• Relationship between EU and UK Law
• Customs and Border Challenges: Building corporate customs infrastructure (operational/IT, warehouse capacity, clearance procedures)
• Emerging cash flow concerns, bank guarantees, and implications for VAT payable at the border
• EU Refunds
• Attaining Authorized Economic Operator status: Questions of Value
• Auditing supply chains
Simon Sutcliffe
Partner,
Blick Rothenberg
Basic Customs Law is Harmonised Across Europe Within the European Customs Union

• The Union Customs Code (UCC) - governs the EU Customs Union as an EU regulation. As an EU regulation it has legal effect in the UK

• VAT (and excise duty) rules across the EU are via a framework of EU Directives and hence are implemented by UK domestic legislation
Customs Approved Treatment

• Place goods under a customs procedure
• Entry into a Free Trade Zone ("FTZ") or free warehouse
• Re-export from the customs territory of the community
• Abandonment to the Exchequer
• Release to Free Circulation
• Transit
• Warehousing
• Inward Processing ("IP")
• Temporary Admission ("TA")
• Outward Processing ("OP")
• Exportation
Union Customs Code Changes

• Digitise the customs process
• Changes to customs guarantees
• Changes to customs valuation
• Increased compliance
HMRC – Customs Declaration System

• Digitisation of Customs – Customs Vision 2020
• Phased implementation of CDS by August 2018
• Replacing the existing CHIEF system which is 25 years old
• Decision to implement CDS made prior to EU referendum
• Amalgamation of other HMRC databases – to create ‘master’ system of other customs databases and cover more functions
• Binding Tariff Information ("BTI")
• Binding Origin Information ("BOI")
• INCOTERMS
• Authorised Economic Operator ("AEO")
Authorised Economic Operator

- Based on WCO Customs-to-Business partnership
- “Trusted trader” status
- Increasing international mutual recognition
- Low take-up of AEO in the UK but continued commitment by UK
- Lack of recognition by the EU of AEO in the UK post March 2019
- Is AEO for all importers and exporters?
- Landscape potentially very different post Brexit
Authorised Economic Operator

- AEO could act as a passport to customs simplifications
- Potentially giving businesses with AEO status an edge over non-AEO authorised businesses.
- Achieving AEO status may also be a requirement for businesses to benefit from any simplified customs formalities
- This may be especially true for goods traded across the Irish land border.
- The potentially ‘lighter touch’ controls and priority treatment for physical and documentary controls should help companies import goods into the UK faster.
The post Brexit customs process

• The UK cannot negotiate its own trade deals as an EU member state.
• In the absence of any negotiated trade deals, or at least any interim arrangements, UK businesses would be faced with making customs declarations at export and import for trade with the EU
• This will also apply to EU businesses.
• Companies trading with the EU (and UK) would see a material increase in their costs of shipping product due to exposure to a customs process intra-EU trade currently has no exposure to.
• Any duty costs would be additional.
A further obstacle to the post Brexit ideal of frictionless trade is the new government Customs Declaration System (CDS). An anticipated an additional 180,000 entities will need to make customs declarations for the first time after Brexit. Initially the CDS was designed to deliver 55 million clearances per year. Post-Brexit, it may need to deliver an estimated 255 million clearances per year. According to the National Audit Office, the system has only been tested to 180 million declarations a year. The current CHIEF system can handle a maximum number of declarations of around 100 million per annum.
Joanna Norland
Technical Editor,
Bloomberg Tax
Brexit and VAT

- Climate of uncertainty
- Current relationship between EU law and UK VAT
- Implications of Brexit for UK VAT
- Implications for financial services industry
Climate of Uncertainty

Transitional Period:
- 21 months (2021)
- Indefinite (repeal ??)
- none

Type of Brexit:
- Hard
- Soft

Status of EU jurisprudence:
- under negotiation

(repeal ??)
• UK Value Added Tax Act 1994 is based on the EU VAT Directive

• Preferential rules to improve efficiency and reduce the risk of double taxation

• Consistency of interpretation
  – CJEU rulings
Implications of Brexit

• Exchange efficiency and certainty for autonomy
Financial Services Industry

- Passporting rights jeopardised.
- UK banks are moving operations to service EU customers outside of London.
- VAT issues raised by these moves:
  - VAT liability
  - Scope of financial services exemptions
  - Loss of UK grouping rules
  - TOGC rules – avoid triggering VAT on business transfer
- Benefits of autonomy???
Alan McLintock
Senior Manager, European Indirect Tax Strategy, Ford Motor Company
The duty and VAT cost to Brexit

• Interaction between the cost of duty and VAT (as the duty forms part of the base cost for VAT purposes). A 10% duty rate has a 12% cost.
• Import VAT – is postponed accounting going to happen? Consider monthly returns to mitigate cash flow?
Preferences

Distribution Methods
- Flash sales - who acts as importer of record / number of Customs entries / who can recover import VAT / friction / possible delays?
- Pre Brexit rush to get goods across/stock piled?
- Border delays = more trailers = more inventory in transit = more cost.
- Will logistics play hard and fast with possible routes to get to clearer ports for the EU export.....and is your billing system able to update as quickly?
- How/when will your billing systems get updated with the new Brexit logic?
- So you are Brexit ready....but what if your suppliers are not?
- Can you get ready if you do not yet know what you are getting ready for?
Things That Were Easy but May Get More Difficult

- No more 8th directive claims.
- Fiscal representatives for non EU companies – joint and several liability issues.
- Future of VAT (EU Commission plans to change how VAT is charged on cross border sales/movements) – Certified Taxable Person – needs an EU establishment which may mean UK companies are at a disadvantage.
- MOSS.
- Triangulation.
Daniel Lyons
Head of Tax Policy Group,
Deloitte
The EU (Withdrawal) Bill

- Imports EU law into UK law as of exit day
- UK VAT law passed before exit day should still be interpreted in the light of the PVD
- UK VAT law passed after exit day - no reference to PVD
- CJEU case law before exit day will bind the UK courts unless the SC decides otherwise
- CJEU case law after exit day not binding on UK courts (although may be persuasive)
- After exit day "general principles of EU law" will not disapply pre-exit UK VAT legislation
Taxation (Cross-border Trade) Bill

- To create functioning Customs, VAT and excise regimes after exit day
- Entirely new UK Customs legislation
- The Bill is specifically designed to be flexible in terms of outcomes including a transitional agreement and a “no deal” scenario
- Delegated powers, consultation the ghost of Henry VIII and Parliamentary scrutiny
Thank You

Questions?
Contact tax-productmanagement@bna.com