



The CPD Fest 2020

Irish UK Tax, VAT & Customs Post Brexit

Presenter:

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Irish/UK Tax, VAT & Customs – Post Brexit

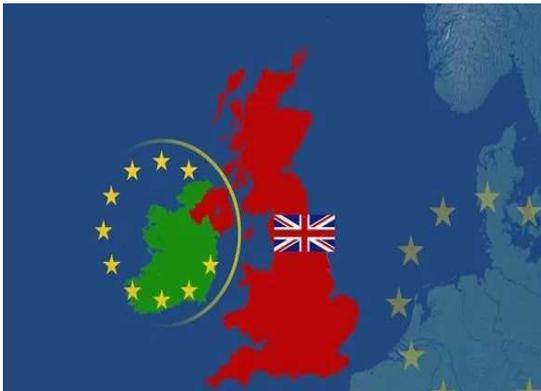
Rose Tierney
3 & 17 December 2020



1

1

Brexit – the Story so far



- On 23 June 2016 the UK electorate voted to leave the EU.
- On 31 January 2020 **The UK left the EU.**
- A transition period, where EU rules continue to apply in the UK runs to 31 December 2020.



2

2

Brexit – the Story so far

- The Withdrawal Agreement and Northern Ireland Protocol which was agreed between EU and UK was designed to ensure an orderly exit on 31/12/2020 and prevent a hard border on the island of Ireland.
- Instead it was agreed the border would be in the Irish sea meaning that – the island of Ireland is one customs territory and the Britain another which would mean checks on good between GB and Northern Ireland.

3

Brexit – The Story so far

- The sea border agreed was always a contentious issue and in the last few weeks the Internal Market Bill has been discussed in Westminster.
- This Bill seeks to ensure that there will be barrier free trading throughout the UK including Northern Ireland ie no checks on goods between GB and NI.
- The bill provides that:
 - the UK government may authorise Northern Ireland businesses not to complete exit summary declarations when sending goods to Great Britain, thereby breaching the Union Customs Code applicable to NI.
 - the UK government would be allowed to interpret, dis-apply or modify the application of the State aid rules of the European Union, which are applicable to UK measures that affect trade between Northern Ireland and the EU.
 - UK regulations in these areas will have effect notwithstanding their incompatibility with relevant domestic or international law, including the Withdrawal Agreement.
- This is in conflict with the withdrawal agreement.

4

Brexit – The Story so Far

- The Bill's progress through the houses of parliament has not been plain sailing – the House of Lords amended it removing the controversial sections and sent it back to the House of Commons.
- The government has indicated its intention to re-table the clauses when the bill returns to the Commons in December.
- So this is an ongoing issue.
- In the instance that this is passed – the EU would still need to protect its border – so that leaves us back talking about border checks on the island of Ireland – Déjà vu!

Brexit – the Story So Far



- What this means in effect is that we have relative clarity on the East West arrangements post Brexit across the Irish sea from Britain to ROI but no clarity on the arrangements from Britain to Northern Ireland and viceversa.
- It makes planning for NI businesses difficult.
- Chaos at the Ports?

Brexit - Preparations

- So what planning are businesses doing?
- Larger businesses – training, recruitment, supply chain mapping, sourcing software & grants, etc
- Smaller businesses – not as much planning going on – some are using the facilities of LEO, Enterprise Ireland & Intertrade to get advice – but systems and processes not being updated quickly enough.

7

7

Brexit - Preparations

Why is this? Brexit Fatigue, Head in the Sand

A lot of misinformation –

“Brexit won’t happen” - IT ALREADY HAS.

“If there’s a trade deal there’s no customs” – EVEN WITH A TRADE DEAL THERE WILL BE CUSTOMS

“My Courier, Haulier will deal with it” -DON’T ASSUME THEY WILL IT’S THE TRADERS RESPONSIBILITY

“My Accountant deals with all that stuff” – YOU BETTER CHECK THAT THEY DO!

8

8

Brexit – Preparations - UK

Information campaigns have only really kicked off in the last couple of months.

British suppliers and customers not ready for changes to export import.
Confusion over paperwork requirements between Britain and Northern Ireland.

9

9

Brexit – Preparations - ROI

- A Brexit Omnibus Bill was passed in 2019 to ensure that many aspects of legislation that include references to EU or EEA could still include the UK. A lot of this was designed to apply until the end of the transition period.
- The New Bill is an extension to this to cover the post transition period arrangements.
- A lot of reorganisations and incorporations took place in 2019 and 2020 to prepare for Brexit.

10

10

Brexit – Preparations - ROI

- Negotiations on an EU-UK Future Partnership Agreement are ongoing. Regardless of the outcome of these negotiations, the Withdrawal Agreement and the Protocol on Ireland and Northern Ireland will remain in place.
- In 2019 much of this work focussed on a possible no deal scenario. The enactment of the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2019 (Brexit Omnibus Act) on 17 March 2019 was designed to bridge the gap should a deal happen
- This Act consists of fifteen Parts under the remits of 9 Ministers. While Parts 1, 14, and 15 of the Act have been commenced (and Part 3 was repealed and its provisions commenced under the Industrial Development (Amendment) Act 2019), the remainder cannot be commenced as they could only apply in the event a Withdrawal Agreement was not concluded.

11

11

Brexit – Preparations - ROI

- Since the Withdrawal Agreement was concluded a new Bill the General Scheme of the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Bill 2020, (the '2020 Brexit Omnibus Bill') was drafted.
- Part 8 deals with Taxation and it aims to maintain the status quo in relation to the operation of many key tax measures which require residence of the EU or the European Economic Area (EEA).
- In most cases this is to be implemented by placing the words “or the United Kingdom” after any mention of EU or EEA.

12

12

VAT Changes 31 Dec 2020/1 Jan 2021

- For an initial period of four years, The Republic of Ireland (IE) and NI will be parties to a protocol. In accordance with this protocol, NI will be treated as a member of the EU and the current EU VAT and customs rules will continue to apply.
- GB, (England, Scotland & Wales) however, will no longer be a member of the EU and will cease to be bound by, or able to take advantage of, its current status as an EU member state.

13

13

VAT Changes 31 Dec 2020/1 Jan 2021

- Under the terms of the Withdrawal Agreement
- From 1 January
 - Sale of goods to GB will become exports –
 - zero rated as sale outside of the EU and
 - Sale of goods to NI will still be intracommunity sales –
 - zero rated within the EU

14

14

VAT Changes 31 Dec 2020/1 Jan 2021

- From 1 January
- Purchase of goods from GB will be imports from outside EU –
 - Vat at point of import but can be deferred until next Vat return and
- Purchase of goods from NI will be intracommunity acquisitions of goods from within EU
 - and the reverse charge applies.

15

15

VAT Changes – Distance Selling

- Distance selling refers to sales made to non-taxable persons.
- These will be sales from a business to consumers (B2C), for example, retail customers or sales to businesses that are not required to be VAT registered.
- From 1 July 2021, Article 14 of the VAT directive will extend this definition so that the distance sales rules will apply to supplies of goods transported by or on behalf of the supplier, “including where the supplier intervenes indirectly in the transport of the goods”.
- This change is intended to prevent sellers circumventing the distance selling rules by utilising third-party distribution companies to transport goods to the end customer.

16

16

VAT Changes – Distance Selling

- Under the current rules, Suppliers of goods on a distance selling basis from a member state to a UK customer may require the supplier to register and account for VAT in the UK. Where the supplies to customers do not exceed the VAT registration threshold for distance sales in the UK the supplier is required to charge VAT at the rate in force in the member state in which the supplier is established eg ROI..
- For example, a sale by a supplier in ROI to a non-VAT registered customer in the UK will carry Irish VAT unless the supplier's sales to the UK exceed the distance selling threshold (currently £70,000 per calendar year), in which case the Irish supplier will be required to register and account for UK VAT, charging UK VAT to the customer, as appropriate.

17

17

VAT Changes – Distance Selling

- From 1 July 2021, an optional scheme is to be introduced covering the distance selling of goods with a consignment value less than EUR 150. This scheme will be available to both EU and third-country suppliers, including NI and GB, selling goods direct to end customers in the EU.
- **Option 1: The One-Stop-Shop (OSS)**
- Under this scheme, the seller of the goods will be required to appoint an intermediary in a single member state, unless the seller is established in a country with which the EU has concluded an agreement on mutual assistance and from which it carries out the distance sales of goods.
- The supplier will charge and collect VAT at the point of sale and the intermediary will declare and pay that VAT to the appropriate member state via a 'one-stop-shop' (OSS).
- **Option 2: Collection of VAT by the declarant**
- If a non-EU supplier chooses not to use the OSS, any import VAT due on the importation of goods (with a value below EUR150) will be collected from customers by the customs declarant (eg, the courier, postal operator or customs agent), who will, in turn, pay over the VAT to the tax authority by a monthly payment.

18

18

VAT Changes – Distance Selling

- Where non-EU suppliers make direct sales to end consumers and the intrinsic consignment value exceeds EUR 150, the supplier will be required to treat these sales as exports or imports, as they do at present.
- **Low value consignment relief (LVCR)**
- The current low value consignment relief, which allows goods to be imported from third countries where the value is below EUR 22, will cease with effect from 1 January 2021.
- **Excise duties for distance selling**
- Goods subject to excise duties will not be eligible for the OSS and will be subject to the normal rules for third-country imports, as at present, and a full customs declaration will be required.

19

19

Customs procedures for distance selling

- After the transition period, goods to the value of less than EUR 150, with the exception of alcoholic and tobacco products, perfumes and toilet waters, will not be liable to customs duty where they are imported from a non-EU territory for delivery direct to an end consumer in the EU.
- However, the movement of goods, including distance sales to consumers, will become subject to customs supervision and controls.
- According to EU law, goods brought into the customs territory of the EU are subject to customs supervision and may be subject to customs controls. Goods must be presented to customs. This applies equally to goods acquired online and subsequently delivered via parcel delivery from the UK as of the end of the transition period, whether those goods are sent by post or by express couriers.
- The customs declarations and documentation required may be different depending on the value of the consignment and the means of delivery; ie, whether delivery is being made by post or by courier).

20

20

VAT Changes – Distance Selling

- The current mini-one-stop-shop scheme (MOSS) and non-Union MOSS schemes for services will be extended and incorporated into the OSS.
- Under the new arrangements, for businesses with regular, low-value sales across a number of EU member states, reporting such sales under a single VAT registration through the OSS system may be less onerous.
- However, businesses with higher-value transactions, businesses storing fulfilment or similar stocks in other member states and businesses using marketplaces, will need to review their VAT reporting obligations and supply chains to ensure compliance and maximise any opportunities for streamlining VAT reporting.

21

21

VAT Changes 31 Dec 2020/1 Jan 2021

- EVR claims for reclaiming VAT incurred in the UK will no longer apply
- Triangulation provisions will no longer include the UK

22

22

Customs & Logistics

- Under the terms of the withdrawal agreement
- GB drops out of the EU customs union.
- All goods moved into, out of or through GB will require customs declarations.
- Source alternate routes, or alternate suppliers is the advice being trotted out by most government departments.
- It is not that easy –
 - while there is additional capacity on some ferry routes the UK landbridge is a huge part of the logistics industry here.
 - Alternate suppliers of the same quality and style can be hard to source.

Customs & Logistics Dataset

- More detail will be required on invoices so systems will have to be updated to accommodate an increased dataset.
- Tariff Code
- Incoterms
- Route Data
- Origin
- Customs Valuation
- Gross & Net Weight

Tariff Classification Code

- Every exporter will have to have the tariff classification for each product they sell.
- You can get Revenue to determine if its the correct code – BTI Binding Tariff Information
- The importer will use this data to pay customs duty on the import side.
- Use the TARIC database on the Revenue website

Incoterms

- First created in 1936 by the International Chamber of Commerce, INCOTERMS are uniform, internationally recognized foreign trade terms that refer to the type of agreement for the purchase and shipping of goods internationally.
- Each term helps users deal with different situations involving the movement of goods.
 - 1.Costs: who is responsible for the expenses involved in a shipment at a given point in the shipment's journey?
 - 2.Control: who owns the goods at a given point in the journey?
 - 3.Liability: who is responsible for paying damage to goods at a given point in a shipment's transit?

Incoterms

- **EXW** - Ex Works (insert place of delivery)
- **FCA** - Free Carrier (Insert named place of delivery)
- **CPT** - Carriage Paid to (insert place of destination)
- **CIP** - Carriage and Insurance Paid To (insert place of destination)
- **DAP** - Delivered at Place (insert named place of destination)
- **DPU** - Delivered at Place Unloaded (insert of place of destination)
- **DDP** - Delivered Duty Paid (Insert place of destination).
- Note: the DPU Incoterms replaces the old DAT, with additional requirement for the seller to unload the goods from the arriving means of transport.

Incoterms

- **FAS** - Free Alongside Ship (insert name of port of loading)
- **FOB** - Free on Board (insert named port of loading)
- **CFR** - Cost and Freight (insert named port of destination)
- **CIF** - Cost Insurance and Freight (insert named port of destination)

Incoterms

- INCOTERMS a little more detail on most commonly used
- Delivery Duty Paid (DDP) A shipping term where the shipper/exporter/seller is responsible for all shipping and clearance through customs for ultimate delivery to the consignee. This transaction makes the shipper/exporter/seller responsible for cost and risk of loss during the entire transaction.
- Delivered Duty Unpaid (DDU) The supplier is required to transfer the goods that have not been cleared for import to the customer at the designated site of the identified location in the importing country. He assumes all transport costs and the risk until the shipment reaches the identified location in the destination country.
- Ex Works (Named point of origin) (EXW) For example: ex factory, ex mill, ex warehouse. Under this term, the price quoted applies only at the point of origin and the seller agrees to place the goods at the disposal of the buyer at a specified place on the date or within the period fixed. All other charges are for the account of the buyer.

Incoterms

- INCOTERMS a little more detail on most commonly used
- Cost, Insurance and Freight (Named port of destination) (CIF) For example: "CIF Tokyo". A shipping term included in contract of sale, CIF indicates that the seller agrees to take full responsibility for delivering the goods to the port of loading, clear the goods for export, and arrange and pay for transportation and marine insurance over the goods to the named port of discharge, such costs being included in the price of the goods. Nonetheless, all risk of loss of or damage to the goods, as well as any additional costs due to events occurring after the time the goods have been delivered on board the vessel, is transferred from the seller to the buyer when the goods pass the ship's rail at the port of loading. It is up to the buyer to arrange transportation from the port of discharge.
- Free on board (Named port of shipment) (FOB) For example: "FOB Long Beach". Or "FOB [Airport]". A shipping term included in a contract of sale, FOB indicates that the seller fulfils his obligation to deliver when the goods have passed over the ship's rail at the named port of shipment, all costs of inland transportation and loading being included in the price of the goods. The buyer has to bear all costs and risks of loss of or damage to the goods from that point.
- Free carrier (Named port of export) (FCA) Replaces the former term "FOB named inland port" to designate the seller's responsibility for the cost of loading goods at the named shipping point. Maybe used for multi-modal transport, container stations, and any mode of transport, including air.

Origin

- Rules of origin determine where goods originate, i.e. not where they have been shipped from, but where they have been produced or manufactured. As such, the 'origin' is the 'economic nationality' of goods traded in commerce. The origin can change to the location where the goods underwent their last significant transformation that added value.
- The tariff classification, value and origin of a good are determining factors based on which the customs tariff treatment is applied. For customs matters, there is a distinction between two types of origins, notably non-preferential origin and preferential origin.
- **Non-preferential origin**
- Non-preferential rules of origin are used to determine the country of origin of goods for the application of the most-favoured nation treatment (MFN) but also for the implementation of a number of commercial policy measures such as anti-dumping and countervailing duties, trade embargoes, safeguard measures and quantitative restrictions or tariff quotas. They are also used for trade statistics, public tenders and origin marking. The EU applies its own set of non-preferential rules of origin provisions, which may be different from those of any other third country.
- **Preferential Origin**
- Preferential rules of origin determine whether goods qualify as originating from certain countries, for which special arrangements and agreements apply. Where all the requirements are met, goods with preferential origin are eligible to be imported with lower duty rates or at zero rate, depending on the preferential tariff treatment provided for.

Origin

- BOI Binding Origin Information
- Where origin is not clear apply for Customs decision
- Timeline
- 30 days to accept application
- 120 further days to process
- Supplier declarations – supplier declares origin

Customs Valuation

- The value of goods used for customs purposes is usually the transaction value, that is the price actually paid or payable for the goods. This is the invoice price plus the cost of transport and insurance. It also includes any other payments made or to be made for the imported goods.
- There are six methods of valuation that apply in hierarchical order. If method 1 (transaction value) cannot be used then you should use the next method and so on:
 1. The transaction value method.
 2. The transaction value of identical goods.
 3. The transaction value of similar goods.
 4. The deductive method.
 5. The computed method.
 6. The residual valuation provision.

Customs valuation and transfer pricing are closely linked.

Direct and Indirect Representation

- The UCC allows the representative to be appointed on either a Direct or Indirect basis. In reality when acting for a party established outside the EU, the Representation will be Indirect, whilst it may be Direct when appointed by an EU based entity. BIFA has identified four main scenarios:-
 - 1 Direct Representation when appointed by an EU/UK based entity
 - 2 Indirect Representation when representing an EU/UK based
 - 3 Indirect Representation when acting for an entity established outside the EU
 - 4 Self-Representation

It is essential that the customs agent understands the fundamental difference between Direct and Indirect Representation and how this impacts on their responsibilities and liabilities.

Direct & Indirect Representation

- Direct Representation, in this scenario the customs representative acts in the name of and on behalf of another party. The party being represented is the declarant and is obliged to meet all the obligations arising from the declaration. The declarant will be responsible for maintaining the records and also providing an audit trail. At this point it is important to deal with one myth that has developed: there is a view that a customs representative has no responsibility should they make an error. This is not necessarily the case. If the represented party has given clear and accurate instructions and the customs representative makes an error the latter will not be able to rely on the protection of Direct Representation. The view of Revenue/HMRC is that they have failed to act in a competent manner and become jointly and severally liable for the debt
- Indirect Representation, in this case the customs representative acts on behalf of another person but acts in their own name. It is incumbent on the customs representative to maintain a full audit trail with regard to the customs declaration. The Indirect representative shall be jointly and severally liable for all customs liabilities arising from the customs related transactions

Duty Payment Methods

- Customs Duty is payable at point of import.
- A duty payment account can be set up with Revenue and put in funds to pay the duty
- A deferred duty account can be applied for if the trader has a comprehensive guarantee in place

Duty Payment Methods

- Once you are registered for an Economic Operators Registration and Identification (EORI) number, you will be assigned a Revenue Trader Account Number (TAN). This is a secure channel through which you can make payments, for example pay import duties.
- Your import duty payments must be made online through the Revenue Online Service (ROS). You can do this by selecting the 'Customs and Excise' payment option and either:
 - provide the required details of your credit or debit card
 - or
 - use the option to transfer money from your (the payer's) bank account by Single Debit Instruction (SDI).
- You may allow your customs clearance agent to use your TAN account on your behalf. If you wish to do this, you should complete the Customs and Excise clearance agent form.

37

37

East West or North South

- The only certainty at the moment is that all East/West transactions between ROI and GB will have customs implications.
- If the worst outcome happens in relations to the recent Internal Market Bill in the UK then all transactions between ROI and UK including NI will also have customs implications.
- If the withdrawal agreement is adhered to the East/West transactions between NI and GB will have declarations.

38

38

Customs Simplifications/Reliefs

- **Authorised Economic Operator AEO – it is not mandatory**
- AEO status is a certified standard authorisation issued by customs administrations in the European Union (EU). It certifies that an economic operator has met certain standards in relation to:
 - safety and security, systems to manage commercial records, compliance with customs rules ,financial solvency, practical standards of competence or professional qualifications.
- This is primarily a trade facilitation measure that recognises reliable operators and encourages best practice in the international supply chain. As an AEO, you could benefit from:
 - recognition worldwide as safe, secure and compliant business partners in international trade
 - lower risk scores in risk analysis systems when profiling

Customs Simplifications/Reliefs

- priority treatment if physical controls are conducted
- mutual recognition of AEO programmes under Joint Customs Cooperation Agreements which could result in faster movement of goods through third country borders
- reduced data sets for entry and exit summary declarations (this only applies to AEO safety and security)
- easier access to simplified procedures
- reduction or waiver of comprehensive guarantees.
- CILT Customs & Trade Facilitation Course IT Carlow

Customs Simplifications/Reliefs

- Customs Warehousing
- Customs warehousing allows for the storage of non-Union goods in an authorised designated location within the customs territory of the EU without being subject to import duties. The duty liability is discharged if the goods are re-exported outside of the European Union. If the goods are released to free circulation, then the duty and other charges become payable at this time.
- Comprehensive Guarantee
- The holder of a Comprehensive Guarantee Authorisation can: amalgamate all their current customs bonds and guarantees under one comprehensive guarantee apply for a reduction or waiver in the amount of guarantee for debt which may be incurred subject to meeting specific criteria as outlined in Article 84 DA reduce to 30% the amount of guarantee for debt which has been incurred where the operator holds the status of Authorised Economic Operator Simplified (AEOC)

Customs Simplifications/Reliefs

- Inward Processing
- You may use the inward processing procedure to obtain relief from Customs Duty and Value-Added Tax (VAT). In order to claim this relief you must:
 - import goods from outside the [European Union \(EU\)](#) to be processed. A process can be anything from repacking or sorting goods to the most complicated manufacturing.
 - release the finished product(s) for free circulation in the EU or re-export them outside the EU.
- Outward Processing
- Under the outward processing procedure, you may temporarily export [European Union \(EU\)](#) goods for processing or repair in a non-EU country. You can claim full or partial relief from import charges when these goods are re-imported and released for free circulation in the EU.

Customs Simplifications/Reliefs

- Transit – essential for UK landbridge
- Transit is a customs procedure that allows goods to be moved across international borders under customs control. A guarantee is required to secure all charges on the goods. There are three types of transit:
- Union transit - allows for the movement of goods within the customs territory of the European Union (EU).
- Common transit - allows for the movement of goods between:
 - the Union and the common transit countries
 - and
 - the common transit countries themselves.
- Transport Internationaux Routiers (TIR) - allows for the movement of goods internationally over one or more frontiers. A portion of the journey between the start and end of the TIR operation must be by road.

Customs Simplifications/Reliefs

- Temporary Admission
- to temporarily import certain goods into the European Union (EU).
Examples of such goods are samples, professional equipment, items for auction, exhibition or demonstration. You will usually have to provide security to cover the import charges normally payable on the goods. The security can be in the form of a bank guarantee or cash deposit. Any duties paid on deposit can be reclaimed when the goods are re-exported.
- Eligibility for temporary admission relief is based on the type of goods concerned and their use before they are re-exported. You cannot use temporary admission to import goods to process or repair them.
- You can apply for it electronically or use an ATA Carnet

Customs Simplifications/Reliefs

- ATA Carnet
- You can use an ATA carnet to temporarily import or export certain goods into or out of the European Union (EU). The carnet is issued in the country from where the goods are exported. You must present the ATA carnet with the goods when they arrive in the EU.
- If you use an ATA carnet you will not have to complete the customs declarations or other formalities normally required at import. The carnet also provides security to cover the duty on the goods you import. The following goods can be entered for temporary admission using an ATA carnet:
 - commercial samples
 - professional equipment
 - goods for exhibitions, fairs or trade shows.

Customs Simplifications/Reliefs

- All relieving provisions require an application through the CDS.
- There is a lead in time – 30 days to accept 120 days to process.
- Businesses who need these simplifications should be acting now.
- Businesses also need to decide whether processing will be carried out inhouse – requires staff training and investment in software- or outsourced.

Customs – Other Issues

- Grant available from Enterprise Ireland for recruiting Customs Staff - €9,000 for fulltime employee.
- Software required to access ROI ROS Customs System – AIS & AEP
- Customer may have to act as both Importer and Exporter so check out UK system and Northern Ireland Trader Support Service.

47

47

Questions?

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48