

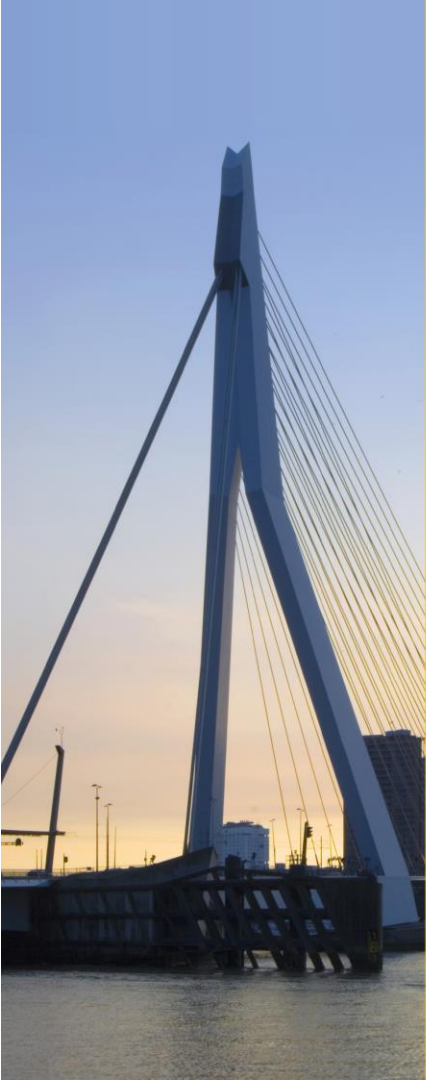
Welcome

EFS Conference

'Interplay between customs and VAT'

➤ Thursday | 16 February 2023

**Erasmus
University
Rotterdam**



Welcome to

EFS conference ‘Interplay between customs and VAT’

Chair of the conference: **Prof. Madeleine Merkx & dr. Martijn Schippers**



Introduction

Prof. mr. dr. Madeleine Merkx

Programme Director EFS

Professor Erasmus School of Law

Partner at BDO

dr. Martijn Schippers

Programma Coördinator EFS

Assistant Professor

Senior Manager at EY

Agenda

13.35 – 14.20 **Incurrence and place of customs debt and import VAT**– Frank Nellen

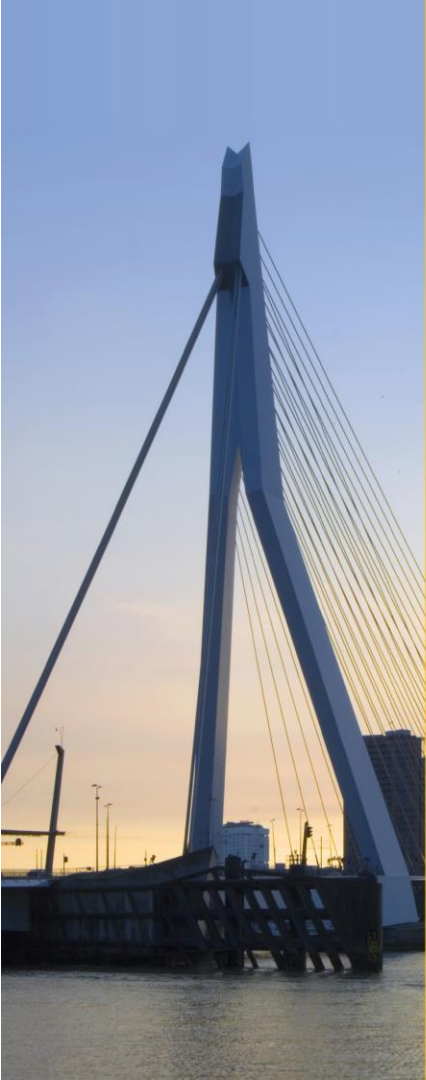
14.20 – 15.05 **Deductibility and liability of import VAT**– Bert Gevers

15.05 – 15.35 **Refreshment Break**

15.35 – 16.15 **Extinguishment of customs debt and import VAT**– Walter de Wit

16.15 – 17.00 **E-commerce** – Marie Lamensch

17.00 – 18.30 **Closing and networking drinks**



Interplay between Customs & VAT

Deductibility and liability of import VAT

Bert Gevers

Rotterdam – 16 February 2023

**Erasmus
University
Rotterdam**

Deductibility and liability of import VAT

- EU VAT Directive

- **Art 201**

*“On importation, VAT shall be payable by any person or persons **designated or recognised as liable by the Member State of importation**”*

- **Art 168**

*“**In so far as the goods and services are used for the purposes of the taxed transactions of a taxable person**, the taxable person shall be entitled, in the Member State in which he carries out these transactions, to deduct the following from the VAT which he is liable to pay:*

...

(e) the VAT due or paid in respect of the importation of goods into that Member State

- **Art 178**

In order to exercise the right of deduction, a taxable person must meet the following conditions:

...

***(e) for the purposes of deductions pursuant to Article 168(e), in respect of the importation of goods, he must hold an import document specifying him as consignee or importer**, and stating the amount of VAT due or enabling that amount to be calculated*

Deductibility and liability of import VAT

- EU VAT Committee Guidance (94th Session)

*“The VAT Committee almost unanimously confirms that a taxable person designated as liable for the payment of import VAT pursuant to Article 201 of the VAT Directive **shall not be entitled to deduct it if both of the following conditions are met:***

- 1. he does not obtain the right to dispose of the goods as owner;*
- 2. the cost of the goods has no direct and immediate link with his economic activity.*

This shall be the case even if that taxable person holds a document fulfilling the conditions for exercising the right of deduction laid down in Article 178(e) of that Directive”.

Deductibility and liability of import VAT

- ECJ

- *DSV Road A/S (C-187/14)* (par 49-51)

- Question

- Can the first Member State into which the goods were imported refuse the taxable person designated by the Member State a deduction of the import VAT pursuant to Article 168(e) of the VAT Directive, where the import VAT is charged to a carrier of the goods in question who is not the importer and owner of the goods but has simply transported and been in charge of the customs dispatch of the consignment as part of its freight forwarding operations, which are subject to VAT?

Deductibility and liability of import VAT

• ECJ

- *DSV Road A/S (C-187/14)* (par 49-51)

- ECJ

- In that regard, it must be noted that, under the wording of Article 168(e) of the VAT Directive, **a right to deduct exists only in so far as the goods imported are used for the purposes of the taxed transactions of a taxable person.**
- *In accordance with the settled case-law of the Court concerning the right to deduct VAT on the acquisition of goods or services, that condition is satisfied **only where the cost of the input services is incorporated either in the cost of particular output transactions or in the cost of goods or services supplied by the taxable person as part of his economic activities** (see judgments in *SKF*, C-29/08, EU:C:2009:665, paragraph 60, and *Eon Aset Menidjmont*, C-118/11, EU:C:2012:97, paragraph 48).*

Deductibility and liability of import VAT

- ECJ

- *DSV Road A/S (C-187/14) (par 49-51)*

- ECJ

- Since the value of the goods transported does not form part of the costs making up the prices invoiced by a transporter whose activity is limited to transporting those goods for consideration, the conditions for application of Article 168(e) of the VAT Directive are not satisfied in the present case.
 - It follows from all the foregoing considerations that the answer to the fourth question is that Article 168(e) of the VAT Directive must be interpreted **as not precluding national legislation which excludes the deduction of VAT on import which the carrier, who is neither the importer nor the owner of the goods in question and has merely carried out the transport and customs formalities as part of its activity as a transporter of freight subject to VAT, is required to pay.**

Deductibility and liability of import VAT

- ECJ

- *Weindel Logistik (C-621/19)* (par 40-49)

- Question(s)

- Is under article 167 & 168 (e) VAT Directive the recovery of import VAT conditional on a right of ownership in respect of the imported goods or on the right to dispose of the imported goods as owner?
 - Is under article 168 (e) VAT Directive the recovery of import VAT only allowed if the imported goods are used for the purposes of the taxable person's taxable transactions in the form of the sale of the goods in the national territory or the supply of the goods to another Member State or the export of the goods to a third country?
 - In such circumstances, is the condition that there be a direct and immediate link between the goods purchased and the output transaction satisfied if the cost components are reflected in the price of the output supply?

Deductibility and liability of import VAT

- ECJ

- *Weindel Logistik (C-621/19)* (par 40-49)

- ECJ :

- A right to deduct exists only to the extent that the imported goods are used for the purposes of the taxable person's taxable transactions. According to the case law on the right to deduct VAT on the acquisition of goods or services, this condition is only met when (i) the cost of the input supplies is incorporated in the price of the particular output transactions or (ii) in the price of the goods or services supplied by the taxable person in the course of his economic activities.
 - The Court pointed out that in the case at hand Weindel Logistik only intervened as supplier of services without having acquired the imported goods or borne the cost of importation, which suggests that, in the main proceedings, the link between the payment of the VAT resulting from the importation and the price of the services provided by Weindel is lacking. Consequently, it will in any event be for the national court to ascertain whether that is the case in the present case.

Deductibility and liability of import VAT

- ECJ

- *Weindel Logistik (C-621/19)* (par 40-49)

- ECJ :

- Referring to ECJ DSV the Court reminds that **persons who import goods without being the owners of the goods are not in a position to benefit from the right to deduct VAT, unless they can establish that the cost of the import is incorporated in the price of the particular output transactions or in the price of the goods or services supplied by the taxable person in the course of his economic activities.**
- The Court also explicitly refers to the (non-binding) guidelines of the 94th VAT Committee which it considers as ‘une aide à l’interprétation’

Deductibility and liability of import VAT

- ECJ

- *U.I. (C-720/19)*

- **Question:** Should article 77 (3) UCC be interpreted as meaning that the indirect customs representative is liable for the customs duties due on the goods he declared as well as for the import VAT on those goods ?

- ECJ

- Based on articles 77 (3), 5(15) and 84 UCC the indirect representative is jointly and severally liable for the customs debt
 - Import VAT is not part of the “import duties” within the meaning of article 5 (20) UCC

Deductibility and liability of import VAT

• Summarizing

- Import VAT (joint & several) liability is decided at MS level;
- Import VAT deduction can take place under the general input VAT deduction rules:
 1. *The person liable to pay import VAT has the right to dispose of the goods as owner; OR*
 2. *The cost of the goods has no direct and immediate link with his economic activity.*
- Member States might have further restrictions, but ownership as a sole & essential condition seems not in line with EU VAT legislation and ECJ jurisprudence

Deductibility and liability of import VAT

• Situation under Belgian VAT law

• Liability for import VAT: Art. 6 of Royal Decree nr. 7

- “VAT upon importation is due by the consignee performing a taxable import of goods in Belgium”

This includes:

- The recipient of the goods (including a commission agent);
- The supplier of the goods;
- The supplier of goods with installation;
- The owner of the goods;
- The contract manufacturer or the lessee;
- The recipient of goods sent under a consignment stock regime;
- The recipient repairing the goods;
- ...

Deductibility and liability of import VAT

- Situation under Belgian VAT law
 - **(Co-)Liability for import VAT: Art. 8 of Royal Decree nr. 7**
 - The declarant;
 - The person authorizing the declarant to act on his behalf;
 - Any person who can be held liable for the import duties.

These persons can be relieved from their co-liability to the extent they did commit a mistake or had been negligent. They can never be released however if they did not know or could not have known that import VAT was not accounted for.

In case import VAT is due via a VAT deferral system (ET14,000 authorization) only the declarant of T1-T2 transit regime can be held co-liable

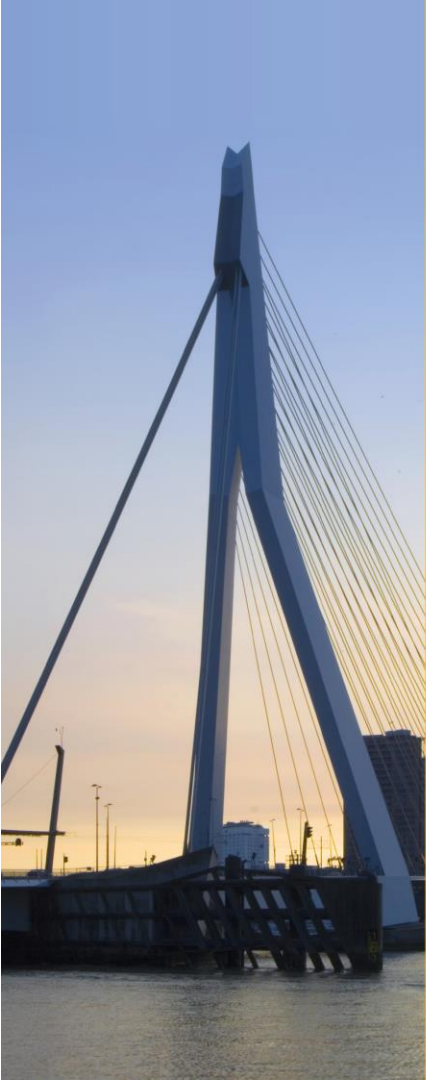
Deductibility and liability of import VAT

- Situation under Belgian VAT law
 - **Import VAT deduction**
 - Under the general principles of article 45 Belgian VAT Code: import VAT is deductible to the extent that goods are imported in the framework of its economic activity
 - Article 3, 3° of Royal Decree nr. 3: VAT deduction is subject to the condition that one disposes of a valid import document indicating you as the consignee and confirming the payment of import VAT

Deductibility and liability of import VAT

- Questions ?





Refreshment Break

15.05 – 15.35

EFS Agenda 2023

- **Post-Master Internationaal en Europees Belastingrecht (in Dutch)**
Module 1: Monday 6 March till Friday 10 March
Module 2: Monday 12 June till Friday 16 June
- **Post-Master EU VAT (in English)**
Module 1: Monday 6 March till Friday 10 March
Module 2: Monday 12 June till Friday 16 June
- **Top-Level Seminar 'Transfer Pricing: Current State of Play and Outlook' (in English)**
Wednesday 12 April till Friday 14 April
- **Post-Master in EU Customs Law (in English)**
Module 1: Monday 25 September till 29 September
Module 2: Monday 6 November till 10 November
- **Post-Master Indirecte Belastingen (in Dutch)**
Tuesday 12 September till Tuesday 5 December (every Tuesday)
- **Top-Level Seminar 'EU VAT: Recent Developments and Outlook' (in English)**
Wednesday 27 September till 29 September

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15.35 – 16.15 ***Extinguishment of customs debt and import VAT– Walter de Wit***

16.15 – 17.00 ***E-commerce – Marie Lamensch***

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Extinguishment of the customs debt (customs and VAT?)

Speaker

Prof Walter de Wit, 16 February 2023

Extinguishment of the customs debt (customs and VAT?)

Or: when the customs debt is extinguished, will there also be an extinguishment of the VAT upon import?

Customs debt on import (Articles 77 to 80 UCC)

Article 77 (regular import declaration)

Article 79 (= “Catch all article”)

For goods liable to import duty, a customs debt on import shall be incurred through non-compliance with any of the following:

- (a) 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;
- (b) one of the obligations laid down in the customs legislation concerning the end-use of goods within the customs territory of the Union;
- (c) 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.

Irregular imports under CCC (now comprised by art. 79 UCC – non compliance)

- Art. 203: removal of goods from customs supervision; *Cases: Wandel (C-66/99), Hamann International (C-337/01)*
- Art. 204: ‘non-fulfilment of one of the obligations arising, (...) from the use of the customs procedure under which they are placed’ unless there is no significant effect on the correct operation of the customs procedure; *Cases: Eurogate, C-28/11 and Döhler, C-262/10*

Extinguishment of customs debt, art 124 (1) UCC (I)

- (a) where the debtor can no longer be notified of the customs debt, in accordance with Article 103;
- (b) by payment of the amount of import or export duty;
- (c) subject to paragraph 5, by remission of the amount of import or export duty;
- (d) where, in respect of goods declared for a customs procedure entailing the obligation to pay import or export duty, the customs declaration is invalidated;
- (e) where goods liable to import or export duty are confiscated or seized and simultaneously or subsequently confiscated;
- (f) where goods liable to import or export duty are destroyed under customs supervision or abandoned to the State;
- (g) where the disappearance of the goods or the non-fulfilment of obligations arising from the customs legislation results from the total destruction or irretrievable loss of those goods as a result of the actual nature of the goods or unforeseeable circumstances or force majeure, or as a consequence of instruction by the customs authorities; for the purpose of this point, goods shall be considered as irretrievably lost when they have been rendered unusable by any person;

Extinguishment of customs debt, art 124 (1) UCC (II)

- (h) where the customs debt was incurred pursuant to Article 79 or 82 and where the following conditions are fulfilled:
- (i) the failure which led to the incurrence of a customs debt had no significant effect on the correct operation of the customs procedure concerned and did not constitute an attempt at **deception**;
 - (ii) all of the formalities necessary to regularise the situation of the goods are subsequently carried out;
- (k) where, subject to paragraph 6, the customs debt was incurred pursuant to Article 79 and evidence is provided to the satisfaction of the customs authorities that the goods have not been used or consumed and have been taken out of the customs territory of the Union.
- Case: Combinova, C-476/19 (re-export after IPR = used?)*
6. In the case referred to in point (k) of paragraph 1, the customs debt shall not be extinguished in respect of any person or persons who attempted **deception**.

Extinguishment of customs debt, art 103 UCC DA

The following situations shall be considered **a failure with no significant effect** on the correct operation of the customs procedure:

- of (a) exceeding a time-limit by a period of time which is not longer than the extension the time-limit that would have been granted had that extension been applied for;
- and (b) where a customs debt has been incurred for goods placed under a special procedure or in temporary storage pursuant to Article 79(1)(a) or (c) of the Code those goods were subsequently released for free circulation;
- are (c) where the customs supervision has been subsequently restored for goods which not formally a part of a transit procedure, but which previously were in a temporary storage or were placed under a special procedure together with goods formally placed under that transit procedure;
- been (d) in the case of goods placed under a special procedure other than transit and free zones or in the case of goods which are in temporary storage, where an error has committed concerning the information in the customs declaration discharging the procedure or ending the temporary storage provided that error has no impact on the discharge of the procedure or the end of the temporary storage;
- authorities (e) where a customs debt has been incurred pursuant to Article 79(1)(a) or (b) of the Code, provided that the person concerned informs the competent customs notified or the about the non-compliance before either the customs debt has been a control. customs authorities have informed that person that they intend to perform

VAT vs customs CJEU Wallenborn Transports C-571/15

CJEU; in so far as that removal from customs supervision took place inside a free zone, the goods at issue continued to be in one of the situations referred to in Article 156(1)(b) of the VAT Directive. No chargeable event art. 71 VAT-D, unless it is established that the goods have entered the economic network of the EU and they may have undergone consumption...

VAT vs customs –Eurogate and DHL Hub Leipzig

- CJEU Eurogate Distribution and DHL Hub Leipzig (C-226/14 and C-228/14) →
 - Eurogate → customs warehouse followed by re-export → removal from customs warehouse reported late in stock records (204 customs debt)
 - DHL → external transit procedure T1, followed by export to China → goods not presented to customs in Germany (customs procedure cannot be ended, 204 customs debt)
 - No VAT on import because goods have been under customs procedure until re-export and goods not in economic network of the EU

VAT vs customs - Latvijas Dzelzceļš

- Latvijas Dzelzceļš C-154/16 → leaking tank wagon in case of external transit procedure (204 customs debt)
- Incorrect closure of an unloading device → no ‘force majeure’ or unforeseeable circumstance → trader did not take due care
- No VAT debt → goods totally destroyed or irretrievably lost while they are placed under the external transit procedure cannot be integrated into the economic network of the EU

VAT vs customs – Dansk Transport og Logistik and UB

- Dansk Transport og Logistik (C-230/08) → smuggled cigarettes which were confiscated after passing the border
- Seizure of goods, together with their simultaneous or subsequent confiscation within the meaning of point (d) of the first paragraph of Article 233 of the Customs Code, can only lead to the extinguishment of the customs debt if that seizure was executed before those goods went beyond the area in which the first customs office is situated inside the customs territory of the EU
- Also applicable to VAT!!

UB (C-489/20)

VAT also extinguished under the UCC?

No, customs debt extinguished under art. 124 (1) (e) UCC if goods are seized and confiscated after being unlawfully introduced in the EU, but not for VAT and excises;

Conclusions?

Thank you for your attention!



Interplay between customs and VAT: The case of e- commerce

Prof. Dr Marie Lamensch

Rotterdam – 16 February 2023

Outline

1. The new legislation on e-commerce with respect to imported goods

- Ratio legis
- Scope of the new legislation
- Overview of the different schemes
- Platforms

2. The role of customs (depending on the collection scheme)

3. The case of returned goods

1. New e-commerce legislation with respect to imported goods

Ratio Legis

E-COMMERCE IMPORTS INTO EUROPE: VAT AND CUSTOMS TREATMENT - Main conclusions of the study carried out by **Copenhagen Economics in 2016:**

- Significant lack of collection of VAT and customs import duty for goods purchased online and imported into the EU via national postal services.
- The resulting loss of public income is estimated at up to 1.3 billion euros annually.
- This experimental study found that shipments sent via national postal operators resulted in a lack of payment of VAT and import duties to the national authorities for **more than 60% of items purchased online.**

TAXUD/ Original EN IMPORTATION AND EXPORTATION OF LOW VALUE CONSIGNMENTS – VAT E-COMMERCE PACKAGE “Guidance for Member States and Trade” Revision 2 Draft (15 Sept 2022)

“Context of adoption” = “The lack of advance electronic data on postal consignments and often poor data quality and accuracy triggers ineffective and inefficient risk analysis in relation to **mis-declaration of origin, mis-description of goods and undervaluation**”.

E-commerce package (into application: 1 July 2021)

- Removal of LVG VAT exemption (but 150 EUR threshold for customs duties exemption remains).
- New collection schemes for 'in scope' imported goods
- Special provision for platforms

In scope goods?

New Article 14, 4,(2), VAT Directive

« Distance sales of **goods imported from third territories or third countries** » means supplies of goods dispatched or transported by or on behalf of the supplier, including where the supplier intervenes indirectly in the transport or dispatch of the goods, from a third territory or country, to a customer in a Member State, where the following conditions are met:

- Supply is made to a non-taxable person (or assimilated)
- Supply **does not consist of new means of transport or goods to be installed** by or on behalf of the supplier

New Article 14, 4,(2), VAT Directive

« Distance sales of **goods imported from third territories or third countries** » means supplies of goods dispatched or transported by or on behalf of the supplier, **including where the supplier intervenes indirectly in the transport or dispatch of the goods, from a third territory or country**, to a customer in a Member State, where the following conditions are met:

- Supply is made to a non-taxable person (or assimilated)
- Supply **does not consist of new means of transport or goods to be installed** by or on behalf of the supplier

Article 5a Implementing Regulation 282/2011

For the application of Article 14(4) of Directive 2006/112/EC, goods shall be considered to have been dispatched or transported by or on behalf of the supplier, including where the supplier intervenes indirectly in the dispatch or transport of the goods, in particular in the following cases:

- (a) where the dispatch or transport of the goods is subcontracted by the supplier to a third party who delivers the goods to the customer;
- (b) where the dispatch or transport of the goods is provided by a third party but the supplier bears either the total or partial responsibility for the delivery of the goods to the customer;
- (c) where the supplier invoices and collects the transport fees from the customer and further remits them to a third party who will arrange the dispatch or transport of the goods;
- (d) where the supplier promotes by any means the delivery services of a third party to the customer, puts the customer and a third party in contact or otherwise provides to a third party the information needed for the delivery of the goods to the consumer.

However, goods shall not be considered to have been dispatched or transported by or on behalf of the supplier where the customer transports the goods himself or where the customer arranges the delivery of the goods with a third person and the supplier does not intervene directly or indirectly to provide or to help organise the dispatch or transport of those goods.

In summary, “in scope goods” are:

- ✓ Goods **imported** into the EU VAT territory from a third country or territory (goods may not have been imported yet, prior to the distance sale) with **at least indirect intervention** of supplier in transport.
- ✓ Goods other than news means of transport or goods to be installed by the supplier.

New collection options?

First remark: Only available for goods having an intrinsic value below 150 EUR.

Bundled goods?

Bundled goods

EC explanatory notes:

- Goods *packed together and dispatched simultaneously* by the *same consignor* (e.g. supplier, underlying supplier or possibly electronic interface acting as deemed supplier) to the *same consignee* (e.g. customer in the EU) and *covered by the same transport contract* (e.g. airway bill) shall be considered as a *single consignment*.
- Goods *ordered separately* by the same person, *but dispatched together*, would be considered as a *single consignment*.
- Goods dispatched by the *same consignor to the same consignee* that were *ordered and shipped separately*, even if arriving on the same day but *as separate parcels* to the postal operator or the express carrier of destination, should be considered as *separate consignments*, unless there is a reasonable suspicion that the consignment was split intentionally in order to avoid the payment of customs duty.

Collection option 1: I-OSS

New article 369I VATD

- ✓ Distance sale
- ✓ Good not subject to excise duties
- ✓ Intrinsic value is less than 150 EUR
- ✓ Tax representative when non-EU seller

I-OSS in short

- VAT is **charged on the distance sale** and the importation is exempt based on valid I-OSS number.
- Super reduced H7 data set for import declaration
- VAT on distance sale is paid via periodical returns (monthly).

Collection option 2: special arrangements

Special arrangements (New Article 369y and 369z VATD):

- ✓ Distance sale
- ✓ Good not subject to excise duties
- ✓ Intrinsic value is less than EUR 150
- ✓ I-OSS is not used
- ✓ Import in the MS of final destination (otherwise transit procedure must be used)
- ✓ MS may require that the person making use of that scheme comply with conditions applicable for deferred payment
- ✓ Relies on « the person presenting the goods to customs » (**New Article 369y VATD**)

New article 369z VATD): « *For the purpose of this special arrangement, (...):*

a. the person for whom the goods are destined shall be liable for the payment of the VAT.

*b. the **person presenting the goods to customs** within the territory of the Community **shall collect the VAT** from the person for whom the goods are destined and effect the payment of such VAT ».*

New article 369z VATD): « *For the purpose of this special arrangement, (...):*

a. the person for whom the goods are destined shall be liable for the payment of the VAT.

b. the person presenting the goods to customs within the territory of the Community shall collect the VAT from the person for whom the goods are destined and effect the payment of such VAT ».

Special arrangement in short

- ✓ Transporter (person presenting the goods to customs) collects the VAT from customer and remits via periodical returns (global payment of VAT amounts collected from customer during a given month).
- ✓ Customer liable for the VAT.
- ✓ ! Postal fees may be very high in some MS (Commission to take action on this).

Platforms?

Platform may act as “deemed supplier”

Article 14a(1) VAT Directive

Where a taxable person facilitates, through the use of an electronic interface such as a marketplace, platform, portal or similar means, distance sales of goods imported from third territories or third countries in consignments of an intrinsic value not exceeding EUR 150, **that taxable person shall be deemed to have received and supplied those goods himself.**

Collection options? Same as “normal suppliers”

Burden for platforms?

M.Lamensch, M. Merkx, J. Lock and A. Janssen: *New EU VAT-Related Obligations for E-commerce Platforms Worldwide: A Qualitative Impact Assessment*, with, World Tax Journal, 2020, Issue 3, IBFD.

Just one example from the explanatory notes, concerning the 150 EUR threshold:

“electronic interface is thus required to make certain reasonable assumptions, e.g. when multiple goods are ordered by the same customer at the same time and from the same supplier, the electronic interface should presume that the goods will form one single consignment. When several distinct orders are placed by the same customer on the same day, the electronic interface should likewise presume that the goods belonging to the different orders will form separate consignments”.

2. Role of customs authorities (depending on the collection scheme that is used)

When I-OSS is used:

✗ Customs do not have to collect the VAT but...

No exemption for LVG → all goods imported into the EU are subject to VAT.

✓ A **customs declaration** is needed for each of them in order to authorise release for free circulation (super reduced data set (H7 data set) can be used).

✓ Check that goods are **in scope** (not excise goods, ...)

✓ Check the **150 EUR threshold** (bundled parcels, price fluctuation, exchange rate fluctuation)

+ **Further check whether not undervalued**

✓ Check **validity of I-OSS numbers** on a real time basis (I-OSS VAT identification number database). Some MS are not able to → Interim solution since March 2022: Customer refunded by supplier/platforms & correction of IOSS VAT return...

✓ Post release **audit**

+ customs must **collect import data** with a view to matching with I-OSS declarations.

In practice: customs must send relevant data from customs declaration to the Commission's Surveillance System as to produce the monthly I-OSS reports that the VAT legislation requires.

(No report yet on effectiveness of this procedure)

When special arrangement is used:

✗ Customs do not have to collect the VAT and do not have to collect import data (Person making use of that scheme must keep records) but...

✓ Check the **150 EUR threshold** (bundled parcels, price fluctuation, exchange rate fluctuation)

+ Further check whether not undervalued

✓ Check that import MS = MS of final destination (otherwise transit procedure must be used)

✓ Import declaration for each parcel (super reduced data set can be used).

When the new legislation is not applicable (excise goods, new means of transport):

Standard rules apply.

Article 201 VATD: « On importation, VAT shall be payable by any person or persons designated as liable by the Member State of importation ».

First assessment by the EC on first 6 months (until Feb 2022)

- EUR 1 billion of new VAT collected on LVG.
 - Direct increase of revenue for goods below EUR 22 threshold
 - Also an increase with respect to LVG between EUR 22 and EUR 150 as a result of better fraud prevention (probably due to platform provision + simplicity of registration option that would increase compliance).
 - Number of I-OSS registration : 8654 (all biggest platforms are registered).

Do the new rules address the identified fraud

✓ I-OSS number misuse?

✓ Any control of the declared value when I-OSS is used?

Burden for customs authorities?

3. The case of returned goods

Preliminary remark

If H7 simplified declaration is used: the goods have been released for final consumption → normal procedure for exportation applies.

If the I-OSS scheme was used, the (deemed) seller must:

- reimburse price incl. VAT to the customer (more complex when platform acted as deemed supplier)
- correct the I-OSS return if occurs in a subsequent taxable period (can only be corrected against VAT from same MS...)
- If replacement good is shipped: a new customs declaration is needed + new exemption on importation (in relation to same distance sale).

* Quid concerning the first exempt importation? If nothing is required, how can we be sure that the good will not be resold on the black market or in any case do not leave the EU?

* Who is responsible to send goods back outside of the EU? How to link first and second exempt importation?

* Quid concerning data on exempt importation collected by customs?

(Remember that in this case the goods may have been imported in a different MS than MS of final destination)

If special arrangements were used, the situation is different whether the customer simply refuses the package *or* decides to return it afterwards...

- If customs declaration not yet made (eg because could not be found and goods remained in temporary storage): no VAT is due.
- If a customs declaration was made: Customs declaration must be invalidated VAT (by the initial declarant); reimbursement by customs or tax authorities

Declarant to keep proof that the goods have left the EU. What if they don't leave the EU (particularly relevant for cheap goods)?

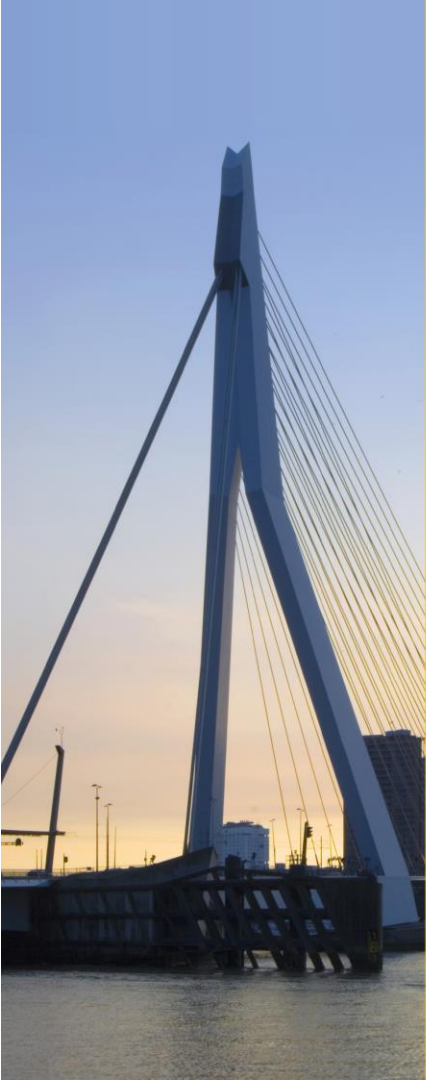
Readings

TAXUD/ Original EN IMPORTATION AND EXPORTATION OF
LOW VALUE CONSIGNMENTS – VAT E-COMMERCE
PACKAGE “Guidance for Member States and Trade” Revision 2
Draft (15 Sept 2022)

Thank you for your attention

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**Thank you for attending the
conference!**

Join us at the networking drinks in the entrance hall!