

January 2021

The EU–UK Trade and Cooperation Agreement

On 24 December 2020, a trade and cooperation agreement (TCA) was signed between the European Union (EU), the European Atomic Energy Community (Euratom) and the United Kingdom (UK), instituting new trade and cooperation framework as of 1 January 2021.

The UK formally ended its EU membership on 31 January 2020, thus entering a transition period running until 31 December 2020, during which it was bound to the EU's rules, in particular in terms of the EU customs union and single market. The purpose of the TCA is to govern relations between the EU and the UK after the end of the transition period.

The summary of the key tax and customs implications of Brexit and the new agreement can be found below.

Changes related to customs procedures

In the absence of an agreement, EU-UK trade relations would have been governed by the rules set out by the World Trade Organization, meaning that the benefits of single market membership would have ceased to have effect. Thus, it would have translated into imposition of new tariffs, ranging from 10 to 30 percent, depending on the type of goods imported.

The TCA provides for zero-tariff access for products traded between the UK and EU and a range of trade facilitation measures.

However, in order to become eligible for zero-tariff access, it will be required to follow the amended EU-UK customs procedures for imports or exports, including new

“rules of origin” measures and VAT (and excise duty, where applicable) settling requirements.

Despite the conclusion of the TCA, Brexit will therefore have a significant impact on companies that sell goods to the UK or provide services to UK entities, buy goods from UK or use services rendered by UK entities, transfer goods through the UK territory or use materials and goods originating in the UK in trade with EU partner countries under preferential regimes.

Exporting and importing goods across the UK-EU border and transferring goods through the UK territory will require, among others, the completion of security and safety declarations, and import and export declarations, or obtaining a special permit to import or export certain goods (e.g. waste, certain hazardous chemicals, genetically modified organisms etc.).

Establishment of the new UK-EU relationship also means the emergence of additional regulations regarding the carriage of goods, supervision and the obligation to submit import and export declarations, including those related to determining the origin of goods.

Changes related to VAT and excise duty

Many of the obstacles to frictionless trade of goods associated with Brexit will relate to VAT accounting. Intra-Community supply of goods will be treated as export and intra-Community acquisition of goods will become import.

This in turn will mean that VAT on goods must be settled in the EU Member State to which the goods are imported from the UK.

Goods exported to the UK will be subject to a zero VAT rate in the EU but bound by the local VAT requirements when imported into the UK.

Thus, VAT rules and procedures for transactions with the UK will differ from those applicable to intra-EU settlements.

Additional requirements will also have to be met in terms of excise goods, such as alcohol, tobacco or fuel, imported from or exported to the UK. Reception of excise goods from the UK will be treated as import and in order to cover such products with the duty-suspension procedure, appointment of a registered consignee will be necessary upon their admission to trading.

Taxpayers should also pay particular attention to chain transactions involving entities from the UK or goods transported to or from the UK, since they will now rely on separate rules for determining the place of delivery for intra-EU and export transactions. Reclassification for VAT purposes may apply to each entity involved in the supply chain.

The changes will also relate to companies selling goods from Poland to UK consumers. The thresholds for distance sales, which made it possible to tax supplies with Polish VAT and avoid registration for tax purposes in the UK, will no longer apply. If the distance sales are made via an online platform operated by a third party, the platform operator will be required to settle VAT on sales to the consumer. What is more, regardless of the rules in force in the UK, the seller will be obliged to declare the export of goods in Poland

(the application of the zero rate will depend on obtaining customs documents confirming the export).

Another consequence of leaving the EU by the UK will be the change of the rules on applying for VAT refund from the purchases made by EU taxpayers in the UK and UK taxpayers in the EU. The Council Directive 2008/9/WE will cease to apply. The taxpayers will not be able to use the unified procedure and the possibility to file an application for refund through the state of their residence.

The VAT refund now is subject to the rules regarding third countries. i.e. the reciprocity rule, which the UK will have to fulfill.

Further developments

The TCA is subject to ratification by the EU and the UK bodies. However, the parties thereto have agreed on its provisional application from 1 January 2021.

The impact of Brexit and the concluded agreement on the obligations of companies trading

with the UK should be analysed in detail on a case-by-case basis.

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