

BREXIT | Frequently Asked Questions

Q. What does the NI Protocol mean for NI businesses?

- NI companies will continue to follow EU rules on the movement of goods;
- There will be no new regulatory checks, no change at the border, no new paperwork and no tariffs in respect of trade in goods between NI and EU member states;
- NI businesses will also have unfettered access to the GB market in respect of qualifying goods;
- The UK Government's Command Paper ensures that for "qualifying goods" (which at present means goods in free circulation in NI but expected to be tightened mid 2021 to mean goods of NI origin) there will be no declarations, tariffs, new regulatory checks or customs checks, or additional approvals for Northern Ireland goods to be placed on the UK market;
- Whilst there are a number of benefits for NI businesses arising from the Protocol, the Protocol also means that goods, such as food and animal products, arriving in NI from GB are now subject to a range of new controls and checks;
- The movement of goods from GB into NI will be treated as an import into the EU and full digital import declarations are now required regardless if no tariffs apply. Once goods are cleared through the import process they are then in free circulation in the EU.

Q. How will the provisions of the UK- EU Trade and Cooperation Agreement impact NI tourism & hospitality businesses:

- As of 11pm on 31 December 2020, the transition period ended and the UK entered into a new trading relationship with the EU, under the EU-UK Trade and Cooperation Agreement (TCA), The TCA contains a number of important provisions that will impact NI tourism & hospitality businesses and the tariffs that they pay on the movement of goods between NI/ EU and GB;
- The Trade and Cooperation Agreement (TCA), allows businesses to benefit from preferential rules (i.e. no tariffs or quotas), on the movement of goods of UK origin when moving to the EU/ NI or EU origin when moving to GB. Goods that are not deemed to have originated in the UK, when moving from GB to NI, can still be traded but they will not be entitled to benefit from preference under the TCA and other options, such as the UK Trader Scheme or the opportunity to waive tariffs, need to be considered if any applicable tariffs are to be avoided;
- Under the TCA, a product will be considered "originating" if it is "wholly obtained" in the EU/ UK, it is produced in the EU/ UK exclusively from originating materials, or it has been substantially transformed in line with the relevant Product-Specific Rule included in the TCA. The TCA also contains detailed rules around what constitutes sufficient processing to change the origin of a good.

Q. How can I satisfy new customs obligations?

- The UK Government's Trader Support Service (TSS) can assist with completion and submission of customs declarations for the movement of goods such as those required when moving goods from GB to NI;
- Many companies are using a blended mix of TSS and use of an external customs agent in order to satisfy customs obligations;
- Fulfilling customs obligations in-house is also a viable option, however, companies should be aware that this may require significant upskilling of employees and purchase of specialised software which can be a costly and time-consuming process;

- Any company who now has additional customs obligations from 1 January 2021 should ensure that they have applied for an EORI number. NI companies should ensure that they have an XI EORI number in place;
- If using a customs agent, traders also need to ensure that their customs agent is aware of any authorisations being availed of to include UK Trader Scheme (further information included below) or preferential tariffs under the EU-UK TCA otherwise EU tariffs could apply on the movements from GB to NI.

Q. What is the UK Trader Scheme?

- The scheme allows authorised businesses to undertake that the goods they are moving to NI from GB are “not a risk” of onward movement to the EU and therefore not liable to EU tariffs;
- To be eligible for the scheme, certain criteria applies to include being established in NI, or in some instances in the rest of UK if fixed business premises are located in NI. The scheme will **not** be available to businesses with serious criminal records or existing compliance issues;
- It will be important for businesses in the tourism and hospitality sector in NI, who wish to continue or are reliant on purchasing goods from GB, to ensure that they get the correct assistance to ensure, if eligible, they are authorised to use the new scheme, thereby avoiding having to pay duties and subsequently reclaim.

Q. Will any specific products result in additional customs formalities or checks at the GB-NI border?

- Movement of goods from GB-NI for products such as goods of animal and plant origin are now subject to additional checks and controls. Once these goods are cleared through the import process, they are then in free circulation within the EU;
- There is a need for export health certificates and SPS checks (sanitary and phytosanitary checks etc.) for items of animal and plant origin;
- The UK government have introduced a Movement Assistance Scheme for agri-food traders, which removes the need for traders to pay certification costs and will reimburse the costs incurred by those certifying the products up to a set amount. This scheme has also now been expanded to cover traders moving organic products to Northern Ireland. It is hoped that this will help mitigate price hikes. There are also easements in place for 3 months in relation to SPS rules. However, these easements are only available to authorised traders who are identified by DAERA. Paperwork, albeit more simplified, is still be required.

Q. What type of information do I need to know in order to complete a customs declaration?

Information will vary depending on the nature of the goods and the transaction, however, required information includes:

- Suppliers name, VAT no., EORI no. and address;
- Importer’s name, VAT no., EORI no. and address;
- Goods description;
- Commodity codes (supplier may be able to assist with this information);
- Quantity;
- Value;
- Currency;
- Weight of goods;
- Incoterms;
- Country of origin.

Q. A lot of the commentary around Brexit appears to relate to the movement of goods. Are there any issues for services companies?

- Yes, whilst services companies will not be impacted by additional customs obligations there are a number of potential issues for services companies including: VAT implications of cross-border trade, ensuring all professional qualifications will continue to be recognised in the EU post 31 December 2020, the eligibility of non-UK and non-Irish citizens to continue to work in the UK and additional requirements for regular processors of personal data;
- Where traders believe they may have an exposure in respect of any of these issues additional advice should be sought.

Q. Will Brexit impact the availability of employees?

- The Common Travel Area (CTA) Agreement between the UK and Ireland ensures that UK and Irish citizens have the right to live and work in the UK post December 2020. However, any non UK or Irish citizens will need to apply for settled status under the EU Settlement Scheme in order to ensure that they remain eligible to work in the UK from 1 January 2021;
- For those not resident in the UK prior to 31 December, and therefore not eligible to apply under the EU settlement scheme, a new immigration points based system has been introduced where employers wish to sponsor a non-UK and non-Irish citizen. The points based system will introduce new minimum salary requirements and take relevant skills into consideration.

Q. Will the certifications that previously applied to my company and/ or my products continue to be recognised in the EU post 31 December 2020?

- Certification, licensing or authorisations provided by UK bodies will no longer be sufficient to certify compliance of products with EU rules and standards post Brexit;
- This has potential implications on the ability to place products on the NI and EU markets post 31 December 2020;
- Companies should review all product certifications and regulatory standards to ensure that they remain valid.

Q. Will postponed VAT accounting be of benefit to my business?

- Prior to Brexit import VAT was payable at the point of entry to the EU. VAT could then be reclaimed (subject to the recoverability rules) when filing the VAT return which had the potential to create a cashflow challenge;
- With postponed VAT accounting, import VAT can be paid and reclaimed on the VAT return in the period that the import takes place, with potential major cashflow benefits for businesses.

Q. Does the Trade and Cooperation Agreement between EU and UK provide for the transfer of data between EU and UK post Brexit?

- Whilst a data adequacy decision is not included in the TCA, a joint declaration published alongside the deal makes it clear the EU will undertake an adequacy assessment. Until that decision is made, a temporary arrangement to allow data to continue being transferred from the EU to the UK from 1 January 2021 has been agreed. This period will last for 4 months and can be extended to 6 as long as the UK makes no changes to its own data protection laws. This means businesses transferring data between the EU and the UK will not need to put in place alternative measures such as standard contractual clauses from 1 January and ought to adopt a wait and see approach in this regard.

Q. What is the VAT treatment of trade between NI and ROI post Brexit?

- **Supply of goods to VAT registered business customers-** This will continue to be subject to the intra community supply provisions. As was the case prior to Brexit, subject to conditions, the VAT registered business customer will be entitled to self-account for the VAT arising;

- **Supply of goods to non VAT registered private consumers-** The distance selling rules will continue to apply to sales such as online sales and mail order sales when supplied to unregistered private consumers. This means that NI traders should continue to apply UK VAT whilst their sales to the country of dispatch of the goods remains below the distance selling threshold. Once this threshold is exceeded, the VAT rules in the country of dispatch of the goods ought to be applied;
- **Supply of services to VAT registered business customers-** As was the case prior to Brexit, the place of supply will continue to be the place where the business customer is established. The VAT registered business customer will continue to be entitled to self-account for the VAT arising;
- **Supply of services to non VAT registered private consumers:** Guidance currently indicates that the place of supply will continue to be the place where the supplier belongs. This means that where a UK based trader provides general rule services to VAT unregistered clients in ROI, UK VAT ought to be applied. It is important to note that this is a general rule, there are a number of exceptions to the general rules and the appropriate VAT rules can vary depending on the nature of the transaction. As such it is important to review the appropriate VAT treatment on a transaction by transaction basis.

Q. What is the VAT treatment of seasonal events such as Halloween events and Santa trails?

- There is an exception to the general place of supply rules for services that relate to an event or physical performance. An event is characterised by HMRC as a gathering of people to watch or take part in an activity for a short or limited time rather than an ongoing basis. These services are often deemed to be supplied “where performed.” There are separate rules for B2B and B2C supplies;
- **B2B:** Only the charge for the admission to an event, and any services ancillary to admission (such as charges for the use of the cloakroom or sanitary facilities), are taxed at the place where the event takes place. All other B2B services relating to the event are determined under the general B2B rules (i.e. place of supply is the place where the business customer belongs);
- **B2C:** The scope of supplies taxed where performed is far wider and includes services relating to cultural, artistic, sporting, scientific, educational, entertainment and similar activities. HMRC indicate that supplies that are taxed where performed include “party planning that includes attendance at the event.” This is not limited to the supply of admission as it is for B2B services;
- Where the above rules apply and the event takes place in NI, UK VAT ought to be applied to the sale of tickets for admission to the event.