

## UK: Brexit Withdrawal Agreement, future trading relationship, immigration and VAT implications

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### Withdrawal Agreement ratification

On 24 January 2020, the Withdrawal Agreement covering the withdrawal of the United Kingdom (UK) from the European Union (EU) was signed by Boris Johnson for the UK, Ursula von der Leyen for the European Commission and Charles Michel as President of the Council of the EU. On 29 January, the European Parliament ratified the Withdrawal Agreement. This was the final legal step in the Brexit process and the UK will leave the EU at 11pm on 31 January 2020. From this date, the UK will enter a transition or implementation period lasting until 31 December 2020, during which it will need to comply with EU rules and laws.

The EU will now send a diplomatic note to more than 160 countries with whom the EU has international agreements, notifying them that the EU will treat the UK "as a Member State of the Union and of Euratom for the purposes of [their] international agreements" until the end of the transition period and effectively asking them in return to treat the UK as a Member State until the end of the transition period.

As noted, under the terms of the Withdrawal Agreement, the UK must comply with all obligations under EU agreements (including agreements on aviation and security as well as trade deals), however, the Withdrawal Agreement is only binding between the EU and the UK. Non-EU countries could decide not to treat the UK as part of the EU. Press comments have suggested that both EU and UK officials do not believe partner countries would seek to do this, particularly as the transition period is so short.

## Reliance on EU tax directives

Article 127 of the Withdrawal Agreement says that unless otherwise provided in this Agreement, EU law shall be applicable to and in the UK during the transition period and that any reference to Member States in EU law, including as implemented and applied by Member States, shall be understood as including the UK. This means that the EU tax directives, which apply between Member States, continue to apply to the UK and that the UK falls within the directives as it is treated as a Member State.

Once the transition period ends, UK recipient companies, unless a specific agreement is reached with the EU, will no longer be able to benefit from the directives in respect of payments made from Member States. Instead, they will need to rely on the UK's double taxation agreements (DTAs) with individual Member States to limit the domestic withholding taxes that can be levied by those Member States. HM Revenue & Customs (HMRC) is considering representations on the need to negotiate new arrangements for those cases (such as Italy) where the current DTAs do not provide for a complete exemption from withholding taxes.

However, in respect of interest and royalty payments made from the UK, HMRC has issued guidance which confirms its view that, although the EU directives will not be available, there will still be relief from UK withholding tax on interest and royalties under UK domestic law. This is due to the wording with which the EU interest and royalties directive (IRD) was implemented in UK law and the payments would still need to comply with the ownership conditions set out in the IRD. It would of course be open to the UK Government to amend the legislation post-Brexit. As the UK does not apply withholding tax on dividends, there was no need for specific UK legislation to implement the EU parent/subsidiary directive.

## Negotiations on future trading arrangements

The relationship that the EU and UK will have following the end of the transition period remains subject to negotiation. In early February, both the EU and the UK are expected to publish their negotiating positions for the future relationship, although it is suggested that negotiations will not commence until 3 March 2020, given the need to get agreement from all Member States on the negotiating mandate. There is some debate about whether 11 months (or in practice 8 or 9 months) is sufficient time to agree to a comprehensive free trade agreement. There has also been speculation that separate "bite size" agreements may be possible, which could leave some areas unaddressed on 31 December 2020.

It was reported on 27 January that the EU and 16 other World Trade Organization (WTO) members agreed to work together to develop an interim appeal arrangement that will allow WTO members to preserve a dispute settlement system. This is important for multinationals operating in countries with no bilateral dispute resolution mechanisms in place and may become relevant to UK businesses if a free trade agreement is not reached with the EU (and other countries) by the end of the year.

## Immigration

On 27 January, the UK Government announced the introduction of a new Global Talent visa under which scientists, mathematicians and researchers can be given fast-tracked entry to the UK. It stated that the immigration rules to bring the visa changes into effect will be made on 30 January 2020 and come into effect on 20 February.

On 28 January, the Migration Advisory Committee (MAC) published its report in response to the request from the Government to consider how a points-based immigration system could be introduced in the UK. The MAC recommended the use of a mixed system, consisting of a minimum salary threshold for skilled migrants coming to the UK with a job offer, and a points-based system for those migrants seeking to enter the UK without having a job arranged. Although the Government is not obliged to adopt the MAC's recommendations, the report will be relevant to the forthcoming Immigration Bill, which will set out the UK rules for EU and non-EU migrants once freedom of movement comes to an end.

## Value-Added Tax (VAT)

HMRC has written to VAT-registered businesses trading with the EU and/or the rest of the world, highlighting actions they need to take before the end of the transition period on 31 December 2020. The actions covered include getting a UK Economic Operator Registration and Identification (EORI) number (if they have not already done so) and deciding how to manage customs declarations from 1 January 2021.

The letters also confirm that registration and use of Transitional Simplified Procedures (TSP) for imports from the EU is currently suspended. Clients will not need to use TSP between February and December 2020. In addition, postponed VAT accounting is not currently available during the implementation period.

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