

E-Commerce Guidelines: Customs in Germany and the EU



The EU is a domestic market and a customs union with harmonized customs legislation. However, the member states are responsible for VAT law, i.e. the VAT rates for products and services.

When are import customs duties required for imports into the EU?

No matter whether you send your products from a third country directly to commercial or private customers in the EU, or maintain a warehouse there with a logistics service provider or a marketplace, a customs declaration is always required at one of the customs offices in the EU, of which there are more than 2,100. This customs declaration is made in electronic form, usually by a freight forwarder, parcel service or customs broker based on your commercial or pro forma invoice and other required supporting documents. As of July 1, 2021, this also applies to small consignments with a value of up to EUR 22, which until then did not have to be recorded electronically.

As an economic operator that needs to make use of an electronic customs declaration in the EU, you would also need an **EORI number** (Economic Operators' Registration and Identification Number) if you are a non-EU company. This registration is done once for each company in the EU and for third country companies in the member state where they first appear as a trader in need of a customs declaration. The EORI is thus valid throughout the EU and helps the customs authorities to clearly identify your company. For Germany, the application is made via the [Form Management System](#) of the Federal Ministry of Finance.

Some EU customs authorities already offer web applications for imports using the “standard procedure”, such as Germany with the [Internet-Zollanmeldung-Eingang \(IZA - Internet customs declaration - import\)](#). After calling up the input screen, however, it quickly becomes clear that a certain amount of customs knowledge is required. As incorrect customs declarations entail economic risks for the importer, we recommend that you hire an experienced logistics service provider or customs agent.

In order to enable efficient and cost-effective customs declarations, even for shipments with a low intrinsic value of up to EUR 150, the German customs authority, for example, is planning special applications such as ATLAS-IMPOST from January 2022. The customs declaration will be simplified by allowing a reduced amount of data to be sent, which means mail order companies should then also be able to use it directly without having to commission a logistics service provider. However, this procedure cannot be used for excisable goods, such as alcohol, tobacco or coffee.

Once the goods have been released into “free circulation in the EU” by means of an appropriate customs declaration, they can be transported to the country of destination of your customer or your warehouse location without further action from a customs office. However, this does not apply to excisable goods, such as alcohol, tobacco or coffee.

What import duties are due?

The electronic customs declaration is used to determine the import duties for your goods into the EU. These include import sales tax and any applicable customs duties. Some products, such as alcohol, tobacco or coffee, may be subject to additional excise taxes.

The import sales tax corresponds to the respective VAT rates of the EU member state, and can be recovered by the commercial importer as input tax deduction, just like “standard” value added tax.

For shipments to private customers in the EU with an intrinsic value below EUR 150, you have the option of participating in the so-called IOSS procedure (Import-One-Stop-Shop) for your shipments from Switzerland or Liechtenstein since July 1, 2021. In this case, no import VAT is levied on imports into the EU. In return, you agree to pay the value added tax of all EU member states, which has been collected via purchases in your webshop, on a monthly basis to the central office in the country where you completed your IOSS registration. We have compiled further information on the new IOSS procedure, which is available separately.

Customs duties are charged as a percentage of the customs value of your commercial invoice and cannot be recovered. They thus affect the expenses of the importer. Customs duties may apply to goods originating in countries that do not have a free trade agreement with the EU.

You should therefore determine the correct customs tariff numbers for your products before you import them, in order to ensure that import sales tax and customs duties are levied correctly. To do this, you can check the [Swiss customs tariff TARES](#) or, on the EU side, the [TARIC database](#). A customs consultant will also be happy to assist you with the correct classification of your products in relation to the customs tariffs.

Duty-free or duty-reduced imports

The import of shipments with an intrinsic value of less than EUR 150 under the IOSS procedure are generally duty-free.

If your shipments have an intrinsic value over EUR 150, and if they come from countries which have a free trade agreement with the EU, they are considered “preferential” and no or at least reduced duties are applied.

You provide the proof of “preferential” origin using a declaration of origin with the prescribed wording on your commercial invoice or, alternatively, with a movement certificate (EUR.1, EUR-MED, A.TR). In these cases, you must also be able to prove the origin to your national customs authorities at any time. This can be done - depending on your individual set-up - with a preference calculation, supplier declarations, customs documents or assessment decisions.

An overview of the EU free trade agreements, and information on the required wording of a declaration of origin and on movement certificates can be found on the [WuP-Online](#) service page of the German customs authorities. In the [proof of origin leaflet](#) of the Swiss Federal Customs Administration (EZV), you will find further valuable information on the obligations to provide evidence in Switzerland when issuing declarations of origin.

Who pays the import duties?

If you supply your customers in the EU **via an importer there (B2B2C)**, you can arrange the import via the Incoterms used so that import duties are charged to them. As a commercial enterprise, they can recover the import sales tax as an input tax deduction in their periodic advance sales tax return, and will take any customs duties into account in their product calculation. Make sure that your importer is actually familiar with the import processes in his member state to avoid any unpleasant surprises.

If, on the other hand, you **stock your warehouse using a logistics or fulfillment service provider** in the EU, you will need your own VAT registration in that Member State. This is because at the time of crossing the border, you lack an EU buyer who can act as importer and debtor of the import sales tax. Here, too, you use the Incoterms to control the electronic customs declaration by your service provider. You will now be charged the import sales tax yourself, and then make the input tax deduction as part of your own periodic advance sales tax return. Check with your tax advisor to what extent you can use the IOSS procedure for distribution from your warehouse.

For **direct distribution to B2C customers** in the EU, i.e. shipments delivered from Switzerland or Liechtenstein directly to private customers there immediately after importation into the EU, a distinction based on the intrinsic value of the shipment makes sense.

Consignments with a value of less than EUR 150 can be imported under the IOSS procedure without the levying of import sales tax. This means that in such a case, no separate VAT registration is required in the EU member state of import. However, the obligations according to the IOSS procedure do apply.

Shipments with an intrinsic value of over EUR 150, on the other hand, are not IOSS-eligible. The import is therefore carried out here with the payment of the import sales tax yourself. You can then recover this via your own VAT registration as part of your advance sales tax returns

for input tax deduction. Check with your tax advisor to determine the extent to which you can use the OSS procedure for direct distributions.

In certain constellations, a combination of all of the described options may be necessary.

Due to the complex customs and value added tax requirements in the EU, designing an optimal set-up for EU distribution in e-commerce can be extremely challenging. Incorrect processes can result in various sensitive, economic disadvantages. You should therefore get advice from experts. Your S-GE will be happy to put you in touch with the appropriate contacts.

VAT registration in the EU

As a third country company from Switzerland or Liechtenstein, you have the option of registering for value added tax purposes in any member state of the EU. In Germany, as probably the most important sales market within the EU, this is done at the [Tax Office Konstanz](#).

If this is done, you can handle imports using your own tax number, wherever necessary. By using the Incoterms DDP, duty and tax paid on your commercial invoices, you pay the import duties yourself and then invoice your EU customers in accordance with German value added tax law.

With a VAT registration in Germany, you do not usually trigger any “tax on profits” liability in Germany. However, you will be subject to sales tax obligations, such as the timely submission of advance sales tax returns, the annual sales tax return, summarized reports and Intrastat reports. We recommend that you hire a tax advisor for the tax registration and completion of the resulting reporting requirements.

Why does it make sense to have a commercial presence in the EU?

With your own VAT registration, in Germany for example, you can stock your EU warehouse and you relieve your customers of the administrative burden and the incalculable costs of import customs clearance. The new IOSS procedure also brings advantages for mail order companies from third countries.

However, even these solutions reach their limits in some cases. The reason here is the residency requirement in the EU for the importer for many business transactions. In some cases, economic considerations also speak against the IOSS procedure or a tax number:

1. Third country companies based in Switzerland and Liechtenstein only have the option of importing in their own name and using their own tax number at the German border customs offices at the Swiss northern border.

What's more, EU residency is required at all other border customs offices. This concerns shipments from Switzerland and Liechtenstein via the known parcel services with import customs clearance, e.g. in Cologne-Bonn or Leipzig. And also direct imports from Asia arriving at German seaports or airports.

With your own subsidiary, you can act freely as an importer throughout the EU. The subsidiary will have its own tax registration, in Germany for example. A tax number for your Swiss or Liechtenstein company is then no longer required.

2. You import products for which the EU has further commercial regulations. In the case of foodstuffs, for example, the EU Food Information Regulation (LMIV) requires that the EU address of the importer be indicated on the sales packaging.

A separate subsidiary can be used as an EU importer of your products. The resulting food law obligations are then also transferred to your EU subsidiary.

3. If you import a large number of packages each shipping day to your customers in the EU, a separate electronic customs declaration is required for each individual delivery, even though you are importing under the IOSS procedure or your own tax number. These will be charged to you by the contracted logistics service provider or customs agent, and they can soon exceed any economic boundaries you have set.

If your subsidiary is involved in the respective commercial operations, it acts as importer into the EU and the import is possible with one customs declaration - regardless of the number of end customers per shipping day.

Making a decision on the right set-up for market development in the EU depends on numerous legal framework conditions and economic considerations. Specialized service providers, such as [Kienzler and Wolf](#), can help you to optimally structure your cross-border business with the EU using its a network of customs, logistics, tax and legal experts.

Import-One-Stop-Shop (IOSS) for mail order companies from third countries

With its VAT digital package, the EU has been facilitating intra-community e-commerce trade in the B2C sector since July 1, 2021.

Until now, mail order companies whose deliveries to private customers in an EU member state exceeded a certain annual sales volume (the so-called sales threshold), also had to register there for VAT purposes.

The invoices to B2C customers were then issued with the VAT rate of this EU member state, and they also had to be paid there as part of the advance sales tax returns. This was not always feasible without the use of local fiscal representatives on site and involved considerable, additional administrative costs for the mail order company for up to 27 EU countries.

With the **one stop shop (OSS)**, which is part of the VAT digital package, mail order companies with EU-wide sales in excess of EUR 10,000 p.a. will now be able to transfer the value added tax of all EU member states, which has been collected via their webshop, to a central office in their respective country for their shipments to private customers in the EU. For Germany, this is the Federal Central Tax Office. This office will then take over clearing with the tax authorities of the other EU member states. This regulation also applies mutatis mutandis to mail order companies from third countries that maintain a warehouse in the EU.

The EU VAT digital package also offers opportunities for direct deliveries from third countries such as Switzerland and Liechtenstein. So for shipments with an intrinsic value of less than EUR 150 to private customers in the EU, the so-called **Import-One-Stop-Shop (IOSS)** procedure can be used.

If they participate in this procedure, mail order companies from third countries will no longer be required to register for VAT in each EU member state if the sales thresholds are exceeded there.

Instead, the respective value added tax for each EU member state, which is collected from B2C customers via the webshop's check-out process, is paid on a monthly basis to the Federal Central Tax Office in Germany as the single point of contact. Mail order companies from third countries such as Switzerland or Liechtenstein require a representative based in the EU for this purpose.

Furthermore, when using this import procedure, no import sales tax is due for the mail order company when importing into the EU. Capital that was previously tied up for EU import tax will thus be freed up for you in future.

From January 2022, it is expected that the German customs authority will offer the possibility to transmit electronic customs declarations for IOSS shipments with a reduced amount of data using the ATLAS-IMPOST application. The time required for customs declarations will therefore be reduced and more cost-effective, or it should even be possible for the mail order company to complete the declarations itself in future.

Do you have any questions?



Philip Morger

Senior Consultant Internationalization Starters

<mailto:PMorger@s-ge.com>

+41 44 365 52 20