

Brexit: Business considerations to prepare for UK exit and trade between the UK and EU

EY Tax News Update: Global Edition

EY's Tax News Update: Global Edition is a free, personalized email subscription service that allows you to receive EY Global Tax Alerts, newsletters, events, and thought leadership published across all areas of tax. Access more information about the tool and registration [here](#).

Also available is our [EY Global Tax Alert Library](#) on ey.com.

The week of 18 May 2020 has seen Brexit return to the headlines, with the United Kingdom (UK) Government publishing a series of papers and negotiating positions in the Brexit talks with the European Union (EU). Given the UK Government has said that it will not consider any extension to the transition period, the UK is due to leave the EU's Single Market on 31 December 2020.

With only a month left until the high-level stock taking exercise between the UK and EU and one negotiating round, in the week of 4 June, in which to make substantial progress, the pressure is rising on both sides of the Channel. Even if the negotiations are positive, very little time remains until December when negotiations have to be concluded and the terms of the future relationship ratified on both sides.

Affected businesses cannot afford to wait until there is certainty over whether there will be a deal at the end of the year, recognizing that COVID-19 may have even impacted some or all previous mitigation strategies. We know now, for planning purposes, both the limitations on the scope of any deal, based in the UK and EU draft texts, and what no-deal might look like. Therefore, preparations should be made accordingly.

The UK's draft negotiating text

On 19 May 2020, the UK published its [draft negotiating text](#) for the EU future relationship negotiations. This followed publication by the EU of its [draft negotiating text](#) on 18 March. Separately, the UK also published its [Approach to the Northern Ireland Protocol](#) on 20 May.

The UK also published its Most Favored Nation (MFN) Global Tariffs this week, which sets the level of tariffs for products entering the UK from the rest of the world, starting at the end of the transition period (31 December 2020) - a separate update can be found [here](#).

This is, to all intents and purposes, the UK's preferred draft of the future trade deal with the EU. We understand that the text as published was first presented to the EU in March. Notwithstanding the lack of progress made in the three negotiating rounds that have taken place since, the draft still sets out a fair representation of the UK's position. Nevertheless, the final deal, should one emerge, will undoubtedly be a hybrid of the UK and EU texts.

The text is over 400 pages and the UK has also put forward additional texts on fisheries; air transport arrangement; social security coordination plan; civil aviation safety agreement; energy; civil nuclear cooperation; and, law enforcement and judicial cooperation.

- ▶ **The shape of a deal:** Both sides have agreed that the future trade and economic relationship should be modelled on a Free Trade Agreement (FTA). This inevitably means change for businesses who will have to manage reduced access to the EU Single Market.
- ▶ **Precedents from Japan and Canada:** The text follows provisions from other EU trade deals, most notably the Canadian and Japanese agreements. However, in some areas, like the Mutual Recognition of Professional Qualifications and international road transport, the UK side has put forward much more ambitious proposals. It would be unfair to characterize the text as purely precedent based.
- ▶ **Goods:** While both sides have said that they are looking for a "zero tariffs, zero quotas" deal, in recent weeks the UK Government has floated the possibility of a less ambitious deal on tariffs if it would counter some of the EU's demands

on level playing field issues. There are a number of areas where additional barriers will be erected such as the need to prove the "origin" of products from the UK to qualify for the preferential tariff treatment afforded under the proposed agreements as well as the possibility of trade remedies being erected between the two sides.

- ▶ **Border formalities:** Once more, "streamlined customs arrangements" are mentioned but many of the more ambitious ideas that have been put forward by the UK over the past three years have been proposed as "pilot projects" with a longer time frame of four years for trialling.
- ▶ **People:** The UK position around short-term business visits is more comprehensive in its draft negotiating text than that of the EU, although much of exact detail of what activities are permitted while on a business visit is detail that has yet to be released.
- ▶ **Tax:** One area in which there appears to be alignment is on tax governance. The text says that the UK and EU will continue to promote good governance in tax matters and improve international cooperation, including at the Organisation of Economic Co-operation and Development.
- ▶ **Level Playing Field:** This is an area where the UK and EU have put forward the most divergent positions. In response to David Frost, Michel Barnier reiterated this week that "The UK cannot expect high-quality access to the EU Single Market if it is not prepared to accept guarantees to ensure that competition remains open and fair." The most notable area of divergence is on State Aid.
- ▶ **What isn't included:** Some business-critical provisions, most notably on personal data flows and equivalence for financial services, will not be included within the FTA. Instead, the UK will seek adequacy and equivalence rulings from the Commission. The UK has also not put forward any provisions relating to Government Procurement, which would mean UK businesses' access to the lucrative EU Government Procurement market, would be determined by the World Trade Organization's Government Procurement Agreement.

Approach to the Northern Ireland Protocol (the Protocol)

Under the Withdrawal Agreement, the Protocol sets up a Joint Committee tasked with its implementation and working out some of the more technical aspects of the Agreement. The UK Government has now set out its approach to these discussions.

The largest departure from earlier statements is an acknowledgement that there will be new administrative requirements for businesses in Northern Ireland, albeit streamlined to the maximum extent, for goods moving from the rest of the UK to Northern Ireland. These new administrative processes for traders of goods entering Northern Ireland from the rest of the UK will include new electronic import declaration requirements and safety and security information. For trade travelling from Northern Ireland to the rest of the UK, no checks would be required by the UK.

While this additional information is welcome, there are still a number of areas where much more detail is needed by businesses who will have to comply with these new requirements and how they will be administered in practice. It's still not clear whether Northern Irish businesses, in the position of having potentially preferential access to both the EU and British markets but with additional administrative and regulatory requirements, will be better or worse off.

What Brexit means for business

- ▶ In many, but by no means all regards, **the shape of the new "at border" trade barriers - customs requirements and immigration - are now understood, insofar as we assume a third country default status.** Businesses can and should start planning now for the changes that are coming, as most of the new procedures will happen irrespective of the direction that the negotiations take, and their implementation can take months rather than weeks.
- ▶ **For companies primarily concerned with goods movements:** There is now a reasonably complete idea of what the UK/EU FTA will look like. Preparing for additional customs formalities is crucial. Modelling how operations would change under the Canada or Japan EU deals should guide an operation's response.

- ▶ **For services and regulated companies:** Services companies will enjoy considerably less access under an FTA between the UK and EU when compared with the Single Market. For those companies, assessing the impact is critical, and should be done sooner rather than later to give them time to adjust. Our [newly created trade strategy team](#) can help.
- ▶ **There is still considerable uncertainty regarding what "behind border" trade barriers might be erected between the UK and the EU once the transition period ends** - new regulatory requirements, licensing obligations, type approvals, labelling and marking, conformity assessments and so forth.
- ▶ **For businesses in Northern Ireland:** Now is the time to understand what the Protocol means for business, prepare to comply with the new administrative requirements and consider, if any, the input that should be provided to discussions on the implementation of the Protocol.
- ▶ **It is still possible that the two sides could negotiate a substantive trade deal.** However - given the lack of progress to date, the limited amount of time remaining, and the extent of divergence between the UK and EU positions - **it is equally possible that no deal will be reached.**
- ▶ With the exception of Northern Ireland, this would mean that the trading terms between Great Britain and the EU would revert to WTO-terms from 1 January 2021, and the tariffs that would be applied to goods coming from the EU would be those set out in the UK Global Tariff regime.
- ▶ Moreover, even if the UK and EU negotiated the most ambitious and comprehensive FTA in history, it would still fall considerably below the provisions of Single Market membership.

For additional information with respect to this Alert, please contact the following:

Ernst & Young LLP (United Kingdom), London

- | | |
|---|-----------------------------|
| ▶ Sally Jones, <i>Trade Strategy and Brexit Lead</i> | sally.jones@uk.ey.com |
| ▶ Marc Bunch, <i>Global Trade Lead</i> | mbunch@uk.ey.com |
| ▶ Simon MacAllister, <i>Island of Ireland Brexit Lead</i> | simon.macallister@ie.ey.com |
| ▶ Chris Sanger, <i>Tax Policy Lead</i> | csanger@uk.ey.com |
| ▶ Alex Gaunt, <i>Transaction Advisory Services Brexit Lead</i> | agaunt@uk.ey.com |
| ▶ Angela Bowden, <i>Consumer Products and Life Sciences Brexit Lead</i> | abowden@uk.ey.com |
| ▶ Seema Farazi, <i>Immigration Brexit Lead</i> | seema.farazi@uk.ey.com |
| ▶ Antonia Green, <i>Workforce Advisory Brexit Lead</i> | antonia.green@uk.ey.com |

About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

Indirect Tax

© 2020 EYGM Limited.
All Rights Reserved.

EYG no. 003572-20Gbl

1508-1600216 NY
ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, or other professional advice. Please refer to your advisors for specific advice.

ey.com