

CUSTOMS PROCEDURE 42 AND FISCAL REPRESENTATION

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René Euskirchen
Lukas Tscheu



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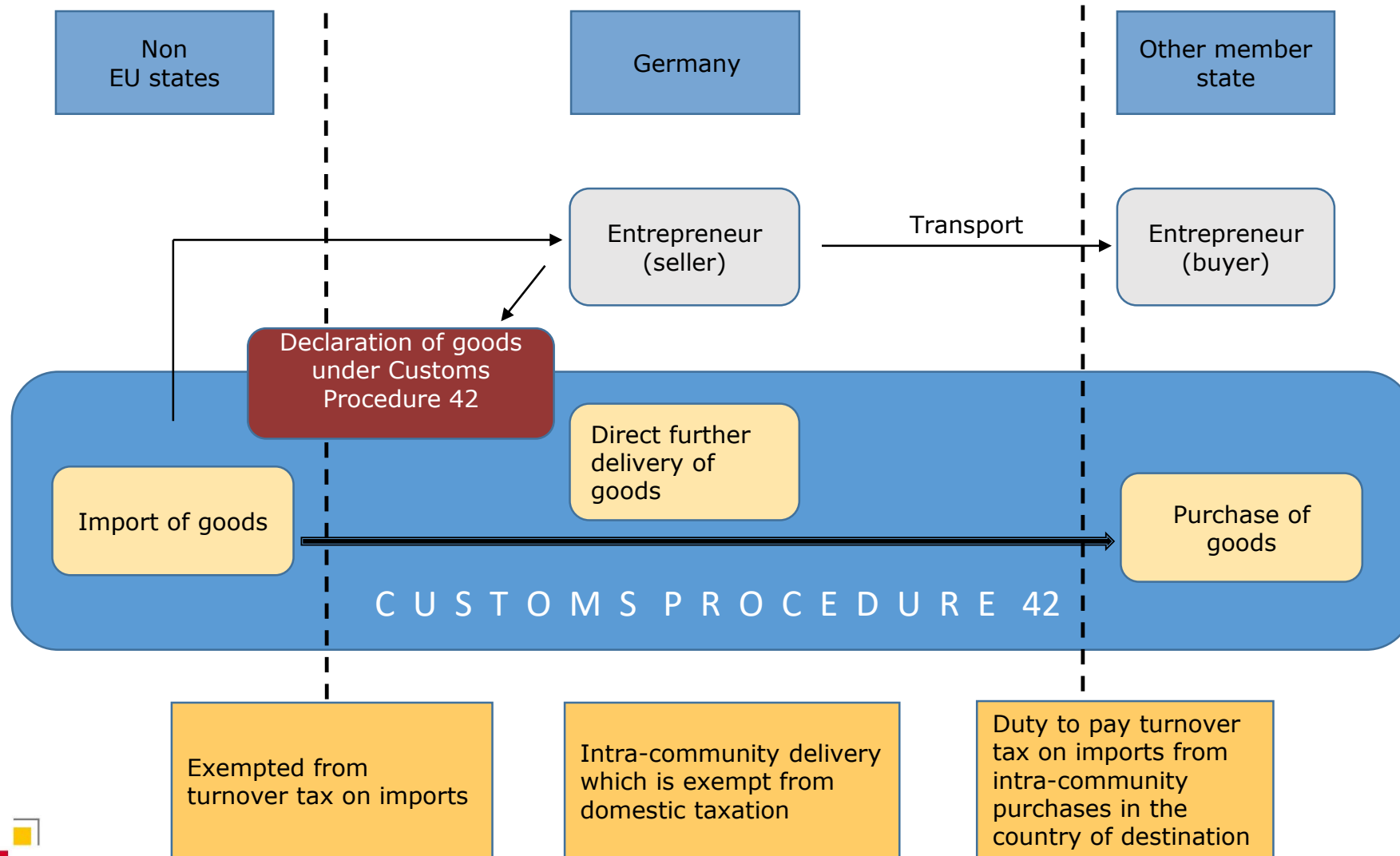


Audits of the German SAI

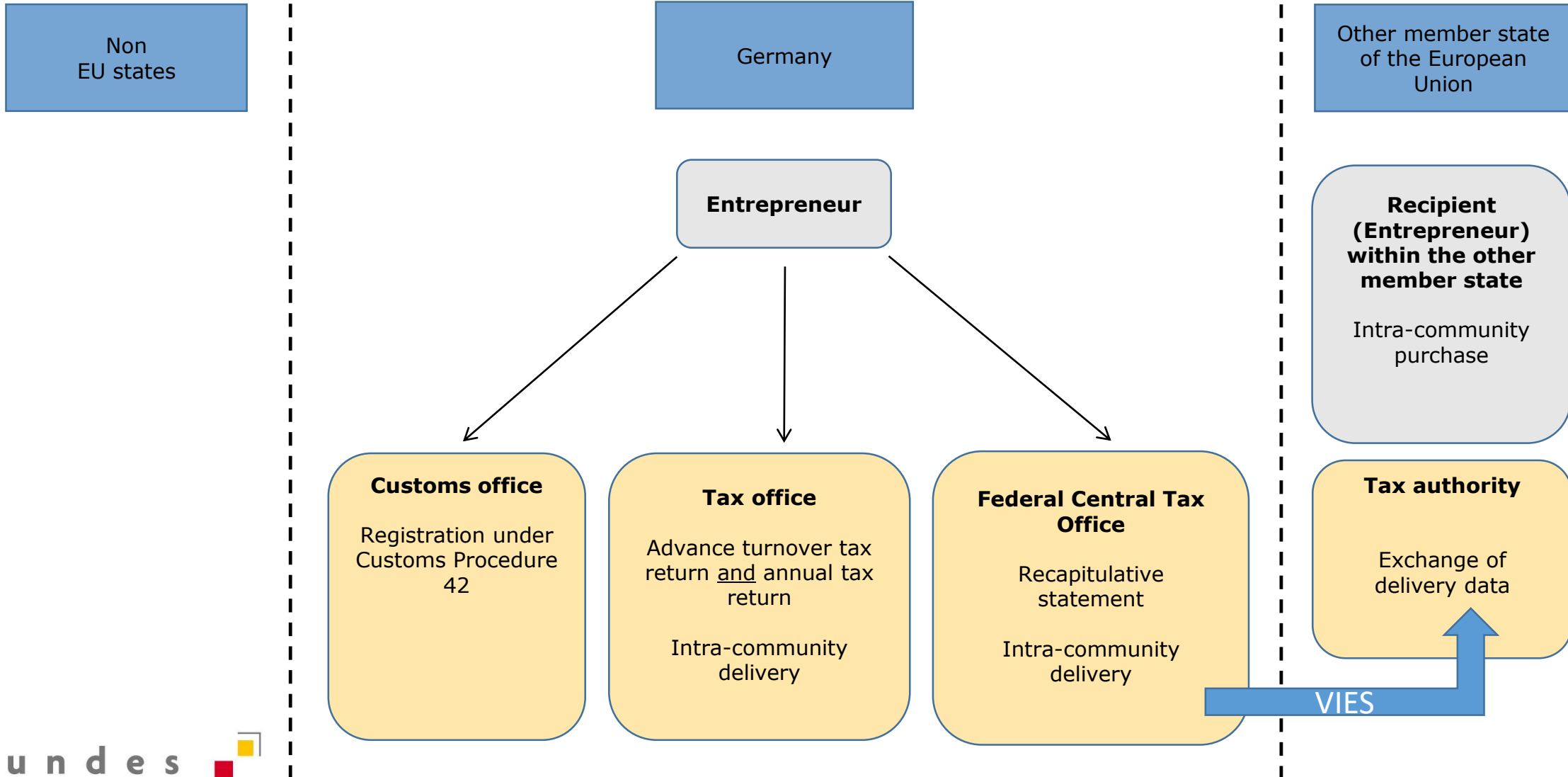
- 2016/2017 Turnover tax-related fiscal representation
- 2019 Customs Procedure 42 from a customs law perspective
- 2019 Customs Procedure 42 from a turnover tax law perspective



Customs Procedure 42 at a glance



Declaration duties and data exchange



Customs Procedure 42 - complexity

Customs law

- EU entrepreneur
 - May submit customs declarations
- Non-EU entrepreneur
 - Declaration of goods: Representative in the EU required

Tax law

- Foreign entrepreneur
 - Registration with the Federal Central Tax Office (turnover tax identification number)
 - Registration with the tax office

Time-consuming and complex



Basics – VAT-related fiscal representation

Represented
entrepreneurs?

- Foreign entrepreneur
- Only tax-free sales
- No pre-tax allowance

Fiscal
representative
- who?

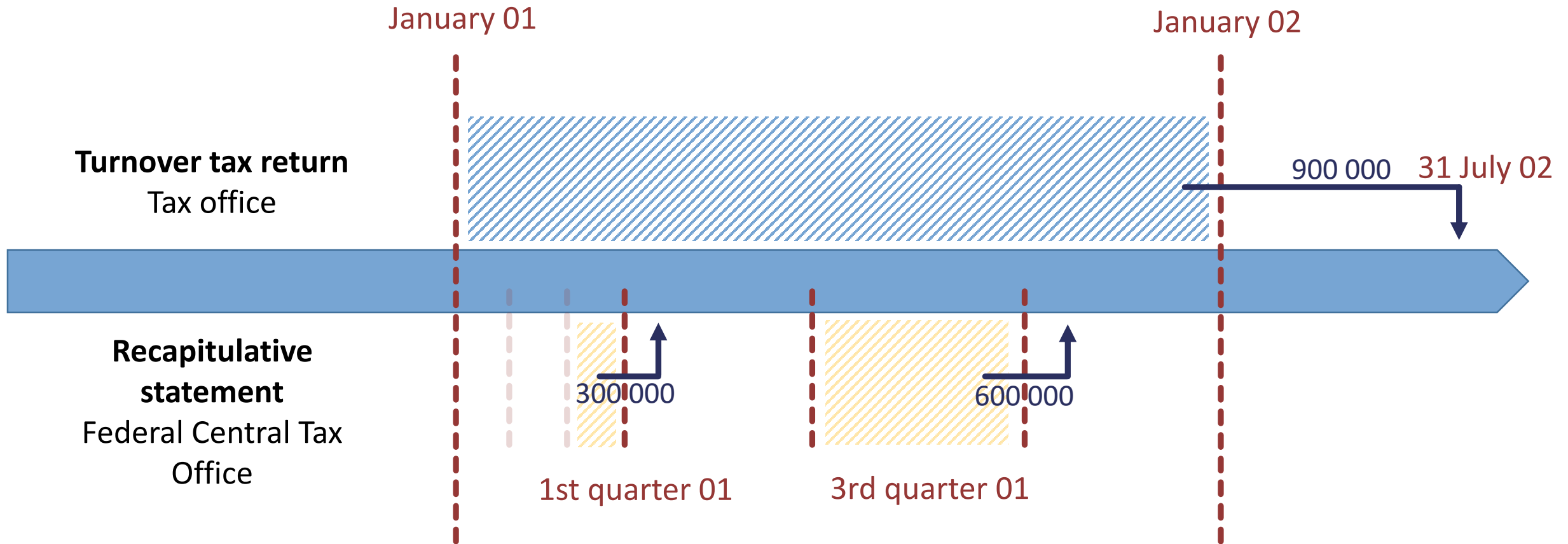
- Tax consultant
- Haulier
- Customs declarant

Tasks
- how?

- Customs declaration
- Tax returns
- Recapitulative statements



Declaration duties of the fiscal representative



Audit of turnover tax-related fiscal representation

Audit preparation

- Data request to the Federal Central Tax Office
 - All fiscal representatives registered in Germany
 - Identifiable through industry code
- Result: 331 fiscal representatives are registered (as of 2015)
 - Of which 153 have been audited



Audit and Findings

- Data requests relative to
 - Intra-community deliveries stated in the turnover tax return
 - Intra-community deliveries stated in the recapitulative statement
- The data stated in turnover tax return and recapitulative statement is often not identical



Not detected by tax bodies



Different data in declarations

Recapitulative statement (excerpt)

Einlagebogen Nr. zur Zusammenfassenden Meldung für den Meldezeitraum 20

Umsatzsteuer-Identifikationsnummer (UST-IdNr.) Bitte 9 Ziffern eintragen
 01 DE 1234567890

Jan. April Juli Okt.
 Feb. Mai Aug. Nov.
 März Juni Sept. Dez.
 Jan./Feb. April/Mai Juli/Aug. Okt./Nov.
 1. Quart. 2. Quart. 3. Quart. 4. Quart.

Kalenderjahr
 Berichtigung (falls JA, bitte 'x' eintragen) 03

Bitte beachten!
 Sonstige Leistungen bzw. Dreiecksgeschäfte sind in Spalte 3 jeweils durch Eintragung der Ziffer "1" oder "2" entsprechend zu kennzeichnen. Wurden sowohl Warenlieferungen, sonstige Leistungen und/oder Dreiecksgeschäfte an denselben Unternehmer erbracht, sind diese in getrennten Zeilen anzugeben.

Zeile	Länderkennzeichen	1	2		3
			Summe der Bemessungsgrundlagen		
		USt-IdNr. des Erwerbers/ Unternehmers in einem anderen EU-Mitgliedstaat	volle EUR	Ct	Sonstige Leistungen (falls JA, bitte 1 eintragen) Dreiecksgeschäfte (falls JA, bitte 2 eintragen)
1	XX	1234567890	300.000		
2	XX	0987654321	600.000		
3					
4					

900 000

Difference:
€100 000

German turnover tax exemption legally admissible?

Actual taxation in country of destination?

Tax return (excerpt)

2017

An das Finanzamt
 – Bitte weiße Felder ausfüllen oder ankreuzen, Anleitung beachten –
 Eingangsstempel

Steuernummer
 121

Umsatzsteuererklärung

Berichtigte Steuererklärung (falls ja, bitte eine „1“ eintragen) 110 50 17 1 99 11

A. Allgemeine Angaben
 Name des Unternehmers
 ggf. abweichender Firmenname
 Art des Unternehmens
 Straße, Haus-Nr.
 PLZ Ort
 Telefon
 E-Mail-Adresse

E. Steuerfreie Lieferungen, sonstige Leistungen und unentgeltliche Wertabgaben
 Bemessungsgrundlage ohne Umsatzsteuer volle EUR

Steuerfreie Umsätze mit Vorsteuerabzug
 a) Ingemeinschaftliche Lieferungen (§ 4 Nr. 1 Buchst. b UStG)
 an Abnehmer mit USt-IdNr. 740 1 0 0 0 0 0 0

1 000 000



Other findings

- No cross-check between tax return and recapitulative statement
- Big time gap between turnover tax return and recapitulative statement
 - Cross-check is more difficult
- Opaque legal situation as to the recapitulative statement
- Represented companies are unknown to tax offices
 - Legality of fiscal representation is in question



Recommendations and their implementation

- Quarterly submission of advance turnover tax returns by fiscal representatives
- List of represented companies
- Clear rules governing the submission of recapitulative statements
- Cross-check



Special reports of the European Court of Auditors

- Special Report no. 13, 2011
 - Does the control of Customs Procedure 42 prevent and detect VAT evasion?
- Special Report no. 19, 2017
 - Import procedures: shortcomings in the legal framework and an ineffective implementation impact the financial interests of the EU



THANK YOU FOR YOUR KIND ATTENTION

René Euskirchen

rene.euskirchen@brh.bund.de

Lukas Tscheu

lukas.tscheu@brh.bund.de

