



Newsflash

New 'Exporter' definition in the Union Customs Code

Discussions took place over the last months, at the level of the European Commission, on the new definition of 'Exporter'. The European Commission recently provided the final version of a guidance note entitled '*Guidance on export and exit from the European Union*'. The Belgian Customs Authorities have also published further clarification on how this new definition should be interpreted.

'Exporter' definition

Under the Community Customs Code ('CCC') that will cease to apply as of 1 May 2016, an Exporter is

- the person on whose behalf the export declaration is made and who is the owner of the goods or has a similar right of disposal over them at the time when the declaration is accepted;
- the contracting party established in the Community pursuant to the contract on which the export is based when ownership or a similar right of disposal over the goods belongs to a person established outside the Community.

This definition has been changed in the Union Customs Code ('UCC') and as of 1 May, only the person fulfilling the following requirements can qualify as 'Exporter':

- the person established in the customs territory of the Union who, at the time when the declaration is accepted, holds the contract with the consignee in the third country and has the power to determine that the goods are to be brought to a destination outside the customs territory of the Union;
- the private individual carrying the goods to be exported when these goods are contained in the private individual's personal baggage;
- in other cases, the person established in the customs territory of the Union who has the power to determine that the goods are to be brought to a destination outside the customs territory of the Union.

According to the UCC, the concept '*established in the customs territory of the Union*' means that a person has, in the EU,:

- a registered office;
- headquarters, or
- a permanent business establishment, i.e. a fixed place of business where:
 - technical and human resources are permanently present and
 - through which a person's customs related operations are wholly or partially carried out.

In the light of the aforementioned change, a company needs to be established in the customs territory of the Union in order to act as Exporter. This raised many questions for economic operators that were, on the basis of the CCC, allowed to export from the Union while being non-EU established companies (e.g. a Chinese company owning a stock in Belgium and exporting these goods when required). Clarifications are now provided as to whether it will still be possible for non-EU established companies to export goods and act as Exporters.

Are non-EU established companies totally excluded?

As of 1 May 2016, if a non-EU established company wants to export goods out of the EU, it will need to appoint an indirect representative who will then have the power to bring the goods out of the European Union.

However, a non-EU established company can also empower a third party established in the Union to bring the goods out of the Union. This can be done by making contractual or business arrangements in order to determine who is the person that will act as Exporter. If this is the case, the exporter may himself appoint a customs representative.

In case the non-EU established company appoints an indirect representative (mentioned in box 14 of the SAD), the latter will be the holder of the export procedure and, as a consequence, should be mentioned in Box 2 of the SAD. However, during a transitional period, the non-EU established company can still be mentioned in Box 2. This transitional period will presumably end with the introduction of the Automated Export System ('AES') planned for March 2019. The fact that it will no longer be possible to mention a non-EU established company in Box 2 of the SAD does not mean that such companies will no longer be able to export goods out of the European Union after the transitional period. However, non-EU established companies will need to arrange that an EU-entity is in place to act as exporter at the end of the transitional period.

Consequences for VAT

The UCC's new Exporter definition raises a number of concerns with respect to VAT.

A supply of goods whereby the goods are transported outside the European Community (1) by or on behalf of a vendor OR (2) by or on behalf of a customer not established in Belgium is a VAT exempt export.

The supplier must be able to prove that the goods have left the EU. The export document (SAD) is the most important document to prove VAT exemption. Traditionally, the Belgian VAT administration argued that suppliers claiming VAT exemption were to be mentioned as exporters of record in Box 2 of the SAD. As the customs definition of Exporter changes with the introduction of the UCC, the exporter of record mentioned in Box 2 of the SAD will, in a number of cases, no longer be the person claiming VAT exemption for export.

The Belgian VAT authorities have decided to make a distinction between the Exporter for customs purposes (based on the UCC definition) and the exporter for VAT purposes (the company claiming VAT exemption). The exporter for VAT purposes will have to be mentioned in Box 44 of the SAD (name and VAT number) for exports out of Belgium. This new procedure allows to mention the exporter for customs purposes in box 2 of the SAD and to refer to the exporter for VAT purposes on the same document. The SAD also needs to refer to the invoice between the exporter for VAT purposes and its customer.

Furthermore, the Belgian VAT authorities emphasise that, in case of supply chain (consecutive supplies between various parties with only one transport whereby the goods are directly shipped from the first supplier to the last customer), it is of the utmost importance to determine which supply the transport outside the EU is to be linked to, based on the contractual arrangement. The exemption for export can only be applied to this supply. As the exporter for VAT purposes can be another person than the exporter for customs purposes, the correct allocation of the transport is essential.

How to complete a customs declaration as a non-EU established company from 1 May 2016?

From a practical perspective and in case the non-EU established company wishing to export goods after 1 May 2016 has appointed an indirect representative, the export declaration needs to be completed as follows:

- Box 2 (consignor/exporter): name and address of a non-EU established company and its EORI number;
- Box 14 (declarant/representative): name and address of the indirect representative and its EORI number;
- Box 44 (Additional information/Documents produced/Certificates and authorisations): the name of the company acting as exporter for VAT purposes and its (local) VAT number.

What does this mean for you?

For non-EU established companies wishing to export goods from the EU, it will be necessary to appoint an indirect representative.

Companies that supply goods under VAT exemption for exports will need to instruct their customs agents that their name and VAT number should be mentioned in box 44 of the export document.

What to do?

For non-EU established companies that would like to continue exporting goods out of the Union after 1 May 2016, it is advisable to make the necessary arrangements with an indirect representative of their choice and to adjust their procedures and systems to complete the SAD in accordance with the new rules. Possible supply chain adjustments and other arrangements should be identified and analysed.

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