Grant Thornton

Brexit Advisory

Brexit: Customs and VAT issues for Northern Ireland

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Introduction

The UK and EU have now agreed the Trade and Co-operation Agreement (TCA) – a comprehensive free trade agreement providing for zero tariffs and quotas on the trade in goods of UK and EU origin. Despite the TCA, Northern Ireland's position is also governed by the Northern Ireland Protocol to the 2019 Brexit Withdrawal Agreement. Like the TCA, this applies 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 ensure they have considered all relevant customs and VAT issues.

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 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 (and its interaction with the TCA) introduces significant 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.

NI businesses will also need to prepare for the significant changes to the EU VAT rules applying from 1 July 2021.

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).

VAT rules for services are not covered by the NI Protocol and NI will continue to follow the normal UK VAT rules for services. We will be publishing separate guidance on the impact of Brexit on the VAT treatment of 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).

Businesses in NI will be eligible to use an XI prefix to their VAT number when sending goods to customers or receiving goods from suppliers in EU countries. This prefix will let EU suppliers know they are dealing with an NI business rather than a GB business. If an NI business has not already been issued with an XI VAT number, it should notify HMRC it is eligible.

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. They must also continue to submit EC sales lists and Intrastat returns in relation to their trade with EU customers and suppliers.

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.

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, goods produced in NI will not necessarily have EU origin for the purposes of the EU's free trade agreements (FTAs). This means that where NI goods go to Ireland for onward sale to countries which benefit from an EU FTA (including following manufacturing or processing into other goods), they may not qualify for 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 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 and duties on their re-import into the EU.

Goods trade: Great Britain/ Northern Ireland

VAT

While NI must follow EU VAT rules in relation to goods, it also remains within the UK's VAT system. NI businesses will continue to have one UK VAT registration number and submit one UK VAT return. VAT will continue to be accounted for as previously on goods sold between GB and NI, meaning the supplier will normally charge VAT on its invoice and account for this on its VAT return, while the customer can reclaim this as input VAT subject to the normal rules.

However, there are a limited number of exceptions to this rule, including where goods are declared into a customs special procedure or sold by an overseas seller through an online marketplace.

VAT registered businesses must account for VAT when they move their own goods from GB to NI, although this may be reclaimed as input VAT subject to the normal rules.

Special rules also apply in a number of cases, including to the movement of goods between GB and NI by members of a VAT group or by partially exempt businesses.

Additional VAT complexities apply when goods are sold from GB to a customer in ROI but the goods are transported through NI. In some cases, it may be necessary to charge UK VAT to the ROI customer unless a relief or special procedure is used.

Customs

Customs procedures

Customs import declarations and entry summary declarations (also known as safety and security declarations) will be required when goods move from GB to NI. The person importing the goods into NI will be responsible for the import declaration.

The UK Government has established a new Trader Support Service (TSS) which can help traders through these import processes by submitting import declarations on their behalf, as an alternative to using their own customs agent.

An EORI (Economic Operator Registration and Identification) number with an XI prefix will normally be needed in order to import goods into NI from GB and from outside the EU. Businesses should apply to HMRC to obtain this number if they have not already received one.

Different rules apply to parcels delivered from GB to NI by Royal Mail or another express carrier service. No customs declaration is required when the parcel has a value below £135. Where the value exceeds this amount and is received by an NI business, a customs declaration is required but can be deferred for up to three months from receiving the goods. New arrangements will apply from 1 April 2021.

Tariffs

Under the NI Protocol, goods moving from GB to NI will be subject to duties under 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).

On 17 December 2020, the UK-EU Joint Committee published a decision on when goods will be considered 'at risk' of onward movement. These rules will significantly impact manufacturers and distributors operating in NI, particularly those importing goods of EU and third country origin from GB.

Broadly, there are three gateways to prevent duties being imposed where goods move into NI from GB:

1. The EU duty due is zero

This will apply if the goods are eligible to claim a zero preferential tariff under the TCA because they are of UK origin. The rules of origin under the TCA are complex (see below) and can depend on where the last significant processing occurred or where the components of the product originated from. Particular issues to note are:

- EU origin goods will lose their preferential status and be subject to duties on import into NI if there has been no processing, or only simple processing, in GB; and
- Third country goods that have paid the UK tariff on import into GB may face a second charge to duty on import into NI.

2. Declare goods not 'at risk'

If the importer is authorised by HMRC under the UK Trader Scheme (UKTS), it can declare the goods not 'at risk' of entering the EU provided it holds evidence the goods are entering NI for the purposes of either:

- sale to or final use by end consumers located in the UK (e.g. sale in retail stores); or
- use in its own business in the UK

This declaration can only be made if the goods will not be subject to commercial processing in NI, unless:

- the importer has an annual turnover of less than £500,000 per year; or
- the processing in NI is for the sole purpose of:
  - the sale of food to end consumers in the UK;
  - construction in NI by the importer;
  - direct provision to the recipient of health or care services by the importer in NI;
  - not-for-profit activities in NI, where there is no subsequent sale of the processed goods by the importer; or
  - the final use of animal feed on premises in NI by the importer.

A declaration may not be made if the goods are subject to EU trade defence measures (e.g. anti-dumping duty).

3. Claim a waiver of the duty

Importers can claim a waiver of the duty provided this is within their de minimis state aid allowance under EU law. Most businesses can claim a waiver of up to €200,000 over 3 tax years, assessed on a rolling basis.

This allowance includes all de minimis state aid claimed within the applicable period, including aid unrelated to duty waivers. Lower allowances apply to businesses in some sectors (including agriculture).

The waiver is claimed by an entry on the customs import declaration and by sending a separate customs duty waiver form to HMRC.

If these do not apply, it may be possible to make use of a customs special procedure (such as inward processing, customs warehousing or transit) to relieve duties in some cases.

The movement of agri-food products from GB to NI will also be subject to additional SPS checks and requirements. However, a three month grace period (i.e. until 1 April 2021) from these requirements applies for authorised traders, such as supermarkets and their trusted suppliers. For some products, a six month grace period applies.

Goods trade: Northern Ireland/Great Britain

VAT

As noted above, VAT will continue to be accounted for as previously on goods sold between NI and GB, unless one of a limited number of exceptions applies. However, there will be no requirement for businesses to account for VAT on the movement of their own goods from NI to GB.

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

Customs

Export declarations will not generally be required when goods leave NI, except where they are under a customs special procedure or where there are specific international obligations binding on the UK or EU (such as for trade in endangered species).

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.

This unfettered access applies to "qualifying NI goods". Under the current definition, any goods present in NI and not under customs supervision or control are "qualifying NI goods". This means that goods which travel from Ireland or the rest of the EU through NI and on to GB could potentially benefit from unfettered access. In order to combat this, the UK has introduced an anti-avoidance rule which imposes duty where the main purpose, or one of the main purposes, of moving goods from NI to GB is to avoid any UK customs duty or customs obligation.

It is understood that the definition of "qualifying NI goods" will be updated in the course of 2021 so that only businesses established in NI can benefit from unfettered access. Different rules apply where goods which were declared for export in an EU country (e.g. Ireland) leave NI for GB

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

VAT

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

Customs

Goods imported into NI from outside GB and the EU will be subject to the UK's post-Brexit Global Tariff schedule (UKGT) unless they are 'at risk' of subsequent movement into the EU, in which case EU tariffs will apply.

These goods will be 'at risk' of moving into the EU unless:

- the EU duty is equal to or less than the UK duty (taking into account any applicable preferential tariffs available under FTAs); or
- the importer is authorised by HMRC under the UKTS and declares the goods not 'at risk' of entering the EU (as above).

There are no duty waivers available where goods are imported from outside GB. In addition, goods cannot be declared not 'at risk' where the EU duty exceeds the UK duty by 3% or more.

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

Goods trade: Great Britain/ EU (including Ireland)

VAT

Movements of goods between GB and the EU will be treated as imports/exports rather than as intra-EU dispatches or distances sales. 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 has introduced 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 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 GB 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

A new regime applies 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. 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. Where an online marketplace facilitates the sale of such goods, they will instead become responsible for collecting and accounting for the VAT due on the supply.

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 this case, the customer will account for UK VAT under a reverse charge mechanism.

In addition, where goods are located in GB 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.

GB businesses will no longer be entitled to claim any VAT they incur in the EU through the existing EU VAT refund system. From 1 January 2021, VAT refund claims will need to be made using the 13th Directive process. This is slower than the EU refund system and requires an application to be submitted to the tax authority in the EU country where the VAT was incurred. Transitional rules mean that VAT incurred in 2020 can be claimed up to 31 March 2021 under the existing system.

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

Customs controls and procedures will apply to the movement of goods between GB and EU countries.

Tariffs

Goods imported into the UK from the EU will be subject to the customs duties in the UK's new Global Tariff schedule (UKGT) unless they are eligible to benefit from preferential zero tariffs under the TCA because they are of EU origin. Similarly, goods imported into the EU will be subject to the duties in the EU's Common Customs Tariff unless they are of UK origin.

The rules of origin under the TCA are complex. The rules for determining origin vary depending on the nature of the product and its commodity code, and can depend on where the last significant processing occurred (and whether this is sufficient to change the tariff heading or sub-heading applicable to the product) or whether more than a certain percentage of the materials used to manufacture the product originate from outside the UK/EU.

Particular issues to note are:

- while EU origin components may be taken into account in determining whether a product is of UK origin (and vice versa), a product will not qualify as UK origin unless a certain level of processing is undertaken in the UK. Similarly, a product will not qualify as EU origin unless a certain level of processing is undertaken in the EU. This means, for example, that EU origin goods imported into GB (e.g. from France) and then sold back to the EU (e.g. to ROI) could be subject to EU tariffs; and
- the TCA does not apply to goods imported into the UK from a third country which are then subsequently sold on to customers in the EU. In this case, both UK and EU tariffs could apply.

In order for the preferential zero tariff to be claimed, the exporter should normally include a statement of origin on their commercial invoice. In some cases, the importer may claim the preferential tariff based on their own knowledge about the originating status of the goods without obtaining a statement of origin.

From 1 January 2022, exporters will be expected to obtain suppliers' declarations concerning the originating status of goods in many cases. Until 31 December 2021, these declarations are not required although exporters must still be confident that the goods meet the TCA rules of origin requirements.

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. The TCA does not remove the need for these requirements.

As well as origin (see above), businesses will need to consider the commodity code classification and valuation of their goods for tariff purposes. They should also consider 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 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; and
- 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 approach 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 most 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 some of 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. This should be considered on a case-by-case basis.

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 and VAT arrangements

The table below summarises the VAT and duties that should be due depending on where goods move from and to. Note:

- this does not cover every combination of movements and some exceptions will apply;
- the table only addresses simple movements of goods and not cases where manufacturing or processing occurs in the intermediate territory;
- it does not take into account the impact of transit relief (or other customs special procedures), which could mitigate duties in some cases;
- it assumes that all supplies are business to business (B2B), as business to consumer (B2C) supplies may involve a different VAT treatment. It also assumes that packages are worth more than £135 and are sent as freight rather than through an express carrier service; and
- the table is illustrative of the potential treatment and businesses should take advice based on their own circumstances, as the treatment could vary in some cases.

Goods moving from	Going via	Ending up in	What duty is paid and where?	VAT treatment
Rest of UK	Northern Ireland	Northern Ireland	EU duty unless preferential zero tariff under TCA or goods not 'at risk' of moving to EU (i.e. because importer is authorised under the UKTS and declares them not 'at risk'). A duty waiver may potentially be claimed within de minimis limits.	GB supplier normally charges UK VAT.
Rest of UK	Northern Ireland	Ireland/EU	EU duty by importer into NI, subject to preferential zero tariff under TCA.	UK VAT chargeable depending on how supply chain is structured (subject to using onward supply relief).
Northern Ireland	Rest of UK	Rest of UK	None, provided goods are "qualifying NI goods".	NI supplier normally charges UK VAT.
Northern Ireland	Ireland/EU	Ireland/EU	None (unless the goods leave and re-enter the EU customs territory).	Zero-rated sale by NI supplier. The NI supplier should quote their XI VAT number on their sales invoice.
Northern Ireland	Ireland/EU	Rest of UK	None, provided goods are "qualifying NI goods".	NI supplier normally charges UK VAT.
Northern Ireland	Rest of UK	Ireland/EU	EU duty by importer into EU, subject to preferential zero tariff under TCA.	Import VAT potentially due when goods imported into EU.
Ireland/EU	Northern Ireland	Northern Ireland	None (unless the goods leave and re-enter the EU customs territory).	Zero-rated sale by EU supplier.

Goods moving from	Going via	Ending up in	What duty is paid and where?	VAT treatment
Ireland/EU	Northern Ireland	Rest of UK	None, provided goods are "qualifying NI goods" and anti-avoidance provisions do not apply.	Supplier charges and accounts for UK VAT.
Ireland/EU	Rest of UK	Northern Ireland	UK duty under UKGT by importer into GB, subject to preferential zero tariff under TCA. EU duty on import to NI unless preferential zero tariff under TCA or goods not 'at risk' of moving to EU (i.e. because importer is authorised under the UKTS and declares them not 'at risk'). A duty waiver may potentially be claimed within de minimis limits.	Import VAT due by importer into GB – accounted for on VAT return under postponed import VAT accounting. VAT accounted for on movement of goods to NI.
Rest of world	Rest of UK	Rest of UK	UK duty under UKGT by importer (subject to any FTA).	Import VAT due by importer – accounted for on VAT return under postponed import VAT accounting.
Rest of world	Rest of UK	Northern Ireland	UK duty under UKGT by importer (subject to any FTA). EU duty on import to NI unless goods not 'at risk' of moving to EU (i.e. because importer is authorised under the UKTS and declares them not 'at risk'). A duty waiver may potentially be claimed within de minimis limits.	Import VAT due by importer – accounted for on VAT return under postponed import VAT accounting. VAT accounted for on movement of goods to NI.
Rest of world	Northern Ireland	Rest of UK	EU duty on import to NI unless goods not 'at risk' of moving to EU (i.e. because EU duty is equal to or less than UK duty, or importer is authorised under the UKTS and declares them not 'at risk'). Otherwise, UK duty under UKGT applies.	Import VAT due by importer – accounted for on VAT return under postponed import VAT accounting.
Rest of world	Northern Ireland	Ireland/EU	EU duty on import to NI unless EU duty equal to or less than UK duty, when UK duty applies.	Import VAT due by importer – accounted for on VAT return under postponed import VAT accounting. Followed by intra-Community movement to Ireland/EU.

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.

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

- how they will submit customs import declarations and deal with customs compliance;
- ensuring they have appropriate EORI numbers
- the commodity codes for their imports/exports and the tariffs on these products under the EU Common Customs Tariff and UKGT;
- the origin of goods for the purposes of the TCA, and whether evidence is held to demonstrate this;
- 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 waiver of any EU duties;
- applying for authorisation under the UK Trader Scheme;
- whether goods moving from NI to GB are "qualifying NI goods";
- 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;
- what procedures need to be followed when goods move from NI through GB to EU countries (and vice versa), or through Ireland to reach GB;
- whether any customs special procedures or reliefs could be utilised to mitigate the impacts;
- the impact of the loss of EU free trade agreements;
- whether they should apply for Authorised Economic Operator (AEO) "trusted trader" status to facilitate their international trade and ease customs burdens;
- VAT changes, particularly for GB/NI trade and goods moved through NI; and
- changes needed to invoicing and coding in ERP/finance systems.

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.

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.

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

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