

Who should read this Brexit Alert?

This Brexit Alert is relevant for all businesses that export goods from Great Britain (GB) to the EU. It is particularly important for those businesses that currently only have customers or suppliers in the EU and have not previously had to deal with customs formalities.

Introduction

The Brexit transition period expires on 31 December 2020. On 1 January 2021 GB will leave the EU Single Market and Customs Union resulting in the introduction of a border with the EU. This means goods sent from GB to the EU will be treated as exports (rather than dispatches) and subject to customs formalities at both the GB and EU borders. Import VAT and customs duty will be payable where applicable by the party importing into the EU.

Please note that under the Northern Ireland Protocol different rules will apply to movements of goods from GB to Northern Ireland and between Northern Ireland and the EU. See our Brexit Alert on **Moving goods under the Northern Ireland Protocol** for further information.

What is changing?

The process for exporting goods to the EU will change. GB businesses need to complete the following actions to continue exporting to EU countries from 1 January 2021:

- obtain a GB EORI number to move goods out of GB
- obtain an EU EORI number if undertaking EU customs procedures
- decide how to complete GB customs export declarations, i.e. whether to use in-house staff or use a customs intermediary

- obtain any export licences required
- comply with the relevant conditions to enable zero rating of the exported goods for VAT purposes
- check that the recipient of the goods is prepared for making the customs import declaration in the EU.

Intrastat declarations will no longer be required for exports from GB.

Direct and indirect exports

For VAT purposes a **direct export** will occur when the supplier sends goods to an EU destination and is responsible either for arranging the transport itself or appointing a freight agent. The goods may be exported:

- in own baggage
- in own transport
- by rail, post or courier service
- by a shipping line, airline or freight forwarder employed by the supplier and not by the customer.

An **indirect export** will occur when the EU customer or their agent collects or arranges for the collection of the goods from the supplier in GB and then takes them to the EU.

There are complicating factors to consider when goods are to be supplied to an EU customer who is also established in the UK which could have an impact on their VAT treatment.

Conditions for zero rating exports

From 1 January 2021, VAT will be payable at 0% (i.e. zero rated) on most goods exported from GB to the EU. However, certain conditions must be met before supplies of goods for export can be zero rated.

A supply of goods sent to an EU destination will be liable to the zero rate as a **direct export** where:

- the goods are exported within the specified time limits (typically within 3 months, but can be up to 6 months for goods involving processing or incorporation into other goods for export)
- official or commercial evidence of export is obtained within the specified time limits (as above)
- supplementary evidence of the export transaction is obtained.

A **direct export** must not be zero rated where:

- the goods are delivered or posted to a customer's address in the UK
- the goods are collected by or on behalf of the customer even if it is claimed they are for subsequent export.

A supply of goods to an overseas customer sent to an EU destination will be liable to the zero rate as an **indirect export** where:

- the overseas customer exports the goods within the specified time limits (typically within 3 months, but can be up to 6 months for goods involving processing or incorporation into other goods for export)
- the overseas customer obtains and provides the supplier with valid official or commercial evidence of export within the specified time limits (as above)
- the supplier keeps supplementary evidence of the export transaction

and the goods are not used between the time of leaving the supplier's premises and export.

An **indirect export** must not be zero rated where the goods are:

- supplied to a private individual who is resident in the UK

- supplied to a customer that has a place of business in the UK from which taxable supplies are made
- delivered to, or collected by, a UK customer at a UK address.

Proof of export

Specific evidence is required for exported goods to be zero rated for VAT purposes. Equal weight is put on official and commercial transport evidence but both must be supported by supplementary evidence to show that a transaction has taken place, and that the transaction relates to the goods physically exported. If there is insufficient evidence zero rating will not be permitted and the supplier will be liable to account for VAT on the goods at the applicable rate.

Different types of evidence

Official evidence is produced by HMRC's customs systems, e.g. a Goods Departed Message.

Commercial evidence describes the physical movement of the goods, for example:

- authenticated sea waybills
- authenticated air waybills
- PIM/PIEX International consignment notes
- master air waybills or bills of lading
- certificates of shipment containing the full details of the consignment and how it left the UK
- International Consignment Note/Lettre de Voiture International (CMR) fully completed by the consignor, the haulier and the receiving consignee, or Freight Transport Association own account transport documents fully completed and signed by the receiving customer.

Photocopy certificates of shipment are not normally acceptable as evidence of export, nor are photocopy bills of lading, sea waybills or air waybills (unless authenticated by the shipping or airline).

Supplementary evidence is information available within the business, e.g. within the accounting system, including:

- customer's order
- sales contract
- inter-company correspondence
- copy of export sales invoice
- advice note
- consignment note
- packing list
- insurance and freight charges documentation
- evidence of payment or evidence of the receipt of the goods abroad.

The importance of incoterms

Incoterms are a set of global commercial rules for the delivery of goods between trading partners, defining where responsibility lies between the customer and supplier. These rules clarify who is responsible for the costs involved in the delivery of goods, including insurance, freight/shipping and duty, and who is responsible for the import/ export declarations and the associated filing costs.

Incoterms will be increasingly important therefore when trading with the EU from 1 January 2021.

They will be key in determining who will bear the additional cost and administrative burden of import/ export declarations and import taxes. Businesses should review their current contracts with EU customers to see which Incoterms currently apply to understand where responsibility for the additional costs fall, and consider renegotiating terms with the customer to mitigate costs where applicable.

What businesses need to do

Businesses that export to the EU need to ensure they are prepared for the VAT and customs changes

arising from leaving the EU Single Market and Customs Union on 1 January 2021.

This includes:

- obtaining a GB EORI number
- obtaining an EU EORI number if required
- checking contract incoterms to confirm which party is responsible for dealing with import/ export processes and bearing the cost of any additional import taxes
- consider renegotiating incoterms to mitigate additional costs
- deciding how customs declarations will be completed
- ensuring the appropriate time limits are met and evidence obtained to secure the zero rating of exports for VAT purposes.