



Evaluation of Collection Procedure for Import VAT

Management Summary



Client



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1 Management Summary

In Germany as well as in other EU member states, the import of goods from non-EU countries is subject to import value-added tax (VAT). However, there are significant differences in the tax collection procedures among European countries. According to market participants, the collection procedure used in Germany affects the competitiveness of Germany as port and logistics location. It creates an incentive for importers to import their goods via seaports of other EU member states, which offer simplification options in the collection procedure. As a result, the current German collection procedure leads to a binding of liquidity and thus to increased costs for the importing economy. As of December 1, 2020, a deferral of the due dates for the collection of import VAT was introduced in Germany. At the same time, it was decided to evaluate in 2023 whether the deferral of the due date for the payment of import VAT and the introduction of further acceleration measures have reduced the competitive disadvantage in comparison to its European peers and whether Germany as business location has been sufficiently strengthened. Furthermore, the introduction of a more sophisticated postponed accounting model is subject of the discussion, which would have a deeper impact on the existing procedures but would be a more sustainable solution from the perspective of many stakeholders, particularly in terms of strengthening the competitiveness of Germany as business location.

To effectively conduct the evaluation in 2023, the German Maritime Centre (Deutsches Maritimes Zentrum – DMZ) has commissioned Hanseatic Transport Consultancy and AWB Rechtsanwalts-gesellschaft to conduct a legal comparison of existing procedures in selected European member states of maritime importance, and to provide a comprehensive quantitative and qualitative analysis of market developments, their causes, and potentials in the period from December 1, 2020, to mid/end 2022.

The results of the study should enable the determination of whether and to what extent liquidity disadvantages, costs for the importing economy, and administration can be reduced, thus strengthening the attractiveness of Germany as maritime business location. In addition, the development of market shares of relevant European locations compared to German locations was determined and documented.

1.1 Status Quo

The import of goods from third countries into the economic cycle of the European Union is subject not only to customs duties but also to import VAT. Unlike customs duties, import VAT is deductible for taxable persons in every European member state and is therefore neutral. In principle, import VAT must be paid upon import of goods and can be subsequently claimed as input tax.

Under the provisions of European VAT law, individual member states determine the details of payment of VAT for the import of goods. In Germany, the determination and collection of VAT is carried out by the (federal) customs administration, and the deduction of VAT as input tax is carried out by the (regional) financial administrations. Import VAT must first be paid to the customs administration by the debtor in accordance with customs legislation and can be subsequently claimed as input tax by submitting a declaration to the financial administration by the person who is entitled to receive a refund on import VAT according to VAT legislation.

European Union VAT law allows member states some leeway regarding the legal framework for the collection process of import VAT. Member States may, at their discretion, provide that the VAT due for the import of goods is not to be paid at the time of import, provided it is declared as such in the VAT return. In this case, no import VAT payment is made upon entry of the goods into the economic cycle of the European Union.

1.2 The Collection Process in Germany

If goods are cleared for free circulation in Germany, duties must be paid within a period of ten days from the notification of the duties to the customs office. Alternatively, it is possible to obtain payment relief by using a so-called authorized payment deferral. In this case, the import duties incurred during a month are only payable to the customs authorities on the 16th of the month **following** the import.









Until November 30, 2020, this applied not only to customs duties but also to import VAT. As of December 1, 2020, the due date for import VAT has been extended to the 26th of the **second** month following the import; the due dates for customs and import VAT thus diverge when using the payment deferral. However, import VAT still has to be paid to the customs authorities.

In Germany, import VAT is refunded as part of the assessment procedure by submitting a declaration to the tax authorities. It must be deducted in the assessment period in which the goods were imported and import VAT was incurred. The submission of a VAT return generally takes place by the 16th of the **month** following the assessment period, or by the 16th of the **second** month following the assessment period when having been granted an extended deadline. However, the submission of the declaration does not necessarily mean that the amounts to be refunded will also be paid out immediately. In some cases, there may be longer periods between the payment of import VAT to the customs authorities and the reimbursement by the tax authorities, so that the collection procedure practiced in Germany can lead to a liquidity disadvantage for the importing economy, particularly in light of current interest rate developments.

1.3 The Collection Process in Selected EU Member States – A Comparison

Subject of the investigation is the collection process for import VAT in EU member states where imports via seaports play a significant role. In addition to Germany, Belgium, the Netherlands, France, Slovenia, Poland, Italy, and Greece were subject of the study.

Figure 1 Comparison of the collection process in selected EU member states

CRITERIA								
Direct payment (deadline 10 days)	✓	✓	✓	✓	✓	✓	✓	✓
Deferred payment customs and import VAT	✓	✓	✗	✓	✓	✓	✓	✓
Deferred payment only for import VAT	✓	✗	✓	✓	✓	✗	✓	✗
Direct settlement	✗	✓	✓	✓	✓	✓	✓	✓
Direct settlement - mandatory	✗	✓	✗	✓	✗	✓	✓	✗
Application procedure	✗	✓	✓	✗	✓	✗	✗	✓
Tax registration	✗	✓ ✗	✓ ✗	✓	✓	✓	✓	✓
Range of goods limited	✗	✓ ✗	✗	✗	✗	✗	✓	✗
AEO Certificate/ Requirements	✗	✗	✗	✗	✓	✗	✗	✓

Source: Own illustration.

Except for Germany, all the examined member states have used the option granted to them by the Union's VAT law to simplify the collection procedure for import VAT and have introduced corresponding provisions for direct offsetting of import VAT and input tax in national law. However, these provisions vary in their design.

- ▶ Postponed accounting is structured as an application/approval process in all examined EU member states, except for Slovenia - and since January 1, 2022, also France. In Slovenia and France, no approval/license/permit is (anymore) required for claiming the direct set-off.
- ▶ All EU member states generally require that the taxable person is registered for value-added tax purposes. The Netherlands and Belgium deviate from this principle in cases where the taxable person appoints a so-called fiscal representative to make the declaration on his behalf. In this case, registration for VAT purposes as well as the obligation to apply for approval is waived.
- ▶ Control of the procedure is carried out in all member states through a data comparison between the customs and tax administrations, similar to the OZEAN special procedure used in Germany. In **Belgium**, the amounts of import VAT declared in the customs declaration are compared with the entries in the VAT return through daily automated data exchange between the Belgian customs and tax authorities.
- ▶ The **Netherlands** already implemented the postponed accounting in national law in 1969; the approval is referred to as a so-called "Art. 23 approval". The applicant must regularly import goods into the Netherlands and - if she/he is not resident in the Netherlands - have appointed a fiscal representative. A separate tax registration is waived when appointing a fiscal representative.
- ▶ In **Belgium**, the possibility of postponed accounting exists since 1973; importers have to apply for a "E.T. 14,000" permit. This is granted to taxpayers who either have their registered office in Belgium, are registered for tax purposes in Belgium, or are represented by a fiscal representative with a Belgian VAT identification number. In addition, the applicant must be able to demonstrate that

imports are made, that their tax obligations have been fulfilled, and that any tax claims have been paid.

- ▶ In **France**, until December 31, 2021, postponed accounting was provided for as a special optional procedure. As of January 1, 2022, it has been designed as the standard procedure for taxable persons who are entitled to full input VAT deduction. In this context, responsibility for import VAT has been transferred from the customs administration to the tax administration. Also, foreign taxable persons who want to clear goods for import into France since January 1, 2022, must have a valid French VAT number to be able to use postponed accounting.
- ▶ In **Slovenia**, postponed accounting is not structured as an application procedure; that is, no permit is required to take advantage of the simplification. The taxpayer must be registered for VAT in Slovenia; if they are not resident in Slovenia, they must appoint a fiscal representative.
- ▶ **Italy** restricts the right to postponed accounting to a narrowly defined range of goods but offers an alternative, which is equivalent to postponed accounting, with the VAT warehouse.
- ▶ **Poland** relies on the fulfillment of the requirements of Art. 39 letters a to c of the UCC for the so-called Authorized Economic Operator (AEO) when granting a permit to use postponed accounting to ensure the taxpayer's reliability.
 - no serious or repeated breaches of customs or tax regulations and no serious crimes in the course of its business activities;
 - evidence of a higher degree of control over its activities and the movement of goods through a system of bookkeeping and, if necessary, transport documents that allow for appropriate customs controls;
 - solvency.
- ▶ In **Greece**, obtaining the authorization for postponed payment is subject to extremely high material and formal requirements due to a minimum import volume, making it legally possible but currently used by only a few taxpayers. In addition, Greece also requires compliance with the aforementioned AEO criteria.

1.4 The Collection Procedure – Valuation

The German economy perceives the changed due date for import VAT at the end of 2020 as a temporary relief. This change does not (yet) lead to a harmonization of competitive conditions with other EU member states, where a direct set-off of import VAT and input VAT credits is possible. Depending on the individual situation of the economic operator and their legal options, there are no significant advantages because of the changed due dates.

To preserve the liquidity of the importing businesses, postponed accounting is the most business-friendly option and is unparalleled for the following reasons:

- ▶ Under current German law, it is not possible to benefit from a payment deferral without having a granted deferment account either directly or through a third party. Individuals who are not eligible for their own deferment account include:
 - Individuals with a registered address in a third country (except for Switzerland and Liechtenstein); Individuals who do not regularly import goods. Regular importers are those who:
 - Conduct at least two import clearance procedures (using the deferment) per month or 25 corresponding clearance procedures per year; or
 - Owe import VAT amounts of at least EUR 10,000/month or EUR 120,000/year.
- ▶ Postponing the payment deadline for import VAT requires a payment suspension previously granted by the customs authorities. If the importer uses the deferment account of a third party, such as a logistics company, the postponement of the payment deadline is legally in favor of the

holder of the deferment account licence. However, the importer will typically be obliged to reimburse the import VAT booked through the deferment account to the third party immediately after the import has been made.

- ▶ For the use of the special customs procedure for temporary admission with partial exemption from import duties, no payment suspension is granted. The full amount of import VAT is due; entrepreneurs using this procedure are excluded from the simplification.
- ▶ The decoupling of the payment deadlines for import duties and import VAT leads to increased administrative burden for both the administration and the taxpayers in monitoring payment.
- ▶ The same applies to the use of the Centralized Customs Clearance without direct invoicing for imports.

1.5 Quantitative Analysis

In the second part of the study, Germany's foreign trade as well as the statistics of German seaports were examined to specify the significance of the collection procedure for import VAT for the choice of transport routing and corresponding seaports for imports from third countries. The results of the quantitative analysis can be summarized as follows.

- ▶ Germany's foreign trade has developed positively in recent years based on the value of goods imported and exported. The dynamic growth in the value of goods, which is the basis for import VAT, was mainly driven by trade with non-EU countries. By comparison, the development based on the weight of goods which is rather relevant to seaports has been less dynamic.
- ▶ In addition to neighboring European countries, China, the United States, and Russia have been among Germany's most important trading partners in recent years. However, due to sanctions, trade with Russia will significantly drop and occasionally come to a halt. The Netherlands are one of Germany's most important trading partners, largely due to the role of Rotterdam as Europe's largest seaport and an important transshipment point for German imports and exports.
- ▶ Since 2015, the development of Germany's foreign trade and the volume of goods handled in its seaports have been partly decoupled. The reasons for this are stagnant or declining volumes in container handling, especially in the two largest German seaports Hamburg and Bremerhaven, resulting in a loss of market share compared to other European ports. In addition to competition with the Western ports of Rotterdam and Antwerp, German seaports face increasing competition from ports in the Mediterranean and Baltic Sea regions, such as Piraeus and Gdansk.
- ▶ The share of trade with non-EU countries varies among the seaports. Importance of non-EU trading business for North Sea ports is much higher than for those in the Baltic Sea region, where there will be further weakening due to sanctions against Russia.
- ▶ Goods are imported through different seaports based on various criteria and are subject to divergent shifting dynamics. The study period was overlaid with the tense situation in container shipping, in which the rationality in the choice of transport routes was partially suspended. With overlaying events and impacts caused by the COVID-19 pandemic since 2020 and the the war in Ukraine since 2022, no effect could be specifically determined connected with newly introduced collection procedure within the observed periods.

1.6 Qualitative Analysis

The qualitative analysis was conducted through a two-stage market survey. Firstly, an initial assessment was conducted through an online survey. In the second step, various stakeholders were interviewed in two interview sequences regarding their assessment of the new regulation, its relevance to their business operations (impact), the importance for the choice of transport routing, and the need for optimization. Interviewees include economic operators such as forwarding companies and logistics service providers, industry players and retailers, seaport authorities and terminal operators, customs

authorities, and various associations, as well as chambers of industry and commerce. The main results of the qualitative analysis can be summarized as follows.

Evaluation of the New Regulation:

- ▶ If respondents expressed a positive opinion about the new regulation, this was usually accompanied by the observation that it is an important first step towards optimizing the collection process, and that further adjustments will be necessary.
- ▶ Freight forwarders generally view the new regulation negatively. Due to the extended due date, potentially higher amounts may accumulate than before, increasing the risk of default. Furthermore, the deferred due date is often not passed on to customers, who make extensive use of the deferral accounts of freight forwarders. Consequently, the intended effect does not reach the target group, especially small and medium-sized enterprises.
- ▶ For many shippers, the new regulation was noticed but did not create much response. New regulations result in administrative effort for companies, which may be multiplied in corporations with a large number of subsidiaries.
- ▶ The intended liquidity effect has been partially achieved, as the model only addresses companies with their own deferral account. According to the customs administration, there has been no increase in the number of import VAT deferral accounts since the new regulation came into effect. Given the negative interest rate situation during the investigation period, individual companies made advance payments, which effectively cancels the intended effect.
- ▶ A lack of interfaces between authorities and the low degree of digitization in import processing make the collection process seem very complicated.
- ▶ The length and history of the legislative process and its adaptation leads to dissatisfaction and frustration among individual market participants. Interviewees expressed incomprehension about a German special role, in which, unlike their European neighbors, the possibilities provided by the regulations of European value added tax law are not fully utilized.

Relevance for business operations (impact):

- ▶ Freight forwarders and logistics service providers are most affected by the regulation. The reasons cited include the risk of default and administrative burden.
- ▶ Importers/shippers are affected to varying degrees, depending on factors such as company size, purpose, and integration into global supply chains. Large companies usually have their own deferral accounts.
- ▶ Small and medium-sized enterprises are affected by the fact that the import VAT still must be paid in advance and can only be deducted as input tax, which potentially reduces liquidity in the short term.
- ▶ Ports are affected depending on the individual importance of third-country business and the shifting risk of the handled commodities at each location.
- ▶ The offer by the customs authorities (due to the negative interest rate situation at the time of the survey) to allow payment before maturity and to settle individual cases leads to a high administrative effort in monitoring payment receipts, as the tax burden is often paid in installments rather than in full.

Relevance for the choice of transport route:

- ▶ Logistical factors such as transport distance to production or distribution centers and costs are decisive for most companies when choosing the mode of transport.
- ▶ A case study shows that the relevance extends to foreign companies importing into Germany, but not having a branch or tax registration in Germany, and therefore choosing the port of entry with the easiest collection procedure from their point of view.

- ▶ Although many of the interviewed companies consider the current collection procedure in Germany as a competitive disadvantage, they could not quantify a concrete effect or potential for relocation.
- ▶ Other European ports are aware of their competitive advantage caused by the collection procedure and make use of it in advertising measures.

Need for optimisation:

- ▶ Most of the interviewed companies requests a solution that is comparable to those in neighboring European countries, i. e. the possibility of offsetting import VAT and input tax, accompanied by improvements in communicating with the different authorities using digital solutions.
- ▶ The federal system is perceived as the main obstacle in the transition process.

1.7 Recommendations for Action

With changing conditions, there is an urgent need for action. Due to the importance of foreign trade also for landlocked locations, all federal states are called upon to address this need for action at the federal government and thus secure the competitiveness of respective regions. It is recommended to:

- ▶ Include the results of this study as a basis for the evaluation of the collection procedure by the Federal Ministry of Finance in 2023.
- ▶ Use the EU framework and push for the introduction of a collection procedure based on postponed accounting logic.
- ▶ Make use of the experiences of neighboring European countries. The collection procedures practiced in France, Belgium, and the Netherlands could serve as possible role models.
- ▶ Develop and implement a German model of postponed accounting.
- ▶ Adjust and extend relevant legal texts and regulations.
- ▶ Actively accompany the transformation process and support it with communication and educational measures.
- ▶ During the transition phase: simplify the framework and access to the current collection model; lower the barriers for a deferral account and make it available to everyone; actively promote the use an own deferral account.