End of Transition Headlines

Confusion buster regarding non-UK, non-domiciled, non UK established companies

In order to make a customs declaration (export or import) a company needs to be 'established' in the UK. This is the role sometimes called the exporter of record or the importer of record. The company that makes the declaration is legally liable for the accuracy and compliance of the content of the declaration to the local customs authorities. What does this mean?

Imports to GB: The declarant/importer of record must be established in GB.

This means that the company needs:

- A UK VAT number (if doing sufficient trade to be VAT registered) and
- A GB EORI and
- A physical presence in GB.

This is different to before Brexit. This means for example that a German based company cannot be the declarant even if they have a UK VAT number and a GB EORI if they do not have an office here with staff.

Exports from GB: The declarant/exporter of record must be established in GB.

This means that the company needs:

- A UK VAT number (if doing sufficient trade to be VAT registered) and
- A GB EORI and
- A physical presence in GB.

Whilst this is not a change in the law it is perhaps a measure of clarity that didn't exist for GB to EU trade in the past.

But my freight agent continues to put the foreign company down as the declarant – how is this working? It isn't!! So what is actually legally happening? In short the freight agent becomes the declarant by default and becomes solely liable for any import duty, import VAT or penalties and fines that may occur. (A variant of indirect representation). Not something many freight agents/customs brokers/freight forwarders will be willing to undertake.

What's all the fuss about the new VAT rules?

This is NOT about Brexit, it's about plugging loopholes responsible for millions of pounds of lost VAT per year and ensuring a level playing field for UK businesses which have been experiencing unfair competition from foreign companies.

This is about <u>imports to GB</u>.

The key point here is a consignment value (not a consolidation value or a total container value for example) of more than £135.00.

If your consignment value is **over £135.00** the rules have not changed and import VAT continues to be due on imports to GB from anywhere in the world unless the particular commodity is zero rated for VAT (see tariff code).

<u>Consignments under £135:</u>

If your consignment value is lower than £135.00 the rules have changed! You need to act now!

There used to be a threshold that said if a consignment was valued at less than £15 import VAT was not due – the consignment was VAT free. This is no longer the case. All shipments no matter what their value are subject to import VAT unless the particular commodity is zero rated for VAT (see tariff code).

<u>Direct Sales from outside GB to consumers located in GB where at time of sale the goods are outside GB</u>

The non-UK seller must register for VAT in the UK and account for UK VAT on the sale to HMRC. This probably means they will need to employ a fiscal agent in the UK to do this for them. UK VAT must be charged on the invoice of sale to the GB consumer. This is why some on-line companies have decided to stop selling to GB as they don't want the effort of dealing with the VAT.

<u>Indirect Sales from a non-GB supplier to a GB consumer via an Online Market Place (OMP) such as Amazon or Ebay.</u>

The OMP will be judged to be making the sale to the consumer and as such the OMP must be UK VAT Registered and must account for VAT in GB. The OMP will need to charge the consumer UK VAT on the invoice of sale.

<u>Sales from outside GB to UK VAT Registered Business'</u>

Where the UK VAT Registered Business provides their VAT number to the foreign seller or the OMP the responsibility to account for VAT will switch from the foreign seller or OMP to the UK VAT Registered business. The UK VAT Registered business will account for the VAT via a Reverse Charge Procedure. In this circumstance the foreign seller or OMP must add a note to the invoice 'Reverse Charge: Customer to account for VAT to HMRC'.

Sales from outside GB to non VAT Registered business'

Where the UK business is not VAT Registered or where the UK business does not supply their UK VAT number to the seller or OMP then the foreign seller or OMP must treat the sale as if it was to a consumer (see above).

Consumer to Consumer shipments

For example gifts valued under £39 are outside these rules.

So all the above means that for consignments under £135 import VAT will no longer be collected at the point of import, so no need for a deferment account to include these consignments with the exception of:

- Non-commercial consignments such as gifts over £39
- Consignments subject to excise duty
- Consignments from Jersey or Guernsey

The new rules became law from 1st January 2021.

But what about the fuss regarding VAT and Repair/Refurbishment imports?

Another one that has nothing to do with Brexit but which is to do with HMRC putting their foot down to stop abuse of the existing law. The key point here is ownership of the item.

The following four scenarios should serve to explain the rules:

Scenario 1.

An item is imported to GB for assessment and repair under the Inward Processing Procedure. It is found to be beyond repair and there would be no commercial point in sending it back to its foreign owner. The foreign owner instructs that it should be scrapped in GB. To do this it would have to be cleared into GB using a customs entry that brought it to free circulation with the payment of import duty and VAT in order to release it from Inward Processing, after which it could be scrapped. The importer of record/declarant in this case would be the GB company that had assessed the item as being beyond repair. **NOTE: the importing company would not be permitted to 'offset' the VAT on its VAT return as it was not the owner of the goods. This VAT would therefore become an expense.**

Scenario 2.

An item is imported to GB for assessment and repair under the Inward Processing Procedure. It is found to be beyond economic repair but under the terms of the original sale the importer must now send a replacement to the foreign owner. A replacement is duly exported **closing of the Inward Processing record with no GB import duty or VAT payable**. The item that is beyond economic repair will now stay in GB and be scrapped. There is nothing explicit in the original contract of sale that says this unrepairable item will become the property of the importer but it is clearly theirs to dispose of as they see fit. VAT rules consider it is explicit in the arrangement that the unrepairable item has been returned to the ownership of the importer so normal VAT rules would apply.

Scenario 3.

An item is to be imported to GB for assessment and repair under the Inward Processing Procedure. Due to clauses in the original contract of sale the importer must send a replacement item immediately before the broken item is imported. The replacement item is sent under **IP EX/IM** from a pool of refurbished items held by the importer. The pool of items is in free circulation. The broken item is then imported which closes off the IP record with **no GB import duty of VAT to pay**. The broken item is to be refurbished and added to the pool of refurbished items held by the importer. VAT rules consider it is explicit in the arrangement that the broken item has been returned to the ownership of the importer so normal VAT rules would apply.

Scenario 4.

An item will be imported to GB for assessment under the Temporary Admission (TA) procedure. The importer assesses it and the item is deemed broken and beyond repair. The item is the property of the foreign exporter who decides that it is too costly to have it returned so advises the importer to scrap the item. There is nothing explicit in the contract about this item becoming the property of the importer but it is clearly now the importer's to dispose of as they see fit, which will include bringing the item into free circulation via a custom declaration and paying import duty and VAT in order to close off the TA record. Normally the company doing the assessment would be the importer of record and incur the import VAT debt.

NOTE: the importing company would not be permitted to 'offset' the VAT on its VAT return as it was not the owner of the goods. This VAT would therefore become an expense.

Contract Confusion

A reminder that the incoterms® Ex Works (ExW) and Delivered Duty Paid (DDP) should **NOT** be used for international trade which now includes the EU. Instead the terms Free Carrier (FCA) and Delivered at Place (DAP) should be used as they match the legal requirements of the declarant/exporter or importer of record (see first article above). Check your contracts, check the small print on the back of your purchase orders / sales orders and make sure they have been aligned to prevent confusion and legal conflicts.

The UK – EU Trade Co-Operation Agreement (TCA)

This so-called Free Trade Agreement does **NOT** mean that all goods can move freely between the UK and EU without paying import duty and without export and import customs declarations or any other paperwork.

Customs declarations, phytosanitary certificates, health certificates, CITES permits, export licences etc. all apply depending on the type of goods being moved.

Import duty and import VAT apply at the point of import (see above discussion for consignments under £135 in value).

Note that different rules apply between GB and Northern Ireland and those rules are not listed in the TCA.

The only goods that can move duty free (not VAT free!) are those that meet the rules of origin listed in the TCA. To find your rule of origin you need to have your tariff/commodity code(s) for the goods. Firstly if your tariff code does not appear on the list – you have to pay import duty and VAT. Secondly if it does appear on the list, in order to get duty free status you have to meet the rule shown beside your tariff code.

The rules fall into three main categories:

1. All non-originating components/subassemblies/ingredients must be of a different tariff code from the finished item. The rule states by how many digits it must be different. For example if your finished item is a laptop from Chapter 8571 to meet this rule none of the non-originating components are allowed to have a tariff code of 8571.
2. A particular process must have happened e.g. complete making up of a coat
3. A comparison must be performed between the value of the components/ingredients/subassemblies used and the calculated ex works price of the finished product. Non-originating components etc. will only be permitted up to a given percentage which varies product to product.

Importers must undertake due diligence to ensure that if they claim duty free status due to origin, they can prove that the goods did meet whichever rule applied under the origin part of the TCA. A main element of this proof is the Long Term Supplier Declaration which the

importer should obtain from the exporter. (There is a template in the TCA). This document should be in the importer's possession prior to import.

Alternatively the importer can hold evidence that the importer has tested the item against whichever rule applies and therefore knows of their own knowledge that the item meets the rule.

If the item doesn't meet the rule or it can't be proven to do so or the importer finds it to much work to try to find out then full import duty will be payable.

All of the above is 'usual' in free trade agreements and to be expected.

Remember many items already have a zero rate of import duty in the GB Global Tariff or the EU Common Customs Tariff. In which case there is no need to concern yourself with origin at all (unless there is a ban on imports from a particular country of course).