

UK Government's guidance on preparing for "No Deal" on Brexit outlines indirect tax implications

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Executive summary

On 23 August 2018, the United Kingdom (UK) Government published its first batch of technical notices setting out some of its unilateral actions and recommended steps for businesses in a "No Deal" scenario on Brexit. This scenario would be one where the UK leaves the European Union (EU) on 29 March 2019 without an agreed EU Withdrawal Agreement and without a framework in place for a future relationship between the UK and the EU. However, in such a scenario, the Government does expect that some agreements can still be reached with the EU given the number of interdependencies between the UK and the EU's respective contingency plans.

This Alert focuses on the notices explaining how the UK Government intends to operate its customs and value added tax (VAT) border from 29 March 2019 absent a deal.

The steps announced in these notices will help reduce some friction in the event of a No Deal scenario mostly for companies that import to the UK. In particular, allowing for VAT to be dealt with in VAT returns rather than to be paid at the border will reduce cash flow impacts, particularly for smaller firms; and a selective approach to customs checks will help reduce the risk of delays and costs at the border.

While helpful, these notices can only cover some of the impact businesses face in a No Deal scenario and of course only cover the UK perspective. UK customs waving through a shipment will have limited effect if that shipment is stopped on the EU side and there are delays on that side. The Government is right to challenge the EU to reciprocate some of these arrangements to avoid the most damaging friction, not least for EU-based firms, should a deal not happen.

The notices published represent about a third of the total notices the Government intends to publish by the end of September. Some of the critical issues to reaching a full agreement between the UK and the EU, such as the "border" between Northern Ireland and the Republic of Ireland are the subject of current negotiations and in the notices, the UK Government simply reiterates that it will be working on a solution to the Irish Border issue with the EU.

Detailed discussion

Customs and trade

Customs function development

All trade between the UK and the EU will require customs declarations as well as safety and security declarations. It is clear that businesses will need to develop and expand their customs knowledge, particularly businesses that have no experience in imports and exports outside the EU.

All current trade of goods between the EU and UK will need to be classified as per the existing HM Revenue & Customs (HMRC) customs tariff. No immediate changes will be made to the existing commodity codes in use, but import licenses or supporting documentation may be required. This allows businesses confidence in the requirements that need to be met and provides the ability to evaluate their existing master data against the requirements.

Businesses need to evaluate between both their customers and suppliers which Incoterms best fit for trade bearing in mind these contractual decisions will now directly impact who will act as the importer or exporter along with all the requisite administration, duty costs and compliance

The UK Government invites businesses to consider using customs special procedures which could allow reliefs of suspensions of duties for goods traded with the EU. These come with controls requirements and potential IT demands to be met that typically have three-six month lead times to be met, meaning businesses need to make those evaluations now if they want to be effective in March.

Future tariff impacts

The UK intends to continue offering unilateral preferences to developing countries and to transition all existing EU free trade agreements (EU FTAs). By omission this means exporters using FTAs may lose the preferential treatment. The Most Favored Nation rates will be applicable for trade between the EU and the UK, however, the UK may choose to apply new duty rates that differ to the EU.

Export controls

Dual use items primarily require no license to move between the UK and EU currently. If the UK leaves the EU without a deal, licenses issued in the country of export would be required for trade of these goods. Existing export licenses for dual use goods issued in the UK would no longer be valid if exporting from an EU Member State, a new EU license would be needed and vice versa if exporting from the UK using an EU license.

Other points

UK excise goods moving under the Excise Movement and Control System (EMCS) will now only be allowed for domestic movements. Businesses importing from the EU will need to make use of a registered consignor to enter goods into suspension and subsequently EMCS in a no-deal scenario.

For businesses producing and processing organic foods, UK businesses would only be able to export to the EU if they were certified by an organic control body recognized and approved by the EU to operate in the UK, however UK control bodies are not permitted to make these applications until the UK becomes a "third country" and approval can take up to nine months. The UK Government will work with the EU for a solution.

The UK Government has applied to re-join the Common Transit Convention which will facilitate cross border movement and which will be a critical tool especially with goods movements to Ireland.

In respect of trade remedies, the UK will review all existing measures applied by the EU and is developing a new system called the Trade Remedies Authority for businesses to raise complaints for investigation after Brexit.

VAT

The Government has confirmed the continuation of a VAT system after the UK leaves the EU and that the VAT rules relating to UK domestic transactions will continue to apply to businesses as they do now. The technical notice highlights the VAT changes that businesses will need to prepare for when:

- ▶ Importing goods from the EU
- ▶ Exporting goods to the EU
- ▶ Supplying services to the EU

UK businesses importing goods from the EU

Accounting for import VAT on goods imported into the UK

Postponed accounting will be introduced for import VAT on goods brought into the UK. This means that UK VAT-registered businesses that import goods to the UK will be able to account for import VAT on their VAT return, rather than paying import VAT on or soon after the time that the goods arrive at the UK border. This will result in significant cash flow savings for business as the import VAT will be offset in the VAT return, rather than being paid and then recovered.

Postponed accounting will apply both to imports from the EU and non-EU countries. Customs declarations and the payment of any other duties will still be required.

VAT on goods entering the UK as parcels sent by overseas businesses

If the UK leaves the EU without an agreement then Low Value Consignment Relief will no longer apply to any parcels arriving in the UK, and all goods entering the UK as parcels sent by overseas businesses will be liable for VAT (unless they are already relieved from VAT under domestic rules).

For parcels valued up to and including £135, a technology-based solution will allow VAT to be collected from the overseas business selling the goods into the UK. Overseas businesses will charge VAT at the point of purchase and will be expected to register with HMRC and account for VAT. On goods worth more than £135 sent as parcels, VAT will continue to be collected from UK recipients in line with current procedures for parcels from non-EU countries,

VAT on vehicles imported into the UK

Businesses should continue to notify HMRC about vehicles brought into the UK from abroad as they do now, using the Notification of Vehicle Arrival Procedures (NOVA) system which will continue to be used for this purpose.

Import VAT will be due on vehicles brought into the UK from EU Member States. Certain reliefs will also be available as with current imports of vehicles from non-EU countries. Businesses will need to continue to use NOVA to verify that VAT is correctly paid on imported vehicles.

UK businesses exporting goods to the EU

UK businesses exporting goods to EU consumers

Distance selling arrangements will no longer apply to UK businesses and UK businesses will be able to zero rate sales of goods to EU consumers. EU Member States will treat goods entering from the UK as imports with associated import VAT and customs duties due when the goods arrive into the EU.

UK businesses exporting goods to EU businesses

VAT-registered UK businesses will continue to be able to zero-rate sales of goods to EU businesses. EC sales lists will not be required. There will be a need for evidence to prove that goods have left the UK, to support the zero-rating of the supply.

UK businesses supplying services into the EU

Place of supply rules for UK businesses supplying services into the EU

The main VAT "place of supply" rules will remain the same for UK businesses. The rules around "place of supply" will continue to apply in broadly the same way that they do now, subject to the points below.

For UK businesses supplying **digital services to non-business customers** in the EU the "place of supply" will continue to be where the customer resides. VAT on services will be due in the EU Member State where the customer is resident.

For UK businesses supplying **insurance and financial services**, input VAT deduction rules for financial services supplied to the EU may be changed. We will provide an update once more information is available.

Other points

UK businesses selling their own goods in an EU Member State to customers in that country will be required to register for VAT in that EU Member States where sales are made in order to account for the VAT due in that country.

The technical notice recognizes that the impact on the Travel Operators Margin Scheme is still not clear. HMRC has been engaging with the travel industry and will continue to work with businesses to minimize any impact.

Businesses that sell digital services to consumers in the EU will be able to register for the Mini One Stop Shop (MOSS) **non-union** scheme. Businesses that want to continue to use the MOSS system will need to register for the VAT MOSS

non-Union scheme in an EU Member State. This can only be done after the date the UK leaves the EU. The non-union MOSS scheme requires businesses to register by the 10th day of the month following a sale.

UK businesses will need to use the existing VAT refund processes for non-EU businesses. This varies across the EU and businesses will need to make themselves aware of the processes in the individual countries where they incur costs and want to claim a refund.

UK businesses will be able to continue to use the EU VAT number validation service to check the validity of EU business VAT registration numbers but UK registration numbers will not be a part of it. HMRC is developing a service so that UK VAT numbers can continue to be validated.

Next steps

The UK Government has repeated that it believes a No Deal scenario remains unlikely given the mutual interests of the UK and the EU in securing a negotiated outcome. Negotiations covering both the future UK/EU relationship and remaining points on the Withdrawal Agreement will continue on a regular basis in the coming weeks. The next meeting of the EU Council is set for 17-18 October 2018 and the UK's technical notices and any responses to them will be part of the background to the negotiations leading up to that meeting. Businesses will hope for more certainty as to the way forward to emerge from these negotiations, preferably at the earliest opportunity.

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