



Crowe Webinar Summary

Brexit: The practical experience from both sides of the channel

Crowe recently held a webinar focused on tax and legal changes arising from Brexit for businesses operating in the EU and UK.

The first few months of 2021 have been about reacting to developments to allow trade to continue with minimal disruption. Organisations now are taking stock as to what Brexit has meant and whether they can do things differently.

What does your organization need to do?

In this summary we detail some of the areas of change that were covered in our webinar.



**If you need any help
with answering the
Brexit related questions,
contact Crowe experts.**

**On-demand video recording of
the webinar is available at:**

<https://bit.ly/3zq4p7Z>

79,1%

of attendees on the webinar reported that VAT and Customs Duty were the areas where they experienced the most change as a result of Brexit. This is consistent with our experience of the issues with which we are supporting our clients.



VAT and Customs Duty

Impact assessment

The first part of any Brexit impact assessment is to map the legal and physical supply chains. An important question is who will act as importer into the destination country? This person will need to complete customs declarations and may have to pay import taxes. Consider the impact of loss of EU VAT simplifications and whether additional overseas VAT registrations are now needed.

Identify and work with customs agents to handle customs declarations: they are necessary for imports and exports. Focus should be given to communication and establishing what information the customs agent needs, and at what time.

Review origin and classification of products. It is dangerous to assume that they will qualify for no tariffs despite the way in which the UK/EU Brexit trade deal has been reported.

Northern Ireland is treated as in the EU for trade with EU, but treated as in UK for trade with GB. Additional administrative actions are required when moving goods in/out of Northern Ireland.

Finally, whilst most of the changes arising from Brexit apply to businesses trading in goods. There were some VAT changes applicable to service businesses and they should carry out a review of their main supply chains to identify areas of potential change.

New e-commerce VAT rules

The EU introduces new e-commerce VAT rules with effect from 1 July 2021 which will result in changes to VAT flows and registration requirements.



Robert Marchant (UK) and Rendall Hofman (EU)

Rendall Hofman is a Partner in Crowe Foederer and Robert Marchant heads Crowe UK's corporate VAT and Customs practice. Both Rendall and Robert have significant experience of advising clients on the VAT and Customs aspects of Brexit and the particular impact on international supply chains.

Robert and Rendall have worked together on mutual clients for a number of years and have proven expertise in covering off the UK and EU angles associated with changes arising from Brexit.

Withholding tax – now that the UK has left the EU, the UK no longer falls under the parent subsidiary or interest and royalties directives.

Corporation Tax

The future business structure should be considered and how the business can best structure itself post Brexit, including whether the UK remain a good EU holding company location. This will depend on the specific circumstances.

Withholding taxes will now depend on the original double tax treaties and will apply on a number of UK/EU cross border interest/royalty/dividend payments. Specific advice should be taken on the relevant withholding tax rate and procedure for clearances to pay using treaty rates, as these can depend on the specific circumstances.

If any UK business is being transferred from the UK to an EU entity, perhaps for VAT/indirect tax efficiencies, consideration is required on whether UK exit charges apply, e.g. on properties, plant, or intangibles (including goodwill).



Paul Fay

Paul is a corporate tax partner in Crowe UK LLP's London office, advising clients ranging from privately owned businesses through to the tax departments of quoted multi nationals.

Paul has a particular focus on issues affecting larger corporates, including transfer pricing, cross border tax planning, and tax efficient structuring of transactions, including acquisitions, disposals, mergers, demergers, flotations and reorganisations. Paul has wide experience of negotiating with the UK Revenue on contentious issues.

**Immigration is a real
issue to be checked
whenever EU nationals
work in the UK or UK
Nationals work in the EU**

Global Mobility

EU settlement scheme deadline is not far away 30 June 2021 – have your employees taken the required action?

Businesses who want to hire and locate EU workers in the UK will need a UK entity to facilitate the immigration process.

Social security rules (determination of liability) largely similar to before Brexit for short term (up to 24 months) and multi state worker scenarios. The procedural side is unclear though.

New and old agreements to consider for EFTA countries – Switzerland, Norway, Iceland. Liechtenstein potentially more complex.

Cross border remote workers – Brexit or COVID driven need attention.



Dinesh Jangra

Dinesh is a cross border tax, social security and payroll expert with more than 21 years of experience specialising in Global mobility. He helps organisations hire and deploy employees across borders in a compliant and cost effective way. He's been helping many organisations understand how Brexit impacts them from a people perspective and assisting them with setting up employment operations in the EU.

**Your contracts might
comprise some hidden
Brexit surprises. And it
is strongly
recommended that you
double check whether
this is the case.**

Product safety regulations and CE marking

By consequence of Brexit the CE marking will in the future no longer be a passport for entry to the British market.

However, the UK government reserves the right to impose new additional product rules as early as 2021. If the product requirements in such new regulations deviate from the European rules, the British rules take precedence, and two sets of rules will already apply in 2021.

The UKCA marking

Starting in 2020 Great Britain has also introduced its own product mark: the UKCA mark.

As it stands now, the EU will not recognize the UKCA mark as a passport for entry to the EU market. Also, from 1 January 2022 the CE marking will not be recognised in Great Britain.

Products can have both labels – UKCA and CE – but the manufacturer and importer must be able to demonstrate that all the requirements for each label are met.

Product liability: shifting roles

Now, the responsibility to demonstrate conformity with the product safety regulations resides with the manufacturer who places the products on the market.

But if the manufacturer is not in the territory where the product is marketed, it is the importer who incurs the responsibility - as if he were the manufacturer.

If your supplier has not complied with product safety regulations, and you as an importer are held responsible by the authorities, the question then is:

Do you have legal recourse against your supplier for the costs and damage incurred, for example for legal advice, which are the result of him not complying with product safety regulations?

The exporter from the EU who by himself markets products in Great Britain – and therefore is the importer of the goods in Great Britain – is now, starting in 2021, liable as a manufacturer under the British Consumer Protection Act 1987.

This means that:

- The importer is directly liable to the consumer if the product is deemed dangerous or has a defect.
- This is a strict liability: In case of a defect you are liable towards the consumer, regardless of whether you can do something about the defect.
- If you are an importer, you bear the costs of handling claims and cannot settle claims just by referring to the manufacturer.
- As an importer, you are the first point of contact for the authorities if there are problems with product safety.

If you are an importer/exporter, ask yourself the following questions:

- Am I willing to take on the additional liability?
- Am I sure that the products I export comply with UK regulations?
- Do I know what to do if a market authority approaches me?
- Does my insurance cover product liability? If not, what are the costs of this insurance?

Trademark regulations

Per January 2021, the EU Trade Mark Regulation no longer applies in Great Britain.

To counter this, the Brexit withdrawal agreement provides for automatic “cloning” of the EU trademark, but only to a limited degree.

After the “grace period” expires on September 30th, 2021, protection of a mark in Great Britain will require a wholly separate application.

Trademark exhaustion

If you are active in parallel trading the following might be especially important to you:

It is important to know that EU law providing for the exhaustion of intellectual property rights no longer applies to the United Kingdom. You might have to double check whether need consent of a rights holder to continue trading to the EU.

For example, this might mean that the rights holder (e.g. the manufacturer) may for instance object to the export by third parties into the European Union without the consent of, say, a distributor in the EU.

Trade name protection

If you are doing substantial business in the UK, under an unregistered trade name, it is important to ask the questions is there a risk that:

- someone will start trading under the same name?
- someone applies for registration of a trade mark similar to my company's trade name?

If the answer is yes, then it is probably wise to consider the possibility of registration of your trade name as trademark in Great Britain.

And likewise, for UK companies trading in the EU without an EU trademark registration for their company name, it might be wise to consider registration for an EU trademark.

Contracting ramifications

It is probably worthwhile to review your existing contracts and ask yourself:

- Is my company party to contracts - such as distribution agreements - which have a specific geographical scope including Great Britain?
- Am I party to agreements which have a licensing component, such as - perhaps - hidden restrictions on use of trademarks in supply contracts, in relation to Great Britain?
- Does my enterprise use a trade name which is not registered as a trademark, but which does require protection in Great Britain or the EU?
- Am I importing goods from the UK, with there being a risk that the rights holder might object to resale in the EU?
- And finally: Is there a risk that, unwantedly, I might become subject to UK law and jurisdiction?



Rutger Broekhuizen

Rutger is legal manager at Crowe Peak, with more than fifteen years of experience in international company law. His expertise mainly focuses on contract law, and in addition he is widely experienced in preventing and solving business legal issues for a variety of international operating companies.

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