

C L I F F O R D

C H A N C E

**UK GOVERNMENT CONSULTATION ON THE DESIGN OF  
THE UK CARBON BORDER ADJUSTMENT MECHANISM**

# CONTENTS

Background	3
What is the UK CBAM?	3
What sectors will the CBAM apply to?	3
Calculating the UK CBAM liability	4
When does CBAM liability arise and who is responsible?	5
When will the UK CBAM come into force?	5
How and when will CBAM liability be paid?	5
How will the CBAM be enforced?	6
Are there any exemptions?	7
How can businesses prepare?	7
Summary of key differences	8

## **UK GOVERNMENT CONSULTATION ON THE DESIGN OF THE UK CARBON BORDER ADJUSTMENT MECHANISM**

The UK Government has published proposals for a UK Carbon Border Adjustment Mechanism (**CBAM**) to deal with carbon leakage while the UK decarbonises. The proposals have similarities to the EU CBAM but there are some key differences. This briefing explores the UK proposals which are subject to consultation, and some of those differences.

### **Background**

In October 2023, the EU introduced its CBAM as part of its 'Fit for 55' package of carbon market reforms designed to speed up decarbonisation in the carbon-intensive industry sectors regulated by the EU Emissions Trading Scheme (**EU ETS**), whilst also addressing the risk of 'carbon leakage' from the EU. We covered this in our June 2023 briefing available [here](#).

Shortly afterwards, the UK Government announced that it would be introducing its own CBAM from 1 January 2027. Little was said at the time of that announcement about the design of the UK CBAM, other than that it would closely resemble the EU CBAM and would address the risk of carbon leakage from the UK in sync with similar decarbonisation reforms to the UK Emissions Trading Scheme (**UK ETS**). Further information has now been provided about the design and implementation of the UK CBAM in the Government's consultation document dated 21 March 2024 (**Consultation**). The Consultation runs until 13 June 2024.

### **What is the UK CBAM?**

The UK CBAM will essentially be an import tax designed to prevent "carbon leakage", the process whereby the production of carbon-intensive goods is moved offshore, or customers switch to goods produced elsewhere, to take advantage of less stringent/costly emissions controls. Like the EU CBAM, the UK CBAM will ensure that a carbon price is paid on relevant goods when they are imported into the UK regardless of where they are produced – including goods originating from the EU. The aim will be to ensure the carbon price paid in respect of these imported goods is comparable to the cost that would be incurred by UK-based producers under the UK ETS in relation to the same goods.

### **What sectors will the CBAM apply to?**

The UK CBAM is proposed to apply to the emissions of imports of specified goods in the following sectors: aluminium; cement; ceramics; fertilisers; glass; hydrogen; and iron and steel. Unlike the EU CBAM, electricity is not proposed to be included. In addition, glass and ceramics which are proposed to feature in the UK CBAM are not included in the EU CBAM-covered sectors.

The key factors which have defined the sectoral scope are:

- **Inclusion in the UK ETS:** to ensure that only sectors which are subject to the UK ETS are captured;
- **Carbon leakage risk:** to ensure that only those sectors which are at risk of carbon leakage are included; and
- **Feasibility and effectiveness:** to ensure that the application to the chosen sectors is deliverable and does not create significant circumvention risk.

The proposed sectoral scope of the UK CBAM will be kept under review, to ensure that changes to carbon leakage risk as well as methodological and technological advances can be reflected.

### Calculating the UK CBAM liability

The UK CBAM liability is proposed to be calculated on the basis that the carbon prices and emissions values should:

- Ensure a comparable carbon price is paid on imported emissions (through the UK CBAM) and domestic emissions (through the UK ETS);
- Not place a burden on importers or imports that is higher than on domestic producers; and
- Be applied fairly to UK imports in line with World Trade Organisation obligations (we covered the EU CBAM, and potential WTO implications of CBAM-style mechanisms, in our June 2023 briefing available [here](#)).

In practice, this will mean that the UK CBAM liability will be calculated as:

#### CBAM liability =

Base (Embodied emissions) x (Effective UK carbon price – Effective overseas carbon price)

#### Embodied Emissions

Both direct and indirect emissions are included in the calculation of embodied emissions. Direct emissions are those related to the production processes of CBAM goods. Indirect emissions are those which relate to the production of electricity which is consumed during the production of a CBAM good. This includes emissions in relevant pre-cursor goods.

Embodied emissions are proposed to be calculated by reference to default values or actual values. Default values are to be set by the Government in line with global average embodied emissions weighted by production volumes of key UK trading partners. Actual emissions must be independently verified.

#### Effective Carbon Price

Taking into account the “effective” carbon price paid in the UK and overseas ensures that any adjustments, exemptions or compensation schemes in the relevant country are factored in. With respect to the effective UK carbon price, the pricing mechanisms are expected to be based on:

- The price of UK allowances (UKAs) under the UK ETS (as the reference price);

- An adjustment to reflect the effect/quantum of free allocation of UKAs to UK producers of the CBAM goods; and
- The carbon price support (CPS) rate (the CPS is a tax which imposes a carbon price on power generators in Great Britain using fossil fuels to generate their electricity).

The effective overseas carbon price will be based on an “explicit carbon price”. This will most likely take the form of an emissions trading scheme with a market-based price or a carbon tax with a fixed price. For example, if the producer of goods imported from the EU has already surrendered EU allowances under the EU ETS in respect of those goods, that ‘carbon price’ paid will be discounted when calculating the liability under the UK CBAM.

### **When does CBAM liability arise and who is responsible?**

The CBAM ‘tax point’ (i.e. when the CBAM charge arises) and the person liable for the CBAM obligation will depend on whether or not there are customs controls in place for the import of the CBAM good:

- Where there are customs controls in place, the tax point will arise when the goods are released into free circulation, and the liable person is the person responsible for the goods when they are so released.
- Where there are no customs controls in place, the tax point will arise when the CBAM goods enter the UK, and the liable person is the person on whose behalf the goods are imported.

The Consultation notes that a liable person will be able to appoint a tax agent on their behalf and submit CBAM returns. However, while such an arrangement may facilitate the payment of the CBAM, the liability for CBAM will remain with the liable person. The Consultation does not reference the ability of a liable person to appoint an indirect customs representative to whom all importing responsibilities would be passed, which, by comparison, is a useful compliance option provided for under the EU CBAM.

### **When will the UK CBAM come into force?**

Imports of UK CBAM-covered goods will be subject to the UK CBAM from 1 January 2027. The first accounting period for these emissions will end on 31 December 2027, with the first CBAM return and payment due for this period by 30 May 2028.

Although the EU CBAM has been in force since October 2023, it is currently operating on a reporting-only transition basis without any liability to pay CBAM costs until the full EU CBAM begins in January 2026. While the UK CBAM will only come into force from 1 January 2027, there will be no such transitional period, and the CBAM cost liability begins immediately from that date, meaning that the full UK CBAM will only be one year behind the full EU CBAM.

### **How and when will CBAM liability be paid?**

After the end of each accounting period (the first such period ending on 31 December 2027), a liable person (or their tax agent) must submit an online return through a service to be developed by HMRC. CBAM payments are required at the same time as the return is made.

From 2028, there will be four fixed accounting periods each year (with a two-month extension for the first reporting period in 2028). The first reporting period and subsequent reporting periods are shown in Table 1 below.

Accounting period ends	Returns and payment due
<b>First return</b>	
31 December 2027	30 May 2028
<b>Each year thereafter</b>	
31 March each year	30 April each year, save for 2028 when this deadline will be extended to 30 June 2028 to avoid coinciding with the deadline for the first return (30 May 2028).
30 June each year	31 July each year
30 September each year	31 October each year
31 December each year	31 January of the following year

The returns are likely to require the following information:

- the CBAM good(s) imported during the period by reference to the commodity code;
- the dates of all imports of CBAM goods during the period;
- the weight of the CBAM goods;
- the total carbon emissions embodied in those CBAM goods; and
- any effective overseas carbon price.

The returns-based service above differs from the EU approach which requires the purchase and surrender of CBAM certificates. Under the EU CBAM, importers must, by 31 May each year, submit a CBAM declaration and surrender the relevant number of CBAM certificates which have been purchased on the central platform to cover the relevant emissions for that reporting period. For the first full EU CBAM period (1 January 2026 – 31 December 2026), the deadline for the CBAM declaration and surrender of certificates is 31 May 2027.

### How will the CBAM be enforced?

The Government will have similar enforcement and inspection powers to those which it uses to administer other taxes and will aim to implement the CBAM in a way that minimises the risk of avoidance or evasion. Similar to other taxes, HMRC will be able to compulsorily register a person for CBAM and require the provision of information and documents.

With respect to specific penalties, the Consultation states the Government intends to align with the penalty points system recently introduced for VAT in respect of late submission of returns or late payments. It will also introduce a general penalty for any non-compliance specific to CBAM, such as failure to keep appropriate records, late registration and failure to provide information. In relation to the quantum of penalties, consideration will be given to penalties due under the UK ETS as well as taxes administered by HMRC.

There is also the potential for criminal offences to be introduced for a liable person who is knowingly involved in fraudulent evasion of the CBAM.

### **Are there any exemptions?**

The application of UK CBAM will be subject to a minimum registration threshold, where a person will not need to register or account for CBAM if the total value of their CBAM goods passing a tax point annually falls below £10,000 (based on customs values methodology). This value threshold is different to the approach taken for the EU CBAM where exemptions are provided on a consignment basis, for consignments with a value of less than €150. The reason for this different approach is to reduce incentives to artificially split consignments to avoid or reduce liability. Also distinct from the EU CBAM, the UK CBAM does not provide exemptions for imports from specified countries.

### **How can businesses prepare?**

Many businesses will have invested significant time and expense in ensuring compliance with the EU CBAM, so will be relieved to note that there are many similarities between the approach taken by the EU and that proposed by the UK. However, there are key differences relating to: the sectors included, time frame for implementation, and the transitional period (or lack thereof), among others (see below). Businesses should take the time now to interrogate these differences and how they will be dealt with operationally.

As for the EU CBAM, the reporting of emissions is dependent on obtaining the required data from suppliers. Importers should therefore examine their supply contracts to determine what clauses can be relied upon to facilitate the provision of this data.

The lack of a transitional period in the case of the UK CBAM will mean that businesses need to have robust processes in place to ensure they can comply with the reporting requirements from 1 January 2027 and have budgeted for the necessary costs.

Interested parties can provide their views on the Consultation until 13 June 2024. A link to the consultation is available [here](#). If you would like to discuss how UK CBAM might apply to your business, please contact Adam Hedley or Kate Mackintosh.

## Summary of key differences

	UK CBAM	EU CBAM
<b>Imports covered</b>	<p>The UK CBAM will apply to the emissions of imports of specified goods in the following sectors:</p> <ul style="list-style-type: none"> <li>• aluminium</li> <li>• cement</li> <li>• <b>ceramics</b></li> <li>• fertilisers</li> <li>• <b>glass</b></li> <li>• iron</li> <li>• steel</li> <li>• hydrogen</li> </ul>	<p>The EU CBAM applies to the emissions of imports of specified goods in the following sectors:</p> <ul style="list-style-type: none"> <li>• aluminium</li> <li>• cement</li> <li>• <b>electricity</b></li> <li>• fertilisers</li> <li>• iron</li> <li>• steel</li> <li>• hydrogen</li> </ul>
<b>Payment of CBAM</b>	<p>Simple tax payment to HMRC due when the return is made. See Table 1 above for the timetable for returns and payment.</p>	<p>CBAM certificates must be purchased on a central platform, and surrendered in May each year when the CBAM declaration is made. The certificates surrendered must correspond to the emissions in the previous year. The first CBAM declaration – for 2026 – is due by 31 May 2027.</p>
<b>Phase-in period</b>	<p>No phase-in period.</p>	<p>Phase-in period began on 1 October 2023 where importers were required to comply with reporting obligations only (i.e. CBAM payments were not required).</p>
<b>Commencement date for full CBAM</b>	<p>1 January 2027.</p>	<p>1 January 2026.</p>
<b>Exemptions (value)</b>	<p>Minimum registration threshold of annual £10,000 of imports (based on customs values methodology).</p>	<p>Exemption for individual consignments with a value of less than €150.</p>
<b>Appointment of customs representative</b>	<p>Consultation does not anticipate that the liable person can appoint a customs representative.</p>	<p>The liable person is able to appoint a customs representative (and, in fact, a representative must be appointed for importers outside of the EU).</p>



## CONTACTS



**Adam Hedley**  
Partner  
London  
T: +44 207006 3381  
E: adam.hedley@cliffordchance.com



**Nigel Howorth**  
Practice Area Leader  
Real Estate London  
T: +44 207006 4076  
E: nigel.howorth@cliffordchance.com



**Kate Mackintosh**  
Senior Associate  
London  
T: +44 207006 1777  
E: kate.mackintosh@cliffordchance.com



**Jessica Gladstone**  
Partner  
London  
T: +44 207006 5953  
E: jessica.gladstone@cliffordchance.com



**Jeremy Stewart**  
Senior Associate  
London  
T: +44 207006 4502  
E: jeremy.stewart@cliffordchance.com



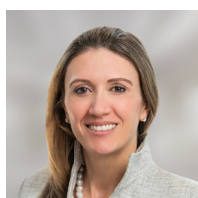
**Thomas Voland**  
Partner  
Dusseldorf  
T: +49 211 4355 5642  
E: thomas.voland@cliffordchance.com



**Liesbeth Buijter**  
Partner  
Amsterdam  
T: +31 20 711 9326  
E: liesbeth.buijter@cliffordchance.com



**Mathias Elspaß**  
Dusseldorf  
T: +49 211 4355 5260  
E: mathias.elspass@cliffordchance.com



**Nadia Kalic**  
Partner  
Sydney  
T: +61 2 8922 8095  
E: nadia.kalic@cliffordchance.com



**Michelle Williams**  
Partner  
Washington DC  
T: +1 202 912 5011  
E: michelle.williams@cliffordchance.com



**Janet Whittaker**  
Senior Counsel  
Washington DC  
T: +1 202 912 5444  
E: janet.whittaker@cliffordchance.com



**Michael Coxall**  
Knowledge Director  
London  
T: +44 207006 4315  
E: michael.coxall@cliffordchance.com

C L I F F O R D

C H A N C E

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

[www.cliffordchance.com](http://www.cliffordchance.com)

Clifford Chance, 10 Upper Bank Street, London, E14 5JJ

© Clifford Chance 2024

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street, London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to [nomorecontact@cliffordchance.com](mailto:nomorecontact@cliffordchance.com) or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi • Amsterdam • Barcelona • Beijing • Brussels • Bucharest • Casablanca • Delhi • Dubai • Düsseldorf • Frankfurt • Hong Kong • Houston • Istanbul • London • Luxembourg • Madrid • Milan • Munich • Newcastle • New York • Paris • Perth • Prague • Rome • São Paulo • Shanghai • Singapore • Sydney • Tokyo • Warsaw • Washington, D.C.

AS&H Clifford Chance, a joint venture entered into by Clifford Chance LLP.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.