Welcome

Brexit, One Year On - What have we learned?
Irish & UK VAT and Customs -
Common Pitfalls and Practical Solutions

RBK

JOHNSTON CARMICHAEL

SWIFTFILE
YOUR CUSTOMS CLEARANCE PARTNER

Brexit – One year on
The Irish perspective

Ronan McGivern

International Tax &
VAT Partner

RBK

April 2022

We're by your side

Where are we now?

- Irish imports from and exports to Great Britain declined sharply following Brexit.
- The effect on exports is not statistically significant, which is likely due to the phased implementation of customs checks by UK. This suggests that it may take further time for the full effects of Brexit to materialise.
- In contrast, trade between Ireland and Northern Ireland increased substantially

ESRI Working Paper No. 714 December 2021 - Initial impact of Brexit on Ireland –UK trade flows

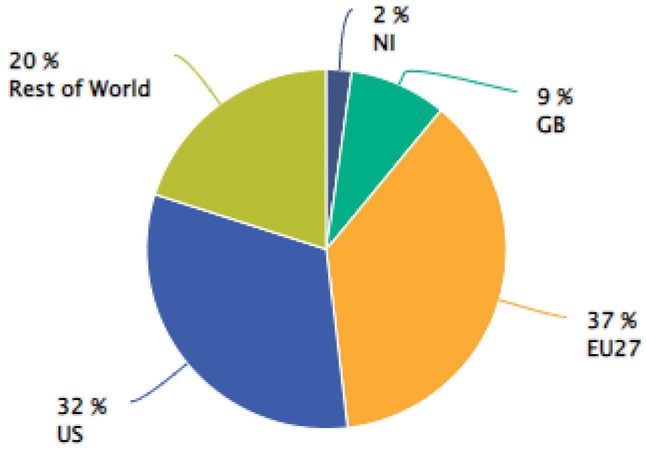
CSO Stats – Impact of Brexit (on ROI) 2021

	2020 €	2021 €	Increase €	Increase/ (decrease)
Exports (GB)	12,309m	14,404m	2,100m	17%
Imports (GB)	17,738m	15,367m	(2,371m)	(13%)
Exports (NI)	2,406m	3,696m	1,290m	54%
Imports (NI)	2,400m	3,956m	1,556m	65%

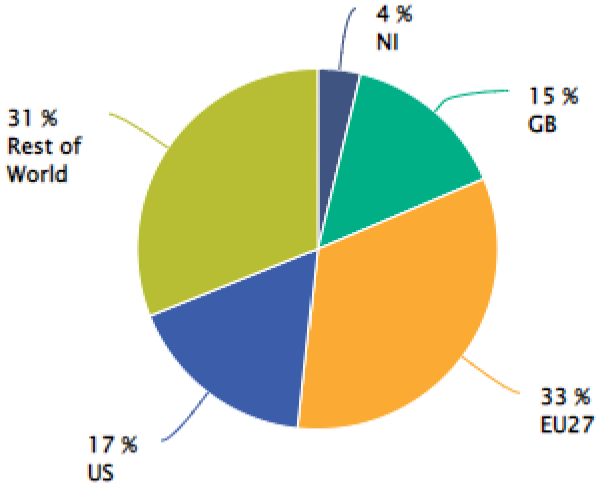
- The negative impact of Brexit is entirely concentrated on imports from Great Britain
- The impact on imports from Northern Ireland is positive ….as a result of Brexit
- Brexit did not lead to a significant reduction in total Irish exports to the UK, however this is not true at the sectoral level.
- Brexit has resulted in significant declines in exports of Food, Beverages, Fuel and Animal Fats to the UK.

ESRI Working Paper No. 714 December 2021 - Initial impact of Brexit on Ireland –UK trade flows

2021 ROI trade flows



Share of total exports by region 2021 (CSO)



Share of total imports by region 2021 (CSO)

Irish perspective

> **Chambers Ireland** (as reported by the Irish Times 23 March 2022)

- Up to **20 new trade routes to continent** in use after Brexit
- Companies avoiding United Kingdom landbridge
- Many companies are now also sourcing goods and inputs from EU countries despite higher prices because of the uncertain delivery times from Britain
- **Direct trade with the EU increased by 13 per cent** or €4 billion last year.

Northern Ireland Protocol

- NI subject to the same VAT rules on goods as EU MS
- The supply and movement of goods between NI and ROI in either direction unchanged
- Movement of goods will continue to be accounted for as intra-Community supplies and acquisitions
- Reporting obligations for these goods transactions will remain the same (VIES, Intrastat).
- The Electronic VAT refund (EVR) system will be available for VAT expended in Northern Ireland in relation to goods.
- EU simplifications, such as call off stock and triangulation continue to apply.
- To be reviewed after 4 years

All Ireland economy

- A UK parliamentary committee has cited a dramatic increase in north-south trade on the island of Ireland as an example of ***"considerable diversion of trade" caused by post- Brexit trading rules".***

- *"the only detectable impact so far is increased costs, paperwork and border delays."* Meg Hillier MP (Committee Chair)

Reported by Irish Times Feb 2022

Common Problems - Goods inbound from the UK

> **Initially the focus was on keeping goods moving and maintaining relationships**

- Use of logistics firms/intermediaries – lack of understanding/knowledge
- Paperwork (?)– move the goods
- Different treatment depending on the logistics/freight company retained-concerning
- Light touch by Revenue authorities – Customs Audits

Common Problems – Goods inbound from the UK

> Misconception – Irish company equates to automatic EU VAT number

- Number of enquiries seeking to incorporate an Irish entity to obtain an Irish VAT number even though no goods being sold in Ireland.
- Back to basics
  - Are you making supplies in Ireland?
  - Is there a stock of goods located in Ireland?
  - What is the basis for VAT registration in Ireland????
- **Solution**
  - Keep it simple. Where are goods going? If customers of UK entity are on the continent then solution may be on the continent rather than in Ireland
  - Netherlands is attractive
    - East of doing business
    - Port and shipping history
    - Concept of “Fiscal Rep”

Common Problems – Goods inbound from the UK

> Delay in getting VAT number

- Start of Brexit the process could take months
- Proof of trading in Ireland
- Evidence of a warehouse/storage in Ireland – what about “intention” to trade???
- Revenue asking for the Incoterms
- **Solution**
    - No threshold for non-established person doing business in Ireland to charge Irish VAT
    - Small “test” of supply to customer in Ireland to provide basis for VAT registration and commence the process
    - Proof of doing business in Ireland – order from Irish customer with reference to DDP

Common problems – Goods inbound from the UK

> **VAT recoverability**

- Commonly see logistics/freight company clearing goods and "onbilling" VAT
- Freight companies/logistics ignoring the fact that the importer is registered for postponed accounting
- Different logistics companies/freight companies adopting different treatment – warning sign
- **Solution**
  - Ensure registered for postponed accounting for VAT
  - Mail out to logistics companies refusing to pay import VAT and informing them they must correctly use postponed accounting
  - Rationalisation of the logistics companies to those that understood the issues – getting this right is important in the event of an audit

Common problem – Goods inbound from the UK

> **Double duty due to importation of goods into UK and then to Irish customers**

- POE exemption not available as goods were not UK origin
- Real cost . Goods originally being acquired from ex EU and from other EU territories
- Balance of power with the end customer – wanted DDP only
- **Solution**
  - Warehouse space obtained in ROI
  - Split containers- goods for ROI sent to ROI warehouse- did not touch UK
  - NI customers were also supplied from ROI – free circulation from ROI to NI – Availed of Protocol and aligned supply chain

Common Problems – UK companies

> No triangulation for UK companies

- Common misconception
- UK company with a legitimate Irish VAT number from pre Brexit (as some sales to ROI customers)
- Had been availing of triangulation relief for goods movements in the continent using UK VAT number
- Looking at options for registering for VAT on the continent in multiple jurisdictions
- **Solution**
  - Keep it simple
  - As the company had an Irish VAT number triangulation could still be availed of – requirement under EU law is the company seeking to avail of triangulation had a VAT number issued by an EU jurisdiction

Key Brexit Takeaways

- Distinction of “import/export” v “intra community supply”
- Particular rules re NI – distinction for goods and services
- Remember importation can arise where a UK business transfer its own goods from the UK to a warehouse in ROI/EU
- Ensure EORI number and postponed accounting available.
- Reliefs such as triangulation and call off stock may no longer be available where UK involved – check the details
- Filings – VIES and Intrastat only apply to intra community supplies

Key Brexit Takeaways

> **EU company = EU VAT registration**

- Not true
- Basic rules – where are the goods located
- Increasing focus on “substance” by Irish Revenue when getting VAT number

> **Incoterms are critically important**

- Irish Revenue are seeking confirmation of incoterms before providing VAT numbers

Key Brexit Takeaways

> **Recovery of VAT on importation**
- Watch treatment by Freight companies/logistics
- Avoid short cuts
- If you are registered for postponed accounting you should not be charged “VAT” on importation

> **Revenue/Customs audits**
- Get ready and review paperwork

Summary

> **Keep it Simple**
- Do you need an entity or just a VAT registration?
- Can you push obligation onto customer – DAP V DDP?
- Fiscal rep?

> **Review your supply chain. There is no one size fits all approach.**
- Split contracts – goods for EU and goods for UK
- Opportunity to grow market share – challenges also impact your competitors

> **Try and align your structure with commercial requirements**
- Brexit provides a commercial rationale for group restructuring. May be other benefits

> **Bias**
- Some EU businesses have a fear over dealing with UK businesses and have refused to trade with them

Thank you

Ronan McGivern

International Tax & VAT Partner

T: +353 1 6440100
E: rmcgivern@rbk.ie

Disclaimer:

The information provided is based on current tax legislation and practice as at the date of this presentation. Please note that the slides are high level in nature and are for information purposes only and should not be relied upon. Detailed VAT advice should be obtained.

@RBK Chartered Accountants
@RBKCA
@RBK Chartered Accountants
www.rbk.ie

Brexit – a year and bit on..a UK perspective

Nigel Roberts

Indirect Tax Director

JOHNSTON CARMICHAEL

Brexit – a process, not an event….

- 1 January 2021 felt like a one off shock for many businesses who goods into and out of the UK. Short term logistics issues dominated, with suppliers and logistics partners scrabbling to find solutions to keep goods moving.
- Many of these early issues have now settled down and businesses can take a wider view of supply chain efficiency in a post-Brexit world.
- However, for the UK, there was never really a “Big Bang” at 1/1/21. Instead this marked the start of a process which will continue to develop over several years from a Customs, VAT and regulatory perspective. Phase 2 of this process will happen in 2022.

The 2022 Customs changes - Origin

- The Trade and Cooperation agreement between the EU and the UK was heavily trailed in the UK as maintaining frictionless, tariff free trade. In reality, it does no such thing.
- Tariff free trade is only the case for goods of UK and/or EU origin. “Origin” is a horribly complex concept – broadly it means goods must either be wholly obtained in or substantially worked in the UK or EU. It also operates at a tariff classification level. Tracking origin for Customs Duty purposes is no easy task.
- Many businesses have decided that the origin rules are too complicated to try and deal with, so just pay tariffs on goods that should qualify for zero duty. It’s been estimated that up to 1/3 of goods exported from the UK to the EU have been incorrectly subject to Customs Duty.

Changes in UK Origin rules in 2022

- The UK has operated an “easement” on supporting evidence for Origin in 2021. This has gone from 1 January 2022 – full supplier declarations for Origin are now required to support zero tariff treatment at import. If these are not received, goods could be held at ports or contingent duty liabilities created.
- These issues are made worse for UK importers by the removal of delayed import declarations from 1 January 2022. In the first 12 months of Brexit, the UK operated a simplified regime which postponed full import declarations for 175 days following arrival. This has now gone and full declarations are now required…..
- …but there is some good news for imports from the island of Ireland, where the 2021 easement will remain in place until the conclusion of negotiations on the NI protocol. Don’t hold your breath…….
- One consequence of the increasingly complex Customs regime is a big shortage of Customs advisors in the UK, despite the Government offering grant support for training and recruitment. We’ve seen several instances of logistics partners offering incorrect or inappropriate advice to businesses – it pays to double check the position.

VAT after Brexit

- VAT freedom (unless you're in Northern Ireland….) !
- In reality, there have been few changes to the UK's domestic VAT regime since Brexit, although the most recent Budget did introduce some small changes on energy saving materials which were heavily promoted as "VAT savings due to Brexit" (except in Northern Ireland…)
- No wholesale changes expected, with UK rules heavily influenced by EU position. The biggest opportunities are around reduced / zero-rates, but scope for change is heavily circumscribed by need to raise revenue post-Covid. VAT based Covid support for hospitality and holiday industries has been withdrawn
- Further down the line there are likely to be reforms to rules on property/construction and financial services

VAT on UK / EU trade

- The position changed significantly on 1/1/21, mainly for trade in goods both to and from the UK
- Imports into the UK from anywhere are now potentially liable to import VAT, payable by the named importer. In principle, this is payable at entry, but the UK has a VAT and duty deferment mechanism (requiring prior approval and possible bank guarantee) and postponed VAT accounting. Importers need to be clear with import agents how they want VAT dealt with at UK entry – we still see logistics partners who won't operate postponed import VAT accounting.
- Import VAT is recoverable by the importer subject the normal rules. This requires either a UK VAT registration or a direct claim to UK Customs (which can take a long time). One important point to note is that under UK rules import VAT can only be recovered if the importer owns the goods – this isn't the case in Ireland or many other EU countries.
- Incoterms are critical post Brexit. Supplying the UK from overseas on DDP terms will invariably require a UK VAT registration – there is no registration threshold for non-established UK businesses. There is always a balance between what's commercially possible and the VAT/Customs impact – Brexit has thrown this into sharp relief.

Exports from the UK

- Full export declarations are required for all UK exports after Brexit. A UK (not EU) EORI number is required. A separate EORI number is required for goods moving into or out of Northern Ireland.

- Incoterms are again critical – DDP exports from the UK will almost certainly result in a VAT registration in the destination country. Experience suggests that EU rules on import and transit are not uniformly applied, so can get complex. A number of UK businesses are now looking at EU hubs to simplify logistics.

B2C sales of goods

- New EU VAT rules were introduced on 1 July 2021, and it is important that businesses and advisers are aware of the impact on transactions from this date.
- The new rules affect businesses trading within the EU and also non-EU businesses trading with the EU. They will impact all businesses that sell goods to consumers (B2C) in the EU and will also affect suppliers of some limited services.
- There are special rules for sales via "electronic interfaces" – online marketplaces.
- These are EU rules. In their "full fat" form (Union OSS) they impact on EU established businesses, but there are variants for non-established businesses making supplies in the EU ("Non-Union" OSS) and for businesses which supply into the EU from outside (Import OSS).
- **The UK has a similar set of rules for businesses selling to UK consumers which were effective from 1 January 2021. These rules will create a UK VAT registration requirement for non-established businesses.**
- OSS replaces the pre-Brexit distance selling rules for UK businesses selling goods B2C to the EU

Where to from here.....?

- UK importers / exporters need to familiarise themselves with the "Phase 2" rules. Anyone operating in the agri-food sector also needs to watch for increased UK regulation later this year.
- Customs Origin is a key issue now
- Keep on eye on NI protocol negotiations....
- UK VAT rules aren't going to change overnight, but may start to slowly diverge from EU model
- Incoterms are critical
- Initial Brexit "fire fighting" is largely done – now's the time to review supply chains and think about efficiencies.

Brexit & Customs- 1 Year on

Brian McNamara FCA

MD of SWIFTFILE Customs Clearance

SWIFT FILE
YOUR CUSTOMS CLEARANCE PARTNER

BREXIT & Customs – new challenges

2021 was all about keeping goods moving.
Customs solutions were often hastily put in place, and may not be fit-for-purpose.

Now businesses need to look at the arrangements that have been put in place, and see if they're right for the longer term. Key questions to ask include:

- ✓ Are we properly managing our customs risk?
- ✓ Is our customs data correct?
- ✓ Are there ways we could be saving money?
- ✓ Are all of our ROI/GB trading arrangements still commercially viable?

New customs requirements bring new challenges. Businesses need to get comfort on their compliance obligations.

Customs Compliance – Company Obligations

But where does responsibility for Customs lie within a business?

FINANCE? **OPERATIONS?** **SUPPLY CHAIN?**

What are your Customs obligations?

INCOTERMS – Firstly, these will dictate the level of customs obligations a business has. There are no right or wrong INCOTERMS. One size doesn't fit all.

LIABILITY – The liability for the customs declaration is completely with the importer/exporter.

DATA ACCURACY –The importer is responsible for the accuracy of the data.

DOCUMENT RETENTION – The importer must retain copies of all documents for 4 years after import.

Customs record keeping requirements: similar to financial, VAT, payroll etc

4 COMMON MISCONCEPTIONS AROUND CUSTOMS

MISCONCEPTION #1

"Outsourcing Declarations Reduces Customs Risk"

For all bar the biggest companies, it makes commercial sense to have 3rd parties filing customs declarations.

However – it's essential to understand that:

- LIABILITY – The importer/exporter is 100% liable for the accuracy of the customs declaration. Third parties are merely agents.
- DATA ACCURACY –It is the importers responsibility to provide the customs docs/data for the import declaration, and ensure it is correct.
- DATA FROM UK SUPPLIERS – Commodity codes will likely be provided by the UK supplier. But the importer is responsible to ensure it is the right code for the goods being imported.

SOLUTION

TAKE OWNERSHIP OF IMPORT DECLARATIONS FILED IN YOUR COMPANY'S NAME

- GET COMFORT ON THE DATASET
- CARRY OUT SPOT CHECKS ON DECLARATIONS
- CHECK COMMODITY CODES AGAINST TARIC
- CLARIFY INTERNAL RESPONSIBILITY FOR CUSTOMS

MISCONCEPTION #2

“Customs Risk Ends at the Port”

Many people think that once goods have been green routed through the port, customs is complete. This is not the case for 2 reasons:

1 Importers are obliged to retain documents for a period of 4 years after the date of import. If chosen for a customs audit, the relevant documents will need to be presented to Revenue.

2 Errors in declarations wont necessarily be picked up when they are filed. Revenue only do checks on a certain % of goods passing through customs.

SOLUTION

GET CUSTOMS AUDIT READY. KNOW THE SOURCE OF YOUR CUSTOMS DOCUMENTS.

CUSTOMS AUDITS ARE A REALITY FOR BUSINESSES TRADING IN A CUSTOMS ENVIRONMENT

AVOID HAVING LARGE NUMBERS OF AGENTS/FREIGHT COMPANIES FILING ON YOUR BEHALF

BUSINESSES SHOULD HAVE VISIBILITY OF THEIR CUSTOMS DATA AND KNOW WHERE TO ACCESS THEIR DOCS

MISCONCEPTION #3

"There is no duty payable on repairs"

This is a very common misconception, and I can see it leading to problems for a lot of businesses down the line.

- Customs do not care that money isn't changing hands. Once goods cross a customs frontier, import duty is payable on the <u>value</u> of the goods.
- Any undervaluing of repair shipments in import declarations means that the importer is non-compliant. If picked up in a customs audit, this could lead to back duties, fines and penalties.
- Again, undervaluing a repair in an import declaration wont necessarily be picked up on entry. It might be several years before its brought to light as part of a customs audit.

SOLUTION

THERE ARE A NUMBER OF WAYS TO AVOID PAYING DUTIES ON RETUNING REPAIRS

- GET REPAIRS DONE IN IRELAND
- APPLY FOR OUTWARD PROCESSING (O.P) RELIEF**
- AVAIL OF SIMPLIFIED O.P (NO AUTHORISATION REQUIRED)

**1 OF C.20 SPECIAL PROCEDURES AVAILABLE TO MAKE TRADING IN CUSTOMS ENVIRONMENT EASIER/CHEAPER.

MISCONCEPTION #4

“Our Import VAT is postponed – so its grand!”

Postponed Accounting for Import VAT introduced 1 Jan 21 to take the sting out of Brexit. To avoid businesses being over-burdened by the cashflow effect of import vat.

IT IS ESSENTIALTO REMEMBER THAT:

All Import VAT postponed in a period must be accounted for in a company’s VAT return.

Failure to do so may result in the Revenue Commissioners disallowing a company from availing of it.

The Revenue have started querying relevant import related figures on 2021 VAT returns.

SOLUTION

INCLUDE IMPORT VAT ACCOUNTING AS PART OF THE MONTH END PROCESS.

- **Revenue send out weekly activity reports showing import vat postponed for each transaction.**
- **Finance Depts should use these reports, along with supplier invoices to capture all the necessary figures for the VAT returns.**
- **Not a particularly straight forward process, particularly for companies with a relatively high volume of imports.**

THIS ALL GOES BACK TO THE IMPORTANCE OF HAVING ACCURATE, VISIBLE AND ACCESSABLE CUSTOMS DATA.

What is the P&L impact of customs?

A lot of businesses are struggling to get a clear picture of the level of duty they are paying, and where exactly it is being charged.

The job of Finance Depts clearly laying out where the duty hit is coming from is made harder by:

- Revenue Customs Reports not including the supplier name or the value of the shipment, making it difficult to match duty paid with suppliers.

- A difficulty in obtaining copies of import declarations from 3rd party agents.
- A lack of clarity on invoices from freight cos (freight cost, duty, and vat sometimes not separated)
- A general lack of familiarity on customs matters within an organization.

How do you get a clearer picture?

Use the weekly Revenue customs reports as a staring point. Build the picture from there using supplier invoices and import declarations.

Work with a customs partner that will provide you with your import data, either through transaction reporting or access to import declarations.

ITS ONLY BY GETTING THE GRANULAR VIEW THAT A BUSINESS CAN UNDERSTAND

So what's next?

LAST YEAR WAS ABOUT KEEPING GOODS MOVING

NOW BUSINESSES NEED TO GET THEIR CUSTOMS HOUSE IN ORDER

OWN YOUR CUSTOMS DATA
KNOW WHERE THE DOCS ARE
GET COMFORT ON CUSTOMS RISK

SWIFT FILE
YOUR CUSTOMS CLEARANCE PARTNER

Thanks for your attention.

Brian McNamara FCA
MD of SWIFTFILE Customs Clearance

brian@SwiftFile.ie
087 242 9985

Thank You

RONAN MCGIVERN
Tax Partner
RBK
E: rmcgivern@rbk.ie

NIGEL ROBERTS
VAT Director
Johnston Carmichael
E: Nigel.Roberts@jcca.co.uk

BRIAN MCNAMARA
Managing Director
Swiftfile
E:brian@towerville.ie

BRIAN FEENEY
Partner
RBK
E: bfeeney@rbk.ie

Save the Date!

- RBK Lunchtime Series continues on Thursday, 19th May 2022
- Succession – Tax and Legal Considerations