

ESSEX COURT CHAMBERS
BARRISTERS

VAT AFTER BREXIT

RODERICK CORDARA
QC, SC

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-and we have no agreement yet governing the UK- EU relationship
 - Hopes are high
 - But expectations should be low – it will be a ‘thin’ deal, if it happens
 - Unsure if the ‘Withdrawal Agreement’ and/or the Northern Ireland Protocol to it, will be fully respected by the UK.

- **UK-EU Withdrawal Agreement**

- https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/eu-uk-withdrawal-agreement_en

- Slides:

- https://ec.europa.eu/info/sites/info/files/slides_the_wa_explained.pdf

- **The Northern Ireland Protocol**

- https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/eu-uk-withdrawal-agreement/protocol-ireland-and-northern-ireland_en

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- European Union (Withdrawal) Act 2018 (amended by EU (Withdrawal Agreement) Act 2020).
 - Taxation (Cross Border Trade) Act 2018 (amended 2020)
- + UK Regulations (many will be redundant if there is a Deal)

VAT AFTER BREXIT: WHAT WILL CHANGE & WHAT WILL NOT?

- Goods
- Services
- Output VAT payment
- Input VAT recovery
- Place of supply rules
- Northern Ireland (goods: in EU) (services: not in EU)

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- **Great Britain** is the Island of Britain- formed 1707 (the English, Welsh, Scots = British).
 - The UK is the '**United Kingdom of Great Britain & Northern Ireland**' – formed 1801, renamed 1922
 - Eire is the Republic of Ireland, on the Island of Ireland - 1922
 - Northern Ireland is result of a English colonisation of a part of Ireland, using protestant Scottish settlers in 1600's. (Eire seceded in 1922, but NI wished to stay part of the UK)
 - (Some Scots hoping to break the Union of 1707 – but will keep the same Queen)
 - (Some Irish in NI hoping to break the Union of 1801 – not likely Queen will remain head of state)

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- The English & Welsh (outside the big cities) voted for Brexit
 - The Scots & Irish voted against Brexit
 - Northern Ireland has its own Government (sometimes)
 - NI voters will have a chance (in 4 years) to decide to go with a full Brexit – but that will never happen.
 - The ‘*Good Friday*’ Agreement (1998) (which ended the violence) means no physical/fiscal customs border can exist on the island of Ireland
 - President-elect Biden (Irish origins, Catholic) likes this Agreement, as do most Irish people.

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- For cross-border VAT on **supplies of goods**, the UK ceases to exist: goods are either supplied to or from **GB** (a ‘third country’) or **NI** (within the EU).
 - For VAT on **supplies of services**, the UK remains whole and is a ‘third country’ for all purposes. (Beware multiple supplies of goods and services involving NI)
 - On **goods supplies** made between NI and EU (including within the Island of Ireland), intra-EU acquisition system [‘I-EUA’] still functions for goods.
 - But NB: NI is a ‘third country’ for **cross-border services**, EU-NI/GB/UK.
 - EU says there is now an EU fiscal border for VAT on goods between Island of Ireland and the Island of Britain (GB) (somewhere in the Irish Sea).

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- No post-Brexit treaty has yet been agreed
 - 36 days are left – EU extension offer refused by UK. No clarity yet.
 - But whatever is agreed (eg Free Trade Agreement – ['FTA']):
 - End of **single market in services** for UK-EU, and **in goods** GB-EU
 - Start of documentary formalities for import/export goods between GB and EU (even if zero tariffs agreed in FTA), including 'Country of Origin', etc. requirements
 - End of mutual recognition & freedom of establishment
 - UK and EU will be two separate regulatory spaces but NI still *de facto* in EU re goods, so that there is a single market on the Island of Ireland

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- The end of the single UK market in goods, for supplies to and from GB (ie the Island of Britain): GB and NI are separate markets for goods
 - No longer any intra-EU acquisitions ['I-EUA'] between EU and GB: (*UK's Taxation (Cross-border trade) Act 2018 s 41*)
 - I-EUA continue between EU & NI

- I-EUA, begun pre 1.1.21, but not finished, have I-EUA status, subject to proof at import
- Matters such as origin, inputs, etc. all to be declared on goods movements between GB and EU – eg GB - Italy.

THE EU VIEW OF POST 1.1.21: 'ONE COUNTRY – TWO SYSTEMS'

Goods moving from/to	VAT treatment
GB to EU	Importation in the concerned MS
EU to GB	Exportation in the concerned MS
GB to NI	Importation in NI
NI to GB	Exportation in NI
NI to EU	Intra-EU transaction
EU to NI	Intra-EU transaction
Third country to NI	Importation in NI
NI to third country	Exportation in NI

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- Italian exports to GB will attract no EU VAT, but will attract UK import VAT.
 - GB exports to EU will attract EU import VAT.
 - Re-imports from UK to Italy of unsold stock, imported earlier to UK: no acquisition VAT (PVD art 143(1)(e) & Withdrawal Agt art. 51(2).)

UK GOVERNMENT NOT CLEAR ON INTERNAL UK FISCAL BORDER

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- Will UK levy UK VAT on imports to GB from NI?
 - Will NI levy EU VAT on imports from GB?
 - EU says '*EU VAT and excise rules apply to goods entering (or leaving) NI from (or to) rest of UK.*' A very clear position

UK Government says: '(2) No tariffs on internal UK trade

25. There should be no tariffs on internal UK trade because, as the Protocol acknowledges, the UK is a single customs territory. Tariffs should only be charged if goods are destined for Ireland or the EU Single Market more broadly, or if there is a genuine and substantial risk of them ending up there.'

*27. In any case, to ensure that trade flows freely, the Government will make full use of the provisions in the Protocol **giving us the powers to waive and/or reimburse tariffs on goods moving from Great Britain to Northern Ireland, even where they are classified as 'at risk' of entering the EU market.** ('tariff' is usually customs duty, but in [27] seems to refer to import VAT.)*

<https://www.gov.uk/government/publications/the-uks-approach-to-the-northern-ireland-protocol/the-uks-approach-to-the-northern-ireland-protocol>

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- 2 new EU distance selling regimes, post 1.1.21: both for goods valued at € 150.
 - No longer any EU low value goods scheme (€ 22).
 - One stop shop [‘OSS’] for goods, still available to NI
 - EORI’s to be reissued.

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- The place of supply of **goods** rules are unchanged on all 3 sides – GB/NI/EU.
 - Place of supply of **services** also unchanged on both sides:
 - B2B – location of customer [PVD art 44]
 - B2C – location of supplier [PVD art 45]
 - Effective use and enjoyment remains available.

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- **B2B:** Supplies of services to UK business customer (inc. NI) by Italian business will be located outside EU
 - Supplies of services to Italian business customer by UK business will be located inside EU (Italy)
 - **B2C:** Supplies of services to UK retail customer by Italian business will be located in Italy
 - Supplies of services to Italian retail customer by UK business will be located in UK

PLACE OF SUPPLY OF DIGITAL SERVICES – MINI ONE STOP SHOP

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- Cross-border telecommunication, television and radio broadcasting, or digital services
 - MOSS – post Brexit: UK suppliers must find a new MOSS (non-union) registration in a Member State (or register everywhere they supply in EU)

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- As established in a third country, UK-registered businesses have no Eighth Directive rights to reclaim VAT incurred in EU.
 - There is a 3 month transition (end 31.3.21) for UK & EU businesses to make pre-2021 Eighth Directive claims (Withdrawal Agt art.50).
 - NI established businesses can carry on with Eighth Directive claims on EU VAT incurred on I-EU A of goods

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- Italian businesses established & registered in UK have domestic input VAT reclaim rights
 - (UK registration threshold: turnover of £85k. Voluntary registration available if turnover below that)
 - Italian businesses, not UK VAT registered, can use existing portal till 31 March 2021.
 - After that, apparently, use the UK's (old) non-EU business, UK VAT reclaim scheme

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- Under the ‘VAT Retail Export Scheme (VAT RES)’, international visitors to the UK can reclaim the VAT they pay on goods purchased but not consumed in the UK.
 - This is, apparently, to be ended on 31.12.20.

ENFORCEMENT OF UK VAT SYSTEM FOR THE PRE-2021 PERIOD

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- Italian businesses who have issues with the UK tax authorities on VAT transactions (supplies/imports) pre-dating 2021:
 - Will retain all vested EU law rights & liabilities up to 31.12.20.
 - Can rely on UK and EU rights against UK tax authorities acquired pre-1.1.21 (there is a Tax tribunal appeal system).
 - Can also often rely legally on informal guidance given to them by HMRC, where it is later shown to be wrong, if it has been relied and caused damage to taxpayer ('judicial review' by UK Courts).

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- Main conclusion – it is too early to reach an overall conclusion
 - The future UK-EU deal will be very basic, and much new paper work, will be needed whatever it says.
 - NI should be examined as a possible base for goods transactions
 - Services will be the least affected in the short term

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- Let us hope for a good outcome for business -
 - touch wood and tocco ferro !

RODERICK CORDARA QC,SC
Essex Court Chambers, London

<https://essexcourt.com/barrister/roderick-cordara-qc/>

SOME UK RESOURCES TO WATCH

▪ Sign up for the UK's trader support service: www.gov.uk/guidance/trader-support-service

- Moving goods into, out of, or through Northern Ireland from 1 January 2021: <https://www.gov.uk/guidance/moving-goods-into-out-of-or-through-northern-ireland-from-1-january-2021>
- **The New UK Border Operating Model (pp 138)**
- [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/925140/Borders OpModel.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/925140/Borders_OpModel.pdf)
- **Collection to be found under <https://www.gov.uk/guidance/trader-support-service> in trader support service, depending on your industry:**
 - **[Chemicals sector: end of transition period guidance](#)**
 - <https://www.gov.uk/government/collections/chemicals-sector-end-of-transition-period-guidance>
 - **[Construction sector: end of transition period guidance](#)**
 - <https://www.gov.uk/government/collections/construction-sector-end-of-transition-period-guidance>
 - **[Retail sector: end of transition period guidance](#) : <https://www.gov.uk/government/collections/retail-sector-end-of-transition-period-guidance>**

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- **Electronics and machinery sector: end of transition period guidance:**
 - <https://www.gov.uk/government/collections/construction-sector-end-of-transition-period-guidance>
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 - **Metals and other materials sector: end of transition period guidance:**
 - <https://www.gov.uk/government/collections/metals-and-other-goods-sector-end-of-transition-period-guidance>
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 - **Automotive sector: end of transition period guidance:**
<https://www.gov.uk/government/collections/automotive-sector-end-of-transition-period-guidance>
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 - **Consumer goods sector: end of transition period guidance,**
 - <https://www.gov.uk/government/collections/consumer-goods-sector-end-of-transition-period-guidance>
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 - **Aerospace sector: end of transition period guidance,**
 - <https://www.gov.uk/government/collections/aerospace-sector-end-of-transition-period-guidance>
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 - **Life sciences sector: end of transition period guidance:**
 - <https://www.gov.uk/government/collections/aerospace-sector-end-of-transition-period-guidance>

EU RESOURCES TO WATCH

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- Wide ranging:
 - https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/getting-ready-end-transition-period_en
 - Goods:
 - https://ec.europa.eu/info/sites/info/files/brexit_files/info_site/vat-goods_en_0.pdf
 - Services:
 - https://ec.europa.eu/info/sites/info/files/brexit_files/info_site/vat-services_en.pdf
 - Getting ready check list:
 - <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020DC0324&from=EN>