Brexit and the impact on VAT

Frequently asked questions
THE LATEST CHAPTER IN BREXIT

The latest chapter in the Brexit story sees the European Commission granting the UK an extension of the leave date from 29 March to 22 May with one significant stipulation; this is contingent on Prime Minister Theresa May getting her deal approved by the UK parliament. Failure to secure approval of this deal by parliament will then mean that the UK will leave the European Union on 12 April 2019.

Without an agreed deal there is still an uncertain outcome, with a ‘No Deal’ Brexit being a significant contender. There are many consequences of a No Deal scenario, but for businesses that move goods between the UK and the European Union, there are a number of key questions being asked about the impact of Brexit on VAT.

In March, RSM hosted a webinar to discuss the various ways that tax authorities were issuing guidance and how businesses were typically responding in preparing for a No Deal scenario.

**When asking 522 attendees “What actions have you taken so far to prepare for No-Deal?” the results were surprising.**

- Only 9% confirmed that their business had anticipated a No Deal Brexit, fully understood all the implications for their business and are fully on track to have all the required changes made on time.
- More surprising was that 29% of respondents admitted that their business had been waiting to see if a deal can be struck before 29 March and hoping that it will not require any critical changes to their operations.
- 23% confirmed that their business had only just started making plans now that the various countries have been issuing guidance for a No Deal Brexit.
- 10% said that their business was expecting an extension of the March 29 deadline and therefore anticipate that they will have more time to prepare, based on a deal that will be subsequently agreed.
- 29% said that Brexit does not affect their business, but it is keen to fully understand the impact of Brexit.

Overall, the most surprising aspect was that with such a short time period to go, accumulatively, 62% of those polled were only now beginning to consider the impact of Brexit on their business.
FREQUENTLY ASKED QUESTIONS (FAQS)

As part of the webinar on March 7 we asked a number of questions that were specific to certain scenarios. In this document, the questions are replicated with provisional answers provided.*

**What is the difference between an EU EORI and a UK EORI number?**

EU EORI number is based on the VAT registration in the country of establishment. Validity can be checked here. Your UK business may need a UK EORI number if the UK leaves the EU with No Deal. You do not need a new EORI number if you already have one that starts with GB.

**We are in the online casino industry. We collect from UK players so do we need to pay any import-export duty?**

Customs duty is not payable on the provision of services provided cross border – only on goods. Online gaming is subject to separate gaming duty – this is a complex area and specialist advice should be sought.

**Will UK companies need to register VAT in the EU if stock is placed in the country of sales?**

In the main VAT needs to be accounted for by a supplier at the place where ownership in that stock transfers to a customer. If that happens in another EU country it will likely require the UK supplier to have a VAT registration in that EU country. This is subject to any local rules around the supply of consigned inventory or by non-established suppliers. You should seek specific advice concerning a more detailed fact pattern.

**When a UK retailer sends a parcel into the EU from the UK (e.g. for online sales), who should be made the importer of record, the customer or the retailer?**

This will be a commercial decision and dependent on the terms of trade, and how the supplier wishes to market the sale – i.e. whether to advertise a single, landed, price which would involve the supplier taking on the import responsibilities. The impact on delivery times would also need to be considered.

*It is important for anyone reading these comments to understand that they relate to specific circumstances. The answers given are designed to provide broad guidance based on some assumptions and in no way constitute advice. No action should be taken by any party in relation to these questions and answers without first consulting a specialist and ensuring that the answer provided meets your specific circumstances. RSM does not accept responsibility for any action any party might take in relation to the comments.*

Brexit and the impact on VAT
From a UK perspective, do we now or will we after 29 March have to apply for the VAT deferment scheme? Or is it only when the scheme is confirmed because there is a definite no-deal?

We would suggest that the application is made now – a ‘No Deal’ Brexit is, currently, still the legal default and as such, suitable preparations should be made now if the business wishes to import goods from the EU after 29 March.

Will a UK company need to charge all EU companies VAT on their invoices, even if the EU company is VAT registered? And similarly, will UK VAT registered companies also then be charged VAT for goods purchased from the EU?

We assume the question relates to the supply of goods. The basic place of supply rules for goods is not changing. VAT will continue to be due at the place where ownership in the goods transfers. If goods are supplied in the UK to an EU customer and they remain in the UK, then UK VAT is most likely chargeable. The same applies in the EU for goods that a UK customer might acquire in the EU. If the supply of goods involves them being removed from the UK (or EU) then this will likely be treated as an export and be zero-rated. The main issue on the movement of goods between the UK and EU is the requirement to make a customs declaration, potential import duty and import VAT. This will add costs and compliance complexity. There are a number of additional areas that might need to be addressed in this question and we encourage you to seek additional advice.

What about the process for claiming back import duties on movements into the EU from the UK?

Duties are, in principle, not recoverable in the same way that VAT is, and therefore potentially represent an absolute cost, although HMRC have announced that the majority of imports in the event of a No Deal will attract 0% rate of duty. There will remain opportunities to claim relief or suspension in certain circumstance (e.g. inward processing).

Although triangulation simplified rules will be abolished will it still be possible to expect a supplier to send goods to a third party, providing that the importer pays and accounts for the import VAT?

If the ‘intermediate’ business i.e. the one buying the goods from the EU country of origin and delivering to the end EU customer is in the UK, it will need to register in either the country of origin or destination post-Brexit. There would be no import VAT if the goods do not leave the EU.

I’m a UK company. Will I need to charge VAT to our German customers after Brexit?

No – in the event of a No Deal these will be exports and zero-rated provided sufficient proof is held that the goods have left the UK.

We are a UK company with a German VAT registration, will this registration still be valid/fully operational post a No Deal Brexit?

Yes, the existing VAT registrations should not be affected by Brexit and should remain in place. It is only critical if you provided any supply without any VAT registration in past where a registration is required in future.
We have customers who are EU registered businesses and we charge zero VAT on our services (i.e. warehousing and transport in the UK) and prepare an EC Sales list return – I assume from 30th March we simply have to start charging them UK VAT and the EC Sales list return falls away – is this correct?

The provision of transportation services (as opposed to the provision of a means of transport – i.e. vehicle without driver) is defined as a general rule service. What this means in practical terms is that services supplied to non-UK businesses are treated as zero-rated (or outside the scope of VAT). The main change we see based on the information provided is that you will not need to complete EC Sales Lists, but should still be able to zero-rate the supply.

We sell software and consulting services, it seems that we don’t need an EORI registration but perhaps a MOSS registration?

If you are supplying your services to other businesses, then MOSS would not be relevant and the basis ‘place of supply rules’ will not change post Brexit. You will not charge UK VAT if your customers are overseas, as is the case currently.

We buy food product from UK and sell in Benelux region so is there any impact for us?

If Brexit leads to the situation that the UK is no longer part of the customs union of the EU, all the goods shipped from the UK to the EU should be imported. In this case import duties will apply, this means that the margin will decrease in case the prices will remain the same.

Is there any impact for an EU company which have the main shareholder a UK company?

If the UK shareholder company is essentially a passive holding company then it should not have any impact on Brexit. It is the trading activities that need to be considered. If the UK shareholder is a trading entity then there is a potential effect, but we would need more details to help you assess that.

I run a B2C e-commerce. Doing distance selling from the UK to other EU countries. Can you clarify what will happen post Brexit? Should the UK business register for VAT in all EU countries or will there be no VAT but customs duties payable?

If you don’t make any changes to your supply chain structure and continue to fulfil orders from UK inventory then the distance selling rules fall away, all shipments out of the UK become zero-rated, but there will be an additional landed cost on arrival at the destination country. This will require a customs declaration, potentially an import duty charge and likely import VAT. The importer of record should manage this, which can either be the UK business (as a non-established taxpayer), the customer or a third-party distributor. If the UK business or a third-party distributor manages the process and needs a VAT registration, then there will effectively be two supplies – the import being the first supply and the onward distribution being the second supply. The onward distribution will then come under the EU distance selling rules. There is a potential advantage to the UK business being registered in the EU as an importer/reseller in that the import value might not need to be the sales price thereby reducing the level of import duty that might be due. It should be anticipated that prices will increase, as a result of the import duty. Subject to volumes and costs, there may be some commercial advantage in creating an inventory store on the EU mainland and fulfilling orders from there.
Will e-casinos have to pay any VAT?

This is a complex area and would ideally require more information, however, the VAT treatment will depend on nature of the e-casino product. Depending on the jurisdiction, a duty may also apply, which is usually by reference to the place of consumption, regardless of where the gambling operator is established.

We are a Czech company with Czech VAT number and we have GB VAT number as well – we have stock in the UK area. Do we have to established new entity in UK after Brexit?

In case the Brexit leads to the situation that the UK is no longer part of the customs union of the EU, all the goods shipped from the UK to the EU should be imported. In case import duties will apply, this means that the margin will decrease in case the prices will remain the same.

For businesses selling on the UK market and they already have a registered UK VAT number plus the required EORI, would it be also necessary to establish a local Fiscal representative?

The UK does not require a local fiscal representative for established or non-established VAT registrations and most VAT accounting processes can be managed from a non-UK location if that is what is preferred.

I had heard previously that an existing EORI number would become invalid on Brexit and that there would be a need to reapply in order to continue to trade with the EU countries. Is that the case?

Your existing UK EORI number would be sufficient for these purposes.

We are importing goods from Belgium in the UK. We have an office in the UK with VAT number. how can we register for deferred import tax?

HMRC have announced that ‘postponed accounting’ will be available to defer the payment of VAT to the VAT return. Details of goods imported will be set out on a monthly VAT certificate and the details entered on the appropriate VAT return on completion. [The link here sets out further details.]

We sell books and CDs from Germany to UK. After hard Brexit I would have thought that I simply treat UK as any other non-EU country and simply not sell with VAT to the UK. Then I do not need to give HMRC any VAT.

Post Brexit, the UK should be treated as any other non-EU location, but that does not mean that VAT should not be accounted for. Most products when imported into the UK are subject to UK VAT, but there are some special rules for certain products such as books, which might benefit from the UK zero-rating provisions.

We have a customer for whom we transport their customers motor bikes to the EU for track days and then we transport the bikes back – how will the we be affected – who has to arrange clearance if any?

The provision of transportation services (as opposed to the provision of a means of transport – i.e. vehicle without driver) is defined as a general rule service. What this means in practical terms is that services supplied to non-UK businesses are treated as outside the EU.
Can the customers (private or business) in the UK simply pay the import tax themselves?

If the customer in the UK is listed as the importer of record then it should be liable to pay any import costs such as VAT and duty. VAT registered customers would normally need an EORI number, but non-VAT registered customers should expect to pay import duty.

Do the changes to Moss discussed only apply in the event of a No Deal Brexit?

We don’t have details of what will happen in the case of a Brexit with a deal, but it is possible that similar changes to MOSS will be required even if a deal is agreed. There might be transitional arrangements in the case of a deal, but we will need to respond to these as they become clear.

If selling B2B services to Germany will the UK company charge VAT post 29 March 2019?

B2B services that fall under the general rule – ie not otherwise specified for special treatment should not be subject to UK VAT and should be treated as outside the scope of UK VAT.

Are you covering services between UK and EU? We provide temporary and permanent recruitment services.

There are no changes planned to the ‘place of supply’ rules as a result of Brexit – and if you are providing these services to EU businesses (and not charging UK VAT) this will continue. You would not, however, need to submit EC Sales Lists in respect of them.

Would the VAT Return be amended given that there are no more intracommunity acquisitions and supplies?

Yes, in case of a No Deal Brexit, the UK VAT return will be affected. Dispatches and acquisitions will no longer be intracommunity but will be deemed to become exports and imports (applicable to transactions between third countries and the EU). There are different reporting requirements for imports and exports. Furthermore, the requirement to complete Intrastats and EC Sales Lists should cease.

What will be the basis to charge VAT on import, a ‘proforma invoice’ or the commercial invoice? We are shipping directly to our UK client, but we invoice our UK subsidiary first. For shipping, we send a proforma invoice to deal with import duties and import VAT, but we don’t want our end customer to see the values on these invoices (commercial invoice from our UK office to customer is of course higher).

Customs valuation of imported product does not simply rely on the commercial or pro-forma invoice, although this is usually a good place to start. Also given, in this scenario, that there is an initial intercompany sale before a domestic UK sale there will likely need to be a transfer pricing consideration to ensure that the value meets those requirements. In this particular situation the intercompany value is likely to be the more relevant for import customs valuation purposes. Import VAT is assessed on the customs inclusive import value.
RSM is the trading name used by the members of the RSM network. Each member of the RSM network is an independent accounting and consulting firm each of which practices in its own right. The RSM network is not itself a separate legal entity of any description in any jurisdiction. The RSM network is administered by RSM International Limited, a company registered in England and Wales (company number 4040598) whose registered office is at 50 Cannon Street, London EC4N 6JJ. The brand and trademark RSM and other intellectual property rights used by members of the network are owned by RSM International Association, an association governed by article 60 et seq of the Civil Code of Switzerland whose seat is in Zug. © RSM International Association, 2019