

ECJ Advocate General Opines on Compatibility of Anti-Abuse Provision with Rules on Chargeability of Excise Duties on Tobacco Products: *Companhia de Distribuição Integral Logista Portugal* (Case C-96/22) (Excise)

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On 8 June 2023, Advocate General (AG) Pikamäe of the Court of Justice of the European Union (ECJ) gave his opinion in the case of *Companhia de Distribuição Integral Logista Portugal, SA v. Autoridade Tributária e Aduaneira* (Case C-69/22) on the compatibility of a national anti-abuse provision with the rules of Excise Directive (2008/118) on the time of chargeability and the rate applicable. In this case, the AG concluded (opining only on the first of the two preliminary questions addressed) that an anti-abuse provision such as the Portuguese one, providing for the application of the tax rate in force at a date later than the date of release for consumption on cigarettes exceeding the prescribed quantitative limits, breaches articles 7 and 9 of [Excise Directive \(2008/118\)](#), which establish that the time of chargeability is the date of release for consumption. The AG also clarified that the said national provision would be compatible with the Excise Framework Directive (Recast) (2020/262), which, however, is subsequent to the case at hand and, therefore, not applicable.

In this sense the AG proposed that the ECJ answer the second question referred to as follows:

"Articles 7 and 9 of Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC [[Excise Directive \(2008/118\)](#)] must be interpreted as precluding national legislation under which quantities of cigarettes in excess of the quantitative limit for release for consumption referred to therein are subject to the rate of excise duty in force after the date of release for consumption."

A more substantial report containing details of the Advocate General's reasoning will be published in due course.

