A NEW ECONOMY
PUBLICATION

BREXIT PLANNING GUIDE

HELPING YOU FIND YOUR WAY ONE STEP AT A TIME

JUNE 2017

ENTER

BDO

CHALLENGES AND OPPORTUNITIES ARISING FROM BREXIT

The world we live in is dynamic and many of the traditional boundaries that once governed the way organisations do business are being replaced by new and often uncertain ones. The one certainty about the UK's decision to leave the European Union is that it will trigger fundamental changes in the way organisations do business. While the final details of the UK's exit terms remain uncertain, businesses must begin preparing now so that they can adapt quickly to the new environment as it evolves.

There is the potential for boundaries to be resurrected between the UK and our nearest trading partners, where none have existed for over 30 years. These could create additional costs and will introduce friction into businesses' supply chains and sales operations, whilst also having the potential to reduce access to the skills they require.

Yet despite the uncertainty, our view remains the same; nothing matters more than our clients' success. This is why exceptional client service will remain at the heart of everything we deliver. We have considered what tax and legal changes could arise from Brexit and how these may drive the need for businesses to reconsider their European group structures and global supply chains. Those businesses that can react in an agile and well planned way will be best placed to succeed. As well as issues to be managed, there will be new opportunities to take advantage of – particularly from any new trade agreements that the UK may be free to negotiate once it is no longer part of the EU.

The following pages set out a range of business scenarios and the challenges that business may face as a result of Brexit, exploring both the indirect and direct tax consequences and what actions can be taken to either minimise their impact or seize the opportunities they offer.

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ABOUT BDO

BDO UK

18 Offices **250** Partners **3,500** Staff

FOR THE **THIRD YEAR RUNNING** MORE OF OUR CLIENTS **86%** WOULD RECOMMEND US THAN **ANY OTHER FIRM**[1]

2015/2016 RESULTS: REVENUES UP **3.8%** TO **£405m**

1. Independent research (Mid Market Monitor 2013-2016) undertaken by Meridian West shows BDO, for the third year running, have the highest proportion of clients who would recommend their advisers among its peers.

BDO INTERNATIONAL

US$7.6 billion 2016 REVENUE

158 Countries **1,400** Offices **68,000** Staff

INTRODUCTION
NEW ECONOMY

We are living in a time of unprecedented change. Brexit, emerging markets, technology and regulation are changing the fundamentals of the way we live and do business, particularly international business.

But with great change there is also great opportunity. At BDO we are campaigning for policies to continue to help British businesses flourish.

We advocate a 'new economy' to continue to encourage fast growth entrepreneurial and mid-sized business, to balance growth by sector and by region and ensure open and simple access to world markets and global talent. You can join the debate and find out more at **www.neweconomy.bdo.co.uk.**

As well as campaigning for the future we are also offering the practical expertise to help businesses now. This guide is part of that and will tell you all you need to know about investing in the UK.

INTRODUCTION
BREXIT TIMETABLE

The exact timetable for Brexit may prove to be a moving target but it is currently expected that the following dates will be significant.

Key: BREXIT TIMETABLE YOUR TIMETABLE

2017

- **29 MARCH** – Article 50 triggered
- **29 APRIL** – Remaining EU states adopt negotiating guidelines
- **7 MAY** – French presidential election
- **8 JUNE** – UK general election
- **MID JUNE** – Formal Brexit negotiations start
- **24 SEPTEMBER** – German federal elections
- **31 DECEMBER** – EU target date to finish initial Brexit negotiations

1. ASSESS YOUR POSITION
2. DEVELOP OUTLINE PLANS
3. IMPLEMENT QUICK WINS

2018

- **JANUARY** – Draft exit deal put to European Council
- **SPRING**
  - Target date for UK Great Repeal Bill to receive Royal Assent
  - European Council summit to review / amend deal terms
- **SUMMER** – UK Parliament legislates to fill any legal gaps
- **30 SEPTEMBER** – EU target date for agreeing Brexit terms
- **AUTUMN** – Possible start for post-Brexit trade talks
- **LATE 2018**
  - EU Council must approve
  - UK Parliament must vote
  - EU Parliament must vote

4. TEST PLAN ASSUMPTIONS AGAINST THE OUTLINE TERMS OF BREXIT
5. REVISE PLANS
6. START IMPLEMENTATION

2019

- **JANUARY** – Any transitional rules and period finalised
- **EARLY 2019**
  - EU Council summit to extend negotiating deadline beyond two years
  - UK Parliament passes any final legislation necessary
- **29 MARCH** – Brexit (or negotiations extended)
- **POST-BREXIT**
  - Great Repeal Bill takes effect
  - Any transitional period commences

7. TEST NEW SYSTEMS (EG CUSTOMS PROCEDURES)
8. PLAN FOR END OF TRANSITIONAL PERIOD
9. REVIEW NEW STRUCTURES TO FIND EFFICIENCY SAVINGS

INTRODUCTION
GLOSSARY

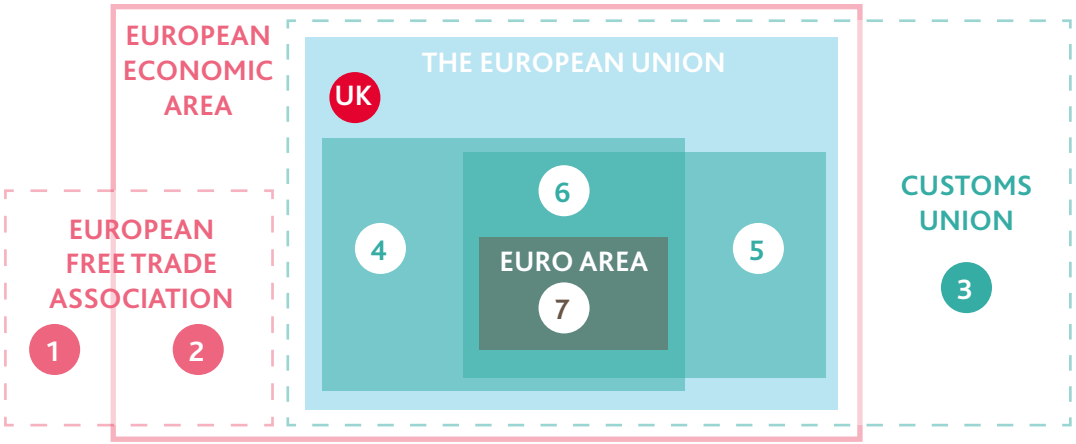
MULTI-GOVERNMENTAL ORGANISATIONS	
Customs Union	A group of European countries which allow cross border tariff free trade between themselves.
EEA	European Economic Area which comprises all EU member states plus Iceland, Lichtenstein and Norway.
EFTA	European Free Trade Association comprised of Iceland, Lichtenstein, Norway and Switzerland which allow tariff-free trade between its members.
EU / EU member state	European Union – comprised of the remaining 27 country members.
Euro Area	Countries using the Euro as their currency.
OECD	Organisation for Economic Co-operation and Development – the global standard setter for member countries.
WTO	World Trade Organisation - the global organisation that sets minimum trading standards (eg on use of import/export tariffs) for countries signed up to its rules.

OTHER TERMS	
Article 50	The clause in the EU's founding Treaty of Rome that sets out the process for a country to leave the EU.
BEPS	Base erosion and profit shifting – the OECD's global project to protect countries tax revenues from tax avoidance by multi-national businesses.
Brexit	Means Brexit, UK's exit from the European Union (but not any future trade deal).
CE mark	A symbol meaning the product conforms to European standards for manufactured goods.
CFC	Controlled Foreign Company, ie a non-UK company controlled by a UK company.
DTA	Double tax agreement/bi-lateral agreement to ensure that cross border profits or income are not taxed in both states.
Parent Subsidiary directive	Rules applying to all EU member countries to abolish WHT on payments of dividends, interest and royalties between associated companies in different EU member states.
Incoterms	Incoterms® rules provide internationally accepted definitions of the tasks, costs and risks involved in the delivery of goods from seller to buyer. Incoterms do not cover transfer of title to the goods.
PE	Permanent Establishment –a business base in a country.
SSE	Substantial Shareholdings Exemption – a UK corporation tax relief on the sale of companies.
WHT	Withholding tax, retained on cross-border payments leaving a country.

INTRODUCTION

EU AND RELATED MEMBERSHIP GROUPINGS

This diagram shows which countries are of the various groupings associated with the EU.



1 EUROPEAN FREE TRADE ASSOCIATION
- Switzerland

2
- Iceland
- Lichtenstein
- Norway

3 CUSTOMS UNION
- Andorra
- Monaco
- San Marino
- Turkey

4 FISCAL COMPACT
- Denmark

5 OBLIGATION TO JOIN EURO
- Czech Republic
- Croatia

6
- Bulgaria
- Hungary
- Poland
- Romania
- Sweden

7 EURO AREA
- Austria
- Belgium
- Cyprus
- Estonia
- Finland
- France
- Germany
- Greece
- Ireland
- Italy
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Portugal
- Slovakia
- Slovenia
- Spain

YOUR BUSINESS PROFILE

BREXIT BUSINESS PROFILE MATRIX

Find the business scenario that most closely fits your business model. Click on the traffic lights and links to read the potential impact of Brexit on your business and further areas for consideration.

- **This transaction flow will be affected by Brexit.** Click on the red light to read more.
- **The potential impacts will depend on the current structures and processes of the business.**
- **There should be no impact from Brexit to this transaction flow.**

CLICK ON THE EACH LIGHT TO READ MORE.

Scenario		Supplier location	Customer/subsidiary location
A	UK as holding company location	N/A	EU and non-EU
B	UK businesses with UK suppliers selling to EU member states	UK	EU
C	UK businesses with non-EU supply chains selling to EU member states	Non-EU	EU
D	UK companies with EU supply chains selling to EU member states	EU	EU
E	UK businesses importing from the EU	EU	UK
F	Global businesses trading with the EU and UK	Worldwide	EU and UK

YOUR BUSINESS PROFILE

A. UK AS A HOLDING COMPANY LOCATION

The UK is an attractive location for holding companies and, for many reasons, it is likely to remain an attractive location for holding companies after the UK has formally left the EU.

The UK has a well-developed legal system and a strong set of financial governance regulations.

The UK tax system is mature, transparent and complies with international tax initiatives such as Base Erosion and Profit Shifting (**BEPS**), where the UK has been an important contributor and an early adopter.

The UK imposes few **withholding tax** (WHT) obligations when businesses make payments to persons outside the UK.

Dividends payable by a UK company are not subject to WHT but annual interest and royalties are. While WHT applies to interest, if the debt is listed as a Eurobond a specific UK exemption from WHT applies.

Royalties on intangible property such as tradenames and trademarks are subject to WHT.

The UK has an extensive range of bi-lateral **Double Tax Agreements** (DTA) with c130 countries, which may grant full and or partial relief from WHT on payments to / from the UK. In addition, the UK gives **credit relief for overseas taxes** to avoid double taxation either via a DTA or by unilateral relief.

Dividends received by a UK company are generally exempt from UK tax as are **gains arising on the disposal of a trading subsidiary.**

The UK extensively amended its **Controlled Foreign Company (CFC)** legislation in 2012 to ensure that profits earned outside the UK are only taxed if they represent a diversion of profits from the UK.

The loss of the **EU directives** may mean payments of dividends, interest and royalties from a EU 'subsidiary' to its UK parent will be subject to WHT of the paying country. Where the UK has a **DTA with that EU country** the WHT may be fully or partially mitigated.

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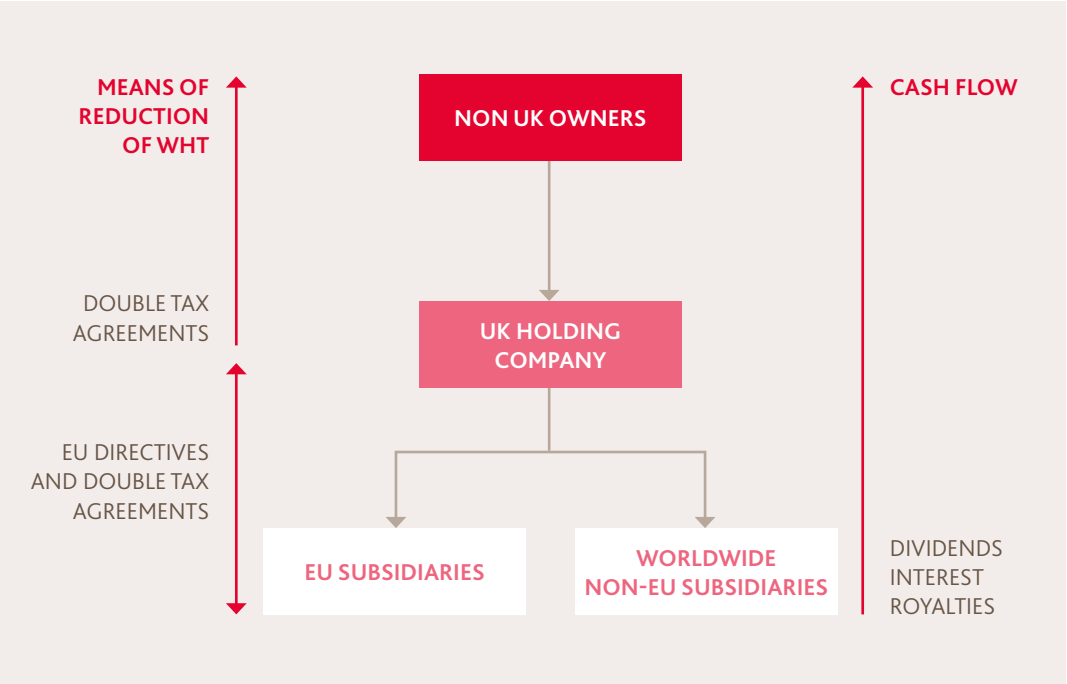
YOUR BUSINESS PROFILE
A. UK AS A HOLDING COMPANY LOCATION



Read more on these issues:

- EC directives and withholding taxes
- Matrix of withholding taxes in the EU
- UK taxation of dividends
- Double tax relief
- UK exemption on disposal of shares
- Controlled Foreign Companies
- Foreign exchange and hedging
- Business restructuring
- Holding companies - VAT issues

YOUR BUSINESS PROFILE

B. UK BUSINESSES WITH UK SUPPLIERS SELLING TO EU MEMBER STATES

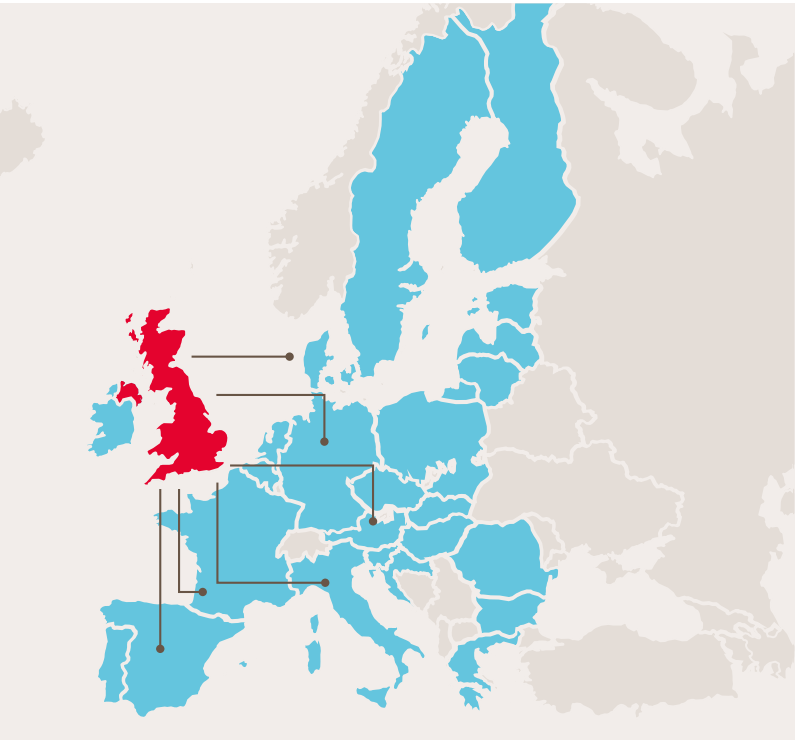
Whether making B2B or B2C sales directly into the EU, UK businesses with a UK supply chain are currently exempt from many of the administrative burdens normally associated with exporting.

Leaving the EU may involve leaving the EU Customs Union which allows trade among member states to flow tariff free. After Brexit, UK businesses may need to comply with Customs-related rules when selling to EU member states. This includes paying duties, **trade tariffs, Customs Warehousing,** and **deferment account guarantees**.

UK businesses will lose access to the VAT simplifications such as the **EU 'one stop shop' mechanisms** and **triangulation.** As a result, businesses may need to file VAT returns monthly, bi-monthly or quarterly in up to 27 further countries to ensure their customers are not adversely affected. In addition, although Intrastat and EC Sales Lists will no longer be required, businesses trading goods will need to complete additional **import and export** declarations. Brexit may also mean that UK businesses will no longer benefit from the EU directives which minimise the impact of **WHT**. Therefore, without further action, net cash received from customers may be reduced and/or profit margins may be adversely affected.

UK businesses should review their contracts for 'grossing up clauses' regarding WHT and confirm their eligibility for **double tax relief** either under relevant DTA or the UK's domestic law.

Depending on the cash flows and profitability derived from sales to EU member states, UK businesses could consider some form of **business restructuring** to help minimise customs duty and VAT if this is an issue.



Read more on these issues:

- Trade tariffs
- Customs Warehousing
- Deferment account guarantees
- Import and export declarations
- EU directives and withholding taxes
- Double tax relief
- Business restructuring

YOUR BUSINESS PROFILE

C: UK BUSINESSES WITH NON-EU SUPPLY CHAINS SELLING TO EU MEMBER STATES

A key issue for UK businesses who source supplies from non-EU countries and make sales directly into the EU will be potential double duty charge, once when goods are imported into the UK and again when a sale is made to the EU.

Being part of the EU Customs Union allows trade among member states to flow tariff free and regardless of which country within the Customs Union imports a product the same tariff applies. After Brexit, the UK may leave the EU Customs Union and until new trade deals are agreed UK businesses will need to comply with Customs-related aspects, when selling to EU member states, such as duty rates, **trade tariffs**, **Customs Warehousing**, and **deferment account guarantees**.

UK businesses may lose access to certain EU VAT simplifications post-Brexit, such as '**supply and install**' and **triangulation.** As a result, UK businesses may need to register for VAT and file VAT returns monthly, bi-monthly or quarterly, and may be required to appoint a **fiscal representative** in relevant member states.

Where businesses are either storing the goods before what will become a re-export to the EU, or they are carrying out a process on the goods before doing so, special procedures such as **Inward Processing** and **Customs Warehousing** could provide significant duty and import VAT savings or improved cash flow, depending on the terms of trade used.

Consideration should be given to contracts and Incoterms to determine who will incur the import duty and import VAT cost upon delivery to the EU.

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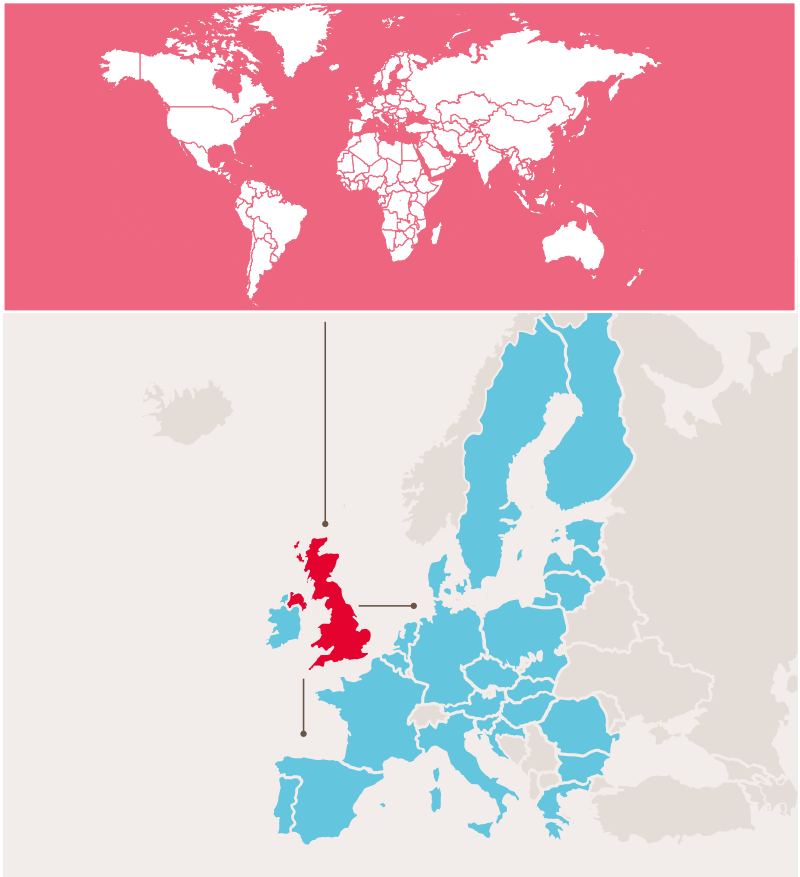


YOUR BUSINESS PROFILE

C: UK BUSINESSES WITH NON-EU SUPPLY CHAINS SELLING TO EU MEMBER STATES

Contracts should also be considered from a commercial perspective to ensure that they are updated to take account of any fixed prices that could be affected by additional taxes and duties and any time critical supply issues as supplies subject to customs formalities may take longer.

Increased administrative costs are to be expected as goods sent to the EU will no longer be dispatches but are likely to require full **export and import declarations**.

Companies are also likely to lose access to many current preferential trade agreements with third country suppliers which give lower preferential duty rates at import into the UK.

Brexit means UK businesses would no longer benefit from **EU directives** which minimise tax leakages caused by **WHT**. So, without further action, the profitability of contracts may be reduced.

UK businesses should review their contracts for 'grossing up clauses' regarding WHT and confirm their eligibility for relief from overseas taxes either under relevant DTAs or the UK's domestic law.

Depending on the effect of Brexit on business cash flows and profitability, some form of **business restructuring** may be appropriate including **business relocation and migration**.

Read more on these issues:

- Trade tariffs
- Customs Warehousing
- Deferment account guarantees
- Inward Processing Relief
- Fiscal representative
- Import and export declarations
- EU directives and withholding taxes
- Double tax relief
- Business restructuring
- Business relocation and migration

YOUR BUSINESS PROFILE

D. UK BUSINESSES WITH EU SUPPLY CHAINS SELLING TO EU MEMBER STATES

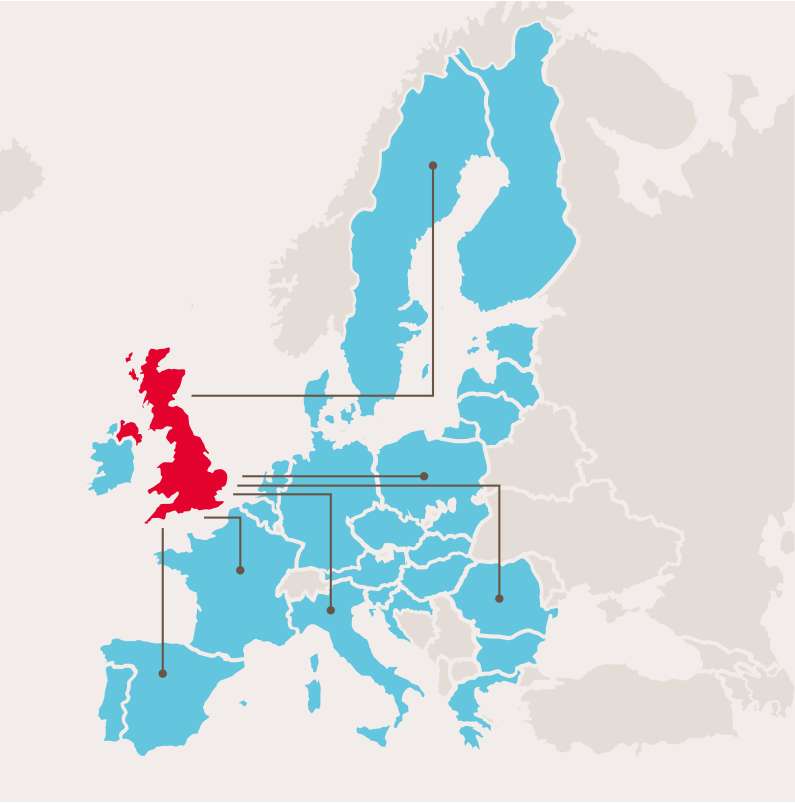
Many UK businesses that have built their business models on access to the EU single market and will have complex EU supply chains involving cross-border movements of components and goods – often back and forth before sale. After Brexit, such cross-border movements are likely to trigger cumulative tax costs.

Establishing an EU holding company for EU supply chain activities and sales within the EU may be appropriate for some businesses. For others, moving distinct operational activity may be required. All business restructuring plans should be based on a detailed analysis of the flow of goods invoices and cash after Brexit.

UK businesses may lose access to certain EU VAT simplifications post-Brexit, such as **'supply and install'** and **triangulation.** As a result, UK businesses may need to register for VAT and file VAT returns monthly, bi-monthly or quarterly, and may be required to appoint a **fiscal representative** in relevant member states.

Moving goods between the UK and EU members states will change from being acquisitions and dispatches and will become exports and imports, potentially liable to customs duties. **Import and export declarations** are likely to be required and the potential impact on **deferment account guarantees** will need to be considered.

Customs special procedures such as **Customs Warehousing** or **Inward Processing Relief** may benefit businesses who either only store the goods before re-sale, or where a process is carried out before dispatch.



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YOUR BUSINESS PROFILE

D. UK BUSINESSES WITH EU SUPPLY CHAINS SELLING TO EU MEMBER STATES

Businesses may also wish to reconsider the location of manufacturing or distribution operations.

Brexit will also mean that UK businesses would no longer benefit from the **EU directives** which minimise the impact of **WHT**. Therefore, without further action, net cash received from customers may be reduced and or profit margins may be adversely affected.

UK businesses should review their contracts for 'grossing up clauses' regarding WHT and confirm their eligibility for relief from overseas taxes either under relevant DTAs or the UK's domestic law.

Depending on the cash flows and profitability derived from sales to EU member states, UK businesses could consider some form of **business restructuring** to help minimise **WHT,** and/or **business relocation and migration**.

Read more on these issues:

- Trade tariffs
- Customs Warehousing
- Fiscal representative
- Inward Processing Relief
- Deferment account guarantees
- Import and export declarations
- EU directives and withholding taxes
- Double tax relief
- Business restructuring
- Business relocation and migration

YOUR BUSINESS PROFILE

E. UK BUSINESSES IMPORTING FROM THE EU

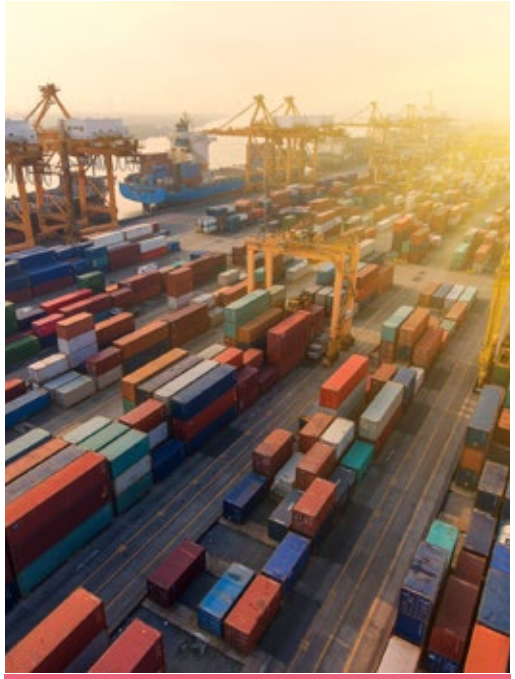
As leaving the EU may involve leaving the EU Customs Union, tariff-free trade with the remaining EU member states could end with Brexit. UK businesses sourcing goods in the EU to sell in the UK should recognise that their suppliers will have to comply with Customs-related rules which may have an impact on prices and delivery lead times.

Although importers may face direct cost increases if tariffs (eg at WTO rates) are imposed on imports from the EU, it is possible to manage these. For example, it may be possible to import the same goods from an intermediary in a non-EU jurisdiction at a lower tariff rate. Sensible use of **Customs Warehousing** and **Inward Processing Relief** can also manage cash flow for Customs duty costs.

However, importers should remember that their EU suppliers are likely to face **additional administration costs** themselves so may have to increase their prices. For example, EU suppliers are unlikely to be able to use the existing EU 'one stop shop' mechanisms for UK sales and may need to register for VAT in the UK unless the UK implements some new simplifications under a new UK-EU trade deal.

If the goods sold in the UK can be sourced from global markets, simply switching suppliers may be a sensible option. Alongside due diligence checks on suppliers it will be necessary to carry out a full analysis of the new supply chain to consider **preferential customs duty rates** and whether **Customs Warehousing** will be beneficial.

Where a UK sales operation is supported by imports from an EU subsidiary manufacturer, then the cost profile for that subsidiary will have to be assessed carefully. It may be cost-effective to **relocate that business** back to the UK or to another non-EU jurisdiction with which the UK has **preferential customs duty rates**. Where such a business restructuring exercise takes place, it will be important to document the business rational and ensure that **transfer pricing** policies are updated accordingly.



Read more on these issues:

- Customs Warehousing
- Inward Processing Relief
- Preferential customs duty rates
- VAT administration
- Business relocation and migration
- Transfer pricing

YOUR BUSINESS PROFILE

F. GLOBAL BUSINESSES TRADING WITH THE EU AND UK

Global businesses with significant sales and or production in the remaining EU member states and the UK will no longer be dealing with a single market after Brexit.

How supply chains are organised going forward may have a significant impact on the profitability of the two new markets. For example, where assembly of products (from globally sourced components) currently takes place in the UK but the finished goods are sold in the EU, double customs duty charges may arise. Similar problems may arise for EU manufactured goods sold in the UK.

Global business will need to assess the attractiveness of the separate UK and EU markets after Brexit and plan how to serve them in the most efficient way. In many cases, the new administrative burdens of trading between the UK and the EU (VAT **imports and exports**, customs duty declarations etc) may be only a minor inconvenience for a global brand. For example, additional costs may simply be absorbed by accepting lower margins in the UK that the EU, or recouped by adopting a premium branding strategy in one market so prices can be increased.

Alternatively, in the longer term it may be cost-effective to build up manufacturing facilities in both markets or segregate supply streams in another way. For example, a US based business may choose to manufacture in the EU for its EU customers but export direct to the UK from the US if a tariff-free trade deal is struck between the US and UK post-Brexit.

Although it is far from clear what the terms of the UK's exit from the EU will be, planning for the post-Brexit trading environment is not an issue that should be delayed. Where significant **business restructuring** is needed it is likely to be beneficial to complete this before Brexit takes place so that the group can benefit from the **EU directives** in minimising the tax costs of the restructure. However, US based groups may wish to defer the execution of any transactions pending implementation of the sweeping corporate tax reforms proposed in the US.

While all aspects of the business model will need to be considered, from the impact of **preferential customs duty rates** to **business relocation** and the **impact of relocating the work force**, it is the fundamental attractiveness of the UK market and EU markets that should drive global businesses reaction to Brexit.

BDO can help you identify and model the relative tax environments for both corporate and employee costs to support your overall business analysis for your response to Brexit.

Read more on these issues:

- Imports and exports
- Business relocation and migration
- Business restructuring
- EU directives and withholding tax
- Preferential customs duty rates
- Impact of relocating your work force

COMMERCIAL ISSUES
FINANCIAL SERVICES PASSPORTING

When the UK leaves the EU, UK-based financial services businesses will cease to benefit from the EU passporting of regulation.

The EU passporting system enables firms that are authorised in any EU or EEA state to trade freely in any other member state with minimal additional authorisation. Loss of passporting will affect all financial services businesses, private equity businesses, fund managers and other UK-based businesses regulated and authorised by the Financial Conduct Authority (FCA) or Prudential Regulation Authority (PRA).

UK businesses currently authorised by the FCA or PRA to conduct business can:

- Market and sell their financial services or financial products directly to EU residents
- Establish networks of branches in financial centres across the EU.

Unless the UK Brexit negotiations move quickly and negotiations on a new UK – EU trade deal can be completed before 2019, it is likely that UK businesses relying on passporting will no longer be authorised to conduct regulated business within the EU after Brexit. In absence of appropriate authorisation, sales to the EU would no longer be permissible and branches of UK companies would have to cease trading. While transitional arrangements may be put in place, most affected businesses are and should be working on the basis that passporting will end in 2019.

PREPARING FOR BREXIT

Many financial services businesses will already have a footprint in other EU member states and will now be considering incorporation of an existing EU branch and applying for financial services authorisation within that jurisdiction. In order to secure authorisation an EU financial regulator may insist that certain control and oversight functions are performed in their jurisdiction. This is to ensure there is local accountability and that underlying financial risk is competently managed. Obtaining authorisation from an EU regulator could therefore involve the transfer and/or creation of control and management functions to the EU jurisdiction.

The operating changes associated with securing authorisation from an EU regulator are likely to raise a number of tax and practical issues including:

- Business restructuring
- Business relocation and migration
- Transfer pricing
- Impact of relocating your workforce
- Social security
- Short term business visitors

COMMERCIAL ISSUES

MANUFACTURING – COMPLYING WITH EU DIRECTIVES FROM THE OUTSIDE

Manufacturers will be acutely aware of the many EU directives covering products sold within the EU and what it takes to comply with them. After Brexit, the Great Repeal Bill should ensure 100% convergence between UK and EU standards but, over time, there is bound to be some divergence as technologies and scientific knowledge advances.

Brexit is expected to mean that the UK leaves the EEA as well as the EU. Therefore, after Brexit a manufacturer based solely in the UK will (as a non-EU manufacturer) have to appoint an EEA based Authorised Representative to act on its behalf in all interactions with the **CE marking** authorities from EU and EFTA member states.

Along with the CE mark that denotes compliance with European directives, products from non-EEA manufacturers must carry the name, address and contact details of the manufacturers Authorised Representative.

While this is initially a relatively straightforward administrative process, it is a clear reminder that UK-based businesses will be out of the EU/EEA loop. While this may have some limited advantages for those manufacturing only for the UK market (as the more onerous terms of some Directives may gradually be removed from corresponding UK law), it could present difficulties in the longer term.

As new products using new materials are developed, it may become a more complex process for these to be cleared as meeting CE mark standards and the UK Government will have little or no input to the development of existing or new European product directives.

Aside from the financial considerations set out in business profile B, this is a clear commercial reason for UK-based businesses to consider creating or acquiring manufacturing capacity within the remaining EU/EEA member states if they plan to sell goods within Europe in the long term.

Read more on these issues:

- Business restructuring
- Business relocation and migration
- Controlled Foreign Companies
- Transfer pricing
- Impact of relocating your workforce
- Short term business visitors

COMMERCIAL ISSUES
LICENSING FOR PHARMACEUTICAL COMPANIES

Although it seems certain that the European Medicines Agency (EMA) will leave its London offices because of Brexit, it is not 100% certain that the UK will renounce its membership of the EMA.

As the drugs regulator for the EU, the EMA has helped to both harmonise pharmaceutical standards across the EU and speed up the clearance process for new drugs (to be faster than in other key global markets). For example, a proposed EU-wide clinical trials system is due to come into force soon giving EU wide approval for clinical trials conducted anywhere in the EU.

Drugs authorised by EMA can be marketed anywhere in the EU but after Brexit UK businesses are likely to face additional regulatory hurdles before selling new drugs within the EU. Equally, under EU law, pharmaceutical companies enjoy significant protection of their trademarks, and associated rights for their products. UK-based companies may well see these protections watered down and may possibly have to deal with separate protection regimes after Brexit.

Fortunately, the European Patent Office is not an EU organisation – the UK is likely to continue to be a member so that UK companies maintain the current patent protections and may even be able to benefit from the EU Unitary Patent System when it is launched.

RESEARCH

EU funded research helps many pharmaceutical companies in the UK and the UK is a net beneficiary – particularly in life sciences research. Losing this support could have a considerable impact on UK universities and spin-off companies that evolve from them. However, depending on the post-Brexit trading arrangements that the UK strikes it may be possible for the UK to continue to participate in EU research collaborations such as Horizon 2020.

Managing clinical trials involving the UK may be more difficult after the UK leaves the EU if there are difficulties with lawful transfer of patient/participant data: the UK Government will have to agree data transfer arrangements that comply with the EU human-rights legislation.

Finally, staffing research labs in the UK will also be more difficult if, as expected, free movement of people is restricted post-Brexit .

COVERING ALL OPTIONS

Businesses that already have a footprint outside the UK will no doubt wish to explore options for establishing an entity that will continue to have access to the EMA post-Brexit. This may involve incorporation of an existing EU facility or formalising joint research arrangements and transferring ownership of IP as well as the transfer and/or creation of control and management functions to the EU jurisdiction.

These or other options are likely to raise a number of tax and practical issues including:

- Business restructuring
- Business relocation and migration
- Controlled Foreign Companies
- Transfer pricing
- Impact of relocating your workforce
- Social security
- Short term business visitors

COMMERCIAL ISSUES
BUSINESS REGULATIONS

After Brexit, it is intended that the Great Repeal Bill will implement the vast majority of EU law and regulations that currently apply to the UK directly into UK law so that there is little immediate change to the regulatory environment in the UK. However, despite this aim of continuity, there are expected to be many areas where differences in regulations have a direct impact on businesses.

TERMS OF BUSINESS

If a business trades throughout the EU using the same terms and conditions in its contracts, these may need to be amended for UK transactions after Brexit as new UK law develops. **Incoterms** are global standards and, where adopted, are not likely to change materially because of Brexit.

GOVERNMENT SUPPORT

The ending of EU state aid rules has been seen by some as an advantage of Brexit – without them, the UK Government would have considerably more freedom to create business incentives. However, the terms of any continuing trade agreement between the UK and the EU may well impose new limits on the incentives that can be offered. Equally, the UK will no longer have a voice in how the EU develops and applies the State Aid rules within the EU so its ability to protect UK businesses from unequal competition by subsidised EU businesses will be reduced.

Businesses should not assume that existing tax incentives will continue for the long term as the UK Government may choose to completely overhaul incentives and subsidies. For example, in the post-Brexit agricultural sector, the Government has only committed to match the existing arrangements until 2020.

Similarly, sector specific regulations and administrative easements can be expected to evolve after the UK leaves the EU. For example, the Tour Operators' Margin Scheme (TOMS) is a special set or VAT rules for businesses that buy-in and re-sell travel, accommodation and certain other services. It is an EU simplification measure which enables VAT to be accounted for on travel supplies without businesses having to register and account for VAT in each member state where the services and goods are enjoyed. TOMS applies to many businesses and not just 'traditional' tour operators.

Businesses must normally account for VAT on the full selling price of their supplies, but can reclaim the VAT charged on purchases. Under TOMS, businesses cannot reclaim any UK or EU VAT charged on the travel services and goods they buy-in and re-supply. However, they only account for VAT on the profit margin they make in the member state in which they are established. Margin scheme supplies are standard-rated when enjoyed in the EU, and zero-rated when enjoyed outside the EU. It remains to be seen how the UK TOMS rules will change following Brexit: they may simply be abolished.

CONTINUED

DATA PROTECTION

The General Data Protection Regulation (GDPR) comes into force throughout the EEA from 25 May 2018 so the UK will have to adopt this before Brexit. As the changes are generally seen as positive by the UK Government, it is likely that they will continue to apply in the UK long after Brexit. While complying with the GDPR may be challenging for businesses, at least data transfers between businesses in the UK and EU member states should not cause further difficulty after Brexit.

DIGITAL PRODUCTS AND SERVICES

Aside from the VAT issues that may arise on **cross-border supplies of digital services**, the EU is currently developing proposals for a harmonised 'digital single market'. While this may not take effect until after Brexit, it may put UK-based businesses at a competitive disadvantage to EU competitors – particularly, rules on e-commerce. While the UK, may choose to adopt similar rules, it may still be necessary for UK-based businesses to develop a commercial base within the EU to achieve full access to EU markets on an equal footing.

MERGERS AND ACQUISITIONS

Currently, large scale mergers fall within the EU Merger Regulations where any UK business is involved. This is likely to change on Brexit with the UK regulations applying for subsequent deals where there is no EU involvement. While this may be seen as good news, the process of obtaining approval for mergers involving EU based entities is likely to slow down considerably as they may require both UK and EU approvals.

Similarly, over time UK competition law may diverge from EU competition rules as, after-Brexit, **European jurisprudence** will no longer be binding on UK courts. Protecting a business on an exclusive territorial basis and creating restrictions on purchasing parallel traded products may be possible in some circumstances (subject to any continuing trade deal the UK strikes with the EU).

VAT AND CUSTOMS DUTY

HOLDING COMPANIES – VAT ISSUES

KEY POINT

VAT recovery for holding companies is a complex and much litigated area. Generally a holding company can't recover VAT on its cost unless it is carrying out 'economic activity'.

The basic functions that a holding company performs in a group, such as acquiring and holding shares in subsidiaries, receiving dividends, making disposals and issuing shares, are generally understood not to qualify as economic activities. Therefore, if a holding company wishes to recover VAT on its costs it needs to conduct actual economic activities.

HMRC may accept that a holding company that is in a VAT group with its subsidiaries is entitled to VAT recovery on corporate finance deal costs, provided the acquisition is directly related to the taxable activity of the holding company. Examples given include taking over a similar or complementary business, or acquiring a company that owns an asset to be used in taxable trading.

However, where this test is not met, (eg because the target is acquired as an investment) the holding company must demonstrate economic activity by supplying management services to its subsidiaries - for a consideration that is more than nominal. Management charges where payment is contingent, eg on the future profitability of subsidiaries, will not entitle VAT recovery.

In all cases, the holding company must have contracted for the supply (whether directly or by novation), used and paid for the supply and hold an invoice in its name.

HMRC has recently revised its policy in this area as a result of litigation and it is vital that groups revising their structure consider their entitlement to recover VAT on holding company costs at an early stage.

SELF TEST

1. What proportion of the VAT paid by your holding company is currently recovered?
2. What economic activity does it carry out and what evidence is available to support VAT recovery?

VAT AND CUSTOMS DUTY
IMPORTS AND EXPORTS

KEY POINT

Post-Brexit, UK arrivals of goods from EU countries will become imports for indirect tax purposes and UK dispatches of goods to EU countries will become exports.

IMPORTS

Currently, goods coming into the UK from overseas are treated differently depending on whether the goods come from other EU countries (referred to as EU acquisitions or 'arrivals') or from countries outside the EU (referred to as 'imports').

Within the EU, most goods are in free circulation, can be brought into the UK with minimal customs control and there is no customs duty or import VAT to pay. In contrast, imports of goods from outside the EU generally require an import declaration to customs and payment of customs duty and import VAT before the goods are allowed to enter the UK.

Post-Brexit, arrivals of goods in the UK from EU countries will almost certainly become imports for indirect tax purposes. Goods will take longer to import as they will need to pass through UK customs procedures. Instead of accounting for acquisition tax on the VAT return, import VAT would be payable on arrival of the goods and there may also be customs duty liabilities, the latter representing an absolute cost. While deferment and warehousing procedures may be available to mitigate cash flow, these will require additional administration to ensure compliance.

EXPORTS

Goods leaving the UK to go to other EU countries are currently referred to as 'EU dispatches', whereas goods leaving the UK to go to countries outside the EU are 'exports'. Both are zero-rated for VAT purposes but the main difference between EU dispatches and exports of goods stems from the complexity of the associated documentation required (eg export declarations to customs) and the extra time taken to clear the goods through customs.

Post-Brexit, dispatches of goods from the UK to EU countries are expected to become exports for indirect tax purposes - giving rise to additional documentation requirements which may impact on the speed of delivery of time-critical goods.

ASSESS

1. The current value of your EU arrivals and dispatches of goods?
2. Potentially difficult business scenarios (eg the impact on just-in-time stock supplies).

VAT AND CUSTOMS DUTY
VAT ADMINISTRATION

KEY POINT

Following Brexit, the administrative burden on UK businesses making supplies in the EU is expected to increase.

One inevitable change will be the switch from intra-EU acquisitions and dispatches to imports and exports instead. So for sales and purchases from the EU:

- Formal evidence of export may need to be obtained for sales of goods into the EU
- **Import and export** formalities could apply for the movement of goods around the EU
- If a deferment account is used for imports then the limit and corresponding bank guarantee may need to be increased
- Accounting and invoice software will need to be modified.

Another administrative issue arises because most EU member states don't have a VAT registration threshold for non-established taxable persons (see our **EU VAT rates and thresholds guide**). There are also a number of simplifications applicable to suppliers within the EU, such as **triangulation**, **supply and install**, **call-off stock** and a threshold for distance selling.

It is likely that these simplifications will no longer be available to UK suppliers after Brexit and it may be necessary to register for VAT in additional jurisdictions (irrespective of the scale of the UK supplier's EU activities).

Furthermore, UK businesses which incur VAT in EU member states can currently recover it using a simplified EU electronic system. Once the UK leaves the EU, this procedure may no longer be available to UK entities, that would instead have to use the lengthy paper-based reclaim process set out in the 13th Directive (assuming that UK businesses will be granted access to this refund mechanism).

We can assist you with analysing your supply chains, evaluating your exposure to EU VAT and, where needed, registering for VAT in other jurisdictions.

REVIEW

1. Do you have robust procedures in place to manage your VAT administration?
2. How will they need to change to prepare for Brexit?

VAT AND CUSTOMS DUTY
SUPPLY AND INSTALL

KEY POINT

Post-Brexit, UK businesses that install goods they supply to customers in EU member states may have to register for VAT in each EU member state where they install goods.

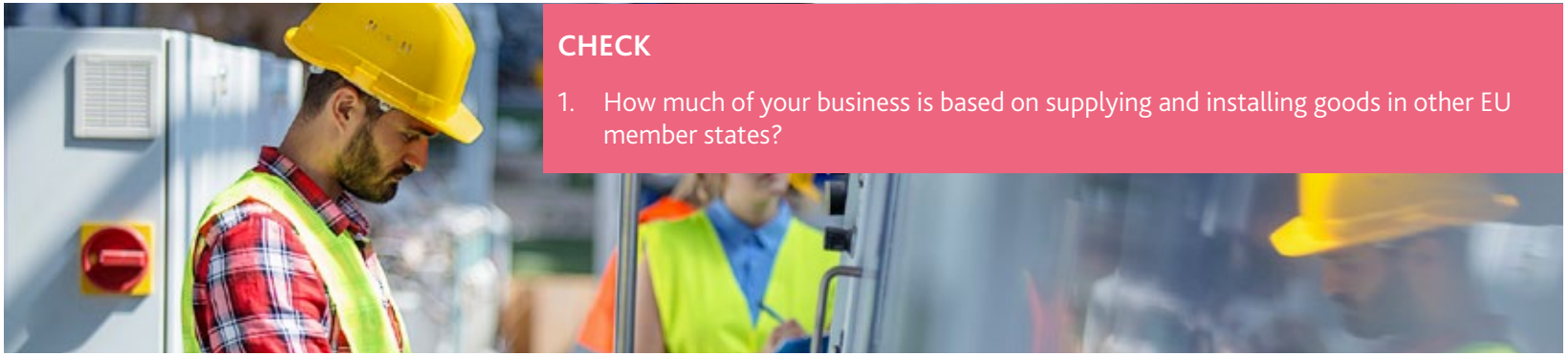
Where goods provided to customers are also required to be assembled or installed by the supplier (and the installation takes place in another EU member state), there can be an obligation for the supplier to VAT register in the country where the installation or assembly takes place.

However most EU member states offer exemptions from VAT registration to suppliers established in another EU member state. Where the EU supplier opts to use this simplification, the EU customer currently accounts for any VAT due.

In the absence of a further agreement post-Brexit, UK suppliers will face the new administrative burden of registering for VAT in multiple EU jurisdictions. The change may also affect EU suppliers currently making use of the simplification in the UK.

Furthermore, where the physical movement of the installed goods is from the UK to EU member states (or vice versa), then this may be regarded as an **import** in the country of installation and the payment of import VAT and/or customs duty may also be due.

BDO can assist you with reviewing your supply chain, identifying the impact of Brexit changes, finding solutions and ensuring compliance.



CHECK

1. How much of your business is based on supplying and installing goods in other EU member states?

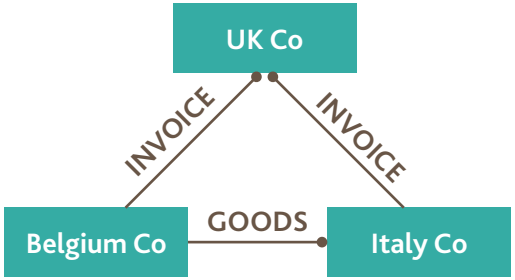
VAT AND CUSTOMS DUTY
EU SIMPLIFICATIONS

KEY POINT

Triangulation and call-off stock simplifications available to UK suppliers may disappear after Brexit.

TRIANGULATION

Triangulation is available for EU VAT registered businesses and allows intermediate suppliers involved in EU cross-border supply chains of goods to avoid the cost and administrative burden of having to register for VAT in multiple EU member states. For example, the simplification enables a UK business in a supply chain between an EU manufacturer (eg in Italy) and an EU customer (eg in Belgium) to avoid the need to register for VAT in the EU customer's country as a UK business acquiring goods there. The obligation to account for the VAT can be shifted on to the EU VAT registered customer.



Once the UK leaves the EU, this simplification may no longer be available to UK intermediate suppliers, possibly obliging them to register for VAT in multiple EU member states to preserve existing supply chains. This will require systems changes and increase VAT compliance risks and costs.

CALL-OFF STOCK

The VAT 'call-off stock' simplification is available to EU suppliers allowing them to physically store their goods across the EU (typically at the EU customer's premises) before onward supply to their customer. Without this simplification, the supplier may be required to register for VAT in multiple EU member states where the goods are located and supplied.

Although this rule has not been implemented consistently across the EU (eg some member states require that certain conditions are met), many EU suppliers are able to avoid the cost and administrative burden of having a local VAT registration. Where the call-off stock simplification applies, the EU business customer must account for VAT on the supplier's behalf and there is no obligation for the supplier to VAT register in the customer's country.

Without special arrangements following Brexit, the absence of these simplifications will create new administrative burdens for UK-based businesses.

BDO can assist you with reviewing your supply chain, identifying the impact of Brexit changes and finding solutions.

REVIEW

1. Are you involved in the cross-border movement of goods between EU member states?
2. Do you use the triangulation or call-off stock simplifications?

VAT AND CUSTOMS DUTY
APPOINTING A FISCAL REPRESENTATIVE

KEY POINT

UK businesses registering for VAT in other EU member states after Brexit may have to appoint a fiscal representative in some territories.

It is likely that the changes brought by Brexit will mean UK businesses making taxable supplies of goods and services to EU customers will have to register for VAT in certain EU member states as a non-EU resident business. The majority of EU member states do not have a VAT registration threshold in such cases, so even low level supplies in those countries could trigger a liability to register.

Some EU member states require non-EU entities to appoint a local fiscal representative in the EU member state of VAT registration. This company acts as the local representative of the non-EU business and may even be jointly and severally liable with it for any VAT liabilities. This could apply to UK companies that must register for VAT in those member states after Brexit.

Fiscal representatives have extensive duties such as ensuring that the non-EU company is properly registered for local VAT, preparing and filing VAT returns, EC-sales lists and Intrastat returns, handling enquiries and inspections from tax authorities etc. As a result, it is common practice to protect the fiscal representative from losses with a full bank guarantee – often an onerous and costly exercise.

Many non-EU companies may seek to structure their supply chain through an EU entity which can then be used as a platform to obtain direct VAT registrations in the EU.

BDO can assist you with analysing your supply chains to determine the impact of Brexit on your EU VAT registration profile, decide whether a fiscal representative is needed and identify solutions such as setting up an EU establishment to benefit from direct VAT registration simplification.

ASSESS

1. In which EU member states will you make taxable supplies post-Brexit?
2. Will you have an EU establishment post-Brexit?

VAT AND CUSTOMS DUTY
EUROPEAN JURISPRUDENCE

KEY POINT

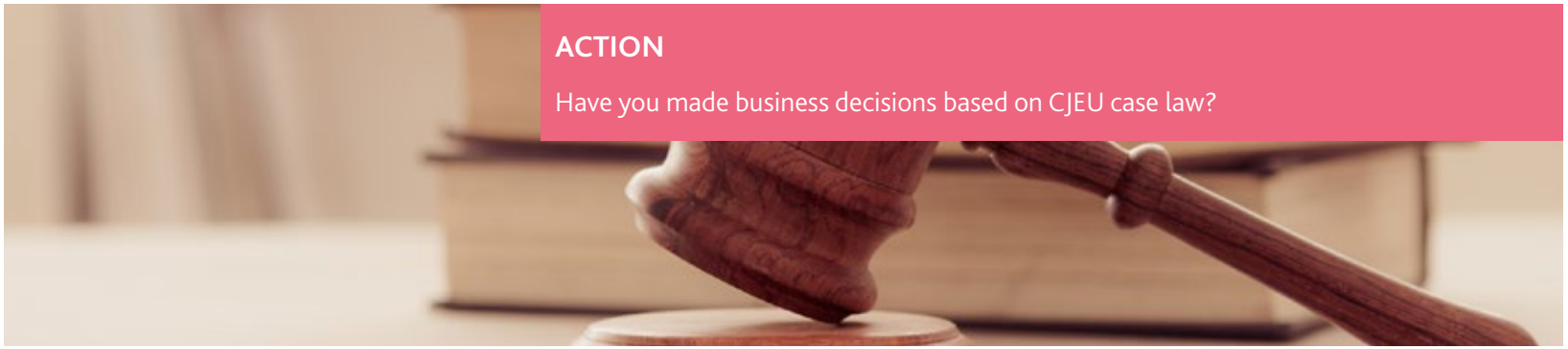
UK courts should continue to apply existing European case law following Brexit, unless Parliament passes legislative changes to VAT.

Current UK VAT legislation is based on the provisions of the European VAT directives and the UK courts are required to interpret local rules in accordance with EU law. In addition, judgments of the Court of Justice of the European Union (CJEU) interpreting VAT directives must be followed by the UK courts.

On 30 March 2017 the Government released the White Paper aimed at ending the supremacy of EU law in the UK after Brexit. The current plan is to convert directly applicable EU law into UK law and preserve the laws that have been passed to implement EU obligations. To facilitate uniform application of these provisions the Government has committed to giving precedent status to CJEU judgments in force on the date the UK leaves the EU. CJEU judgments are intended to have the same status as those of the Supreme Court.

UK courts will not be required to consider subsequent CJEU judgments when making decisions. If Parliament makes any changes to EU law based VAT legislation, any relevant CJEU judgments will no longer apply. The paper does not however comment on the status of CJEU cases ongoing at the time of exit. Will these cases become irrelevant on the basis that they are not part of existing case law at the time of Brexit?

The interaction of EU and UK VAT law is likely to continue long after Brexit and it may be difficult to navigate the effect of the migration of VAT law from EU to UK on individual VAT issues. We can help you monitor your key VAT issues taking into account all the latest developments.



ACTION

Have you made business decisions based on CJEU case law?

VAT AND CUSTOMS DUTY
USE AND ENJOYMENT

KEY POINT

Leaving the EU may result in a different or wider application of 'use and enjoyment' rules on certain supplies of services.

The use and enjoyment rules aim to tax specific types of services where they are effectively consumed regardless of where the recipient and supplier are located. They supersede the general rules where the relevant services:

- Are supplied in the UK but are effectively used and enjoyed outside the EU or
- Are supplied outside the EU but are effectively used and enjoyed in the UK.

In these cases place of supply becomes the place of consumption of the service and the VAT treatment is determined accordingly.

The rules currently apply to the following services under UK VAT legislation:

- Letting or hire of goods (including means of transport)
- Electronically supplied services (B2B supplies only)
- Telecommunications services
- Repairs to goods under an insurance claim (B2B supplies only)
- Radio and television broadcasting services.

The use and enjoyment rules don't apply to intra-EU supplies but, following Brexit, legislation could be changed so that use and enjoyment rules apply to more types of services (the Government technically has the power to do this under current EU VAT law) or the rules could be extended so that they also apply to services that would otherwise be considered to have a place of supply within the EU.

We can help review your supply chains to identify place of supply issues and potential changes in VAT treatment.

ASSESS

Do you supply services to customers in the EU?

VAT AND CUSTOMS DUTY

CROSS-BORDER SUPPLIES – DIGITAL SERVICES

KEY POINT

Businesses may no longer be able to register for the VAT Mini One Stop Shop (MOSS) in the UK after Brexit. Instead they will have to register in an EU member state.

Businesses supplying digital services (broadcasting, telecoms and electronic services) to private consumers in the EU are required to charge and account for VAT on their supplies in the consumer's country. To pay the VAT, businesses can either register for VAT in each EU country where they supply digital services to consumers, or register to use the MOSS in one EU country. There are two types of MOSS scheme, the Union MOSS for businesses based in the EU and the non-Union MOSS for businesses based outside the EU.

Unless alternative arrangements are made, the Union and non-Union MOSS will no longer be available in the UK when it leaves the EU. Any businesses (UK or based elsewhere outside the EU) that currently have UK MOSS registrations will have to register again for the non-Union MOSS in one of the remaining 27 EU countries, or register for VAT in every EU country where they have customers.

Any non-UK businesses supplying digital services to private consumers in the UK will also be required to register in the UK and account for UK VAT on their supplies – the MOSS will no longer cover UK supplies after Brexit.

If you make supplies of digital services to private consumers, we can assist you to identify and fulfil your VAT registration and accounting obligations in all relevant jurisdictions.

REVIEW

1. Can you quantify the value of digital services provided to private consumers in the EU?
2. Are you registered for the MOSS in the UK?
3. Do you have an EU establishment outside the UK that could register for the MOSS in future?

VAT AND CUSTOMS DUTY
SUPPLIES OF B2C SERVICES

KEY POINT

After Brexit, B2C supplies of professional and other services to customers in the EU could be outside the scope of UK VAT.

The EU default rule for B2C supplies of services is that they are considered to be supplied where the supplier belongs and UK VAT should be charged on them by a UK supplier. However, there is an exception for a number of services when they are supplied to a customer belonging outside the EU: these include:

- Services of lawyers, accountants, consultants, engineers, etc
- Advertising services
- Banking, financial and insurance services
- Transfers and assignments of intellectual property rights
- Supply of staff.

A different VAT rule applies to these services where they are supplied to customers in third countries: the place of supply is the country of the recipient and UK VAT is not applicable.

Once the UK leaves the EU, there is a valid question as to whether or not there is any reason to continue to distinguish between supplies to EU and non-EU counterparts for place of supply purposes. Changing the existing rules so that all relevant services provided to customers belonging outside of the UK could present a competitive opportunity for UK businesses 'exporting' services. However, it would also mean a substantial loss of revenue for the government. Therefore, whether the place of supply rules will change post-Brexit is as much a political question as it is a VAT question.

Whatever the terms of Brexit, BDO can help review your supply chains and assess the impact on your VAT liability.

ASSESS

1. What proportion of your turnover depends on the supply of relevant services to EU customers?
2. How price sensitive are sales of these services?

VAT AND CUSTOMS DUTY

SUPPLIES OF GOODS TO PRIVATE INDIVIDUALS

KEY POINT

After leaving the EU, UK businesses may no longer be able to use the simplified EU VAT rules for 'distance sales' so may have to register for VAT in multiple member states.

'Distance selling' occurs when a business in one EU member state supplies and delivers goods to a customer in another who is not registered for VAT (eg private individuals).

VAT is normally due on distance sales in the member state from which the goods are dispatched. However, when the value of such supplies exceeds the annual distance selling threshold in the customer's country, the business will be liable to register and account for VAT in that member state. Thus, under the current rules, a UK business is not required to register and account for VAT outside the UK on online or mail order sales provided the value of those distance sales to each member state does not exceed the distance selling threshold of that country.

Unless alternative arrangements are made, the distance selling rules will no longer apply after the UK leaves the EU. Deliveries of goods from the UK to the EU will be treated as imports for VAT purposes in the relevant member state and UK businesses importing goods for onward supply in a member state may be required to register and account for VAT there. This may result in UK businesses facing VAT registration obligations in multiple jurisdictions. EU businesses making supplies of goods to UK private individuals will face similar VAT issues in the UK.

If you make distance sales of goods, we can assist you to review your supply chain and identify potential VAT registration/accounting issues and possible solutions.

ASSESS

1. Do you sell goods to private individuals in other EU member states?
2. Do you have an EU establishment outside the UK?

VAT AND CUSTOMS DUTY
CUSTOMS WAREHOUSING

KEY POINT

Post-Brexit, UK businesses will need a Customs warehousing authorisation to suspend customs duty and import VAT on goods imported from the EU.

Customs Warehousing (CW) brings two distinct benefits:

- A cash management advantage (always)
- Customs duty savings (sometimes).

Broadly, CW allows businesses to store imported goods while suspending customs duty and import VAT until such time that the goods are either released to free circulation (at which point customs duty and import VAT need to be paid) or re-exported - in which case customs duties are not payable at all. To maximise the cash management advantage it is key to set up the supply chain and distribution channels in a way that keeps the goods duty and VAT suspended for as long as possible. There is no time limit for how long goods remain in the Customs warehouse. Numerous UK businesses who import goods from outside the EU already make use of this relief offered through the EU's Union Customs Code (UCC) legislation.

When the UK Great Repeal Bill comes into force on Brexit day, the UCC and its CW relief will be replaced with brand new UK legislation. It is expected that the current CW benefits will extend to the remaining EU member states in addition to non-EU member states. A UK CW authorisation holder will be immune from immediate charges under any new UK customs duties applied to goods imported from the EU.

Although there is no guarantee that the new legislation will mimic the current CW relief, HMRC has publicly expressed recognition of the need for UK importers to be on equal footing with EU importers. Consequently, we strongly believe that the sooner you apply for CW authorisation the better chance you stand to enjoy the additional benefits after Brexit.

ASSESS

1. Do you import goods from the EU?
2. What is the duty rate on the imported goods?
3. What proportion of the imported goods will be re-exported?

VAT AND CUSTOMS DUTY
INWARD PROCESSING RELIEF

KEY POINT

Post-Brexit, UK businesses importing goods from the EU for processing and re-export stand to gain significant financial advantages from applying for Inward Processing Relief.

Inward Processing Relief (IPR) is a customs arrangement that brings the financial benefits of:

- A cash flow advantage (through suspension of payment for import VAT and customs duties for up to 12 months)
- Customs duty savings (through full customs duty relief where the processed goods are exported).

Broadly, IPR allows the business to work on imported goods (processing operations) while suspending payment of customs duty and import VAT. This need not be paid until such time as the processing is complete and the goods are either released into free circulation in the UK or re-exported, in which case customs duty is not payable at all. The time limit allowed for processing is normally six months, but this can be extended for up to 12 months upon request.

This relief is currently offered under the EU's UCC and is widely used. After Brexit, it is expected that the current IPR benefits will extend to the remaining EU member states in addition to non-EU member states so a UK IPR authorisation holder will not be immediately affected by new UK customs duties applied to goods imported from the EU.

The UK government plans to replace and IPR relief in the UCC with brand new UK legislation through the UK Great Repeal Bill which will come into force on Brexit day. HMRC has publicly expressed recognition of the need for UK manufacturers to be on equal footing with EU manufacturers so, while there is no guarantee that the new rules will be identical to the current IPR relief, we strongly believe that IPR authorisation holders in the UK will be offered similar arrangements and that there will be a 'grandfathering' scheme to cover the transitional period.

ASSESS

1. Do you import goods from the EU for processing in the UK?
2. How much duty would be payable on those goods at WTO/Most Favoured Nation duty rates?
3. How big proportion of the imported goods will be re-exported?

VAT AND CUSTOMS DUTY

PREFERENTIAL CUSTOMS DUTY RATES

KEY POINT

After Brexit, the UK government will be free to apply unilateral and bilateral preferential customs duty rates to goods from third countries without EU consensus (but within the limits of WTO rules).

The World Trade Organization (WTO) with its 164 members, including the UK and the EU, provides a framework for tariffs and international trade with the aim of ensuring a level playing field for all members.

One of the main WTO principles is that of the 'most favoured nation' (MFN). The MFN principle states that a WTO member may not give preferential treatment to another member without offering the same to all other members. Exceptions are allowed only for bilateral or multilateral Free Trade Agreement (FTA) and for unilateral Generalised Scheme of Preferences (GSP) arrangements for developing countries only.

On Brexit Day, the UK government will be free to apply unilateral and bilateral preferential customs duty rates to goods from third countries independently from the EU. However as a WTO member in its own right, the UK must comply with the MFN principle.

What will this mean for UK duty rates? In the short term, UK importers will be at a disadvantage compared to EU importers as the UK will no longer benefit from EU's FTAs. However, as soon as new UK FTAs and GSPs come into force, duty rates for goods originating in third countries could match or fall below the preferential duty rates that are currently available to all EU businesses.

ASSESS

1. Do you import goods originating in countries entitled to EU preferential customs duty rates?
2. How much impact will the loss of preferential duty rates have on your profit margins?
3. How easy will it be to switch suppliers to limit the financial impact?

DIRECT TAX
EU DIRECTIVES AND WITHOLDING TAXES

KEY POINT

After leaving the EU, businesses may no longer be able to rely on the directives to eliminate double taxation and withholding tax on dividends and payments of interest and royalties.

The EU directives were designed to:

- Abolish withholding taxes on payments of dividends, interest and royalties between associated companies of different member states, and
- Prevent double taxation of parent companies on the profits of their subsidiaries.

Regarding the last point, provided a parent company holds at least 10% of the shares of its subsidiary of an EU member state, either the income (eg dividends) is exempt from tax in the hands of the parent or double tax relief is available for the tax already paid on the profits of the subsidiary. The UK generally exempts dividend income under its domestic law regardless. Regarding the first point where there are cross border payments of dividends, interest and royalties, the Directives prevent WHT being levied on payments made between EU member states.

Without the directives, UK businesses may have to rely on the relevant DTAs to establish whether payments from EU subsidiaries are exempt from WHT or subject to a reduced rate of WHT. Treaties often reduce the rate of WHT below domestic rates, and sometimes to nil - see our **WHT matrix**.

Businesses should review all payments and receipts to identify the transactions that currently benefit from favourable treatment under the directives. Businesses should then assess the long term impact on their income streams (eg whether WHT is an absolute cost or simply a cash flow disadvantage) and the UK double tax relief options available to them.

We can assist with analysing your transactions to determine what the additional costs will be. We can also review your arrangements to assess if transactions might be structured more efficiently.

ACTION

1. Assess your income streams from subsidiaries in EU member states and potential future WHT.
2. Review contracts for gross-up clauses.
3. Investigate restructuring options.

DIRECT TAX
UK TAXATION OF DIVIDENDS

KEY POINT

After Brexit, EU-resident subsidiaries paying dividends to UK parent companies may create an absolute tax cost due to WHT.

When the UK leaves the EU UK businesses will no longer be able to rely on the **Parent Subsidiary Directive** to ensure that profits of their EU-subsidiaries paid to the parent company in the UK as dividends are not liable to WHT.

Instead, UK businesses will need to assess whether the dividends are subject to WHT and, if so, whether the WHT can be reduced by **double tax relief**. Where withholding taxes apply to the dividend, this is likely to result in an irrecoverable tax cost equal to the withholding tax. See our **WHT matrix** to assess the effect of withholding taxes.

Dividends received from UK and overseas subsidiaries will be exempt if they satisfy the conditions of the UK dividend exemption regime. However, different eligibility conditions apply depending on whether the group is 'small' or 'large'.

Small groups (plus their linked and partner enterprises) are those with fewer than 50 employees and turnover not exceeding €10m or gross assets not exceeding €10m. Linked and partner enterprises are defined as companies controlled by another entity or where a 25% capital/voting relationship exists.

There seems no reason for the UK not to continue to use the current EU definitions of a small company for the purposes of applying the UK dividend exemption post-Brexit.

ACTION

1. Consider repatriation of profits before the UK leaves the EU.
2. Check our WHT matrix to identify the EU member states which impose a WHT on dividends.
3. Consider returning capital and the UK's substantial shareholding exemption.

DIRECT TAX
DOUBLE TAX RELIEF

KEY POINT

Double tax relief may need to be claimed to mitigate the impact of WHT on cash flow and profits.

WHT is calculated by reference to the gross payment without deduction of expenses. Where WHT is applied to a payment, the UK recipient will have to consider claiming the overseas tax paid against its UK tax liability to avoid double taxation.

Double tax relief is available under DTAs or unilaterally through the UK's domestic tax laws. The UK has an extensive network of DTAs with over 130 countries. These treaties will be updated by the OECD's BEPS multilateral instrument (MLI) which, amongst other things, introduces additional anti-'treaty shopping' measures (where both parties have signed the MLI) and is expected to take effect during 2018. DTAs either exempt the payment from WHT or provide for a reduced rate of WHT to be applied. If the WHT rate is reduced to nil, no double taxation arises.

Where WHT is suffered at source, the DTA allows the overseas tax to be claimed as a credit against UK taxes arising on the same income ('DTA tax credit relief').

In the absence of relief under a DTA, the UK allows unilateral relief and, provided the income has a foreign source, a credit for overseas taxes can be claimed.

Income received from an overseas client may not mean the income has a foreign source. Rules apply to determine the source of income for tax purposes.

If a UK business cannot claim a credit for the overseas tax against their UK tax liability under either a DTA or by way of unilateral relief, the overseas tax may be claimed as an expense in calculating the business' taxable profits. This is the least favourable option as a business will lose most of the benefit of overseas taxes that have already been paid.

UK businesses should identify the overseas taxes paid and confirm the likelihood of claiming double tax relief.

ACTION

Analyse what levels of WHT you could be exposed to after Brexit and investigate your double tax relief options to build a forecast of the net cost to the group.

DIRECT TAX
TRANSFER PRICING

KEY ISSUE

Transfer pricing rules apply to transactions and restructurings and comes into sharper focus post-Brexit.

Transfer pricing rules are designed to prevent the sheltering of income and profit in low tax territories through the manipulation of pricing between connected parties within a multinational enterprise. Governed by the OECD's Guidelines on Transfer Pricing, these are adopted by tax authorities in Europe and more widely: they will continue to apply following the UK leaving the EU.

Tax authorities are expected to focus on ensuring that local entities receive an arm's length reward for their activities. They will test this through a businesses transfer pricing documentation. While small and medium-sized enterprises have an exemption from transfer pricing in the UK, this is not available throughout the EU. The EU side of transactions will need to be compliant even for those companies exempted from transfer pricing risk in the UK.

Businesses restructuring their activities in response to Brexit will need to:

- Collate supporting evidence that transactions undertaken as part of restructuring a group would have taken place on those terms between third parties (including an analysis of realistically available options)
- Ensure that the provision of goods, services and assets is demonstrably at arm's length going forward.

Until now, any double taxation arising from a successful tax authority challenge could be addressed through the mutual agreement process between EU tax authorities. This will only remain available where DTAs are agreed post-Brexit with the appropriate clause.

We can assist you with reviewing your intragroup transactions and proposed group restructuring to determine the transfer pricing risks and how these are best addressed. We can help you to identify, implement and support robust positions.

ASSESS

1. Do you have a transfer pricing policy and documentation in place?
2. Is it a good fit to the reality of your business model?
3. If a change of business structure or model is expected, how should your transfer pricing change?

DIRECT TAX
FOREIGN EXCHANGE AND HEDGING

KEY POINT

Brexit may cause greater uncertainty over foreign exchange movements but preparing accounts in a functional currency other than sterling may reduce that uncertainty.

One of the most significant and immediate outcomes of the referendum in June 2016 was the sharp fall of sterling (to its lowest level since 1985).

Continuing uncertainty around what the post-Brexit economy will look like and the outcome of trade negotiations means businesses without sufficient protection in place could be exposed to significant risk of currency gains and losses.

Businesses can put in place bespoke operating and financial hedging operations to minimise their forex exposure or they could consider preparing their financial statements in an appropriate functional currency other than sterling.

A functional currency is the currency used in the primary economic environment an entity operates. This is the environment in which the business primarily generates and spends cash.

UK businesses might be able to reorganise their activities whereby activities denominated in a particular currency other than sterling can be undertaken in a single entity. This should allow the entity to use that currency as its functional currency in order to prepare financial statements in that currency – reducing the entity's exposure to forex movements on its operating and financial activities. There will still be an exposure to currency fluctuations when profits are repatriated and when UK taxes are paid.

ASSESS

1. Whether your business is sufficiently protected against currency fluctuations.
2. Whether using a functional currency other than sterling may help to reduce these risks.

DIRECT TAX
BUSINESS RESTRUCTURING

KEY POINT

If UK businesses incur substantial customs duty and/or VAT liabilities as a result of Brexit which cannot be mitigated, they should consider restructuring their business.

Restructuring a business often involves closing operations in one country and starting new operations in another country.

Restructuring can be a lengthy and complex process often requiring the movement of people and assets and involving a considerable amount of senior management time. Furthermore, pre-Brexit restructuring review should consider all anti-avoidance measures under UK law (eg the GAAR) and the EU Anti-Avoidance Tax Directive (see **page 45**).

The benefits of restructuring therefore have to be clearly identified and measured from the outset.

Leaving the Customs Union, the subsequent imposition of new Customs/VAT procedures and the additional liabilities that arise from the implementation of those procedures could be significant and a substantial cost for some businesses.

Where additional costs cannot be passed onto customers, UK businesses should consider how these costs can be mitigated by restructuring their operations.

All businesses operate in a complex environment and there is no single restructuring solution that will apply to every business looking to restructure. Each case will need to be considered based on their specific facts and circumstances.

IDEAS

Here are a few of the many reasons why a UK business may want to restructure:

a. Processing businesses, which import from non EU countries, carry out a process in the UK and sell finished goods to EU countries but which cannot mitigate the double tariff charges. The process and selling business may be more profitable based in the EU.

b. Processing businesses, which import from non EU countries, carry out a process in the UK and sell finished goods to EU countries may be able to mitigate tax charges by relocating head office functions to another EU country (eg Ireland) and using the UK processing facility as a 'toll manufacturing service".

c. Retailers importing finished goods from outside the EU may consider setting EU based distribution facilities.

d. Businesses benefitting from EU-wide regimes such as the Marketing authorisations (pharmaceutical) and EU passporting regulations (financial services) need to consider remodelling their structure to obtain UK and EU-wide authorisations, passports etc to enable competitive access to the EU market.

e. Businesses receiving dividends from a country which has a WHT on dividends which is not reduced to zero under the relevant DTA.

f. Businesses using the UK as a holding company location for its favourable tax regime and direct access to the EU single market now need to review their structure and assess if they should establish an intermediate EU holding company.

DIRECT TAX
UK EXEMPTION ON DISPOSAL OF SUBSIDIARIES

KEY POINT

Gains on the disposal of shares in trading subsidiaries (including infrastructure and real estate companies) may be exempt from tax.

The UK substantial shareholding exemption (SSE) provides that gains made by UK companies on the disposal of trading subsidiaries are exempt from UK tax. The UK Government intends to relax the qualifying rules significantly from 1 April 2017 (although the legislation has been delayed by the General Election).

For the disposal to be exempt, the UK parent company or group needs to have held 10% of the ordinary share capital in the subsidiary being sold for any 12 month period in the last six years.

The longstanding investor company trading condition has been removed in its entirety.

This is particularly helpful for reorganising UK subgroups of a foreign owned group, as the UK investor company may not have ready access to information about the wider group necessary to meet the old condition.

A new exemption is proposed for institutional investors to help alleviate a charge where the company being sold carries on an infrastructure and or real estate business, which would otherwise not be regarded as a trading activity.

The UK SSE rules are designed to promote the UK as being 'open for business' and enhance an already favourable tax regime for businesses to establish and manage their trading businesses, infrastructure projects and real estate activities. If the operational consequences of the UK leaving the EU mean businesses need to restructure their group to remain competitive or to access markets, it is now more likely that SSE will be available to reduce the associated tax costs.

ACTION

When developing a business model for the post-Brexit environment, businesses should consider holding trading businesses and special purpose entities in the UK.

DIRECT TAX
BUSINESS RELOCATION AND MIGRATION

KEY POINT

Businesses may need to move people, assets and functions as a consequence of Brexit. There are many tax consequences of such moves. Some are obvious, some are not!

SETTING UP OVERSEAS ENTITIES

Moving operations outside the UK may often require setting up a legal entity in the overseas country ie a branch or a company. This can be a long process when compared to the UK process and creating an overseas company often requires more than a nominal amount of share capital to be introduced. The legal and commercial considerations will be very important in deciding what legal entity is set up and the tax consequences of using either entity will also need to be considered.

PERMANENT ESTABLISHMENTS (PE)

UK businesses should also be aware that a taxable presence in an overseas jurisdiction, ie a PE can arise regardless of a legal entity being established in that overseas country. A PE will normally have the same tax consequences as an overseas branch.

A PE is normally created if a fixed place of business exists through which a business carries on its activities and/or a dependent agent has the authority to conclude contracts on behalf of the business.

The definition of a PE is currently being addressed as part of the BEPS Action plan. Once the new rules are adopted into tax laws across the EU, the scope for creating a PE will increase. For example, in future a PE may be created where contracts are significantly negotiated in a country.

TAX CONSEQUENCES

UK tax legislation broadly treats the trading operations of an overseas branch or an overseas company as not taxable in the UK by electing to exempt overseas branch profits and by exempting company's profits under the CFC rules and by exempting dividends received.

Withholding taxes either on remittance of branch profits and or dividends may apply, which may be mitigated under the appropriate DTA. In addition, remittances of income to the UK may need to be more closely monitored by reference to exchange controls and legal procedures - eg it may only be possible to pay dividends at certain times coinciding with the approval of the accounts.

TRANSFER PRICING

Once a UK business starts to transact with an overseas entity, the prices charged between each entity must comply with each jurisdictions **transfer pricing** policies – these are designed to ensure that transactions between connected persons are conducted at prices equivalent to prices charged between third parties. **Transfer pricing** applies to all transactions between connected persons ranging from the provision of finance, intellectual property and goods and services.

While the UK has some de minimis rules before businesses need to apply **transfer pricing**, most other countries do not. Therefore, UK businesses may find themselves in a position whereby they have to comply with transfer pricing regulations overseas but not in the UK.

CONTINUED

DIRECT TAX
BUSINESS RELOCATION AND MIGRATION

TRANSFERRING ASSETS OVERSEAS

The transfer of any UK asset is normally a disposal for UK tax purposes and a transfer between connected parties is normally deemed to be made for market value. Transferring a bundle of assets may indicate part or all a trade has been transferred and therefore intangible assets including 'goodwill' need to be identified to understand what assets have been transferred.

Valuation of assets may be required for UK tax purposes - particularly for intangible assets which are not included on the balance sheet. Gains arising on asset transfers may be capable of being deferred under UK tax law. However, deferral can be dependent on transfers taking place between entities resident in two EU countries. Therefore, the timing of such transfers will be important.

ANTI-AVOIDANCE TAX DIRECTIVE (ATAD)

ATAD will implement the OECD's BEPS recommendations on a EU-wide basis – including measures on CFCs, anti-hybrid rules and tax interest deductions. In addition, ATAD will implement new exit tax measures (eg when a company changes its tax residency or transfers a PE) and a general anti-avoidance rule to cover gaps in domestic measures. All EU wide, UK and local member state anti-avoidance legislation may have an impact on business relocation and migration plans so should be considered carefully as plans are drawn up.

MOVING SENIOR PEOPLE

Moving senior people can result in significant business tax consequences, such as:

a. Creating a PE in an overseas country
b. Changing the tax status of a company
c. Amending processes which effect **transfer pricing** policies.

CHANGING A COMPANY'S TAX STATUS

As well as the many people issues that arise from **relocating your workforce**, moving people who are directors of a company could lead to a change in the tax resident status of the company. Residence status is often determined by the place of management of the company (eg under DTA tie breaker clauses) and, therefore, where directors make decisions is important in establishing the place of management.

Changing a company's tax residence can give rise to an 'exit charge' on any assets transferred. If certain conditions are met it is possible to defer the exit charge where a subsidiary company migrates but advice should be sought at the planning stage.

For companies that are seeking to operate under a different commercial code to the one they were originally registered under requires a change in the company's domicile. Currently, the European company or 'SE' offers UK companies an opportunity to change their domicile. It is currently unclear whether this option will remain available post-Brexit

MANAGING TAX CASH FLOWS

Profits arising in different jurisdictions will affect the effective rate of tax and ultimately the cash leaving the business. Losses arising in one country are unlikely to be relieved against profits arising in another country. This could lead to a higher effective rate of tax, more tax cash flowing out of the business and trapped losses.

ACTION

If you are thinking of moving people, assets and businesses across borders as a result of Brexit, this is likely to alter your tax profile. Seek advice before you make the move.

DIRECT TAX
CONTROLLED FOREIGN COMPANIES

KEY POINT

Businesses intending to relocate activities or assets from the UK after Brexit need to establish if a CFC charge could be triggered.

The UK CFC rules are rules designed to prevent tax avoidance by the diversion of UK profits to overseas jurisdictions.

If profits of overseas companies (or overseas branches where the branch profits election has been made) fall within the rules they can be subject to UK corporation tax on the controlling UK parent company.

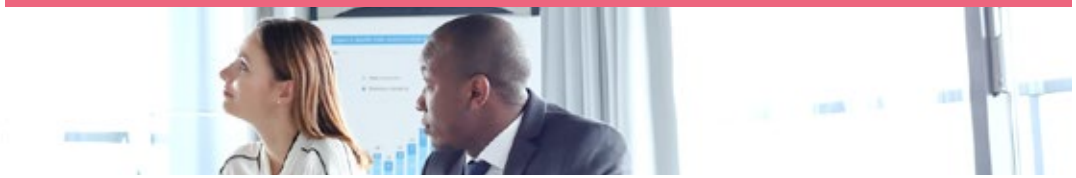
'Control' is widely defined to include majority owned (50% plus) subsidiaries and 40% joint ventures as well as companies treated as controlled under FRS2 (regardless of any requirement to consolidate the subsidiary).

All controlled non-resident companies are CFCs irrespective of the level of tax in the overseas jurisdiction but there are a wide range of exemptions from the rules. Where no exemption applies, the 'diverted' profits arising within the overseas subsidiary or branch may be apportioned to the UK shareholding company and taxed accordingly. However the rules only apply if profits have been artificially diverted away from the UK. Where the CFC rules do not apply, the diverted profits tax may still apply where artificial structures or actions would otherwise result in profits falling outside the UK tax net.

Taking into account the wide-ranging exemptions that can be claimed many groups should be able to organise their post-Brexit structure and activities to satisfy UK legislation.

ACTION

1. Review relocation plans for activities or assets to establish if there is a risk of falling into the UK's CFC regime.
2. Consider alternative commercial structures to mitigate this risk.



PEOPLE ISSUES
IMPACT OF RELOCATING YOUR WORKFORCE

KEY POINT

There are a number of people issues to consider if any decision is made to relocate your workforce.

You may be considering relocating your business operations to a different country (eg into a remaining EU member state or into the UK), whether for practical, regulatory or other financial reasons.

The relocation of workforces creates a number of issues employers will need to consider:

- Comparison of tax rates across the two jurisdictions
- Consideration of tax policies an employer can implement if they want to make sure their employees are not worse off from a net income perspective
- Determination of employer and employee social security payable
- Identifying payroll and other compliance obligations for both the employer and employee (tax returns, registrations with tax authorities etc)
- Currency policies and how to deal with paying employees
- Pay benchmarking and cost of living allowances
- Visa and immigration issues
- Relocation assistance and costs
- Housing – is it comparable in terms of standard and cost?
- Schooling - is it comparable in terms of standard and cost?
- Healthcare - is it comparable in terms of standard and cost? Will employees need private medical cover?
- Understanding of the culture / living environment and where difficulties might arise either in doing business in such a location or for employees and their families to settle.

BDO can help run scenario planning so you can get a full picture of what any such move will mean in terms of costs for you and the impact on your employees.

ACTION

1. Identify the tax and social security costs of any move for both the employer and employee.
2. Consider any additional benefits you might need to provide employees moving abroad.

PEOPLE ISSUES
SOCIAL SECURITY

KEY POINT

Post-Brexit, the UK may no longer be covered by EU social security regulations.

All 31 member states of the EEA, plus Switzerland, have agreed a common social security policy. The purpose of these regulations is to protect equality of treatment and social security benefits and healthcare rights for workers and their dependants regardless of where they work or live in the EEA. Currently, where EU regulations conflict with UK domestic social security law, the EU regulations take priority.

Any individual covered by the EU regulations will only be subject to the social security legislation of a single member state at any particular time - so there can be no double contributions on the same income. The basic rule is that contributions are paid where work is performed. However there are special rules for employees working in more than one member state at the same time and workers who are posted temporarily between member states with the aim of ensuring continuity of home country social security coverage.

Employers will, therefore, be concerned about how Brexit potentially affects employer and employee social security costs for their inbound and outbound mobile workforce, multi-state workers, commuters and business travellers. Already we have seen that Germany has stated that they will not issue A1 certificates beyond 29 March 2019. Employees are also likely to be concerned about the impact on their access to healthcare and social security benefits. If employees are no longer able to access a host country's healthcare, either under a S1 certificate or a European Health Insurance Card (EHIC), this will lead to additional worries as well as costs.

We can help you navigate these issues and provide a risk assessment covering your current social security costs and the impact of potential changes in rules. This will compare your current social security costs against potential costs on a risk basis. We can also help undertake an assessment of the social security costs if you have any plans to move your workforce or set up in new locations.

ACTION

1. Review your mobile workforce (including secondees, commuters, multi-state workers and business travellers) to identify who may be affected by any change in legislation.
2. Consider the viability of current and future secondments.

PEOPLE ISSUES
IMPACT ON EMPLOYEE PENSIONS

KEY POINT

Cross-border pension schemes and workers may no longer be governed by EU legislation.

Currently pension schemes are, in the main, the responsibility of the individual EU member state. However the EU has a regulatory framework which covers pensions and in particular: cross-border co-ordination of social security; setting up an internal market for company pension schemes and protection for scheme members; minimum guarantees in case of the insolvency of the sponsoring employer; and anti-discrimination rules.

The rules currently allow workers across different EEA countries and Switzerland to aggregate state pensions built up across their working lives and make one application to the country in which they reside during retirement. Without this system in place, UK or EEA nationals who have spent periods living and working in other member states would be disadvantaged with additional administration and potentially find their pension rights significantly reduced.

European regulators have also agreed service level agreements for the cross border application process. Pension schemes located in one EU state need to apply for authorisation and approval to accept contributions from employers employing members who are subject to the employment law of another EU state. There is also the requirement for cross-border pension plans to be fully-funded at all times.While some of the EU rules, most notably the requirement for cross-border occupational pensions to be fully funded, are onerous, it is also important for UK companies to have ready access to investment opportunities and service providers in the EU.

It is possible that much of the existing EU-derived legislation will remain in place, mainly because it was designed to protect members. Existing regulations will continue to apply until changed specifically by the UK Government. The Pensions Regulator has been clear that pension scheme trustees should avoid 'knee jerk' reactions to market volatility although it is recommened that their position is reviewed to understand risks of the scheme's investment strategy and the employer's legal obligation.

Finally it is important to note that the taxation of pension contributions or pay outs is determined by reference to either domestic tax rules or double taxation agreements in existence between the countries concerned. Therefore, Brexit should have no impact on the tax treatment of pension contributions or pension payments.

ACTION

1. Review the pensions you offer and identify any scheme members working in a different EU member state.
2. Consider whether you have employees moving between the UK and other EU member states who will be affected by any shift from the current EU pension directive.

PEOPLE ISSUES
SHORT TERM BUSINESS VISITORS

KEY POINT

Brexit is likely to increase the number of internationally mobile employees but there may be compliance and reporting obligations for short term business visitors.

National tax authorities across the globe are now increasingly scrutinising internationally mobile employees – often viewing this as an area of likely non-compliance and a soft target to increase their tax take by applying penalties.

Some authorities (including the UK) now insist on compliance reporting of business traveller populations on an annual basis and employers signing an agreement to track them. With the onset of the BEPS, the requirement for country-by-country reporting and the movement to more closely align transfer pricing practices with value creation, employers face an increasing need to monitor the whereabouts of their employees.

In the UK, companies with short term business visitors are required to sign up to an agreement with HMRC and track their visitors. There is a requirement for annual reporting on those visitors that are eligible for inclusion in a report on the basis that they qualify for DTA protection for any earnings attributable to UK workdays. If you have business visitors but do not have an agreement with HMRC, PAYE should be operated for these individuals (unless an NT code is in place).

BDO can help you further understand your obligations, provide guidance on tracking, monitoring, preparing and submitting any necessary applications to tax authorities. We can also provide BDO QuickTrip - our business traveller app and platform which is designed to help HR and Finance teams manage the increasing number of tax and immigration challenges for their business traveller communities.

BDO QuickTrip enables employers to track their business travellers' international movements, it includes an alert system for impending tax events and enables employers to produce reports to manage their compliance obligations.

ACTION

1. Identify your business travellers.
2. Review your systems for tracking business travellers and meeting all necessary compliance and reporting requirements.

PEOPLE ISSUES
IMMIGRATION AND EMPLOYMENT ISSUES

KEY POINT

Brexit challenges the EU pillar of free movement of persons between the UK and other member states.

After Brexit, it is expected that employees' ability to transfer between the UK and the other EU member states will be restricted. Employers will need to consider the impact on EU nationals (or UK nationals in the case of non-UK employers) currently working in their business and their recruitment policies.

Your people are your greatest asset. In a communications vacuum, employees will fear the worst and, therefore, employers will need to review the potential impact and give what reassurances they can.

It is expected that the Brexit 'divorce settlement' will include some special rules for certain groups of workers: it is possible that EU workers will be subject to the same conditions and restrictions as migrant workers from outside the EU. Similarly, people from the UK who want to work in other member states may need a valid work permit or a long-term residence permit to be able to do so.

Although the 'Great Repeal Bill' will import EU directives into UK law on Brexit, over time, British lawmakers will then be free to deviate from European legislation and the rulings of the European Court of Justice. This may affect (amongst others):

- Working time
- Temporary staff
- Transfer of business / collective redundancy
- Family-friendly measures, including pregnancy and parental leave
- Minimum wage
- Stipulations regarding equality and the prohibition of discrimination
- Trade under the WTO rules.

However, it is important to note that in many cases UK regulations have greater scope and offer more protection than the European minimum standards.

ACTION

1. Review employee contracts and consider what action may be needed to ensure that non-EU and EU talent is protected and retained.
2. Review your UK employees working in the EU and consider similar actions.
3. If you currently use seasonal workers from within the EU, what are the cost implications for your business should free movement of labour cease?

WITHHOLDING TAX MATRIX

The UK is an attractive location for holding companies and, for many reasons, it is likely to remain an attractive location for holding companies after the UK has formally left the EU.

- **This transaction flow will be impacted by Brexit.** Payments by EU companies to the UK recipient are likely to result in further cost to the recipient equal to WHT as dividends are generally exempt in the UK.
- **The impact may be mitigated by further action.** Payments by EU companies to the UK recipient may result in WHT to the recipient. If the WHT can be reclaimed against UK taxes, a cash flow cost will arise from the timing difference.
- **There should be no impact from Brexit to this transaction flow.** Payments by a EU company to the UK recipient should not result in any further cost.

Country	Dividends	Interest	Royalties
Austria	If shareholding is 25%+, 5%; otherwise WHT is 15%		Shareholding 50%+, 10%; otherwise 0%
Belgium	If shareholding is 10%+, 0%; otherwise WHT is 10%/15%	0% / 10%	5%
Bulgaria	If shareholding is 25%, 0%; otherwise WHT is 5 or 15%	If shareholding is 10%+, 0%; otherwise WHT is 5%	
Croatia	If shareholding is 25%+, 5%; otherwise WHT is 10%/15%	5%	5%
Cyprus			5% for film rights; otherwise 0%
Czech Republic	Shareholding 25%+, 5%; otherwise WHT is 15%		0%/10%
Denmark	If shareholding is 25%+, 0%; otherwise WHT is 15%		
Estonia	If shareholding is 25%+, 5%; otherwise WHT is 15%	10%	
Finland			
France	If shareholding 10%+, 0%; otherwise WHT is 15%		

Rates and rules as at June 2017.

WITHHOLDING TAX MATRIX

Country	Dividends	Interest	Royalties
Germany	Shareholding 10%+, 5%; otherwise WHT is 10%/15%		
Greece	15%		
Hungary	If shareholding is 10%+, 0%, otherwise WHT is 10%/15%		
Ireland	If payable to a company resident in a treaty company, 0%; otherwise WHT is 5%/15%		
Italy	If shareholding is 10%+, 5%; otherwise, WHT is 15%	10%	8%
Latvia	If shareholding is 25%+, 5%; otherwise WHT is 15%	10%	5%/10%
Lithuania	If shareholding is 25%+, 5%; otherwise WHT is 15%	10%	5%/10%
Luxembourg	If shareholding is 25%+, 5%; otherwise WHT is 15%		
Malta			
Netherlands	If shareholding is 10%+, 0%; otherwise WHT is 10%/15%		
Poland	If shareholding is 10%+ for 2 consecutive years , 0%; otherwise WHT is 10%	5%	5%
Portugal	If shareholding 25%+, 10%; otherwise WHT is 15%	10%	5%
Romania	If shareholding is 25%+, 10%; otherwise WHT is 15%	10%	10%/15%
Slovak Republic	If shareholding is 25%+, 5%; otherwise WHT is 15%		10%/15%
Slovenia	If shareholding is 20%+, 0%; otherwise WHT is 15%	Shareholding 20%+, 0%; otherwise WHT is 5%	5%
Spain	If shareholding is 10%+, 0%; otherwise WHT is 10%/15%		
Sweden	If shareholding is 10%+, 0%; otherwise WHT is 5%/15%		

Rates and rules as at June 2017.

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