

Adding value through the **PLUS FACTOR**



Introduction

On 1 January 2021 the transition period with the European Union (EU) will end, and the United Kingdom (UK) will operate a full, external border with our previous EU partners. This means that controls will be placed on the movement of goods between Great Britain (GB) and the EU. In addition, trade between GB and Northern Ireland and between Northern Ireland and the EU will be governed by the Northern Ireland Protocol.

The UK Government's Border and Protocol Delivery Group issued a 206 page document in July 2020 setting out the post-Transitional implications of "The Border with the European Union". This document summarises that guidance. In addition, it provides guidance on the impact of the Northern Ireland Protocol on businesses. In addition, guidance has been provided on additional VAT changes which will arise as a result of the UK's departure from the EU.



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Movement of Goods

The physical movement of goods is one of the areas that will create new issues and additional administrative burdens on businesses; whether that is bringing goods in or exporting goods from the UK.

Currently, the VAT and customs obligations and requirements are very different if you are trading with customers in other EU member states compared with when goods are being imported and exported to jurisdictions outwith the EU.

During the Brexit transitional period which ends on 31 December 2020; the UK continues to be treated as a part of the EU meaning that no additional Customs declarations are required for movements of goods between the UK and the EU.

However, from 1 January 2021, the UK's departure from the EU will see the biggest change in the UK Customs landscape since the introduction of the EU Single Market in 1993. Many businesses who, for more than 25 years, did not have to deal with customs documentation and tariffs will need to understand new and complex processes.

To ensure the smooth transition of goods between the UK and the EU post Brexit, UK businesses will need to be aware of the requirements. This will ensure:

- ✓ The goods arrive without undue delay;
- ✓ The correct amount of duty is paid; and
- ✓ All necessary customs and other regulatory documentation is completed correctly and fully.



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The UK Government has announced that in order to allow businesses to adapt to the changes, there will be a six-month phased implementation of the new processes.

From 1 January 2021

Businesses may have up to 6 months to submit the necessary customs declarations with the payment of any tariff being deferred until the entry is submitted. The Goods Vehicle Movement Service (GVMS) will only apply to transit movements.

From 1 April 2021

Businesses will be required to pre-notify movement of animal and plant products and submit the relevant health documentation. Any physical checks on these products will be conducted at the point of destination until 1 July 2021.

From July 2021

Full customs border becomes effective. Full Safety and Security documentation will be required and sanitary and phytosanitary checks on animals, plants and their products will take place at GB Border Control Posts. The GVMS will apply to all import, exports and transit movements at relevant border locations.

With circa 46% of goods removed from the UK in 2019 being supplied to the EU, 1 January 2021 will see a significant increase in the volume of Customs declarations and businesses will need to ensure that they are not left behind.



Actions to Take

Regardless of how the UK's negotiations with the EU progress, there are certain actions that all businesses should consider.

Apply for a GB EORI Number

An EORI is required for all businesses moving goods into or out of GB. Applying for an EORI is straightforward but it can take up to a week for the number to be issued. HMRC did auto-enrol a number of VAT registered businesses prior to October 2019; however, VAT group members may need to take specific action to obtain their own EORI number.

Appoint a Customs Intermediary

Given the changing requirements and the importance of correct declarations, it is common for businesses to appoint an intermediary to prepare and submit the necessary customs documentation. If an intermediary is not appointed, businesses may need additional software to allow access to HMRC's systems to make their customs declarations themselves.

Apply for a Duty Deferment Account

For those regularly importing goods on which a customs duty, excise duty or import VAT cost liability applies, a Duty Deferment Account allows the payment to be made once per month via direct debit.

Identify & Maintain a record of the Correct Commodity Codes

For the goods you will be moving. The applicable duty rate is based on the commodity code. Declaring incorrect commodity codes can result in penalties and unanticipated additional duty costs.

Understand & Review Commercial Arrangements

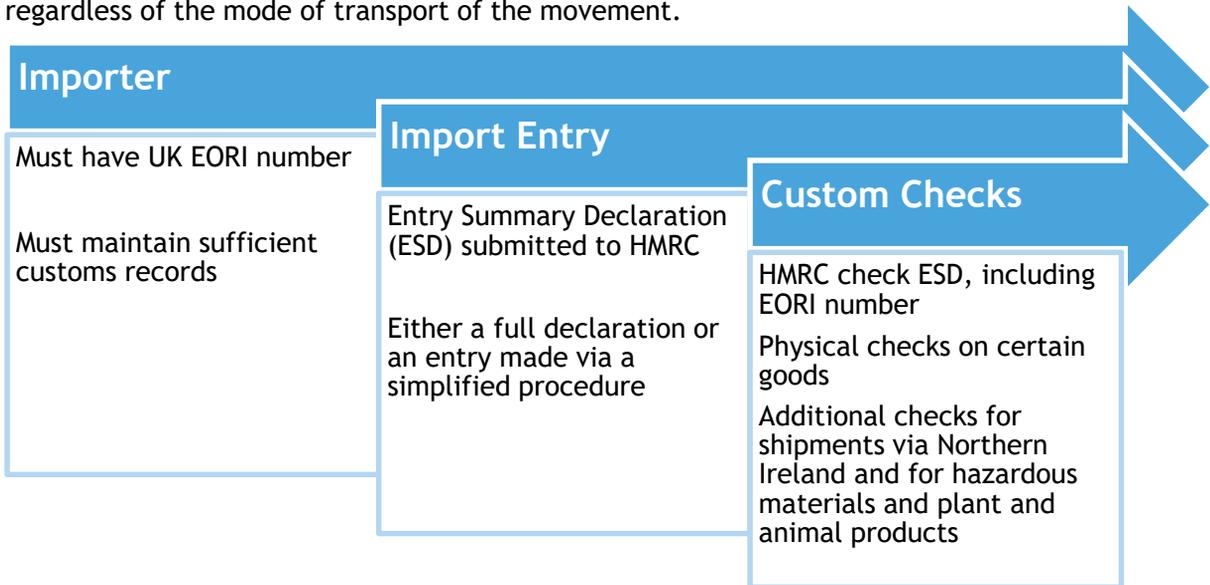
The contractual obligations are based on the Incoterms agreed and, following 1 January 2021, the current Incoterms for EU movements may place additional burdens on businesses. It is important that the impact of the commercial arrangements are understood and, where appropriate, steps taken to ensure that changes are made.



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Import Procedures

The principals of HMRC’s Core Model will apply to all goods movements between GB and the EU regardless of the mode of transport of the movement.



Special Procedures

There are a number of import reliefs and regimes that UK businesses may benefit from.

Most regimes require a Customs Comprehensive Guarantee (CCG), a financial guarantee provided to HMRC that covers potential customs liabilities and debts. With the EORI number, the CCG is the cornerstone of the import regimes.

These regimes can simplify and speed up the import processes or can help defer or remove duty costs. Applying for a CCG and some of the more complex regimes can take over 4 months and we would recommend that contact be made with HMRC as early as possible to ensure that any simplification is in place in advance of the end of the transitional period.



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VAT Accounting

Currently, import VAT must be paid when the goods are entered to HMRC or deferred until the 15th day of the following month using a Duty Deferment Account (DDA). VAT on acquisitions from the EU are declared on the regular VAT return. However, from 1 January 2021, the cash flow benefit available for acquiring goods from the EU will be extended to all imports through the introduction of Postponed Import VAT Accounting. Going forward, importers will declare and recover import VAT on the same VAT return.

Who can operate postponed import VAT accounting?

VAT registered businesses do not need to be authorised to account for import VAT through their VAT return. Businesses can account for import VAT if they enter goods to free circulation and:

- + they include their VAT registration number on the customs declaration;
- + they include their EORI number on the customs declaration; and
- + The imported goods are for use for a business activity.

If goods are originally entered into a customs special procedure, import VAT due when these goods are released to free circulation can also be accounted on the VAT return through the postponed import VAT accounting regime. This includes goods entered to:

- + Inward processing
- + End use
- + Duty suspension
- + Outward processing
- + Temporary admission
- + Customs warehousing

Postponed import VAT account can also be used for excise goods released for home consumption from an excise warehouse after being entered to duty suspension at the time of their importation.

When is payment of import VAT due?

As outlined above, VAT registered traders will be able to account for import VAT on their VAT return by using postponed VAT accounting from 1 January 2021. Unless they are eligible to defer their supplementary declarations, they will not be compelled to use postponed VAT accounting. Non-VAT registered traders (and any VAT registered traders not using postponed VAT accounting) will need to report and pay import VAT through the customs processes. As with the current rules, VAT payments can be deferred using a Duty Deferment Account (DDA).



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From 1 January 2021 VAT on imported goods in consignments with a value of up to £135 will not be collected at the point of importation. Businesses selling goods to be imported into the UK with a value not exceeding £135 will be required to charge and collect any VAT due at the time of sale. Such businesses will need to register for VAT in the UK and to account for the VAT due on their VAT return.

How to complete your VAT Return from 1 January 2021

Postponed accounting allows you to declare and recover import VAT in the same VAT return. An online monthly statement will be available to download and keep for your records. The statement will show the value of import VAT postponed for in the previous month which you should include in your VAT return.

The following entries should be made to the VAT return:

VAT Return Box	What You Should Include
Box 1	The VAT due in this period on the imports which have been accounted for through postponed VAT accounting
Box 4	The VAT reclaimed in this period on the imports which have been accounted for through postponed VAT accounting
Box 7	The total value, excluding any VAT, of all imports of goods included on your online monthly statement

If you are eligible to defer the submission of the customs supplementary declarations during the initial 6 months of 2021, the import VAT will still be due based on the date of importation. As these goods will not be included on the online monthly statement at the time, businesses will need to estimate the import VAT due from their record of imported goods.

When the deferred declaration is subsequently submitted, these imports, and the relevant import VAT, will appear on the next online monthly statement. Businesses will be required to adjust their previous estimates and account for any differences on their next VAT Return.



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Calculating the Duty

In order to establish the duty due on a product, three key components are needed:

Tariff Classification

The classification describes the goods to be imported and is used to establish the relevant duty rate that will apply.

The UK issued its UK Global Tariff (UKGT) in May which sets out the duty rates that will apply to goods imported into the UK that do not qualify for a preferential rate.

Customs Value

The value of an import is normally based upon the price paid for the goods, subject to certain adjustments for freight and insurance costs, etc.

For intercompany sales, the customs value may differ from the transfer price.

The duty due is charged based upon a %age of the customs value.

Origin

The availability of preferential duty rates based upon Free Trade Agreements (FTA) are based upon the goods meeting certain origin requirements.

Complex rules help establish the “nationality” of the product which determines the rate. Only where it can be demonstrated that these rules are met do the goods coming from a jurisdiction with a FTA qualify for the preferential rate.

The UK Government has stated that the UKGT ensures that 60% of trade will come into the UK tariff free on WTO terms or through existing preferential access from January 2021. It is hoped that successful FTA negotiations will increase this.

We would recommend that businesses ensure that they have the necessary processes for establishing the correct tariff classification, customs value and origin are in place in advance of 1 January 2021. However, under the phased approach announced, although duties may become payable from 1 January 2021, it will be possible to defer payment until the customs declaration has been made.



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Transit

As the UK has adopted the Common Transit Convention (CTC), goods from Ireland passing through the UK on route to another EU country (or vice versa) would not need to be customs cleared on import and export from the UK. CTC does not apply for goods that are unloaded in the UK unless the goods are transferred to an appropriate customs procedure.

In addition to the normal customs documentation, the supplier will need to place the goods in transit and provide the carrier with the appropriate transit documentation to accompany the goods.

Additional Controls

Certain goods will have additional controls, and businesses need to ensure that all necessary obligations are met before movement of the goods. In particular, the following areas have additional requirements:

- ✓ **Excise Goods** - The UK intends to implement its own Excise Movement and Control System (EMCS). The excise duty on any controlled goods entering the UK will have to be paid at the UK border unless the goods are moved under ECMS to a bonded warehouse.
- ✓ **Plant & Animal Products** - specific Sanitary and Phytosanitary Controls apply to certain animals, plants and associated products which carry an increased risk of infection or disease. Pre-notification and health documentation requirements will be required from 1 April 2021.
- ✓ **Regulated Products** - Certain goods, including chemicals, pharmaceutical products, automotive parts and cosmetics, will need to meet EU regulations. As UK and EU regulations diverge over time, understanding the differences will become very important.



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Additional Controls

Section 1.2 of the UK Government’s document “The Border with the European Union” provides further detail on the specific additional import requirements for following categories:

Goods covered by International Conventions/Commitments

- ⊕ Endangered Species of Wild Fauna and Flora (CITES)
- ⊕ Rough Diamonds (Kimberley)
- ⊕ Temporary import of non-perishables (ATA Carnets)

Goods subject to Sanitary and Phytosanitary Controls

- ⊕ Animal products (Products of Animal Origin and Animal By-Products)
- ⊕ Fish, Shellfish and their Products
- ⊕ High-Risk Food and Feed Not of Animal Origin (HRFNAO)
- ⊕ Live animals and Germinal Products
- ⊕ Equines
- ⊕ Plants and Plant Products

Goods with Specific Customs Requirements

- ⊕ Excise Goods

Other Regulated Goods

- ⊕ Bottled Water
- ⊕ Drug Precursors
- ⊕ Explosives Precursors
- ⊕ Firearms
- ⊕ Market Surveillance
- ⊕ Veterinary Medicines
- ⊕ Waste
- ⊕ Medicines, Medical isotopes, Clinical Trial Supplies, Controlled Drugs, Substances of Human Origin

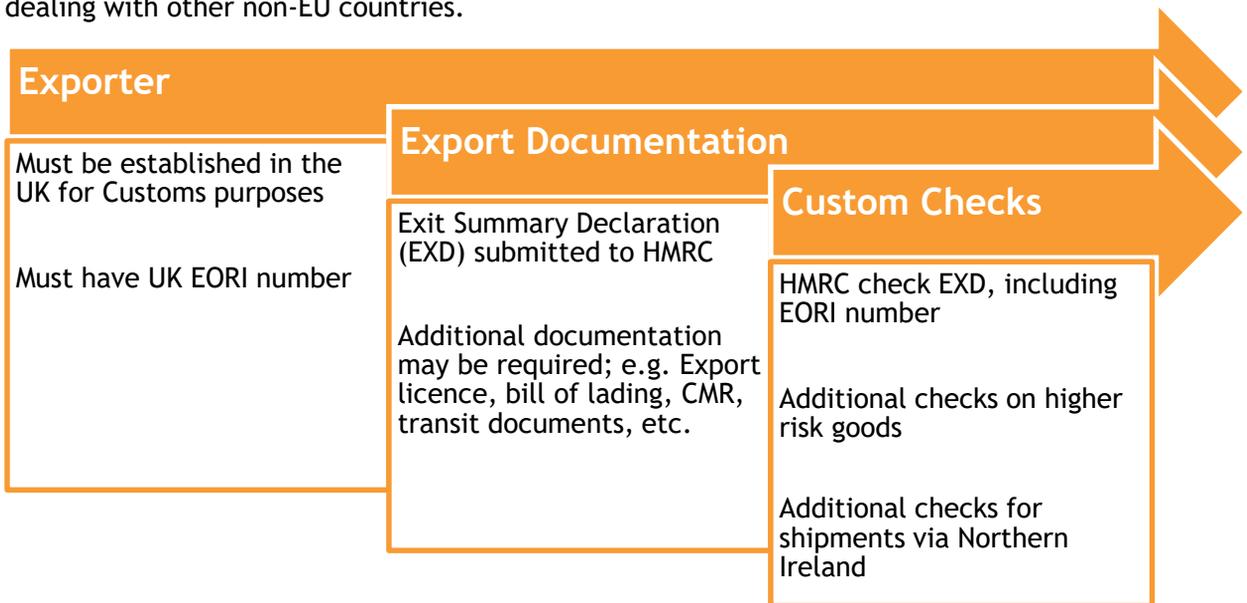


Life After Brexit

Export Procedures

Currently, when goods are sold and moved to a customer in another EU member state, the process is straight forward. No customs checks or clearance is required and, provided that you obtain and show the EU customer's VAT number on the sales invoice, the supply can be zero rated.

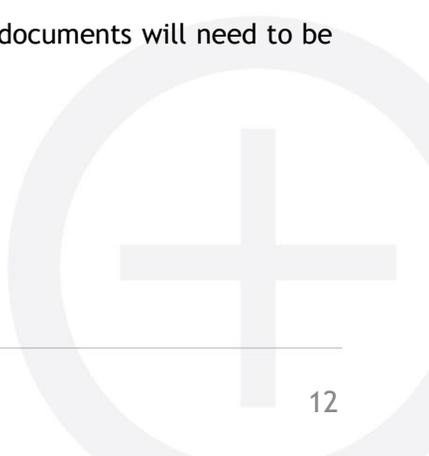
This all changes on 1 January 2021 where trade with the EU will follow the current processes for dealing with other non-EU countries.



Importing into the EU

If the UK business is also responsible for importing the goods into the EU, there will be additional customs obligations. In particular:

- ✦ A separate EU EORI number will be needed to import the goods into the EU;
- ✦ If the business has no EU establishment, it will be necessary to appoint an indirect representative to act as the declarant of the EU import documentation;
- ✦ The goods will have to be classified correctly in order to establish the appropriate duty rates that will apply.
- ✦ If a free trade or preferential arrangement is in place, additional documents will need to be prepared to support qualification for the preferential rates.



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Importing into the EU

The EU operate simplification procedures similar to those available in the UK. However, unless a UK business has an EU establishment, these simplifications will not be directly available. Whilst it would be possible to take advantage of these simplifications using an authorised customs compliance provider, this is likely to result in additional compliance costs.

Goods may also be entered to an outward processing regime to allow goods to be sent to the EU for processing or repair with full or partial relief of duty when the goods are brought back to the UK.

Transit

As the UK has adopted the Common Transit Convention (CTC), clearance in the EU can take place in the destination state rather than at the point of entry into the UK. This is likely to allow clearance more quickly at less busy customs jurisdictions rather than the main transit points from the UK into the EU.

In addition to the normal export documentation, the exporter will need to place the goods in transit and provide the carrier with the appropriate transit documentation to accompany the goods.

Additional Controls

Certain goods will have additional controls, and businesses need to ensure that all necessary obligations are met before movement of the goods. In particular, the following areas have additional requirements:

- ✓ **Plant & Animal Products** - Specific Sanitary and Phytosanitary Controls apply to certain animals, plants and associated products which carry an increased risk of infection or disease;
- ✓ **Controlled Goods** - Certain goods, including those with a dual military and civilian use, are subject to export controls, including licences, etc.;
- ✓ **Regulated Products** - Certain goods, including chemicals, pharmaceutical products, automotive parts and cosmetics, will need to meet EU regulations. As UK and EU regulations diverge over time, understanding the differences will become very important.



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Additional Controls

Section 4.2 of the UK Government’s document “The Border with the European Union” provides further detail on the specific additional import requirements for following categories:

Goods covered by International Conventions/Commitments

- ⊕ Endangered Species of Wild Fauna and Flora (CITES)
- ⊕ Rough Diamonds (Kimberley)
- ⊕ Temporary import of non-perishables (ATA Carnets)

Goods subject to Sanitary and Phytosanitary Controls

- ⊕ Animal products (Products of Animal Origin and Animal By-Products)
- ⊕ Fish, Shellfish and their Products
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- ⊕ Live animals and Germinal Products
- ⊕ Equines
- ⊕ Plants and Plant Products

Goods with Specific Customs Requirements

- ⊕ Excise Goods

Other Regulated Goods

- ⊕ Bottled Water
- ⊕ Drug Precursors
- ⊕ Explosives Precursors
- ⊕ Firearms
- ⊕ Market Surveillance
- ⊕ Veterinary Medicines
- ⊕ Waste
- ⊕ Medicines, Medical isotopes, Clinical Trial Supplies, Controlled Drugs, Substances of Human Origin

VAT Position

Provided that the necessary evidence is held to show the movement of the goods, exports can be zero rated. Currently UK businesses will take advantage of simplifications such as call-off stocks and triangulation. In order to continue to benefit from these simplifications, an EU VAT registration may be required.



The Northern Ireland Protocol

The end of the Brexit Transitional period on 31 December 2020 sees the UK leaving the EU VAT regime, Customs Union and Single Market. However, under the Northern Ireland Protocol, Northern Ireland (NI) retains a special, dual position within these frameworks.

This is summarised below:

Trade going from Northern Ireland to the rest of the UK should take place as it does now. There should be no additional process or paperwork and there will be no restrictions on Northern Ireland goods arriving in the rest of the UK.

No tariffs will be applied on goods moving from the rest of the UK to Northern Ireland provided that the goods will remain within the UK customs territory. Only those goods ultimately entering Ireland or the rest of the EU or deemed by HMRC to be at clear and substantial risk of doing so, will face tariffs.

The Protocol promises unfettered access 'with no additional process or paperwork' for trade going from Northern Ireland to the rest of the UK.

There will be some limited additional process on goods arriving in Northern Ireland, these will be conducted flexibly using any available discretion. It is not planned that there will be any additional physical customs infrastructure. However, to allow for appropriate controls on agricultural products, there may be an expansion to some existing entry point facilities

Trade to and from Northern Ireland from third countries will be handled in accordance with the above principles and, where the UK has Free Trade Agreements with those countries, Northern Ireland businesses will benefit from preferential tariffs in the same way that the rest of the UK will.



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As part of the Brexit Withdrawal Agreement, to avoid the need for physical border controls at the Irish land boundary, NI remains part of the EU VAT regime, Customs Union and Single Market.

From a VAT perspective, taxable cross-border goods and services between the EU and UK will become normal EU to/from non-EU third country. But the Protocol will create a complex treatment for the VAT on goods moving between Ireland, NI and Great Britain / GB. Goods shipping between NI and GB will become imports and exports rather than goods moving freely within the UK.

Goods moving in transit between Ireland and the EU via the UK will have special arrangements to minimise the disruption of existing trade.

The UK will offer a free Brexit customs declarations Trader Support Service (TSS), which will complete all customs and safety and security declarations. To move goods to or from Northern Ireland from 1 January 2021, affected businesses will need an EORI number that starts with XI. To get an EORI number that starts with XI, the business must already have an EORI number that starts with GB. Any UK businesses that signs up for the TSS before 23 November 2020 will automatically be allocated an XI EORI.

A separate application for an XI EORI will have to be made if a business does not sign up before 23 November.

The Northern Ireland protocol does not impact on the supply of services; however, HMRC issued a Policy paper on 26 October 2020 setting out the rules for accounting for VAT on goods moving between GB and NI from 1 January 2021. These rules are summarised below.



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Movement of own goods

The table below sets out the VAT and other reporting requirements when a business moves its own goods to and from NI:

Nature of movement	VAT treatment	Liability	Reporting obligations
EU – NI	Intra-community arrival	Acquisition tax due	Intrastat reporting
NI – EU	Intra-community dispatch	Zero rated	EC Sales & Intrastat reporting
NI – GB	Export from NI	Zero rated	EU Export declaration
NI – GB	Import to GB	No VAT due	No Import declaration
GB – NI	Export from GB	Output VAT declared	No Export declaration
GB – NI	Import to NI	Input VAT recovered	EU Import Declaration

Partially exempt businesses which move their own goods between the UK and NI risk creating irrecoverable VAT twice on the same goods. Businesses will be able to make an adjustment in their partial exemption annual adjustment to correct such issues.

Sales to third parties

Where goods are sold between GB and NI, VAT is charged, and is recoverable, as normal.

Intra-VAT group sales

Normally intra-VAT group sales are disregarded for VAT purposes. However, the Northern Ireland Protocol has resulted in some changes to VAT group VAT accounting.

- ⊕ Where the sale happens within a VAT group and the sale involves the movement of the goods from GB to NI, output tax needs to be charged on the sale.
- ⊕ If the goods are in NI when supplied to another VAT group member, unless both are established in NI, output tax is due.
- ⊕ Any output tax charged on intra-VAT group supplies is recoverable by the VAT group if used to make onward taxable supplies.



Post-Brexit VAT Position - Supply of Services

The main rules on the place of supply of services are likely to be unchanged following 1 January 2021. The guidance is silent on the 'use and enjoyment' rules.

Supply of digital services to EU consumers

Businesses selling digital services to EU consumers will no longer be able to use the UK's Mini One Stop Shop (MOSS) portal to account for VAT in relevant jurisdictions. Since 2015, providers of digital services have been able to report sales to consumers across the EU via a single MOSS return. This is completed on HMRC's online platform, and then the funds are redistributed by HMRC to the appropriate EU member state.

Going forward, UK businesses would have the option of registering for the MOSS non-union scheme in another EU jurisdiction. Non-EU businesses that used the UK as their point of entry to the EU MOSS regime, will also have to register in another EU jurisdiction to correctly declare their supplies to EU consumers.

Any supplies to UK Consumers will be declared on the normal UK VAT return.

Financial Services

As is the case for financial services supplies to non-EU customers, from 1 January 2020, the Specified Services Order will be amended to extend this VAT recovery to all exports of financial services, both to EU and non-EU customers. The Chancellor, Rishi Sunak indicated that this could be worth £800m per annum to the UK Financial Services sector.



Post-Brexit VAT Position - Ecommerce supplies of Goods

The cross-border supply of goods sold over the internet will change from 1 January 2021.

Supply of goods to EU Consumers

For UK sellers to EU customers, the distance selling simplification will no longer be available. Currently, UK online sellers that trade below the distance selling threshold in other EU member states can account for these sales through their UK VAT return. This simplification will not be available after 1 January 2021 and over 25,000 UK businesses may find themselves with a VAT registration requirement in multiple EU jurisdictions.

Supply of goods to UK consumers via online marketplaces (OMP)

For overseas sellers supplying goods to UK consumers via an OMP, the position will also change after 1 January 2021. The OMP will have the responsibility for accounting for the output VAT on the sale. The overseas seller will still be required to register for VAT and will be deemed to be making a zero rated supply of the goods to the OMP and the value of the sales will be declared in box 6 of the overseas seller's UK VAT return.

Overseas sellers will have to ensure that the VAT registration, etc. details provided to OMP is correct to ensure that the OMP can correctly report the sales. These rules only apply to supplies to consumers. Sales to business customers in the UK will remain the responsibility of the overseas seller. The OMP will provide the overseas seller with the VAT registration number of the business customer. The overseas seller will then be seen as making a normal UK domestic supply to the business customer. Unless the customer provides a VAT number, the overseas business (and the OMP) can assume that the supply is to a consumer and the OMP will account for the VAT due.

Where the overseas seller makes small value (>£135) supplies to UK customers via an OMP, the OMP is responsible for the import and output VAT elements of the supply.



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Other VAT considerations

EU VAT Refunds

If not required to register in another EU member state, the EU has confirmed that the 13th Directive procedure and reciprocity will apply. The deadline for 2020 claims under the existing EU refund procedure will be 31 March 2021 for UK businesses into the UK and vice versa.

Thereafter, claimants from GB will have to make claims to the EU under the existing 13th Directive processes.

Operating in Other EU Countries

As outlined above, a VAT registration in another EU jurisdiction may be advantageous for UK Businesses as it will allow access to existing EU simplifications. However, certain jurisdictions have approached UK businesses advising of the need to appoint a VAT representative post 1 January 2021.

The following EU countries are likely to require the appointment of a VAT representative after the end of the Transitional period:

Austria, Belgium, Croatia, Hungary, Poland, Portugal, Romania, Slovenia, Spain, Lithuania, Netherlands	
France, Finland, Italy, Sweden, Bulgaria	The requirement for a Fiscal representative may be removed if a treaty has been concluded concerning mutual assistance by the competent authorities
Cyprus	The requirement for a Fiscal representative may be removed provided that a bank guarantee is deposited with the tax authorities
Denmark	Not required for EFTA states



Life After Brexit

How Can AAB Help?

Whether it is a FTA or a 'No Deal' Brexit, coming hard on the heels of the COVID-19 pandemic, UK businesses will have little time to react to the final agreement.

However, there are steps that can be taken now and AAB's indirect tax team are able to assist businesses to understand and address the challenges.



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