

Customs implications for e-commerce retailers

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Polling question 1

Does your business currently sell goods directly to consumers in the UK or EU market?

1. Yes
2. No
3. No, but we would like to explore this further



IMPORTING INTO THE UK AND THE EU

Introduction to customs compliance

- Import and export customs formalities are required to help **control** what moves into and out of a country or territory.
- **Tariffs** are a tax charged on the import of goods from foreign countries, used to:
 - generate revenue
 - protect domestic industries
 - help achieve other geopolitical goals e.g. sanctions on Russia.
- **Customs declarations** are the mechanism which is used to manage the process of controlling imports and exports and collecting tariffs.
- **Customs compliance** is the process of making sure you make accurate customs declarations, but this should always be in the **most efficient** and **cost-effective** manner.

Importing into the UK and the EU

When goods enter the UK or EU, an import will take place.

As such, customs compliance obligations arise and traders will need to complete a customs declaration that provides details about the goods that are being imported.

Customs declarations can be submitted **directly by a business** or by an **agent / freight forwarder** and cover the following key elements:



Parties: Importer, Exporter, Declarant

Goods: Description, classification, value, origin

Customs procedures and reliefs claimed e.g. Customs Warehousing

Taxes and duties owed

E-commerce challenges

- Supply chain configuration
- Confusion over who does what (Incoterms®)
- Establishment requirements?
- Impact of customs duties
- Managing VAT obligations
- Regulatory challenges
- Working with logistics providers

INCOTERMS® & CUSTOMS REPRESENTATION

Incoterms®

Incoterms® (International Commercial Terms) rules are universally recognised rules for clarifying the responsibilities of the buyer and seller in international sale transactions, defining the allocation of obligations, costs and risk between the parties.

- The rules comprise of **eleven** three-character acronyms which govern the responsibilities of the parties in the end-to-end shipment process.
- E.g. under **EXW** ("Ex-Works") terms - the seller's only obligation is to make the goods available to the buyer at a named place such as the seller's warehouse.
- This contrasts with **DDP** ("Delivered Duty Paid") terms, which impose **maximum** responsibility on the seller.
- Crucially, they cover who is responsible for export and import customs clearance.

Incoterms®

Additional considerations

Whilst Incoterms® are useful in assigning the respective obligations of the buyer and seller, they do not act as a replacement for a contract of sale, and **crucially, do not deal with the transfer of ownership or title of the goods sold.**

Incoterms® also do not cover



Customs representation

Businesses typically appoint a customs agent, often the entity moving the goods, to make customs declarations on their behalf.

Business established in the UK or EU can appoint an agent on a “direct” representation basis, but non-established businesses must find an agent willing to be their “indirect” representative.



DIRECT

The representative acts in the principal’s name and on their behalf e.g. a UK broker represents a UK business

The principal will remain solely responsible for any customs debt



INDIRECT

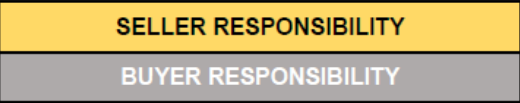
The representative acts in their own name but on behalf of the principal

The principal and representative will be jointly liable for any customs debt

DAP vs DDP?

INCOTERMS® 2020 RULES

	SELLER / EXPORTER FACILITY	CUSTOMS CLEARANCE (EXPORT)	PRE-CARRIAGE	DELIVERED & UNLOADED AT PORT OF LOADING	ALONGSIDE VESSEL	ONBOARD VESSEL PORT OF LOADING	MAIN TRANSPORT	ONBOARD VESSELS POINT OF DISCHARGE	UNLOADED AT PORT OF DISCHARGE	ON-CARRIAGE	CUSTOMS CLEARANCE (IMPORT)	BUYER / IMPORTER FACILITY
DAP Delivered At Place	CARRIAGE RISK COST											
Seller delivers the goods to the agreed place at destination. Seller assumes all cost and risk until the goods are ready for unloading at named place at destination.												
DDP Delivered Duty Paid	CARRIAGE RISK COST											
Seller delivers the goods to the agreed place at destination. Seller assumes all cost, including import formalities, and risk until the goods are ready for unloading at named place at destination.												



- Key difference – who is responsible for import clearance?
- What is the impact on the customer experience? Possibility of delays? Does the customer understand all charges?
- “DDP Lite” / “Soft DDP” – buyer acts as importer, but seller is billed the charges

CUSTOMS FUNDAMENTALS

Factors that determine duty payable



Customs Valuation

Overview

- Customs valuation provides the basis to determine the correct amount of customs duty and import VAT payable on imported goods and this can be a highly complex topic.
- There are 6 methods of customs valuation that must be applied in sequence (apart from methods 4 and 5 which can be used interchangeably) until a customs value can be derived.
- **Method 1** is used in over 90% of instances, based on the **transaction value** – the price paid or payable – for the goods.
- All costs up to the introduction of the goods at the UK or EU border must be included in the customs value.
- Circumstances where **successive sales** occur and/or where goods are sold between **related parties** must be reviewed closely to ensure that an acceptable value to customs is declared.

Tariff classification

Overview

Tariff classification identifies the products at hand and is used to determine the duty rate, additional duties that may apply, control measures, rule of origin, quotas and duty suspensions.

There are globally harmonized rules set out by the World Customs Organisation (WCO) that govern how a tariff classification code is determined. For countries that use the Harmonized System (HS), the first six digits of the commodity code are universal.

Example: T-shirt



6109.10.0010

Chapter (2 digits)

Heading (4 digits)

Sub-heading (6 digits)

Individual countries/territories often extend to 8-10 digits for greater specificity and control

Tariff classification

What you need to know

In order to arrive at an accurate classification, detailed product information is required to outline its “objective characteristics and properties”, including:

What is the product?

What is the product made of?

What is the purpose of the product?

How is the product made?

Is the product part of a set?

How is the product presented to customs?

Tariff classification

The rules of classification

There are six general rules of interpretation (GIRs) in relation to product classification. These should be consulted in sequential order i.e. if the rule consulted cannot be applied then the next rule is consulted.

GIR 1

Classification determined according to Headings and chapter notes

GIR 2

Unfinished products can be classified as if it were a finished product, if the 'essential character is the same'

GIR 3

If two different Headings apply, consider
a) most specific description b) essential character and c) last heading

GIR 4

Goods classified in reference to similar goods

GIR 5

Packaging is classified under the same category as the product they contain

GIR 6

Once a Heading is chosen, a sub-heading should be chosen according to rules 1-5

Customs origin

Overview

Rules of origin

Rules of origin establish the customs nationality of the goods. There are two types of origin:

Non-preferential

The economic nationality of the product. All tangible goods must have a non-preferential origin declared on the importation of the goods.

Preferential

Whether goods qualify for preferential treatment under trade agreements. Trading under FTAs allows businesses to take advantage of lower or zero import duties, which increases competitiveness and allows for greater price and margin flexibility.

EU-UK TCA

The EU-UK TCA establishes zero tariffs or quotas on trade between the UK and the EU, providing that goods comply with the appropriate rules of origin. If the goods are of UK/EU origin (as the exporting country), then the products can be considered originating and preference can be claimed if any of the below apply.

Wholly
obtained in
the UK/EU

Produced in
the UK/EU
exclusively
from
originating
materials

Non-
originating
materials
which satisfy
the Product
Specific Rules
(PSR)

Customs origin

Evidence requirements

To benefit from preferential tariffs when importing into the UK or the EU, the importer will be required to declare that they hold proof that the goods comply with the rules of origin. To claim the preferential rate of duty, either a Statement on Origin must be issued or importer's knowledge must be held.



Importers knowledge

The importer claims preferential treatment based on the evidence that they have obtained about the originating status of the imported products

The supporting documents should include the commodity code, an overview of the production process and whether the goods were wholly obtained / sufficiently transformed



Statement on Origin

The exporter provides proof of the originating status of the goods

This should be provided on an invoice or any other commercial document describing the product in sufficient detail to allow identification of the goods

DUTIES AND VAT

Methods of payment



Duty Deferment Account

Many businesses typically use their customs agent's deferment account to pay duties, for which the agent will charge a fee

Traders with a UK bank account can set up their own duty deferment account for greater control and to avoid charges

You must authorise an agent to use your Duty Deferment Account and new functionality allows you to pay your balance early if you are getting close to your limit (frees up funds for the rest of the month)



CDS Cash Account

New functionality in CDS, replacing Flexible Accounting System. Acts as a "pre-paid Duty Deferment Account"

Once registered for CDS, all users are automatically set up with a cash account with an assigned number

Funds are added by making payments to the HMRC CDS bank account

Funds can be used to pay duties and import VAT in order of when declarations are made

Import VAT - UK

Low value imports

The UK introduced changes to the VAT treatment of low value consignments (LVC) from 1 January 2021. Low value consignments refer to packages with a value up to £135, which is the threshold for customs duty liability.

Goods
value
> £135

Import VAT is payable at the point of importation of the goods into the UK

No import VAT is charged at the border.

Supply VAT is payable at the Point of Sale (POS)

Sellers required to be registered and account for UK VAT. Standard UK VAT registration

B2B sales - reverse charge mechanism can be used with provision of a UK VAT registration from customer

Import VAT - EU

Low value imports

The EU introduced changes to the VAT treatment of low value consignments (LVC) from 1 July 2021. Low value consignments refer to packages with a value up to €150, which is the threshold for customs duty liability.

Goods
value >
€150

Import VAT is payable at the point of importation of the goods into the EU

Goods
value <
€150

No import VAT charged at border if valid Import One Stop Shop (IOSS) number is presented

Instead seller charges local VAT in lieu of import VAT being charged. Submitted on monthly VAT returns

Non-established businesses required to register and account for IOSS using representative

If no IOSS number then import VAT applies

Import VAT - UK

Payment and recovery

Goods which are ordinarily subject to VAT in the UK will attract the same rate of import VAT when imported from outside the UK.

Recovery via C79



Traders can provide an up-front payment of import VAT

HMRC issue a C79 monthly certificate as evidence of import VAT paid and traders use this as a basis for recovery

Recovery via VAT return



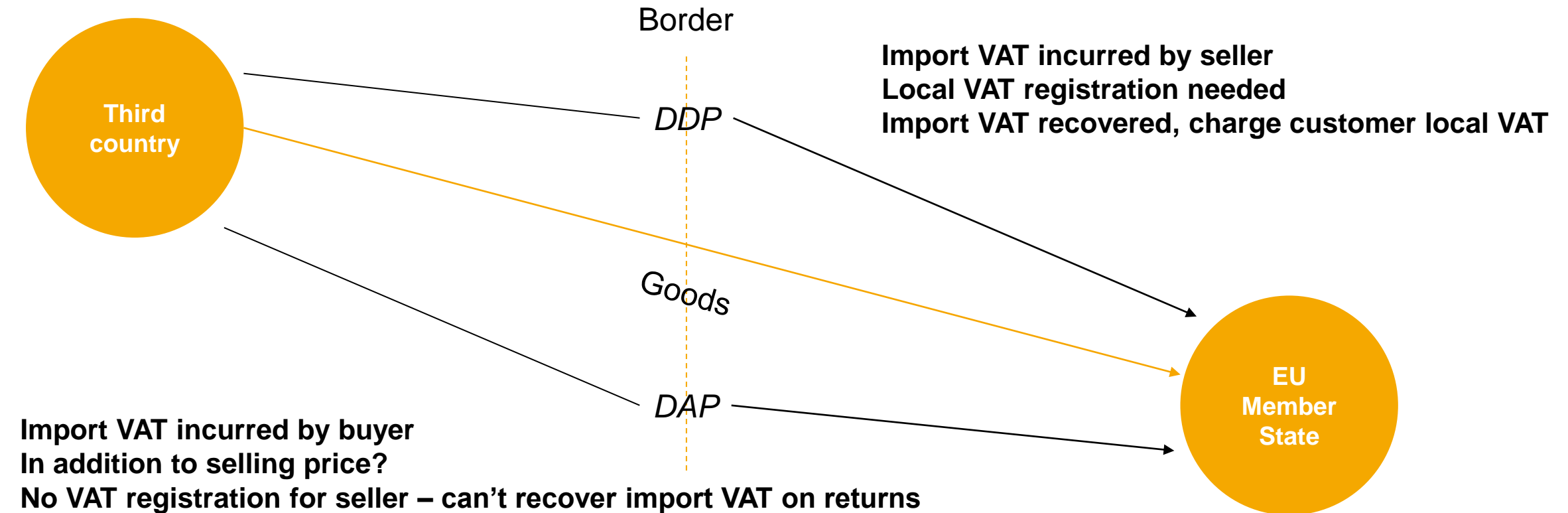
The UK introduced Postponed Import VAT Accounting (PIVA) on 1 January 2021

With PIVA, VAT registered businesses pay and recover import VAT (subject to the normal rules) on their UK VAT return, thus providing a significant cash flow benefit

Larger value goods

Managing import VAT

For higher value packages which attract import VAT and duties, a decision must be made as to how that is managed. Practical management vs customer experience should be considered.



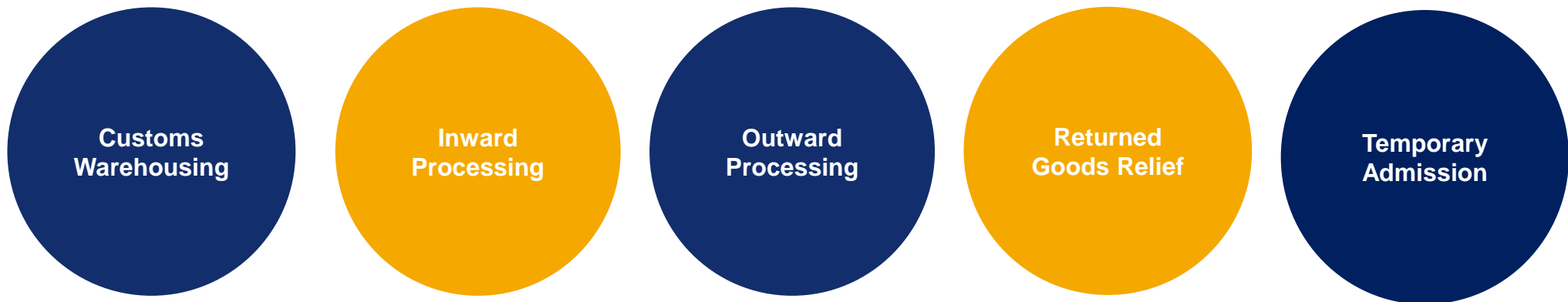
SPECIAL PROCEDURES & RELIEFS

Customs special procedures

Customs special procedures can be useful in reducing, postponing or mitigating the duty and import VAT payable on goods imported into the UK under specific conditions.

For many businesses, Brexit caused significant disruption to current supply chains and operating models.

The procedures are a cost-effective measure for goods imported into the UK which will not be immediately entered into free circulation in the UK market e.g. goods which are placed in storage prior to sale to UK customers.



Customs Warehousing

If goods imported into the UK do not require access or alteration, they can be stored in customs warehouses to mitigate the duty payable position. Whilst the goods are held in the warehouse and under the supervision of HMRC, customs duties and import VAT will be suspended and only payable once the goods are removed from the warehouse, or not payable at all if the goods are re-exported.

There are two types of customs warehouses:

Public warehouse

The responsibilities lie with the holder of the authorisation and also with the holder of the procedure

Private warehouse

The holder of the procedure and holder of the authorisation are the same



Returned Goods Relief

Where goods are imported into the UK from the EU and subsequently re-exported to the EU, or vice versa, RGR can provide duty relief at the point of re-importation into the EU. Businesses must be able to provide evidence of the following:

- The goods are re-imported in their original condition
- The goods were in free-circulation in the UK when they were exported
- The goods must be re-imported within three years of the date of the original export

Goods re-exported to a different member state

In addition to original export declaration, an INF3 document (returned goods information sheet) must be provided if the goods are imported into a different member state than the one they were originally exported from.



Polling question 2

Are you comfortable with your business' duty exposure & customs compliance profile?

1. Yes
2. Yes, but there is room for improvement
3. No, we need to focus more on this



Summary

- Customs compliance** Businesses should be confident in meeting compliance obligations and be clear on the responsibilities in a transaction; employing the correct Incoterms® and understanding customs representation is key.
- Customs fundamentals** Businesses should ensure classification, origin and valuation processes are compliant and accurate in determining the duties payable.
- Import VAT** The value of the package will dictate whether it is possible to avoid import VAT. If low value then consider for the EU using IOSS and for UK need to be VAT registered. Incoterms are critical for larger value packages to manage costs and customer experience
- Customs Warehousing** The Customs Warehousing procedure can hold significant duty benefits for holding stock where there final destination of the goods is not known.
- Returned Goods Relief** Businesses can claim duty relief on goods re-imported goods providing that they remain in their original condition.

Q&A