



There is nothing more certain than the uncertainty of how (or indeed, whether) the UK will leave the EU at 11.00 pm on 29 March 2019. As we draw near this deadline, unless politicians in the Westminster bubble, and in Brussels perhaps, can agree a last minute deal, it could result in the UK leaving the EU under a 'no deal Brexit'. If the UK crashes out of the EU with no deal, we highlight some of the major implications that will face UK businesses currently transacting in goods with EU member states.

CONSEQUENCES OF A NO DEAL BREXIT

Customs declarations and customs duty

For UK businesses currently buying and selling goods within the EU, from the night of 29 March 2019 they will be transacting with a "third country". With a no deal Brexit, UK businesses acquiring goods from the EU will suffer the imposition of the customs duties. Unlike import VAT, customs duties are not recoverable by the importing business and therefore would become a cost component for the UK business. Unless the UK business absorbs this additional cost the natural consequence will be an increase in wholesale and retail prices.

HMRC will want to ensure that the correct amount of customs duty is paid on a commodity imported into the UK. Custom duty rates can vary, on average, between 0% - 15%, which is dependent on what the commodity is, where it is sourced and the materials that make up that commodity. Potentially, HMRC could hold up the movement of goods through UK ports and airports to verify the custom duty declared by the importer. The use of incorrect duty rates could result in seizure of the imported goods plus a penalty for misdeclaring the imported goods and underdeclaring the custom duty payable. Unless a business has its own in-house customs expertise, it is likely that there will be a need to use a customs agent to complete the import declarations.

This will add to the cost of importing goods as, depending upon the complexity of the import declaration, customs agents can charge anything up to £55 for filing a single import declaration.

February 2019

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BREXIT: VAT AND CUSTOMS DUTIES

It should be mentioned that the government will introduce “Transitional Simplified Procedures” (TSP) to assist UK businesses. UK businesses can register for TSP, however, for this privilege, UK businesses are likely to have to provide HMRC with a financial guarantee. How long TSP will remain available after a no deal Brexit is not known, although the government has indicated that it will review TSP within six months after 29 March 2019, but it will “...remain in place for more than a year...”.

Additional formalities

Any UK businesses exporting goods to the EU after a no deal Brexit will need an Economic Operator Registration and Identification (EORI) number which will have to be shown on all Customs documentation. UK businesses currently importing from or exporting to, EU states do not require an EORI number, so it would be prudent to consider applying for an EORI number well before the 29 March 2019. In the event that we do not have a no deal Brexit, obtaining an EORI number would do no harm as the number allocated will remain with the business and can be used for any future transaction that involves export to a country outside the EU/UK. EORI numbers can be applied for through the HMRC portal and it will only take a few minutes to submit the application, with approval taking a few days.

Businesses could avoid delays in clearing goods through Customs by applying to become an Authorised Economic Operator (AEO). The application for an AEO is rather bureaucratic and requires significant information about the business’ accounting systems, staffing, training, internal controls and security procedures. The application process will take some time both in completing the application form and for HMRC to review the application, with no guarantee that the application will be approved by HMRC. However, if approved, AEO status is an internationally recognised kitemark and assists in speedy clearance of goods internationally.

Facilitation procedures

HMRC have a number of regimes where a UK business can import goods into the UK and suspend the payment of customs duty and VAT. Such regimes include bonded warehouses and Temporary Admissions. There are stringent rules relating to the use of these schemes and each business would have to consider the benefits and costs carefully.

Value Added Tax (VAT)

Selling and exporting goods to any EU state once the UK has exited the EU with no deal will be zero rated for VAT, without having to consider whether the customer is a business or a private individual. The issue comes with importing the goods in to the EU State and who is acting as the importer, as this could throw some VAT complexities in to the transaction (i.e. international trader rules). This may necessitate a change in how business is conducted and advice should be sought.

In terms of imports from the EU, as is currently the case with importing from non-EU countries, UK businesses will have to pay import VAT on top of any customs duty. However, government will be introducing ‘postponed accounting’ for import VAT. Rather than paying the VAT to HMRC upfront with recovery through the VAT return (which leads to cashflow concerns), under postponed accounting, payment of import VAT is deferred until the importing business submits its VAT return.

BUSINESS TAX ALERT

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This is dealt with by the importing business declaring the import VAT on its VAT return as VAT payable to HMRC (Box 1 on the VAT return) and if the business is in a position to recover VAT the same amount of VAT will be included on the reclaimable side of the VAT return (Box 4). Therefore, no VAT cashflow issues for the UK business importing into the UK.

EU VAT refund claims

Currently, UK businesses reclaiming VAT incurred in other member states of the EU can submit a claim through HMRC. With a no deal Brexit, as from 30 March 2019, such claims will have to be made direct to the tax authorities of the member state in which the VAT was incurred. It will be necessary to understand the procedure adopted by individual member states as these vary between member states.

Mini One Stop Shop (MOSS)

Non-UK businesses supplying digital services to non-business customers established in the EU will be familiar with MOSS. This is a mechanism whereby the supplier can elect to declare sales throughout the EU by registering for MOSS in the UK and paying the appropriate VAT without having to register for VAT in the customer's member state.

With a no deal Brexit, the UK will no longer offer MOSS for supplies to customers established in the EU. The supplier will have to register for the scheme in an EU member state.

Final thoughts

How the UK will leave the EU is still an ongoing discussion, not only with the politicians but with businesses, advisers and the public at large. The uncertainty is certainly unsettling, however, we trust that practical pointers highlighted in this Alert will provide some insight into the customs duty and VAT implications of the UK leaving the EU without a deal. If you wish to discuss this further please speak to your usual R&H contact or one of the following:

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