Update

Newsletter - *January 2020*

Belluzzo International Partners

As of the 1st of January 2021, regardless of the recently signed agreement, the UK is no longer part of the single market and therefore the principle of free movement of persons, goods, services and capital between the UK and the EU no longer applies. The main changes are summarised below:

Brexit Checklist – Individuals

LIVING IN THE UK

Anyone wishing to remain and live in the UK will not need a visa but must obtain permanent resident status (settled status) or provisional resident status (pre-settled status) if they have lived in the country for less than 5 years. The deadline to apply is the 30th of June 2021, but they must prove that they had moved to the UK before the 31st of December 2020.

WORK

Anyone wishing to come to the United Kingdom for work will have to possess a visa. They should apply for one of the categories based on the new points system, depending on the position for which they apply.

STUDY

Anyone wishing to study in the UK will have to apply for a visa and be covered by health insurance. Different rules will apply for enrolling in universities, as the UK will no longer be part of the Erasmus programme, and university fees will increase.

TRAVEL

It will no longer be permitted to remain in the United Kingdom for more than three months in a 180-day period, but nothing will change in terms of documents until the 1st of October 2021. Italian visitors and those from other European countries will not require a visa. From October, however, everyone will require a passport (valid for at least six months).

INVESTING

Anyone wishing to start a business and/or invest in real estate or financial activities related to the UK, will have to take into account the various internal regulations and their changes due to Brexit, which may not have had an impact before, in order to avoid administrative and/or tax complications.

TRAVEL TO ITALY

For British citizens wishing to go to Italy to live, work, study, travel or invest, the same "restrictions" apply as those for Italian citizens. There may be important changes and it is advisable to keep updated.

LIVING IN THE UK

EU citizens, regardless of whether a 'deal' has been reached, will still need to regularise their position in order to continue to live and work in the country legally. The same applies to those who intend to apply for residence, work, study or visit the United Kingdom **after the 31st of December 2020,** as they will have to follow the new rules set out in this website for reference. 1

Following the United Kingdom's exit from the EU, the Community provisions on immigration will no longer be applicable, and EU citizens - including Italians - established in the United Kingdom will **need to regularise their position** by the 30th of June 2021 through the "EU Settlement Scheme". 2

WORK

Under the new points-based immigration system, anyone wishing to move to the UK for work will have to meet several specific requirements for which they will earn points. Visas will consequently be awarded to those who earn enough points.

The points system will provide employers in the UK with simple, effective and flexible arrangements to recruit skilled workers from around the world through a number of different immigration[3] '*routes*':

- **Skilled worker** - The Skilled Worker route is for employers to recruit people to work in the UK in a specific job. A Skilled Worker must have a job offer in an eligible skilled occupation from a Home Office-approved sponsor;
- **Intra-Company Transfer** - The Intra-Company Transfer route is for established workers who are being transferred by the business they work for to undertake a skilled role in the UK;
- **Graduate ICT** - The Intra-Company Graduate Trainee route is for workers who are being transferred by the business they work for to undertake a role in the UK as part of a structured graduate training programme;
- **Global Talent** - The Global Talent route is for people aged 18 or over in the field of science, engineering, humanities, medicine, digital technology or arts and culture who can show they have exceptional talent or exceptional promise in their field;
- **Innovator** - The Innovator route is for anyone seeking to establish a business in the UK based on an innovative, viable and scalable business idea they have generated, or to which they have significantly contributed. The application must be supported by an endorsing body;
- **Start-up** - The Start-up route is for anyone seeking to establish a business in the UK for the first time. The person must have an innovative, viable and scalable business idea which is supported by an endorsing body approved by the Home Office.

This represents a significant change for employers recruiting from outside the UK, which they will have to adapt to. If the employer is not a "*licensed sponsor*" and intend to sponsor workers through the *skilled worker route* scheme they should apply immediately apply as outlined on this website. [4]

[1] For further information visit: https://www.gov.uk/guidance/new-immigration-system-what-you-need-to-know.

[2] For further information visit (https://www.gov.uk/settled-status-eu-citizens-families);

[3]For further information visit: https://www.gov.uk/government/publications/uk-points-based-immigration-system-further-details-statement

[4]For further information visit: https://www.gov.uk/apply-sponsor-licence

STUDY

Britain has formally withdrawn from the *Erasmus* programme. Anyone wishing to study in will need to obtain a visa based on certain requirements, including being able to demonstrate that:

- they been offered a place on a course by a student sponsor recognised by the Home Office;
- they can speak, read, write and understand the English language;
- they are self-sufficient enough to support themselves and pay for the course;
- they intend to study in the UK.

There is a separate visa for *children between the* ages of 4 and 17 who wish to study at an independent school

TRAVEL

The end of freedom of movement means that travelling to Britain will be different for European citizens.

A visa will not be required for a holiday, but it will not be permitted to stay for more than three continuous months up to a total of 180 days.

From October 2021, a passport will be required at the border, instead of an identity card. [5]

INVESTING

There are no significant changes to UK domestic law due to Brexit but there will be administrative and fiscal changes that need to be checked in relation to income streams due to the non-applicability of [6]EU directives.

There are also no significant changes in buying or selling a house in the UK as a result of Brexit, except for a few practical aspects that are already becoming apparent, including greater difficulty in opening a bank account and obtaining a *mortgage*.

TRAVEL TO ITALY

British citizens travelling to Italy will have to meet certain requirements[7] which can be summarised as follows:

- It will be possible to visit Italy for a maximum of 90 days within a period of 180 days; there will be a *Visa Scheme* after 2022;
- Anyone wishing to work in Italy will need a '*Working Visa*';
- Higher costs and administrative complications related to obtaining a '*Student Visa*' will be applied in order to study in Italy;

[5] for further information visit: https://www.gov.uk/government/publications/the-border-operating-model

[6] For further information visit: https://www.gov.uk/guidance/changes-to-deduction-of-tax-from-interest-royalties-and-dividends-from-1-january-2021

[7] For further information: https://www.gov.uk/visit-europe-1-january-2021

Brexit Checklist – Corporate bodies

As a result of the withdrawal there are many changes that need to be considered; here follow the main ones:

CONTRACTS	CUSTOMS PROCEDURES	VAT DECLARATIONS
Existing contractual arrangements will have to be reviewed in light of possible consequences related to reference to EU law and the clauses determining the governing law and the jurisdiction of courts.	The necessary customs formalities must be carried out both for importing and exporting goods, and the respective procedures must be applied with respect to the category of goods ("standard goods or controlled goods"). No customs duties or charges of any kind are applicable to imported or exported goods that comply with the rules of origin set out in the Agreement. The importer in the UK must therefore certify that the goods originate in the EU to avoid paying customs duties. Importers and exporters will need to have an EORI code issued by the UK. The EU EORI code will only be required if the person is responsible for lodging the customs declaration in the EU.	Movement of goods to and from the UK will be classified as "imports" and "exports" respectively. As from the 1st of January 2021, persons registered for VAT in the UK will be able to declare the import VAT in the VAT declaration, unlike non-registered persons who will have to make the payment to customs. In the latter case, it will be useful to consider the request to open a Duty Deferment Account in the UK. With regard to shipments of goods with a value of less than £135, VAT must be applied at the point of sale rather than on entry into the UK.

PRODUCTS	WORKERS	TAXATION	PRIVACY LAW & GDPR
It will be necessary to verify the conformity of "CE" products and to proceed with obtaining the "UKCA" mark from 2022. Attention should also be paid to product labelling and its adaptation.	As of the 1st of January 2021, "company policies" must be adapted to the new Immigration Points System in order to recruit staff from the EU to the United Kingdom and/or manage the travel of employees.	There will be several impacts to consider both in terms of direct and indirect taxes. For each transaction, it will be important to check the "tax" difference compared to what was expected with the application of the EU directives.	GDPR will cease to apply to the UK with consequences over the transmission of personal data to and from the EU.

CONTRACTS

Firstly, it is advisable to assess the opportunity to maintain the English law as the governing law of commercial contracts, based on its contents and the residence of the parties. Similarly, the jurisdiction clauses must be analysed in the light of the potential greater difficulty and length of the proceedings for the enforcement of the decisions of the English courts.

The UK has taken steps to adhere to international conventions, which, if accepted, can reduce time and cost. The Hague Convention has already been adopted by the United Kingdom which has also asked to accede to the Lugano Convention.

The use of arbitration clauses could in any case prove to be advantageous and efficient in resolving potential disputes. Brexit does not have an impact on existing arbitration clauses and / or procedures.

Contracts that contain references to European laws or regulations, or even simply to the EU, should be analysed to verify the consequences of the UK no longer being part of the EU (e.g. the definition of "EU Law") in view of amending them accordingly.

The Incoterms could also be changed in light of which party will assume the new customs clearance obligations on import and / or export from the UK and the EU.

It is particularly important that contracts adequately clarify the terms for trade across EU borders, including how VAT and duties are dealt with and who is responsible for import and export formalities. You will need to consider on your contracts what International Terms and Conditions of Service (INCOTERMS) apply.

CUSTOMS DUTY AND IMPORT VAT

The UK-EU Free Trade Agreement means that there are no tariffs or tariff rate quotas on imports to the UK that “originate” in the EU, or on imports to the EU that “originate” in the UK. There are, however, differences between the treatment of goods movements into Northern Ireland and the rest of the UK.

All imports and exports of goods to and from the EU will be subject to customs procedures, both in respect of EU goods imported into the UK and UK goods exported to the EU. Excise duties will continue to apply to tobacco, alcohol and certain energy products.

The basic rules of customs are that imported goods need to be declared, and any duties are paid (which could include VAT, customs and excise duties) at the time of importation. However, traders who import goods regularly may benefit from having a “duty deferment account” (DDA). This enables customs charges including customs duty, excise duty, and import VAT to be paid once a month through Direct Debit instead of being paid on individual consignments.

Businesses need to register with HMRC to open a duty deferment account and will need to provide a bank guarantee. Certain businesses with good track records can apply for a waiver of the guarantee.

To import or export goods into the UK you will need an GB Economic Operator Registration and Identification (EORI) number. This is required for all businesses (traders and hauliers) moving goods into or out of GB, including those delaying their import declarations.

Some GB traders or hauliers may also need to apply for an EU EORI number. Traders need an EU EORI number if their business will be making customs declarations or getting a customs decision in the EU.

Licences and import certificates may now also be required that were not necessary before the end of the transition period. Further information regarding imports into the UK from the EU can be found at https://tinyurl.com/Brdealimp.

CUSTOMS DUTY AND IMPORT VAT

There are also new rules that affect hauliers as it will be necessary for all truck drivers carrying out international transportation tasks to get a Kent Access Permit (KAP). This permit is required by both UK and non-UK drivers and whether the truck is loaded or not that are crossing the border via Dover or Eurotunnel. It is not required for domestic transport to, from, or within Kent nor for vehicles under 7.5 tonnes nor for departures from other ports. The permit is valid for 24 hours only. It is necessary to obtain a KAP from https://www.gov.uk/check-hgv-border.

Rules of origin requirements for the preferential no tariff rate – what are they?

The Trade and Cooperation Agreement contains bespoke rules of origin for each tariff line. To benefit from preferential tariffs, goods generally need to be wholly obtained (e.g., grown, extracted etc.) in the EU or the UK, undergo significant manufacturing in the EU or the UK, or have a certain proportion (generally more than 50%) of their materials by value originate either within the EU or the UK.

In addition, when importing into the UK from the EU (or importing into the EU from the UK), the importer will be required to declare they hold proof that the goods comply with the rules of origin.

You'll be entitled to claim the preferential rate of duty if you have either:

- a statement on origin that the product is originating made out by the exporter;
- the importer's knowledge that the product is originating.

The text for a statement on origin is in Annex ORIG-4 of the Trade and Cooperation Agreement.

When exporting from the EU to the UK a statement on origin can be made out by any exporter where the value of the consignment is 6,000 euros (currently £5,700) or less. Above this amount the EU exporter must have a Registered Exporter (REX) number and include it in the statement.

When exporting to the EU you must include your EORI number in any statement you issue to your EU customer, regardless of the value.

The statement on origin must be provided on an invoice, or any other commercial document (excluding a bill of lading), describing the originating product in sufficient detail to enable its identification.

It will be valid for 2 years from the date it was made out on imports into the UK and 12 months for imports into the EU.

Importers knowledge' allows the importer to claim preferential tariff treatment based on evidence they have obtained about the originating status of imported products. This evidence must be in the importer's possession, be in form of supporting documents or records which may be provided by the exporter or producer and provide evidence that the product qualifies as originating.

As the importer is making a claim using their own knowledge, no statement on origin has to be provided by the exporter or producer.

There is a transitional period until the 31st of December 2021, where proof of origin does not need to be provided at the border. However, unless reliance is placed on importers knowledge, the proof of origin must be obtained subsequently and by the 31st of January 2022.

Simplified customs declarations can be made through the CHIEF system or the new Customs Declaration System using the EORI number for many goods, in particular ones not requiring certificates or licenses.

A delayed declaration up to 6 months can be made for goods that are not *controlled goods* and were:

- In free circulation in the EU.
- Imported into and in free circulation in Great Britain between the 1st of January and the 30th of June 2021.

CUSTOMS DUTY AND IMPORT VAT

These can be declared in a business's own records without getting authorisation in advance. It is necessary to send HMRC full information within 175 days on a supplementary declaration. Controlled goods include excise goods, controlled drugs, chemicals, endangered species, weapons, goods subject to sanctions, anti-dumping or countervailing duties and rough diamonds.

VAT

To import or export from/to the EU, a UK business is required to obtain an EORI number. This is vital to enable a business to interact with customs authorities.

Triangulation rules will no longer be applicable to UK VAT numbers. EC Sales lists are no longer required to be filed, except for companies in Northern Ireland.

Intrastat declarations will remain.

The existing rules for imports from non-EU countries now apply to imports from the EU, but with some changes. With effect from the 1st of January 2021, VAT registered traders can account for import VAT on their VAT return using *postponed VAT accounting.* This means that UK VAT registered businesses importing goods to the UK will be able to account for import VAT on their VAT returns, rather than paying import VAT on or soon after the time that the goods arrive at the UK border.

This important relaxation applies to imports from the EU and non-EU countries. This will give UK businesses importing from outside the EU a cash flow benefit.

However, non-VAT registered traders (and any VAT registered traders not using postponed VAT accounting) will need to report and pay import VAT through the customs processes. Within this context, VAT payments can be deferred using a duty deferment account DDA.

With regards to VAT on imports of goods in consignments not exceeding £135 (excluding consumer to consumer consignments), the point at which VAT is collected will be moved from the point of importation to the point of sale. This will mean that UK VAT, rather than import VAT, will be due on these consignments and therefore accounted for via the VAT return. It will be necessary for the supplier to register for VAT in the UK and account for VAT.

Where the goods are from the UK or the EU and sold direct to customers in Northern Ireland import VAT will be charged.

The £135 limit applies to the total value of the consignment not the separate value of the individual items in a consignment. Also, there are separate rules for excise goods and for non-commercial goods such as gifts.

Where the consignment is valued at more than £135 the goods will be liable to import VAT and Duty. Online marketplaces (OMPs) involved in facilitating the sale of imported goods, are responsible for collecting and accounting for the VAT, even when the goods are in the UK at the point of sale.

After the 31st of December 2020, all supplies of digital services to consumers in EU member states are liable for VAT in the consumer's member state. The £8,818 annual threshold for cross borders sales of digital services to EU consumers no longer applies.

Businesses will have to charge VAT at the rate where the customer is based and declare those sales to the relevant EU member state.

UK businesses that had been using the UK VAT MOSS union scheme can continue to use the system but must register for the VAT MOSS non-union scheme in an EU member state.

VAT

For businesses wanting to continue using MOSS, they must register for the scheme by the 10th day of the month following their first sale after the UK leaves the EU. For example, register by the 10th of February 2021 if a sale is made in January 2021.

Alternatively, businesses can register in each EU Member State where they make sales. Check the EU's Europa website for further information about registering for VAT in EU member states.

Non-UK businesses that had previously used UK VAT MOSS non-union scheme will now need to register for the scheme in an EU member state.

Non-UK businesses need to declare sales of digital services to UK consumers by registering for VAT in the UK and declaring the sales via a UK VAT return.

To declare the VAT charge, businesses can register for VAT in each EU member state where sales are made or register for the VAT MOSS non-union scheme in an EU member state of their choice.

The UK VAT Mini One Stop Shop (MOSS) was an online service that allowed EU businesses that sell digital services to consumers in other EU member states to report and pay VAT via a single return and payment in their home member state.

As of the 1st of January 2021, businesses are no longer able to use the UK's MOSS scheme to report and pay VAT on sales of digital services to consumers in the EU.

Businesses that sell digital services to consumers in the EU must register for the MOSS non-union scheme in one of the remaining 27 EU member states. The registration deadlines are the same as above for MOSS.

PRODUCTS

The UKCA mark applies to most goods previously subject to the CE marking.

The UKCA mark came into effect on the 1st of January 2021. However, to allow businesses time to adjust to the new requirements, the CE mark will be allowed until the 1st of January 2022 in most cases.

EMPLOYEES

Under the new immigration system in force from the 1st of January 2021, if a European national wishes to come to the UK to work or to live long term, they will need to apply for a visa (primarily the Points- Based System). In most cases the prospective employee will need to be sponsored by a UK employer.

UK employers should therefore consider reviewing or amending their HR processes to ensure these are fully compliant with the obligations arising under a sponsor licence in case the business has to fall back upon the Points-Based System arrangements when hiring EU nationals.

The social security system for seconded employees (in the UK from an EU state or vice versa) has also changed from the 1st of January 2021. The trade agreement provides for measures to coordinate social security obligations between the UK and the EU to avoid that double payments are made.

These are definitively limited measures compared to the past and applicable only to EU member states that decide to adopt them, therefore in case there are employees in these situations it is advisable to evaluate the consequences for social security purposes.

Employees who are EU/EEA/Swiss nationals and who live in the UK by the 31st of December 2020 will need to register for the settlement scheme by the 30st of June 2021.

If wishing to recruit from overseas, the employer will need to apply to become sponsored employer and consider the new Points-Based Immigration System introduced by the Government.

TAXATION

On top of the impact on VAT, the consequences of Brexit for income tax purpose rest primarily on the inapplicability of the EU tax directives. Particularly intercompany flows may be affected by the UK losing the benefit of the Parent-Subsidiary and Interest and Royalties Directives, under which payments between EU resident associated companies can be made, upon conditions, free of withholding taxes.

There could be withholding taxes applied on certain interest, royalty and dividend payments between the UK and the EU (where currently there may be none) and this could mean that certain corporate holding structures may need to be reviewed.

GDPR

Another important area affected by Brexit is privacy law, i.e. the processing of personal data, given that the GDPR will cease to apply to the United Kingdom.

From a domestic point of view, the Data Protection Act 2018, which incorporates the GDPR with some small changes, will remain in force but particular attention must be paid to international data transfers. Indeed, as of the 1st of, 2021, the UK has become a "third country" for these purposes which in normal circumstances would mean that transfers of personal data from the EEA to the UK must be performed under adequate safeguards, such as standard clauses contracts.

However, the trade agreement provides for a transitional period of 4 months (possibly extendable by another two) to allow the European Commission to evaluate the adoption of a recognition of "adequacy" of the United Kingdom legislation so that these safeguards are not necessary.

With respect to the transfer of personal data from the UK to the EU EEA, this adequacy decision has already been taken unilaterally by the UK.

It is advisable to analyse the data flows between the UK and the EU to determine which ones may require specific safeguards to allow the transfers in the event that the European Commission does not take an adequacy decision with respect to the UK.