



Payroll and Tax Matters to Consider in the event of a 'No-Deal' Brexit

Introduction

The Government has initiated a publicity campaign urging businesses to prepare for the possibility of a no-deal Brexit. The uncertainty will continue until either the UK and the EU agree the terms of the withdrawal agreement or there is a parting without one. While the possibility of a no-deal Brexit looms we have summarised below some pressing issues which would need to be considered.

VAT - Assess your supply chain

As of 31 October 2019, after midnight, goods may be blocked at the UK border. A no-deal Brexit, in principle, implies that as from that date (considering there may not be a transition period or an extension), goods that are being dispatched from an EU country to the UK will be subjected to export procedures in the relevant EU country and subsequent import procedures in the UK. Apart from the administrative burden businesses will have to face, import duties may be due to be paid and therefore resulting in extra costs. Similar procedures will apply in the reverse situation where goods are being dispatched from the UK to an EU country.

If you are an importer or an exporter, you should have an [EORI number](#). HMRC have issued these automatically, but if you have not received one, please follow the link below on simplified transitional import procedures.

The impact of a no-deal Brexit may be less substantial for the service industries, unless staff are being sent to the UK for a certain assignment. However, invoicing and reporting procedures will in any case need to be adjusted as the services rendered will no longer be considered to be 'intra-Community services' for VAT purposes and therefore the Reverse Charge for VAT no longer applicable. Naturally, invoicing and reporting procedures also need to be assessed in case goods are being dispatched from and to the UK.

Businesses can register for simplified transitional import procedures in a no-deal Brexit using the following link: <https://www.gov.uk/guidance/register-for-simplified-import-procedures-if-the-uk-leaves-the-eu-without-a-deal>



Importation and Exportation of goods

The first thing that importers and exporters will need to do is classify the products that they will be exporting or importing to see if duties apply under the World Trade Organisation rules and then businesses will need to check if they should be registered for VAT. A UK EORI number will also be required.

For imports into the UK, non-UK exporters will need to appoint an agent in the UK to make the appropriate declarations on its behalf. Rather than submit these at entry into the UK, which is likely to lead to delays in delivery of the goods, businesses may wish to consider applying for Transitional Simplified Procedures (TSP) which would enable its goods to be imported without a customs declaration being made to HMRC until at least the 4th day of the month following importation (we are hoping the period will be extended for an initial period but do not have confirmation of dates as yet). Under TSP, the company would keep its own record (probably a spreadsheet) of what is being imported. The information they will need to record is:

- their unique reference number for the consignment
- a description of the goods and the commodity code
- the quantity imported
- purchase invoice numbers
- the customs value
- delivery details, including carrier and date of arrival

They must subsequently ask a customs agent to complete the actual customs entry, the number and date of which should be added to the spreadsheet. By giving the haulier its EORI and TSP authorisation number, the haulier can import the goods without stopping for customs clearance.

We assume that Exporters will have to follow similar procedures for the supply of goods into the EU. If you are dealing with EU customs then you may need an EU EORI number which is obtained from the customs authority in the EU country you first conduct trade with or you request a customs decision from.



Grants for businesses completing customs declarations

The Government have announced that £16m funding is now available to help businesses train staff in making customs declarations, and to help businesses who support others who trade goods to invest in IT.

The Grant can be used to support:

- training costs for businesses who complete customs declarations, or who intend to in the future; and
- funding for IT improvement, which is available to small and medium sized employers who are currently involved in trade as an intermediary

Further details and guidance can be found by accessing the following links:

<https://www.gov.uk/government/news/16-million-funding-boost-to-support-thousands-more-customs-experts>

<https://www.gov.uk/guidance/grants-for-businesses-that-complete-customs-declarations>

Companies group structures and potential double taxation issues

The business impact of a hard Brexit on a group's direct tax position will primarily affect withholding taxes on intercompany dividend, interest and royalty flows between UK and EU companies. Where these payments are currently exempt from withholding tax under local implementation of EU directives in both countries (with limited administrative burden), this may no longer be the case after a no-deal Brexit. Withholding taxes may not immediately apply, but in the absence of the EU directives, nothing prevents either government from abolishing its domestic withholding tax exemptions and/or renegotiate the EU contracting states/UK double tax treaty. Even if the current treaty exemptions remain effective, obtaining a treaty exemption is generally considered to be more aggravating and time consuming compared to their domestic equivalent.

Reviewing your group structures thoroughly, particularly focussing on holding and intra-group banking/financing activities and/or ownership of royalty generating intellectual property is therefore highly recommended to avoid future withholding tax leakage burdens.

It is probable that post a no-deal Brexit, European tax dispute resolution mechanisms (EU Arbitration Convention and last year's Council Directive 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union) may no longer apply to avoid double taxation with the UK. Instead, taxpayers may have to fall back on the mutual agreement procedures under the treaties which do not necessarily impose a binding obligation on the contracting states to eliminate the double taxation (to be determined on a country by country basis).

Groups of companies should carefully review their tax risk profile and expected outcome of double taxation disputes involving the UK.



Workforce

A no-deal Brexit will mean that the UK will no longer be covered by EU social security regulations.

In a no-deal Brexit scenario where the UK does not join the EEA, issues will arise regarding the social security rights of workers (inbound and outbound mobile workforce, multi-state workers, commuters and business travellers), both for the past (already-acquired rights) and the future (risk of discrimination), as the equality of treatment, social security benefits and health care rights shall no longer be protected.

Currently there are no guarantees in relation to avoiding double social security contributions for employees working in the UK and one or more EU member states, unless the UK has signed bilateral social security agreements with each of the individual EU member states. There are a number of 'old' Bilateral Social Security Agreements concluded between the UK and some EU Member States before the UK accessed the European Union in 1973. These agreements, in theory, could be "revived", however, they would not be modernized.

The current Portable A1 certificates may no longer be valid in a no-deal scenario.

The UK would be treated as a non-EU country and consequently, would lose all the benefits provided by the EU legislation, including the right to request and obtain an A1 certificate for their posted workers, cross-border workers, and business travellers. Instead, the national social security legislation of each individual EEA Member State will dictate how social security compliance should be guaranteed whether exemptions apply, or if dual social security contributions will be due.

These changes may lead to employers having to consider the wording of current policies and assignment letters. At present, employees have the opportunity to remain in their home country social security system while on assignment and be exempt from local social security contributions, but this may not be the case in a no-deal Brexit scenario.

If the end date on the A1 Certificate goes beyond Brexit day, employers will need to contact the relevant EU / EEA or Swiss authority to confirm whether or not their employees need to start paying social security contributions in that country from that date.

If your employee is a UK or Irish national working in Ireland, their position will not change after Brexit as they are covered under the international agreement signed by the UK and Ireland in February 2019.



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

UK or EEA nationals who have spent periods living and working in other member states would be disadvantaged in case of a 'no-deal' Brexit due to the additional administration of having to apply for their pension in several states instead of just their state of residence. They could also potentially find their pension rights significantly reduced.

Free movement of persons between the UK and other Member States will be restricted

Employers will need to consider the entity requirements for their employees working in the UK and in the EU. It is possible that EU workers in the UK 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 EU member states may need a valid work permit or a long-term residence permit to be able to do so.

EU, EEA or Swiss citizens and their families can apply to the EU Settlement Scheme to continue living in the UK after 30 June 2021. If the application is successful, they will [get either settled or pre-settled status](#). The deadline for applying is 30 June 2021. [Which status you get](#) may depend on when you apply.

If the UK leaves the EU without a deal then affected citizens will need to be living in the UK before it leaves the EU to apply. The deadline for applying will be 31 December 2020.

UK employment and social security law may deviate from European legislation and the rulings of the European Court of Justice

The working time regulations, temporary staff, redundancy, family-friendly measures, including pregnancy and parental leave, minimum wage, stipulations regarding equality and the prohibition of discrimination are some of the areas which may be affected in the case of a no-deal Brexit scenario.



Personal tax issues

The tax rules governing internationally mobile employees or private individuals who receive foreign source income are not directly imposed by the EU but have been written down in bilateral tax treaties between independent countries. Those are not affected by Brexit.

However, based on the 4 fundamental freedoms included in the treaty of Rome, the ECJ has adopted extensive jurisprudence aiming to ensure that EU countries will not enforce stricter (tax) rules on residents of EU countries than on their own residents or introduce tax rules that are discriminatory against foreign residents.

A no-deal Brexit will lift the protection against unequal tax treatment that UK residents currently have in the other EU countries where they work. Likewise, EU residents working the UK, will no longer be protected by any discriminatory tax rules the UK may impose. For example, the availability of the tax-free personal allowance for income tax and the annual exemption for capital gains tax, which are currently available to non-resident EU national taxpayers.

In such a scenario, companies operating a tax equalisation agreement may need to seek advice.

Data protection

If the UK leaves the EU without a deal, the individual EU states will become a third country. This means UK organisations and individuals that process or transfer the personal data of EU citizens from the 27 EU states to the UK may need to revisit their data protection policies to continue the free flow of data from the EU to the UK.

Legal matters

Businesses and individuals will need to review all contracts to ensure that they are compliant in the UK and in the EU.

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