

Dutch Customs announces that non-EU company can no longer act as exporter from The Netherlands as of 1 December 2019

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Executive summary

On 1 October 2019, Dutch Customs announced that as of 1 December 2019, a non-European Union (EU) established entity would no longer be allowed to be reported in box 2 of the export declaration. Consequently, a non-EU company can no longer act as an exporter for exports from the Netherlands. Prior to the announcement, this was allowed for non-EU companies which appointed an indirect customs representative. Non-EU companies exporting from the Netherlands therefore have a 2-month period in which they must arrange alternative means of ensuring Dutch exports continue to flow as usual from 1 December 2019.

The change in approach of the Dutch Customs will have an impact on non-EU principal companies, non-EU companies in general or, considering Brexit, United Kingdom companies currently exporting from the Netherlands. As of 1 December 2019, such companies will need to authorize another company to act as exporter or change their EU customs presence so that they will be regarded as a company established in the EU Customs Territory (either by setting up an EU entity, or by establishing a "permanent business establishment" for customs purposes).

Detailed discussion

Background of the changes

On 30 July 2018, the European Commission published amendments to the *Commission Delegated Act* of the Union Customs Code (UCC), introducing a new definition of exporter in the EU. According to this definition, a company that wants to act as an “exporter;” should be a company established in the EU customs territory and:

- ▶ Have the power to determine that the goods are to be brought outside the customs territory of the Union

Or

- ▶ Be a party to the contract under which goods are to be taken out of that customs territory

Lack of harmonization between EU Member states

Following the changes, most EU countries (the Netherlands included), however, did allow non-EU entities to act as exporter as long as they appointed an indirect representative. This would be allowed during the transitional period of the implementation of the EU Automatic Export System (UCC IT system) which has been extended until 31 December 2025 in the Netherlands.

Other EU Member States (Belgium, Italy, the Czech Republic, Hungary, Lithuania, Latvia, **and recently Germany**) have changed their approach prior to the Netherlands by no longer allowing a non-EU company to be reported as exporter in box 2 of the export declaration. The approach of some other EU Member States remains unclear, but there seems to be a shift in the approach of EU customs authorities to no longer allow the transitional arrangement.

Steps to mitigate the impact

Non-EU companies exporting from the Netherlands should review their supply chain and ensure it is in conformity with the new changes. Businesses should also work with their local tax professional to:

- ▶ Determine which other EU-established party may act as exporter for customs purposes in the EU and appoint that party as exporter by means of business and contractual arrangements (e.g., authorize this company by way of a Power of Attorney covering the export activities).
- ▶ Consider the EU presence of the company: by establishing a “permanent business establishment” for customs purposes, the non-EU company might qualify as an EU-established entity allowing it to export from the Netherlands.
- ▶ Review the current supply chain set-up and address supply chain & trade flow optimization.
- ▶ Address modifications to upcoming or existing IT implementation programs (e.g., implementation of ERP systems) resulting from the alterations to the roles of the stakeholders in the distribution model.

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