

After 'Brexit'!

June 2020





The United Kingdom has finally left the European Union with effect from 31 January 2020. However, under the terms of the agreement with the EU, the UK is, for a transitional period, to operate as if it were still a member.

The transitional period expires on 31 December 2020 and, until then, the UK will continue to operate the EU VAT system. In anticipation of the UK's departure, the European Commission has published a 'Notice to Stakeholders' setting out its view of the relationship between the remaining EU countries and the UK.

What's the issue?

After three years of talks and parliamentary stalemate, a new Prime Minister and a decisive general election, the UK has finally hauled itself over the 'Brexit' line. The United Kingdom left the European Union on 31 January 2020.

Having severed its membership of the Union, the UK is now in something of a limbo period. Whilst it is no longer a member, it is still operating as if it were. The UK is now operating in a transitional period which expires on 31 December 2020. During the transitional period, the UK will continue to be subject to EU VAT laws. In light of the Covid-19 global pandemic, there have been calls for this transitional period to be extended but the UK Government has stated quite unequivocally, that this will not happen. So, businesses in the UK and in the remaining EU post Brexit need to prepare for a new VAT regime which does not include the UK as a Member State.

On 16 April 2020, the European Commission issued an updated "Notice to Stakeholders" setting out how the new regime will work in terms of cross border supplies of goods and in particular the arrangements for supplies of goods between Northern Ireland and the Republic of Ireland.

Legal position post-Brexit

After the transitional period, the UK will no longer be subject to the EU's common VAT system. The terms of the VAT Directive will not apply. Neither will the EU rules relating to VAT refunds (refunds of VAT to taxable persons established in a different Member State). In reality, in terms of its relationship with the EU, the UK will become a 'third country' and the VAT treatment of cross-border supplies and VAT refunds will need to change.

Cross-border supplies of goods

The EU VAT rules for cross-border supplies of goods are different depending on whether there is an intra-EU supply (ie goods moving between Member States) or the movement of goods begins or ends outside the EU. Intra-EU supplies of goods are dealt with as acquisitions or despatches. Under this regime, where goods are supplied by a taxable person in one Member State to another taxable person in a different Member State, the despatch of the goods is VAT free (zero-rated) and the acquisition of the goods by the purchaser is taxable in the Member State of destination. From 1 January 2021, the supply of goods from the UK to another Member State will be treated as an export from the UK and an importation into the EU and the supply of goods from a Member State to the UK will be treated as an export from the EU and a corresponding importation into the UK.

Importantly, not only will the VAT rules change for such transactions, but the movements of goods (including distance sales to consumers) will become subject to customs supervision and controls.



Distance sales

From 1 July 2021, an optional scheme is to be introduced covering the distance selling of goods (with a value less than €150) involving importation into the EU from third countries (including the UK). Distance sales occur where goods are supplied to non-taxable persons (generally consumers) where the goods are transported to the consumer by the supplier. Under this scheme, the seller of the goods will charge and collect VAT at the point of sale and will declare and pay that VAT to the appropriate Member State via an import 'one-stop-shop' (IOSS). UK suppliers of goods to consumers in the EU will be required to appoint an intermediary established in the EU but this requirement may be waived in certain circumstances.

If a UK supplier chooses not to use the IOSS system, any import VAT due on the importation of goods (with a value below €150) will be collected from customers by the customs declarant (e.g. the courier, postal operator or customs agent) who will, in turn, pay over the VAT to the tax authority via a monthly payment.

VAT refunds

The 13th VAT Directive covers and governs the repayment of VAT incurred in the EU by non-established taxable persons. Under the existing regime, any repayment of VAT is subject to three main conditions. Firstly, claims have to be submitted to each Member State, secondly, payment of the claim may be subject to a reciprocity condition (ie an agreement between the Member State and the third country in which the claimant is established to repay any VAT incurred) and finally, the Member State may impose a requirement for the claimant to appoint a fiscal representative. Subject to the exact terms of the EU withdrawal agreement between the UK and the EU, these conditions will apply to refunds by Member States to taxable persons established in the UK.

Transitional rules

The Notification to Stakeholders also sets out how the movement of goods which span the end of the transitional period will be treated. Movements of goods between the UK and the EU (and vice versa) that begin before 31 December 2020 but arrive after that date will be treated for VAT purposes as if they were still subject to the pre-Brexit regime. In other words, goods moving from the UK will be regarded as despatches and goods moving to the UK from the EU will be regarded as acquisitions. Importantly, the movements will, however, need to be presented to Customs and it will be necessary to provide evidence that the movement commenced before 31 December if the imposition of import VAT is to be avoided. Similarly, such movements will continue to be reportable on both EC sales lists and Intrastats.



Northern Ireland

One of the difficulties of the Brexit negotiations was how trade in goods between Northern Ireland and the Republic of Ireland could continue post-Brexit without imposing a physical border between the two countries. Under the terms of the Withdrawal Agreement, a Protocol on Ireland/Northern Ireland deals with this situation. The Protocol will come into force at the end of the transitional period.

The Protocol provides that EU VAT rules concerning goods apply to the UK in respect of Northern Ireland. Transactions involving services are not covered by the Protocol.

This means that transactions involving the movement of goods between the EU and Northern Ireland will continue to be treated under the existing rules relating to intra-EU transactions (i.e. as despatches and acquisitions in the case of B2B transactions).

For sales to consumers in the EU, suppliers established in Northern Ireland will continue to apply the existing distance selling rules from 1 January to 30 June 2021. From 2 July 2021, they will be entitled to use the Union OSS scheme when making distance sales to EU customers. Suppliers established in other Member States will also be able to use the Union OSS in relation to distance sales to customers in Northern Ireland. (It should be noted that this differs from the IOSS that may be used by third countries and the UK).

However, in the view of the Commission, the movement of goods from Northern Ireland to the rest of the UK (and vice versa) will be treated as imports/exports.

Similarly, taxable persons established in Northern Ireland will still be entitled to use the EU VAT refund system to reclaim any VAT incurred on goods in the EU, and taxable persons established in other Member States will be able to make a claim for VAT incurred on goods in Northern Ireland.

The continued application of the Protocol beyond the initial period of 4 years after the end of the transitional period (i.e. 31 December 2024) is subject to the periodic consent of the Northern Ireland Assembly.

These arrangements in relation to Northern Ireland do not confer any rights on the UK to participate in the decision-making processes of the European Union.

The VAT treatment of supplies of goods in Northern Ireland after the end of the transitional period is complex. Businesses involved with such transactions will need to familiarise themselves with the new rules and the terms of the Protocol.

As a summary, the following table sets out the VAT treatment that will apply to various scenarios:

Goods moving from/to	VAT treatment
GB ¹ to EU	Importation in the Member State
EU to GB	Export from the Member State
GB to NI	Importation in NI
NI to GB	Export from NI
NI to EU	Intra-EU transaction
EU to NI	Intra EU transaction

1 GB means the United Kingdom with the exception of Northern Ireland

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About Grant Thornton

Grant Thornton has a national team of VAT and Customs specialists. We have a wealth of experience advising on cross-border EU trade and international transactions and supply chains.

These new post-Brexit rules are complex and will require businesses to change existing procedures and accounting requirements.

The transitional period is due to end on 31 December 2020 leaving little time for businesses to get to grips with the new rules.

If you wish to discuss any aspect of these provisions, please contact your usual Grant Thornton advisor.



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