



# Consequences of Brexit

## An Indirect Tax perspective

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# Consequences of Brexit

**Even though some time will pass before the UK will leave the European Union (“EU”) and it is not certain which model will be implemented post secession, there will clearly be quite some changes. This holds true from a tax perspective too. Especially for Indirect Taxes where VAT and customs legislation is largely harmonised, the long-term consequences and the associated systems impact could be quite substantial.**

## Introduction

### 1. Legal framework

The Customs Union means customs duties are absent within the EU Customs territory, while Member States share common external tariffs with third countries. The Member States share a common VAT system governed by the VAT Directive.

The secession process – a negotiation about exit terms – triggered by the Brexit vote is likely to take at least several months and its outcome is quite uncertain. It may take up to two years before a secession agreement is reached, or longer if an extension of the negotiation period is agreed upon. Until then, EU laws and treaty obligations continue to have effect. However, article 50 of The Consolidated Treaty provides a Member State with the right to “withdraw from the Union in accordance with its own constitutional requirements”.

#### 1.1. Effects – Article 50

UK will need to invoke Article 50 of the Lisbon Treaty. During negotiations under Article 50, EU Treaties and law continue to apply to the UK. If no agreement is reached within 2 years of the UK activating Article 50, the UK would leave the EU without any new agreement being in place. This 2 year period can be extended. The negotiated agreement would need to be adopted by a qualified majority of

72% of the remaining 27 Member States, representing 65% of the population. The final agreement would also need to be approved by the European Parliament, voting by a simple majority.

## 1.2. Possible alternatives to EU membership – Multiple options

The UK will have multiple options once it leaves the EU. One of them is inclusion in models like the European Economic Area, in which Norway and Liechtenstein participate, or other models. The following table shows possible models and their impact on typically economic and fiscal areas where the EU currently provides for coverage.

		EU member	EEA	EFTA	Customs Union	MFN	'Duty-free'
		28 European member nations	Norway, Liechtenstein, Iceland	Swiss	Turkey	Australia	Monaco, Singapore
<b>Free movement of goods, services, and capital</b>		Yes	Yes	Yes	No	No	No
<b>Free movement of people</b>		Yes	Yes	Yes	No	No	No
<b>Free to negotiate trade deals and set tariff levels with non-EU countries</b>		No	Yes	Yes	No	Yes	In principle, but slower
<b>EU laws and regulation</b>	<b>Influence</b>	Yes	Very limited	No	No	No	No
	<b>Compliance</b>	Yes	Yes	Yes, but some opt-outs	Some	No	No
<b>Fiscal contributions</b>		Yes	Yes	Yes	No	No	No
			-83%	-52%			
<b>Common Agricultural Policy</b>		Yes	No	No	No	No	No

## 2. Indirect Taxes – a perspective

### 2.1. VAT

VAT is a supposedly fully harmonised tax that is currently governed by EU VAT Directives and Regulations, decisions from the European Court of Justice, and so on. With effect from the date of secession the consequences would be the following.

#### 2.1.1. ECJ court cases would not apply

UK taxpayers – thus including UK subsidiaries of EU businesses - will no longer be able to rely on the “direct effect” of certain EU laws and the teleological approach to the interpretation of UK VAT law (which has its origins in the way that EU law is written and interpreted) may be less widely applied. The UK courts will revert to interpreting the UK provisions and instead of case law of the European Court of Justice. From a broader perspective, the entire context of the harmonised legislative framework will be different, as one will need to bear in mind that soft EU law, too, like interpretations, non-binding rulings, arbitration and policy will no longer have direct effect.

#### 2.1.2. Import VAT

The most tangible consequence of Brexit would likely be the imposition of “import” VAT when goods enter the EU from the UK, and when EU goods enter the UK. The system of Intra Community Supplies and Acquisitions will no longer apply. This will also affect the way in which related obligations, like European Sales listings, but also the entire intra EU matching system and electronic refunds and so on will be altered.

A practical example would be the application for an import license in order to avoid negative VAT cash flows from UK imports.

The most tangible consequence of Brexit would likely be the imposition of “import” VAT when goods enter the EU from the UK, and when EU goods enter the UK

## Financial transactions with UK customers will be considered VAT-exempt, with a right to deduction

### **2.1.3. Additional VAT pro rata deduction**

When UK leaves the EU financial transactions between EU and the UK will from an EU point of view be considered to be VAT-exempt with the right to deduct. This will have a direct benefit for EU (and BE) businesses.

### **2.1.4. MOSS**

EU businesses supplying electronic services to UK consumers will no longer be able to apply the Mini One Stop Shop or MOSS mechanism. Most likely a local VAT registration in the UK will be required. The European Commission has plans to expand the MOSS to sales of goods as well. Clearly that will no longer apply to the UK either.

### **2.1.5. Intrastat**

Intrastat declarations must be filed when goods are moving from one Member State to the other. The UK leaving would also affect the Intrastat filings.

## **2.2. Customs duty**

Perhaps the biggest customs related change that businesses are likely to see, will be the recognition of trade with EU countries as imports and exports. Depending on the outcome of the secession negotiations, duty may become payable when goods move to and from EU Member States. This, and the related import and export formalities, will potentially result in some trade impediments.

### **2.2.1. Customs law effects**

A failure to reach a trade agreement, in whatever form (see possible alternatives above), will make the UK a third country from a customs law perspective.

This would imply that:

- The UK is no longer part of the customs union;
- Import duties / Import VAT will need to be taken into account;
- The UK will need to draft its own customs legislation;
- The UK will need to develop its own customs procedures;
- The UK is no longer part of Free Trade Agreements concluded by the EU;
- ECJ cases would not apply.

### **2.2.2. Parting the customs union**

The EU is a customs union and its members apply the same tariffs and other common policy measures in connection with trade in goods between the union and countries or territories outside the Union's customs territory. At the same time, the movement of goods within the union is free, so no tariffs or other common policy measures apply for such intra-union trade. As stated earlier on, a Brexit implies that the UK will no longer be part of the customs union.

### **2.2.3. Customs duties**

The UK no longer being part of the customs union will trigger payments of customs duties and raise the costs for trading with the UK. Customs duties are calculated on the basis of the classification, value and origin of goods. The UK will need to implement its own system for determining import/export duties, for all of these elements.

### **2.2.4. Customs legislation - procedures**

The customs union is a uniform system for handling goods upon importation, exportation and transiting. This is implemented by a common set of rules (the Union Customs Code). This harmonisation cuts red tape for businesses active in several EU member states. In this respect, simplifications such as centralised clearance, makes it easy for companies to set up centralised customs procedures in the EU.

The UK will no longer be able to benefit from these harmonised customs procedures. Companies will need to adapt their operating procedures to the new standards that will need to be implemented in the UK. This will not only increase the administrative burden, companies will also need to adapt their IT systems.

### 2.2.5. Free Trade Agreements

One of the cornerstones of the EU customs strategy are Free Trade Agreements (FTAs). As trade is globalised, customs unions and countries around the world are seeking to conclude FTAs to enhance trade.

The EU has already concluded several FTAs and their application is a success. Leaving the EU implies the UK will have to do without these advantageous FTAs. Companies who benefit from FTAs will need to analyse their sourcing schemes and prepare for probable adaptations of their supply chains.

A customs union also triggers non-fiscal measures relating to market access

### 2.2.6. Non-fiscal measures

In addition to the impact from a fiscal point of view (which is financial), a customs union triggers non-fiscal measures as well. These measures relate to market access and are considered non-fiscal barriers to trade. In a wide range of industries, companies who want to import in the EU need to have authorisations, registrations, and so on. The common agricultural policy provides regimes for the import of agricultural products. REACH requires registration for import of chemical products. Imported goods need to comply with EU quality standards. All these aspects will need to be assessed by UK importers before trading with the EU. The inbound flow into the UK could also become subject to new market access restrictions and trade barriers. The UK could even implement an anti-dumping/anti-subsidy policy on imports from the EU. Vice versa, imports from the UK after the secession could become subject to the EU's anti-dumping/anti-subsidy policy.

### 2.3. Excise duty

Following Brexit the EU influence on Excise duty would be released. However, since Excise duty rates are not fully harmonised right now, this is unlikely to result in material changes to rates in the UK market. As with customs duty, movements of excise goods between the UK and EU Member States will be treated as imports or exports. Subject to any agreements reached during the secession negotiations, this is likely to mean that such movements will be subject to different procedures than the current "intra-EU trading" rules.



Customs duty

- Almost entirely governed by EU law
- Domestic law will need to be implemented
- Trade with EU will become import/export



Excise duty

- Trade with EU no longer "intra-EU"



VAT

- Possible changes to rates and reliefs?
- Invoicing and reporting
- ERP systems & tax codes



Capital duty

- UK would no longer be bound by Capital Duty Directive and related case law

Other indirect taxes largely or entirely unaffected

The UK no longer being part of the European Union will affect the enterprise model, tax determination and tax

### 3. Systems and controls

Implementing the changes described above within the ERP systems and compliance processes currently used by businesses to account for VAT and Customs Global Trade may require considerable planning and resources. For example, tax codes, tax logic and client/vendor reference data may need to be thoroughly reviewed and updated, while compliance procedures as well as spreadsheets or automated tools used in the VAT return preparation process would need to be amended.

#### 3.1. System impact

The overall tax system design of ERP systems typically contains three key considerations:

- **Enterprise model:** the business model (such as legal entities, tax registrations, inventory, and so on) needs to be mirrored in the enterprise model within the ERP system;
- **Tax determination:** the tax logic should automatically determine the correct tax rate/treatment
- **Tax reporting:** the output of the system should generate tax compliant reports (invoices, VAT ledgers, customs reports, and so on)

When the UK is no longer part of the EU, each of these areas will be affected.

#### 3.2. Enterprise model

The entities established, with branches or registered offices in the UK, should no longer be considered as EU entities within the ERP system's enterprise model. The same applies to its customers/vendors. The effort mainly lies in updating master data fields and certain tables used in the tax determination and reporting process.

An EU entity may sometimes obtain a relief to register in other EU countries based on certain VAT simplifications (e.g., for triangular deals). If they can no longer be applied, additional VAT registrations may be required, thus impacting the ERP system's enterprise model. Foreign entities using such relief regimes in the UK will be affected as well.

The classification of products and the inventory management design may be significantly affected, as products that are currently customs cleared and/or stored in the UK need to be reclassified as non-EU products.

In SAP the impact mainly relates to setting up company codes, plants (abroad) and registrations. In Oracle, changes can be made through the so-called Legal Entity Configurator and the inventory module. For both SAP and Oracle, master data setting for both customers, vendors and materials/products have to be updated.

#### 3.3. Tax determination

A Brexit will heavily affect this area. Some key considerations:

- The tax determination process is based on master data set-ups. This not only covers the customer/material or vendor master data but also the tax master data.
  - Typically, the core framework in SAP (Tax Procedures, Tax Codes) or Oracle (eBusiness Tax Regime to Rate) have to be modified. For instance, tax (rate) codes should no longer be used for Intra EU transactions for transactions with the UK. Some particular exemption and reverse charge tax rate codes may have to be revisited, and so on.
  - In both SAP and Oracle the calculation of VAT on AP/AR transactions is typically automated based on a tax logic or set-ups in the customer/vendor master. In SAP it will have a very significant effect on the tax logic (condition logic) and Oracle (eBusiness Tax Rules) and any other procurement/billing system. Not only should the intra EU transactions be modified but also complex rules when simplifications are used, such as in chain transactions, will have to be redesigned.
- Intercompany: both the SAP and Oracle designs typically use predefined logic to handle the tax determination process for intercompany transactions (especially if they are on the same ERP platform). This is either based on some of the standard tax logic mentioned above, or specific intercompany tax tables. Those tables will have to be adjusted.
- Customs requirements are typically automated through trade solutions such as SAP GTS, Oracle GTM, or through other third party solutions, such as Track on Trade. Again, in case of a Brexit, all the items listed in the previous section will affect the system design as well as the master data and logistic movements feeding those systems.

The classification of products and the inventory management design may be impacted significantly, as products which are currently customs cleared and/or stored in the UK need to be reclassified as non EU products

While the Brexit will mostly affect indirect tax, other areas should be considered as well

### 3.4. Tax reporting

A whole range of tax reports will be affected when the UK is no longer part of the EU. For instance:

- Intrastat: logistic reports registering the move of goods within the EU are no longer applicable. In SAP this requires changes in either the foreign trade reporting functionality or GTS for both UK companies and their vendors/customers. In Oracle the inventory module and reporting functionalities are affected.
- Invoices: since the UK will no longer be part of the EU, the text on the invoices will have to be modified (in particular for certain zero rated transactions).
- European purchase and sales listings: the UK will no longer be part of the EU and therefore purchases and sales between the UK and EU companies should no longer be reflected on those listings. This will not only impact the settings of the UK entities but also of its vendors/customers.
- Any addition of new VAT registrations means local country tax reports will need to be designed.

### 3.5. Other taxes

While the Brexit will mostly affect indirect tax, some other tax and reporting areas should be considered in the ERP solutions as well:

- Wage taxes;
- Banking set-ups;
- Direct tax;
- Data management

### 3.6. Follow-up technology steps

Companies will have to reroute their business transactions when the UK is no longer part of the EU (this includes the use of related simplifications). This should not be limited to UK entities themselves but should also include their business partners (especially for intercompany transactions).

Subsequently, companies should perform impact assessments on their current tax designs, covering the three key areas, i.e., the enterprise model, tax determination, and the tax reporting area. Finally, the system should be aligned with the new tax requirements. Potentially, if the changes to the business and/or supply chain model are more significant it should be redesigned even further.

# Conclusion

Time will tell exactly what will happen and what the scope of the changes will be. The Brexit may not yet have that many immediate tax consequences and a model similar to Norway or Switzerland seems to limit short-term adverse consequences. In the long term, especially looking at indirect tax which is almost fully harmonised at an EU level, the impact in this respect on trading, logistical and distribution functions could be quite significant. The UK trading position will alter and lose the ability to rely on the EU system, which is effective and powerful. That said, it will also allow the UK to take its own course.

The UK will have to rely on such protections as can be found in the WTO system, which may be different than the EU. The UK will leave a tried and tested supranational system, but on the other hand it could create its own solutions. Although the UK can keep the customs duties it collects, in the future the UK will lose the gateway to EU free circulation. International companies that are dependent on this gateway will need to carefully consider the complexities arising from this. This may yet again put extra emphasis on the administrative and practical trade enhancing measures that certain EU countries have or have not implemented in their national legislation. One thing is certain: in any ERP or systems project the Brexit will need to be taken into account or at least provide for flexibility to be able to manage any upcoming changes, e.g., in logic set-up, tax coding and reporting.

It goes without saying that it will be important to prepare for the changes, especially the systems changes that often require quite a lot of advance planning.

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