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Importation and exportation of cannabinoid products post Brexit

This article examines some of the key considerations that those working in the CBD sector will need to bear in mind when considering their business operations post Brexit regarding the importation and exportation of CBD products into and from the UK.

THC Content

The rules regarding the THC contents of CBD products being imported into the UK remain the same with a 1mg maximum being the allowable limit.

Customs Declarations and VAT

If you are an importer of CBD products or you are intending to import CBD products your business will need to understand and familiarise yourself with:

- Customs Freight Simplified Procedures (CFSP);
- Entry in the Declarant's Records (EIDR); and
- Simplified Declarations Process (SDP).

Meaning of Customs Freight Simplified Procedures (CFSP)

The CFSP was originally introduced by HM Customs and Excise in 2001 as an optional scheme to simplify and grant some flexibility for non-EU import and customs warehouse processes and offered a number of benefits to importers. Now that the UK is out of the EU there is a requirement to understand these procedures. Post Brexit HMRC are using the terminology Simplified Customs Declarations Process (SCDP). This process will now also apply to imports between the UK and EU. There are two types of authorisations to consider:

- 1 Entry in the Declarant's records (EIDR)** – formerly known as Local Clearance Procedure (LCP), this enables an importer to enter goods to a customs procedure without the need to provide a full customs declaration at the point of release.
- 2 Simplified Declaration Procedure (SDP)** – as with the EIDR the SDP allows the importer to enter goods to a customs procedure without the need to provide a full customs declaration at the point of release. SDP also removes the requirement for a supplementary declaration when entering goods to low-value imports (LVBI replacement) or OSR.

No matter which of the two options your business uses, you must make a supplementary declaration after the date of import. During the first 6 months of 2021, this can be deferred for six months, along with paying any customs duty at that time (a duty deferment account is required for this). As of the 1 July 2021, the supplementary declaration must be submitted by the fourth working day of the following month if you're using EIDR or SDP.

VAT Rules

Prior to Brexit the UK has been part of what is commonly known as the EU VAT regime. In essence what this meant was that a UK business was not required to register for VAT with each individual EU country. Simply, a common set of rules were applied in relation to the accounting for VAT. However, since 1 January 2021, UK businesses will treat EU countries like they already do countries outside the EU.

VAT on Imports – will now become payable for imports from the EU. The UK Government has however introduced a postponed VAT payment system to avoid cash flow issues. This will let businesses importing goods into the UK account for the VAT on their next VAT Return.

VAT on Exports – to EU countries will be treated like those to non-EU countries – they will be zero-rated for UK VAT. This will apply whether exporting goods to a consumer (B2C), or to a business (B2B). There is no longer a need to observe distance selling regulations, or to verify the VAT status of the recipient business. This does not mean you can simply forget about VAT. It means you apply a 0% VAT rate. No VAT is payable but you still have to include the exports as part of your VAT accounting records.



As of 1 July 2021, access will be given to a One-Stop-Shop (OSS) whereby non-EU sellers will charge and collect the VAT based on the location of its customers and will need to file OSS returns. Your CBD UK businesses will need to register so that you can continue or commence trading in the EU, regardless of the value of your EU sales.

If your business is already using the Mini One-Stop-Shop (MOSS) system you will need to register for the OSS.

VAT on imports £135 and under – Low Value Consignment Relief (LVCR) is being removed. Previously, this exempted imports with a value below £15 from import VAT. Online marketplaces (OMPs), where they are involved in facilitating the sale, will be responsible for collecting and accounting for the VAT.

VAT will be applied at the point of sale, on imports with a consignment value of £135 or lower, rather than applied as import VAT at customs. So as a foreign seller sending CBD products into the UK you will need to charge UK VAT and apply to be part of the UK VAT system when supplying goods with a value of £135 or less to end consumers. Businesses that receive goods of £135 or less will have to account for the VAT as part of the reverse charge procedure, declaring the VAT on their next VAT Return.

Rules of Origin

Businesses exporting goods into the EU, or importing goods to the UK from the EU, will need to comply with the Rules of Origin (RoO) under the Trade and Cooperation Agreement (TCA) between the UK and EU to claim preferential treatment and move their products tariff free. Goods that do meet the RoO remain tradeable but they are likely to incur tariff charges. For exports to the EU this will be the charge under the Common External Tariff; for imports into the UK it will be the UK Global Tariff.

There are three routes by which products can satisfy the RoO:

- 1 They are wholly obtained within either the UK or EU. Plants grown and harvested, within the UK or EU, will be treated as wholly obtained.
- 2 They are produced exclusively from originating materials in either the UK or EU.
- 3 They incorporate non-originating materials but satisfy specific requirements set out in the TCA.

As an exporter it is advisable to provide a statement on the origin of your product to your customer to ensure that the products can be shipped tariff free to the EU. This can be included in the sale invoice or provided separately. It can cover multiple shipments over a period of 12 months.

Additional food for thought

The above explains the general position regarding the importation and exportation of goods post Brexit. Other related points for consideration include the following:

Dual incorporation UK / EU Company – International companies selling or supplying CBD should consider whether, post Brexit, it makes sense to become a UK incorporated company if wanting to import into the UK.

Dual fulfilment strategy / warehousing – Thought should be given to where it would be most appropriate for CBD containing products to be stored if importing into the UK or, for UK companies seeking to supply products outside of the UK.

Economic Operator Registration and Identification (EORI) – An EORI number is assigned to all importers and exporters by HMRC and used by customs authorities to exchange information between themselves and central government for statistical and security purposes. Following Brexit, anyone importing or exporting goods to the UK still requires an EORI number however, if it does not currently begin with "GB" then an application will need to be made for a new one.

Apply for UK VAT registration –

Businesses with a VAT taxable turnover of more than £85,000 per annum are required to register with HMRC and thereafter must charge VAT (currently 20%) on all products sold. This will be recouped quarterly by the Revenue which offsets any VAT paid by the company in the course of its business against that owing through the sale of taxable goods.

Novel Foods – there ongoing changes to the UK Novel Foods regime which will affect all organisations involved in the manufacture or supply of goods and products containing CBD.

Data Protection – there are potentially significant changes to the UK data protection regime pending the outcome of the EU Commission adequacy decision. Organisations making international transfers of data in the course of their business are advised to begin planning their risk mitigation strategy in case of a negative adequacy decision now.

Checklist of key actions for businesses

The key steps to be taken moving forward by businesses are as below. These steps will need to be taken before the full border controls come into force mid 2021:

- Obtain an EORI number
- Collate all information required to complete the Customs Declaration
- Determine the declarant for the purpose of the Customs Declaration
- Apply for the Customs Freight Simplified Procedures
- Check the requirements for a Duty Deferment Account and Customs Comprehensive Guarantee
- Consider appointing a Customs Agent
- Calculate the payable duty
- Double check compliance with the RoO for tariff calculation purposes
- Consider VAT requirements (if any)
- Consider excise compliance requirements
- Check requirements with the Food Standards Agency (if relevant)

Conclusion

The above will give those working in the CBD sector an indication of the key considerations that need to be had moving forward. For further information don't hesitate to contact the authors.



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