IMPACT OF BREXIT ON E-COMMERCE RETAILERS SELLING GOODS ACROSS THE UK-EU BORDER

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WITH LESS THAN TWO MONTHS UNTIL THE END OF THE TRANSITION PERIOD, BUSINESS PLANNING MUST NOW PIVOT FROM SCENARIO MODELLING TO TACTICAL ACTIONS

There are less than 50 working days to go until the end of the Brexit transition period. As of 1 January 2021, the UK will begin a new economic relationship with the EU, impacting on how businesses operate and trade in the UK and EU. For some retailers, this will mean significant change, and time is quickly running out to prepare. For businesses that have already undertaken planning, the COVID-19 pandemic has introduced additional complexity.

KEY ISSUES FOR E-COMMERCE RETAILERS TO CONSIDER

Retailers selling goods across the UK-EU border need to prepare for both 'at the border' barriers and 'behind the border' barriers.

AT THE BORDER:

Tariffs will become payable when trading goods between UK and EU, in the absence of a free trade agreement (FTA). The specific rates will depend on the customs classification of the product. Even if there is an FTA, businesses need to review whether their products actually meet the rules of origin requirements to benefit from the preferential tariff rates.

Customs procedures, with significant additional requirements, will apply at the UK-EU border irrespective of whether there is an FTA. Businesses will need to ensure they have the right information to complete declarations, even if they are using a third party supplier to submit on their behalf. Additional import/export controls will also apply for certain products.

Delays at the border will impact on the delivery times. The Government's 'Reasonable Worst Case Scenario' for the end of the transition period references maximum queues of c. 7,000 trucks with associated delays of up to two days. The disruption is expected to be at its peak in the first two weeks of January, and could last up to three months. Retailers need to plan for such delays, including engaging with their suppliers and customers. They may need to update commitments on delivery and returns refund processing.

There will be added complexity for Northern Ireland, with different rules applying for goods movements between Northern Ireland and Great Britain, and Northern Ireland and Republic of Ireland. Customs procedures will be required on goods moving from Great Britain to Northern Ireland, with tariffs applying if the goods are 'at risk' of moving to the EU.

BEHIND THE BORDER:

Regulatory requirements to place products on the UK and EU markets will vary – if these are not met, businesses may be able to move goods across the border, but not actually sell them. The requirements are product-specific, so businesses will need to understand what regulations apply to their products, and how the compliance obligations will change at the end of the transition period. These may also require retailers to have two sets of packaging and labelling for goods for the UK and EU markets. Further, UK manufacturers of certain products may be prohibited from affixing the CE mark to their products without additional testing and/or substance in the EU.

Businesses will also need to review any cross-border flows of personal data for customers and employees. The UK will not necessarily obtain an 'adequacy status' for the purposes of the General Data Protection Regulation (GDPR) and so organisations will need to ensure they have appropriate mitigations in place, or risk significant fines for any breaches.

The UK will be outside the EU VAT regime (although elements will continue to apply in Northern Ireland), resulting in changes to import VAT, distance sales and loss of EU simplifications. Businesses will need to review what the changes mean for them. Some businesses are changing their supply chains in response to the change in regulatory requirements, and this could have VAT and wider tax implications.

These barriers create further challenges for how retailers engage with their customers. For example, where retailers are selling direct to customers across the UK-EU border, customers will become responsible for customs clearance, tariffs and VAT, creating an obligation they may not want to take on. Further, there are additional complications and expense in managing customer returns. Many businesses are reviewing their legal entity set-ups in the UK and EU to mitigate these impacts. These considerations also apply when retailers are selling to distributors or through online platforms, and may find that they are now being asked to deliver their goods to a specific EU location.

WHAT SHOULD RETAILERS DO NOW?

There are some critical actions that businesses need to take now:

- Map out the physical flow of goods, understand supply chain responsibilities and identify any logistical pressure points;
- Validate the customs fundamentals – data, processes, people and technology – to support customs procedures;
- Review the regulations that apply of products, and assess the requirements – compliance obligations, product registrations, product labelling, certificates/ testing, designated persons;
- Check contracts and update to manage risks;
- Map personal data flows and put in place mitigations, such as standard contractual clauses;
- Understand and address tax compliance obligations, including VAT and customs requirements as intra-EU become non-EU supplies and purchases;
- Review any systems changes required;
- Review the impact on cash flow from the additional direct and indirect costs of mitigating Brexit impacts;
- Engage with suppliers and customers, on Brexit readiness and implications for them.

For more information please visit:
Brexit: Critical readiness actions for businesses

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REFERENCES:

[1] https://www.gov.uk/government/publications/reasonable-worst-case-scenario-for-borders-at-the-end-of-the-transition-period-on-31-december-2020