.

concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (the Horizontal Directive)).[5] The concept of "release for consumption" comprises, among others, the holding of excise goods outside a duty suspension arrangement where excise duty has not been levied pursuant to the applicable provisions of Community law and national legislation (art. 7(2)(b) of the Horizontal Directive).

Acquisition or holding of excise goods not placed under the excise-suspension procedure where the due amount of excise has not been paid thereon and where it has not been ascertained in tax control, customs and fiscal control, or tax proceedings that such duty has been paid is subject to excise duty under Polish law (art. 8(2)(4) of the Excise Tax Act of 6 December 2008).[6]

It is noteworthy that where an excise duty liability has arisen regarding excise goods in relation to the performance of one of the acts referred to in art. 8(1) of the Excise Tax Act, the duty liability shall not arise in respect of any other act which is subject to excise if the excise amount has been fixed or declared in due amount after the excise-suspension procedure ceased to apply, save as otherwise provided in the afore-mentioned act (art. 8(6) of the Excise Tax Act).

The rules outlined above create significant risks for both economic operators and customers. They can unknowingly purchase excisable goods on which excise duty has not been remitted in the amount required by law. Excisable goods are specified only as to their kind, making it nearly impossible to determine whether excise duty on the goods subject to a given transaction was paid (save for goods bearing tax marks). One should remember that excisable goods are subject to trade also between entities that do not have any special status in excise duties and do not remit excise duties to tax authorities themselves. Moreover, the level of required taxation (or exemption) may depend on the use of taxed goods or the content of chemical additives therein. These may also prove to be difficult, if not impossible in usual business practice, to verify.

One can point to a whole string of situations where a person falls under the scope of excise taxation without knowing about it. For instance,

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[5] OJ L 9, 14.1.2009, p. 12–30.

[6] Polish OJ, 2020, item 722.

fuel can be sold a couple of times in a supply chain beyond the excise duty suspension arrangement. A buyer cannot ask his or her supplier for proof of payment of excise duty because the supplier (and a preceding supplier) acted out of excise duty arrangement and did not consider him- or herself to be an excise duty taxpayer. Actual control if excise duty has ever been paid is practically impossible, especially if one remembers that fuel (and most other excise goods) is not an object of individual identity. One can also think of alcohol that – under contractual terms – should have been delivered denatured and, therefore, exempt from excise duty. However, the presence of some denaturing substances cannot always be under reasonable business conditions checked in commercial laboratories. If a supplier fails to deliver properly denatured alcohol, the buyer might be held liable for payment of excise duty.

3. Customs Duties

Customs debt can be incurred through the placing of non-Union goods liable to customs duties under release for free circulation procedure or temporary admission with partial relief from import duty procedure (art. 77(1) of the Regulation 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (the UCC)).[7] These are situations when customs debt arises in typical, regular business procedures. Customs debt can, however, also be incurred owing to non-compliance (art. 79(2) of the UCC).

Up to a certain point similarly to the case of excise duties, customs rules can create unexpected problems for both economic operators and final customers as they require imposing duties on those who hold goods on which customs duties were not paid in the required amount. Checking whether such payment has taken place by a business entity may prove impossible or the expenses connected with the thorough check may be unacceptably high. The problem is limited if imported goods are identifiable by their individual numbers (such as cars).

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[7] OJ L 269, 10.10.2013, p. 1–101.

II. Taxpayer's Knowledge and Personal Scope of Taxation

1. VAT

There are no provisions related to the influence of taxpayer's knowledge on VAT settlements in the VAT Directive. However, it must be emphasised that there are no explicit rules requiring the taxation of holders of untaxed goods or depriving taxpayers of their rights if they enter into a transaction with a fraudster. Despite such a form of legal rules, the Court of Justice has referred to the significance of knowledge in the spheres of input VAT deduction and zero-rating.

In its judgment of the Court of Justice of 12 January 2006 in the joined cases C-354/03, C-355/03 and C-484/03, *Optigen Ltd, Fulcrum Electronics Ltd, Bond House Systems Ltd v. Commissioners of Customs & Excise*, para. 55, the Court of Justice held:

> Transactions such as those at issue in the main proceedings, which are not themselves vitiated by value added tax fraud, constitute supplies of goods or services effected by a taxable person acting as such and an economic activity within the meaning of Articles 2(1), 4 and 5(1) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment[8] (…) where they fulfil the objective criteria on which the definitions of those terms are based, regardless of the intention of a trader other than the taxable person concerned involved in the same chain of supply and/or the possible fraudulent nature of another transaction in the chain, prior or subsequent to the transaction carried out by that taxable person, of which that taxable person had no knowledge and no means of knowledge. The right to deduct input value added tax of a taxable person who carries out such transactions cannot be affected by the fact that in the chain of supply of which those transactions form part another prior or subsequent transaction is vitiated by value added tax fraud, without that taxable person knowing or having any means of knowing.

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[8] OJ L 145, 13.6.1977, p. 1–40. This directive is not in force anymore, but there are no grounds for a different approach under the VAT Directive currently in force.

As regards the zero-rating of intra-Community supplies the Court held in the judgment of 27 September 2007, *The Queen, on the application of: Teleos PLC and others v. Commissioners of Customs & Excise*, case C409/04, para. 72:

> The first subparagraph of Article 28c(A)(a) of Sixth Directive[9] (…) is to be interpreted as precluding the competent authorities of the Member State of supply from requiring a supplier, who acted in good faith and submitted evidence establishing, at first sight, his right to the exemption of an intra-Community supply of goods, subsequently to account for value added tax on those goods where that evidence is found to be false, without, however, the supplier's involvement in the tax evasion being established, provided that the supplier took every reasonable measure in his power to ensure that the intra-Community supply he was effecting did not lead to his participation in such evasion.

The judgments cited above are classics of their kind and still represent the current reasoning of the Court of Justice. It stems from them that one cannot be deprived of rights based on the VAT Directive owing to participation in fraudulent supply chains if one not aware of this fraudulent nature and – being diligent – had no means of knowing about such nature of the supply chain.

2. Excise Duties

In relation to the holding of excise goods as referred to in art. 7(2)(b) of the Horizontal Directive the person holding the excise goods and any other person involved in the holding of the excise goods shall be liable to pay the excise duty (art. 8(1)(b) of the Horizontal Directive).

Under Polish law the excise duty payer shall be a natural person, legal person, and an organizational unit having no legal personality that performs acts subject to excise or in respect of which the state of facts subject to excise occurred, including a subject acquiring or holding excise goods not placed under the excise-suspension procedure where

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[9] This directive is not in force any more, but there are no grounds for a different approach under the VAT Directive currently in force.

a due amount of excise duty has not been paid thereon and where it has not been ascertained in tax control, customs and fiscal control or tax proceedings that such duty has been paid (art. 13(1)(1) of the Excise Tax Act).

There are no references to the holder's good faith or due diligence in the afore-mentioned provisions. Such references are present only in the provision delineating the personal scope of taxation in the case of irregularity in the course of movement of goods under excise duty suspension arrangement (art. 8(1)(a)(ii) of the Horizontal Directive). Interestingly, none of the Polish provisions regulating the personal scope of taxation reproduces such a reference to reasonably possessed knowledge. Still, most provisions regarding the personal scope of taxation, even the Horizontal Directive, do not refer the reasonable knowledge, good faith or due diligence of persons involved in activities regarding excise goods.

Recently, the Court of Justice has presented its position regarding the case with the following facts in the background. A heavy goods vehicle driven by WR, a self-employed worker, was stopped on arrival at Dover Docks in the United Kingdom by UK Border Agency (UKBA) officers. The vehicle contained goods subject to excise duty, namely pallets of beer. WR produced to the UKBA officers a CMR note. It was stated in the CMR note that the goods at issue were covered by an electronic administrative document referred to in art. 21 of the Horizontal Directive. That note also stated that the consignor was a tax warehouse in Germany and that the consignee was a tax warehouse in the United Kingdom. However, after consulting the Excise Movement and Control System (the EMCS), the UKBA officers were able to establish that the number of excise consignment stated on the CMR note had already been used for a separate delivery of beer for the same tax warehouse in the United Kingdom. Those officers therefore took the view that the goods at issue were not being moved under a duty suspension arrangement and, consequently, that the excise duty relating to those goods had become chargeable when those goods arrived in the UK. In those circumstances, the UKBA officers seized the goods at issue and the vehicle carrying them. Subsequently, the UK tax authority, first, issued to WR an assessment to excise duty and, second, imposed on WR a fine. The First-tier Tribunal in the United Kingdom upheld WR's appeal against the contested assessment to excise duty and the fine. That tribunal held that, even though he knew that the

goods at issue were subject to excise duty, WR was not a conspirator in relation to the attempt to smuggle those goods. Since he did not have access to the EMCS, he had no means of verifying whether the excise number stated on the CMR note had already been used. Moreover, nothing in the documents available to him was such as to give rise to doubts in that regard. Furthermore, WR was not the owner of the vehicle and had no right to or personal interest in the goods at issue, his sole aim being to collect and deliver those goods, for a fee, in accordance with the instructions received.

In the course of the subsequent court dispute, a question was referred to the Court of Justice regarding imposing excise duty on WR in such circumstances. The dispute regarding the fine came to an end.

In its judgment of the Court of Justice of 10 June 2021, *The Commissioners for Her Majesty's Revenue and Customs v. WR*, case C-279/19, para. 36, the Court held:

> Article 33(3) of Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC must be interpreted as meaning that a person who transports, on behalf of others, excise goods to another Member State, and who is in physical possession of those goods at the moment when they have become chargeable to the corresponding excise duty, is liable for that excise duty, under that provision, even if that person has no right to or interest in those goods and is not aware that they are subject to excise duty or, if so aware, is not aware that they have become chargeable to the corresponding excise duty.

The Court presented the following arguments in the grounds of the judgment. Under art. 33(1) of the Horizontal Directive, where excise goods which have already been released for consumption in one Member State are held for commercial purposes – that is to say, by a person other than a private individual or by a private individual for reasons other than his own use and transported by him – in another Member State in order to be delivered or used there, excise duty is to become chargeable in that other Member State. Under art. 33(3), 'the person making the delivery or holding the goods intended for delivery, or to whom the goods are delivered in the other Member State', is to be liable to pay the excise duty (para. 22). The concept of a person who 'holds' goods refers, in everyday

language, to a person who is in physical possession of those goods. In that regard, the question whether the person concerned has a right to or any interest in the goods which that person holds is irrelevant (para. 24). Moreover, there is nothing in the wording of art. 33(3) of the Horizontal Directive to indicate that the status of the person liable to pay the excise duty, as being 'the person holding the goods intended for delivery', depends on ascertaining whether that person is aware or should reasonably have been aware that the excise duty is chargeable under that provision (para. 24).

That literal interpretation is borne out by the general scheme of the Horizontal Directive (para. 25). Under art. 7(1) and 7(2)(b) of the Horizontal Directive, excise duty is to become chargeable at the time, and in the Member State, of 'release for consumption'. The concept of 'release for consumption' is defined as the holding of excise goods outside a duty suspension arrangement, without excise duty having been levied. In such a case, the person liable to pay the excise duty is, in accordance with art. 8(1)(b) of that directive, 'the person holding [those] … goods and any other person involved in the holding of the excise goods' (para. 27). However, like art. 33(3) of the Horizontal Directive, art. 8(1)(b) of that directive does not contain any express definition of the concept of 'holding' and does not require the person concerned to be the holder of a right or to have any interest in relation to the goods which that person holds, or that that person be aware or that he should reasonably have been aware that the excise duty is chargeable under that provision (para. 28). By contrast, in a situation different from that referred to in art. 33(3) of the Horizontal Directive, that is to say, in the case of an irregularity during a movement of excise goods under a duty suspension arrangement, within the meaning of art. 4(7) of that directive, art. 8(1)(a)(ii) of that directive provides for liability to pay the excise duty on the part of any person who participated in the irregular departure of those goods from the duty suspension arrangement and who, furthermore, 'was aware or who should reasonably have been aware of the irregular nature of the departure' (para. 29). That directive lays down, as stated in art. 1(1) thereof, general arrangements in relation to excise duty which is levied directly or indirectly on the consumption of the goods listed in that article, in particular so that, as is apparent from recitals 2 and 8 thereof, the chargeability of excise duty is identical in all Member States and the related tax debt is in fact collected

(para. 32). That interpretation of art. 33(3) of the Horizontal Directive is without prejudice to the possibility, where provided for by national law, for the person who, under that provision, has paid the excise duty that has become chargeable to bring an action for a contribution or indemnity against another person liable to pay that duty (para. 35).

In this judgment the Court has relied on the grammatical interpretation of the Horizontal Directive without even minor references to the principles of law.

3. Customs Duties

Several provisions make the personal scope of customs duties dependent on the potential debtor's knowledge, but under some of them, liability for customs debt is based on purely objective factors.

Where a customs declaration in respect of a release for free circulation or temporary admission with partial relief from customs duties is drawn up on the basis of information which leads to all or part of the import duty not being collected, the person who provided the information required to draw up the declaration and who knew, or who ought reasonably to have known, that such information was false shall also be a debtor (art. 77(3) second sentence of the UCC).

If customs debt is incurred through non-compliance with the any of the following:

- one of the obligations laid down in the customs legislation concerning the introduction of non-Union goods into the customs territory of the Union, their removal from customs supervision, or the movement, processing, storage, temporary storage, temporary admission, or disposal of such goods within that territory,
- one of the obligations laid down in the customs legislation concerning the end-use of goods within the customs territory of the Union,
- then customs debtors are:
  (a) any person who was required to fulfil the obligations concerned,
  (b) any person who was aware or should reasonably have been aware that an obligation under the customs legislation was

not fulfilled and who acted on behalf of the person who was obliged to fulfil the obligation, or who participated in the act which led to the non-fulfilment of the obligation,

(c) any person who acquired or held the goods in question and who was aware or should reasonably have been aware at the time of acquiring or receiving the goods that an obligation under the customs legislation was not fulfilled (art. 79(3) of the UCC).

When customs debt arises due to non-compliance with a condition governing the placing of non-Union goods under a customs procedure or the granting, by virtue of the end-use of the goods, of duty exemption or a reduced rate of import duty the debtor shall be the person who is required to comply with the conditions governing the placing of the goods under a customs procedure or the customs declaration of the goods placed under that customs procedure or the granting of a duty exemption or reduced rate of import duty by virtue of the end-use of the goods (art. 79(4) of the UCC).

Where a customs declaration in respect of one of the customs procedures referred to in point (c) of art. 79(1) is drawn up, and any information required under the customs legislation relating to the conditions governing the placing of the goods under that customs procedure is given to the customs authorities, which leads to all or part of the import duty not being collected, the person who provided the information required to draw up the customs declaration and who knew, or who ought reasonably to have known, that such information was false shall also be a debtor (art. 79(4) second sentence of the UCC).

Nevertheless, the Court of Justice adopted the view that – in the absence of references to reasonable knowledge in customs provisions, a customs debt can be incurred even if the facts leading to its incurrence are beyond the potential debtors control. For instance, in its judgment of 4 March 2004 in the joined cases C-238/02 and C-246/02, *Hauptzollamt Hamburg-Stadt v. Kazimieras Viluckas, Ricardas Jonusas*, the Court held that the presentation to customs of goods introduced into the Community concerns all goods, including those hidden in a secret compartment specially made for that purpose, and that the obligation to present goods rests with the driver and co-driver of a lorry who introduced the goods, even though the goods were hidden in the vehicle

without their knowledge (para. 24). The person who has introduced goods into the customs territory of the Community without mentioning them in the notification of presentation to customs is a customs debtor (para. 30).

The approach presented by the Court of Justice in the field of customs duties is highly similar to the one that can be noted in the sphere of excise duties. There is no ground for considering the knowledge or even reasonably expected knowledge of a potential custom debtor unless customs provisions specifically refer to such criteria.

III. General Principles of Law

1. Overview Of General Principles

The general principles should be viewed as tools allowing the protection of individuals.[10] They vary in nature. One can distinguish both explicitly written and unwritten principles of the EU law.[11] Looking at the jurisprudence of the Court of Justice, one can easily notice that the principles of proportionality and legal certainty play the most important role in tax practice. Both principles are of utmost relevance for the topic of this paper.

The general principles of EU law are positioned in the hierarchy of law as at least above the secondary law of the EU.[12] This means that they can also be referred to when assessing the secondary law of the EU.[13]

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[10] A. G. Toth, *Legal Protection of Individuals in the European Community*, 1978, vol. I, 86 as quoted by A. Arnull, *The General Principles of EEC Law and Individual*, Leicester: Leicester University Press, 1990, p. 1.

[11] See, for instance, Z. J. Pietraś, *Prawo wspólnotowe i integracja europejska*, Lublin: Wydawnictwo UMCS, 2006, p. 48 et seq.

[12] C. Mik, *Europejskie prawo wspólnotowe. Zagadnienia teorii i praktyki*, Warszawa: C.H. Beck, 2000, p. 486.

[13] See, for instance, *Ampafrance SA v. Directeur des Services Fiscaux de Maine-et-Loire and Sanofi Synthelabo, formerly Sanofi Winthrop SA v. Directeur des Services Fiscaux du Val-de-Marne*, Joined Cases C-177/99 and C-181/99, Judgment of 19.9.2000.

2. Remarks Regarding General Principles in the Field of Indirect Taxation

The principle of legal certainty has served as the main factor affecting the direction of interpretation in the judgment of 6 November 2008 in the case C-291/07 *Kollektivavtalsstiftelsen TRR Trygghetsrådet v. Skatteverket*. The question was whether the Court opted for the interpretation in line with the principle of legal certainty, where the core issue was to understand the concept of services provided to a taxable person. According to the Court the interpretation under which one can assume that services are provided to a taxable person if they are provided to a person who has used his or her VAT number, no matter for what sort of needs the service is rendered, is consistent with the objective pursued by art. 9 of the Sixth Directive, which is to lay down a conflict of laws rule to avoid the risk of double taxation or non-taxation (para. 30). In the same way that interpretation facilitates the implementation of that conflict of laws rule, in that it serves the interests of simplicity of administration – of the rules on the place of supply of services – as regards the rules governing the collection of taxes and the prevention of tax avoidance. The supplier of services needs merely to establish that the customer is a taxable person in order to ascertain whether the place of supply of services is in the Member State in which he, the supplier, is established or in the Member State in which the customer's activities are based (para. 31). Furthermore, that interpretation is in line with the objectives and operating rules of the Community VAT system since it ensures, in a situation such as that at issue in the main proceedings, that the ultimate consumer of the supply of services bears the final cost of the VAT payable (para. 32). As the Advocate General observed, such an interpretation is also consistent with the principle of legal certainty; furthermore, it enables the burden on traders operating across the internal market to be reduced and facilitates the free movement of services (para. 33). In the VAT cases mentioned in earlier sections of this article the reasoning of the Court of Justice leads to the conclusion that legislator (or tax authority in a specific case) cannot reasonably require taxpayers of general taxes to investigate all the entities which it makes supplies to or makes purchases from. This would negatively affect the

functioning of the economy nowadays when one is often involved in transactions with entities from other parts of the world. The principles of proportionality and legal certainty are mentioned in the zero-rating cases (the *Teleos case*, para. 45).

The Court has stressed that VAT provisions should be interpreted in such a way as to be compliant with the principle of legal certainty. The addressees of legal norms should be capable of determining what their tax situation is. This is not the case, however, in the sphere of excise duties or customs duties where the Court allows (or at least: happens to allow) the imposing of excise duties or customs duties on entities that had no chance to identify all the tax (or customs) relevant facts without being in any way at fault.

The difference that the Court of Justice most probably implicitly takes into account is that in the sphere of VAT certain rights based on the EU law, underpinning the common VAT system, would be limited (right to deduct or right to zero-rate) whereas in the sphere of excise duties or customs duties no such rights have been explicitly introduced. On the contrary, some excise and customs rules show the requirement to tax (or subject to customs duties) all goods reaching customers. This explanation is only partly satisfactory as it ignores the hierarchical position of the general principles of EU law as situated above the secondary law of the European Union.

Conclusions

One can spot differences in the approach of the Court of Justice towards the scope of protection that taxpayers (or potential customs debtors) receive from the general principles of EU law. The general principles seem to prohibit the Member States from introducing any requirements that would allow the taxation of entities regarding situations beyond their control (the *TRR* case) and would be effective as the sole point of reference in the assessment of domestic law literally based on the EU secondary law (the *Ampafrance* and *Sanofi* cases). The approach towards the assessment of the compatibility of EU secondary law with the general principles is not so unambiguous (the *WR* case). It seems

that the application of the general principles, especially in the sphere of excise duties and customs duties, requires rethinking. One can hardly accept a situation where a taxable event occurs and leads to taxing an individual or an entity that had no reasonable means of finding out that they are covered by the scope of taxation.