Modernization of E-commerce Imports into the EU – A Customs and VAT Perspective

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<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>B2B</td>
<td>Business to Business</td>
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<tr>
<td>B2C</td>
<td>Business to Consumer</td>
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<td>C2C</td>
<td>Consumer to Consumer</td>
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<tr>
<td>CC</td>
<td>Centralised Clearance</td>
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<td>CSR</td>
<td>Regulation (EC) No 1186/2009: setting up a Community System of Reliefs from customs duty</td>
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<tr>
<td>E-commerce</td>
<td>Electronic commerce</td>
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<tr>
<td>ECOFIN</td>
<td>Economic and Financial Affairs Council (EU)</td>
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<td>EC</td>
<td>European Commission</td>
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<td>EU</td>
<td>European Union</td>
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<td>IT</td>
<td>Information Technology</td>
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<td>ICT</td>
<td>Information and Communication Technology</td>
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<tr>
<td>OECD</td>
<td>Organisation for Economic Co-operation and Development</td>
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<tr>
<td>OSS</td>
<td>One Stop Shop</td>
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<tr>
<td>LVCR</td>
<td>Low Value Consignment Relief</td>
</tr>
<tr>
<td>MOSS</td>
<td>Mini One Stop Shop</td>
</tr>
<tr>
<td>SME</td>
<td>Small and Medium-sized Enterprises</td>
</tr>
<tr>
<td>UCC-IA</td>
<td>The UCC Implementing Act: adopted on 24 November 2015 as Commission Implementing Regulation No 2015/2447</td>
</tr>
<tr>
<td>VAT</td>
<td>Value Added Tax</td>
</tr>
<tr>
<td>WCO</td>
<td>World Customs Organization</td>
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<td>WGEC</td>
<td>The WCO Working Group on E-commerce</td>
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</table>
1. Introduction
The imports of E-commerce goods into the EU causes issues for EU Tax and Customs authorities in collecting sufficient revenue. Undervaluation of E-commerce goods, fraud and the disadvantages experienced by domestic retailers seem to be key issues in this respect. In the field of EU VAT, the EC has adopted several modernizations with respect to E-commerce, aiming to tackle these issues. In this thesis I will answer the following question:

Are the current and future E-commerce challenges and issues sufficiently tackled by the 2017 modernizations from an EU VAT and Customs perspective?

In order to do so, I will discuss the following:
- The relation between E-commerce and Indirect Taxes (Customs duties and VAT) in Section 2;
- The main Customs and VAT issues and challenges in relation to E-commerce in Section 3;
- The relevant published initiatives and potential solutions that could overcome these issues and challenges in Section 4);
- Comments, potential solutions and recommendations on the modernizations in Section 5;
- Lastly, I provide a conclusion in Section 6.

In relation to the scope of my research, I note that even though this thesis is written for the purpose of the Post-master in EU Customs Law, I will give equal attention to both Customs and VAT, due to the fact that EU Customs and VAT are significantly interlinked within E-commerce. Disregarding one of the two subjects would in my opinion be artificial and would not provide a clear picture of the challenges faced by businesses and Customs (and tax) Authorities involved in E-commerce trade.

I note that I will not cover all E-commerce modernization changes. The focus of this thesis is with supplies of goods. Services are therefore not covered. Further, non-commercial supplies of goods, fulfilment business supplies as well as returned goods are out of scope for this thesis. Lastly, within E-commerce this thesis mainly focuses on tax revenue collection rather than on safety and security or other potential customs relevant topics such as data exchange (between authorities) and facilitation.
2. E-commerce & Indirect Tax – Legal background of current status

E-commerce is a very broad term and most institutions and reports do not spend much (or any) time in explaining the specific characteristics of it. The WCO however, provides some essential and useful elements to consider in the definition of E-commerce:

- Online initiation;
- Cross-border transaction/shipment;
- Physical goods; and
- Destined to a consumer (B2C and C2C).

Given this definition, it is clear that E-commerce is closely related to both VAT (aiming at taxing supplies of goods (and services)) and Customs (aiming at collecting duties and controlling cross-(customs)border flows of goods). Any (taxable) person active in the field of cross-border E-commerce sales of goods will therefore have to comply with the EU VAT and Customs rules related to E-commerce.

2.1 VAT

Below I outline the most relevant RVD provisions in relation to E-commerce imports into the EU, being the LVCR and ‘distance sales’ rules.

As a starting point, Article 2 RVD outlines the transactions subject to VAT in relation to goods:

- **the supply of goods** for consideration within the territory of a Member State by a taxable person acting as such;
- **the intra-Community acquisition of goods** for consideration within the territory of a Member State [...];
- [...];
- **the importation of goods**.

Article 30 RVD provides that ‘importation of goods’ means the entry into the Community of goods which are not in free circulation. The general rule indicates that for goods that are transported the place of supply is deemed to be the place where the transport begins, as outlined in Article 32 RVD. In addition, Article 32 RVD provides that if goods are imported (i.e. if the dispatch or transport of the goods begins in a third territory or third country), the place of supply by the importer designated or recognized under Article 201 RV as liable for payment of VAT and the place of any subsequent supply is deemed to be within the Member State of importation of the goods. Specific rules apply however to ‘distance sales’ (I refer to Paragraph 2.1.2).

2.1.1 LVCR

The LVCR has been introduced in the EU in 1983. The relevant provision in RVD allowed Member States to relieve imports of goods of a negligible value not exceeding EUR 22 from VAT and was intended as a method to facilitate cross-border trade by reducing the administrative burden and cost involved for business and Member States.

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2 The WCO further provides that key characteristics of e-commerce cross-border transactions are: time-sensitive goods flow, high volumes of small packages, participation of unknown players and return/refund processes required.
Article 143(1)(b) RVD, as further detailed in Title 4 of Council Directive 2009/132/EC, obliges the Member States to exempt all commercial B2C importations of consignments with a value not exceeding EUR 10 from import VAT. Member States are free to increase this threshold up to EUR 22.\(^5\) Analysis with regard to the LVCR indicates that most EU Member States have implemented the maximum allowed threshold of EUR 22.\(^6\)

### 2.1.2 Distance sales

The general place of supply rules (Article 32 RVD) would trigger unequal treatment in cases where non-taxable persons purchase goods from other Member States (e.g. if a non-taxable person purchases goods locally in Denmark, those goods are taxable at a 25% VAT rate, whereas the same goods would only be taxable at a 17% VAT rate if purchased from a Luxembourg business).\(^8\) Therefore, the so-called distance sales rule was established with the introduction of Article 33 RVD. The distance sales rule is a special regime that is applied to intra-Community B2C supplies of goods.\(^9\)

According to Article 33 RVD, the place of supply of distance sales goods is the place where the dispatch or transport of the goods to the customer ends. This deviation from Article 32 RVD results in an equal treatment in cases where non-taxable persons purchase goods from other Member States (e.g. no matter if a non-taxable person purchases goods locally in Denmark or in Luxembourg, the same goods will be taxed at the same rate). This rule however, only applies insofar the distance sales threshold\(^10\) is exceeded. If not, Article 34 RVD provides for deviating rules. Below I have outlined the details and consequences of exceeding distance sales threshold or not.

**Below threshold**

Article 34 RVD provides that the supply of goods is taxed at the place where the goods are located when the dispatch or transport to the customer begins for distance sales if the supplier’s annual sales are below the threshold applied by the customer’s Member State (except if the supplier has opted to tax in the Member State of destination). This means that as long as the distance sales threshold is not exceeded for a certain Member State, the supplier will be able to charge and report the VAT in the country where the dispatch or transport begins (i.e. the supplier will not have to register in the country where the dispatch or transport ends).

**Above threshold**

Article 33 RVD on the other hand provides that the supply of goods is taxed where the goods are located when the dispatch or transport to the customer ends for distance sales if the supplier’s annual sales are above the threshold applied by the customer’s Member State. This means that a distance sales supplier has to VAT register in every country where the threshold is exceeded in order to charge and report local VAT.

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\(^{7}\) Note that non-commercial consignments are also covered by the LVCR, but not in scope of this thesis.

\(^{8}\) Van Doesum et al., Fundamentals of EU VAT Law, Kluwer Law International, p. 154

\(^{9}\) Van Doesum et al., Fundamentals of EU VAT Law, Kluwer Law International, p. 469

\(^{10}\) Different thresholds in every Member State.
2.2 Customs
Below I outline the most relevant Customs provisions (UCC and CSR) in relation to E-commerce imports into the EU. I assume for this thesis that E-commerce imports relate to goods coming from non-EU countries brought into free circulation in the EU.\(^\text{11}\)

According to Article 77 UCC a customs debt\(^\text{12}\) on import shall be incurred through the placing of non-Union goods liable to import duty under the customs procedure release for free circulation. Non-Union goods are (inter alia) defined in Article 5(24) UCC as goods brought into the customs territory of the Union from countries or territories outside that territory and released for free circulation. Therefore, in principle a customs debt incurs for E-commerce goods at the moment of import into the EU.

2.2.1 Consignments of negligible value
The CSR was set up to establish a system of reliefs from customs duty. Article 23 CSR covers ‘Consignments of negligible value’. This article provides that any consignments made up of goods of negligible value dispatched direct from a third country to a consignee in the Community shall be admitted free of import duties. ‘Goods of negligible value’ means goods the intrinsic value\(^\text{13}\) of which does not exceed a total of EUR 150 per consignment. I note that according to Article 24 CSR, the customs relief does not apply to alcoholic products, perfumes and toilet waters and tobacco or tobacco products.

2.2.2 Grouped consignments
It is possible that a consignment of negligible value is not sent individually but as a package of individual consignments. In the case of a groupage consignment whose total net asset value exceeds the limits (see paragraph 2.1.1), but whose individual packages have a negligible value, these packages are exempt from import duty and/or VAT, provided that each separate package of the groupage is addressed to an addressee located in the Union.\(^\text{14}\)

2.2.3 Customs declarations
Article 158 UCC provides that all goods intended to be placed under a customs procedure (e.g. free circulation) have to be covered by a customs declaration. In principle the customs declarations have to be lodged electronically. There are however exceptions, depending on the type of transaction (commercial / non-commercial) and value of the goods imported into the EU.

Non-commercial goods can be lodged orally according to Article 135(1)(a) UCC-DA, in contrast to commercial goods. Customs declarations for commercial goods generally have to be lodged using the standard customs declaration, as mentioned in Article 162 UCC, or a simplified customs declaration as mentioned in Article 166 UCC and Article 146 UCC-DA.

Goods in a postal consignment which benefit from a customs duty relief in line with the CSR, where not declared using other means, shall be deemed to be declared for release for free circulation in accordance with Article 141 UCC-DA (acts deemed to be a customs declaration). Customs declarations for goods in postal consignments (as mentioned in Article

\(^{11}\) As the fulifment business model is not in scope of this thesis.

\(^{12}\) A customs debt is defined in Article 5(18) UCC as the obligation on a person to pay the amount of import or export duty which applies to the specific goods under the customs legislation in force.

\(^{13}\) According to Dutch Customs the ‘intrinsic value’ is the value of the goods without costs such as transport, insurance and mediation. I refer to: Belastingdienst Douane, ‘Handboek Douane – 24.2’ <www.belastingdienst.nl/bibliotheek/handboeken/html/boeken/HDU/douanevrijstellingen-begrippen.html#HUD-d1e216922?> accessed 15 January 2018.

\(^{14}\) Case C-7/08 (Har Vaessen Customs Service BV) [2009] ECR I-05581
6(2) UCC) may be lodged by means of a customs declaration containing the reduced data set referred to in Annex B of UCC-DA (insofar the conditions mentioned there are fulfilled).

### 2.3 Overview

<table>
<thead>
<tr>
<th>Value</th>
<th>Import VAT</th>
<th>Customs Duties</th>
<th>Customs declaration$^{15}$</th>
<th>Average cost processing import$^{16}$</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; EUR 22</td>
<td>×</td>
<td>×</td>
<td>Declaration by any other act, oral declaration, paper based or electronic manifest, simplified SAD</td>
<td>EUR 2.34</td>
</tr>
<tr>
<td>EUR 22 - EUR 150</td>
<td>√</td>
<td>×</td>
<td>Full or simplified SAD</td>
<td>EUR 8.96</td>
</tr>
<tr>
<td>&gt; EUR 150</td>
<td>√</td>
<td>√</td>
<td>Full or simplified SAD</td>
<td>EUR 9.21</td>
</tr>
</tbody>
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$^{16}$ Ibid, p. 5.
3. E-commerce Challenges and Issues
This section covers the most relevant E-commerce challenges and issues in relation to EU VAT and Customs.

3.1 VAT
According to the EC, these are the most important challenges in E-commerce from a VAT perspective, which will be further discussed in the paragraphs below:

1. The complexity of VAT obligations has consistently been identified as one of the key reasons why a business will not engage in cross-border E-commerce, and therefore it means that the single market cannot be accessed by many businesses. It has been estimated that the costs of complying with VAT obligations are on average EUR 8,000 annually for each Member State which a business supplies to. This is a significant cost for business, in particular SMEs.

2. The current system is not neutral as EU businesses are at a clear disadvantage to non-EU businesses which can legitimately and through high levels of non-compliance make VAT-free supplies into the EU. Given that VAT rates can be as high as 27%, there is a substantial distortion in favour of non-EU business if VAT is not applied.

3. The complexity of the existing system as well as the current exemption for the importation of small consignments means that Member States lose valuable tax revenues. It is estimated that between VAT foregone and non-compliance from cross-border E-commerce such losses are currently as high as EUR 5 billion annually.

3.1.1 Complexity and compliance costs
In October 2015, the EC published a Report (Lot 1) in a series of Reports on options for modernization in relation to the VAT aspects of cross-border E-commerce. According to this Report, the overall costs that business face when engaging in cross-border B2C E-commerce amount to almost EUR 6 billion, or about EUR 24,000 per company per year, or about (on average) EUR 8,000 for each Member State in which a company is VAT registered.

Apart from the costs itself, the requirement by Member States to VAT register when companies exceed the distance selling threshold in that market (thresholds of EUR 35,000 or EUR 100,000) is perceived as very burdensome, as they have to deal with large differences in the procedures and timing necessary for registration across Member States. It is often difficult to identify the national requirements and the relevant institutions in each market. In addition, language often presents a barrier, resulting in businesses turning to local advisors to handle the procedures on their behalf.

Further, companies have to file periodical VAT returns in every Member State where a VAT registration is obtained. According to the above mentioned EC Report, filing of VAT returns represents by far the most burdensome and expensive requirement, as it represents more than 80% of the total compliance costs. Large differences across Member States in the process of preparation and submission of VAT returns, such as differences in formats, language, methods for correction and submission, as well as with differences in the timing for submission (even with similar frequencies). These differences make the management of the VAT returns-related procedures rather complex.

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3.1.2 Non-compliance and LVCR
EU Tax authorities have mentioned that the main types of non-compliance identified on the import of small value consignments are:  
- Undervaluation of parcels, often showing value under the small consignment threshold (EUR10-22) in order for the import to benefit from VAT exemption (“LVCR”);  
- Miss-labelling of parcels, showing commercial B2C import as a ‘gift’ (C2C import) or ‘documents’ (“non-commercial consignments”).

According to the above mentioned Report (Lot 1) ignoring distance sales thresholds, use of ‘split supplies’, ‘parcel motel’ and rate shopping on distance sales are some of the other types of non-compliance that EU tax authorities have identified.

LVCR
The EC Expert Group on E-commerce made the specific recommendation in 2014 to “abolish the small consignments exemption” and that this should be pursued as “a priority in tandem with the development of the broader One Stop Shop also applying to other small consignments for which no customs duties are due”.

In May 2015, EY published its Report “Assessment of the application and impact of the VAT exemption for importation of small consignments”. This Report was made on request of the EC and aimed at evaluating to which extent the LVCR was having an impact on EU businesses, including on SMEs. The Report estimated that VAT foregone as a result of fraud and misdeclarations, including undervaluation, has increased from EUR 168.04 million in 1999 to EUR 758.22 million in 2013. I would like to stress in this respect that – from a cost perspective - undervaluing the goods is not only beneficial from a VAT and customs perspective, but also in the interest of lowering import processing costs (for details I refer to Paragraph 2.3).

EY concluded in the LVCR Report that there is evidence to demonstrate major competitive distortions resulting from the LVCR. The impacts of such distortions include the considerable loss of VAT revenues to Member States as well as reports of business closures, business relocations and booming fulfilment industries outside the EU.

3.2 Customs
The WCO has performed extensive research on the link between Customs and E-commerce, most recently in its March 2017 Study Report (which will be addressed extensively in Chapters 4 and 5). This Study Report followed by the establishment of the WGEC in July 2016. The WGEC was given the mandate of addressing cross-cutting issues in relation to growing E-commerce and came up with proposals for practical solutions to the clearance of low value shipments, including appropriate duty/tax collection mechanisms and control

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19 Ibid.  
22 Ibid., p.19.  
23 Ibid., p.19.  
procedures that will facilitate and encourage the growth of E-commerce for the benefit of economic and social development.\textsuperscript{26} The WGEC consists of several stakeholders: Customs administrations, tax authorities, partner international organizations, representatives from postal operators, express service providers, e-vendors/platforms and online payment providers as well as academia.\textsuperscript{27}

Also on EU level, the link between Customs and E-commerce is recognized by the EC, albeit not as comprehensive as in its VAT analyses (i.e. no concrete reports on E-commerce & Customs issues specifically have been published so far by the EC). The EC does however recognize the following issues and challenges (as also recognized by the WCO):\textsuperscript{28}

- Huge increase in volumes of imports have to be managed by customs authorities;
- Greater risks for security and safety, illegal trade and evasion of VAT/duties;
- Lack of a level playing field in compliance obligations between different economic operators involved in the delivery of goods;
- Particular problem of small/low-value consignments.

### 3.2.1 Revenue collection

The WCO March 2017 Report (inter alia) outlines the issues and challenges in relation to revenue collection:

<table>
<thead>
<tr>
<th>Topic</th>
<th>Issues and challenges</th>
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<tbody>
<tr>
<td>Revenue collection</td>
<td>1. E-commerce shipments are often claimed to fall below de minimis thresholds in order to avoid paying any duties and taxes</td>
</tr>
<tr>
<td></td>
<td>2. These thresholds have given sellers and buyers an incentive to undervalue or misdeclare consignments</td>
</tr>
<tr>
<td></td>
<td>3. Many consignments are sent from the commercial consignor as “gifts” even if they are normal sales/purchases\textsuperscript{29}</td>
</tr>
<tr>
<td></td>
<td>4. Risk of prohibited goods entering the country by way of misdeclarations\textsuperscript{30}</td>
</tr>
</tbody>
</table>

The Customs Regulations stipulate that all EU Member States apply a customs duty relief if the consignment has an intrinsic value below EUR 150. This relief does not apply to alcoholic products, perfumes, toilet waters and tobacco or tobacco products. The intrinsic value is the actual value of the product and does not include any other costs such as insurance and freight.\textsuperscript{31} The rationale behind this duty relief is that revenue collection on low-value shipments should be commensurate with their processing costs.\textsuperscript{32}


\textsuperscript{27} Ibid.

\textsuperscript{28} Reference is made to the EU Customs strategy: European Commission, ‘EU Customs strategy’ [online via <ec.EURpa.eu/taxation_customs/general-information-customs/eu-customs-strategy_en> accessed 15 January 2018].

\textsuperscript{29} As mentioned previously, not in scope of this thesis.

\textsuperscript{30} Not in scope of this thesis.


From a Customs perspective, the increase in imports of low-value consignments below the duty relief threshold (EUR 150) can have an adverse impact on revenue collection. Some Customs administrations are witnessing the growing misuse of the duty relief facility, by way of vendors splitting and/or under-valuing consignments for tax avoidance purposes, to keep the value of an individual shipment below the specified threshold.33

Based on the information provided by tax authorities, they apply different compliance measures to imports and are often faced with practical issues, such as the lack of resources for sufficient levels of sampling or the fact that other customs control objectives (i.e. drug trafficking, terrorism, and counterfeiting) are considered higher priorities. The main compliance measures currently used on small consignment imports are:34

- General customs sampling;
- General customs risk profiling.

### 3.2.2 Low value consignments

The main reason for the lack of information on non-compliance on small value imports was mentioned to be the lack of resources focusing on VAT aspects of imports. It was also recognized that in order to have full information on the level of compliance, customs authorities would need to drastically increase the physical inspection of parcels which is imported and declared to be under the value of 150 EUR or non-commercial (gift, documents).35 However, this would be considered a disproportionate administrative cost and would have a detrimental effect on logistics operations.

The customs authorities further have consensus on the belief that the existing measures are not sufficiently effective and that extra resources directed towards identifying non-compliance would have a limited effect on reducing or preventing non-compliance where sellers are from non-EU countries (e.g. China, Hong Kong, Thailand and the USA).36

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36 Ibid.
4. E-commerce Initiatives
This section covers the most relevant E-commerce initiatives in relation to EU VAT and Customs.

4.1 VAT
In the field of EU VAT, a package of three VAT cross-border E-commerce proposals was adopted at the ECOFIN meeting of 5 December 2017. The proposals were firstly released on 1 December 2016 by the EC, followed by the release in late December 2017 of three amending legislations:

- Directive (2017/2445) amends the RVD as regards VAT obligations for supplies of services and distance sales of goods;
- Regulation (2017/2459) amends Implementing Regulation 282/2011;
- Regulation (2017/2454) amends Regulation 904/2010 on administrative cooperation and combating fraud.

This package of E-commerce proposals was made in the framework of the Strategy for the EU Digital Single Market. The EC has identified the completion of the Digital Single Market as one of its 10 political priorities.37 On 6 May 2015, the European Commission announced its Strategy for the EU Digital Single Market.38 One of the key elements within the Strategy for the EU Digital Single Market is reducing VAT related burdens and obstacles when selling across borders.39 The EC mentions that the following burdens and obstacles are reduced:

1. Cross-border trade will be facilitated;
2. VAT fraud will be combated; and
3. Fair competition for EU businesses will be ensured.

This reduction in burdens and obstacles, will – according to the EC – have the following impact:40

I have separated the EU VAT modernizations in four subjects, which I will discuss in more detail in the paragraphs below.41

4.1.1 Distance sales changes
Chapter 6 Section 3 of Title XII of the RVD currently provides for the MOSS, (inter alia) a special scheme for established taxable persons supplying electronic services to non-taxable persons. This scheme will be extended in order to cover taxable persons established in the

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39 Ibid.
41 Note that I will not cover all E-commerce modernization proposals (e.g. (electronically) supplied services), as the focus of this thesis is with supplies of goods and not with services.
EU but not in the Member State of consumption to other services supplied to non-taxable persons as well as to intra-Community distance sales of goods. In short, the following changes to the RVD will apply:

1. **The removal of existing intra-Community distance sales thresholds**, as laid down in Article 34 RVD;

2. **A yearly VAT threshold of €10,000** will replace the above mentioned distance sales thresholds. Cross-border sales below the new threshold of EUR 10,000 to other countries within the EU are treated as domestic sales. The idea is to support start-ups and micro-businesses (along with other initiatives such as single invoicing rules, I refer to Paragraph 4.1.3);

3. **Introduction of the OSS.** The OSS is a special scheme for distance sales of goods imported from third countries or third territories of an intrinsic value not exceeding EUR 150. It has the same structure and is based on the same principles as the MOSS.42
   a. The distance sales place of supply in relation to imported goods is currently governed by Article 33(2) RVD. This Article makes clear that where the goods are imported by the supplier into a Member State other than that in which dispatch or transport of the goods to the customer ends, they shall be regarded as having been dispatched or transported from the Member State of importation. In order to have a dispatch or transport ending in the same Member State as the Member State of import also covered by the OSS, a second subparagraph is added in Article 33(2) creating a taxable event in the Member State where the OSS is used (even though this strictly speaking cannot be considered a distance sale in the sense of Article 33(1) RVD).
   b. Non-EU vendors will be able to make use of the OSS by designating a person established within the EU ("intermediary")43 to fulfil their VAT obligations under the OSS in their name and on their behalf. Article 369m is therefore added to the RVD. This Article makes further clear that, apart from designating an intermediary, a non-EU person can be duly authorized to use the OSS if certain conditions are met.44
   c. The country from which the OSS is used, depends on whether or not the vendor is established or has a fixed establishment in the EU and whether or not an intermediary has been designated by the vendor. The new RVD Articles in this respect, mention the ‘Member State of identification’ as the relevant criterion of where the OSS is operated from. ‘Member State of identification’ is, according to Article 369l (3) RVD:
      i. For a non-EU business without a fixed establishment in the EU: the Member State in which he chooses to register;
      ii. For a non-EU business with a fixed establishment in the EU: the Member State with a fixed establishment where the taxable person indicates he will make use of the OSS;
      iii. For an EU business: the Member State of establishment;

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43 According to the new Article 369l (2) RVD, an ‘intermediary’ means a person established in the Community appointed by the taxable person carrying out distance sales of goods imported from third territories or third countries as the person liable for payment of the VAT and to fulfil the obligations laid down in this special scheme in the name and on behalf of the taxable person. The Commission mentions that persons such as a courier, postal operator or customs agent would typically act as an intermediary in this respect (I refer to: European Commission (2017), ‘Modernising VAT for e-commerce: Question and Answer’ [ online via: <EURpa.eu/rapid/press-release_MEMO-16-3746_en.htm> accessed 15 January 2018]).
44 These conditions seem to closely relate to the Authorized Economic Operator (Section 4 UCC)/Certified Taxable Person (COM(2017) 567 final) status (note that these statuses are not available for non-EU taxable persons), which I will not further touch upon in this thesis.
iv. For the intermediary established in an EU Member State: the Member State of establishment;

v. For the non-EU intermediary with a fixed establishment in the EU: the Member State with a fixed establishment where the intermediary indicates he will make use of this special scheme.

4. No VAT will be payable anymore upon importation of the goods, if VAT is declared under the OSS. For that reason an exemption is inserted in Article 143(1) RVD. This is Article 143(1) (ca) RVD:

\[ \text{Member States shall exempt the following transactions:} \]
\[ \text{‘the importation of goods where the VAT is to be declared under the special scheme …’} \]

To allow customs to identify these consignments upon importation a valid VAT identification number proving that VAT is declared under the special scheme should be provided to customs at the latest upon lodging of the import declaration for release for free circulation (point 7).

5. Simplified rules for companies selling less than €100,000 cross-border sales.

6. Special arrangements for import VAT where the OSS is not used. Article 369y RVD and further provide that for such imports, Member States permit the person presenting the goods to customs in the EU (typically the postal operators or express couriers) to report and pay import VAT due on these consignments electronically on the basis of a monthly declaration (Article 369zb RVD), on behalf of the person for whom the goods are destined (Article 369z RVD). To further simplify the declaration, these goods should systematically be subjected to the standard VAT rate, unless the person for whom the goods are destined specifically request the application of a reduced rate (Article 369za RVD).

4.1.2 Removal of LVCR

On 5 December 2017, the EC announced that the LVCR will be removed by deleting Title IV Council Directive 2009/132/EC of 19 October 2009. Firstly, the use of the OSS removes the need to maintain this VAT exemption. Secondly, the removal of the LVCR will address the problem of fraud caused by a previously misused VAT exemption for goods valued at under €22 coming from outside the EU which can distort the market and create unfair competition.

4.1.3 Reduction of compliance obligations

The OSS will allow EU sellers to apply home country rules in areas such as invoicing and record keeping. The obligation to issue an invoice for intra-Community distance sales laid down in Article 220(1)(2) RVD will be removed where the OSS is used as this obligation is linked to the current intra-Community distance sales regime requiring the monitoring of the national thresholds.

In addition, as for the non-Union scheme, the proposal extends the deadline to submit the VAT return from 20 to 30 days following the end of the tax period in Article 369f of the VAT Directive and, in Article 369g(4) of the VAT Directive, provides that corrections to previous

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46 In some EU countries, such a system already exists in the field of (deferred) import VAT. In the Netherlands, for example, the scheme is only triggered if a valid VAT identification number is provided in the customs declaration proving that VAT is declared under the special import VAT deferment scheme (so-called ‘Article 23 License’).


VAT returns can be made in a subsequent return instead of in the returns of the tax periods to which the corrections relate (points 24).

### 4.1.4 VAT collection responsibility online marketplaces

On 5 December 2017, the EC has updated its fact sheet on ‘Modernising VAT for E-commerce’ (the original version dated 5 December 2016). In this update it became clear that large online marketplaces will be made responsible for ensuring VAT is collected on sales on their platforms that are made by companies in non-EU countries to EU consumers. This includes sales of goods that are already being stored in by non-EU companies in warehouses (so-called ‘fulfilment centres’) within the EU which can often be used to sell the goods fraudulently VAT free to consumers in the EU.

I note that the original package of proposals dating 5 December 2016 did not include a provision for this responsibility. With the release of Council Directive (EU) 2017/2445 on 29 December 2017 it is clear what the actual RVD Article (14a) will look like:

1. 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.
2. Where a taxable person facilitates, through the use of an electronic interface such as a marketplace, platform, portal or similar means, the supply of goods within the Community by a taxable person not established within the Community to a non-taxable person, the taxable person who facilitates the supply shall be deemed to have received and supplied those goods himself.

In consideration 7 of Council Directive (EU) 2017/2445, the Council notes in this respect that: ‘… it is [...] necessary to involve taxable persons who facilitate distance sales of goods through the use of such an electronic interface in the collection of VAT on those sales by providing that they are the persons who are deemed to make those sales. For distance sales of goods imported from third territories or third countries to the Community, this should be restricted to sales of goods which are dispatched or transported in consignments of an intrinsic value not exceeding EUR 150, as of which a full customs declaration upon importation is required for customs purposes.’

### 4.1.5 Entry into force

Council Directive (EU) 2017/2445 amending the RVD includes two implementation dates. The introduction of the OSS rules to distance sales of goods both from third countries and intra EU as well as the removal of the LVCR come into force in 2021. However, everything which does not require IT development, including the new cross-border simplification threshold to help small businesses, will be introduced on 1 January 2019. In relation to the VAT responsibility of online market places, the Commission will engage with online marketplaces to ensure that there is full clarity on the role of online marketplaces when the reforms are introduced in 2021.

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49 Ibid, p. 11.
51 According to the EC: to give Member States time to update the IT systems underpinning the system.
4.2 Customs

In the field of Customs there have not been concrete amendments or proposals to change the current EU customs legislation. However, the OECD, WCO and the EC have all published articles and reports on initiatives (to be developed), which I discuss below.

4.2.1 Administrative cooperation

Several tax and customs authorities mentioned that they aim to improve cooperation with postal operators and couriers to use their data to improve compliance control.\(^\text{53}\) Many tax and customs authorities mentioned that they have started to use administrative cooperation with third country customs authorities to improve compliance controls. For example, in the case of imports from China, the parcels are often under-valued due to Chinese export duties, therefore there is an interest on both sides to improve controls. The OECD Convention on Mutual Administrative Assistance on Tax Matters\(^\text{54}\) was mentioned as hopefully improving the situation in the future.

4.2.2 Alternate revenue collection models

In 2015, the WCO published a paper called ‘E-commerce and revenue collection’. This paper provides for two alternate models for collecting duties and taxes on low-value consignments:\(^\text{55,56}\)

<table>
<thead>
<tr>
<th>Alternate model</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vendor Collection Model</td>
<td>Under this model, non-resident vendors would be required to register in the importing country, and remit duties and taxes to that country</td>
</tr>
<tr>
<td>Intermediary Collection Model</td>
<td>Under this model, vendors rely on an intermediary to remit duties and taxes on their behalf. Collection could be handled by:</td>
</tr>
<tr>
<td></td>
<td>• Postal operators, express service providers or transporters (FedEx, DHL, etc.)</td>
</tr>
<tr>
<td></td>
<td>• E-commerce platforms or marketplaces that provide a trading framework for businesses (eBay, Amazon, Facebook, etc.).</td>
</tr>
<tr>
<td></td>
<td>• Financial intermediaries such as online payment providers (Visa, MasterCard, American Express, PayPal, etc.).</td>
</tr>
</tbody>
</table>

With the Vendor Collection Model, the greatest issue lies in collecting taxes and duties from a non-EU party. A system has to be created which provides sufficient incentives for non-EU vendors to voluntarily collect and remit taxes on behalf of a lot of countries.\(^\text{57}\) Also, compliance would need to be facilitated and encouraged by simplifying procedures, and providing additional incentives to compliant vendors, such as fast-track processing of


\(^{56}\) Note that a consumer collection model (in which duties are directly collected from the consumer) is not provided for by the WCO, even though this would have advantages too: easy to identify the liable person, the buyer has access to all relevant data, no burden on third parties, etc.

imported goods. If not implemented correctly, this system would benefit non-EU vendors compared to EU vendors as they could structure their business in order to collect and pay no or a too low amount of taxes and duties.

With the Intermediary Collection Model, the greatest issue lies in the lack of available relevant data on the side of the Intermediary (e.g. product information, value information, final destination of the goods, etc.). Intermediaries can almost only rely on information provided by others, they themselves have no good picture of the products they are submitting the customs declarations for.

With its agreement on 5 December 2017, the EU seems to move towards a hybrid model of the Vendor Collection Model and the Intermediary Collection model, which I will comment on in Section 5.

4.2.3 Impact of removal LVCR
The EC touches upon the impact of the removal of the LVCR on Customs authorities in the Member States in its fact sheet on ‘Modernising VAT for E-commerce’. According to this factsheet, the clearance of small consignments from trusted non-EU traders or marketplaces who register with the VAT One Stop Shop will be simplified in terms of customs procedures. Consignments valued up to €150 will no longer be stopped at customs for VAT clearance and VAT collection for these goods will be managed separately on a self-assessment basis. This marks an important change in the world of customs, moving from clearance per transaction to clearance on overall sales. Importantly however, the EC notes in the factsheet that the new VAT rules will ‘in no way interfere with other customs rules and regulations concerning safety and security, nor with the existing customs simplification measures already in place’.

4.3 Practical treatment B2C imports of consignments into the EU making use of OSS

<table>
<thead>
<tr>
<th>Value consignment</th>
<th>Import VAT</th>
<th>VAT (exemption) via OSS</th>
<th>Customs Duties</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; EUR 22</td>
<td>× (=No)</td>
<td>√ (=Yes)</td>
<td>×</td>
</tr>
<tr>
<td>EUR 22 - EUR 150</td>
<td>×</td>
<td>√</td>
<td>×</td>
</tr>
<tr>
<td>&gt; EUR 150</td>
<td>√</td>
<td>×</td>
<td>√</td>
</tr>
</tbody>
</table>

4.4 Practical treatment B2C imports of consignments into the EU without making use of OSS

<table>
<thead>
<tr>
<th>Value consignment</th>
<th>Import VAT</th>
<th>VAT via OSS</th>
<th>Customs Duties</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; EUR 22</td>
<td>√</td>
<td>×</td>
<td>×</td>
</tr>
<tr>
<td>EUR 22 - EUR 150</td>
<td>√</td>
<td>×</td>
<td>×</td>
</tr>
<tr>
<td>&gt; EUR 150</td>
<td>√</td>
<td>×</td>
<td>√</td>
</tr>
</tbody>
</table>

58 The exemption will be provided for in Article 143 ca RVD.
5. Comments, Potential Solutions & Recommendations

With the EC I agree that E-commerce imports into the EU had to be modernized if the EU wants to encourage online businesses and the digital economy to expand cross-border and to thrive.\(^{59}\) The current legislation is too complicated in terms of VAT compliance obligations and makes it too expensive\(^{60}\), especially for SMEs, to operate in the cross-border B2C trade of goods. It is however the question to which extent the EC succeeded in simplifying the compliance obligations by updating the VAT legislation.

I will therefore provide comments on the agreed proposals and provide some further (possible) solutions and recommendations in the field of both VAT and Customs.

5.1 VAT

5.1.1 Introduction of the OSS

It seems to me that the administrative burden for businesses will be relieved significantly\(^{61}\) as a result of the introduction of the OSS. The OSS will be hosted by the tax administration of the business in its own language, which seems to me as a welcome gesture towards businesses.

Some articles call for a broadening of the scope of the OSS, in order to cover B2B transactions as well.\(^{62}\) I do not quite understand this call – insofar it relates to supplies of goods – as there are currently only few cases in which a B2B supply of goods would be taxable in the country of the recipient (obviously in contrast to the (intra-Community) acquisition of goods). Therefore, the need to prevent from registrations and VAT reporting in different EU Member States is only marginal at the moment in this respect and I would suggest disregarding this call provided that the VAT legislation remains as is. However, should EC’s proposals on a far-reaching reform of the EU VAT system as of 2022 be adopted\(^{63}\), a broadening of the scope of the OSS makes a lot of sense as all supplies of goods would be VAT taxable in the place of destination (in contrast to the current situation).

A large issue in my opinion is that at the moment approximately 75 different VAT rates exist throughout the EU,\(^{64}\) which clearly does not create a level playing field and makes it difficult and burdensome for businesses to apply the correct VAT rate. The current provisions on VAT rates are the result of different compromises agreed by all the EU Ministers of Finance, as unanimity is required. Regardless of the difficulty of convincing all EU Ministers of Finance, I advocate introducing standard VAT rates based on the CN code of the goods. This would truly create a level playing field within the EU and prevent from any possible VAT tariff shopping in relation to B2C supplies of goods, as tax competition between Member States should be avoided in my opinion (at least with respect to VAT).\(^{65}\)


\(^{60}\) I refer to Paragraph 3.1.1

\(^{61}\) Except for E-commerce platforms, as I will outline in Paragraph 5.1.8.


\(^{63}\) I refer to the following proposals: COM(2017) 567, 568 and 569.


\(^{65}\) I note in this respect that on 18 January 2018, the European Commission made a proposal to introduce (even) more flexibility for Member States to change the VAT rates they apply to different products. The current EU’s common rules on VAT rates do not treat Member States equally as more than 250 exemptions allow several Member States much more flexibility in setting VAT rates than others. While these derogations are due to expire once the reformed VAT system comes into place, the rates proposal will ensure that all Member States have the same flexibility and a uniform structure in which to set their own VAT rates. In my opinion this does not create a
5.1.2 OSS – Input VAT deduction

In the proposals, as outlined in this thesis, no reference was made to the deduction of input VAT under OSS. Council Directive (EU) 2017/2455 amending the RVD does however include Articles on the input VAT deduction under OSS.

Article 269w RVD is (inter alia) added in this respect:

‘The taxable person making use of this special scheme may not, in respect of his taxable activities covered by this special scheme, deduct VAT incurred in the Member States of consumption pursuant to Article 168 RVD.66 […] the taxable person in question shall be refunded in accordance with [the relevant] Directives.’

The fact that input VAT deduction is not covered by the OSS is in my opinion a weakness in the new VAT legislation. It does not seem supportive for businesses that the OSS scheme only provides the possibility (or better: obligation) to pay VAT. Should a business have incurred (high) amounts of input VAT in respect of his taxable activities covered by the scheme, it will not be able to deduct this VAT under the OSS. Any input VAT can only be reimbursed to the taxable person via a regular refund request. This could obviously result in large cash flow disadvantages and should therefore – in my opinion – be solved in future legislative amendments (obviously this would require even closer communications and trust between the Member States).

5.1.3 Removal of the LVCR

I support the removal of the LVCR in combination with the introduction of the OSS, as it would have been very burdensome if the LVCR would just have been abolished without introducing a completely new collection model (i.e. all of a sudden all low value consignments would become subject to import VAT, as there would no longer be an exemption in place). In my opinion the LVCR removal will significantly reduce fraud and VAT foregone. Besides it will create a level playing field between EU and non-EU businesses.

On the negative side however, I note that abolishing a scheme such as the LVCR could be costly to E-commerce sellers and consumers. This is due to the fact that the abolishment could lead to an increase in the delivery costs of packages. This could be considered contrary to the purpose of the OECD and the EC, in particular: ensuring better access for consumers and businesses to goods and services via E-commerce across the EU.67 I would recommend ensuring that the processing of low value consignments can be dealt with in the most efficient, simple and cost-effective manner. In my opinion this is the case with the introduction of the OSS.

Besides, the fact that the abolishment of the LVCR could lead to an increase in the delivery costs is in my opinion only fair to EU market players, who were – generally – not in the position to benefit from the LVCR at all and already had to charge VAT on low value consignments. The latter could be considered a case of discrimination (non-EU parties were treated favourably compared to EU market players). The removal of the LVCR seems to solve this discrimination issue.

66 Under Article 168 RVD the taxable person is generally entitled, in the Member State in which he carries out transactions, to deduct VAT which he is liable to pay.
5.1.4 Responsibility online marketplaces

Online marketplaces are generally not transactionally involved in the supply of E-commerce goods. Instead, they are merely facilitating these sales by providing an online platform. However, based on the new Article 14a RVD (as outlined in Paragraph 4.1.4) the online marketplaces will be deemed to have received and supplied the goods themselves from a VAT perspective. It is not completely clear to me whether this deemed supply will exist next to the original supply (from the vendor using the marketplace to the buyer) or completely replace it. This should be further investigated, in absence of any guidance. In any case, it seems that the online marketplace will have to report the input and output VAT in relation to the deemed supplies of goods to the tax authorities as if they made the supplies themselves.

The new Article 14a RVD will thus make online marketplaces (such as Ebay, Alibaba and Amazon) responsible for collecting VAT for both B2B and B2C sales by non-EU businesses to EU residents. As a result, online marketplaces will be faced with a significant additional administrative burden and financial responsibility. So far online market places are almost only involved in supplies of services and not (much) in supplies of goods. This new Article 14a RVD is therefore a very big change and I strongly encourage the fact that the Commission will engage with online marketplaces to ensure that there is full clarity on the role of online marketplaces when the reforms are introduced in 2021, as there should not be any misunderstanding in this respect.

As the original package of proposals (dating 5 December 2016) did not include a provision for this online market place responsibility, there is not much literature or background published on this topic. An October 2017 UK parliamentary report however, has criticized Amazon and eBay for not doing enough to prevent tax fraud on their online market places and recommended the government to hold the online marketplaces accountable for tax lost to evaders.68 The Council has further indicated that it has proved insufficient to ensure effective and efficient collection of VAT to provide Member States with the possibility to hold a person other than the person liable for the payment of VAT to be held jointly and severally liable for payment of VAT in such cases.69 Given this criticism it may seem fair to keep the online marketplaces responsible. All the more, given the fact that the enforceability seems controllable by tax authorities (there are only few large online market places, in contrast to numerous, if not countless, online vendors and buyers) and the risk of VAT foregone would most likely be reduced.

In my opinion however, this new Article 14a RVD imposes a disproportionately large responsibility on the online marketplaces as they are not even transactionally involved in the transaction in the first place. Besides, I can imagine that it can be very difficult for online marketplaces to enforce that all relevant information is available and correct. However, I understand the (short-term) necessity of introducing the VAT responsibility on online marketplaces given the above mentioned arguments, regardless of the negative impact on them. Therefore, I would advocate supporting these measures as an interim short-term solution, in absence of any better possibilities immediately available. In the long run however, I expect the solutions as outlined in Paragraph 5.2.2 to make the new Article 14a RVD unnecessary, as I will explain below.

5.1.5 Simplification thresholds

Marie Lamensch argues that the threshold of 10,000 to support start-ups and micro-businesses could result in distortion of competition by attracting SMEs to low tax Member

States. Further, non-EU businesses do not have the possibility to use the EUR 10,000 threshold, which – in her opinion – creates discrimination.

Although I see the point of Lamensch, I consider the practicalities of the new measures of higher importance than a minor (in my opinion) potential discrimination issue. The fact that non-EU businesses will be able to benefit at all from the OSS (in contrast to the MOSS previously), is already a big step forward in my opinion and solving many potential discrimination issues.

In contrast to Lamensch, I would argue that the threshold of EUR 10,000 to support start-ups and micro-businesses is too low. I agree with the EC that a threshold that is set too high could have a distortive effect, but in order to facilitate and encourage start-ups and micro-businesses to expand cross-border EU sales the threshold could in my opinion easily be increased up to EUR 20,000 (or even slightly higher) as EUR 10,000 seems like a very marginal amount. An amount of EUR 20,000 is still relatively small, but will provide the smaller businesses with some more breathing space to explore and expand the cross-border activities.

I suppose that the main concern with the EUR 10,000 threshold is that businesses will start activities under a different name as soon as the threshold is reached (in order to never exceed the simplification threshold). Especially with non-EU businesses this would be difficult to control, as it is almost impossible for EU tax authorities to verify who is the (ultimate) beneficiary of a certain entity. Even though I cannot verify whether this has been the reason for excluding non-EU businesses from this simplification threshold, I consider the risk of abuse of the simplification threshold significantly mitigated as a result of the exclusion of non-EU businesses. Should the risk hereto also exist in relation to EU businesses, I suggest further exploring possibilities to preventing from fraud instead of keeping the threshold too low (and therewith discouraging (smaller) businesses).

An outstanding issue with simplification thresholds will in my opinion be the case in which businesses could be trying to underdeclare VAT in order to remain below the threshold. Obviously, underdeclaring VAT would be a clear fraud case, but I can imagine that it is generally difficult to detect by tax authorities. I would therefore suggest aligning with my recommendations as outlined in Paragraph 5.2.2 below in which I propose an efficient data exchange between the relevant stakeholders (i.e. customs/ tax authorities, postal operators, E-commerce platforms, E-commerce sellers). If this approach would be followed, it would be almost impossible to underdeclare any VAT.

**5.1.6 Compliance obligations**

The relieve in the administrative burden is particularly clear in relation to the VAT compliance obligations under the OSS. I encourage the application of the invoicing rules of the Member States of identification, as well as the record keeping obligations of these Member States. The extension of the deadline to submit VAT returns from 20 to 30 days and the fact that

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72 Note that I did not perform an impact assessment, nor did I come across such a report.
74 New Article 219a (2)(b) RVD.
75 New Article 369k RVD.
76 New Articles 364 and 369f RVD.
taxable persons can declare supplies of goods and of services under the OSS in the same VAT return\textsuperscript{77} are other good examples of how the EC is making it easier for businesses to comply with the VAT obligations.

I acknowledge that the introduction is not all good news from a compliance costs perspective, as mentioned by Lamensch. She makes clear that in particular the setting up costs of the MOSS (I assume quite similar to the setting up costs of the OSS) are quite high and therefore remain an issue for smaller taxable persons.\textsuperscript{78} I note that apart from the fact that the simplification threshold is specifically created for these types of issues (although not applicable for non-EU taxable persons), these costs will only be one-off (apart from some marginal maintenance costs), due to which I do not expect too many issues in this respect.

5.1.7 Distance sales – chargeable event

In relation to distance sales under OSS, Article 369n will be added to the RVD:

\textquote{For distances sales of goods imported from third territories or third countries on which VAT is declared under this special scheme, the chargeable event shall occur and VAT shall become chargeable at the time of supply. The goods shall be regarded as having been supplied at the time when the payment has been accepted.}'

The chargeable event thus occurs and the VAT becomes chargeable at the time of supply according to art. 369n RVD. The goods are further deemed to be supplied at the time the payment is accepted. I note that the payment is generally accepted by the supplier before goods are actually shipped (e.g. from China to the Netherlands), due to which the goods could well be located outside the EU (e.g. in China) at the time when the payment is accepted. If so, VAT becomes chargeable on goods that are not located within the EU (and might not even arrive there). It could be questioned whether this is in line with the – general – EU VAT principles.

First of all, I note in this respect that according to Article 2 RVD (I refer to Paragraph 2.1) two transactions subject to VAT could be identified in this case:

(i) The supply of goods (at the time when the payment is accepted);
(ii) The import of goods (at the time the goods are actually imported).

This could result in a potential issue of double taxation. I assume that this is tackled by the VAT exemption on import when using the special scheme. If the special scheme is not used, Article 369n RVD is not applicable and the goods become VAT chargeable at the time of the actual import (as no supply of goods as mentioned in Article 2 RVD has taken place yet).

Secondly, it is the question whether it is constitutional to determine a supply of goods at the moment when the payment is accepted when using the OSS. Article 63 RVD provides for the general rules in this respect:

\textquote{the chargeable event shall occur and VAT shall become chargeable when the goods or the services are supplied.'}

Article 65 RVD further provides that:

\textquote{Where a payment is to be made on account before the goods or services are supplied, VAT shall become chargeable on receipt of the payment and on the amount received.'}

The new Article 369n RVD seems to be in line with the above mentioned Articles. Therefore, I do not see an issue in making these events VAT chargeable even though the goods could

\textsuperscript{77} New Article 369g RVD.

\textsuperscript{78} Lamensch (2017), European Commission’s new package of proposals on e-commerce : a critical assessment, IBFD-library 2017/a112467.
potentially be located outside the EU when the payment is accepted. Especially considering the fact that in the OSS scheme the VAT has to be reported one month after the end of the calendar quarter according to the new Article 369f RVD. Hence, the goods will almost always already be located within the EU at the moment of declaration and payment of VAT. It has to be further investigated what would happen from a VAT perspective if the E-commerce goods never actually arrive in the EU, even though the payment has been accepted.79

5.2 Customs

5.2.1 Impact of VAT modernizations
First of all, I encourage the separation of the VAT accounting from the customs processes of imported goods. No longer will the VAT accounting be based on a transactional basis, but rather on a periodic reporting and payment and, therefore, reducing the administrative burden of both businesses and customs authorities. As a result, this will enable customs authorities to focus (more) on customs enforcement instead of VAT collection.

I further recommend making the customs formalities on import as simple as possible in order to facilitate the OSS in the smoothest way possible. Currently, as outlined in Paragraph 2.2.3, customs declarations have to be submitted for almost all consignments with a value up to EUR 150. These customs declarations are currently either standard or simplified.

I recommend exploring possibilities to facilitate businesses using the OSS scheme, or more generally: businesses involved in imports of E-commerce goods with the filing of customs declarations. Considering the fact that the OSS scheme will be triggered by the validation of the VAT identification number through the import declaration for release for free circulation (the VAT identification allows customs to identify the specific OSS consignments), it will in my opinion still be necessary to file customs declarations after the introduction of the OSS scheme.

A great possibility to be further explored would in my opinion be the option provided for by Dutch Customs, being VENUE (simplified E-commerce customs declaration).80 VENUE offers businesses the opportunity to file an incomplete declaration in advance (i.e. prior to the release for free circulation) during the transition period of the UCC ending at 1 January 2021. The current treatment is that for imports with a value above EUR 22, a supplementary declaration has to be filed with Dutch Customs within a predetermined period after the actual release for free circulation (either through the electronic filing system AGS or as a declaration that is part of an automated periodic declaration).81 In my opinion this is a great facility for businesses, even though it is required to obtain the license for simplified customs declarations from Dutch Customs to use VENUE.82

I recommend rolling out a system based on VENUE throughout the EU and also recommend to make it applicable after the transition period of the UCC ending at 1 January 2021. The threshold of EUR 22, above which supplementary declarations have to be filed can in my opinion be abolished (together with the abolishment of the LVCR). As a result of this, either a VAT exemption (under the OSS scheme) can be reported in the supplementary declaration.

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79 I assume that the general VAT principles will apply as a result of the issuing of a credit invoice and the related VAT consequences.
81 Ibid.
or the actual payment of import VAT\(^{83}\) (for releases into free circulation outside the OSS scheme). Besides reducing pressure on customs authorities, the above could perhaps reduce the import processing costs as outlined in Paragraph 2.3.

5.2.2 OSS and CC

CC is one of the customs simplifications for placing goods under a customs procedure of the UCC.\(^{84}\) It provides the holder of an authorization to submit a customs declaration at the customs office where he is established for goods which are presented at another customs office within the customs territory of the Union. CC could therefore be considered the OSS for customs procedures.

I note in this respect that the European Commission published a Report on the design of the system for Centralised Clearance at Import in terms of business case and project scope on 7 July 2017.\(^{85}\) The objectives of this Report are (inter alia):\(^{86}\)

- Implement an IT system to deliver on the legal possibilities that exist for CC;
- One declaration for all purposes, customs, statistics and fiscal needs;
- Faster exchange of data for the CC process and customs controls;
- Closer and more structured collaboration between customs authorities;
- Common process which delivers greater efficiency and reduced costs.

The European Commission expects (inter alia) the following outcomes in this respect:\(^{87}\)

- Economic operator has to interact with and connect to IT system of a single Member State, thereby reducing costs and facilitating contacts with authorities (single point of contact);
- Further simplification of customs procedures for economic operators doing business in multiple Member States;
- Replacing manual case-by-case solutions with integrated IT solution;
- Central management, verification and clearance of customs declarations at one customs office;
- Single guarantee for customs duty valid in supervising Member State.

The above makes clear in my opinion that the European Commission is taking the CC system very seriously and trying to make it future proof. I recommend adding one objective to the list above: closely connecting with the OSS scheme. This is due to the following: the customs debt will be deemed to be incurred in the Member State of authorization / establishment. However, VAT and Customs are currently not (always) aligned in this respect as import VAT will generally be due in the actual country of import (as explained in Section 2) while the customs debt will be deemed to be incurred in the Member State of authorization / establishment. With the introduction of the OSS this issue will most likely be solved (if using OSS) as both the import VAT and the customs debt can be reported and paid in the country of establishment / authorization.

With regard to import VAT in relation to imports of goods outside the OSS scheme, I support the recommendations of the Report in ensuring close coordination between the CC

\(^{83}\) Which may be subject to an import VAT deferment scheme.
\(^{84}\) I refer to Article 179 UCC, Article 149 UCC-DA, Articles 229-232 UCC-IA, Articles 18-20 of the UCC Transitional Delegated Act.
\(^{85}\) European Commission (2017), Final Report from the C2020 Project Group defining the design of the system for Centralised Clearance at Import (CCI) in terms of business case and project scope, taxud.a.3 SDC/ER(2017) version 8.
\(^{86}\) Ibid, p. 10.
\(^{87}\) Ibid, p. 10.
Supervising Customs office and the tax authorities of the Member State of importation.\textsuperscript{88} This is due to the fact that the customs declaration is filed in one Member State and the import VAT is due in another.

5.2.3 IT solution: Data pipeline
Should it not be possible (in the shorter or longer term) to facilitate the customs formalities for goods with an intrinsic value below EUR 150 by declaring these goods by a system such as the Dutch VENUE (simplified E-commerce customs declaration),\textsuperscript{89} a different approach should be considered in my opinion. From that perspective but also from a more general point of view, I consider exploring new IT solutions to be a very logical and crucial next step in relation to Customs and E-commerce, as I will outline below.

Customs authorities are currently dependent on the data they receive via customs declarations. These customs declarations often do not contain correct information about the consignments as not all stakeholders in the supply chain have access to all the information necessary for submitting a complete and correct customs declaration (e.g. logistics providers, carriers, etc.).\textsuperscript{90} Further, the data necessary for a customs declaration is sourced from many different stakeholders (e.g. vendor, consumer, logistics provider, etc.).\textsuperscript{91} This has been a problem for a long time because the stakeholders do not trust each other or do not want to disclose certain particulars to each other.

\textsuperscript{88} Ibid, p. 26.
\textsuperscript{89} As mentioned in Paragraph 5.2.1.
\textsuperscript{91} Ibid, p. 20.
Hesket and Heijmann provided a figure of the current international trade system and customs, which clarifies the current data complexity in this respect.\textsuperscript{92}

*Figure 1. Current international trade system and customs (© 2010, Hesket and Heijmann)*

Considering this figure, it appears crucial to (further) develop IT systems to give access to the relevant stakeholders along the supply chain. I note this is easier said than done. For example with regard to the value of goods and/or services in relation to the shipment of these goods, not all stakeholders would want to disclose their information (e.g. due to the margins they make on these services).\textsuperscript{93} Also, issues such as data privacy and intellectual property should be overcome. Data access should therefore be controllable by all stakeholders involved in the supply chain, and only the Customs authorities should obtain full access to the information.

Hesket and Heijmann therefore propose a ‘seamless integrated data pipeline’.\textsuperscript{94} This data pipeline aims at capturing data from different sources in the supply chain. The data pipeline is created by linking IT systems of companies.\textsuperscript{95} The role of the data pipeline as presented in

\textsuperscript{93} Ibid. p. 23-24.
Figure 1 above, is shown in Figure 2 below. It shows how each subsequent party in the chain makes data accessible via the pipeline, resulting in the availability of source data at the moment it is available to the providing party.\footnote{Klievink et al. (2012), Enhancing Visibility in International Supply Chains: The Data Pipeline Concept. International Journal of Electronic Government Research, 8(4), p. 16.}

\textit{Figure 2. International trade system and customs in pipeline situation (© 2011, Hesketh and Heijmann)}

Data accessibility and visibility could be considered a potential issue with this data pipeline.\footnote{As previously mentioned.} Therefore, only some specific partners, most notably the buyer, seller and tax/customs authorities will be granted access to most or all information.\footnote{Klievink et al. (2012), Enhancing Visibility in International Supply Chains: The Data Pipeline Concept. International Journal of Electronic Government Research, 8(4), p. 21.}

As a result of improved IT systems along the supply chain in the form of a seamless integrated data pipeline, so-called 'green trade lanes' could be developed.\footnote{Even the buyer and seller might not want to share the full information with each other, especially if not related to each other.} Any inconsistencies would be spotted in the processes in an early stage. I expect this would enable easier customs controls, especially considering the limited capacity on the side of customs authorities to verify and control every single consignment imported into the EU and smooths the way for compliant businesses as their consignments will not be interrupted with (lengthy) customs checks.

\cite{Klievink2012}

\cite{WCO2015}

\cite{Klievink2012}

\cite{Klievink2012}

\cite{WCO2015}
I note however, that in contrast to an AEO-trusted trade lane (almost always covering B2B transactions), E-commerce trusted trade lanes will generally not be as straightforward (e.g. many one-off B2C/C2C transactions instead of a steady B2B flow of transactions). For this purpose, efficient data exchange between the relevant stakeholders (i.e. customs authorities, postal operators, E-commerce platforms, E-commerce sellers) should be of the highest priority. Possible solutions such as blockchain should in my opinion be further explored, in order to reach this goal.
6. Conclusion

Updating the VAT legislation in relation to E-commerce imports into the EU was crucial, as the current legislation is too complicated in terms of VAT compliance obligations and makes it too expensive, especially for SMEs, to operate in the cross-border B2C trade of goods. Are the current and future E-commerce challenges and issues sufficiently tackled by the 2017 modernizations from an EU VAT and Customs perspective? In my opinion to a large extent, but not completely (yet), as I outline below.

The introduction of the OSS scheme in combination with the removal of the LVCR, is something that I encourage. It seems to me that the administrative burden for businesses will be relieved significantly as a result of the introduction of the OSS. However, certain aspects of the new legislation could be improved in my opinion in order to be truly in the benefit of businesses and tax authorities. I have therefore provided several recommendations in relation to VAT and E-commerce in this thesis:

- Covering input VAT deduction under the OSS;
- In relation to online marketplace:
  - supporting the measures as an interim short-term solution, in absence of any better possibilities immediately available and
  - engagement of the Commission with online marketplaces to ensure that there is full clarity on the role of online marketplaces when the reforms are introduced in 2021;
- Introduction of standard VAT rates, in order to create a level playing field within the EU and prevent from any possible VAT tariff shopping in relation to B2C supplies of good;
- Further exploring possibilities to prevent from fraud instead of keeping the simplification threshold too low. On the contrary, increase the simplification threshold to an amount of EUR 20,000, providing smaller businesses with more breathing space to explore and expand cross-border activities.

In relation to Customs, I expect the introduction of the OSS scheme to have a positive impact on Customs authorities, as it will enable customs authorities to focus (more) on customs enforcement instead of VAT collection. I recommend:

- Aligning the OSS scheme with customs by making customs formalities in relation to these imports as simple as possible;
- Connecting the OSS scheme with CC;
- Exploring new IT solutions in relation to Customs and E-commerce. The seamless integrated data pipeline seems like a great first step in this respect. For the (near) future, I highly recommend exploring possible solutions such as blockchain.
Literature list

Books

Articles

EU Case law
- Case C-7/08 (Har Vaessen Customs Service BV) [2009] ECR I-05581

EU communications
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Miscellaneous