



# No deal Brexit

## What now for VAT and customs?

On 23 August 2018, the UK government published technical notices outlining the government's approach in the event of a 'no deal' Brexit. These included guidance on the expected VAT and customs duty position. Given that Brexit is now only six months away, businesses engaged in cross-border trade with the European Union (EU) - and the rest of the world - should take steps to plan for a 'no deal' scenario and consider the impact on their business.

### What is a 'no deal' Brexit?

This means the UK leaves the European Union (EU) at **11pm on 29 March 2019** without a withdrawal agreement or an agreement on the framework for the future trading relationship between the UK and the EU. The UK would be outside both the EU single market and customs union, and trade between the UK and EU would revert to World Trade Organisation (WTO) terms. In this scenario, there would be no transitional/implementation period lasting until the end of 2020. A cliff edge change would occur on 30 March 2019.

### VAT

#### Importing goods

There was concern that Brexit could mean that imports from the EU would be treated in the same way as imports from outside the EU, so import VAT would be payable at the border. This would have created a significant cash flow cost for business. However, the government has now confirmed that in the event of a "no deal" Brexit, postponed accounting for import VAT would be introduced. Businesses would therefore account for UK VAT on imports on their VAT returns, in the same way as they do at present for acquisitions from the EU. Significantly, this change would also apply to imports from non-EU countries, in order to help businesses make the most

of global trading opportunities. This presents a cash flow advantage for business compared to the status quo.

Of course, there is no guarantee that the EU will reciprocate this treatment (and individual member states may be prohibited from doing so under EU VAT law), so EU customers of UK businesses are still likely to face a cash flow disadvantage.

Where overseas businesses send parcels valued up to £135 to the UK, a technology-based solution would allow the overseas business to register with HMRC and pay the VAT, so that the customer is not required to do so.

#### Exporting goods

At present, where goods are sold to EU consumers, "distance selling" arrangements apply, so that UK suppliers must charge VAT (in the UK or the customer's country, depending on their turnover in that country).

In a "no deal" Brexit scenario, these rules would no longer apply and UK businesses would be entitled to zero-rate their sales to EU consumers. However, the customer is likely to have to pay VAT on the import in their country.

## Services

The main place of supply rules (that determine in which country VAT is due) should remain the same. However, there would be significant implications for businesses that use the UK's VAT Mini One Stop Shop (MOSS) to account for VAT on their sales of electronic, telecoms and broadcasting services to EU consumers. The UK would no longer be able to operate the MOSS scheme.

Affected businesses would either need to register for the non-Union MOSS scheme in another EU member state (such as Ireland), or register for VAT in every EU country in which they have customers.

## What else could change?

There should be a substantial degree of continuity in the VAT regime as the European Union (Withdrawal) Act 2018 provides that existing EU VAT law (with some exceptions) will be incorporated into UK law after Brexit. This includes the case law of the Court of Justice of the European Union (CJEU) and the general principles of EU law.

However, there could be increased divergence between the UK and EU VAT systems over time. In particular, the UK government would have more flexibility to set its own VAT rates, and extend the scope of the VAT zero rates, reduced rates and exemptions.

## Customs

In a "no deal" scenario, the UK would be outside the EU Customs Union and imports of goods from the EU would be subject to customs duty and controls in the same way as imports from outside the EU (and vice versa). Free circulation of goods between the UK and EU would cease.

## Customs duties

The import of goods from the EU could be subject to UK customs duty. The UK will no longer apply the EU's Common Customs Tariff and would establish its own UK Trade Tariff. The UK government will determine and publish the new UK duty rates before Brexit, which may be different from the current EU rates.

It has been suggested that the UK might unilaterally reduce tariffs to allow essential goods from the EU into the UK. However, under WTO rules, the principle of Most-Favoured-Nation (MFN) treatment means that, unless a preferential agreement is in place, the same rate of duty, on the same good, must be charged to all WTO members equally. This means that if the UK unilaterally reduces tariffs on imports from the EU, it would need to apply the same treatment to imports of the same goods from outside the EU, which could cause significant harm to domestic producers.

Imports of goods into the EU from the UK would be subject to EU customs duty at the non-preferential MFN rates provided for in the EU's tariff.

## Non-tariff barriers

Tariffs are not the only barriers to international trade. Non-tariff barriers are often more problematic. At present UK and EU standards are aligned, meaning that it is not possible for EU countries to raise non-tariff barriers between one another. Whilst the standards that UK products must adhere to are unlikely to change overnight, once the UK is outside the EU, member states would not be prevented from increasing non-tariff barriers to UK goods. If the UK chooses to introduce different standards, there are likely to be implications for businesses as goods would need to meet both UK standards for domestic sales and EU standards for sales to the EU.

## Procedures

Businesses importing and exporting would 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. These formalities, along with the need for customs checks at the border, could cause significant delays in the movement of goods between the UK and EU. This will be particularly problematic for businesses trading perishable goods or that rely on "just-in-time" supply chains.

Businesses that have not previously traded outside the EU will need to familiarise themselves with complex customs rules for the first time. These include rules relating to classification and valuation of goods for tariff purposes and the availability of reliefs and customs special procedures which could mitigate the customs impact (including customs warehousing, inward processing, temporary admission and authorised use, among others).

The UK would no longer apply the customs procedures in the EU's Union Customs Code. The Taxation (Cross-border Trade) Act 2018 provides for the UK to establish its own independent customs regime. Much of the detail will be contained in secondary legislation which has not yet been published. This means there could also be changes for businesses involved in trade outside the EU.

## Trade agreements

Membership of the EU brings access to over 50 Free Trade Agreements (FTAs) negotiated by the EU, which usually provide for preferential duty rates for goods originating from the EU. In the event of a "no deal" Brexit, access to these FTAs would be lost for UK businesses. Once outside of the EU, the UK would be free to negotiate its own FTAs, but the time and resources needed to achieve such agreements will be significant and dependent on the willingness of other countries to negotiate. The UK government hopes to agree to roll-over the terms of the EU's FTAs post-Brexit, but this depends on the agreement of individual countries and raises technical issues (e.g. how any agreed quotas will be apportioned between the UK and the remaining EU countries).

The UK government is expected to publish a further technical notice on the continuity of existing trade agreements.

### Trade remedies

The UK will no longer be part of the EU's trade remedies regime. The Trade Bill currently progressing through Parliament provides for the establishment of a Trade Remedies Authority (TRA) to investigate complaints of unfair trading practices and unforeseen surges in imports, which cause injury to UK industry. The TRA will be able to impose anti-dumping and anti-subsidy measures (such as anti-dumping duty and countervailing duty) following an investigation.

### Excise duty

Like VAT, excise duty is based upon EU Directives and so traders in excise goods (alcohol, tobacco and hydrocarbon oils) should expect changes to procedures for cross-border movements of goods after Brexit.

The Excise Movement Control System (EMCS) would no longer be used to control suspended movements of excise goods between the EU and UK. However, EMCS would continue to be used to control the movement of duty suspended excise goods within the UK. This means that UK excise duty would become immediately payable on the importation of excise goods into the UK from the EU, unless those goods are placed into UK excise duty suspension.



### What about the Northern Ireland border?

The UK government has given no specific advice for businesses in Northern Ireland which trade across the border with the Republic of Ireland. The guidance notes that in the event of a 'no deal', the UK government will respect the UK's unique relationship with Ireland and the Good Friday Agreement, and recognise the very significant challenges that would be posed in this highly sensitive context. More information on arrangements for land border trade will be provided in due course. The UK government recommends that businesses should consider whether they also need advice from the Irish government.

### What should businesses do now?

Affected businesses should consider the impact of these VAT and customs changes on their business models, supply chains and profitability. Each business will be affected in different ways depending on the nature, volume and complexity of its trade.

If your business involves cross-border trade with suppliers or customers in other EU member states, we strongly recommend that an impact assessment is undertaken as soon as possible. At Grant Thornton we have developed a tool, Brexit indirect tax impact analysis, to provide your business with a personalised analysis of the impact of a range of possible Brexit scenarios (including a 'no deal') on your VAT and customs position using your actual import and export data. This includes impacts arising from the loss of existing EU FTAs.

Businesses should also consider the following:

- a review of their existing VAT and customs procedures to understand the changes that are likely to occur as a result of Brexit;
- the tariff classification of their imports and exports, and customs special procedures they could utilise to mitigate the impacts;
- how they will submit import declarations and deal with other customs formalities;
- any changes needed to their contracts and INCOTERMS with suppliers and customers to reflect the fact they may be treated as importing and exporting in the future; and
- whether they should apply now for Authorised Economic Operator (AEO) "trusted trader" status to facilitate their international trade and ease customs burdens, and/or for duty deferment so customs duty is not payable at the border.

Even though we have focussed on the consequences of a "no deal" in this factsheet, even if a deal is reached with the EU, similar VAT and customs implications could still arise for UK businesses. The VAT changes will still be relevant unless the UK agrees to be part of the EU's VAT system after Brexit, and the customs changes could still apply unless the UK agrees to join a customs union with the EU or enters a bespoke arrangement having similar effect. Therefore, there is value in considering the issues outlined above even if a deal is ultimately reached.

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