

VAT focus

The VAT changes to GB imports and online marketplace burdens

Speed read

The VAT rules have changed from 1 January 2021. UK VAT registered businesses are able to account for import VAT in their VAT returns for goods imported into GB from outside the UK on a deferred basis, provided certain requirements are met. There are new rules for low value consignments: the previous relief is replaced by rules aligning with the threshold for customs duty. Whilst the changes are intended to simplify the process, there are several complexities and overseas sellers should monitor carefully for the different kinds of transactions that might arise. Further, HMRC's confirmation that it is only the owner of the goods that has the right to recover UK import VAT will present practical challenges for many businesses.



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Following the end of the Brexit transition period, businesses and their advisers need to gain an understanding of HMRC's changes for VAT. This article examines both the new VAT rules for importing goods into GB from countries outside the UK and also the new rules for online marketplaces.

These new rules are as set out in a government policy paper *Changes to VAT treatment of overseas goods sold to customers from 1 January 2021* (see bit.ly/3mqoiLY). The new rules apply only to imports into GB. Northern Ireland is set to become a unique VAT jurisdiction where developments should be monitored in case planning opportunities arise.

HMRC's new policy draws on multiple pieces of legislation relating to goods moving between GB, EU and NI, such as the VAT (Accounting Procedures for Import VAT for VAT Registered Persons and Amendment) (EU Exit) Regulations, SI 2019/60, which introduces changes to allow taxpayers to account for import VAT in their VAT returns; and the Taxation (Post-transition Period) Act 2020 (in particular, s 7 which is the legislation that provides for the new rules around online sales by overseas persons and low value importations).

The import VAT changes will affect: the timing of declaration of import VAT liability; low value consignments; goods imported and sold by overseas suppliers; and online marketplaces.

Postponed VAT accounting

Following the end of the Brexit transition period, UK VAT registered businesses will be able to account for import VAT in their VAT returns for goods imported into GB from outside the UK on a deferred basis, provided certain requirements are met. Under the new rule, import VAT liabilities will no longer be payable at the time of importation of the goods, but they will be declared later in the UK VAT return and reclaimed on the same VAT return (subject to the normal input tax rules). This will be known as 'postponed VAT accounting' (PVA) and no authorisation from HMRC will be required.

Import VAT can be accounted for under PVA if:

- the goods imported are for use in the importer's business;
- the importer's EORI number is stated; and
- the importer's UK VAT registration number is stated in the customs declaration where required.

Estimation of the import VAT liability will be permitted where the importer makes a deferred declaration. When the customs declaration is later submitted, the VAT return can be adjusted to the precise amount of import VAT due.

There are some cases where PVA cannot be used, so each importer should consider their own position carefully.

This is an important change to the current system where VAT is paid upon importation and reclaimed only upon receipt of the C79 import VAT certificate. This new procedure will be a helpful measure for many importers.

New low value consignment rules: £135

While the new PVA rules will apply to many consignments of imported goods, there are various additional rules for low value consignments. Sellers and business customers alike must maintain a careful awareness of changes in how their supplies are made, as transactions which differ in certain details will require different methods of accounting for import VAT.

Currently, in 2020, there is a relief for imported consignments valued at £15 or below. This relief will be removed from 1 January 2021 and replaced by new rules aligning with the threshold for customs duty. Qualifying consignments of £135 or less will not require any UK VAT to be paid at the border (although customs declarations will still be required), but there will be a requirement to account for VAT on the sales of the goods which are imported into GB. There are some questions which are not answered by the government's policy paper, and we await the final detail.

The new rules are not straightforward. Questions to consider are:

- is the value of the consignment £135 or less?
- are the goods supplied to a UK VAT registered business?
- at the point of sale, are the goods located inside GB or outside the UK?
- is the vendor VAT registered in the UK?
- is the vendor an overseas seller supplying directly to a consumer in GB or supplying via an online marketplace (OMP)?

Overseas sellers and OMPs will be particularly affected by the new rules for low value consignments.

Overseas sellers

The general intention remains to remove import VAT for low value consignments, but a distinction is drawn between sales of goods which are located outside the UK at the point of sale and goods located within GB at the point of sale (goods moving into Northern Ireland are subject to a unique set of rules and are not the focus of this article).

Where the goods are within GB at the point of sale, whether or not to a UK VAT registered business, the overseas seller has a requirement to register for UK VAT in order to account

for UK output tax. There is no VAT registration threshold for an overseas business with no UK establishment and therefore many overseas sellers will be caught by this rule, being required to register for and account for UK VAT. This mirrors the pre-Brexit position, but these obligations might alter if the supply is made via an OMP (see below).

More commonly, an overseas seller will supply goods located outside the UK at the point of sale. The new rules bring about a change for overseas sellers here. The import rules will be the same as for goods within GB at the point of sale, with the exception of supplies to UK VAT registered businesses which will be subject to different import VAT rules (see below). This is an important change for overseas sellers, as their supplies will fall within the scope of UK VAT for the first time and they will have UK VAT registration obligations even when title to the goods passes to the customer outside the UK. However, these obligations too might alter if the supply is made via an OMP (see below). These rules contain complexities and overseas sellers should monitor carefully for the different kinds of transactions that might arise.

Further burdens for online marketplaces (OMPs)

Where an OMP facilitates the sale for an overseas seller to a customer in GB, the OMP will usually be deemed to be making the GB sale instead of the overseas seller. The overseas seller could still be required to register for VAT in the UK, but their deemed sales to the OMP will be zero-rated.

This new burden will not apply to OMPs where the sale is to a UK VAT registered business and the goods are inside GB at the point of sale. Such GB sales will remain the responsibility of the overseas seller. It would be advisable for OMPs to retain sufficient evidence to defend any later HMRC assertion that the OMP was responsible for the supply.

New reverse charge

A new reverse charge will apply where the consignment of goods imported into GB does not exceed £135 and the items are located outside GB at the point of sale. If the seller (whether overseas direct seller or the OMP deemed supplier) holds the business customer's UK VAT registration number, the responsibility to account for UK import VAT will switch to the business customer, which will be required to account for the VAT liability by means of a reverse charge procedure.

Neither consignments valued in excess of £135 nor supplies where the goods are located in GB at the point of sale will qualify for the reverse charge and the VAT liability will remain with the overseas direct seller or the OMP.

Owner of the goods

This is all rendered more complex with the latest policy announcement as to who is entitled to recover VAT on imports. *Revenue & Customs Brief 15/20* confirms HMRC's view that only the owner of the goods has the right to recover UK import VAT. This will present practical challenges for many businesses and their overseas supply chains. For example, where goods are imported on a 'sale or return' basis by a business customer or by a selling agent where title does not pass until after importation, HMRC is adamant that any UK import VAT paid is not recoverable by the importer, even when recorded as importer in the customs declarations. HMRC has effectively put the burden on businesses to find a solution. There might be ways to resolve this position, but supply chains should prepare to be flexible.

Example 1: B2C

Consider a German supplier selling small items valued at £100

each from Germany to individuals in the UK. The German supplier has no UK establishment and holds no stock in the UK, but it sells partly via an online marketplace and partly direct. Sales are agreed in advance and the goods are then shipped direct from Germany to the customer in GB.

In 2020, the German supplier could account for German VAT on the sales under distance selling rules until it reached the threshold.

In 2021, the German supplier will have to acquire a UK VAT registration number. As its business model is currently set up, it will not be required to account for UK import VAT. For such B2C supplies (business to consumer), the German supplier will have to distinguish sales via OMPs from direct sales. B2C supplies via an OMP might be outside the scope of UK VAT, with current guidance suggesting that a zero-rated sale to the OMP only arises if the goods are already in the UK at the point of sale. Direct B2C sales will however be subject to UK output tax and will need to be declared by the German supplier in its UK VAT return.

The German supplier should be monitoring whether the detail of any of its consignments exceed £135, whether it might sometimes hold goods in GB prior to sale, whether any of its customers unexpectedly provide VAT registration numbers, whether the goods are destined for Northern Ireland rather than GB, who will issue any sales invoices (OMP or German supplier) and what is stated on those invoices, and whether any sales via the OMP are in fact zero-rated sales by the German supplier to the OMP and should be declared on its UK VAT return. Many businesses in the EU27 will consider holding a stock of goods in the UK prior to sale to avoid delays at Customs, which will change its UK VAT requirements.

Example 2: B2B

Consider the same German supplier selling items valued at £1,000 each to a UK VAT registered business in GB, selling direct (not via online marketplaces) from Germany to the GB customer.

In 2020, the German supplier might expect to account for VAT by zero-rating a Dispatch from Germany to the UK VAT registered business customer, which in turn would account for UK VAT on the Arrival of the goods in the UK under Acquisition rules.

From 2021, the German supplier should consider whether it is required to obtain a UK VAT registration number and charge UK VAT on its supplies of imported goods, accounting for UK import VAT under the PVA rules.

As with B2C supplies, the German supplier should monitor for differences in its transactions which might impact its VAT requirements. In addition, the customer in GB should also monitor for variations in transactions in case its UK VAT responsibilities are also altered.

Final thoughts

There are some significant changes to the GB VAT system in respect of imports from 1 January 2021. Some are helpful to business in allowing for a smooth post-Brexit transition and promoting frictionless trade.

However, there are also new challenges. OMPs appear to come under increasing burdens to ensure there is no VAT loss from overseas suppliers. Overseas suppliers themselves will find themselves increasingly within the GB VAT net, which will in turn present challenges for HMRC to ensure compliance and effective policing of the VAT system.

All importers, whether GB or overseas, should now be looking to understand the new rules in order to be VAT compliant after 31 December 2020. ■