Think Ahead ACCA

Technical factsheet
International VAT

CONTENTS

1. INTERNATIONAL SERVICES

1.1 The basic rule

1.1.1 Basic rule

The majority of services provided to overseas business customers will be supplied where the business customer belongs – the so-called B2B (business-to-business) supply.

This means that if you are billing a French company, the place of supply is France and the French company has a mandatory reverse-charge obligation.

The UK company must ensure it has proof of its customers' business status (eg VAT number, contracts, letterhead etc).

B2B services are outside the scope of VAT but the UK company must include the sale in box 6 of its VAT return. From 1 January 2021, there is no requirement to complete an EC sales list.

It is also good practice (but not mandatory) for the UK company to put the reverse-charge narrative on its invoice to remind the French customer of their reverse-charge obligation.

If you are billing a non-EU company, the supply is still where the customer belongs and any local sales taxes are normally the responsibility of the customer.

There are limited overrides to the basic B2B rule and these can be found in VATA 1994 Schedule 4A. VAT Notice 741A is also very useful.

Services supplied to non-business overseas customers are generally supplied where the supplier belongs – the so-called B2C (business-to-consumer) supply. The supply will then follow the normal UK supply rules, ie UK VAT charged if the liability of the supply in question is standard rated. Again, Schedule 4A and Notice 741A are useful for any overrides to these B2C rules.

1.1.2 Overrides to the basic rules

Schedule 4A VATA 1994 lists the overrides in three parts:

Part 1 – general exceptions (paras 1 to 8)

Part 2 – B2B overrides only (paras 9 to 9E)

Part 3 – B2C overrides only (paras 10 to 16)

While the basic rules remain unchanged post-Brexit, there are some important changes to the overrides within Schedule 4A. The more common overrides are outlined below.

1.2 General exceptions

1.2.1 Land-related services

Services relating to specific sites are supplied where the land is situated.

Services relating to the sale of a UK property by an overseas individual are subject to the standard rate of UK VAT, eg estate agent commission, lawyers' conveyancing fees etc.

Likewise, if a UK individual is selling their Spanish holiday home, they are charged Spanish VAT on similar costs.

UK providers of land-related services need to be careful of requests to undertake land-related services on EU sites as this can create an EU registration obligation for the UK provider. For example, an interior designer is engaged by a high-worth

individual to work on his French, Italian and Austrian homes. These are land-related services and, as such, the interior designer has registration obligations in France, Italy and Austria.

From 1 July 2021, the designer could register for the Non-Union OSS (see 1.5) and account for the relevant VAT through their OSS registration. Prior to 1 July 2021, multiple EU registrations were required.

If the land-related services are provided to an EU-registered business, we need to check whether the destination state has a reverse-charge rule for land-related services. If it does, then the reverse charge will take precedence and no OSS reporting is required.

If supplying land-related services in relation to land situated outside the EU, local advice must be sought to determine whether the UK service provider is liable to any local taxes.

There is a useful list of land-related services at VAT Notice 741A Para 7.4.

1.2.2 Passenger transport

The transport of passengers (or of any luggage or motor vehicles accompanying passengers), eg coach trips, is treated as being made in the country where the transportation takes place and, in the case of more than one country, in proportion to the distances covered in each.

So, if a coach trip crosses three EU countries, the coach company must consider its VAT registration obligation in those three EU member states. While passenger transport is zero-rated in the UK, it is lower rated (at best) in EU member states.

From 1 July 2021, the coach company could register for the Non-Union OSS (see 1.5) and account for the relevant VAT through its OSS registration.

If supplying passenger transport services outside the EU, local advice must be sought to determine whether the UK service provider is liable for any local taxes.

1.2.3 Hiring of a means of transport

Short-term hire is supplied where the customer collects the means of transport eg car hire. ‘Short term’ means periods up to 30 days for cars (90 days for vessels).

Long-term hire of transport will be supplied where the customer belongs (B2B or Schedule 4A Para 13A override if B2C).

The above rules for short- and long-term transport can be overridden by the use and enjoyment rules (see 1.6).

From 1 July 2021, the hire company could register for the Non-Union OSS (see 1.5) where it was subject to an overseas registration obligation.

If hiring transport outside the EU, local advice must be sought to determine whether the UK service provider is liable to any local taxes.

1.2.4 Restaurant and catering services

Supplies of restaurant and catering services are made in the place where they are physically carried out.

UK caterers being asked to cater for an EU event should be aware of their potential registration obligation in the country in which the event takes place. The reverse charge may deal with that when the customer is a business person, but when catering for private individuals, an EU registration obligation is likely to arise. From 1 July 2021, this could be met via the Non-Union OSS.

If supplying restaurant and catering services outside the EU, local advice must be sought to determine whether the UK service provider is liable to any local taxes.

1.3 B2B overrides

1.3.1 Admission to cultural, educational and entertainment activities etc

Admission to conferences, fairs, exhibitions etc is treated as made in the country in which the event takes place.

If a UK business is running a conference in the UK, it must charge UK VAT on the admission fee – irrespective of whether the attendee is a UK or non-UK business.

Likewise, if a UK business is running a conference in the EU, it has an EU registration obligation in respect of its ticket income. It could meet its obligation by registering under the Non-Union OSS, but a full registration is more appropriate as it allows input tax recovery on the event costs, eg venue hire.

If supplying admission services outside the EU, local advice must be sought to determine whether the UK service provider is liable to any local taxes.

1.4 B2C overrides

1.4.1 Intermediary services

Where disclosed intermediaries are arranging a service for a non-business client, the place of supply of its intermediary service will be the same as the supply it is arranging.

This could create an EU registration obligation for UK businesses arranging supplies that have an EU place of supply. From 1 July 2021, the Non-Union OSS can be used to discharge any EU VAT obligations.

If supplying intermediary services on supplies that are outside the EU, local advice must be sought to determine whether the UK service provider is liable to any local taxes.

1.4.2 Transport of goods

The transport of goods is treated as being made in the country where the transportation takes place and, in the case of more than one country, in proportion to the distances covered in each. This covers a UK removals company helping families move to France, for example.

This could create an EU registration obligation for UK businesses performing such work in the EU. They could meet their obligation by registering under the Non-Union OSS, but a full registration is more appropriate as it allows input tax recovery on the costs of the trip, eg fuel costs.

If transporting goods outside the EU, local advice must be sought to determine whether the UK service provider is liable to any local taxes.

1.4.3 Valuation or work on goods

Valuing or working on goods will be supplied where the work is physically performed.

This could create an EU registration obligation for UK businesses performing such work in the EU. From 1 July 2021, the Non-Union OSS can be used to discharge any EU VAT obligations.

1.4.4 Broadcasting, telecommunication and electronically supplied services

The override for broadcasting, telecommunication and electronically supplied (BTE) services supplied B2C is found within Schedule 4A Para 15 and shifts the place of supply to where the customer belongs. The most common examples are

electronically supplied services, eg clients that offer downloaded software, apps, games, books, music etc. These services are all supplied electronically with minimal or no human intervention.

This means that supplying electronically supplied services to consumers will create a registration obligation in the EU member state of download. Providers of electronic services will often have multiple EU registration obligations as one download in any member state will create a registration obligation; this is the case pre- and post-Brexit.

Non-established traders do not enjoy the registration threshold that applies to established traders. This means that a UK supplier providing electronic services to individuals in France, Germany and the Netherlands has a registration obligation in those member states.

Up to 31 December 2020, service providers avoided multiple EU registration obligations by taking advantage of the Mini One Stop Shop (MOSS) simplification. Rather than registering in each member state of download, they could register for MOSS via the UK portal. This was separate to their existing UK registration.

Service providers still charged French VAT to French individuals, German VAT to German individuals etc but reported and accounted for the VAT via their MOSS return. UK VAT registration was still maintained for UK sales and UK input VAT recovery.

From 1 January 2019 to 31 December 2020, there was an £8,818 annual *de minimis* for total EU sales. So, if the electronically supplied services into the EU were below this level, the service provider could charge UK VAT. Since 1 January 2021, the *de minimis* rule has not been available to UK service providers.

Since 1 January 2021, the Union MOSS scheme has been closed to UK service providers. If UK service providers want to continue with the MOSS simplification, they must register for the Non-Union MOSS scheme in a member state of their choosing. Many chose Ireland or Malta as these portals and returns are in English. The effective date of their Non-Union MOSS registration was 1 January 2021. Rather than submitting their MOSS return via the HMRC portal, they use the portal where they registered for Non-Union MOSS. Other than that, the practicalities remain the same.

From 1 July 2021, the Non-Union MOSS scheme was changed to the Non-Union OSS (see 1.5).

If supplying BTE services to customers outside the EU, local advice must be sought to determine whether the UK service provider is liable to any local taxes.

1.4.5 Schedule 4A Para 16 services

Para 16 services include consultants, accountants, lawyers, hiring of goods and the hiring of staff, among others.

Up to 31 December 2020, para 16 services provided to non-EU consumers were supplied where the customer belongs. As a result, no UK VAT was chargeable when invoicing non-EU consumers.

Consultancy fees must be for the provision of information and expert advice. Where the services fall short of this or go beyond this, then the basic B2C rule will still be in point and UK VAT should be charged. In the recent case of Mandarin Consulting, career coaching fees charged to non-EU families were held to fall within the definition of consultancy, so no UK VAT was chargeable to the China-based families.

From 1 January 2021, Para 16 is extended to any consumer outside the UK, ie EU and non-EU consumers. Therefore, accountants no longer charge VAT to any

overseas client. B2B services remain basic rule while B2C services are covered by Para 16. There is no EU registration obligation for B2B services as these are covered by the mandatory reverse charge. And unless the member state has a use and enjoyment rule for Para 16 services (unlikely), there will be no EU VAT registration for B2C services either.

If supplying Para 16 services to customers outside the EU, local advice must be sought to determine whether the UK service provider is liable to any local taxes.

1.5 Non-Union one stop shop from 1 July 2021

1.5.1 Non-Union OSS

The Non-Union One Stop Shop (OSS) was formerly known as the Non-Union MOSS scheme. For the first six months of 2021 it was used to report and account for EU VAT when UK businesses supplied broadcasting, telecommunication and electronically supplied services to EU individuals.

Prior to 31 December 2020, UK traders reported the same via the Union MOSS scheme.

The Non-Union OSS is an optional system and the UK supplier can still VAT register in each member state in which they make supplies, if they prefer. Where they opt to use OSS, they register in a single member state of their choosing and complete a single return to account for VAT due in each member state. It is submitted electronically and records all supplies of services to member states that are taking place there, along with their value and VAT due. A return must be submitted by the end of the month following the tax period covered by the return. Tax periods are calendar quarters. Therefore, for a return covering January to March, it must be submitted by 30 April. Payment should be made at the same time.

If a UK trader was already registered for MOSS in a member state, it was moved over to the new OSS system from 1 July 2021.

Input VAT incurred in another member state cannot be recovered under an OSS return. In order to recover any input tax incurred in the EU, a UK supplier needs to submit a 13th Directive claim. A supplier is under no obligation to issue an invoice when using OSS.

All supplies of services, where the place of supply is in the EU, are covered under the OSS scheme. Non-Union MOSS only covered broadcasting, telecommunication and electronic services.

The types of services that are covered by the OSS scheme include (the list is not exhaustive):

- broadcasting, telecommunication and electronic services
- admission to cultural events
- transport services
- hiring of means of transport
- land-related services.

1.6 Use and enjoyment rule

1.6.1 The use and enjoyment rule post-1 January 2021

The use and enjoyment rules will shift the basic place of supply to where the goods are used and enjoyed. The rules apply only if we have a UK place of supply but the means of transport is used outside the UK or vice versa.

The use and enjoyment rules only apply to specific services:

- hiring of a means of transport (short and long term)
- hiring of goods
- broadcasting services
- B2B electronically supplied services and telecommunication services.

For example, a UK car-hire company renting a car to a US tourist for six weeks is subject to UK VAT under the use and enjoyment rules, ie US basic rule regarding long-term hire, but as the car was used and enjoyed in the UK, the place of supply shifts to the UK.

1.7 Specified services

1.7.1 Specified services

Pre-1 January 2021, input tax was deductible on costs relating to certain financial services provided to non-EU customers. This enabled exempt businesses to recover input tax on their non-EU business.

From 1 January 2021, input tax recovery extended to financial-related services provided to non-UK customers.

Similar rules are in place for insurance intermediaries providing services to non-UK insurers, provided that the insured person is outside the UK.

Many clients in this area are partially exempt from an input tax recovery perspective. Any costs relating to their UK business are not deductible, whereas any costs relating to their non-UK business are deductible. Costs relating to both are residual and will be apportioned in accordance with the partial exemption rules.

1.8 Reverse charge

1.8.1 Reverse charge

There have been no changes to reverse-charge rules under Brexit.

If a UK business buys services from an overseas business, it must reverse charge the service on its VAT return. The entries are normally made in boxes 1, 4, 6 and 7 of the UK VAT return. Input tax recovery in box 4 is dependent on the company using the service for its taxable activity.

Making tax digital (MTD) software such as Xero, QuickBooks or Sage has the capability to deal with VAT entries provided the purchase invoice is identified as a reverse charge when inputted into the software.

1.9 Zero rating

1.9.1 Schedule 8 Group 7

Where the place of supply is the UK, zero rating may be in point where the service falls within Schedule 8 Group 7.

This is normally in connection with work on goods to be exported or when the service provider is making arrangements for the export of goods.

Zero rating can also cover the making of arrangements for any supply of services that are made outside the UK. (Schedule 8, Group 7 Item 2(c).)

For example, an actor's agent might be invoicing a UK VAT-registered actor for a production that will be filmed outside the UK.

If the production company is UK based, then the actor will charge the production company UK VAT on their fee. The agent will invoice the actor for their commission plus UK VAT, ie the main supply between actor and production company is in the UK so the zero-rating provisions within Group 7 do not apply.

If the production company is based outside the UK, then the actor will have a B2B outside the scope supply and no UK VAT will be charged to the overseas production company. The agent will invoice the actor for their commission but the commission will be zero rated as the main supply between actor and production company is outside the UK; the provisions within Group 7 apply.

Where the production is filmed is not relevant; it is where the film production company is based that will determine the VAT treatment of the actor's fee and, in turn, the agent's fee.

1.10 Tour Operators Margin Scheme

1.10.1 Changes from 1 January 2021

The Tour Operators Margin Scheme (TOMS) applies to businesses that buy in and resell transport, accommodation etc without material alteration. This typically covers tour operators in the main but can apply to any business that buys in and resells TOMS-related services.

Certain supplies will always fall within TOMS when bought in and resold without material alteration. These are:

- accommodation
- passenger transport
- hire of means of transport
- trips or excursions
- services of tour guides
- use of special lounges at airports.

Other supplies can fall within TOMS when provided with the services above. These include catering, admission tickets and sports facilities.

TOMS is a mandatory scheme whereby businesses must account for output tax on the profit margin of their bought-in and resold supplies. There is no input tax recovery on their bought-in supplies but other input tax relating to accountancy fees, property costs, telephone, advertising etc is recoverable.

In 2020, the margin on EU packages was standard rated, meaning that 1/6 VAT was due on the EU margins. The non-EU margin was zero rated. From 1 January 2021, VAT on travel outside the UK is now all zero rated. Many TOMS operators are now repayment traders as they only sell overseas holidays.

VAT Notice 709/5 provides full details of how the scheme operates.

2. INCOTERMS

2.1 Incoterms

2.1.1 What are incoterms?

Published by the International Chamber of Commerce (ICC), international commercial terms (Incoterms) are a set of internationally recognised, abbreviated terms used when trading in goods. Incoterms are guidelines rather than law, and are accepted by governments and legal authorities around the world.

Inserted into a contract, Incoterms clarify the tasks, costs and risks to be borne by buyers and sellers at each stage of the deal. These terms effectively provide instructions to carriers, forwarders, customs brokers, banks and other financial institutions involved in shipping goods; they specify who is responsible for paying for and managing the shipment, insurance, documentation, customs clearance and any other activities.

There are 11 Incoterms in total, four of which relate specifically to sea and inland waterway transport.

When including Incoterms in a contract, two items need to be included: the abbreviated Incoterm being used and the named place, which will be one of the following:

- place of delivery
- place of destination
- port of shipment
- port of destination.

Incoterms for road, rail, air and sea

EXW:	Ex works (insert place of delivery, usually seller's premises)
FCA:	Free carrier (insert 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 place of destination)
DPU:	Delivered at place unloaded (insert place of destination)
DDP:	Delivered duty paid (Insert place of destination).

Incoterms for sea and inland waterway transport

FAS:	Free alongside ship (insert port of loading)
FOB:	Free on board (insert port of loading)
CFR:	Cost and freight (insert port of destination)
CIF:	Cost, insurance and freight (insert destination port)

It is important to remember that Incoterms do not cover everything: for example, they do not identify the goods being sold, the price or the method and timing of payment. Further, the contract will need to detail separately what happens in the event of failure to provide the goods, delayed delivery and, indeed, how any dispute will be resolved.

While Incoterms are a commercial term, they will be important when considering the VAT implications of moving goods.

The full incoterms are available from the ICC website, but the most common ones used are as follows.

2.1.2 EXW (ex-works)

The buyer is responsible for moving the goods from your premises to their own premises. The transport company will be engaged by the buyer and will be responsible for the transport and insurance costs for the transportation of the goods.

The buyer will deal with the export and import documentation, and pay any import VAT (and duty where relevant) in the destination country.

2.1.3 FOB (free on board)

The seller is responsible for moving the goods to the port of export and loading them onto the vessel at the port. The seller is responsible for the export declaration.

The buyer will deal with all costs and procedures from there, including the import declaration. The buyer will need to pay import VAT (and duty where relevant).

2.1.4 CIF (cost, insurance and freight)

The seller is responsible for insuring and moving the goods to the port of import and will be responsible for the export declaration.

The buyer deals with all the costs and procedures from the port of import, including the import declaration. The buyer will need to pay import VAT (and duty where relevant).

2.1.5 DAP (delivered at place)

The seller is responsible for moving the goods to a specified destination – normally the buyer's premises. The seller is also responsible for the export declaration but the buyer will be responsible for the import declaration.

The buyer will pay any import VAT in the destination country, together with any customs duty where relevant.

2.1.6 DDP (delivered duty paid)

The seller is responsible for moving the goods to a specified destination – normally the buyer's premises. The seller is also responsible for the export and import declarations.

The seller will pay any import VAT in the destination state. Where relevant, customs duty will also be the seller's responsibility.

The seller must normally register in the destination state to recover the destination import VAT they pay over and to account for the destination VAT they charge their customer.

2.1.7 Practical impact

The implications of Incoterms need to be appreciated. If a GB business were to agree DDP terms with an EU customer, we will have a problem. The GB supplier is responsible for the GB export documentation and the EU import documentation in the destination state. As a result, the GB supplier will be responsible for the EU import VAT and, as such, this will normally result in a VAT registration obligation in the

destination state. The GB supplier will then be able to recover the import VAT paid and account for the EU VAT on their onward sale to their EU customer.

If they have no choice but to accept DDP terms, the GB supplier should consider appointing a limited fiscal representative in the destination state. The limited fiscal representative can deal with your local obligations without the need for a formal company registration.

In the Netherlands, for example, a limited fiscal representative will account for the relevant import VAT on their VAT return and recover it on the same VAT return. They will then report a zero-rated sale to the GB supplier's customer with an obligation for the customer to apply a reverse charge to the supply.

3. EXPORT OF GOODS

3.1 Introduction

3.1.1 Export of goods

From 1 January 2021, all goods leaving GB will be a zero-rated export where certain conditions are met – including retaining proof of export.

For larger contracts, the customer is expected to be the importer of record in the destination country and, as such, they must deal with the import formalities in their own country (entry declarations, VAT and duty declarations). This is under Incoterms such as EXW, FOB, CIF and DAP.

3.1.2 Direct or indirect export?

From an invoicing perspective, we need to understand the difference between direct and indirect exports.

Direct exports are when the GB supplier arranges the transport of their goods to their non-UK customer. The GB supplier can zero rate their direct exports as the goods have left GB and they have evidence of that movement.

Indirect exports are simply where the customer arranges the transport of the goods. To secure zero rating on indirect exports, the non-UK customer must not have a GB establishment, eg a GB branch, and the GB supplier must have evidence of the movement. If there is a GB branch, then the sale to the non-UK customer must be standard rated even though the goods have left GB.

If goods were sold to a GB customer but delivered to their branch in France (say), the rules are fundamentally the same. Where the GB supplier arranges the transport, we have a zero-rated direct export. If the GB customer arranges the transport, the supply will be standard rated as an indirect export.

It should be noted that if there are two GB parties involved, with the second GB party selling goods to their French customer (say), then the supply between the two GB parties is standard rated. The supply from the second GB party to their French customer is the one zero-rated supply.

3.1.3 Importing into the EU

Many GB suppliers directly import goods into the EU for onward supply.

For example, importing goods from Japan into the Netherlands for onward supply within the EU will invariably create a Dutch VAT registration obligation for the GB supplier but this can be discharged by appointing a Dutch limited fiscal representative. The representative can deal with the import formalities and then the onward supply. The use of limited fiscal representatives is very popular as it is a cost-effective way of avoiding formal registration in the Netherlands (in this example).

3.1.4 Triangulation

If a GB company is the intermediary in a triangulation chain of transactions, they will normally have to register for VAT in the destination state. The triangulation simplification is no longer available to GB businesses.

It is possible to appoint a general fiscal representative to deal with your registration obligations. This is different from a limited fiscal representative as you will have your own VAT number and a responsibility to submit your own VAT return.

4. IMPORT OF GOODS

4.1 Postponed accounting on imports

4.1.1 Postponed accounting on imports

When importing goods, businesses should look to claim postponed import accounting (PVA) as it offers significant cash-flow advantages. The normal C88 procedures will need to be followed on import but the importer (or their freight agent) will claim PVA by entering code G in Box 47e.

Import VAT will then be accounted on the VAT return rather than at point of entry. Where the goods are used for a taxable purpose, the import VAT can be claimed on the same return. Monthly postponed import VAT statements (MPIVS) are available online and these replace the C79 as evidence.

Most accounting software packages will allow you to download the MPIVS directly into the accounting software. Software packages such as Xero will then populate Boxes 1 and 4 from the download. The business will enter the invoice into the accounting system in the normal way and this will populate box 7 of the VAT return.

If your accounting system does not facilitate such a download, you can enter the required information manually. To obtain the required numbers, access the MPIVS return on the HMRC website.

4.2 Deferment scheme

4.2.1 Deferment scheme

If you are not claiming PVA, VAT and duty (where relevant) must be paid at point of entry or secured by deferment before goods are released. A deferment account will delay the payment of the VAT and duty liabilities. All the amounts due for the calendar month will be collected by direct debit on the 15th day of the following month.

When a deferment scheme is set up, HMRC will issue a deferment authorisation number (DAN) and this should be quoted on the import declarations.

HMRC will agree the deferment account limit (DAL), which is the maximum amount that can be deferred each month. A deferment account must be backed by a guarantee provided by a bank or other financial institution. The guarantor agrees to pay up to twice the amount of the DAL, because there may be two months' liability outstanding by the time the company defaults on payment.

Amounts deferred are referred to as 'actual' debts; this determines which rules for the guarantee apply. There are two levels of 'actual guarantees' for customs duty. A 100% guarantee is required unless the applicant is an Authorised Economic Operator – Customs (AEOC). An AEOC only needs a 30% guarantee. The higher the required guarantee, the more expensive it will be to obtain.

The C79 is sent to the importer to evidence support the input tax recovery.

4.3 Freight agent disbursement

4.3.1 Freight agent disbursement

The freight company can settle the VAT and duty on behalf of the UK importer.

The freight company will then invoice the GB importer for reimbursement of the import VAT and duty paid over.

There will, of course, be a fee for such a service.

The C79 will be sent direct to the importer as evidence of import VAT paid.

Alternatively, the freight agent could claim PVA on the importer’s behalf.

5. NEW RULES OF ORIGIN FOR CUSTOMS DUTY

5.1 Rules of origin post-Brexit

5.1.1 Introduction

Up to 31 December 2020, GB businesses could trade with the EU tariff free without the need for customs declarations or meeting rules of origin. From 1 January 2021, our trading with the EU has been based on a new free trade agreement (FTA): the Trade and Cooperation Agreement (TCA). However, to continue with tariff-free trading under this agreement, we must meet the new GB-EU preferential rules of origin, backed up by supporting documentation.

5.1.2 TCA rules of origin

The rules determine the origin of goods based on where the products or materials used in their production come from. The purpose of these rules is to ensure that preferential tariffs are only given to goods that originate in GB or the EU.

Goods that do not meet the GB origin rules will have duty applied, which means that goods imported from China and then exported to Ireland, for example, are unlikely to meet the rules, unless they meet product-specific rules of origin.

The TCA rules are in split into two parts:

1. general provisions that apply to all products being traded under preference
2. product-specific rules of origin (PSRs), with specific rules for every product based on their Harmonised System (HS) code.

ANNEX ORIG-2 of the TCA contains 97 chapters that stipulate the PSRs for each HS code.

5.1.3 Originating products

There are two ways in which a product can be considered originating:

1. wholly obtained, where the product is exclusively obtained or produced in one country's territory, without using materials from any other country
2. substantially transformed in line with the relevant PSR, of which there are three types:
    - value-added rule
    - change of tariff classification
    - manufactured from certain products or through specific processes.

ANNEX ORIG-2 of the TCA will specify which rule(s) must be met for each HS code (available online).

5.1.4 Bilateral cumulation

Under bilateral cumulation, EU materials used in GB production are regarded as having GB origin and vice versa. Therefore, if an EU product is incorporated in the production of a final product in GB, its full value is considered as GB originating when the final product is exported.

Bilateral cumulation will not apply if the EU product is only subject to simple operations in GB. Article ORIG-7 of the TCA describes this as ‘insufficient production’.

In this instance, the final product could still qualify but the EU element will be regarded as non-originating and the product will need to meet the PSR rules from there.

5.1.5 Insufficient production

The exporter may only apply cumulation where the work or processing carried out in their country has gone beyond the operations regarded as insufficient.

Article ORIG 7 Insufficient Production states:

> Notwithstanding the general requirements a product shall not be considered as originating in a party if the production of the product in a party consists only of one or more of the following operations conducted on non-originating materials:
>
> - preserving operations (drying, freezing etc to keep in good condition)
> - breaking-up or assembly of packages
> - washing, cleaning, removal of dust, oxide, oil, paint or other coverings
> - ironing or pressing textiles
> - simple painting and polishing
> - husking and partial or total milling of rice, polishing and glazing of cereals
> - operations to colour or flavour sugar or form sugar lumps; partial or total milling of sugar in solid form
> - peeling, stoning and shelling of fruits, nuts and vegetables
> - sharpening, simple grinding or simple cutting
> - sifting, screening, sorting, classifying, grading, matching, making sets etc
> - simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations
> - affixing or printing marks, labels, logos etc on products or their packaging
> - simple mixing of products etc
> - simple addition of water or dilution with water or another substance that does not materially alter the characteristics of the product, or dehydration or denaturation of products
> - simple assembly of parts of articles to constitute a complete article or disassembly of products into parts
> - slaughter of animals.

5.1.6 Example – HS Code 2002.90 Chopped tomatoes

Spanish tomatoes are imported and processed in GB before being exported to the EU.

Bilateral cumulation is possible here because EU-sourced tomatoes are subject to a sufficient process.

Using HMRC's online tool, we can establish that HS Code 2002.90 applies to chopped tomatoes. The first two digits, 20, refer to Chapter 20, which is within Section IV.

SECTION IV PREPARED FOODSTUFFS; BEVERAGES, SPIRITS AND VINEGAR; TOBACCO AND MANUFACTURED TOBACCO SUBSTITUTES
Chapter 20 Preparations of vegetables, fruit, nuts or other parts of plants

Under this chapter, there are three groups of HS codes:

1. 20.01 CTH
2. 20.02-20.03 Production, in which all the materials of Chapter 7 used are wholly obtained
3. 20.04-20.09 CTH, provided that the total weight of non-originating materials of headings 17.01 and 17.02 used does not exceed 40% of the weight of the product.

Chopped tomatoes fall into the second of these groups (20.02-20.03), with the specific rule of origin stating that all materials from chapter 7 (edible vegetables and certain roots and tubers) must be grown and harvested in GB. However, with bilateral cumulation, GB producers can import EU tomatoes of HS heading 0702 (grown and harvested in the EU) and process them by chopping, cooking and packaging them into chopped tomatoes for onward sale. The final product can be exported back to the EU as a GB 'originating' product.

5.1.7 Claiming preferential treatment

Preferential treatment is not automatic. When importing into GB or EU, to benefit from preferential tariffs, a business must:

- claim preference on the customs declaration
- declare that they hold proof that the goods meet the rules of origin.

Proof can be either a statement of origin completed by the exporter on a commercial document, such as an invoice, or knowledge obtained by the importer, supported by documents, confirming the goods' origin.

Importer responsibilities

The importer must obtain proof on originating status before claiming preference. This could be an invoice, origin declaration or supporting documents if knowledge based. The importer should claim preference on the customs declaration and provide proof of origin to customs authorities if requested. Records must also be maintained for at least four years.

Exporter responsibilities

Exporters must understand whether they need obtain a supplier's declaration to prove the origin of materials used in production or bought in for resale. Supplier declarations are not required for GB-EU trade in 2021 but the exporter must be confident of origin status.

The exporter must hold evidence that the goods meet the origin rules before issuing a statement on origin or supporting documentation if it is a knowledge-based preferential claim. The exporter must also keep their records for at least four years.

Statement of origin

Statements or origin are valid for two years when issued by an EU exporter but only for 12 months when issued by a GB exporter.

A number of things must be disclosed, including:

- the date of the shipment or period covered, as a statement of origin can cover multiple shipments over a specified period of time, up to the 12- or 24-month limits stated above
- words stating 'The exporter of the products covered by this document (exporter reference #.....) declares that, except where otherwise clearly indicated, these products are of…… preferential origin.'
  - the exporter reference will be the EU exporter's REX number or, if it is a GB exporter, their EORI number
  - the exporter will need to specify where they are moving from by inserting that the products are of either GB or EU origin
- place and date of export
- name of the exporter.

5.1.8 Conclusion

The rules of origin must be addressed to benefit from tariff-free trading. GB-sourced goods should be fine when exporting into the EU and vice versa. However, clients that simply import and export without processing the goods will have to rely on other customs procedures to avoid double duty, eg returned goods relief if clients are moving goods from the EU to GB and then on to another EU state without any processing or temporary storage, or customs warehousing to avoid double duty where goods come into GB from a non-EU country and are then exported to the EU without any processing in GB.

If clients import from non-EU countries, process the goods and then export into the EU, clients will need to consider the PSR to determine if the goods are of GB origin.

6. E-COMMERCE

6.1 Consignments up until 30 June 2021

6.1.1 E-commerce from 1 January 2021 to 30 June 2021

Where consignments of goods valued up to €22 are sold to a customer in an EU country, the GB supplier treated that as a zero-rated export. As the goods are classed as a low-value consignment, there is no import VAT payable in the EU country of destination. No duty is payable as the goods were under the €150 duty threshold.

Where consignments are valued at greater than €22, there is still no UK VAT but import VAT is payable in the destination country. This is normally accounted for by the customer via the local postal import system. The customer will also settle any duty where the goods are over €150 and not of UK origin.

On its website, the GB supplier will normally advertise their goods net of VAT with a note that the customer is responsible for settling any import VAT and duty in their country. However, some e-commerce suppliers are giving their customers the option of paying gross, meaning that the local VAT (and duty where applicable) is added to the sales price at check-out. This VAT (and duty) will then be paid to the transport company so that the goods can be cleared at the border.

6.2 Consignments from 1 July 2021

6.2.1 E-commerce from 1 July 2021

From 1 July 2021, the EU e-commerce directive came into force and the €22 import VAT exemption for small consignments was removed. This means that all goods imported in the EU will now be subject to VAT but the way that it is collected has changed. The duty limit remains unchanged at €150.

Where goods are imported with a value of up to €150, the seller can continue with the postal import system if they want to.

Alternatively, they can charge the destination country's VAT rate at the point of sale. This means that the seller should advertise the goods net of VAT and then add the correct country's VAT at the point of sale. The VAT charged is called supply VAT rather than import VAT.

The payment of the supply VAT to the destination authority will be facilitated through the EU's new Import One Stop Shop (IOSS).

Where the supplier sells via an online marketplace (OMP), then the OMP can take on these responsibilities.

6.2.2 Import One Stop Shop (IOSS)

E-commerce suppliers wanting to use the IOSS simplification must register in an EU member state of their choice. Having registered, the supplier will receive an IOSS registration number that must be communicated to the transport company responsible for delivery of any goods sold. This should ensure that goods pass through customs with minimal interruption. The IOSS number ise evidence that VAT has been accounted for at point of sale and there is no duty for consignments up to €150.

To facilitate this, the GB supplier will need to appoint a local representative to prepare their monthly IOSS returns. Monthly payments will be due via the registration portal of the member state chosen to register in. The returns will only include EU output VAT for each country where the supplier has traded, on a line-by-line basis.

6.2.3 Consignments over €150

These goods are not accounted for in the same way. Where such goods are sold to an EU customer, the GB supplier will continue to have a zero-rated export but the EU import VAT due will be payable through the relevant country's postal import system.

Where the goods are of 'UK origin', no duty will be payable. However, in cases where the origin rules are not satisfied, duty will also be payable.

6.2.4 Storing goods in the EU

Where a GB supplier stores goods in an EU country prior to sale to EU customers, the GB supplier must register for VAT in the country where the goods are stored.

For example, if a GB supplier stores goods in Belgium for onward sale to customers in France, the GB supplier must:

- register for VAT in Belgium
- charge Belgium VAT on the sale to the French customer.

Up until 30 June 2021, if the distance-selling thresholds were breached in France, the supplier had to register in that member state as well. From 1 July 2021, distance selling becomes a thing of the past. The point-of-sale system becomes effective and French VAT is charged at point of sale.

6.2.5 Third-party storage facility

What if the goods are being stored in an Amazon fulfilment house in Belgium?

Provided that Amazon is acting as the supplier's own-name agent, there is effectively a deemed sale to Amazon and Amazon is deemed to sell the goods on. This is a zero-rated export for the GB supplier and Amazon is responsible for the EU output VAT.

On 1 July 2021, the EU introduced an online marketplace rule whereby the online marketplace is responsible for the local VAT, irrespective of own-name agent status.

6.3 E-commerce into Great Britain from 1 January 2021

Six months earlier, the UK introduced a similar system to the EU's for consignments up to £135.

Where a non-UK company sells goods valued up to £135 to a GB customer, no duty is payable. However, UK supply VAT is due at the point of sale, meaning that the overseas supplier must charge UK VAT at the point of sale and must register for VAT in the UK.

If that supplier is selling through an online marketplace, the online marketplace must be registered for UK VAT and account for the point of sale UK VAT.

Selling to a business

Most e-commerce transactions are B2C supplies. However, where a non-UK company sells goods to a GB business for an amount up to £135, provided that the overseas company obtains the GB company's VAT number, the GB company must reverse charge the supply. The same will apply where a GB company sells to an EU business.

Goods stored in GB by overseas supplier

If goods valued at up to £135 are in GB at point of sale, then the overseas supplier will already be UK registered as the goods have been imported into the UK.

If the goods are then sold to unregistered customers via an online marketplace:

- the overseas supplier has a zero-rated supply to the online marketplace
- point-of-sale VAT is accounted for by the online marketplace.

If the goods are sold to a VAT-registered customer, the supplier must charge VAT, with the online marketplace simply providing the supplier with the sales information.

Consignments into GB greater than £135

These will be treated as a zero-rate export in the country of dispatch, but import VAT, rather than supply VAT, will be due in the UK. There will be an import declaration at time of arrival.

If the supplier is the importer of record, the supplier will register in the UK and use the UK postal import system.

Remember: on 1 July 2021, the EU introduced the same rules for goods over €150.

7. CROSS-BORDER VAT REFUNDS

7.1 Foreign refund reclaims

7.1.1 Post-transition

UK businesses may incur VAT in other member states eg hotels, meals and car hire when an employee goes on a business trip.

For input tax incurred in the EU in 2021, we have to rely on input tax reclaims via the paper-based 13th Directive. The electronic cross-border refund system that existed up to 31 December 2020 is closed to UK businesses.

The result will be the same but the claim process will be paper based and not as streamlined. UK claimants need to send their claim forms to each member state that they are seeking a refund from.

VAT will be recoverable based on the input tax recovery rules in the member state of claim.

The claim periods are normally to 30 June each year, with a 31 December submission deadline.

8. NORTHERN IRELAND PROTOCOL

8.1 The Northern Ireland Protocol

8.1.1 Introduction

The Northern Ireland Protocol means that Northern Ireland maintains alignment with the EU VAT rules for goods, including on goods moving to, from and within Northern Ireland. However, Northern Ireland is, and will remain, part of the UK's VAT system.

UK VAT rules related to transactions in services will apply across the whole of the UK. HMRC will continue to be responsible for the operation of VAT and collection of revenues in Northern Ireland.

Under the obligations in the protocol, import VAT will be due on goods that enter Northern Ireland from GB (England, Scotland and Wales). The same will also broadly apply to goods entering GB from Northern Ireland.

Transactions in goods between Northern Ireland and EU businesses and consumers will continue as they did pre-Brexit. The same processes and reporting requirements will apply, and Northern Ireland businesses trading under the protocol will continue to have zero-rated dispatches when moving goods to EU businesses and pay acquisition tax when buying goods from EU suppliers etc. They will still be subject to the distance-selling rules up to 30 June 2021 and then Union one-stop shop (OSS) from 1 July 2021.

The only change is related to the use of the 'XI' prefix when trading under the Northern Ireland protocol.

There is no requirement for a new VAT registration for sales of goods in Northern Ireland. Their existing VAT registrations are unaffected.

Businesses will continue to account for VAT on all sales across the UK through their single UK VAT return, which will contain the same boxes as pre-Brexit. Boxes 8 and 9 are, however, reserved for traders under the protocol.

8.1.2 Selling to the EU

The Northern Ireland supplier will have a zero-rated dispatch of goods to their EU registered customer. They must obtain their customer's VAT number and retain two pieces of non-contradictory evidence that the goods have left Northern Ireland.

The sale is recorded in boxes 6 and 8 of the UK VAT return. EC sales lists and Instrastat declarations must be completed.

The EU customer must account for their acquisition.

8.1.3 Buying from the EU

The Northern Ireland customer must provide their VAT number to their EU supplier – using the XI prefix. This will secure zero rating on the purchase.

The Northern Ireland customer then accounts for acquisition tax on their UK VAT return (boxes 2, 4, 7 and 9). An Intrastat return is also required where the limits are exceeded.

8.1.4 Trading with Great Britain

A GB company will charge 20% VAT on its invoice to the Northern Ireland customer. Technically, it is import VAT but it is charged via the sales invoice. The GB supplier records the sale in boxes 1 and 6 of its VAT return.

The Northern Ireland customer recovers the import VAT charged as though it was input tax. This is recorded on boxes 4 and 7 of the VAT return.

8.1.5 Own goods to Northern Ireland

When a GB company moves goods to its Belfast branch, it charges itself import VAT and recovers it on the same VAT return. This is recorded on boxes 1, 4, 6 and 7 of the VAT return for the quarter in which the goods move.

The sale of goods from the Belfast branch follows the normal rules, eg SR if sold to Belfast customers.

8.1.6 GB company selling to Ireland (transporting through Northern Ireland)

If a GB company sells goods to an Irish company and the goods are transported through Northern Ireland on their way to the customer, the GB company must charge 20% import VAT on its invoice. The sale is recorded in boxes 1 and 6 of the GB company's VAT return.

The Irish company recovers the VAT charged via the cross-border refund scheme.

8.1.7 GB company buying from Ireland (goods transported through Northern Ireland)

Where goods are sold from an Irish company to a GB company and are transported through Northern Ireland on their way to the GB company, the Irish supplier must register for UK VAT.

The Irish supplier has import VAT to account for and recover; PVA is the best option. It will then charge 20% VAT to its GB customer.

8.1.8 Distance selling from Northern Ireland

Distance selling is where goods are sold to non-registered customers with the supplier being responsible for delivery. This normally applies to online or mail-order retailers.

Northern Ireland businesses engaged in such activity must charge destination VAT rates on distance sales to EU consumers, eg French VAT charged to French customers.

The VAT charged is then accounted for via the Union One Stop Shop.

Where total EU sales are under €10,000 in a calendar year, the supplier can charge UK VAT.

This factsheet has been compiled by Dean Wootten, CPD lecturer and tax consultant.

AUGUST 2022