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UK Indirect Tax Conference 2015
Union Customs Code

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Contents

Changes in legislation

Background and timing

What is the Union Customs Code (UCC)?

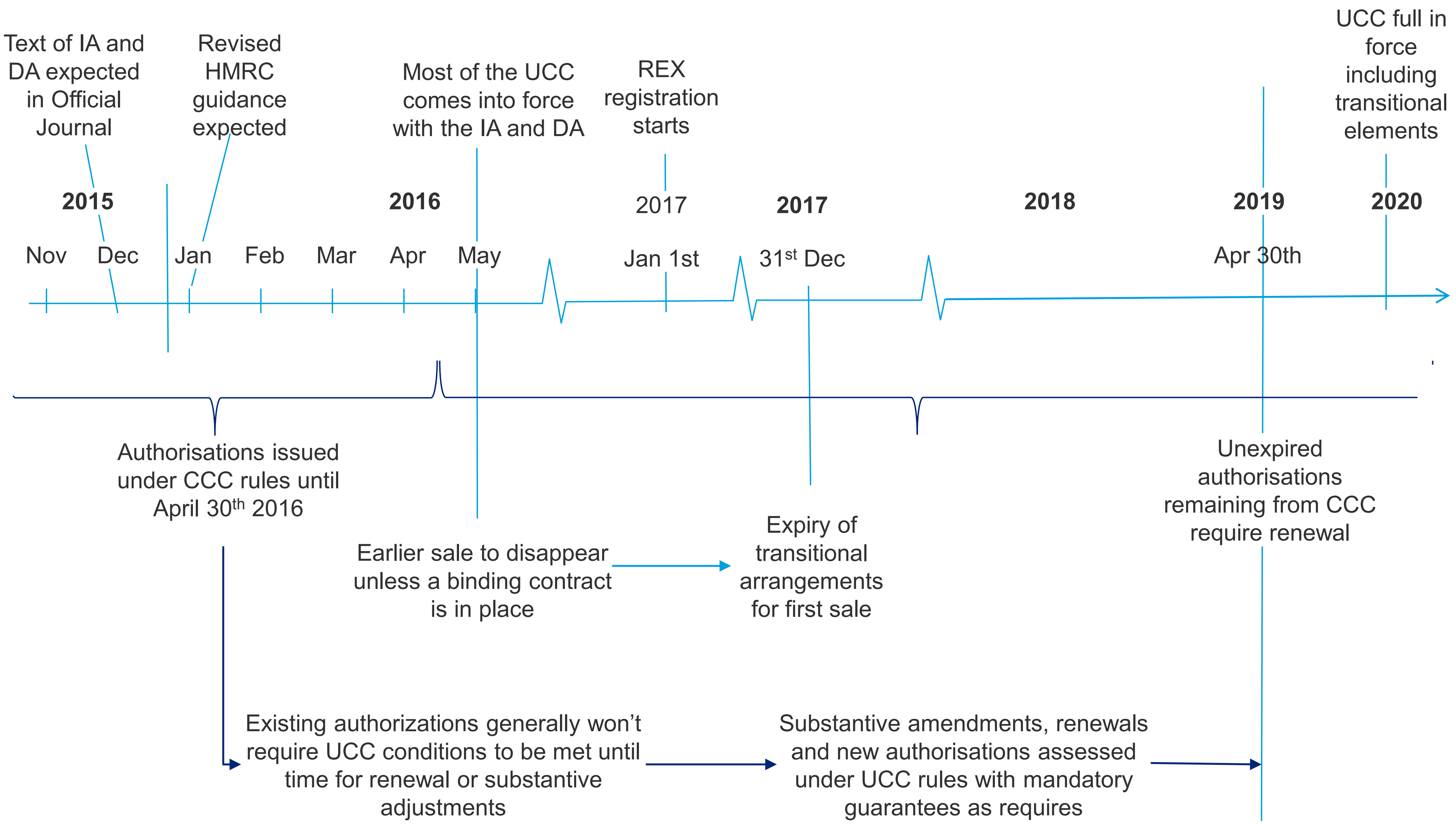
- It is the new European Union's customs legislation
- It will establish a new set of EU customs laws by establishing a new framework regulation for customs rules and procedures, bringing lots of changes
- It is a recast of the originally planned Modernised Customs Code (MCC)
- It's been a long time coming! However, the principle of the law was adopted on 10 October 2013 in Council Regulation (EU) 952/2013, suggesting the revised timelines could be realistic
- Implementation **due 1st May 2016** once the Delegated and Implementing Acts (implementing provisions) are agreed
- Text of the Delegated Act was adopted 28 July 2015
  - EU Council and European parliament have 2 months to decide whether to object
- Text of Implementing Act discussed by the Customs Code Committee in September
- Both texts were expected in the Official Journal in late October / early November

Aims

The main objective for re-writing the EU customs legislation is to support modernisation and create:

- Greater facilitation of legitimate trade (i.e. providing measurable benefits for those who put compliance programmes in place and can effectively self-regulate compliance)
- Reinforced need to ensure security & safety (throughout the supply chain, involving imports and exports to and from the EU)
- A paperless environment for customs & trade (moving to customs e-filing)
- Harmonised & standardised application of customs controls (creating greater transparency and consistency, as well as easier pan-European customs management)

Timing and key milestones under UCC



Key considerations

Who will be impacted by UCC?

- Operators of a special regimes (customs procedures) where conditions of use will now change and new requirements and conditions will be introduced
- AEO certified companies – to be reassessed under the new UCC criteria
- Anyone moving goods under customs control, for example Temporary Storage and Community Transit
- Anyone using First Sale for Export as a customs valuation method, or if royalties are involved in your supply chain, impacting your customs value
- Companies who want to use Self-Assessment
- Companies interested in Centralised Clearance
- Exporters making declarations of origin

Key changes to legislation

Valuation
Classification
Origin
AEO
Customs Debt & Guarantees
Simplifications & IT environment
Regimes / Special Procedures

Key changes include:

- ✓ Introduction of new simplifications
- ✓ Mandatory guarantees
- ✓ Movement of goods under temporary storage
- ✓ Removal of earlier sales provision (with transitional arrangements)
- ✓ Changes to assumptions regarding adjustments for royalties
- ✓ Electronic communications

Valuation – Royalties

- Valuation
- Classification
- Origin
- AEO
- Customs Debt & Guarantees
- Simplifications & IT environment
- Regimes / Special Procedures

Current requirements

Very basic determination as to whether a royalty fee is dutiable:

1. Does it relate to the imported goods; and,
2. Is it paid as a condition of sale of those imported goods?

Future requirements

Under the UCC, Royalties & Licence Fees will generally be considered to be paid as a condition of sale of the goods irrespective of the relationship between the buyer/seller and should therefore be included in the customs value

The UCC includes a specific reference to royalties. The new provisions (draft) assume that royalties are always related to the good being valued or imported and outlines the condition where a 'condition of sale' is deemed to be met

What should companies be doing now to prepare for these changes?

Consider what royalties are paid and whether they are or are not included (currently) in the customs value for duty. Calculate the impact the new change will have to seek to find ways of eliminating or minimising the new duty exposure

Valuation – Earlier sale

- Valuation
- Classification
- Origin
- AEO
- Customs Debt & Guarantees
- Simplifications & IT environment
- Regimes / Special Procedures

Current requirements

The sale price of the earliest sale in an export chain can be used for customs valuation purposes

Future requirements

Under the UCC the facility to use an earlier sale is withdrawn;

Transitional rules (Sunset Clause) apply until 31 December 2017. The draft text of the "Sunset Clause" (*Article 341 Rev7 IA)* reads as follows;

The transaction value of the goods may be determined on the basis of a sale occurring before the sale referred to in Article 128(1) where the declarant is bound by a contract concluded prior to…(entry into force of this regulation)

What should companies be doing now to prepare for these changes?

Determine whether the business is using earlier sale and calculate the impact the new change will have to seek to find ways of eliminating or minimising the new duty exposure. If the business is not using earlier sale, determine any potential short term benefit prior to 2018

Classification

Valuation
Classification
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Current State requirements

Binding Tariff Information rulings are not binding on the applicant meaning that if you apply you can still chose to use a code other than that decided by the authorities

Future State requirements

Becomes binding on the holder as well as authorities and the period of validity is reduced to 3 years

Mandatory requirement to declare BTI reference on customs declaration

Existing decisions will remain valid for the period set out in those decisions

What should companies be doing now to prepare for these changes?

Determine what BTIs are in place and whether they are being used i.e. is the decision of the authorities applied. Establish a new policy and communicate to the business, establishing requirements for obtaining BTIs and requiring centralised approval so the risk can be managed

Non-preferential origin

Valuation
Classification
Origin
AEO
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Regimes / Special Procedures

Current State requirements

There is a focus on preferential origin – i.e. origin that impacts the customs duty paid through the use of free trade agreements. There is limited information on non-preferential origin (i.e. origin for other measures such as anti-dumping duties, quotas etc.)

Future State requirements

Specific rules from the WTO agreement on rules of origin, including listing of specific products considered to have undergone last substantial transformation in the Annex

The introduction of legally binding objective and specific Primary Rules clearly defining when 'goods the production of which involved more than one country' meet the substantial processing criterion and Residual Rules to determine the origin when the Primary Rules are not met

Introduction of a generic list of minimal operations that in any event cannot be considered as last substantial transformation conferring origin, among other things including simple assembly

What should companies be doing now to prepare for these changes?

Determine the areas of the business where non-preferential rules are currently applied

Preference

- Valuation
- Classification
- Origin
- AEO
- Customs Debt & Guarantees
- Simplifications & IT environment
- Regimes / Special Procedures

Current State requirements

A paper based system of origin certification often resulting in missing paperwork and unclaimed preference (or conversely preference claimed that should not have been)

Future State requirements

A move towards a paperless system enabling traders to make out origin declarations in place of the current paper certificates for EUR and GSP

The Registered Exporters System (REX) is a self-certification for exporters that will replace GSP certificates

Registration of exporters under REX will begin on 1 January 2017, with full implementation completed by 30 June 2020

What should companies be doing now to prepare for these changes?

Consider requirements to register under REX and what determine what actions their suppliers are taking to do the same

Authorised Economic Operator (AEO)

- Valuation
- Classification
- Origin
- **AEO**
- Customs Debt & Guarantees
- Simplifications & IT environment
- Regimes / Special Procedures

Current State requirements

AEO is currently deemed as a kite-mark for companies with robust processes and procedures although the benefits have been deemed limited by many

Future State requirements

The UCC links AEO to a number of benefits, financial and otherwise through linking it to the use of regimes such as customs warehousing and Inward Processing Relief i.e. to be authorised, AEO or AEO level procedures must be demonstrated

There will be a financial benefit to being AEO if operating procedures such as Customs Warehousing or Inward Processing relief as non-AEO authorised traders will be required to guarantee debt and potential debt under the UCC

What should companies be doing now to prepare for these changes?

Consider the benefits of applying for AEO – are there additional financial benefits? Will there be benefits in relation to current special procedures in place or future applications

Guarantees

- Valuation
- Classification
- Origin
- AEO
- **Customs Debt & Guarantees**
- Simplifications & IT environment
- Regimes / Special Procedures

Current State requirements

There are currently no guarantee requirements in the UK specifically linked to operating regimes such as customs warehousing and Inward Processing Relief

Future State requirements

Guarantees will be required for authorisations to operate certain procedures and will cover actual **& potential** customs debts, with potential debts to be calculated at highest level of duty

Guarantees may be individual or comprehensive (cover multiple authorisations and simplifications) can cover a single Member State (MS) or multiple MS

The draft text stipulates €10,000 per declaration where information is not available (fallback method)

What should companies be doing now to prepare for these changes?

Consider where guarantees may be required under UCC and determine the data available (i.e. can the actual amount be determined or will the fallback method be applied)

Centralised clearance

Valuation
Classification
Origin
AEO
Customs Debt & Guarantees
Simplifications & IT environment
Regimes / Special Procedures

Current State requirements

Currently traders can apply for Simplified Authorisation for Simplified Procedures (SASP) allowing for the declaration of imports to one Member State with the physical import taking place elsewhere although this is limited to only a few Member States / traders currently

Future State requirements

The scope of CC and exactly how it will work is not clear as it is still subject to negotiations, however, the basic theory is similar to SASP but more far reaching. SASP which can be seen as a form of CC will continue in its current form until CC is finalised, likely to be towards the end of the transition period (2020)

To be authorised for CC, AEO(C) status will also be required

What should companies be doing now to prepare for these changes?

Considering where this may benefit the business – for example are there currently countries where doing business would benefit from SASP or would this increase management oversight of the customs process and so improving compliance?

General imports

- Valuation
- Classification
- Origin
- AEO
- Customs Debt & Guarantees
- Simplifications & IT environment
- Regimes / Special Procedures

Current State requirements

Goods are customs cleared as usual with no additional considerations

Future State requirements

Goods which are not customs cleared before 1 May 2016 will be released under the UCC provisions unless specifically exempted, this will affect:

- Uncleared entries (queried by CHIEF, held for examination/ documentary checks)
- Pre-lodged entries
- Goods in temporary storage

What should companies be doing now to prepare for these changes?

Ensuring that a plan is in place prior to May 2016 and that this is communicated internally – i.e. a customs clearance plan for 2016 demonstrating when goods should be for example removed from regimes to be governed by the pre or post implementation rules

Are systems ready to manage any additional data elements required? For example additional valuation information

Special procedures summary

- Valuation
- Classification
- Origin
- AEO
- Customs Debt & Guarantees
- Simplifications & IT environment
- **Regimes / Special Procedures**

Current State requirements

Special procedures refers to regimes such as customs warehousing, Inward Processing Relief, Outward Processing Relief etc. Currently there are 2 types of IPR and Processing under Customs Control (PCC)

Future State requirements

The number of regimes will reduce with the following disappearing: Free Zone type II, Customs Warehouse Type D and Inward Processing (IP) Drawback

PCC and IP merged and the requirement to re-export under IP removed

Compensatory interest will be abolished

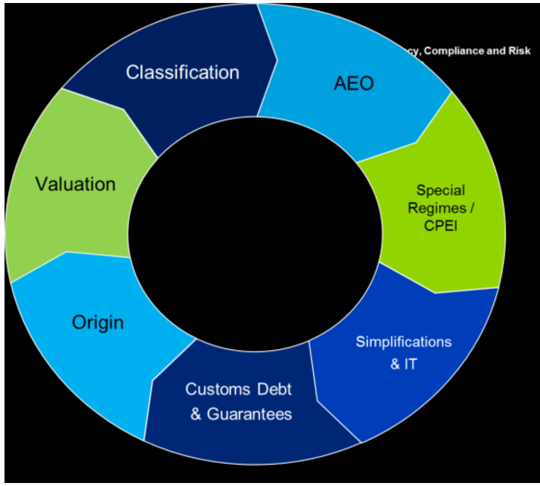
A financial guarantee will be mandatory requirement of authorisation for a Special Procedure

What should companies be doing now to prepare for these changes?

Mapping the use of regimes in each of the EU Member States and determining key actions and considerations – for example validity periods of authorisations, current and future rules etc.

Next steps

Next steps
What should you do now?



You should develop a clear strategy on UCC, including the following:

- **Carry out an impact assessment** – i.e. to fully map the areas covered by the legislation and how it will impact the business from an operational, technological and financial perspective
- **Prioritise customs duty planning** – take steps now to minimise the potential cost increase that will occur when the legislation comes into force
- **Prioritise areas that may cause supply chain disruption** – understand key areas that may cause delays or disruption to the supply chain if you are not in a position to respond to the new requirements and act now to minimise the impact
- **Develop an implementation plan** – prepare a project plan and manage the actions that need to be taken between now and May 2016, and beyond, to prepare for the changes
- **Develop a communication plan** – The impact can be across numerous business areas (Logistics, Finance, Tax…) and these areas need to be aware of the changes as such, a communication plan should be developed and implemented prior to May 2016