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McKenzie.**

**The Brexit Endgame:
Preparing your business from 1 January 2021 webinar**

Tuesday 5 January 2021, 3.00 pm GMT



Agenda

1 Introduction

2 Trade and Customs

3 Product Regulation

4 Competition

5 IP and Data Protection

6 Commercial Contracts

7 Employment and Immigration

8 Tax

9 Q&A



1

Introduction

Speakers



Jenny Revis
Partner, London

Ratification of EU/UK Deal



UK Ratification

- UK ratified the deal on **31 December 2020** after passing the [European Union \(Future Relationship\) Bill](#).



EU Ratification

- The deal will be applied provisionally (pending EU full ratification) in accordance with international law until **28 February 2021**.
- **EU-only deal**: Approval only required from Council of the EU and European Parliament



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Trade and customs

Speakers



Jessica Mutton

Senior Associate, London

Customs – formalities



➤ Customs formalities apply to UK-EU movements

- The UK is phasing in formalities for imports from the EU – no declarations required at the border for most goods until 1 July

➤ Special arrangements for Northern Ireland under the Northern Ireland protocol

- No formalities or duties for all EU-NI movements
- Declarations required for movements from GB to NI
- Duty payable only where the goods are "at risk" of moving to the EU and the GB goods do not qualify for preference
- In most cases, no formalities or duties for movements from NI to GB

➤ Mutual recognition of AEO status

➤ Advance Rulings from Customs authorities

Customs – originating goods



No customs duties or tariff rate quotas for goods moving between the UK and EU

- But only if the goods meet the relevant rule of origin



Make sure that you can provide **proof of origin** if claiming preference

- Grace period until 31 December 2021
- No requirement to obtain "approved exporter" or similar status in the UK. EU exporters will need to register in REX for shipments over EUR 6,000.



UK inputs **may no longer count** toward EU origin for the purpose of EU FTAs (and vice versa)



Possibility to **combine preferential treatment and inward processing relief** ("duty drawback")

- Rare in EU FTAs, and potentially a benefit to cross-border supply chains

Chapter 85	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles
85.01-85.02	CTH except from non-originating materials of heading 85.03; or MaxNOM 50 % (EXW).
85.03-85.06	CTH; or MaxNOM 50 % (EXW).
85.07	
- Accumulators containing one or more battery cells or battery modules and the circuitry to interconnect them amongst themselves, often referred to as "battery packs", of a kind used as the primary source of electrical power for propulsion of vehicles of headings 87.02, 87.03 and 87.04	CTH except from non-originating active cathode materials; or MaxNOM 30 % (EXW) ⁹¹ .

UK Post-Brexit Trade Agreements

● CARIFORUM Trade Bloc

(Antigua & Barbuda, Bahamas, Barbados, Belize, The Commonwealth of Dominica, Dominican Republic, Grenada, The Republic of Guyana, Jamaica, Saint Christopher and Nevis, Saint Lucia, Saint Vincent and the Grenadines, The Republic of Trinidad and Tobago)

● United States

● Central America

(Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama)

● Andean countries

(Colombia, Ecuador, Peru)

● CPTPP

(Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, Vietnam)

● Canada
(partially effective from 1 January 2021)

● Mexico
(entry into force expected early 2021)

● Iceland

The Balkans

● (North Macedonia, Kosovo)
● (Albania, Bosnia and Herzegovina, Montenegro, Serbia)

● Norway

● Faroe Islands

● Liechtenstein

● Switzerland

● Turkey

● Morocco

● Tunisia

● Chile

● Côte d'Ivoire

● SACU+M
(Botswana, Eswatini, Lesotho, Mozambique, Namibia, South Africa)

● North and Western Africa
(Cameroon, Algeria, Ghana)

● Palestinian Authority

● Ukraine

● Moldova

● Japan

● European Union

● South Korea

● Vietnam

● Singapore

● Egypt

● Israel

● Jordan

● Lebanon

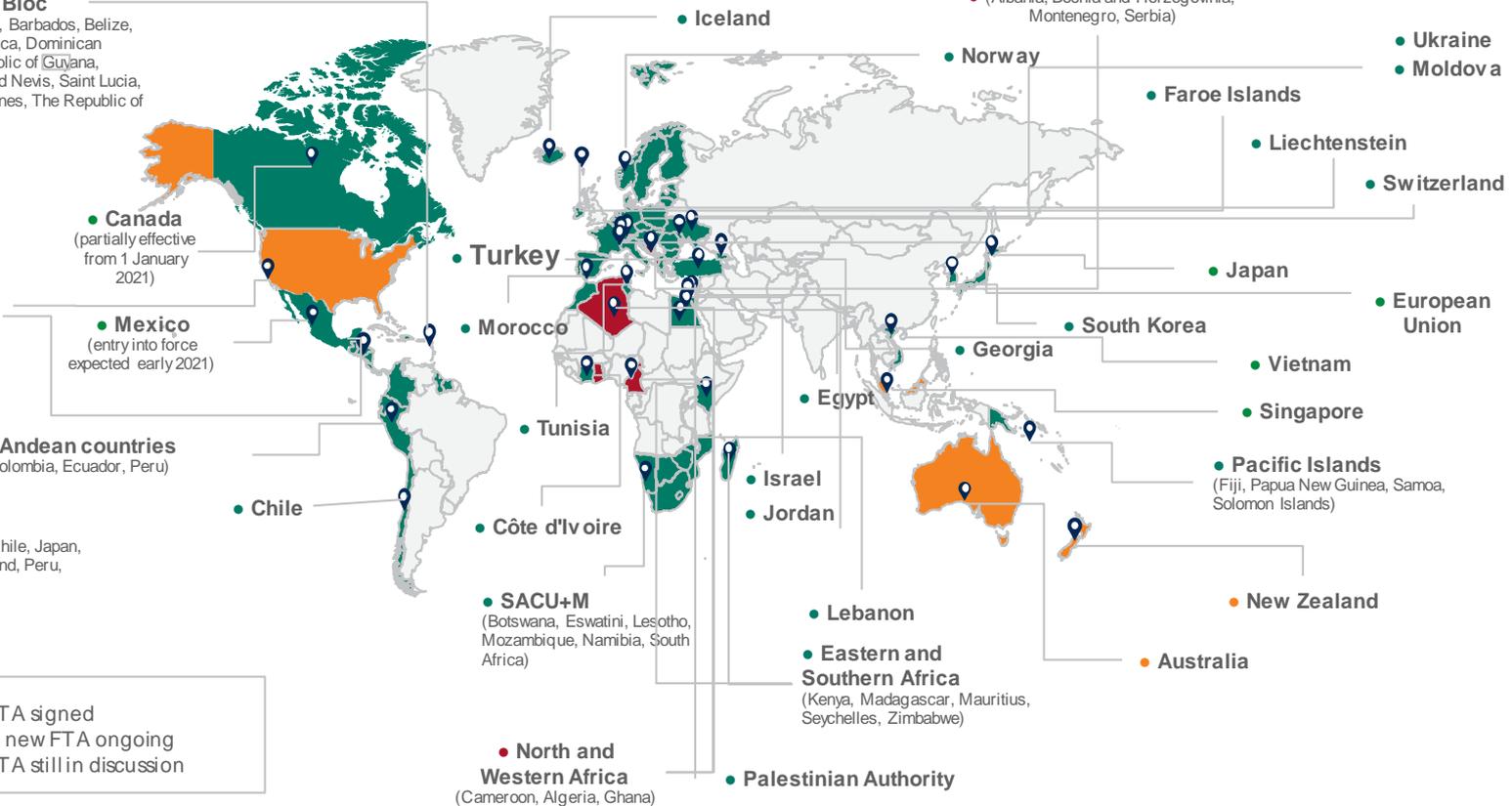
● Eastern and Southern Africa
(Kenya, Madagascar, Mauritius, Seychelles, Zimbabwe)

● Pacific Islands
(Fiji, Papua New Guinea, Samoa, Solomon Islands)

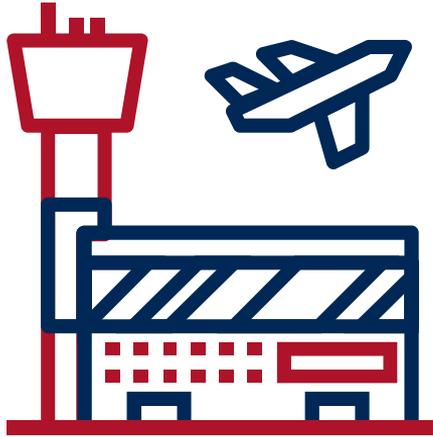
● New Zealand

● Australia

- Replacement FTA signed
- Negotiations on new FTA ongoing
- Replacement FTA still in discussion



Sanctions and export controls



New independent UK sanctions regime

- Takes the EU position as a starting point
- Changes to sanctions lists and definitions – not total alignment
- Divergence likely in the future



Limited export control impact

- UK has retained the EU Dual-Use Regulation
- Licences required for movements between the UK and EU
 - EU has added the UK to EU GEA 001
 - UK has issued a general licence for exports of most dual-use items to the EU
- Consider position for Northern Ireland

3

Product Regulation

Speakers



Graham Stuart

Partner, London

Product regulation



Technical Barriers to Trade

- Freedom to regulate goods in appropriate way for their own market
- Two sets of regulations and compliance procedures from 1 January 2021 e.g.
 - **GB companies previously qualifying as EU importers** (for product regulatory purposes) lost that status with related obligations transferring to EU distributors.
 - **GB distributors now have GB importer status** (with associated obligations) if bringing products from EU/EEA into GB for GB market.
 - **British conformity assessment bodies** have lost status as accredited entities for EU product conformity assessments. UK accepts products for GB market that are CE-marked under certificates issued by EU conformity assessment bodies until 31 December 2021.
 - **The new UK Conformity Assessment (UKCA) mark** must be applied from 1 January 2021 (certain products for GB market) or from 1 January 2022 (all CE-marked products except medical devices).
 - **NB:** CE mark can be used until 31 December 2021



Product regulation



Mutual recognition measures (Annexes to Chapter 4, TCA)

- Only the below benefit from any substantive mutual recognition measures in the TCA under:
 - **Motor Vehicles and Equipment and Parts Thereof (Annex Tbt-1)** - Parties to accept products covered by valid UN type-approval certificate, without further testing or marking requirements to verify compliance
 - **Medicinal Products (Annex Tbt-2)** – mutual recognition of Good Manufacturing Practice inspections and certificates for medicinal products (human / veterinary use)
 - **Chemicals (Annex Tbt-3)** – implementation of the United Nations Globally Harmonized System of Classification and Labelling of Chemicals, cooperation and information exchange
 - **Organic Products (Annex Tbt-4)** – equivalence agreement so products certified as organic in one market recognised as organic in the other
 - **Trade In Wine (Annex Tbt-5)** – simplified certification, documentation, labelling and packaging requirements for imports

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Competition

Speakers



Keith Jones
Partner, London



Anthony Gamble
Senior Associate, London

Merger Control

31 December 2020
End of Transition Period



Live cases:



The EC will retain exclusive jurisdiction in certain scenarios



EC has committed to be responsible for monitoring and enforcing, including any UK elements, after the end of the TP



Cases opened after 31 December 2020



Regime established by the EUMR no longer applicable with respect to the UK – what does this mean?



Mergers may be subject to review by both the CMA and EC after end of transition period



When will the CMA have jurisdiction?

Antitrust

31 December 2020
End of Transition Period



Live cases:



EC will continue to be competent for the proceedings after the end of the TP for existing investigations



If no decision was reached by the end of the TP and the case proceeds, EU antitrust prohibitions will cease to apply from the CMA's perspective – UK prohibitions (which are similar) apply



Cases opened after 31 December 2020



Will apply and enforce national competition law rules in relation to both pre- and post-Brexit conduct



Will no longer enforce Articles 101 or 102 TFEU



Must ensure there is no inconsistency between:



the application of national competition law rules in relation to competition within the UK; and



the principles laid down by the TFEU and the EU Courts before Exit Day in determining any corresponding question arising in EU law

State Aid / Subsidies

31 December 2020
End of Transition Period



Existing EU State aid regime



State aid must be notified to the European Commission and is subject to a standstill obligation (although there are certain exemptions)



CJEU is ultimate arbiter on State aid



UK subsidy control regime after Brexit



EU State aid regime will no longer apply to Great Britain



UK Government will establish an independent system of subsidy control



Practical application of new regime is currently unclear



EU State aid rules will continue to apply for measures that affect trade between Northern Ireland and the EU

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IP and Data Protection

Speakers



Rachel Wilkinson-Duffy
Of Counsel, London



John McGovern
Associate, London

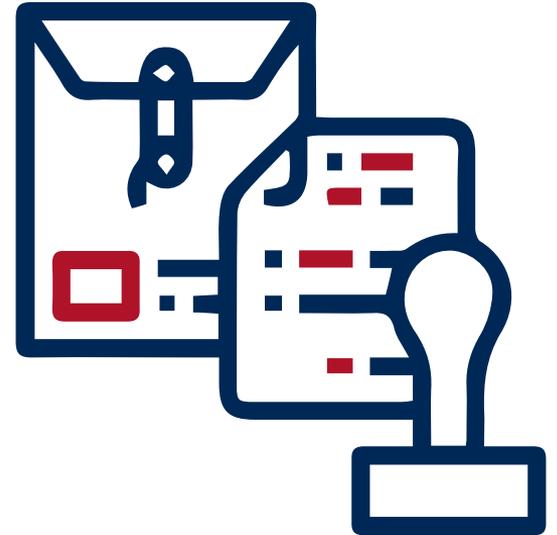
Intellectual Property

Trademarks and designs



Key changes:

- EUTMs and RCDs validly registered on 31 December 2020 no longer cover the UK, but now cloned into equivalent UK rights (including IRs).
- EUTMs and RCDs pending on 31 December 2020 also no longer cover the UK, but can be re-filed as equivalent UK applications until 30 September 2021 retaining priority.
- Ongoing disputes involving EUTMs and RCDs based exclusively on UK rights now deemed groundless.
- Use in the EU in 5 years prior to 31 December 2020 deemed use to maintain UK clones, and vice versa.



Intellectual Property

Exhaustion of rights and border enforcement



Both EU and UK free to set their own exhaustion policies.
Currently:

- EU only recognises EEA exhaustion (i.e. goods put on the market in the UK not be exhausted in the EEA)
- UK recognises EEA exhaustion (i.e. goods put on the market in the EEA deemed exhausted in the UK) – for now...



UK position may change, as consultation due to start early 2021.



Otherwise, IP status quo maintained for border control.

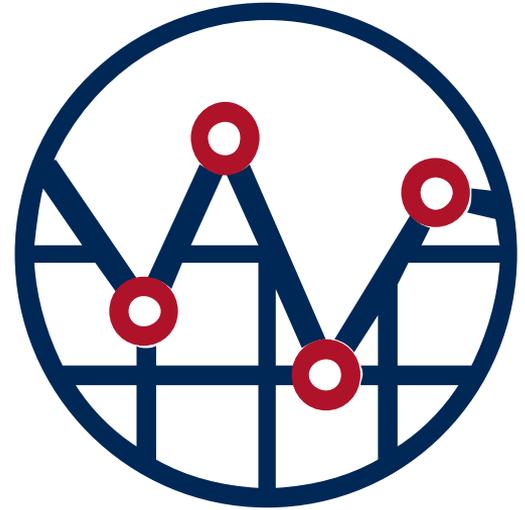
Intellectual Property

Geographical indications



TCA place no obligation on either party to recognise geographical indications, only “**the Parties may jointly use reasonable endeavours to agree rules**”.

UK no longer bound by requirement set out in the Withdrawal Agreement to respect EU GIs, but non-UK applications can apply for GI protection under a new UK GI scheme. Requires GI to have already been approved in country of origin and full criteria for acceptance currently unclear.



Intellectual Property

Patents, copyright and others

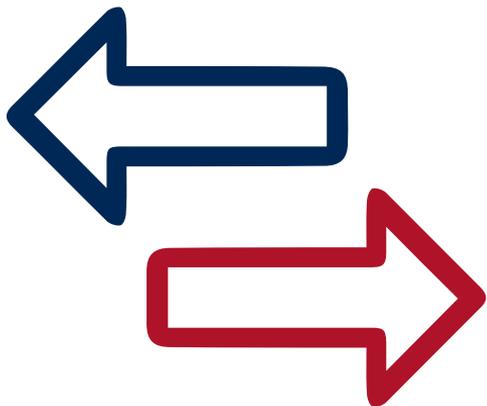


Broadly speaking, status quo maintained. Worth noting:

- SPCs (supplementary protection certificates) maintained and nationalised
- UK will not engage in the UPC
- IP Enforcement Directive maintained
- No plans for the UK to implement the EU Copyright
- Trade Secrets Directive maintained

Cross-border transfers

EEA to UK transfers



- "Bridging mechanism" while Commission considers adequacy
- Can continue without safeguards (e.g. SCCs) for 4 months
 - Period may be extended for 2 months if neither UK nor EU objects
 - Period ends earlier if Commission adopts adequacy decision
- Condition: UK must continue to apply UK GDPR

Cross-border transfers

Other transfers

UK to EEA

- Can continue without safeguards; UK has already designated EEA member states as adequate
- However, designation may be withdrawn at any time

UK to third countries

- EU's "adequate" jurisdictions: transfers can continue without safeguards (UK may add/remove at any time)
- Non-adequate jurisdictions: transfers require safeguards (SCCs OK under DPA 2018)

Other issues



Direct marketing:
consent required
(but soft opt-in still
available)



Cooperation:
to continue at bilateral
and multilateral level,
including re:
enforcement



Data localisation:
requirement to
store/process data
locally prohibited



Law enforcement:
cooperation subject to
effective safeguards

Next steps



EU/UK Agreement



- **Continue to comply with GDPR:** substantive alignment likely in short- to medium-term
- **Cross-border transfers:** map flows between UK and EEA to prepare for worst-case scenarios



Broader issues



- **Lead supervisory authority:** consider alternative where ICO currently designated as LSA
- **EU and UK representative(s):** if no establishment in relevant jurisdiction(s)

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Commercial Contracts

Speakers



Harry Small
Senior Counsel, London

Keep Calm and Carry On!

➤ Major issue in the TCA is the mutual recognition of judgments

➤ Note that choice of governing law is about a lot more than that

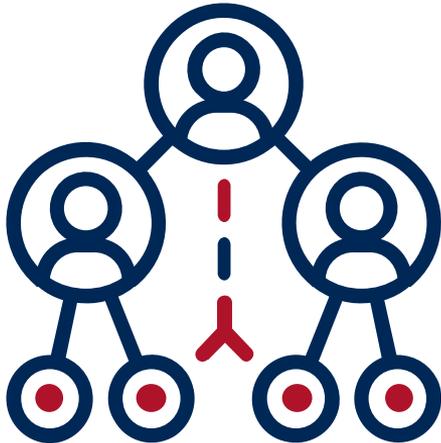
➤ As of 1st January 2021, the **Brussels Regulation** which used to govern UK/EU mutual recognition no longer applies

➤ But there is the **Lugano Convention** which deals with judgments between EU and:

- Has the same effect as Brussels Reg in general
- UK applied to join
- Iceland/Norway/Switzerland agreed – EU thinking about it



Conventions



➤ Absent Lugano, there is the **Hague Convention**

➤ Enforces mutual exclusive jurisdiction clauses, but:

- final judgments only
- more opportunities to challenge
- a very technical dispute on dates...

➤ Arbitration clauses unaffected: New York Convention unaffected

➤ **Repeat:** choice of law is not only about mutual enforcement

➤ **Reminder:** English law not UK law or E&W law!

Consumer Law

➤ No substantial change expected especially for digital transactions

➤ Obligation to maintain high consumer protection standards including:-

- good faith and fair commercial practices
- clear information about proposed transactions, broadly as now

➤ Protection against unsolicited marketing communications, as now



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Employment Law and Immigration

Speakers

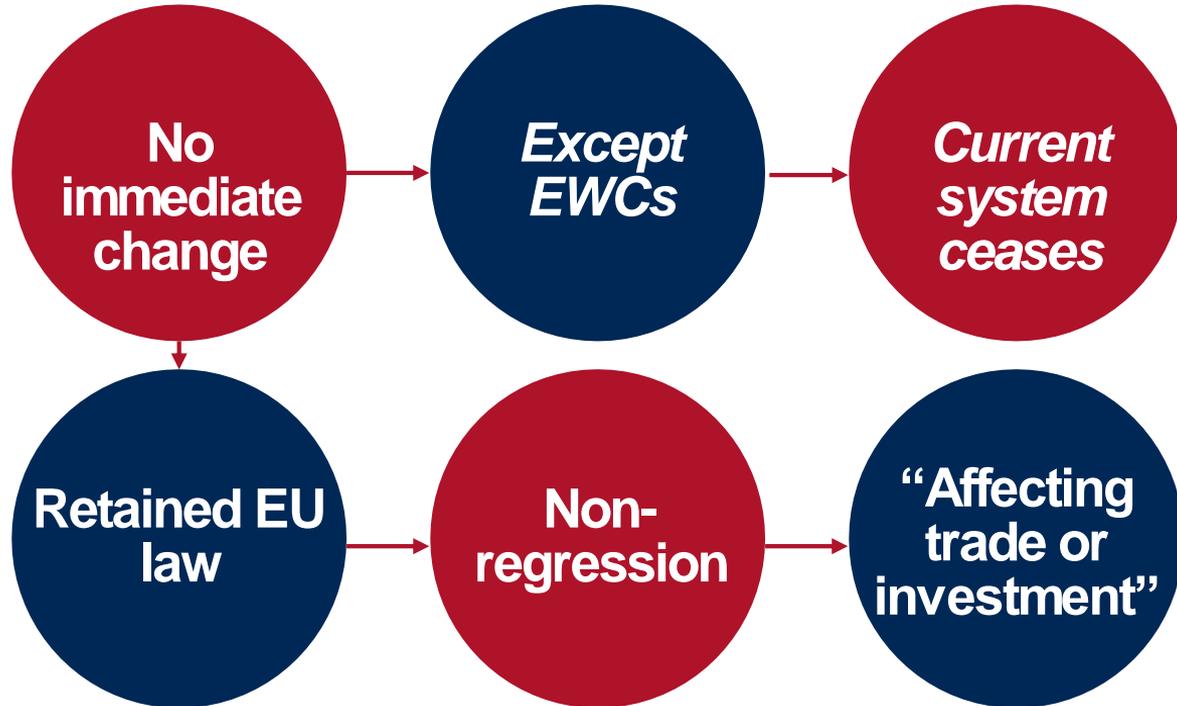


Stephen Ratcliffe
Partner, London



Tony Haque
Senior Associate, London

Employment law



Social security

Coordination, but increased complexity



Posted before end 2020: old rules apply.



Post-2020: social security benefits are coordinated.

- Broadly, only one set of rules applies to a person at any given time.



BUT some complexities e.g.:

- Detached worker rules (applicable to workers moving for less than 2 years), are subject to EU member states electing for them to apply.



EU Settlement Scheme

Rights granted under Withdrawal Agreement



Free Movement ended at 11 pm on 31 December 2020



EU/EEA nationals and their family members who entered UK before deadline qualify for status under EU Settlement Scheme



EU/EEA nationals resident for 5 years or longer granted “settled status” otherwise granted “pre-settled status”



No physical document issued, although status can be checked online



Applications must be filed by 30 June 2021

Points Based System

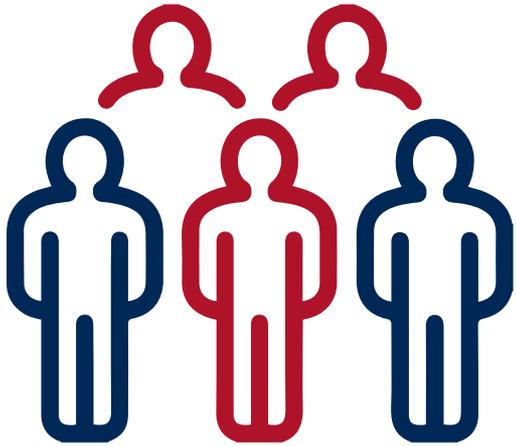
New UK Rules

- EU/EEA nationals now treated exactly the same as a non-EU nationals
- EU/EEA nationals arriving in UK from 1 January 2021 can visit UK for a maximum period of 6 months without a visa
- EU/EEA nationals coming here for work or for longer than 6 months must apply for visa under new Points-Based System
- New Skilled Worker category replaces Tier 2 General category with the entry requirements significantly relaxed
- Irish citizens are exempt from new requirements due to the long standing relationship between the UK and Ireland



British Citizens in EU/EEA

New Rules for UK nationals



Status of British citizens and their family members resident in EU prior to 1 January 2021 is protected under Withdrawal Agreement



British citizens visiting the EU from 1 January 2021 can visit Schengen area for up to 90 days in any 180 day period without a visa



British passport must be valid for at least 6 months and have been issued within the last 10 years



British citizens travelling to the EU for work or for longer than 90 days must apply for a visa under the domestic requirements of the EU country

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Tax

Speakers



Adam Peacock
Senior Associate, London



Nick Evans
Senior Tax Advisor, London

Tax

Withholding tax implications for holding companies on certain inbound interest, royalty and dividend payments

UK no longer bound by EU standards on tax governance; has limited reportable cross-border arrangements to just those meeting Category D Hallmark



- Movements of goods between the UK and EU will now be imports and exports for VAT purposes
- Intra-EU simplifications will no longer apply in the same way
- Low value import regime
- Marketplace liability
- Northern Ireland

- Change in VAT reporting for electronic services
- Increased VAT recovery for financial service providers
- B2C place of supply rules

- Changes to cross-border VAT recovery
- TOMS operators to consider application of regime

Brexit Webinar Series

	Customs and Product Regulation	Tuesday 26 January, 3.30 - 4.30 pm GMT
	WTO and Trade Remedies	Wednesday 27 January, 3.30 - 4.30 pm GMT
	Trade Sanctions & Export Controls	Thursday 28 January, 3.30 - 4.30 pm GMT
	Merger Control	Tuesday 2 February, 3.30 - 4.30 pm GMT
	UK / EU Competition and Consumer Protection Enforcement	Wednesday 3 February, 11.00 am - 12.00 noon GMT

Full information about these sessions can be found [here](#).

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Questions

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