# Ten key considerations to prepare for the post-Brexit landscape

**Businesses now have just two months to prepare for tax changes that take effect at the end of the transition period. Zoe Hawes of Deloitte UK explores some of the key changes from a tax perspective and the steps that tax teams can take to prepare.**

The UK left the EU on January 31 2020, kicking off a transition period that runs to the end of the year. Over the past few months, the UK and the EU have been negotiating details of the future relationship under a potential free trade agreement (FTA). At the time of writing the outcome of these negotiations is still uncertain. While there were no definitive conclusions from the European Council meeting on October 15 and 16, talks are set to continue and organising principles for further negotiations have been published.

Although exactly what comes next is unclear, one thing is certain – change is inevitable. Indeed, many of the tax changes arise irrespective of the outcome of the negotiations, by virtue of the fact that the UK is no longer part of the EU single market and customs union.

Business attention has understandably been most recently focused on responding to the impact of the COVID-19 global pandemic. However, as businesses review their Brexit planning in preparation for the end of the transition period, there are 10 key actions that tax teams should undertake to prepare:

1) Customs compliance:
2) Customs duties;
3) Customs regimes and simplifications;
4) VAT law changes;
5) VAT simplifications and reporting;
6) Systems and data;
7) Corporate tax and EU directives;
8) Transfer pricing and exit charges;
9) Social security; and
10) Northen Ireland.

## Customs compliance

Businesses that are responsible for moving goods between the UK and the EU will face additional customs compliance obligations, notably customs declarations, as the movements become imports and exports. This will be the case even with a FTA in place.

For many goods entering Great Britain (England, Wales and Scotland) from the EU, businesses will be able to defer making import declarations (and any associated duty payments) for up to six months until July 1 2021. Key information such as customs value, description and quantity of the goods, and a unique consignment reference, will need to be recorded in the business records at the time of entry. Full details on the operation of the Great Britain/EU border can be found in the UK government's Border Operating Model (separate rules apply in respect of Northern Ireland).

The EU will implement full border control measures from January 1 2021, so businesses exporting goods from the UK to the EU will need to meet all relevant export requirements from that date.

### How to prepare

- Determine whether your business has the responsibility for imports or exports in the supply chain;
- Check that Incoterms (international commercial terms that define responsibilities relating to the import and export of goods) reflect buyer and seller responsibilities appropriately;
- Obtain an economic operator registration and identification (EORI) number for use in the UK (and a separate one for the EU if necessary);
- Line up the necessary resources, data, and systems for completing customs declarations;
- Decide on the approach for managing customs compliance, including whether to outsource the filing of customs declarations; and
- Engage with third party logistics providers to see that arrangements are in place for the import and export of goods.

## Customs duties

The UK and EU will each operate an independent tariff policy at the end of the transition period. The UK global tariff (UKGT), the UK's most favoured nation (MFN) tariff schedule, will replace the EU's common external tariff MFN schedule on January 1 2021. These tariff rates will apply to all UK imports, subject to any FTAs or other preferential arrangements in place.

The UK and EU are seeking tariff and quota-free access under a FTA. The UK is also negotiating FTAs with third countries. Goods will need to meet the rules of origin set out in the relevant FTA in order to qualify for preferential duty rates.

### How to prepare

- Check that the business holds the necessary information on classification, origin, and value and quantify potential additional duty costs; and
- Check duty deferment account arrangements and consider whether the limit for an existing account will need increasing.

## Customs regimes and simplifications

Customs authorisations can help businesses manage customs administration or suspend duty costs. For example, customs freight simplified procedures (CFSP) allow importers to import goods into the UK with minimal administration at the border.

Other customs regimes may be relevant to businesses moving goods across the UK/EU border multiple times, e.g. due to consolidation of goods at a distribution centre or for processing and repair, to help manage potential additional duty costs. For example, goods can be imported for incremental work – think manufacturing or repair – without incurring import duty or other import-related taxes if customs regimes are used.

Businesses will need to factor in the lead time for obtaining authorisation. For example, the authorisation process for CFSP can take up to five months. Therefore, it may not now be possible to implement customs regimes for January 1 2021.

### How to prepare

- Assess which customs regimes and simplifications could help manage the additional customs administrative requirements and mitigate potential duty costs;
- If the business has significant cross-border trade, consider applying for authorised economic operator (AEO) status as well; and

The UK's transition period after Brexit comes to an end on December 31

- Investigate customs warehousing, inward processing, and other potentially beneficial customs procedures that are relevant to the business's supply chains.

## VAT law changes

Import VAT will become payable on the UK/EU movements of goods. Postponed import VAT accounting will apply at the end of the transition period to imports of goods into the UK from both EU and non-EU countries. This enables UK VAT registered businesses to account for import VAT on the VAT return, thereby relieving the cash flow cost. Businesses that defer the submission of customs declarations during the first six months of 2021 will have to use postponed import VAT accounting. Some EU member states operate similar arrangements for import VAT, subject to meeting certain conditions (e.g. the Netherlands).

There will also be sector-specific changes to VAT law that businesses may need to consider. For example, under the tour

operators' margin scheme (TOMS), a travel business pays VAT on the margin it makes on any EU holidays. As a consequence of leaving the EU, UK TOMS rules are expected to be amended so VAT is only paid on the margin on UK holidays, effectively making the margin on EU holidays VAT-free.

For cross-border business-to-consumer (B2C) supplies of digitised services, the EU's mini one-stop shop (MOSS) scheme will no longer apply to UK registered businesses. Therefore, businesses that are registered under the MOSS scheme in the UK will have to register for MOSS in an EU member state via the non-union scheme, or the union scheme if the business has an establishment in an EU member state.

From July 1 2021, the EU's MOSS scheme is being extended to cover other B2C services and distance sales of goods. New rules will apply for goods sold via marketplaces. This means that in addition to preparing for the end of the transition period, retail businesses making B2C supplies to EU customers will also need to prepare for another set of rules that come into play six months later.

Another example of industry specific impact is the VAT treatment of cross-border supplies of certain financial services. From an EU perspective, the UK will be a non-EU country, resulting in increased VAT recovery for EU businesses supplying UK counterparts. The UK could also allow VAT recovery on all supplies made to non-UK counterparties at the end of the transition period.

### How to prepare

- Map supply chains for goods and services to identify where changes to VAT law will impact the business, including changes to reporting and administrative requirements; and
- For goods supply chains, check the rules relating to entitlement to recover import VAT, and whether the company meets evidence requirements for import VAT recovery, both in the UK and in relevant EU countries.

## VAT simplifications and reporting

EU VAT simplifications such as distance sales, call-off stock and triangulation, and administrative arrangements will no longer apply in respect of UK VAT registrations. This is likely to mean that UK VAT registered businesses relying on EU VAT simplifications will require additional EU VAT registrations and have to meet associated reporting requirements. In addition, some EU member states may require non-EU established taxpayers to appoint a fiscal representative.

### How to prepare

Review the use of EU VAT simplifications and identify where additional registration requirements may arise. Determine whether a fiscal representative must be appointed in any EU countries.

## Systems and data

Expect Brexit to affect tax systems and processes. Changes in VAT and duty compliance obligations, for instance, mean changes will be required to indirect tax compliance and reporting systems. Shifting supply chains and tax treatments can require changes to tax determination software.

Changes to other systems are likely to be required as well, which interact with tax reporting processes. For example, human resources systems may need to handle expenses and mobile employees differently. Sales, procurement, and point of sale systems may have to reflect new supply chains or tax treatments. Likewise for banking, trading, treasury, and cash-flow systems – tax changes can have repercussions for any of these. Offline, Brexit-related tax changes can hit spreadsheets and manual processes.

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### How to prepare

- Identify systems and processes that need updating to manage the tax and duty reporting requirements arising from Brexit;
- Identify where changes are required to master data such as customs classification and tax codes; and
- Ensure sufficient lead time for changes to be made.

## Corporate tax and EU directives

The EU Interest and Royalties Directive and Parent-Subsidiary Directive will no longer apply in relation to payments to and from UK resident companies. This could affect the withholding tax on dividends, interest, and royalty payments, depending on the relevant domestic laws and any bilateral treaty position.

Without EU resident status, companies may stand to lose certain tax reliefs and exemptions. In some EU territories, for instance, companies may no longer be able to consolidate with other local entities for tax purposes because they are no longer linked by a common EU-resident parent company, while termination of existing consolidations could see tax liabilities arising.

Some EU territories (e.g. Germany and Spain) have controlled foreign company (CFC) rules where there is a specific exemption or relaxation in the case of controlled companies resident in an EU member state. As the UK will cease to be an EU member state, it will be necessary to re-assess the ongoing CFC status of UK resident companies controlled by a parent company resident in another EU territory.

One change is already in effect. As of February 1 2020, a mechanism for accessing US double tax treaties (DTTs) no longer applies for EU subsidiaries of UK parent companies because the UK is no longer an EU member state. This means UK-headed

groups with US investments may have seen an increase in US withholding tax exposures.

### How to prepare

- Find out where EU directives are providing tax protections for the business and whether equivalent protection is available under bilateral tax treaties with the UK;
- Identify any additional compliance or clearance requirements to access treaty benefits;
- Determine whether the business benefits from tax consolidations/fiscal unities in EU member states and confirm local rules on whether such relief will continue; and
- Find out which CFC regimes are relevant to the organisation's UK resident entities and whether any of these operate an EU-related exemption.

## Transfer pricing and exit charges

Many businesses have undertaken restructuring in light of Brexit, e.g. to enable regulated businesses to continue accessing the EU market. Business restructuring can create a number of tax impacts. Where businesses transfer functions, assets, or risks from a UK entity to an EU one, e.g. to meet regulatory requirements to maintain access to EU markets, then the associated valuation, exit tax and transfer pricing implications need to be assessed.

### How to prepare

- Determine whether cross-border transfers of business activities trigger a taxable event and the associated valuation and exit tax position;
- Review the impact of Brexit-related business changes on transfer pricing policies; and
- Consideration should also be given to the interaction between transfer pricing and customs valuation for inter-company movements of products between the UK and the EU.

## Social security

From a people perspective, immigration is the key change. The free movement of people between the UK and the EU will end, and in the UK a new points-based system will enter into force from January 1 2021. However, from a tax perspective, another change to consider is social security.

Where an employee is assigned before the end of the transition period, they will continue to be covered by the existing EU/EEA and Swiss agreements, and so employers should continue to make applications for PDA1s and E101s as previously. However, in the absence of any agreement between the UK and the EU in this area, this would no longer be the case for assignments commencing from January 1 2021, and therefore dual social security liabilities could potentially arise in some scenarios for assignments starting on or after January 1 2021.

### How to prepare

- Calculate changes to assignment cost for mobile employees as a result of potential dual social security liabilities, or the need to compensate employees for reduced access to state benefits;
- Assess the impact on state benefit entitlements to determine appropriate policy approach response, i.e. level of support the business is prepared to offer employees to mitigate the impact of any loss;
- Communicate with employees around any potential impact on their social security position, access to benefits, and steps being taken to mitigate any impact; and
- Work with the payroll teams in home and host countries to enable them to perform the appropriate calculations and filings and deal with dual liabilities.

## Northern Ireland

Finally, businesses should note that specific rules that will apply in respect of Northern Ireland. Under the withdrawal agreement, the Northern Ireland Protocol sets out the arrangements that apply to avoid a hard border on the island of Ireland. Northern Ireland is part of the UK customs territory and UK VAT regime, but remains aligned to EU rules for goods. This means that EU customs rules, and VAT rules for goods (but not services), apply in respect of Northern Ireland.

As a result, customs declarations will be required for movements of goods from Great Britain to Northern Ireland. The UK government is launching a new trader support service (TSS), which will deal with customs formalities on behalf of businesses in Northern Ireland. Businesses wishing to use the TSS will need to register. Goods 'at risk' of entering the EU single market will be subject to EU customs duties. The definition of goods 'at risk' is subject to negotiations between the UK and the EU in the Joint Committee. A separate Northern Ireland VAT registration number is expected to be introduced to support the application of EU VAT rules in respect of movements of goods between Northern Ireland and EU member states.

### How to prepare

- Map existing supply chains for goods moving to, from and through Northern Ireland;
- Determine the associated customs compliance requirements and review the systems and processes in place to manage these;
- Consider signing up for the TSS if goods are moved from Great Britain to Northern Ireland; and
- Assess VAT implications such as reporting requirements for goods under EU VAT rules.

## Ramp up your Brexit tax readiness

Business preparations for the end of the transition period are often split into two parts. First, and the immediate focus, is on key steps to support continued operations from January 1 2021, e.g. getting arrangements in place to file customs declarations, obtaining additional VAT registrations etc. Second, and a longer-term consideration, is optimising the arrangements to manage costs, enhance systems and operations, and reduce administrative burden.

Linked to this second point, tax teams will also need to consider changes in domestic policy which might feed into planning for the post-Brexit landscape. Moreover, business changes such as restructuring or changes to supply chains could lead to tax consequences, which need to be considered up front.

This means tax directors have a critical role to play in helping multinational organisations get ahead of the customs, VAT, corporate tax and social security implications arising as a result of Brexit. With just two months to go until these changes come into effect, time is running short to implement Brexit readiness actions.

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