

Brexit and the Impact on Tax

While it is still not clear how the UK's departure from the EU is going to look, it is important for organisations to plan for a no-deal Brexit, in which the UK leaves the EU without a withdrawal agreement.

In principle, taxes most affected by a no-deal Brexit are those where the rules are imposed at EU level – such as customs duties, VAT and certain information sharing rules. The exact impact on an organisation will depend largely on the type of organisation in question, but this note aims to give a brief overview of some of the main tax changes to UK organisations in the event of a no-deal Brexit.

What will happen if the UK Government agrees a deal?

- During any agreed transition period (currently end of 2020 unless otherwise agreed), the UK will be treated as an EU Member State and a member of the Customs Union
- The same VAT and Customs laws and procedures will apply to all UK/EU transactions
- Assuming that the EU and UK agree the relevant trade agreements within the transition period, the transition period will end and VAT, customs, withholding tax and other regulatory rules within the newly agreed treaty shall apply the day after the transition period has ended

And if there is no deal?

- If the UK crashes out of the EU without a deal, all EU laws applicable to the UK will become UK law under the *European Union (Withdrawal) Act 2018*
- The UK will no longer be a member of the Single Market or Customs Union
- World Trade Organisation (“WTO”) rules shall set the baseline for access to EU and UK markets.

What does a no-deal Brexit mean in respect of changes to VAT?

For most UK organisations there will be no change to VAT and the VAT regulations as they relate to wholly UK transactions will remain unchanged, save for the following few changes:

Goods imported from the EU

Goods will be subject to the same regime as currently applies to imports from non-EU countries, but there will be a change to the timing of payment of Import VAT. This will be included on the relevant VAT return rather than paid at the time of import.

Goods exported to EU consumers

Sales of goods to retail customers will be zero rated, subject to the normal rules, but import VAT and duty will be due in the country of arrival.

Goods exported to EU businesses

Sales of goods to business customers will continue to be zero rated, with import VAT and duty usually payable by the party identified as the importer.

Selling goods from a warehouse in the EU

Current EU rules will still apply and require a UK business to be VAT registered in any country where they hold a stock of goods for sale from that warehouse.

Services to EU customers

The place of supply rules for services will continue to apply with some limited exceptions but if selling digital services to EU non-business consumers, organisations will have to register to use the non-union Mini One Stop Shop (MOSS) scheme to report that VAT.

Services generally

The key is to understand the place of supply. As a general rule, where the supply is to an EU business, the place of supply is where the recipient belongs, and where it is to an EU consumer, the place of supply is where the supplier belongs. There are a number of exceptions to this and a UK supplier into the EU may need to register in one or more member states.

How will a no-deal Brexit effect EU wide systems?

As a member of the EU, the UK has relied on various systems to facilitate the exporting and trading within the Customs Union and any form of 'no deal' Brexit will mean that these systems will no longer be available:

EU VAT refund system

UK organisations will continue to be able to claim refunds of VAT from EU member states but in future they will need to use the processes for non-EU organisations. These processes vary across the EU and organisations will need to use the processes in the individual countries where they incur costs and want to claim a refund. It should be noted that the paperwork and the time limits for making claims are likely to be different to the current position.

TOMS and MOSS

British organisations may no longer be able to part of the EU wide *Tour Operators Margin Scheme* (TOMS), which currently enables them to account for VAT on supplies, without having to register and account for VAT in every EU country in which the services and goods are enjoyed.

The *Mini One Stop Shop* (MOSS) VAT system that applies to electronic services supplied to EU based customers will most likely not be available either. This means that organisations may need to register for VAT in the other EU states as MOSS will no longer allow UK businesses to account for VAT in the EU through a UK VAT registration.

What about trading with the EU if there is no Brexit deal?

- The UK is a member of the WTO in its own right, although the European Commission represents EU member states collectively within the WTO framework. Although a WTO goods schedule lists a member's agreed maximum tariff levels (known as **bound tariffs**) on particular products, the customs duties that a member actually charges on imports (known as **applied tariffs**) do not appear in a WTO schedule. The EU's 'applied' tariff, which all member states must apply to goods imported from non-EU countries, is known as the "common external tariff". The UK must continue to apply the EU's common external tariff until exit day in a no-deal scenario or, if the UK and the EU conclude a withdrawal agreement, until the end of the post-Brexit transition period.
- A WTO member may not impose custom duties or 'applied tariffs' exceeding the bound tariffs. Although, under WTO rules, a member may apply lower tariffs, this may only be done on the "most favoured nation" (MFN) basis, which means that the lower rate would have to be extended to all other WTO members. There are exceptions to this, such as where there is a free trade agreement between the trading members or they are part of a customs union

such as the EU where, as noted above, the UK currently must apply the EU's common external tariff to imports from third countries unless those countries have a free trade agreement, or customs union arrangement, with the EU.

- Regardless of the nature of any agreement with the EU, at the point of Brexit, the UK will need to establish its own WTO goods schedules, which will apply to trade with other countries in the absence of a free trade agreement. The government has indicated that it will, as far as possible, adopt schedules that replicate its current obligations under EU law.
- If the UK does not conclude a withdrawal agreement with the EU before the Article 50 extension period has transpired (no deal) or does not conclude a free trade agreement with the EU before the end of any agreed transition period, UK trade with the EU will be on WTO terms. Therefore, the EU will apply its MFN rates to goods imported into the EU from the UK.
- The current Customs & Excise rules applying to non-EU/EEA territories will also apply between the UK and EU and customs duties will be imposed on goods entering the UK.
- Customs declarations and safety/security declarations will be required for the movement of goods.

Any other considerations?

- The Merger Directive, Parent and Subsidiary Directive, and Interest and Royalty Directive will cease to apply to UK organisations. As a result, royalties and interest paid by UK organisations, and dividends, interest and royalties received by UK organisations may become subject to withholding tax and claims under Double Tax Treaties should be made.
- For those organisations or individuals who own boats or pleasure craft located in the EU or who intend to take them to or out of the EU, the Royal Yachting Association has provided a helpful analysis of the likely outcomes in the event of a no-deal Brexit. See <https://www.rya.org.uk/knowledge-advice/current-affairs/Pages/no-deal-Brexit-scenario.aspx>. The basic position is that if the boat is in the EU at the date the UK leaves the EU, it can be used in the EU following that date without import VAT being payable. If it leaves the EU, re-entry into the EU will then be treated as an import and at that point there is a risk that VAT import duty is then payable. However, relief from the import VAT may be available under the Temporary Admission rules ("TA"), which state that the boat must leave the EU after 18 months though it can then re-enter the EU and another 18-month period of TA will begin. Specialist VAT advice must however be taken by anyone who currently owns a boat in the EU or who is thinking of taking one into or out of the EU. This is particularly the case if the boat is of a size that would allow it to sail outside EU territorial waters on a voyage and then re-enter the EU.

For further guidance on the topics discussed above, please see the below link to guidance from the government.

<https://www.gov.uk/government/publications/vat-for-businesses-if-theres-no-brexit-deal/vat-for-businesses-if-theres-no-brexit-deal>

Each organisation has its own different tax requirements, and you should take focused advice from a Tax specialist. If you have any questions, Gateley Legal's Tax team will be happy to help.