Brexit-Information for Germany

(Status February 2021)

Dear Sir or Madam,

With the UK's withdrawal from the European Union, relations between the United Kingdom and the EU have been reshaped since January 2021. In this Brexit information, we briefly summarise the most important results for you (without claim of completeness).

A. Key points of the Trade Agreement

The agreement in principle on a provisional EU-UK Trade and Cooperation Agreement (TCA) entered into force on January 1, 2021, which essentially covers the following topics:

- Great Britain leaves the EU single market as well as the customs union. The entire regulations of the EU are therefore no longer generally applicable. **Special regulations exist for Northern Ireland**.
- Trade in goods between the UK and the EU will nevertheless remain duty and quota free. This means that **no bilateral import duties** will be levied and there will be no quantitative restrictions on imports. However, since the EU no longer recognises British product standards across the board, there will be export declarations and border controls. Moreover, this only applies to the extent that the products originate in Great Britain or the respective EU countries and comply with the so-called "Rules of Origin".
- The regulations of the TCA apply primarily to the trade in goods. **Services** have so far not been covered or only rudimentarily.
- **Level playing field.** Although the UK does not have to comply with future EU regulations, it may not fall behind the social and ecological standards of the EU regulations valid until the end of 2020. In addition, the agreement obliges both sides to comply with common subsidy principles and provides for EU companies to take legal action in British courts in the event of non-compliance or infringements.
- **EU citizens** need a valid passport to enter the UK. A visa is also required for stays of 90 days or more. As the UK is withdrawing from the Erasmus programme, the cost of studying abroad will increase significantly. Professional qualifications are no longer automatically mutual recognised.
- There will be significant **restrictions on the hiring of staff** as well as far-reaching consequences for the social security system, which will have a considerable impact in particular on expatriations and the previous practice of continuing retirement and health insurance coverage in the respective home country of the employee.
- There will also be consequences in the field of **data protection**. From July 1, 2021, Great Britain will be a third country from the perspective of the GDPR. A solution is now being sought until this deadline, which could possibly take the form of putting the UK on an equal footing with EU member states, so that the GDPR could continue to be valid.
- For the **fishing sector**, a five-and-a-half-year transitional phase was agreed, during which the fishing quotas of European fishermen are to be reduced by 25%. From 2026 onwards, there will be annual negotiations on fishing rights.

B. Key tax consequences of the Brexit

1. Income taxes

- **Withholding tax on dividends:** In UK inbound situations, future cross-border profit distributions to a UK parent company are no longer subject to the withholding tax exemption of the EU Parent-Subsidiary Directive. Such divi-

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dends are only subject to a withholding tax reduction to 5% under income law if a minimum participation of 10% is held (Art. 10 (2) letter a DBA UK).
In the reverse case, i.e. distribution by a UK company to a German parent company, the tax consequences should be examined before making the dividend distribution.

- **Withholding tax on interest and royalty payments:** After Brexit, interest and royalty payments to a British company are no longer subject to withholding tax exemption under the EU Interest and Royalties Directive. In the direct relationship with Germany, however, no additional withholding tax burdens should arise as a rule, since the right of taxation is assigned exclusively to the recipient state of residence pursuant to Art. 11 (1) and Art. 12 (1) DBA D-UK.
  In the reverse case, i.e. interest or royalty payments from a UK company to a German parent company, the tax consequences should be checked before making the respective payments.
- **Tax neutrality of corporate transformations:** As a rule, reorganisations involving UK companies should no longer be possible on a tax-neutral basis at book value. Exceptions to this may be possible and subject to certain conditions for so-called asset by share-deals and share by share-deals.
- **CFC taxation:** German CFC taxation for low-taxed and passive income of a foreign company does not apply if a so-called substance test can be carried out. Since, at least according to the wording of the law, a substance test is only permissible for EU / EEA companies, there is a risk of CFC taxation for low-taxed UK companies generating passive income**.**
- **Inheritance and gift tax:** In the future, business assets and shares in corporations in the UK will generally no longer be eligible assets due to the lack of an EU / EEA connection.

2. Value added taxes

After leaving the European Union, the UK has the status of a third country in many respects and is not subject to the EU VAT Directive, nor will it be bound by ECJ rulings in the future. Exceptions have been made for Northern Ireland with regard to the supply of goods. The main points to note are as follows:

- **Deliveries to and from Great Britain (excluding Northern Ireland):**

  Intra-community deliveries and purchases must be treated as exports and imports in the future. For these, in particular, increased documentary evidence will apply.

  Intra-community shipments will no longer have to be declared in future. Instead, separate customs regulations apply to these intra-company exports / imports.

  The EU simplification rule for supplies via UK **consignment warehouses** is no longer applicable. Deliveries to customers via a local consignment warehouse now lead to a registration and tax liability in the UK. Existing distribution structures should be reviewed in this respect.

  The general rules for **triangular intra-community transactions** now apply to chain transactions; these lead to additional registration obligations in the respective country of departure or destination.

  Mail order business: Deliveries to British consumers will be subject to British VAT in the future due to the elimination of the delivery thresholds. For supplies to British traders, the local reverse charge procedure applies. In the case of deliveries via online marketplaces, the online marketplace - irrespective of its registered office - is deemed to be the exporter of the delivery. Customs and import VAT relief is available for deliveries up to £135.
- **Services to and from the UK (incl. Northern Ireland):**

  Certain services **to British entrepreneurs** will in future be taxed in the country in which the service is effectively

used and evaluated. This may lead to additional registration and tax obligations. Furthermore, several services such as various consulting services, the leasing of movable assets or financial services provided by a German company **to British non-entrepreneurs** will be taxable in the United Kingdom in the future. Affected companies should therefore ensure that they are registered for VAT in the UK as a precautionary measure.

For all telecommunications, radio and television broadcasting services as well as **electronic services**, the "mini-one-stop procedure" and the simplification regulations for services to British consumers no longer exist. Affected companies should therefore take the precaution of registering for VAT in the UK.

The EU **input VAT refund procedure** according to 2008 / 9 / EC will no longer apply to UK input VAT amounts from 2021. The only exception is input VAT from the supply of goods in Northern Ireland.
Applications for refund of UK input VAT from 2020 can still be submitted to the Federal Central Tax Office via the EU input VAT refund procedure until 31.03.2021. For input VAT amounts from 2021 onwards, it is expected that the refund will have to be applied for in Great Britain itself; no regulations on reciprocity have yet been made here.

Should you have questions or require any assistance, please do not hesitate to get back to us. As always, we will assist you wherever we can.