

A beginner's guide to UK customs duties

Introduction

The UK's departure from the EU could mean that an entirely new set of rules may apply to imports and exports. The Taxation (Cross-border Trade) Act 2018 gives the Government the ability to establish a stand-alone UK customs regime. However, it is expected that the rules of such a regime will be closely based upon the existing EU rules. This guide sets out a simple overview of how the current rules work. We will update this guide as the situation develops.

The UK is currently part of the EU Customs Union. This lays down a set of rules (the Union Customs Code) for dealing with imports from and exports to non-EU countries, as well as ensuring that no customs duties apply on imports and exports within the EU.

What are customs duties?

Customs duties are taxes imposed on the import and export of goods. The rates of customs duties and the procedures involved vary according to the goods involved, and international agreements between the relevant countries.

As well as customs duties, you may have to pay import VAT when importing goods to the UK at the relevant rate of VAT for the goods in question (the standard UK VAT rate is currently 20%).

In addition, duties such as excise duties (charged on particular goods such as alcohol and cigarettes) and anti-dumping duty (a high rate of

duty imposed in order to discourage countries from subsidising or dumping goods into the UK market) may be imposed.

How to make a customs declaration

The key step in the process for a person importing goods into the UK is to make a customs declaration. This can be done by completing a Single Administrative Document (form C88), which is most commonly done electronically. The form will set out:

- what the goods are
- how much they are worth
- where the goods are moving from and to
- the commodity code for the goods
- the Customs Procedure Code (CPC) - which determines how customs treat your entry

Most businesses will use a courier or freight forwarder to make customs declarations for them. It is possible to make your own customs declarations but the process is complicated and suitable only for more experienced importers.

The commodity code determines the applicable rate of customs duty and import VAT (if any). It is therefore critical to ensure that you apply the correct commodity code to any goods you import into the UK. The UK Trade Tariff lists customs classification codes (based on the EU's Combined Nomenclature).

If there is any uncertainty on the code, it is possible to apply to HMRC for a Binding Tariff Information (BTI) ruling. This gives certainty about the classification of your goods and is valid for three years.

To make a declaration you will normally need an EORI (Economic Operators Registration and Identification) number, which identifies your business. In the UK, HMRC can issue an EORI number.

Paying the duty

Imported goods are not normally released by HMRC until you have paid duty and VAT. Once the duties and VAT are paid, the goods are said to be 'released into free circulation'.

If you import regularly you can set up a deferment account with HMRC, allowing you to pay monthly in arrears. You will generally need a bank guarantee to set up a deferment account.

If you do not need the imported goods immediately or you intend to re-export them, you can store them in an authorised customs warehouse.

While the goods remain in a customs warehouse, you do not have to pay import duty or VAT. You can then choose when to release the goods into free circulation.

Reliefs and special procedures

Apart from customs warehousing, there are a number of special processes that offer relief from customs duties and VAT. These mainly apply to situations in which the goods are not going to remain within the EU in the long term.

The principal procedures are:

- Union transit - allows duties and VAT on imported goods to be suspended until the goods either reach their point of destination in the EU or are exported out of it. These arrangements cover both the EU and the European Free Trade Association (EFTA)
- Temporary admission – this is for goods temporarily imported for use on the basis that they will be exported in the same condition as they were imported
- Inward processing – goods are imported to be processed and then exported
- Onward supply relief – this delays import VAT when goods are going to be supplied to another EU member state
- Outward processing – goods are exported to be repaired or processed outside the EU before being re-imported
- Returned goods relief - goods that were previously exported but have not been processed overseas. Commonly used if the customer rejects the goods.
- Low value consignment relief – packages with a value below £15 are in most cases exempt from import VAT
- End use relief - allows a reduced or zero rate of customs duty on some goods when used for specific purposes and within a set time period.

There are also other reliefs that apply to specific situations, such as the import of goods for charities or for exhibition use.

For many of these processes, the importer must obtain prior authorisation from HMRC.

Seizure and forfeiture

Customs officers have considerable powers to seize goods and subject them to forfeiture. By way of example, if the paperwork accompanying a consignment is inaccurate even in only some small respect and this is a result of an innocent error, HMRC could seize

not only the misdescribed goods themselves, but the entire shipment and the vehicle transporting it all!

What to do if things go wrong

If you have a disagreement with HMRC because, for example:

- HMRC disagree about the correct duty to be imposed
- Your authorisation request is refused
- A large sum of additional duty is demanded
- Your goods are seized

It is possible to challenge HMRC, either through HMRC's own review process or through the courts.

Clyde & Co can provide advice and assistance on every stage of the importation process, from advice on obtaining a BTI ruling, to litigation before the courts.

Examples of recent UK customs duty work carried out by members of our team include:

- Acting for an importer presented with a demand for around £3m in respect of unpaid anti-dumping duty on photovoltaic cells (solar panels). We were able to negotiate successfully with HMRC and prepare together the right paperwork so that the demand was cancelled and nothing had to be paid.
- Advice on the proper approach to take in relation to the import of a new lifestyle DNA testing product
- Advising on the restoration of goods seized by HMRC as a result of an innocent misdeclaration
- Acting for a manufacturer in respect of a dispute with HMRC regarding the correct classification for customs duty purposes of electronic music players imported into the UK. The dispute concerned the application of the 'principal function' test and whether the product should be correctly classified as a video player (subject to a higher duty rate) or a music player, as the product had both music and video playback functionality.
- Advising a manufacturer of products for the construction industry in respect of a dispute with HMRC concerning the correct classification for customs duty purposes and whether the product was subject to anti-dumping duty on the basis of its country of origin.

The matter also involved an appeal against HMRC's decision to revoke a BTI ruling and an appeal against HMRC's refusal to remit the duty in question.

- Assisting a manufacturer to resist an assessment from HMRC for under-declared customs duty and import VAT in respect of safety components imported into the UK for use in the motor industry and the application of 'end-use' relief, including successfully challenging HMRC's assessment on judicial review grounds.
- Providing advice in respect of BTI rulings, including enforceability and revocation by HMRC.
- Assisting manufacturers of electronic and industrial goods on the correct customs classifications in relation to the 'principal function' test and determination of the 'essential character' of the products, as well as the relevance of BTI rulings issued to third parties in other EU Member States in respect of similar products.

Further information

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