

First Year Experience of the Abolition of the €22 Rule and the Introduction of the New e-Commerce VAT Laws

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SUMMARY

The abolition of VAT exemption regarding negligible consignments has raised a variety of tax and customs management issues in terms of budget revenues both on the EU and domestic fronts. The abolition of VAT exemption below €22 in July 2021 has brought upon a completely new situation in the customs management of e-commerce from non-member countries to the EU. A review of the achievements and challenges of the past year, which also underpins the timeliness of our study, can contribute to further refinement and clarification of the system. The main focus of this research is to explore the customs experience with the new VAT regime for B2C e-commerce from third countries into the customs territory of the European Union, introduced from 1 July 2021, to identify the problems encountered in the past period and possible solutions. The article will use statistical data collected from the National Tax and Customs Administration to explore the characteristics of the past year and the main trends in turnover, and to identify the challenges and the solutions authorities can provide to them.

KEYWORDS: customs union, e-commerce, customs value, intrinsic value, VAT exemption, VAT control

JEL CODES: H20, H26, H27, F13, K34, O24

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Looking at the central issue of this paper from a distance we can see that one of the key areas of fiscal policy is the central budget within the general government, which is expected to cover the revenue side of expenditure with a good tax system. A tax system should be enforceable, simple, transparent and understandable (Lentner, 2015). We can also see that tax preferences, and hence fiscal policy, have often changed in recent decades. According to Lentner (2016), *“In the past decade, the world economy, and more specifically the European Union, have become points of attraction and directions of convergence for the Hungarian economy.”* 278.) Starting from 2010, the focus of fiscal policy has shifted from direct (e.g. income type) taxes to indirect (e.g. consumption type) taxes (Lentner, 2019, 2021). In 2011 strong state control (cf. Pajor, 2021) was introduced in the Fundamental Law, with the goal of creating full employment and competitiveness. In the implementation of fiscal responsibilities, the National Tax and Customs Administration established in 2011 as the state tax and customs authority promised more efficient cost-saving operation, effectively delivered over the past decade (Magasvári, 2021). The abolition of VAT exemption analysed in the study is in line with both the domestic and EU expectations for indirect taxes and the role of customs authorities.

The EU (European) customs union established in 1968 makes it easier for EU companies to trade, harmonises customs duties on goods from outside the EU, and helps to protect Europe’s citizens, livestock and the environment. In practice, the customs union means that the customs authorities of all EU countries work together as if they were one. They apply the same tariffs to goods imported into their territory from the rest of the world, and apply no tariffs internally. According to Article 3 of the Treaty on the Functioning of

the European Union, the EU has exclusive legislative powers in the territory of the customs union. The Member States and their customs authorities are required to implement these legislations, including carrying out customs control duties (Pardavi, 2012, 2015; Horváthy, 2004; Szendi, 2014). The Member States’ customs administrations play an important role in balancing trade facilitation and customs control, as the smooth flow of goods to and from the customs union is essential for the EU.

Import duties provide an important source of revenue for the EU budget, which in 2019 amounted to EUR 21.4 billion (13-14% of total revenue) (ECA, 2021). In addition to the EU’s former traditional resource, there is also the so-called value-added tax based own resource, which in recent years made up approximately 15% of budget revenues (Ohnsorge-Szabó, Romhányi 2007; Halász, 2010; Halmai, 2018; Kengyel, 2019; Halász, 2021).

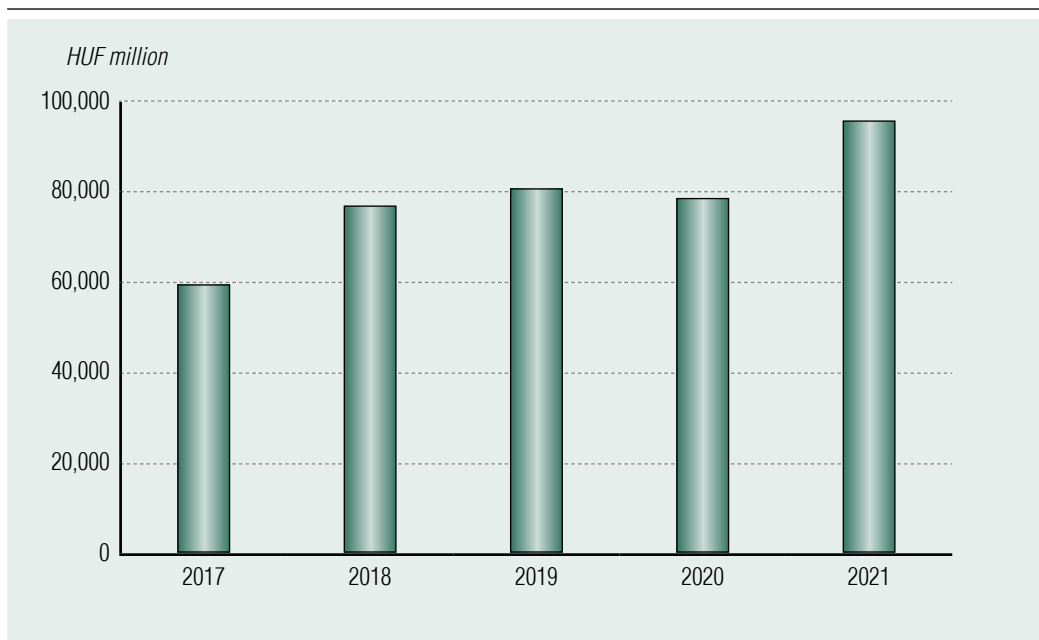
Figure 1 shows that, except for 2020¹, the customs section of the National Tax and Customs Administration (NTCA) has provided steadily increasing customs revenues. As with all Member States, the collected customs revenues do not benefit the national budget, but must be paid into the EU budget.

At the same time, a percentage of these revenues is kept by the Member States to cover the costs of collecting customs duties. The share of revenue retained by the Member States has changed several times, from 10% to 25%, and then to 20% (Szendi, 2017); currently the Member States retain 25% of the customs duties collected by them. [Council Decision (EU, Euratom) 2020/2053, Article 9 (2)] (Figure 2)

Today goods may arrive from a third country not only as a result of traditional purchase but also as a result of e-commerce, with customers viewing and buying products online based on their main characteristics. Already in 2015, 150 million consignments with an intrinsic

Figure 1

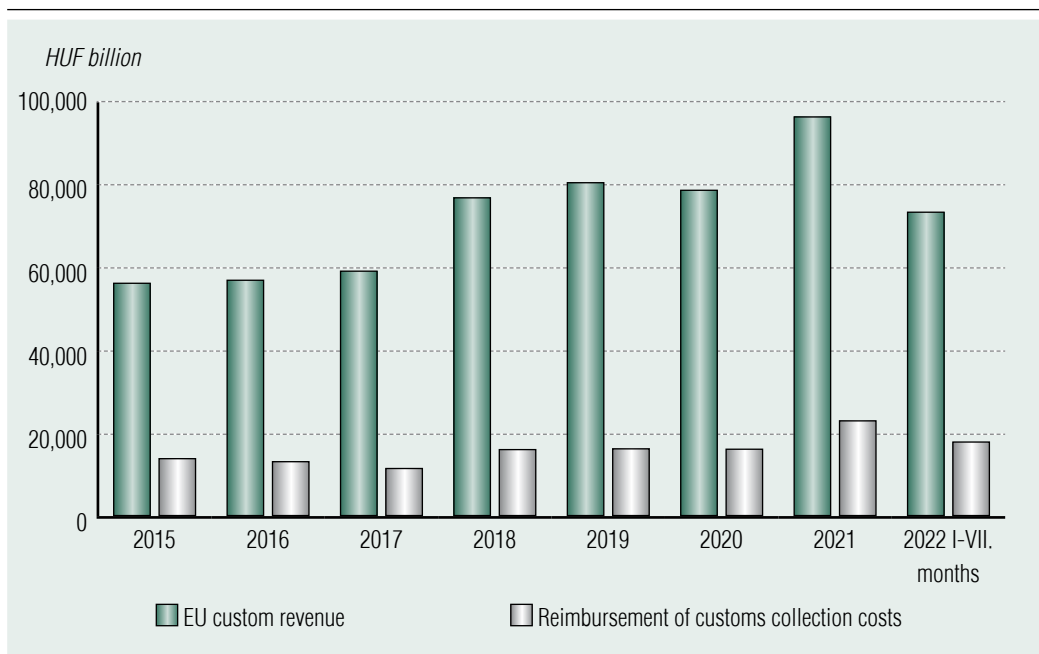
EU CUSTOMS REVENUES COLLECTED BY THE NTCA



Source: own editing based on NTCA yearbooks (2017, 2018, 2019, 2020, 2021)

Figure 2

COLLECTION COSTS OF MEMBER STATES, 2015–2022



Source: own editing based on NTCA data

value of less than EUR 22 million were imported into the EU (Növekedés.hu, 2019). In recent years, there has been a steady increase in e-commerce (both for items from third countries entering the EU customs territory and for those sold within the European single market), with statistics indicating that one in five businesses in the EU-27 single market engaged in e-sales in 2017. This paper analyses the flow of e-commerce shipments dispatched from third countries and entering the EU through its external borders. The Member States are responsible for collecting value added tax (VAT) and customs duties on these transactions. Deficiencies in the collection of VAT and customs duties have affected the budgets of the Member States and the EU negatively (ECA, 2019).

Recent statistics show that 60% of EU residents shopped online in 2018 (eNET, 2019 and URL3), which increased to 71% in 2020 due to the Covid-19 pandemic (URL1, URL2). In Hungary the number of online shoppers reached 5.4 million already in 2018 (91% of adult internet users), including 3.1 million ordering products from abroad (eNET, 2019). According to an EU survey, 61.8% of consumers in Hungary shopped online in 2020 (URL2). The items ordered from abroad primarily include low-value clothing, shoes, bags, toys, gifts, watches, jewellery, and computer products (eNET, 2019).

CUSTOMS AND VAT EXEMPTION RULES

The rise of e-commerce and an increase in the number of consignments could be observed before the outbreak of Covid-19, with the development of new shipping routes and modes of transport already under way (Boboc, 2020; Szabó et al., 2021; Szabó & Takács, 2019), while the upswing in e-commerce

during the pandemic highlighted the limits and vulnerability of supply chains, too (Lentner, 2021).

Prior to the explosion of e-commerce, shipments of negligible value were granted exemption in line with EU customs regulations. Goods below a certain threshold, in our case EUR 22, were exempt from paying customs duties and other taxes. This was because the small revenues collected on low-value shipments failed to compensate for the administrative and business costs of ensuring compliance with the customs rules. The rapid growth of e-commerce made it necessary for the EU to take action. An OECD document published in 2015 “Addressing the Tax Challenges of the Digital Economy” (URL4) also recognises that at the time of introducing the majority of low-value import exemptions, internet shopping did not yet exist, and the level of imports benefiting from such exemptions was relatively low (Dale & Vincent, 2017). With the expanding volume of e-commerce, the EU realised an increasing loss of VAT revenue due to exemption of shipments below EUR 22. The loss of revenue due to VAT exemption was estimated to be at least EUR 1 billion per year, and as a result of fraud (undervaluation, importation as gifts) at around EUR 4 billion (ECA, 2019; Papis-Almansa, 2019; Bakai, 2016).

The regulation also had an adverse effect on competitiveness, as VAT had to be paid on goods sold in the EU, which caused a competitive disadvantage to EU merchants (Gelei et al., 2020). VAT exemptions are difficult to check, and they made the EU merchants less competitive.

The change in VAT legislation abolished VAT exemption for low-value consignments from third countries below EUR 22 from 1 July 2021, with an obligation to file customs declarations for these goods.

Exemptions from customs duties under EU legislation or international treaties typically

go hand in hand with exemptions from other charges, such as taxes in Member States. An exception to this general rule is the import of consignments of negligible value, the regulation of which changed from 1 July 2021. According to Article 23 of the EU Directive formerly in place² goods with a total value of less than EUR 10 (the legislative texts do not use the term ‚intrinsic value’ here) could be imported into the EU free of VAT. In addition, the Member States (including Hungary) were allowed to exempt imports of goods worth more than EUR 10 but less than EUR 22. Based on these rules, duty-free treatment for imports of goods of negligible value applied to the whole consignment, but VAT exemption was limited to EUR 22.

The full exemption from VAT for consignments below EUR 22 and the related use of simplified declarations (CN22³) made room for abuse. For example, in connection with the use of the CN22 document, it became a common practice to falsely mark the packaging of goods bought on the internet as a „gift” (either as a value or as a description of the goods). This was due to the fact that consignments sent by one private individual to another without consideration were exempt from customs duty and VAT up to a higher threshold, i.e. a total of EUR 45 (again, the legislative texts do not use the term ‚intrinsic value’ here) (this rule did not change as of 1 July 2021).

The massive growth in e-commerce experienced in the last decade, particularly during the pandemic period, and the EUR 22 threshold for VAT exemption caused a significant loss of revenue for EU Member States, as suggested by some studies and a special report by the EU Court of Auditors (URL5). Also, non-EU suppliers enjoyed a competitive advantage over EU businesses that did not benefit from the same VAT exemptions when selling goods in the single market. To

address this issue, on 5 December 2017 the Council of the European Union adopted its e-commerce VAT package which, among others, abolished VAT exemption for import consignments of negligible value up to EUR 22 and introduced simplifications for the collection and payment of import VAT [import one stop shop (IOSS) and special arrangement (SA)] for distance sales of goods from third countries or third territories to EU consumers. These rules became applicable on 1 July 2021. Hence, it’s time to review the data, trends and experiences of the past year both in Hungary and in the EU.

THE eVAM (eCUSTOMS) MODULE

The implementation of tax rules for e-commerce made it necessary to amend customs legislation. To ensure that VAT is collected on all goods imported into the EU from third countries, declarants were required to submit a customs declaration for release for free circulation, even for consignments with an intrinsic value of less than EUR 150. As this obligation imposed a huge burden on both declarants and customs authorities, the Commission amended its regulation establishing the detailed rules of the Union Customs Code (UCC) (Delegated Act, DA) with a view to determining the same rights and obligations for all declarants.⁴ For these e-commerce consignments, a customs declaration with reduced data content covering the elements specified in column H7 of Annex B to the DA must be lodged with the customs authorities. In Hungary, the customs declarations submitted with data content „H7” (reduced data content) are processed by the eVAM module. The module is able to quickly receive and process a significant number of customs declarations with reduced data content submitted simultaneously. The

module can be accessed by private recipients through a website after client identification, and by operators (forwarders) via the so-called External Communication Centre, a machine-to-machine communication platform already used in customs procedures. The latter is also available to Magyar Posta (Hungarian Postal Service), which can submit customs declarations with „H6” data content (postal declaration with reduced data content) through this channel.

A possible method for sellers from outside the EU to pay VAT on e-commerce consignments arriving in the EU from third countries is to register in a Member State for the so-called IOSS system, or import scheme. In this case, customers already pay the VAT due in the Member State of destination to the third-country seller at the time of purchase, who in turn pays it in the Member State of registration, the tax authority of which redistributes it to the Member State of destination. Third-country sellers, who are taxable persons, typically use an electronic platform, such as a marketplace, portal or other similar means to facilitate the distance sales of goods imported from third territories or third countries (Szlifka, 2019; Magony, 2022).

Taxpayers not established in the EU can only use the scheme via so-called IOSS intermediaries. IOSS intermediaries are taxable persons who satisfy the legal requirements for financial representatives so as to represent one or more taxpayers on the basis of a separate IOSS application and to fulfil the related tax liability on behalf of and in the name of these actors. This, however, is not the same as customs representation. The EU operators satisfying the requirements for intermediaries can pre-register on the OSS⁵ portal⁶ (Sinisalo, 2021).

Another way for paying VAT is for the freight forwarders to simplify the process by using special arrangement (SA), which

must be agreed with the relevant national tax authorities in advance. The customs authorities do not apply VAT, but the consignment is delivered to the recipient after customs clearance where the freight forwarder collects the VAT from the recipient and makes a periodic consolidated declaration with payment to the tax authority accordingly. SA can only be applied if the transport of goods terminates in the importing Member State.⁷ This solution is typically designed for national postal services and express mail service operators.

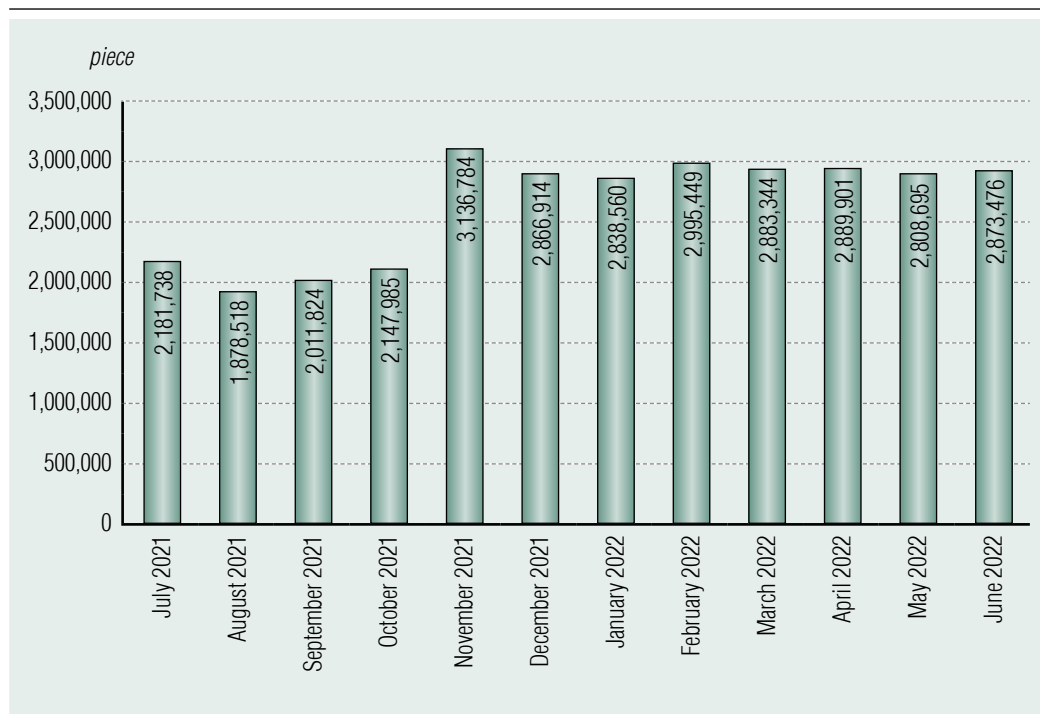
In the course of our research, we reviewed the information provided by the National Tax and Customs Administration with key data for the first year of the new regulation. In the period 1 July 2021 – 30 June 2022 approximately 31.5 million (31 513 188) customs declarations were processed in the NTCA eVAM system. Analysing the trends for the customs declarations lodged and accepted, it can be seen that around 2 million declarations were lodged every month between July and November 2021 (with a slight upward trend). In November 2021 (presumably due to the Double 11 and Black Friday promotions) there were 3.1 million declarations, and since then approximately 2.8 million declarations are received in the NTCA systems on a monthly basis (*Figure 3*).

65.5% of the consignments with a destination in Hungary originated from the People’s Republic of China, 7.6% from the United Arab Emirates, and 5% from the United Kingdom.

The vast majority, 97.5%, entered the territory of the EU with an IOSS number, 2.4% of the consignments were released for free circulation with SA, and 0.1% without. In terms of value, 15.8% of the consignments ranged between EUR 22 and EUR 150, and 84.2% were below EUR 22. This is the category for which customs authorities did not

Figure 3

NUMBER OF CUSTOMS DECLARATIONS, JULY 2021 – JUNE 2022



Source: own editing based on NTCA data

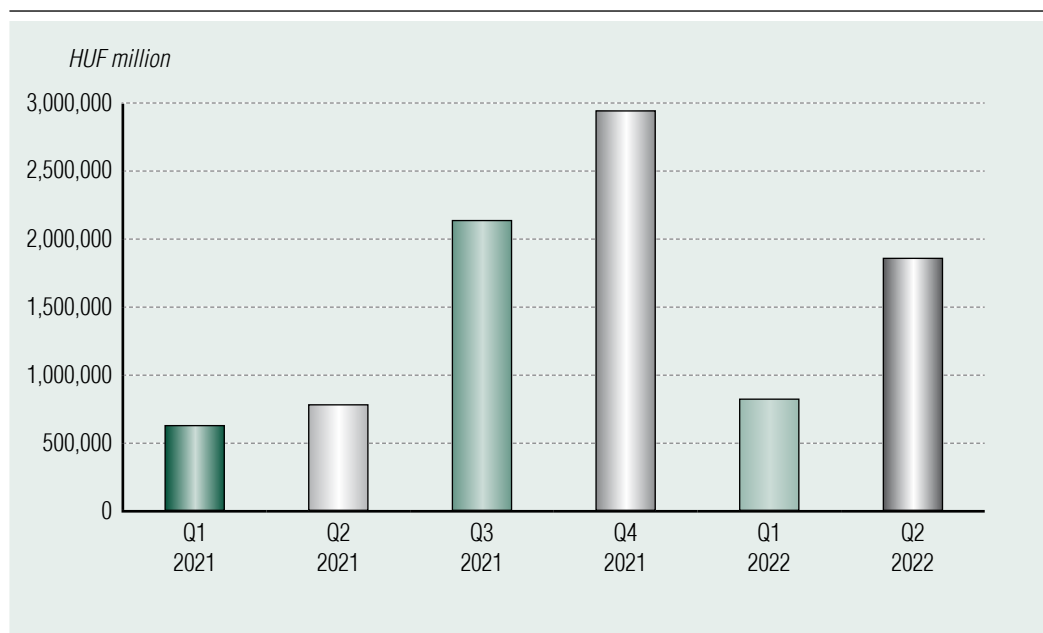
have electronically analysable data before the new regulation. 99% of the declarations were submitted by two operators (the remaining 1% belonged to 10 other players), in all cases to the NTCA Airport Directorate. 8.8% of the incoming shipments had a destination in Hungary, while 91.2% were forwarded to other EU Member States, making Budapest Airport one of the regional entry points for e-commerce purposes.

As for the customs declarations managed in the eVAM system, the VAT to be collected or declared amounted to HUF 32.3 billion. Of this HUF 5.85 billion was paid to the Hungarian national budget, while HUF 26.5 billion was due to other Member States, paid by the relevant sellers/declarants (Figure 4).

CUSTOMS VALUE – INTRINSIC VALUE

As for consignments of negligible value, the concept of intrinsic value and its relation to customs value deserves special attention. Following the above described legislative changes introduced in 2021, it was necessary to clarify the precise definition of intrinsic value, as the regulation on customs relief failed to provide an explanation. Therefore, the Commission decided to introduce the definition into the UCC DA, as it would have been much more time-consuming to amend the Council Regulation in question. However, Article 1 (48) of the UCC DA made it clear that the definition could also be used for the interpretation of the customs relief regulation.

IMPORT VAT LEVIED AND NOTIFIED FOR INFORMATION PURPOSES, 2021–2022



Source: own editing based on NTCA data

According to the definition provided in the UCC DA, intrinsic value means the following:

a FOR COMMERCIAL GOODS it is the price of the goods themselves when sold for export to the customs territory of the European Union, excluding transport and insurance costs, unless they are included in the price and not separately indicated on the invoice, and excluding other taxes and charges (in particular VAT) which may be established by the customs authorities from any relevant document;

b FOR GOODS OF A NON-COMMERCIAL NATURE it is the price that would have been paid for the goods themselves if they were sold for export to the customs territory of the EU.⁸

This raises the question of how this could be controlled, as there are rules in existence for verifying and establishing customs value.

With regard to consignments of negligible value, i.e. goods arriving via e-commerce, paragraph (a) of the above definition is relevant.

However, on the basis of Article 85 of the EU VAT Directive, Article 74 of the Hungarian VAT Act⁹ provides that VAT is not based on the intrinsic value, but on the customs value of the imported goods as determined in accordance with the customs regulations effective at the time of delivery. According to Article 70 (1) of the UCC, the customs value of goods is based primarily on the transaction value, that is the price actually paid or payable for the goods when sold for export to the customs territory of the Union, adjusted, where necessary. The Court of Justice of the European Union has ruled in several cases in the interest of accurately establishing the customs value of goods as a matter of particular importance to ensure customs revenue for the EU (Szendi, 2020).

Therefore, under domestic regulation, the taxable amount for imported goods, in addition to the customs value, also includes:

- taxes, duties, levies, contributions, agricultural levies and other similar charges incurred outside the Member State of importation, and those due by reason of importation, excluding the VAT to be levied as regulated in this Act;
- incidental expenses, such as commission, agency fees, as well as packaging, transport and insurance costs incurred up to the first place of destination within the territory of the Member State of importation.

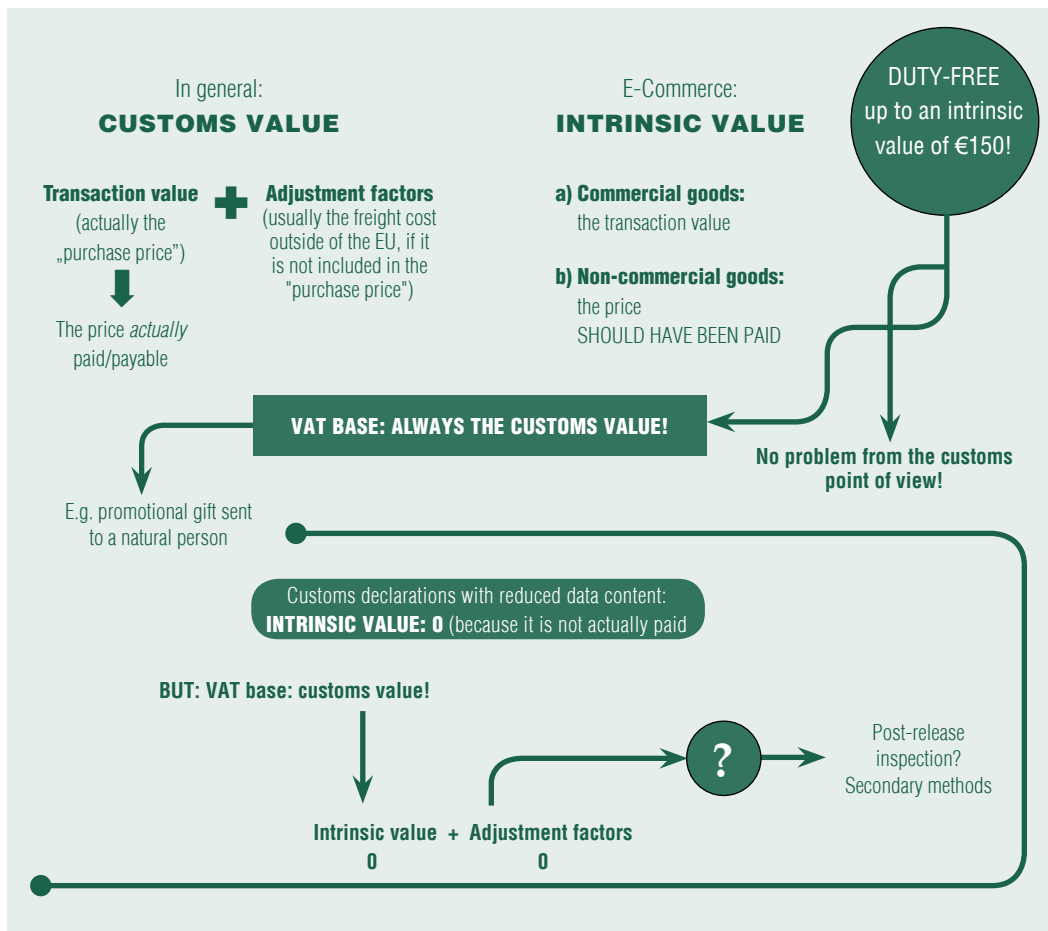
Essentially, this is not a problem, as the declarations with reduced information (data set H7) used for the release for free circulation of consignments with an intrinsic value of less than EUR 150 must indicate both the intrinsic value and the transport and insurance costs up to the place of destination. Generally, the two data elements together provide the VAT base. In some cases, the intrinsic value may be far too low compared to the transport and insurance costs. This may give rise to an examination of the intrinsic value by customs authorities, as the declared value may turn out to be false. This is particularly important if the real intrinsic value exceeds EUR 150, as the consignment cannot be released for free circulation as having a negligible value under Article 23 of the EU regulation on relief from customs duty.¹⁰

There are some cases, however, where the above method is not suitable to determine the customs value for VAT purposes, in particular when there is no sale transaction. In practice this can happen when, for example, a company sends a gift to a natural person customer as a promotional item. Based on the above definition of intrinsic value, we could say that in this case the intrinsic value is zero, and therefore the shipment is naturally eligible for duty exemption (but not VAT

exemption) (*Figure 5*). This, however, does not change the fact that the VAT is based on the customs value, which in this case, and by this interpretation, cannot be determined on the basis of customs declarations filled in with H7 data content. The situation is made even more complicated as in the absence of a sale transaction, only the so-called secondary methods of customs valuation can be used. In practical terms it means that in the absence of a transaction value – which is based on the purchase price *actually payable* by the buyer – to determine the customs value and hence the VAT base, the secondary valuation methods must be used, such as the (comparable) value of identical goods. In such cases post-release inspection could be considered in order to collect the statutory amount of VAT. However, the question is whether customers in this case could be penalised in any way, as the customs value does not have to be declared in the H7 declaration (only the intrinsic value). Another issue to consider is that conducting post-release inspections on such a scale would impose an enormous administrative burden on the customs authorities, presumably with significant value differences, and thus no significant increase in government revenue to be gained.

The exact data broken down by consignment, such as the value of the promotional item (the value that would be declared in a similar import transaction between independent contracting parties) are held by the taxable person, i.e. the third-country seller, who has an obligation to keep electronic records. These records must be sufficiently detailed so the tax authorities of the Member State of consumption can check the correctness of VAT returns.¹¹ The taxpayer, i.e. the operator of the marketplace, platform, portal or similar facility must make the records available on request to the Member State of consumption, the Member State issuing the IOSS identifier,¹² and the Member State of

CUSTOMS VALUE AND INTRINSIC VALUE



Source: own editing

importation (in the case of SA)¹³. Requesting information from the taxpayer is therefore based on the law. However, this does not solve the problem of promotional items: that this value cannot be accepted as transaction value, as it is not the amount actually paid or payable. Therefore, in such cases it could be appropriate to carry out post-release inspections, and to determine the customs value by secondary methods. Nevertheless, this would result in a series of inspections requiring significant resources, presumably with negligible revenue

to be gained. An obvious solution to reduce this administrative burden would be for the legislator to include the customs value among the H7 data elements so that determining it would be no longer necessary for the authorities.

CONCLUSION

The experience of the past year has highlighted some of the weaknesses of the current system,

such as the abovementioned misuse of IOSS identification numbers. Challenges have been identified also in the area of security and safety risks, where the rules may differ from one Member State to another, thus weakening the control of certain restrictions and prohibitions during entry in another Member State. Naturally, this covers fraudulent under-declaration as well, where the value declared is lower than the value actually paid.

Detecting the misuse of IOSS numbers is rather difficult mainly due to the fact that, as described above, the holder of the IOSS number declares the VAT to be paid to the issuing tax authority using data at the level of the Member State of destination rather than transaction level data. While sales platforms are required to keep record of transactions in sufficient detail and to provide them to the tax authorities on request, this makes it really difficult to quickly and efficiently verify the individual transactions and correct data as necessary. The solution would be for the EU customs authorities to access the platforms' records not only on request, but either having them annexed to the declarations, or gaining online access.

The Member States may determine their prohibitive and restrictive provisions in different ways, and right now there is no common database available at EU level. Therefore, in cases where release for free circulation does not take place in the Member State of destination, it is not possible to review them, and the customs authority conducting the import procedure will apply its own national rules in the process. Nevertheless, it is important to note that this is not only the case for e-commerce, but also for 'normal' external trade. To address the situation that weakens the unity of the customs union, there is need for even closer EU coordination.

The issue of undervaluation, which the new regulation was meant to address, is still present in e-commerce. The goods previously valued below EUR 22 have presumably moved closer to their real values, but there are still many cases of undervaluation, especially around the thresholds (EUR 150 for consignments of negligible value, which practically covers e-commerce,¹⁴ and EUR 45 for shipments sent by one private individual to another¹⁵). The new system has not made it easier for the authorities to check undervaluation, which can be done mainly by contacting the buyers. A solution to this would be the possibility to access the platforms' databases directly, which would further limit the potential for undervaluation fraud. Again, it should be pointed out that there is little to be gained by investigating such cases, as the traditional methods would only be able to deal with them through a disproportionate investment of resources. A further problem is the fact, as already explained in this paper, that in the case of IOSS, the platforms provide aggregate tax returns, which would need to be adjusted according to the inspection results. Right now, however, this can only be done through ad hoc enquiries and, again, with considerable effort.

The issue of undervaluation and unauthorised use of IOSS numbers could be addressed by having online access to the platforms' databases, which would also allow for random checks. This is because at the moment of purchase, the platforms have all the information required, including details of the buyer and seller, the price, the cost of transport and insurance (if any), as well as details of the transaction (typically bank card transaction). Accessing them would make it possible for the tax and customs authorities to tackle e-commerce abuse. ■

NOTES

- ¹ Covid-19 had an adverse effect on revenues.
- ² Council Directive 2009/132/EC of 19 October 2009 determining the scope of Article 143 (b) and (c) of Directive 2006/112/EC as regards exemption from value added tax on the final importation of certain goods
- ³ Consignment Note 22 is a document filled in by the sender for postal items, which can be used up to 300 SDR with a specified content. Postal service providers submit a customs declaration to the authorities relying on the data indicated in these documents.
- ⁴ Article 143 (a) of Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code
- ⁵ One Stop Shop
- ⁶ <https://oss.nav.gov.hu/>
- ⁷ Title XII, Chapter 7 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax
- ⁸ Article 1 (48) of Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code
- ⁹ Act CXXXVII of 2007 on Value Added Tax
- ¹⁰ Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty
- ¹¹ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, Articles 369x (1) and 369zb (3), and Act CXXXVII of 2007 on Value Added Tax, Articles 253/V (1) and 253/ZA (3)
- ¹² Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, Articles 369x (2), and Act CXXXVII of 2007 on Value Added Tax, Article 253/V (1)
- ¹³ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, Article 369zb (3), and Act CXXXVII of 2007 on Value Added Tax, Article 253/ZA (4)
- ¹⁴ Article 23 of Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty
- ¹⁵ Article 25 of Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty

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