

Brexit: VAT and customs issues for Northern Ireland

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Introduction

Regardless of whether the United Kingdom (UK) and European Union (EU) agree a new trading relationship by the end of the Brexit transition period, Northern Ireland's (NI) position has already been set out under the Northern Ireland Protocol to the Withdrawal Agreement. This will apply from 1 January 2021.

Under the Protocol, Northern Ireland will have the most complex VAT and customs regime in Europe. Businesses in, or trading with, Northern Ireland should start preparing now to meet the new rules.

Under the NI Protocol:

- Northern Ireland must follow the rules of the EU Single Market for goods, so its standards remain harmonised with Ireland and there is no need for regulatory checks on goods crossing the land border;
- NI businesses should receive unfettered access to the rest of the UK market;
- However, there will be some regulatory checks, including Sanitary and Phytosanitary (SPS) controls on agri-food products, for goods moving from Great Britain (GB) to NI;
- NI is part of the UK customs territory, but imposes EU customs duties in some cases and follows EU customs rules; and
- NI follows most EU VAT rules in relation to goods (but not services) and EU excise duty rules.

While the NI Protocol introduces significant additional complexity for NI businesses, it potentially gives them a competitive advantage as they will be able to trade freely within the EU Single Market as well as enjoying unfettered access to the whole of the UK internal market.

The changes mean the UK will have three different VAT regimes from 2021:

- NI VAT rules for goods (reflecting EU law);
- rest of UK VAT rules for goods; and
- UK-wide VAT rules for services.

Unlike businesses in the rest of the UK, NI businesses will also need to prepare for the significant changes to the EU VAT rules applying from 1 July 2021.

Unfortunately, there appear to be some differences of opinion between the UK Government and the EU in how the NI Protocol should be interpreted and applied.

In this briefing paper, we consider the VAT and customs implications for businesses trading goods between:

- Northern Ireland/Ireland;
- Northern Ireland/Other EU countries;
- Northern Ireland/Great Britain;
- Northern Ireland/Rest of the world (other than GB and the EU); and
- Great Britain/EU (including Ireland).

We will be publishing separate guidance on the VAT impacts for services.

Goods trade: Northern Ireland/Ireland

VAT

From 1 January 2021, the current VAT treatment should continue to apply to trade in goods between NI and Ireland. In particular:

- supplies of goods to Irish businesses should be treated as zero-rated intra-EU dispatches; and
- supplies to consumers will use the distance selling rules (so that Irish VAT will need to be accounted for when the level of sales exceeds the annual distance selling threshold)

The European Commission has announced a proposal to amend EU VAT law to introduce a special VAT identification number for businesses in NI in order to facilitate this treatment. This proposal must be agreed by all EU Member States, but the Commission hopes it should be in effect by 1 January 2021.

However, the fact that not all EU VAT regulations will apply in NI means there is some scope for mismatch with the EU position.

From 1 July 2021, major changes will be made to the EU's VAT rules, which will also need to be implemented in NI. Under the new rules, the distance selling thresholds will be abolished and VAT due on supplies to consumers in EU countries will need to be accounted for under a "One Stop Shop" (the Union OSS). This means NI businesses will need to charge VAT at the appropriate rate in the customer's country but account for this to HMRC.

NI businesses continue to be entitled to claim any VAT they incur on goods (but not services) in the EU through the existing EU VAT refund system.

Customs

EU customs rules will continue to apply in NI, so no customs controls, declarations or tariffs will be required for the movement of goods between NI and Ireland.

Along with NI's alignment to the EU Single Market rules for goods, this should ensure the frictionless land border between NI and Ireland is maintained.

However, it is not clear what the position of NI goods will be when they go to Ireland to be manufactured or processed for onward sale to countries which benefit from an EU Free Trade Agreement (FTA). If the NI goods do not count as EU origin, this could disqualify the finished product from benefitting from any preferential tariff under the FTA.





Goods trade: Northern Ireland/Other EU countries

The same rules should apply as for trade between NI and Ireland, as set out above.

However, there will be extra complications for businesses that move goods from NI across the GB land bridge to reach the EU (or vice versa). These movements will probably need to use the customs transit procedure as they will be leaving and re-entering the customs territory of the EU. Otherwise, the goods could lose their EU status and be subject to import procedures on their re-import into the EU.

Goods trade: Northern Ireland/Great Britain

VAT

According to the European Commission, trade in goods between NI and GB should be treated as imports and exports for VAT purposes, rather than a local sale with VAT charged on the invoice. It is not yet clear whether the UK Government accepts this position.

In any event, it seems likely that postponed import VAT accounting would be available on these sales, meaning VAT registered businesses importing goods from GB would account for the VAT due on their VAT returns, rather than paying VAT when the goods cross the Irish Sea.

Under the NI Protocol, the UK is entitled to apply the reduced rates of VAT applicable in Ireland to goods sold in NI.

Customs

NI to GB

The UK Government has said that Northern Irish goods should have unfettered access to the GB market. There will be no customs checks or tariffs, and import declarations and entry summary declarations will not be required.

However, this will not apply to goods that travel from Ireland or the rest of the EU through NI and on to GB, as the UK's customs and regulatory regime will apply to goods originating in the EU. Brexit legislation gives a power for the Government to define a qualifying status for goods and businesses in NI that will benefit from unfettered access. It is not yet clear to what extent goods that are manufactured or processed in NI but use components from EU countries will qualify for this status.

How the UK will distinguish between NI qualifying goods and EU goods in the absence of any customs checks is unclear.

Export declarations will not generally be required when goods leave NI (except in a minority of cases where there are specific international obligations binding on the UK or EU, such as for trade in endangered species). It is not yet clear whether an exit summary declaration will be needed in every case. Technically, this would appear to be required under EU customs rules, but the UK has said it aims to reach agreement with the EU that these declarations are not necessary.

GB to NI

In contrast, import declarations and entry summary declarations (also known as safety and security declarations) will be required when goods move from GB to NI, although it seems the UK will take a relatively light touch approach to checks as no new physical customs infrastructure will be built.

Ports and terminal operators in NI have been asked to choose between two models to carry out customs processes on goods moving into NI from GB:

- Pre-lodgement model – This is based on customs declarations being pre-lodged prior to goods arriving at the port, to minimise the need for goods to wait while customs processes are completed.
- Temporary storage model – This is the existing model used for handling rest of world traffic, and provides storage for goods until declarations are made and customs clearance is given.

HMRC are developing a new customs system known as the “Goods Vehicle Movement Service” (GVMS) to support the pre-lodgement model and track the movement of goods across the Irish Sea. This will integrate with HMRC's existing CHIEF and CDS customs systems.



Goods moving from GB to NI will be subject to the EU's external tariff if they are considered "at risk" of subsequently being moved into the EU (whether by themselves or forming part of other goods following processing). This will be the case (subject to some exemptions) unless it can be established that:

- The goods will not be subject to commercial processing in Northern Ireland; and
- They fulfil criteria to be established by a Joint Committee comprised of UK and EU representatives

This means that EU tariffs potentially apply where businesses use GB components to manufacture their products (i.e. not just where goods pass through NI).

However, subject to EU state aid rules, the UK may reimburse or waive these duties, or compensate businesses to offset the impact, particularly where it can be shown that the goods remain in NI.

The position will also depend on whether the UK and EU agree a free trade agreement with zero tariffs, although this would not remove the need for customs controls under the NI Protocol.

The movement of agri-food products from GB to NI will also be subject to additional SPS checks and requirements.

The UK Government is establishing a new Trader Support Service which will help to guide traders through import processes when goods move between GB and NI, including by submitting import declarations on their behalf.

Goods trade: Northern Ireland/Rest of the world (other than GB and the EU)

VAT

Postponed import VAT accounting is likely to apply when goods are imported into NI from outside the EU, meaning VAT registered businesses would account for the VAT due on their VAT returns, rather than when the goods arrive at the border.

Customs

Goods imported into NI will be subject to the UK's post-Brexit Global Tariff schedule (UKGT), which will apply from 1 January 2021, unless they are "at risk" of being subsequently moved into the EU, in which case EU tariffs will apply.

The rules for determining whether goods are "at risk" of moving into the EU are broadly the same as for goods moving into NI from GB (see above).

Where the UK agrees free trade agreements with non-EU countries, NI is permitted to benefit from any preferential tariffs under those agreements.

Traders importing third country goods into NI will also be eligible to make use of the Trader Support Service.

Goods trade: Great Britain/ EU (including Ireland)

VAT

From 1 January 2021, movements of goods between GB and the EU will be treated as imports/exports rather than as intra-EU dispatches or distances sales, as at present.

This means the exporter should be entitled to zero-rate the sale (subject to holding the appropriate evidence that the goods have been exported).

For imports, the UK will introduce postponed accounting for import VAT on goods brought into the UK. This means VAT registered businesses importing goods will account for the VAT due on their VAT returns (as they do at present when acquiring goods from the EU), rather than paying VAT when the goods arrive at the UK border. This avoids a significant cash flow cost for business. The measure also applies to imports from non-EU countries.

This means many EU suppliers moving goods into GB will need to register for UK VAT and obtain a UK Economic Operator Registration and Identification (EORI) number (unless their customers are willing to deal with all import formalities). The same will apply, vice versa, to GB suppliers moving goods into the EU. In some EU countries, a fiscal representative may be required to obtain a VAT registration.

Low value consignments

From 1 January 2021, a new regime will apply to the import into GB of most consignments of goods with a value not exceeding £135. For these consignments, import VAT will not be due at the point of importation but instead VAT must be charged and accounted for at the point of sale. Where an online marketplace facilitates the sale of such goods, they will become responsible for collecting and accounting for the VAT due on the supply. Where goods are sold directly by the seller to the customer (i.e. not through an online marketplace) it will be the seller's responsibility to register for UK VAT and to account for the VAT to HMRC through a UK VAT return.

These new rules will also apply to business to business sales unless the customer is registered for UK VAT and provides its VAT number to the seller. In such cases, the customer will account for UK VAT under a reverse charge mechanism.

In addition, where goods are located in the UK at the point of sale but are sold through an online marketplace, the online marketplace will be deemed to make the supply of the goods to the customer regardless of the value of the supply.

VAT simplifications

Existing VAT simplifications available to EU suppliers (i.e. for triangulation, call-off stock, installed and assembled goods) will no longer be available to GB businesses, or conversely to EU businesses in GB.

From July 2021, a new system will apply to goods sold to consumers in the EU, which will allow the supplier to charge import VAT and account for this to EU tax authorities under an "Import One Stop Shop" (IOSS).

Customs

After the transition period, customs controls and procedures will apply to the movement of goods between GB and EU countries.

Tariffs

Goods imported into the UK will be subject to the customs duties set out in the UK's new Global Tariff schedule (UKGT) published in May 2020. Goods imported into the EU will be subject to the duties in the EU's Common External Tariff (i.e. the duties applicable to imports from all countries without an FTA with the EU).

These duties will apply unless relieved under an FTA between the UK and EU. The terms of any trade deal are not yet clear – it is possible that the UK and EU could agree an FTA which provides for zero-tariffs and quotas, but it is also possible that significant tariffs could apply.

An FTA would only apply to goods that are of EU and UK origin (as defined under complex rules in the agreement). This means the FTA would not apply, for example, to goods imported into the UK from a third country which are then subsequently sold on to customers in the EU.

Customs procedures

Businesses importing and exporting will need to make import and export declarations as appropriate for each consignment of goods. In addition, separate safety and security declarations may need to be made by the carrier of the goods. An FTA between the EU and UK will not remove the need for these formalities and customs checks.

Businesses will need to consider rules relating to classification, valuation and origin of goods for tariff purposes, and the availability of reliefs and customs special procedures which could mitigate the impacts (including customs warehousing, inward and outward processing, temporary admission and authorised use).

However, the UK Government has announced they will introduce customs controls on imports from the EU on a phased basis:

- From 1 January 2021, when “standard” goods are imported, the importer can record the import in their own records and will have until 1 July 2021 to submit a customs import declaration and pay any duties. In order to take advantage of this six month deferral, the importer (or its agent) must have authorisation to use simplified declarations for imports and a duty deferment account with HMRC in place by 1 July 2021.
- However, from 1 January 2021 checks and declarations will be required for controlled goods like alcohol and tobacco; and live animals and high-risk plant products will require pre-notification and health documentation.
- From April 2021, all products of animal origin (POAO) and regulated plant products will also require pre-notification and health documentation.
- From July 2021, full import controls (including safety and security declarations) will apply to all imported goods, and import declarations and payment of duties will be required at import.

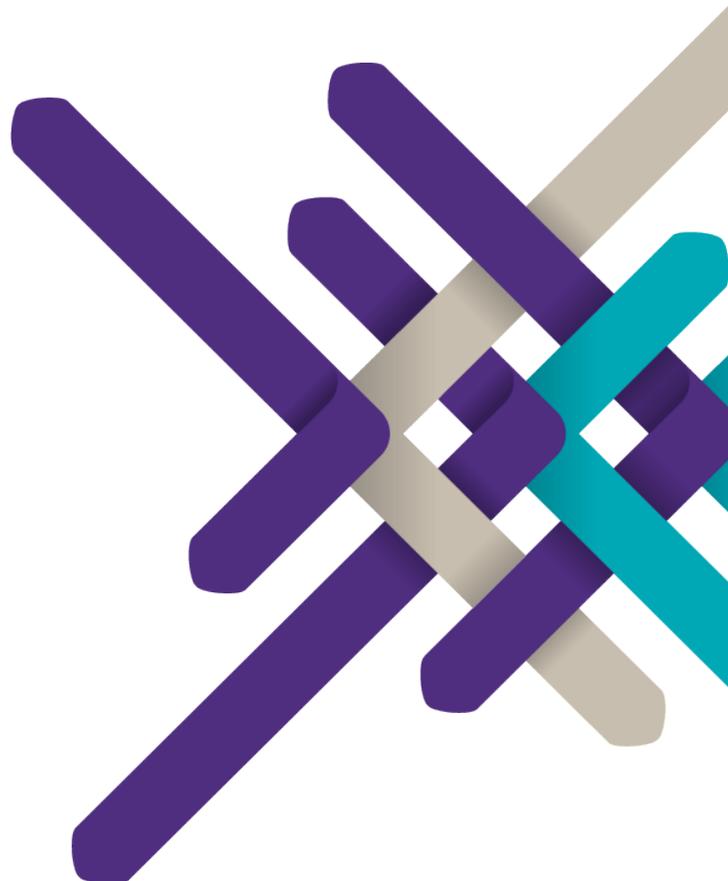
The UK’s announcement does not alter the EU customs procedures applicable when goods are imported into the EU.

Other free trade agreements

Membership of the EU brings access to over 40 FTAs negotiated by the EU with third countries, which usually provide for preferential duty rates for goods originating from the EU. Access to these FTAs will be lost for UK businesses from 1 January 2021, although the UK government has agreed to enter into new agreements with many (but not all) of the countries concerned which replicate the effects of the existing EU agreements from this date.

In order to benefit from FTAs, traders will need to ensure their products meet any relevant rules of origin requirements in the FTA. These vary between FTAs and depending on the type of product in question, but often require a certain proportion of ingredients to originate from, or processing to be carried out in, one of the countries that is a party to the FTA. This could present an issue where UK products include EU-originating or processed goods. However, under the continuity FTAs signed to date, the UK has agreed with partner countries to treat EU content as originating in the UK when incorporated into goods provided sufficient processing rules are also met.

The UK will also be free to negotiate its own FTAs with other countries, like the USA, Australia and New Zealand.



Summary of new customs arrangements

The table below summarises the duties that should be due depending on where goods move from and to, and whether any waiver or reimbursement is possible. Note:

- this does not cover every combination of movements and some exceptions will apply – see the detail above;
- the table only addresses simple movements of goods and not cases where manufacturing or processing occurs in the intermediate territory, which are more complex; and
- it does not take into account the impact of transit relief (or other customs special procedures), which could mitigate duties in some cases.

Goods moving from	Going via	Ending up in	What duty is paid and where?	Can duties be reclaimed from UK?
Rest of UK	Northern Ireland	Northern Ireland	None, provided not “at risk” of moving into EU	Yes, if EU duty paid because “at risk” of moving into EU
Rest of UK	Northern Ireland	Ireland/EU	EU rate by importer into NI	Potentially although TBC
Rest of UK	Ireland/EU	Northern Ireland	EU rate by importer into Ireland	No
Northern Ireland	Rest of UK	Rest of UK	None	N/A
Northern Ireland	Ireland/EU	Ireland/EU	None	N/A
Northern Ireland	Rest of UK	Ireland/EU	EU rate by importer into EU	No
Ireland/EU	Northern Ireland	Northern Ireland	None	N/A
Ireland/EU	Northern Ireland	Rest of UK	UK rate under UKGT by importer into GB, if not NI “qualifying” status (subject to any UK/EU FTA)	No
Ireland/EU	Rest of UK	Northern Ireland	UK rate under UKGT by importer into GB (subject to any UK/EU FTA)	No
Rest of world	Rest of UK	Rest of UK	UK rate under UKGT by importer (subject to any FTA)	No
Rest of world	Northern Ireland	Rest of UK	UK rate under UKGT by importer (subject to any FTA), provided not “at risk” of moving into EU	Yes, if EU duty paid because “at risk” of moving into EU – likely difference could be claimed if UK rate lower
Rest of world	Northern Ireland	Ireland/EU	EU rate by importer into NI	Potentially although TBC

What should businesses do now to prepare?

Affected businesses should consider the impact of these VAT and customs changes on their business models, supply chains and profitability.

We recommend businesses trading in or with Northern Ireland should consider:

- how they will submit import declarations where goods move from GB to NI;
- applying for an EORI number if they do not already have one;
- the commodity codes for their imports/exports and the tariffs on these products under the EU Common External Tariff and UKGT;
- whether goods they import from GB or the rest of the world could be “at risk” of moving to the EU, and the potential for reimbursement/waiver/compensation for any EU duties;
- how to obtain “qualifying status” to show their goods are of NI origin;
- which party is responsible for import formalities / duties in their supply chain, and whether any changes are needed to their contracts and INCOTERMS with suppliers and customers;
- applying to HMRC for a grant towards the cost of training, hiring new staff or IT improvements to help complete customs declarations;
- what procedures need to be followed when goods move through GB to EU countries (and vice versa), or when NI goods move through Ireland to reach GB;
- whether any customs special procedures or reliefs could be utilised to mitigate the impacts;
- what the “origin” of their goods will be for the purposes of the UK and EU’s free trade agreements;
- whether they should apply for Authorised Economic Operator (AEO) “trusted trader” status to facilitate their international trade and ease customs burdens; and
- VAT changes, particularly for GB/NI trade.

How we can help

If your business involves cross-border trade with suppliers or customers in GB, the EU or other countries, we strongly recommend that an impact assessment is undertaken as soon as possible.

Our Brexit Indirect Tax Review service considers the impact of these VAT, customs and trade changes on your supply chain, analysing the risks and opportunities, where costs are likely to arise, and the changes you can make to mitigate them in readiness for 1 January.

We have a wealth of experience advising on cross-border EU trade, Brexit, international transactions and supply chains.

Key contacts for our VAT and customs specialist team:



Peter Legge
Partner, Tax
T +44 (0)28 9587 1081
E peter.legge@ie.gt.com



Lee Squires
Head of Indirect Tax
T +44 (0)28 9587 1095
E lee.squires@ie.gt.com



Stephanie Smyth
Manager, Indirect Tax
T +44 (0)28 9587 1137
E stephanie.smyth@ie.gt.com



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