Brexit, trade and VAT

A guide to the new rules

Contents

Return to contents

With significant amendments to the existing customs and VAT rules contained within the EU-UK withdrawal and free trade agreements, businesses have had to adapt quickly to the new rules related to trade and VAT following Brexit.

Although many businesses have started to put the necessary procedure in place, there remains many issues that they have to contend with, which have emerged since the Brexit transition ended at the start of 2021.

To help give some insight into these issues and how to overcome the complexities of the new rules, we have prepared this helpful guide, which explores:

- EORI numbers
- Rules of origin
- Import VAT
- VAT registration

If your business requires assistance with any of these issues or support with trade and VAT post-Brexit, please speak to our experts.

This guide was accurate at the time of publication. The rules surrounding trade with the EU continue to evolve and change, so it is important that you seek professional advice.

Return to contents

1 First steps

Many businesses are still getting to grips with the impact of Brexit. As the new rules around customs, trade and VAT are phased in it is important that businesses:

- Obtain the relevant EORI numbers required to complete customs declarations and submit VAT returns
- Pay and account for VAT on imported goods
- Review commercial arrangements and terms of trade
- Confirm rules of origin
- Determine the customs classification and value of goods
- Make the necessary customs declarations to HMRC either on their own or with the help of an intermediary, such as a customs agent.

Businesses in certain industries also need to check:

- What export licences or certificates they require
- The marking, labelling and marketing standards for food, plant seeds and manufactured goods
- The rules for exporting or importing alcohol, tobacco and certain oils.

The new rules surrounding trade are now slowly being implemented as part of a phased approach under what is known as the Core Model.

The final stage of this process will be reached in July 2021, by which point there will be full controls in place for all goods that are imported.

UK businesses supplying goods to the EU will have to make full customs declarations at the point of importation.

Full Safety and Security declarations will also be required and there will be an increase in physical checks at the UK border as well.

Return to contents

2 The importance of EORI

Businesses must have an EORI number to move goods between Great Britain and other countries. It is a mandatory part of a customs declaration and is necessary to report and pay VAT as well.

Return to contents

Businesses may only require one EORI number, or they may have multiple numbers, depending on the nature of their business and how they trade with the EU.

GB

Businesses need a GB EORI number to move goods between Great Britain and the EU.

If the business uses a post or parcel company, they may tell the business if it needs an EORI number, but it is best to check.

If you already have an EORI number and it does not start with GB you will need to apply for a new one.

Businesses offering services to customers in the EU and not goods, do not need an EORI number. It only affects the physical movement of goods over the border.

EU

If a business makes declarations or gets customs decisions in an EU country, it will need to get an EU EORI number from the customs authority in the EU country where it is submitted.

XI

If a business moves goods into Northern Ireland or via it into the EU, then they should sign up for the Government's Trader Support Service and acquire an 'XI' EORI number.

Businesses need an XI number to:

- move goods between Northern Ireland and non-EU countries (including Great Britain)
- make a declaration in Northern Ireland
- get a customs decision in Northern Ireland

This free-to-use Trader Support Service is available to businesses of any size moving goods into Northern Ireland, providing guidance, training, a digital declaration support service and support from customs experts.

Return to contents

3 The rules of origin

Under the EU-UK free trade agreement, tariffs will not be charged where a business can demonstrate that goods meet these rules and are predominantly of UK origin.

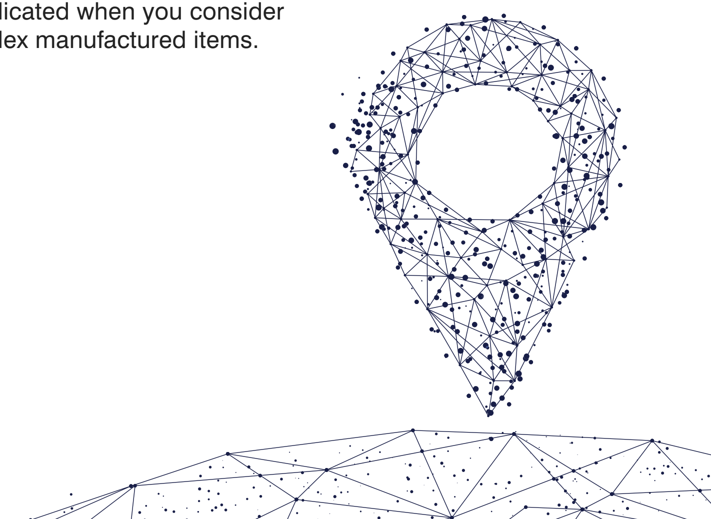
The simplest way to think about the rules of origin is to give goods being imported and exported an ‘economic nationality’.

This determines where they have been produced or manufactured, not just where they have been shipped to or bought from.

UK goods seeking to enter the EU under a preferential tariff, which means that no payment is due, have to prove that they are from the UK under particular rules agreed in the free trade agreement.

Generally speaking, the free trade agreement says that goods must be locally sourced, or must have had sufficient work carried out on them in the UK to be tariff-free.

This matter is in fact far more complicated than this and how the rules of origin apply to each sector or to each individual item exported and imported between the EU and UK varies and this only becomes more complicated when you consider more complex manufactured items.



4

Assessing rules of origin

The first step for a business is to determine what good is being traded. The World Customs Organization has a list classifying every product traded under tariff headings. Each product has a unique code which is grouped into broader categories.

Once the good is classified, the next step is to establish its 'economic nationality' as opposed to simply the country it came from.

This involves determining the good's value and where the contributions were made in adding value to the final product.

If all materials were obtained and processed in one nation, it would be 'wholly obtained' in that country. That would apply, for example, to agricultural produce, raw materials and natural resources.

However, it can be very difficult to determine origin for some complex manufactured products. In this case, the final product is determined by the location of the "last substantial transformation."

Return to contents

5 Substantial transformation

For preferential origin such as the EU-UK relies on, substantial transformation is defined through one or a combination of three main criteria:

- **Change of tariff classification:** When the work undertaken within a country results in a change of classification. For example, the unique code for car parts, 8708, is different to the code for a finished car, 8703. If a country assembles car parts into a finished car, it would qualify as a change of tariff classification.
- **Sufficient value-added:** The originating state must contribute a minimum percentage of the value of a product. Each component will add a certain amount of value, calculated as the percentage of the ex-works price of the final good (i.e. the total price of the inputs to the good exempting transportation and insurance costs).
- **Specific processing:** Finished products can qualify when particular specific working or processing activities are carried out. For example, a rule may require clothing products to be manufactured from yarn.

The precise rules for manufactured goods are very detailed and can change for each product depending on what is agreed in the free trade agreement.

Typically, for preferential origin, more than 50 per cent of value has to be added to claim origin, but it differs for each classification of goods that is imported or exported.

Return to contents

6 Complying with the rules of origin

For businesses to benefit from preferential tariffs when importing into the UK or EU, they must claim preference on their customs declaration and declare they hold proof that the goods meet the rules of origin.

The type of proof needed depends on the type of goods and where they're being imported from, or exported to, but could include:

- EUR1 or EUR-MED movement certificate
- Origin declaration
- Importers knowledge
- Generalised Scheme of Preferences form A

The length of time a proof of origin will be valid for depends on the agreement and the type of proof.

The UK and EU have agreed to a 12-month grace period. This means that until 31 December 2021, businesses do not need supplier's declarations from business suppliers in place when the goods are exported but they must be confident that the goods do meet the preferential rules of origin.

Businesses may be asked retrospectively by HMRC to provide supporting evidence that they were correct when declaring proof of origin.

This evidence could include production records, invoices, accounting details and suppliers' declarations. It is important that businesses retain this information.

Return to contents

7

Import VAT

Goods that move into the UK from the EU from 1 January 2021 onwards will be considered imports, meaning import VAT will be payable and customs declarations will need to be made.

Businesses must account for VAT on all goods imported using a postponed accounting system.

Under this system, import VAT on goods is accounted for and paid via a company's usual VAT return rather than paying it immediately at the point of entry. This means that rather than physically paying import VAT at the border and then reclaiming it on a subsequent VAT return, VAT is accounted for as input and output VAT on the same return.

Postponed VAT accounting, prevents an immediate impact to a business's cash flow when importing.

This system applies to all goods imported by VAT registered importers to the UK from anywhere in the world if they're worth more than £135, including those from the EU.

Return to contents

Accounting for import VAT on your VAT return

To account for import VAT via their VAT return under the postponed accounting system the goods must be for use in the business.

A customs declaration must also have been completed, which includes the relevant EORI numbers and a company's VAT registration number, where appropriate.

You must account for import VAT on a VAT return when you submit a declaration that releases goods into free circulation from one of the following special customs procedures:

- customs warehousing
- inward processing
- temporary admission
- end use
- outward processing
- duty suspension

You can only account for import VAT on a VAT return once excise goods are released for use in the UK.

If the business imports goods that are not controlled into Great Britain from the EU, between 1 January and 30 June 2021, they must also account for import VAT on their VAT return.

Controlled goods are those that must have a license to import, or excise goods like alcohol or tobacco, which have additional duties on them.

This rule still applies even if you delay the customs declaration i.e. where a business decides to record the information and tell HMRC up to six months later once goods are released.

Return to contents

9 UK import VAT duty deferment

Businesses that import goods regularly can set up a Duty Deferment Account that allows them to delay paying most customs charges, including import VAT.

Through this account, a business can make a single payment each month via direct debit instead of paying for each consignment separately as would be expected under the usual system of postponed accounting of import VAT.

Under this system, you can pay the duties and import VAT you defer during one calendar month as a total sum, either:

- on the 15th of the next month; or
- on the next working day after it if the 15th is not a working day

This means that you can defer duties and import VAT for between two and six weeks – offering an average of 30 days credit.

The scheme is open to importers or customs agents and freight handlers that work for importers and have an approved deferment guarantee or waiver in place.

Regardless of the method of accounting for VAT on imported goods, checks to ensure that the data on the customs declarations is accurate will continue to be highly important for VAT purposes, for all imports.

Return to contents

10

VAT registration in the EU

Businesses must determine the country where a supply takes place for VAT purposes so that they know where VAT due is payable.

Businesses should be aware that they may continue to create VAT liabilities in other EU Member States.

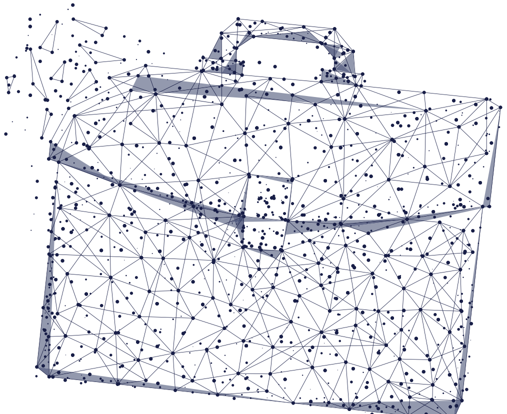
This may mean that businesses in the UK require multiple EU VAT registrations within each member state that they trade within.

Similarly, if you're an EU business selling to British customers, you need to register for UK VAT as of 1 January. You are not allowed to sell products to UK consumers if you're not registered for UK VAT.

The one exception to UK VAT registration requirements is for B2B remote sellers. Remote sellers don't need to register for UK VAT if they sell digital products only to businesses and/or professionals (100% B2B).

If you think you or part of your business falls into this category, we recommend you confirm your particular case with HMRC or a professional tax advisor.

Businesses need to be aware that the rules for VAT registration differ from one member state to the next and so it is important that they research this and complete the necessary registrations. Details of the various EU VAT rules can be found on the European Commission website.



Return to contents

11 Fiscal representatives

When it comes to VAT compliance in EU member states businesses may need to appoint a Fiscal Representative. They are a special type of VAT agent for foreign businesses with a VAT registration in another country.

They are responsible for the correct calculation and reporting of VAT for their clients and are the first point of call for local tax offices during investigations or audits.

They are usually held jointly and severally liable for any unpaid or undeclared VAT of their non-resident clients. They, therefore, typically charge higher fees and often require a bank guarantee or cash deposit to protect them against any client losses.

Confirming VAT registration

Businesses dealing with business-to-business sales are likely to also want to confirm the VAT details of customers. The EU VAT Registration Number Validation service allows businesses to check if a customer or supplier's VAT number is valid.

UK businesses will be able to continue to use the EU VAT number validation service to check the validity of EU businesses, but UK VAT registrations will cease to be included. HMRC has developed a service to ensure that UK VAT numbers can continue to be validated, which can be found on GOV.UK.

Return to contents

12 Impact on services

Post-Brexit there should be minimal impact on the supply of services. Business to business services are treated as though they are supplied where the customer belongs and that customer must account for the local VAT.

This will mean that for UK service suppliers they will continue to not charge UK VAT. For business to consumer supplies, UK VAT generally applies and this will also remain the same.

When receiving services, UK businesses may still have to apply a reverse charge to the receipt of services from non-UK suppliers. This ensures that there is no competitive advantage from sourcing services via non-UK suppliers.

Return to contents

13 Sales of digital services to the EU

After 31 December 2020, all supplies of digital services to consumers in EU member states are liable for VAT in the consumer's member state. The £8,818 annual threshold for cross- border sales of digital services to EU consumers no longer applies.

Return to contents

Organisations will have to charge VAT at the rate where the customer is based and declare those sales to the relevant EU member state.

UK businesses that had been using the UK VAT MOSS union scheme can continue to use the system but must register for the VAT MOSS non-union scheme in an EU member state.

For businesses wanting to continue using MOSS, they must register for the scheme by the 10th day of the month following their first sale after the UK leaves the EU. For example, register by 10 February 2021 if a sale is made in January 2021.

Alternatively, organisations can register in each EU Member State where they make sales. Check the EU's Europa website for further information about registering for VAT in EU member states.

Non-UK businesses that had previously used UK VAT MOSS non-union scheme will now need to register for the scheme in an EU member state.

Non-UK businesses need to declare sales of digital services to UK consumers by registering for VAT in the UK and declaring the sales via a UK VAT return.

To declare the VAT charge, businesses can register for VAT in each EU member state where sales are made or register for the VAT MOSS non-union scheme in an EU member state of their choice.

As of 1 January 2021, businesses are no longer able to use the UK's MOSS scheme to report and pay VAT on sales of digital services to consumers in the EU.

Businesses that sell digital services to consumers in the EU have to register for the MOSS non-union scheme in one of the remaining 27 EU member states. The Institute of Chartered Accountants in England and Wales understands many businesses are considering doing so in Ireland.

Under the non-union MOSS scheme, businesses wishing to use the scheme must register by the 10th day of the month following a sale. For example, if you make a sale in January 2021 you will need to register by 10 February 2021. Alternatively, a business can register for VAT in each EU member state where sales are made.

Return to contents

14 How we can help

We are standing by to support businesses with the complexities created by post-Brexit trade, including the challenges of VAT registration and import VAT.

We understand that during this difficult period it can be difficult to balance the needs of complying with Brexit and the other important day-to-day tasks of running a business.

If you would like carefully tailored business, tax and accountancy advice related to any of the points covered in this guide, please contact us.