Key post-Brexit tax and customs changes

Indirect Tax | International Tax



02 March 2021

A Tolley summary of the most significant Brexit changes – for VAT, customs and direct taxes

Amidst all the flurry of last minute Brexit negotiations and an 11th hour trade deal, it is easy to lose track of the main tax implications. This Tolley summary highlights what we consider to be the most significant Brexit changes – for VAT, customs and direct taxes.

Image

VAT AND CUSTOMS

VAT area affected	Position
Moving goods to the UK from EU member states	Treated as imports. Import VAT will be due, and a customs declaration must be completed. Border controls are phased in between 1 January 2021 and 1 July 2021 which will reduce the compliance burden. Under the Free Trade Agreement, no customs duty should be payable on most goods imported from the EU.
EORI number	Businesses require a GB EORI number to import or export goods into Great Britain. An XI EORI number is required for imports and exports to or from Northern Ireland. This number must be quoted on the import customs declaration to ensure that any import VAT can be recovered.
Moving goods to EU member states	These are zero-rated exports for a UK supplier. Export declarations are required. Export licences and certificates may be required.
Movements of goods within the EU and holding stocks in the EU	The UK cannot take advantage of the Single Market simplifications. VAT registrations will be required within the EU.
Distance sales to the UK	Overseas sellers, supplying goods directly to UK consumers (B2C), where the consignment is less than £135, are required to register for UK VAT in order to account for VAT on those sales.
Distance sales to the UK via online marketplaces	If the consignment is less than £135 and the marketplace facilitates the sale to a private or non-business customer (B2C), then the marketplace is the deemed seller. Marketplaces are required to account for any VAT due regardless of whether they are established in the UK.
Trading with Northern Ireland	Northern Ireland is effectively treated as a member of the EU, so EU VAT rules apply to goods moved to or from Northern Ireland to EU member states. Goods moved from Great Britain to Northern Ireland are exports and imports when goods move from Northern Ireland to Great Britain.
Intrastat	Arrivals Intrastats are required for movements to the UK from member states during 2021.
Services	The UK has become a third country and cannot take advantage of any EU simplifications. Use and enjoyment provisions may result in a requirement to register for VAT.
Mini One-Stop-Shop (MOSS)	The UK scheme has been abolished and UK businesses must register for the non-Union MOSS scheme in a member state.
Postponed Import VAT Accounting (PIVA)	Businesses can use PIVA to account for import VAT due on goods imported into the UK. The import VAT due is accounted for via the importers UK VAT return.
EU VAT refunds	UK businesses need to use the paper based 13th Directive refund system to recover VAT incurred in the EU.
VAT representatives	UK resident businesses may need to appoint a tax representative to deal with VAT registrations in certain member states.

Image

DIRECT TAXES

Tax area affected	Position
Withholding taxes	The Parent-Subsidiary Directive and Interest and Royalties Directive cease to apply. This will have less of an impact for outgoing payments made from the UK to companies in the EU, as the directives have been implemented into UK law. The treatment of incoming payments is more complex and will largely depend on the terms of the double taxation treaty between the UK and the relevant EU jurisdiction.
Mergers	The Taxes (Amendments) (EU Exit) Regulations, SI 2019/689 make amendments to the UK legislation that implements the provisions of the EU Mergers Directive, so that the impact of the directive is preserved in the UK. However, while the UK position might be preserved, the merger may nonetheless trigger tax liabilities in the EU member state.
Tax avoidance	The UK has amended several areas of legislation recently to implement the Anti-Tax Avoidance Directive (ATAD), including adjustments to the controlled foreign companies legislation and the anti-hybrid rules. Under the terms of the draft EU-UK Trade and Cooperation Agreement (TCA) (Part II, Title XI, Article 5.2), the UK has committed to implementing BEPS deliverables and not to dilute the UK provisions on automatic exchange of information, interest limitation, controlled foreign companies and hybrid mismatches below the OECD minimum standards that were legislated as at IP completion day.
State aid	A number of tax incentivised regimes are restricted by the EU's state aid rules. The terms of the (draft) Trade and Cooperation Agreement allow Great Britain to set up its own subsidy-control regime and to not follow the EU's state aid regime or procedures from 1 January 2021. The UK has also made two sets of state aid related regulations that apply from IP completion day: the State Aid (Revocations and Amendments) (EU Exit) Regulations 2020, SI 2020/1470, which revoke EU regulations, decisions and treaty rights which would otherwise become EU retained; and the Taxes (State Aid) (Amendments) (EU Exit) Regulations 2020, SI 2020/1499, which make consequential amendments to tax legislation to ensure that UK tax law continues to be fully operable from IP completion day.
International tax transparency	The directive for administrative co-operation (DAC), Directive 2011/16/EU, will no longer apply to the UK. However, the International Tax Compliance (Amendment) (No. 2) (EU Exit) Regulations, SI 2020/1300, remove references to the DAC from the UK's implementing regulations for DAC 2 on financial account information, as well as changing the source of certain definitions and to maintain the effect of certain dates set out in the DAC after IP completion day.
Cross-border tax arrangements	The International Tax Enforcement (Disclosable Arrangements) (Amendment) (No. 2) (EU Exit) Regulations 2020, SI 2020/1649, which took effect on IP completion day, significantly reduced the scope of the arrangements that need to reported in the UK under DAC 6, by effectively removing all the hallmarks other than those in category D. Further changes are expected as HMRC intends to completely repeal the DAC 6 legislation and replace it with new legislation to implement the OECD mandatory disclosure rules.
Mutual agreement procedures	SI 2020/51, which implemented EU Directive (Directive 2017/1852/EU) on Tax Dispute Resolution Mechanisms in the EU, has been revoked with effect from IP completion day. HMRC has confirmed that it will not accept new requests to access the EU directive after IP completion day, but it will continue working on cases where the requests were received prior to IP completion day.