

European Commission amends definition of exporter in the EU

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Executive summary

On 30 July 2018, the European Commission published amendments to the *Commission Delegated Act of the Union Customs Code (UCC DA)*, introducing a new definition of exporter in the European Union (EU).¹ In addition, the European Commission (the Commission) revised its *Guidance Document on the Definition of Exporter*.² The new definition of exporter has been introduced to allow greater flexibility to business partners in the choice of the person who may act as exporter for goods exported from the EU. The introduction of the new definition and revision of the guidance do, however, not produce any changes to the position of the Commission that non-EU established companies may not act as exporter in the EU.

This Alert summarizes the new definition of exporter and outlines how this new definition affects companies exporting goods from the EU.

Detailed discussion

The new definition of exporter

Companies exporting goods from the EU should file export declarations with the competent EU customs authority. For filing the export declaration, an "exporter" should be appointed. The Regulation, introducing the new definition of exporter,

states: “The current definition is problematic insofar as it determines as ‘exporter’ only one person, who has to meet three cumulative requirements: being established in the customs territory of the Union, holding a contract with a consignee in a third country, and having the power to determine that the goods are to be brought outside the customs territory of the Union. Therefore, the new definition of ‘exporter’ should be less restrictive and limit the conditions for being an exporter [...]”

In short, the new definition of exporter has been revised to give companies – apart from private individuals – greater flexibility to designate the person acting as exporter. Article 1(19) of the UCC DA now requires a company that wants to act as an “exporter,” to be a person established in the EU customs territory and:

- ▶ Has the power to determine that the goods are to be brought outside the customs territory of the Union
- or
- ▶ Is a party to the contract under which goods are to be taken out of that customs territory

Determining if somebody has the power to decide that the goods are to be brought outside the customs territory, should be assessed based on the factual elements surrounding the supply chain set-up according to the *Guidance on the Definition of Exporter*. If the person does not have such power, the business partners are at liberty to designate a person as exporter in their contractual or business arrangements, provided that this designated person is established in the EU customs territory.

In that way, the new definition of exporter seems to provide greater flexibility because companies are not necessarily obliged to hold the contract with the consignee or have the power for determining that the goods are to be brought to a destination outside the EU customs territory.

Non-EU-established companies as exporter?

The new definition of exporter and revised *Guidance document on the Definition of Exporter* do not provide for a definite solution for non-EU-established company wanting to act as exporter. The legal definition still requires the exporter to be established in the EU and as such a non-EU-established company may not act as exporter for customs purposes. Companies affected are typically non-EU-established traders, headquarters and procurement companies involved in export transactions from the EU. In addition UK-established companies would, post-Brexit, no longer be able to act as exporter.

Currently, these companies may act as exporter, as an exception, during the “transitional period.” During that period a non-EU-established company may act as exporter for customs purposes insofar as it appoints an indirect representative. The transitional period ends as soon as the Automatic Export System (“AES,” one of the so-called “UCC IT systems”) has been implemented. It is expected that this system will not be implemented before the end of 2020.³

Implications

Companies exporting from the EU should review their supply chain and ensure it is in conformity with the new definition of exporter. Businesses should also work with their local tax professional to:

- ▶ Determine which parties in the supply chain may act as exporter for customs purposes in the EU.
- ▶ Review the current supply chain set-up and address supply chain & trade flow optimization, in particular by using the greater flexibility of the new definition of exporter.
- ▶ Address modifications to upcoming or existing IT implementation programs (e.g., implementation of enterprise resource planning (ERP) systems) resulting from the alterations to the roles of the stakeholders in the distribution model.

Endnotes

1. Commission Delegated Regulation (EU) 2018/1063 of 16 May 2018 amending and correcting Delegated Regulation (EU) 2015/2446 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code.
2. Annex A, Definition of “Exporter” Article 1(19) UCC DA Revised, Taxud.a.2 Ares(2018)4494380 (dated 30 July 2018).
3. Report from the Commission to the European Parliament and the Council on the implementation of the Union Customs Code and on the exercise of the power to adopt delegated acts pursuant to Article 284 thereunder, COM(2018) 39 final.

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