



Brussels, 8 July 2021
TAXUD.A/LP/mb(2021)

NOTE ON MEANS OF TRANSPORT

Subject: Means of transport

Scope of this note:

- **This note refers to means of transport driven or piloted by their owners (natural persons), or by a person who is acting on their behalf for their normal use in the customs territory of the Union, i.e. to transport persons and/or goods.**
- **This note does not refer to means of transport brought to the customs territory of the Union for commercial reasons, i.e. to be sold by retailers or to undergo processing operations, unless it is otherwise explicitly mentioned.**
- **Please note that the UK left the EU on 31 January 2020, which means that any reference to an EU Member State does not include the UK if this reference corresponds to a date after 31 January 2020. However, EU customs and VAT law applied in the UK during the transition period, i.e. between 1 February and 31 December 2020. References to a Member State must be considered as within the customs territory of the Union, unless otherwise is stated.**
- **Means of transport are, among others, cars, trucks, vans, ships or aircraft that are normally used to carry people and/or goods.**

1. BACKGROUND

Following the numerous questions received on the customs and tax procedures applicable to means of transport, this note explains:

- 1) Customs status, with particular attention to the effect of Brexit
- 2) Customs procedures and formalities, and
- 3) VAT aspects linked to means of transport.

2. CUSTOMS STATUS

General aspects :

According to Article 5(22) of the Union Customs Code (hereafter UCC)¹, customs status is the status of goods as Union or non-Union goods. Union goods brought to the customs territory of the Union are under customs supervision for as long as necessary to determine their customs status (see Articles 134 UCC and 254 UCC), with the exception of goods declared for end-use and internal transit. Therefore, Union goods are not subject to the usual customs formalities and/or procedures, and no import duty is due for Union goods.

Article 5(23) UCC defines Union goods as goods:

- (a) wholly obtained in the customs territory of the Union and not incorporating goods imported from countries or territories outside the customs territory of the Union;
- (b) brought from countries or territories outside that territory and released for free circulation, and
- (c) obtained or produced in the customs territory of the Union from the aforementioned goods.

In addition, Article 153(1) UCC establishes the presumption that all goods located in the customs territory of the Union are deemed to be Union goods, unless it is established that they are not Union goods.

Therefore, in principle, means of transport located in the Union or released for free circulation therein are deemed to be Union goods. The flag, plate or any other means of registration of the means of transport is irrelevant to determine the customs status to means of transport, except in the case of motorised road vehicles mentioned in Article 208 of the UCC-Implementing Act (UCC-IA)². This means that, for example, the fact that a boat flying a flag of a third country and/or that an aircraft is registered in a third country does not necessarily mean that this boat is a non-Union good, i.e. it can have Union status. Conversely, a Member State flag or plate does not necessarily provide to such means of transport the customs status of Union goods.

Means of transport that are Union goods can lose their customs status in any of these two cases:

- a) Where they are taken out of the customs territory of the Union (unless they are placed under internal transit), or
- b) where the declaration for releasing those means of transport for free circulation is invalidated after the release of the means of transport.

UK's withdrawal from the EU:

Means of transport with customs status of **Union goods located in Great Britain (GB) on 1 January 2021** (end of the transition period) have lost their customs status as Union

¹ Please find the UCC by clicking on the following link: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0952-20200101&from=EN>

² In the case of motorised road vehicles registered in a Member State that leave temporarily the customs territory of the Union and re-enter this territory, the registration plates and the registration documents may prove the Union customs status. See UCC-IA in the following link: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02015R2447-20210101&from=EN>

goods and became automatically non-Union goods as from this date. Means of transport located in third countries on 1 January 2021 had lost their status as Union goods when they left the customs territory of the Union.

By contrast, means of transport with customs status of Union goods located in the customs territory of the Union (or in Northern Ireland with exception for the Northern Irish territorial waters pursuant to Article 5(3) of the Protocol on Ireland/Northern Ireland) on 1 January 2021 keep their status of Union goods **even if they are registered in the UK**.

Proof of Union status:

Article 208 UCC-IA establishes that motorised road vehicles registered in a Member State that leave temporarily the customs territory of the Union and re-enter this territory prove their status of Union goods if they are accompanied by their registration plates and documents indicating such registration in a EU Member State. Therefore, road vehicles with UK registration plates and documents that leave the customs territory of the Union on 1 January 2021 or later cannot prove their customs status as Union goods any longer by means of their registration plates or documents. In this case, the proof of the customs status of Union goods must be provided by one of the other means listed in Article 199 UCC-IA.

Examples:

- a) A boat was built in a shipyard in the UK. It was in free circulation and registered in the UK in March 2020. It moves to the port of an EU Member State in August 2020 and it stays in this port in 2021. This boat had the customs status of Union goods when it was built and registered in the UK, as the UK was then part of the customs territory of the Union in 2020. Therefore, the boat keeps the status of Union goods in 2021 because it has not been taken out of the customs territory of the Union. Therefore, this boat is not subject to the payment of import duty. The same would apply if a boat was built in a third country, brought to the UK and released for free circulation in the UK in March 2020.
- b) An aircraft was built in the EU. It was in free circulation in the EU and registered in an EU Member State in April 2020. The aircraft was taken to the USA in September 2020. This aircraft has the customs status of Union goods in April 2020 and loses this status, i.e. it becomes a non-Union good, in September 2020 because it was taken out of the customs territory of the Union.
- c) A car registered in an EU Member State is taken from one EU Member State to another one via Switzerland. Once the car re-enters the customs territory of the Union, the car plate and documents prove that the car has Union status.

3. CUSTOMS PROCEDURES AND FORMALITIES

Union goods, except the ones placed under the end-use or internal transit procedure, are not subject to the usual customs formalities³. Therefore, this point refers to means of transport that are non-Union goods, unless otherwise explicitly stated.

³ Please note that means of transport can be declared by the sole act of crossing the frontier when they are declared for temporary admission or for release for free circulation as returned goods. For this reason, the customs authorities may request the owner of a car registered in a third country and located in a Member State to prove the Union status (e.g. demonstrating by concrete evidence that the means of transport exited the customs territory of the Union and re-entered this territory as returned goods, that is complying with all the conditions mentioned in Article 203 UCC).

Non-Union means of transport brought to the customs territory of the Union are subject to customs procedures and formalities. In general, this means that they are subject to import duties, unless any of the following applies:

- **Presumption of Union status:** motorised road vehicles registered in a Member State may move, without being subject to a customs procedure, from one point to another within the customs territory of the Union and temporarily out of that territory without alteration of their customs status if proveproof of their registration can be shown, pursuant to Article 119(3)(d) of the UCC-Delegated Act (UCC-DA⁴).
- **Returned goods**⁵: if the means of transport entering the Union customs territory were previously Union goods, they can be declared for release for free circulation as returned goods if they fulfil the conditions established in Article 203 UCC (e.g. they must have been previously exported as Union goods from the customs territory of the Union), which means they become Union goods again and they benefit from relief from import duty.
- **Temporary admission:** Non-Union means of transport not complying with the conditions established in Article 203 UCC can be declared for temporary admission. In this case, the means of transport are non-Union goods subject to customs supervision and they can benefit from total relief from import duty if they fulfil the conditions established in Article 212 UCC-DA⁶, otherwise they can benefit from partial relief from import duty but VAT must be paid. Means of transport declared for temporary admission are subject to the time limits established in Article 217 UCC-DA.

Means of transport can be declared by the sole act of crossing the frontier if they are either declared for release for free circulation as returned goods or for temporary admission. This means that they are not subject to the customs formalities consisting of lodging an Entry Summary Declaration (ENS), a temporary storage declaration and customs declaration and they do not have to be presented to customs (see Articles 141(1) UCC-DA and 218 UCC-IA).

UK's withdrawal from the EU:

The Brexit Guidance clarifies that, where Union goods were taken from the Union to the UK before the end of the transition period and then such goods move back to the Union after the end of that period, the provisions on returned goods referred to in Article 203 UCC apply if the economic operator can provide evidence that the Union goods were transported to the UK prior to the end of the transition period.⁷

⁴ Please find the UCC-DA in the following link: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02015R2446-20210101&from=EN>

⁵ See TAXUD note on returned goods in the following link: https://ec.europa.eu/taxation_customs/sites/taxation/files/2021-note-on-returned-goods_en.pdf

⁶ Please note that one of these conditions is that the user of the means of transport (who may be the declarant as well in some cases) has to be established outside the customs territory of the Union (see Article 212(3)(b) UCC-DA, unless any derogation applies, e.g. hired cars or any other of the ones established in Articles 214, 215 or 216 UCC-DA).

⁷ See page 18 of the Brexit Note in the following link: https://ec.europa.eu/info/sites/default/files/brexit_files/info_site/guidance-customs-procedures_en_0_0.pdf

Means of transport taken to the UK from an EU Member State before 1 January 2021 can therefore be considered as exported in the sense of Article 203 UCC only if the economic operator can provide evidence proving that the means of transport were transported from the Union to the UK. This means that they can be considered as returned goods when they are brought to the customs territory of the Union if they fulfil all the conditions established in Article 203 UCC (e.g. the goods return within a period of three years after the transport from the Union to the UK took place and they return in the same state in which they were exported).

By contrast, means of transport built in GB or built in a third country and released for free circulation in GB, and located in GB on 31 December 2020, cannot be considered as returned goods when entering the Union from 1 January 2021, if no previous transport from the EU 27 to UK has taken place in the previous three years.

Examples:

- a) A pleasure boat with Union status and registered in GB sails from GB to an EU Member State in May 2020 and it is located in the customs territory of the Union on 1 January 2021. The boat is taken out of the customs territory of the Union in February 2021 and it is brought back in March 2021. This boat can be declared by the sole act of crossing the frontier as a returned good if it fulfils the conditions established in Article 203 UCC or, if it does not, for temporary admission (provided that all conditions of that customs procedure are met, such as the intention to re-export the pleasure boat). The boat can stay in temporary admission for up to 18 months (see Article 217(e) UCC-DA). If this boat stays in GB from the date of registration (i.e. May 2020) until 1 January 2021, then it loses its Union customs status on 1 January 2021 and it cannot benefit from the returned goods relief because the boat was never exported according to Article 203(1) UCC.
- b) A car is released for free circulation in GB in October 2020 and it is registered in the UK. In December 2020, the car is brought to an EU Member State and it is located in this EU Member State in 2021. This car is not subject to import duty or to customs formalities because it has Union customs status, unless it is taken out of the customs territory of the Union. After being taken out of the customs territory, the car can only be a returned good under Article 203 UCC (provided all other conditions are met) if it can be proven under Article 199 UCC IA that the car was located in a EU Member State at the end of 2020 and therefore kept its Union status, despite being registered in the UK.
- c) A motorcycle taken from an EU Member State to a country outside the customs territory of the Union in January 2021. The motorcycle is brought back to the customs territory of the Union in March 2021 in a different state as the one it had when it was exported (e.g. the engine has been changed for another one of different quality). Therefore, the motorcycle cannot be released for free circulation as returned goods, as it does not meet all the conditions mentioned in Article 203 UCC. However, the motorcycle can be declared for temporary admission by the sole act of crossing the border, unless the motorbike is registered in the customs territory of the Union⁸. The motorcycle can stay under the temporary admission procedure and hence benefit from total relief from

⁸ Please note that, if the motorcycle is registered in a Member State, Article 208 UCC-IA would apply and therefore the Union status of this motorcycle could be proven if the conditions established in this Article are met. In this case there is no need to declare it for temporary admission.

import duty for the corresponding time limit depending on the purpose of the stay (see Article 217(c) UCC-DA), if all conditions of that customs procedure are met, such as intention to re-export the motorcycle.

4. VAT ASPECTS LINKED TO MEANS OF TRANSPORT

Means of transport brought to the customs territory of the Union are not only subject to import duty (with possible exemptions as mentioned above), but also to VAT. Means of transport that are not in free circulation and that are brought to the customs territory of the Union are subject to VAT, as this entails an importation of goods subject to VAT according to Articles 2(1)(d) and 30 of the EU VAT Directive⁹. This includes means of transport on which VAT was paid in the UK while it was part of the VAT territory (and which are imported in the Union customs territory after 31 December 2020). This also includes means of transport that are brought from a place within the customs territory of the Union, but outside the VAT territory, to another place which is part of both territories¹⁰.

However, VAT exemptions may apply, such as the ones established in Article 143 of the VAT Directive.

Means of transport released for free circulation that fulfil the conditions established in Article 203 UCC are exempted from VAT if they are reimported by the person who exported them (see Article 143(1)(e) VAT Directive).

Means of transport brought to the VAT territory and placed under a special procedure (except end-use and temporary admission with partial relief from import duty) are not subject to VAT upon import as long as they are covered by these procedures (see Article 71, VAT Directive),

Examples:

- a) A pleasure boat with UK flag and registration, and VAT paid in the UK in 2017, brought to an EU Member State (within the VAT territory) in November 2020. The boat stays in this Member State after 1 January 2021.

This boat has the status of Union good and it keeps this status, unless it is taken out of the customs territory of the Union. Therefore, it is not subject to import duty or to any customs formalities as long as it does not lose the Union status. The boat is not subject to VAT, unless a taxable event takes place (e.g. it is sold by a taxable person to another person within the VAT territory). If the boat is taken out of the customs territory of the Union, it can be brought back to this territory and declared for release for free circulation as returned goods if all the conditions mentioned in 203 UCC are met (see example above). In this case, the boat will be exempted from VAT if the person who imports it is the same as the person who exported it.

If the conditions in Article 203 UCC are not fulfilled, the boat can be declared for temporary admission with total relief from import duty if the conditions

⁹ Please find the VAT Directive in the following link: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02006L0112-20200101&from=EN>

¹⁰ Please note that some territories, mentioned in Article 6(1) VAT Directive, are part of the customs territory of the Union, but not of the VAT territory, such as the Canary Islands.

mentioned in Article 212 UCC-DA are met. In both cases, the declaration can be done by the sole act of crossing the frontier (see Article 141(1)(d) UCC-DA) and the boat is not subject to VAT upon import as long as it is covered by this arrangement.

- b) A boat, with the status of Union good located in the Canary Islands (i.e. outside the VAT territory, but within the customs territory of the Union) and brought to the territory of an EU Member State (within the EU VAT territory) in 2021. The boat lost temporarily its customs status when it was taken out of the customs territory of the Union and then it recovers this status of Union goods as returned goods when it is brought back to this territory because it is declared by the sole act of crossing the border. The boat is not subject to customs formalities, apart from the sole act of crossing the border to declare it as returned goods. When the boat arrives to the VAT territory, an importation in terms of VAT is taking place, which means that VAT is due, unless an exemption applies.