

# Indirect Tax Update:

## „Exporter‘ under the new EU Customs legislation - UCC

Indirect Tax Update February 2016

### The Union Customs Code

Definition of ‚Exporter‘

This update aims to highlight some points of interest around the definition of ‘exporter’ under the new EU Customs Code. A literal reading of the new Customs Code indicates that non-EU entities cannot be an exporter as of 1 May 2016. This appears to require export process adjustments for non-EU companies which currently operate as exporters in the supply chain. These issues need some clarity and our EY Global Trade practice is currently in discussions with national Customs authorities throughout Europe. The European Commission is also aware of these concerns.

The informal indications received from governmental agencies indicate that additional guidelines are expected to confirm that non-EU companies will continue to be allowed to ship/export products out of the EU. This would mean that the new EU customs code will not result in any structural re-designing of existing supply chain models.

However, even with this clarification, the regulatory changes can lead to modification of current export compliance arrangements; such as revised customs representation by (third party) agents and/or related EU based entities getting a new function in the supply chain as ‘exporter’ for customs purposes. Therefore is it prudent to examine the export scenarios in the operating models and have a clear position from a customs technical, documentation and systems perspective.

# Indirect Tax Update: ,Exporter' under the new EU Customs legislation - UCC

## What's new

The implementing provisions of the new EU Union Customs Code (UCC) were published on 29 December 2015. The new provisions will be effective 1 May 2016.

Among other changes, the UCC adjusts the definition of 'exporter'. In the existing customs rules the term 'exporter' predominantly follows the ownership (or a similar right of disposal) over the goods at the time when the customs declaration is accepted.

The existing rules enable both EU and non-EU entities to be 'exporter' from the EU. [Note: there are diverse opinions among Member States on 'exporter' definition even under the existing customs code].

The new rules define 'exporter' as an entity:

- Being established in the customs territory of the European Union; and
- Holding the contract with the consignee in the non-EU country at the moment of filing the export; and/or
- Having the power to determine that the goods can be transported out of the European Union.

## What's the impact

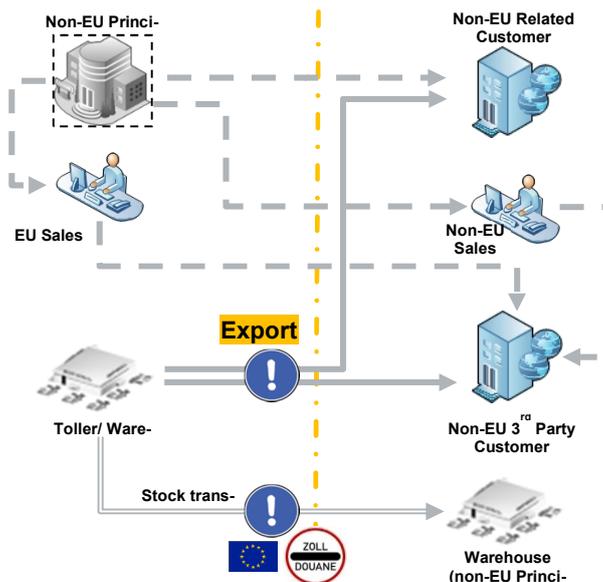
The impact depends on the guidance provided by the EU Commission, and interpretation adopted by the customs authorities. On a literal reading of the definition it seems that:

- Only EU established parties can be named as the 'exporter' for customs purposes; and
- In all other cases the exporter is the party established in the EU and has the power to determine that the goods are shipped outside the EU.

**!** Examine the possibility of making the EU based Toller, Sales Co or third party representative the exporter for customs filing purposes, although the goods are legally owned by the non-EU Principal.

## Non-EU Principal

A typical centralized operating model envisages that the (EU- / non-EU) Principal company is the exporter of record of the goods shipped out of the EU. The new definition indicates that the exporter should be established in the EU for the customs compliance purposes. Various export scenarios are illustrated in the following chart:



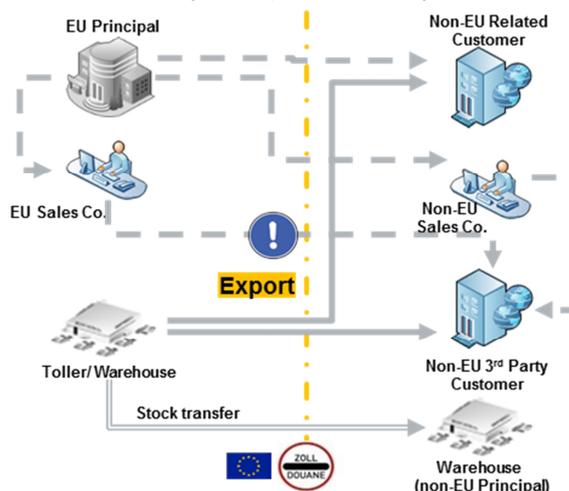
# Indirect Tax Update: ,Exporter' under the new EU Customs legislation - UCC

- ▶ Based on current legal wording it is expected that exporters reported in customs filings need to be established in the EU.
- ▶ The exporter does not necessarily need to be the legal owner of the goods.
- ▶ The EU Commission is aware of the ambiguity. Guidelines on the practical implementation can be issued by the EU Commission, or by EU Member clarifying certain scenarios.
- ▶ If it is necessary to name an EU based entity as the 'exporter' for customs purposes, contract, process and systems changes may be needed:
  - ▶ Different (third party) customs representation;
  - ▶ Appropriate alignment & documentation for VAT and customs purposes ;
  - ▶ Alignment with direct tax/ TP to address implications of making toller, warehouse or Sales Co. responsible for the exports.

**!** *It will be relevant to examine if the EU Principal has the 'power to decide the movement of goods at the time of filing the export declaration although the contract with foreign customer is with the Sales Co. (e.g. back-to-back sales from the EU Principal to customer via the Sales Co.).*

## EU Principals

An EU Principal company will not face changes on most of its transactions. However, there can be an impact on current (centralized) licenses, system or documentation processes. Some questions could be raised if the Principal does not hold a contract with the foreign consignee at the time of filing the export (i.e. selling via an EU sales entity).



- ▶ The authorities in certain Member states may have different views on compliance. Depending on the factual arrangements there can be grounds to support the EU principal as the exporter for customs purposes.
- ▶ It is important to maintain centrally kept (cross-border) customs licenses at the level of the EU Principal which facilitate faster exports and/or Free Trade Agreement ('FTA') benefits.
- ▶ However even if it is necessary to name the Sales Co. as 'exporter' for customs purposes this can be managed with some changes like:
  - ▶ Appropriate documentation for VAT and customs purposes;
  - ▶ Amendments in customs simplifications and FTA licenses;
  - ▶ Alignment with direct tax/ TP to address implications of making toller, warehouse or Sales Co. responsible for the exports.

## What's next

- ▶ Revisit the export transactions within the existing operating models in the EU.
- ▶ Examine the impact of new exporter's definition on different export scenarios.
- ▶ Clarify and document the position for internal records.
- ▶ Adjust transaction/ documentation processes, and systems where necessary.
- ▶ Contact dedicated EY Indirect tax practitioners who are already involved with some major multinationals reviewing the impact
- ▶ Align possible changes to the transactional operating model with other tax specialties (Direct Tax, Transfer Pricing) as well as the business operations.

# Contacts

## Offices

### Zurich

Barbara Henzen  
Phone +41 58 286 62 14  
barbara.henzen@ch.ey.com

### Berne

Lars Henschel  
Phone +41 58 286 63 12  
lars.henschel@ch.ey.com

### Geneva

Susanne Gantenbein  
Phone +41 58 286 63 44  
susanne.gantenbein@ch.ey.com

## Locations

Ernst & Young Ltd.  
Maagplatz 1  
CH-8005 Zurich

Ernst & Young Ltd.  
Belpstrasse 23  
CH-3001 Berne

Ernst & Young Ltd.  
59 Route de Chancy  
CH-1213 Geneva

EY | Assurance | Tax | Legal | Transactions | Advisory

### About the global EY organization

The global EY organization is a leader in assurance, tax, transaction, legal and advisory services. We leverage our experience, knowledge and services to help build trust and confidence in the financial markets and in economies all over the world. We are ideally equipped for this task - with well trained employees, strong teams, excellent services and outstanding client relations. Our global mission is to drive progress and make a difference by building a better working world - for our people, for our clients and for our communities.

The global EY organization refers to all member firms of Ernst & Young Global Limited (EYG). Each EYG member firm is a separate legal entity and has no liability for another such entity's acts or omissions. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information, please visit [www.ey.com](http://www.ey.com).

EY's organization is represented in Switzerland by Ernst & Young Ltd, Basel, with ten offices across Switzerland, and in Liechtenstein by Ernst & Young AG, Vaduz. In this publication, "EY" and "we" refer to Ernst & Young Ltd, Basel, a member firm of Ernst & Young Global Limited.

© 2016 Ernst & Young Ltd.  
All Rights Reserved.

### Disclaimer

This publication contains information in summary form and is therefore intended for general guidance only. Although prepared with utmost care this publication is not intended to be a substitute for detailed research or professional advice. Therefore, by reading this publication, you agree that no liability for correctness, completeness and/or currentness will be assumed. It is solely the responsibility of the readers to decide whether and in what form the information made available is relevant for their purposes. Neither Ernst & Young Ltd nor any other member of the global EY organization accepts any responsibility. On any specific matter, reference should be made to the appropriate advisor.

[www.ey.com/ch](http://www.ey.com/ch)