Brexit Industry Insights
Professional and Business Services

The UK left the EU on 31 January 2020 and is currently due to exit the transition period on 1 January 2021. During this period professional and business services (PBS) businesses are navigating debates over its regulation and effectiveness. As the UK and EU negotiate the specific details of their future trading relationship, what is clear is the UK will be leaving the Single Market and the Customs Union at the end of the transition period. Businesses can already identify known change areas and, given the negotiating positions of the two sides, can start preparing.

The impacts of Brexit will also lead to change in the sector, which for some businesses could represent a significant departure from ‘business as usual’. There are changes we know are coming for certain, and the time to act is now. The winners over the longer term will be those in the sector prepared for change and alive to the opportunities.

Coronavirus
The coronavirus pandemic has affected the world in an unprecedented way. In addition to the human toll and the disruption to millions of people’s lives, the economic damage is significant and far-reaching. The virus has created a supply and demand shock to businesses globally. How the situation will unfold is as yet uncertain, but coronavirus is likely to continue to provide significant headwinds to the professional and business services sector for the year ahead.

What does Brexit mean for the professional and business services?
In 2017 the UK had a net trade deficit in goods of £137 billion, but a trade surplus in services of £113 billion. PBS provides almost 40% of this trade surplus in services, at £42 billion. The sector accounts for 11% (£199 billion) of the UK economy’s gross value added and 13% (4.7 million) of employment. In addition to PBS exports themselves, PBS firms are a vital component of the trade and investment support ecosystem in facilitating and underpinning UK trade more widely.

Some of the key implications for businesses operating in the sector are:

People
EU/EEA citizens resident in the UK before 31 December 2020 will retain their rights to settlement and access to services, and will need to apply under the EU settlement scheme by 30 June 2021.

The UK has announced plans to introduce a new points-based immigration system from January 2021 for all new EU nationals arriving in the UK after this date. The system includes a salary threshold of £25,600, the requirement to have a job, be educated to an A-level standard, and speak English.

References:
3. See note 1 above.
4. UK GDP(O) Low Level Aggregates ONS, 2018; ONS Workforce jobs, 2018
Multinational professional and business service companies often have a highly mobile international workforce and are reliant on the efficient deployment of individuals around the world including within the EU.

Dual social security liabilities could arise for employers and mobile employees, depending on the final agreement between the UK and EU.

**Access to talent**

Due to the specialist skills required by certain professional services firms, it may be harder for businesses to secure the key skills they require. All new non UK nationals will be subject to the new immigration regime to work in the UK, coming into effect from 2021, and it may be administratively more difficult and costlier to recruit international employees, including those from the EU, EEA, and beyond.

The UK has also become recognised by some international professionals as a less attractive destination to live and work. For instance, Deloitte’s 2019 “Power Up” survey revealed over 48% of international workers already in the UK say they find the UK a less attractive place to work. A decline in the UK’s perceived attractiveness could also make it harder to attract and retain the appropriate talent.

**Tax**

Restructuring in response to regulatory barriers has resulted in a number of tax issues for companies to manage, including assessing whether the activity transitioning to a new EU company is a transfer of a business going concern (i.e. with goodwill or intangibles attached) in order to determine potential exit tax charges and associated valuation issues.

Post-restructuring, the tax implications for ongoing operations present different tax challenges. For example, new cross-border charges for services provided by an old UK hub company to a new EU company will have transfer pricing and VAT implications. As will back to back arrangements where the UK company seeks to continue some of the key entrepreneurial risk-taking functions in respect of the financial assets that may now be originated and entered into by the EU company with EU customers. The employment tax position for staff moving to new locations will need to be considered.

**Individual member state regulation**

In the event of no-trade deal being agreed, or services not being a negotiated part of a deal, many of the barriers faced by UK companies looking to export their services into the EU would still be governed at the individual member state level, with huge variation between EU countries. For example, each EU27 member state often has specific requirements for determining rights to establishment (for a commercial presence) overseas. These vary between countries and can include a range of requirements such as local ownership, nationality of directors, or even the name of the organisation. Professional services firms should monitor what agreement the government is able to negotiate for the cross border provision of services.

Regulated professions like legal services, architecture or audit face additional restrictions.

**Data flows**

Many PBS organisations rely on the flow of information to deliver services, some of which can fall under the category of personal data. Personal data flows are regulated by the EU. The European Commission (EC) has the power to determine whether a country outside of the EU offers an adequate level of data protection. The EC will provide an adequacy decision if it deems the non EU country to have local data protection laws of the same or similar standard as the EU. The EC has started this process and is expected to conclude it before the end of the transition period.

The UK has already incorporated the General Data Protection Regulation (GDPR) and related rules into UK law and has signalled it will not significantly diverge from these rules, at least in the short term.

Should no agreement on adequacy be reached, the UK’s Information Commissioner’s Office (ICO) has indicated for a time limited period it will recognise EEA states as providing an adequate level of protection for personal data. However, this statement has not been matched by the EU and so business must assess their personal data flows originating from the EEA. Unless the UK and the EU enter into a separate legal agreement, businesses will need to ensure appropriate legal safeguards (e.g. standard contractual clauses and for intra group transfers, binding corporate rules) are in place to facilitate cross border flows of personal data. Businesses will also need to take steps to mitigate potential data storage risks.

**Commercial contracts**

Contracts may need updating to manage some of the potential risks arising from Brexit or in response to Brexit related restructuring. Areas of focus include: reviewing risk allocation between parties such as which counterparty bears the risk of border delays and tariff costs; definitions of key terms; changes to pricing structure or frequency of pricing reviews and changes to payment terms and contract enforcement.

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• Perform a full analysis and impact assessment of the known changes across the key areas of your business, these include – supply chain, workforce, tax, legal and regulatory.

• Establish a project management office function that appreciates the cross-functional challenge of Brexit, and has buy in from all key areas of the business.

• Continue to monitor key sources of information including advice from the UK government, the EU and other countries in which your business operates, trade associations, industry bodies and regulators.

• Conduct a services trade continuity and market access review to understand your exposure into the EU and through the rolling over of the EU’s existing trade agreements for the UK.

• Understand what rules and regulations could change if you are planning to establish a commercial presence in the EU27 after Brexit.

• Undertake a regulatory review to understand what changes to the standards or regulatory regime could mean for your products and services where they are delivered, produced and sold – in particular with regards to the transfer of personal data and the GDPR.

• Perform a legal review to identify potential contractual risks as a result of Brexit. Identify impacted terms and plan response, e.g. the creation of a precedent bank of terms for future re negotiation, immediate re negotiation or repapering.

• Continue to engage with and encourage your existing workforce to certify their residency status while also reviewing recruitment strategy for critical roles. Concurrently, monitor information from countries in which you operate to ensure you understand local visa and work permit requirements.

• Determine which of your employees will be regularly travelling into the EU to provide services which require a professional qualification, and understand whether there will be continued recognition of those qualifications. This should be an essential part of your people Brexit planning around settled status and other immigration elements.

• Manage all key stakeholders to understand commitments and expectations. Engage with audit committees and liaise with trade bodies and regulators on preparations.

• Develop a strategy for government engagement on the issues that matter most to the business in order to influence future policy.

This Brexit guidance is not exhaustive. Companies should routinely review the latest official updates and technical guidance as and when they are published by the UK, EU, and individual EU Member States.

In focus: Recognition of Professional Qualifications

Professional qualifications are the means by which the quality of individuals delivering professional and business services is tested and maintained. Regulated subsectors of the professional services industry, such as lawyers and auditors, rely on mutual recognition of professional qualifications (MRPQ) to provide their services to clients in the UK and to the EU.

The specific requirements vary by sector. In the absence of any agreement, there will be no system of reciprocal recognition of professional qualifications between the UK and EU, meaning UK-recognised professionals may not be able to deliver services and advice in the EU. At the end of the transition period, EU-wide mutual recognition of UK qualifications could be replaced by a myriad of local regulations with varying effects on the standing of UK firms. Reverting to this ‘patchwork’ approach to mutual recognition of qualifications would increase costs and reduce efficiencies for businesses in the UK and the EU27.

Even if a trade deal is secured, there is no precedent for practical implementation of MRPQs under an EU FTA. Some EU FTAs, such as the one with Canada, provide a framework for the potential for mutual recognition, but there remains a long process for the details to be agreed between the two sides (including by the relevant authorised bodies). This has yet to be used under the Canada or any other agreement. As such, even if a framework is provided by a deal, there is no guarantee that recognition would be in place for day one.
How can Deloitte help?

Deloitte is a leading voice in navigating Brexit considerations with business and government. We combine our global Brexit insights with specialist knowledge of the negotiations, developed through advising clients across multiple industries, jurisdictions and technical subject matter areas. Using our Brexit Impact Assessment, we apply a methodical approach to mapping the impact of external drivers of change onto an organisation's business model, providing a clear framework for identifying critical actions.

For further information please contact Deloitte Brexit Support at brexitsupport@deloitte.co.uk

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