



# CAMMINO DIRITTO

Rivista di informazione giuridica



## **EXEMPTION FROM VAT (REVERSE CHARGE). ITALIAN COURT OF CASSATION N.17815/2015**

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*After the European Justice Court's latest verdicts, the national law might determine the exemption from VAT on imports if the imported goods, which are also destined to a bonded warehouse, are physically introduced in this mechanism. However, in accordance with the principle of fiscal neutrality, the tax payment cannot be imposed if it has already been regulated in the reverse charge.*

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The issue presented to the Supreme Court concerns the regime practicality expressed by **art. 50 bis par. 4 lett. b D.L. 331/1993**. This disposition establishes that **non-European goods can be introduced without paying VAT**. However, **is it possible to virtually introduce the goods in a bonded warehouse? And, if it is not possible, how would the reverse charge affect the VAT payment concerning imports?**

It has been often maintained that the introduction of importing goods in the VAT deposit is essential for the exemption from VAT if the goods are European and make use of excise duty exemption, since they are secured to the regime of the bonded warehouse established in the authorization. Subsequently, failing the storing requirement, the VAT had to be paid. The tax duplication was also excluded in the case of the self-invoicing mechanism when the goods were inserted in a virtual way in the VAT deposit; this could not compensate for the missing payment of the VAT concerning the import. Therefore, it was concluded that the use of the self-invoicing system could not influence the VAT payment obligation concerning the import if the goods were not stored in the VAT deposit, because this mechanism integrated a real neutral operation of the national VAT compensation with that of credit.

**The Justice Court introduced the well-known Equoland sentence in 2014.** First of all, it confirmed the full compatibility of the national law and **the «real» introduction of the goods in the VAT deposit**, giving each country the opportunity to determine the methods with which the bonded warehouse could work – such warehouse favours the exemption from VAT. The other member states might determine the cases in which the individual can benefit from the VAT exemption; this means that **the Italian legislator predicted that the individual must physically introduce the imported goods in the bonded warehouse. We can presume that this «physical» presence guarantees the following tax collection.** Therefore, the correlation test between pursued object and used measures, to which the State’s activity was subject, has not highlighted any divergence between the inner organisation and EU system. Moreover, the community judge focused on the consequences of the VAT payment with the self-invoicing system made by the importer after the virtual passage in the deposit and in the act of goods’ extraction. **Contrary to the opinion of internal jurisprudence**, the Court has maintained that **the reverse charge mechanism does not have a formal or artificial value but it establishes a real VAT fulfilment because it permits to contrast tax avoidance and evasion. Therefore, the sixth directive, which introduces this mechanism, exposed to a national law which allows the member state to demand the VAT payment when it has already been regulated in the reverse charge mechanism (through self-invoicing and registration in the records of purchases and sales of the passive subject).**

By applying the Equoland sentence, the **Italian Court of Cassation established the full compatibility between the inner law and the community law with reference to the need that the goods are materially introduced in the deposit and without being in charge of the goods.** The missing storing implies a real misappropriation, from which the tax-related obligation to pay the VAT for the imports derives. However, the judges did not agree with the Regional Tax-related Commission, which had maintained that “the tax-related obligation is still applied if the prescribed formality for the extraction from the warehouse has been fulfilled after the imports, because the so-called reverse charge does not involve any payment and it does not replace the VAT collection concerning the imports, which must be absolved”. As it has already been said, the same Justice Court confers a **substantial value to the mechanism of reverse charge and identifies, under certain conditions, the suitability to exclude the VAT payment for the imports.**

**The referring court will be in charge of verifying whether the inner VAT self-invoicing at the moment of goods’ extraction, which have been inserted only in a virtual way in the VAT deposit, is suitable for determining the fulfilment of the VAT concerning imports, despite being**

**tardive and eventually subject to sanctions.**

The sentence is rejected and the issue is dealt with in another Section of the CTR itself.