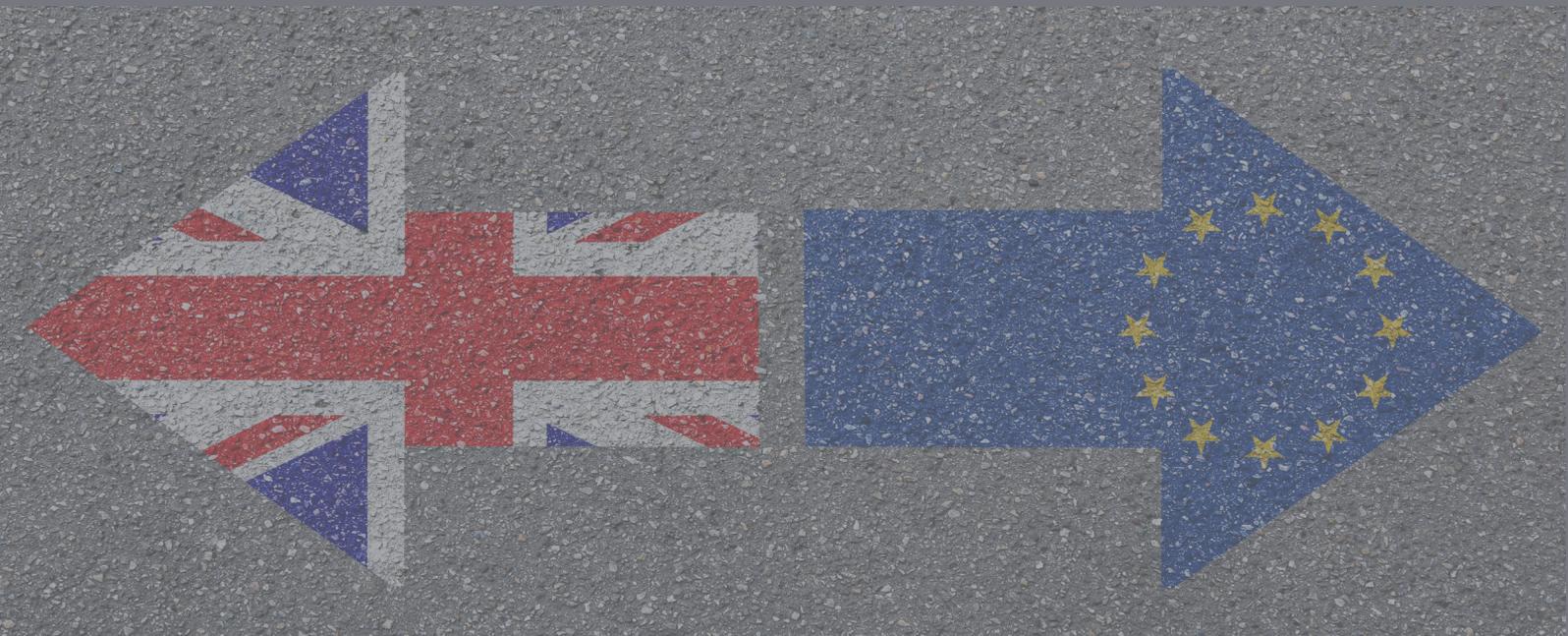


# DBASS GUIDE TO BREXIT

for Business



# Foreword by Eoghan Farrelly

The United Kingdom as our nearest neighbour has always been Ireland's primary trading and social partner. Their exit from the European Union will have a great impact on the Irish Economy and it's cultural life.

There are many challenges ahead but, also many opportunities. Through planning and application of processes, Irish businesses can position themselves to succeed in this changing landscape.

We now know that there will be major implications for many Irish businesses across a broad number of sectors, affecting their processes, structures, operations and systems. Many businesses will need to adapt in order to maintain their competitiveness and retain their market access.

In this document we have looked to address the most important concerns for businesses and individuals, however we would encourage you to contact us directly if you have any queries in relation to this subject matter. Please do not hesitate to contact a member of the DBASS Team with any of your concerns on 01 849 88 00 or [info@dbass.ie](mailto:info@dbass.ie).

You will also find a full range of resources on our website at [www.dbass.ie](http://www.dbass.ie) which we update regularly in line with the changing needs of business.



I am confident that with the right approach Irish business owners can navigate this difficult transition in a manner which will ultimately result in greater opportunity for their businesses well into the future.

Here's to a prosperous new era for us all!

**Eoghan Farrelly**

Head Of Tax

DBASS Chartered Accountants



VAT & Goods



VAT & Services



Customs UK



Customs NI



Other Brexit Issues

(FOOTNOTE: For the purposes of this document the term **GB** will be used to define England, Scotland & Wales)

## VAT implications of trade with Great Britain

### GOODS

#### Distance sales of goods

##### **B2C sales of goods from ROI to GB**

The rules that apply for Business to Consumer (B2C) sales of goods will be impacted by Brexit.

-From 1 January 2021, ROI companies that currently charge Irish VAT on B2C supplies of goods to GB consumers should not charge Irish VAT on these supplies.

-Previously the distance sales threshold for VAT registration for B2C sellers of goods from Ireland into the UK is £70,000. The threshold will no longer apply from 1 January 2021.

-Under new rules, Irish sellers will be liable to charge UK VAT on goods shipped from Ireland to consumers in GB in consignments of £135 or less.

-For consignments with a value over £135, import VAT and potentially customs duty will be due. The Irish supplier will need to consider whether they arrange for payment of the UK VAT and custom duty or if their customers should be responsible for the payment of any customs duty and VAT arising in the UK. This will mean a requirement to register for VAT

##### **B2C sales of goods from GB to ROI**

-For the distance selling of goods B2C from GB to ROI, those businesses will continue to have an obligation to register and pay Irish VAT on their supplies to Irish customers. Those companies will also need to complete the necessary import declaration in respect of goods imported into Ireland.

##### **B2C sales of goods from ROI to NI**

-For B2C sales from ROI into NI, the distance sale rules will remain the same (until the EU rules change on 1 July 2021).

#### VAT registration requirements

(Considerations apply if you are VAT registered and either:

- your goods are located in NI at the time of sale;
- you receive goods in NI from VAT registered EU businesses for business purposes;
- you sell or move goods from NI to an EU Member State.

-You need to be identified within HMRC's VAT system if you're making transactions that fall within the Protocol.

-A separate NI VAT registration number is not required. However, you will need to put an "XI" prefix in front of your VAT number when communicating with an EU customer or supplier (your invoices will show an XI number ahead of your VAT number - for example, XI 123456789 - instead of GB).

-For suppliers, HMRC have confirmed that they are happy for you to include an XI and GB invoice on your supplier invoice but XI must be included for supplies to EU

-You'll be automatically identified as falling within the scope of the protocol if:

- your VAT registered address has a BT postcode;
- your VAT registration certificate shows a type of business that is not solely involved in the provision of services.

More information on this can be found on gov.uk

## VAT implications of trade with Great Britain

### GOODS

#### Key VAT system changes- NI and ROI

Under the Protocol, transactions in goods between NI and EU businesses and consumers will continue as they did before December 2020. The same processes and reporting requirements will apply. However GB will be outside the EU's VAT rules.

From 1 January 2021, you may need to update your VAT system. Below are some actions you might consider implementing:

- Ensure that digital records and functional compatible software are updated with new transaction treatments where relevant
- Understand Brexit's impact on master data, invoicing templates and reporting
- Ensure transactions are coded correctly
- Ensure a distinction exists in ERP systems between GB and NI
- Intrastat declarations should only include the relevant EU transactions (i.e. between NI and ROI)
- VIES reports should only include the relevant EU transactions (e.g. no GB supplies)
- EU VAT refund (EVR) system will no longer apply for VAT incurred in the UK from 31 March 2021 (similar VAT reclaim available under the 13th Directive)
- From a UK perspective, you must ensure compliance with Making Tax Digital.

#### EU VAT reporting obligations

VAT reporting obligations currently apply to trade between EU Member States. After the transition period ends, these obligations will no longer apply to trade with GB. Under the Protocol, transactions in goods between NI and EU businesses and consumers will continue as they do today. The same processes and reporting requirements will apply.

For example in ROI, you will not have to report the following information for trade with GB:

- Details of supplies in goods and services to VAT registered businesses in GB on a VIES return
- Details of sales to or purchases from GB on Intrastat returns.

For example in ROI, you will have to report the following information for trade with NI:

- Details of supplies of goods (but not services) made to VAT registered businesses in NI on a VIES return
- Sales of goods to NI and purchases of goods from NI on Intrastat returns.

Guidance can be found on Revenue.ie

NI businesses will also have to follow the same rules as ROI.

## VAT implications of trade with Great Britain

### SERVICES

#### Business to Business (B2B) services and Business to Consumer (B2C) services

##### Supply of services

The NI Protocol means NI will remain aligned with EU rules for trade in goods. NI will now follow UK rules for services.

After the transition period, if you supply services to or receive services from the UK (including NI) and vice versa, different place of supply rules for VAT on services may apply.

##### B2B services -ROI

The VAT treatment applicable to the supply of most business-to-business (B2B) services between Ireland and the UK will largely remain the same (i.e. the place of supply is the place where the business receiving the services is established). Using the example of an ROI business, if you receive services from a company based in the UK after the transition period, in general, no VAT is due. If you provide services to a company based in the UK after the transition period, in general, no Irish VAT is due on services.

##### B2C services -ROI

Business to consumer (B2C) services, in general, the place of supply is the place where the supplier is established. However, many services supplied for example from Ireland to non-business customers outside the EU will not be subject to Irish VAT.

Subject to the Use and Enjoyment provisions, VAT is not due on the following services supplied to non-business customers established outside the EU:

- Transfers and assignments of copyrights, patents, licences, trademarks and similar rights.
- Advertising services.
- The services of consultants, engineers, consultancy firms, lawyers, accountants and other similar services, as well as data processing and the provision of information.
- Obligations to refrain from pursuing or exercising, in whole or in part, a business activity or a right.
- Banking, financial and insurance transactions including reinsurance, except for the hire of safes.
- The supply of staff.
- The hiring out of movable tangible property, with the exception of all means of transport.
- The provision of access to, and of transport or transmission through, natural gas and electricity distribution systems. This includes the provision of other services directly linked thereto.
- Telecommunications services.
- Radio and television broadcasting services.
- Electronically supplied services.

## VAT implications of trade with Great Britain

### SERVICES

continued from previous page:

#### B2B services – UK

If a UK business buys services from outside the UK, the reverse charge applies. VAT will be accounted for on the UK VAT return and a simultaneous credit for the amount of VAT due will be taken (assuming you have full VAT recovery). See gov.uk for more guidance.

#### B2C services – UK

If a UK business sells services to customers in the EU, they will need to charge VAT at the usual rate.

Exceptions in UK

There are different rules for some types of service, including:

- hiring transport
- land and property services
- ‘electronically supplied services’ no physical involvement(eg.web hosting or music downloads)
- events
- restaurant or catering services

VAT on certain services

After the transition period ends, NI will continue to follow UK VAT rules for services.  
**Business to Business (B2B)**

The VAT treatment on the supply of most B2B services between the UK (including NI) and Ireland and other countries will broadly remain the same from 1 January 2021. For B2B, the place of supply is the place where the business receiving the services is established. See Revenue guidance and HMRC guidance.

#### Business to Customer (B2C)

From 1 January 2021, Irish VAT should not arise on the supply of certain services such as accounting legal, and consultancy work to non-business customers in GB or NI. If a UK business supplies accounting services to non-business consumers outside of the UK, the services are supplied where the customer belongs and are therefore outside the scope of UK VAT. See gov.uk for more information.

Mini-One-Stop-Shop (MOSS)

-MOSS returns can be used when telecommunications, broadcasting and electronic services are being supplied to private customers (B2C).

-From 1 January 2021, the MOSS scheme will no longer apply in respect of UK VAT charged on B2C supplies to UK consumers, and Irish companies engaged in these supplies will need to VAT register in the UK post Brexit in order to account for the UK VAT due on such supplies.

## Customs implications of trade with Great Britain

### Customs(UK trade)

#### Areas To Review:

- Compliance
  - Supply Chain
  - Strategy
  - It will be critical to determine how to complete Customs Declarations
- Consider cost-benefit and risk analysis to decide whether to bring this function in-house or outsource as well as considering levels of control over the accuracy of these declarations.

#### Completion of Customs Declarations

With effect from 1 January 2021, Import and Export Declarations will be required on goods entering ROI from GB and on goods departing ROI for GB (similarly the same will happen on the GB side, albeit with a potential simplification for the first six months of the year).

These customs declarations are tax declarations and, as with all tax declarations, need to be 100% accurate.

In terms of Import and Export Declarations the company is the Importer or Exporter of Record and liable for the accuracy of the declarations completed. Therefore, you will need to ensure that whoever is completing these declarations on your behalf, either internally in your company or on an outsourced basis, is experienced and knowledgeable about Customs Clearance rules.

Along with the Tax Compliance requirements, accurate completion of customs declarations will also lead to speed of customs clearance. As a corollary, inaccurate completion of declarations will lead to delays, error routings, and customs interventions; thus delaying the clearance of your goods.

Inaccurate completion of declarations can also lead to an under- or overpayment of **Customs Duties (depending on circumstance of a free- trade agreement)**.

In this regard we recommend that you engage your clearance agents using the same rules as you would apply to your tax advisors or auditors.

In addition, once declarations are completed, we recommend an internal audit take place to review all these declarations completed on your behalf. A statement can be obtained weekly and monthly from ROS to enable this to take place. Customs will carry out a post-clearance audit within the next three years and they will look for evidence of your internal controls

#### Economic Opertator's Registration and Identification Number (EORI number)

Businesses in the UK will need an EORI number to move goods between the UK and non-EU countries and between Great Britain and the EU. **Businesses may also need a separate EORI number that starts with XI if goods are moved to or from Northern Ireland.**

## Customs implications of trade with Great Britain

### Customs(UK trade)

#### (continued) Economic Operator's Registration and Identification Number (EORI number)

From 1 January 2021, an **EORI number that starts with GB** is needed to move goods between GB and other countries. If your current EORI number does not start with GB, you will need to apply for a new one.

**If you move goods to or from Northern Ireland, you'll need an EORI number that starts with XI:**

- move goods between Northern Ireland and non-EU countries
- make a declaration in Northern Ireland
- get a customs decision in Northern Ireland

-If you already have an EORI number from an EU country, you do not need an EORI number starting with XI. You may still need an EORI number starting with GB to use some UK customs systems.

-To get an EORI number that starts with XI, you must already have an EORI number that starts with GB.

-If you already have an EORI number starting with GB

- You need to apply for an EORI number that starts with XI if you have not already received one from HMRC in the past.

- You'll get your EORI number that starts with XI within 4 working days.

-If you do not have an EORI number starting with GB

- You can apply for an EORI number that starts with GB and one that starts with XI at the same time.

- You'll get your EORI number that starts with XI within 4 working days.

For more information see [gov.uk](http://gov.uk)

#### Proof of Origin

Along with the above, if there is a Free Trade Agreement, you will also need to ensure you have evidence of the origin of your goods to ensure you can take advantage of this agreement. In order to qualify you will need to ensure:

- You understand the rule of origin applicable to your product. This will be produced in an Annex to the Agreement and will be based on the tariff code of your finished product.
- You undertake more than simple assembly operations, packing or unpacking, testing, etc.
- You have evidence of the origin status of any raw materials or parts that you purchase from EU or UK suppliers. This is often an area where companies find, in an origin audit, that they do not have the necessary evidence in place.
- You can manage dual sourced items and allocate correct origin.

## Customs implications of trade with Great Britain

### Customs(UK trade)

#### (continued)Proof of Origin

- You can manage percentage rules, e.g., if the rule of origin for your product requires no more than 40 percent non-EU material costs, then what happens if your BOM is always hovering on the 39-41 percent margins?

These latter two require strong ERP and IT controls along with, again, internal audit and risk management.

The above is just some of the new rules that companies will need to apply going forward.

*There are two points of audit:*

- 1) On entry of the customs declaration
- 2) As part of the post-clearance audit

Most of the customs audits in ROI take place on a post-clearance basis; therefore, putting in place compliance procedures and internal audit checks are critical to ensure there is no un-expected build-up of liability.

#### Customs Valuation

All goods imported and exported need to be assigned a value for customs purposes. The value for customs purposes relates to the inherent value of the goods on crossing the EU border. Therefore, even if the goods are supplied free of charge, an accurate customs value needs to be assigned.

This can be relatively straightforward in the case of Third-Party Sales where there is a sale between unrelated parties. However, it becomes a lot more complex to determine the value where the sale is between related parties, or where there is no sale on import or export, e.g., with consignment stock.

#### Tariff Classification

Accurate assignment of tariff classifications on the customs declaration is one of the most critical aspects of Import and Export Compliance. The correct tariff classification will determine the duty payable (where there is a positive duty rate applicable). However, it also determines the rules applicable to qualify for a Free Trade Agreement 0 percent duty rate (see proof origin below).

Lastly it also determines the security criteria applicable to the goods, license requirements, sanctions impositions, etc. There are serious penalties for the inaccurate or negligent assignment of tariff classifications and therefore this tends to be a high priority area for all companies importing and exporting. If you have not worked through your customs tariff classifications, then this is one of the most important steps you now need to take.

**See tariff classifications:** [https://ec.europa.eu/taxation\\_customs/dds2/taric/taric\\_consultation.jsp?Lang=en](https://ec.europa.eu/taxation_customs/dds2/taric/taric_consultation.jsp?Lang=en)

## Customs implications of trade with Great Britain

### Customs(UK trade)

#### Impact on Customs Clearance Requirements

Many companies are now looking at whether to employ a clearance agent or to bring this in house. We recommend that all Financial Controllers put in place strong controls and checks when considering this. In making a decision, we recommend applying the following cost-benefit and risk approach:

**Cost of staff:** Customs will be operating 24/7 from 1 January 2021 and your staff will need to also operate on this basis in interacting with Customs. What will the cost of this be when compared with the cost of out-sourcing to an agent?

**Experience:** It is difficult to get experienced staff and equally difficult to get experienced customs clearance agents. However, the quality and accuracy of declarations will have both a short- and long-term impact on your business. Therefore, you need to ensure staff/agents are experienced and, at minimum, have undertaken appropriate training.

**Scalability:** In engaging a clearance agent you need to ensure that the company is capable of scaling to meet your needs. How many agents do they have? What software is being used? How many declarations can they input for how many customers?

**Compliance:** You want to ensure robust SOPS are in place and strong internal audit controls and checks. You do not want to be in a position where a post-clearance audit unveils hidden errors, and the company has left itself open to post-clearance duty collections, penalties and fines. We see this many times in the application of customs classification and in qualifying for “origin” benefits.

**Document retention and filing:** All customs documentation must be retained for a minimum of three years, plus the year of filing. In addition, these documents may be required for VAT compliance for seven years. It is important to ask how your documents are being filed, where will they be retained, what is the ease of access when the post-clearance audit takes place. We find this can be one of the most time-consuming issues when preparing a customs audit, where documents are unavailable, archived or simply impossible to access after a year.

**Control:** What control will you have over your declarations? What visibility will you have into the customs processing system? Most companies would like to retain control while having expert support and intervention with Customs on Customs-specific issues. How will this work?

In recent months businesses have been established to offer specific support to businesses in the area of customs clearance . These services allow a business to create and manage their customs declarations in one secure place.

## Customs: The Northern Ireland Protocol

### Customs

#### NI Protocol

The Protocol is designed to maintain an all-island economy and avoid a hard border on the island of Ireland regardless of the Brexit outcome. This means that from 1 January 2021, a different Customs (and VAT) regime will exist in Northern Ireland. Agreement in principle was reached by the EU and UK on the implementation of the Protocol on 10 December 2020. The Institute has engaged extensively with HMRC on these proposed changes and will continue to do so next year on your behalf

**Broadly, the Customs changes under the Protocol are as follows:**

- NI will follow a limited set of the rules of the EU Single market for goods.
- While NI will remain part of the UK's Customs territory, there will be cases where NI will follow EU Customs.
- NI will continue to follow the EU's safety standards for goods so that there will be no need for regulatory checks on goods crossing the land border into ROI.
- NI businesses shipping NI goods to Great Britain (GB) should have unfettered access to that market, meaning no Customs declarations are needed generally.
- For goods entering NI from GB, EU tariffs will only apply on those goods that are at risk of being moved to ROI/EU.
- For goods moving from GB to NI, a UK Trader Scheme authorisation must be applied for by 31 December 2020 to declare goods "not at risk" of entering the EU from 1 January 2021.
- For agri-food moving from GB to NI, authorised traders (such as supermarkets and their trusted suppliers) will have a grace period until 1 April 2021 from official certification of certain products of animal and plant origin, and there will be minimum checks of these products at NI ports for 6 months.

## Customs: The Northern Ireland Protocol

### Customs

#### At Risk Guidance

This guidance sets out details of the 31 December 2020 application deadline for the UK Trader Scheme.

This guidance is subject to change so we would recommend that you ensure to check back on a regular basis to allow for any possible updates.

<https://www.gov.uk/guidance/check-if-you-can-declare-goods-you-bring-into-northern-ireland-not-at-risk-of-moving-to-the-eu-from-1-january-2021>

#### When duty may arise

From 1 January 2021, businesses will need to make declarations and may need to pay any tariffs due when bringing goods into NI from GB or from countries outside of the EU. **Whether these businesses have to pay duty, and how much that duty is, will depend on where the goods are coming from and if they are “at risk” of onward movement to the EU.**

If goods are “not at risk” then the business will either pay:

- zero duty, if moving goods into NI from GB; or
- UK duty, if moving goods from a country outside the EU.

If a business intends to bring goods into NI which are not at risk of moving to the EU, then they must apply for an authorisation for the UK Trader Scheme – more detail on this is below. However, this scheme is not available where goods enter NI from outside of the UK and a country outside of the EU and the differential between the UK and the EU tariff is 3 per cent or more.

#### “Not at risk” definition

The key, therefore, is to decide if goods are or are not “at risk”. Goods are “not at risk” where either:

- the applicable UK tariff is equal to or higher than the applicable EU tariff (for movements into NI from GB, this covers goods where the EU tariff is zero); or
- goods are brought into NI for sale to, or final use by, end consumers located in NI or for internal UK trade elsewhere in the UK.

#### Goods entering NI for commercial processing

The Northern Ireland Protocol treats goods entering NI for commercial processing differently. The guidance contains specific rules which cover scenarios where goods are brought into NI for commercial processing.

A business with a turnover below £500,000 in its most recent financial year bringing goods into Northern Ireland for processing can apply through the UK Trader Scheme to be able to declare goods as “not at risk”.

## Customs: The Northern Ireland Protocol

### Customs

#### At Risk Guidance

Businesses can also apply to the UK Trader Scheme for authorisation to be able to declare goods for processing as not “at risk” if the goods they intend to bring into Northern Ireland are for certain purposes. These include goods for processing where the purpose is:

- food for sale to end consumers in the UK;
- construction, direct health and care provision, and not-for-profit activities carried

out by importers in Northern Ireland; and

- processing of animal feed for final use at premises located in Northern Ireland by the importer.

#### More detail on the UK Trader Scheme

- Goods moved for sale to, or final use by, end consumers will be considered “not at risk” when moved by businesses authorised under the UK Trader Scheme. This, therefore, means that authorisation under the UK Trader Scheme will be a critical element for businesses.
- In order to declare goods movements as being not “at risk from 1 January 2021, the business must have applied for UK Trader Scheme authorisation by 31 December 2020. -In recognition of the tight timescale available to businesses to apply, if a business applies before the end of February 2021, subject to the necessary conditions being met, it can be granted a provisional authorisation while HMRC processes their application. During this time the business can declare goods as not “at risk”.

Applications received after the end of February 2021 will be processed as normal. The guidance also sets out that the application process can typically take up to a month; therefore, a business must ensure it applies one month before it intends to declare goods as not “at risk”.

Applications for authorisation are via an on-screen form which can be saved onto a computer. Once complete, this form should be emailed to [uktraderscheme@hmrc.gov.uk](mailto:uktraderscheme@hmrc.gov.uk) with the supporting documentation, quoting the EORI number of the business in the subject of the email.

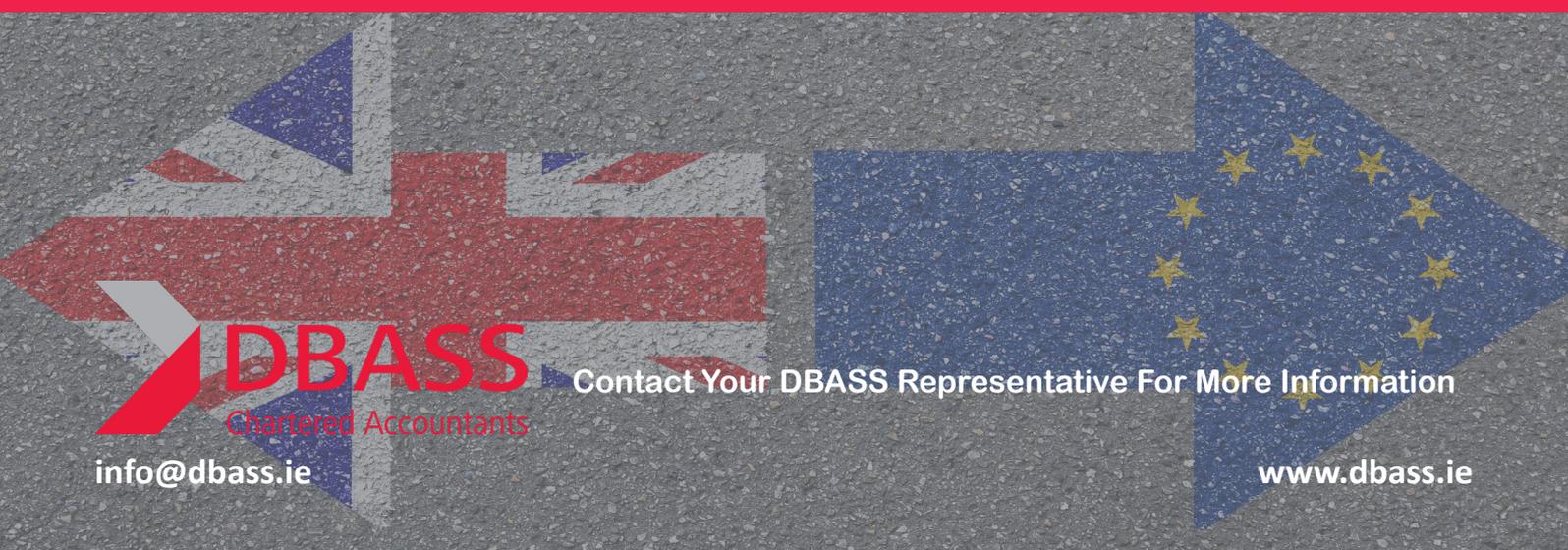
This should be accompanied by proof of permanent business establishment or document of establishment (HMRC will provide more details on how this is defined in future guidance). A business may also provide evidence of its record-keeping to supplement the information provided in the application, but this is not mandatory.

## Customs: The Northern Ireland Protocol

Other	
<b>At Risk Guidance</b>	<p>- Businesses which have already been granted trusted trader status, such as Authorised Economic Operator status, should find the application process faster, as HMRC will already have many of the details required for the application.</p> <p>-The guidance also sets out that businesses with a known history of serious non-compliance, or criminal offences relating to its economic activity, will not be eligible for the UK Trader Scheme.</p>
<b>Branches</b>	<p>Following Brexit pre-existing External Companies (“Branches”) will not have to re-register with the Companies Registration Office, nor will they be required to incorporate an Irish subsidiary.</p> <p>Branches will, however, be subject to filing annual returns with the CRO under non-EEA country legislation, which carries additional filing requirements. The major result of this will be the Branch’s responsibility to state it’s called up share capital figure on the annual Form F7.</p> <p>In order to keep their business within the EEA and European Union post Brexit , some businesses have opted to incorporate an Irish subsidiary.</p> <p>A subsidiary is an independent legal entity and its liability is limited to its issued share capital. The UK parent company can still own and control the subsidiary, but it is a separate entity incorporated within the EEA and EU, and therefore may be suitable to those with major lines of business within the EU.</p>
<b>Working In The UK</b>	<p>If you are an Irish citizen and you want to continue living in the UK, you do not need to apply to the EU Settlement Scheme. Your rights to live, work and access public services in the UK are protected under the Common Travel Area arrangement. However, even though you do not need to apply to the scheme yourself, your family members from outside of the UK and Ireland will need to apply.</p> <p>Answers to some important questions relating to working/ living or studying in the UK after Brexit can be found here : <a href="https://www.dfa.ie/brexit/getting-ireland-brexit-ready/brexit-and-you/frequently-asked-questions/">https://www.dfa.ie/brexit/getting-ireland-brexit-ready/brexit-and-you/frequently-asked-questions/</a></p>

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 We recommend that you do not rely solely on the information held within this document when making any business, legal or other decisions.  
 Should you require more detail on any of the content contained we would recommend that you contact your DBASS representative to discuss the individual requirements of your business.



Contact Your DBASS Representative For More Information

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