

## BREXIT - INVESTORS MUST PLAN THE POST TRANSITIONAL PERIOD

The UK has left the EU and begins the transition period (\*)



### UK has left the EU but what are the consequences today and what the perspectives

The European Parliament on January 29 ratified Brexit by providing:

- A transitional period until 31/12/2020, during which the EU rules remain in force with the UK;
- The effective exit of the UK from the EU market and tax territory in 2021 unless by June 2020 the EU and the UK jointly will agree for the extension of the transition period.

Below we tried to give an overview about post-transition scenarios.

#### Human resources, immigration & social security

The difficulties in finding talents, considering the loss of the European market to attract them in the UK and, vice-versa, in attracting British employees in other EU countries, could have a significant impact on investments. One wonders if London will always be the EU's financial center or if the "European Oil Capital" will still be Aberdeen. On the post-transitional period, only hypotheses can be made:

- **Soft exit** – The UK and the EU reach an agreement to establish a "free trade area", in which the principles of coordination of social security systems would be substantially maintained, but immigration aspects would be less likely of being kept as they are now;
- **Hard exit** - UK will have to enter into individual bilateral social security agreements to avoid that social security contributions paid in the UK and Italy for activities carried out in the respective countries do not entitle to any pension. In this scenario, the immigration aspects risk being even more "heated".

In both scenarios it also remains to be understood how the non-EU employees who have entered the UK and obtained European work permits such as the "EU blue card" will be managed, they could find themselves with a document that is no longer valid after the transitional period.

#### VAT and customs duties

Unless otherwise agreed after the transition period it is expected that:

- The sales and purchases of goods between Italy and the UK will no longer qualify as intra-Community transactions but will have the nature of export sales respectively (for goods shipped from Italy to the UK) and imported goods (at the time the introduction of goods from the UK into Italy);
- It will no longer be possible to benefit from the simplifications envisaged for triangular Community operations, for "distance selling" (which imposes to register for VAT purposes in the Member State of consumption only if certain turnover thresholds are exceeded), for the transfer of goods furniture in another Member State for processing, appraisals (in these cases, the discipline of the customs of inward and outward processing may be applicable), to render a service and so on;
- For the provision of generic services pursuant to art. 7-ter of DPR 633/72, the formal obligations vary: for the services rendered, it must be indicated that the operation is "not subject" and no longer does the reverse charge apply; for the services received, however, the Italian taxpayer will be required to apply the reverse charge mechanism by issuing self-invoice and no longer integrating the invoice received by the English provider.

By the end of the transitional period, however, the EU and UK will be able to establish clearer and more advantageous rules for goods entering, leaving or transiting through the customs and tax territory of the EU and the UK (see press release Italian Customs Agency and Monopoly 29/01/20). Instead, the provisions of Directive 2010/24 / EU on mutual assistance for the recovery of tax credits (both referring to VAT and other taxes) continue to apply for a further 5 years after the end of the transition period.

#### Corporate tax

Unless otherwise agreed, the UK will become a non-EU country for income tax purposes from Jan 2021. Thus the European rules on income flows into and out of the UK (e.g. exemption from withholding taxes on dividends, interest, royalties, etc.) will cease. The automatic exchange of data on financial assets and related income

will not take place according to the implementation procedures of Directive 2011/16 / EC.

### **Employment tax**

With reference to employment income, the harmonization of tax legislation at the EU level is still ongoing.

However, the powers retained by the Member States must nevertheless be exercised consistently with Community law. In this respect, the case-law of the Court of Justice EU (CJEU) clarified how the EU principles limit the right of EU Countries.

In other words, for example, the EU rules must be interpreted as being capable of limiting the right of a Member State to lay down conditions concerning the liability to taxation of a national of another Member State and how tax is to be levied on the income received by him within its territory, since EU rules do not allow a Member

State, as regards the collection of direct taxes, to treat a national of another Member State employed in the territory of the first State in the exercise of his right of freedom of movement less favorably than one of its nationals in the same situation.

Now in the post-transition period, we expect more freedom of the UK judges in their interpretation of the UK employment tax rules.

For more details please see the following paper:

Marcello Ascenzi “La tassazione del personale in mobilità internazionale nel rispetto dei principi europei di libera circolazione” EUTEKNE, approfondimenti e Focus di pratica professionale, n. 07 - 2020

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