AUSSENWIRTSCHAFT AUSTRIA

ADVANTAGE AUSTRIA

No deal BREXIT and Austrian Subsidiaries/Branches FAQ

AUSTRIAN TRADE COMMISSION LONDON
February 2019

Brexit Info-Point for Austrian companies brexit@wko.at, www.wko.at/brexit

Topics

This documents attempts to answer the questions so far most frequently asked by representatives of Austrian subsidiaries. We compiled in this document from various UK and EU sources and experts of the Federal Economic Chamber to the best of our ability and knowledge. In many aspects, the information available is general in nature and many details have still to be ironed out. New information becomes available every day. Please consider this document as general guidance, which cannot however replace consulting with service providers (e.g. lawyers, taxadvisers,...) who will be liable for their advice.
Compiled 18.2.2019

1. Status of EU nationals presently living and working in the UK after Brexit (whether employed by UK subsidiaries / branches or foreign parent company)

The EU Settlement Scheme aims to ensure that EU citizens in the UK can remain after the UK leaves the EU. Some EU citizens will be able to stay in the UK without making an application through the EU settlement. These are:

- Citizens of the Republic of Ireland
- Citizens of other EU countries who already have *indefinite leave to remain* in the UK
- Citizens of other EU countries who already have *indefinite leave to enter* the UK

However, citizens of EU countries who already have indefinite leave to remain or indefinite leave to enter should consider applying for settled status to document and secure their status.

Groups that will need to apply through the EU Settlement Scheme are:

- EU citizens not covered by the exceptions above, including those who already have *permanent residence*
- Non-EU citizens who are the spouses, civil partners or unmarried partners of EU citizens
- Certain other relatives of EU citizens or their spouses or civil partners

Successful applicants to the scheme can expect to receive *settled status* or *pre-settled status*, depending on their circumstances:

- Applicants who have *five years' continuous residence* will normally be granted *settled status*
- Applicants who have less than five years' continuous residence will normally be granted *pre-settled status*

Applicants must be able to evidence their residence. In addition, *settled* or *pre-settled status* may be refused to an applicant who fails ID and criminal checks.

Only settled status confers the right to remain in the UK. Note that this right to remain can expire if the holder of settled status spends a long period outside the UK. A long period is likely to mean five years, but the exact period is still to set in statute (only in case of a no deal, in case of a deal it will mean five year).

Pre-settled status confers the right to remain for five years only. However, persons with pre-settled status may apply to convert to settled status once they have amassed five years of continuous residence in the UK. The latest point at which the holder of pre-settled status can apply for settled status is therefore five years from the point of receiving pre-settled status.

Five years' continuous residence generally means residence for a period of at least six months over five continuous years. However, in exceptional cases such as serious illness or an overseas work posting, this period can be interrupted by up to 12 months.

The latest possible start date for the period of continuous residence depends on whether the UK leaves the EU with or without a deal:

- If there is no deal: the residence must have started before the UK leaves the EU
- If there is a deal on its current terms: the residence must begin before the end of the transition period on 31 December 2020

Note that holders of a UK *permanent residence document* need not meet the five years' continuous residence requirement, but must still apply to the scheme (and can expect to receive settled status). Not all residence documents are classified as a *permanent residence document*, so it is important to check a person's individual status carefully.

In limited circumstances, settled status may be granted to a person with less than five years' continuous residence. For example, an EU citizen employed in the EU may receive settled status if they have worked in the UK for three continuous years and usually return to their UK home at least once a week.

The application process is online and will be fully open from 30 March 2019. At the time of writing, the process is in a test phase. Note that the application system does not currently support iPhones,

The deadline for applying depends on whether the UK leaves the EU with or without a deal:

- If there is no deal: apply by 31 December 2020
- If there is a deal on its current terms: apply by 30 June 2021

Settled and pre-settled status will be a digital record only to which holders will receive a link.
On 21 January 2019, the government abandoned its intention to charge application fees for the EU Settlement Scheme. However, the government will continue to collect fees (£65 for over 16s and £32.50 for under 16s) until the scheme has entered full operation, and refund them later.

Additionally EEA nationals in the UK could consider whether they already qualify for *Permanent Residence* status. If so, they can apply for this up until the point of the UK's leaving the EU and then apply to convert it into *settled status* without having to make a full, new application under the EU Settlement Scheme. To be granted *Permanent Residence*, an applicant:

- Must have been continuously resident in the UK for five years
- Must have been *qualified person* for this period, meaning that they must have been working, self-sufficient, a student, seeking work or a family member of a *qualified person*
- Must not have any serious criminal convictions

Backdated proof of employment (such as P60 forms, payslips and letters from employers') may be required to apply for *Permanent Residence*.
More information:

- *gov.uk: Settled and pre-settled status for EU citizens and their families*
- *gov.uk: Stay in the UK after it leaves the EU ('settled status'): step by step*
- *gov.uk: Apply for a permanent residence document or permanent residence card: form EEA (PR)*
- *House of Commons Library: EU citizens in the UK and a 'no-deal' Brexit*
- *Goodwille: Is your status settled? Protecting EU residence rights after Brexit*

2. Immigration of EU nationals after Brexit (including "posting of workers" with subsidiaries / branches of foreign parent companies)

If the withdrawal agreement as it currently stands is ratified, free movement will continue to operate in its current form until the end of the transition period. The initial transition period would end on 31 December 2020. However, the withdrawal agreement allows the UK and EU to agree an extension for one or possibly even two years. This means that free movement could continue until 31 December 2022.

If the UK leaves the EU without a withdrawal deal, the government intends to end free movement at the first opportunity. This requires the enactment of the *Immigration and Social Security Co-ordination (EU Withdrawal) Bill 2017-19*, introduced to Parliament on 20 December 2018. At the time of writing, the bill is at second reading in the Commons – meaning that the detailed scrutiny of its provisions at committee stage and subsequent further debates (in both the Commons and Lords) are yet to come. Only then, can the Bill pass Parliament and receive the Royal Assent (by which it becomes an Act and passes into law).

The government expects the Bill to receive the Royal Assent before 29 March 2019. It is, however, important to note implementation of the government's policy will also require amendment of further existing primary and secondary legislation. The Bill lets the government use statutory instruments to achieve this. Statutory

instruments allow the government to make changes to primary and secondary legislation with limited legislative scrutiny by Parliament.

In the longer term, the government outlined its intentions for a new immigration system in a white paper published (after some delay) in December 2018. This is a skills-based system, meaning that EU citizens would be treated in the same way as non-EU citizens. The government does not intend to introduce a visa requirement for citizens of current EU member countries. However, the white paper does propose a new "light-touch" Electronic Travel Authorisation, which all travellers into the UK (other than citizens of the UK and Republic of Ireland, but including EU citizens with pre-settled or settled status) will be required to obtain before travelling. This should be similar to the ESTA system operated for entry into the US.

The white paper explicitly acknowledges the importance of short-term business visits (including installing, servicing and providing training for the use of machinery) and leaves open the possibility of reciprocal provisions with the EU to minimise disruption in this area.

The white paper is not a detailed set of future regulations, and it will be some time before draft legislation is presented to Parliament. The new rules are not expected to be in operation before 2021 – and not before applications under the EU Settlement Scheme have been processed.

This means that in a no deal scenario, there will be an interim period between the end of free movement and the introduction of a new immigration regime. The government outlined its plans for this interim period on 28 January 2019.

For EU citizens, the fundamental change occasioned by the end of free movement is that entry to the UK will no longer be a right by virtue of their EU citizenship, but governed by UK immigration law. As such, the UK authorities could deny entry to EU citizens on a case-by-case basis. The exception to this is citizens of the Republic of Ireland, who retain a right to enter and live in the UK under the Common Travel Area arrangements between the UK and the ROI.

In practise, EU citizens will receive initial *leave to enter* automatically. This means that there will be little noticeable change at passport control. However, this initial leave to enter will only allow EU citizens to remain in the UK for three months. This is the same length of time as EU citizens may currently reside in the UK before having to exercise treaty rights (such as working or studying) under the Free Movement Directive.

After Brexit, EU citizens will no longer be able to exercise a treaty right to remain in the UK beyond the initial three months, but will instead have to apply for a new immigration status, *European Temporary Leave to Remain in the UK*. An EU citizen granted this status would be allowed to stay, work and study in the UK for a maximum of 36 months. An application for *European Temporary Leave to Remain* will only be possible after entering the UK.

There will be no fees for the initial (3-month) *leave to enter*, but the application for *European Temporary Leave to Remain* (36 months) will attract fees, at a level yet to be announced.

Applications to remain in the UK beyond the expiry of an individual's *European Temporary Leave to Remain* status will fall under the new immigration rules, which are yet to be finalised (see above).

EU citizens who wish to enter the UK using a valid national identity card will be able to do so until 31 December 2020. After this date, EU citizens will require a passport to enter the UK.

The above arrangements in relation to *leave to enter* and *European Temporary Leave to Remain* will also be extended to citizens of the non-EU members of the European Free Trade Association (that is, to citizens of Switzerland, Norway, Iceland and Liechtenstein).

3. EU nationals visiting UK for short term business visits

See above. There are important changes from a legal point of view, but with little or no practical impact for most visitors from the EU. Note that if the UK were to leave the EU before the *Immigration and Social Security Co-ordination (EU Withdrawal) Bill 2017-19* is passed, or after the bill has past but before the secondary legislation it enables has allowed new immigration arrangements to be set up, the precise technical status of EU citizens arriving in the UK is currently unclear.

4. Status of Inter-Company Transfers visa holders after Brexit (relevant for non EEA nationals only)

The Intra-company Transfer visa (Tier 2) is currently only available for citizens of countries outside the European Economic Area, and as such is part of the non-EU immigration system that runs parallel to free movement. The fact of the UK's potential exit from the EU on 29 March will not directly affect this visa type, but the wider new immigration context does mean that small changes are to be expected.

Essentially, though, the white paper suggests that the future immigration scheme will broadly resemble the current system in terms of specific routes targeted at "innovators", "exceptional talent", "investors" and "other temporary workers" (such as competitors in sporting events). The core distinction the system will make is between skilled workers (who may stay for longer periods, but will generally need to be sponsored by an employer) and short-term workers at all skill levels (who will need to be sponsored, but whose entry will be much more tightly controlled – and limited to entrants from countries deemed "low risk").

As the Intra-company Transfer visa (Tier 2) is for citizens of countries outside the EEA only it is not directly affected by the UK's withdrawal from the EU, and holders of this visa would not qualify for settled status under the EU Settlement Scheme.

Currently, holders of an Intra-company Transfer visa (Tier 2) can extend their stay, possibly for up to nine years, subject to meeting the relevant criteria.

In the longer term, there are currently no plans to change the Intra-company Transfer visa (Tier 2). Though the precise details of the future immigration scheme are not yet known (see above), the government in the white paper has said it will accept many of the recommendations made by the Migration Advisory Committee (MAC) in relation to the related Tier 2 (General) visa. In this report, commissioned by the Home Secretary in July 2017 and published in September 2018, the MAC proposed that the Tier 2 (ICT) should continue to operate unchanged. The MAC noted "Some of the rules on ICT come under Mode 4 of the WTO rules. We think it important that these flows remain as free as possible after the UK leaves the EU".

More information:

- *Policy Paper: Immigration from 30 March 2019 if there is no deal*
- *Immigration and Social Security Co-ordination (EU Withdrawal) Bill 2017-19*
- *House of Commons Library Research Briefing: The Immigration and Social Security Co-ordination (EU Withdrawal) Bill 2017-18*
- *Guidance: European Temporary Leave to Remain in the UK*
- *House of Commons Library: EU citizens in the UK and a 'no-deal' Brexit*
- *Migration Advisory Committee: EEA migration in the UK: Final report*
- *White Paper: The UK's future skills-based immigration system*
- *gov.uk: Intra-company Transfer visa (Tier 2)*

5. Insurance coverage under policies issued by non UK-registered EU insurance providers after Brexit (including group policies)

EU-based financial service providers rely on "passporting" arrangements to offer their services in all the member states. If the withdrawal agreement in its current form is ratified, these arrangements will continue to be available until the end of the transition period (that is, until at least 31 December 2020).

If the UK leaves the EU without a withdrawal agreement, however, the "passporting" arrangements will no longer be available. Ultimately, this means that all financial service providers operating in the UK will require authorisation from the appropriate UK regulator (for insurance companies, the Bank of England's Prudential Regulation Authority).

If the UK leaves the EU on 29 March 2019 without a withdrawal agreement, a *temporary permissions regime* will allow firms that had previously relied on "passporting" and do not yet have a UK authorisation to continue operating for a limited period (probably three years) while they gain local authorisation.

This regime has already been established by secondary legislation (*The EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018*). Insurance providers who wish to enter the regime must notify the regulator by 28 March 2019. Entry into the *temporary permissions regime* is not automatic and there is no public register of included providers. Hence, policyholders should check with their insurers to confirm that there will be no interruption to their cover in the event of an unruly Brexit.

While the *temporary permissions regime* should minimise disruption in a disorderly Brexit scenario, policyholders should nonetheless review their insurance policies in the light of the UK's leaving the EU. For example:

- Do policies contain references to the EU that require amendment to include the UK?
- Does the UK's departure from the EU create new risks to insure against?
- Are existing contracts with UK insurers enforceable elsewhere in the EU after Brexit?

In the event of a disorderly Brexit on 29 March 2019, UK companies operating vehicles that cross into the EU should note that:

- UK drivers are likely to need to carry a Green Card to drive within the EEA. This is an international certificate of motor insurance issued by your motor insurer. Insurers may make an administrative charge. In some EU states, a separate Green Card is required for trailers.
- The Association of British Insurers recommends requesting a Green Card at least one month before travel. For trips planned for the month after 29 March 2019, this means applying for a Green Card before the UK has left the EU.
- A Green Card must cover a minimum of 15 days. Motor insurance policies that are due to expire less than 15 days after the date of travel must therefore be renewed before departure.
- Border authorities may wish to check insurance policies, so drivers should carry them.

Business travellers should also note that if the UK leaves the EU without a withdrawal agreement on 29 March 2019, the *European Health Insurance Card* (EHIC) would, in the absence of a separate agreement with the EU, no longer provide state healthcare for EU citizens in the UK or UK citizens in the EU. Companies should also check that any private health and travel insurance policies would continue to cover their staff, as some policies only cover travellers who also have EHIC cover.

The end of the UK's participation in the EHIC scheme is likely to lead to a rise in private insurance claims for care previously provided by state health authorities. This will, according to the Association of British Insurers, inevitably lead to higher insurance premiums.

Finally, note that all employers registered with HMRC for PAYE (including subsidiaries and UK establishments of Austrian companies) must by law take out Employers' Liability insurance policy with an insurer listed on the Financial Services Authority Register.
More information:

- *FCA: Temporary permissions regime for inbound passporting EEA firms and funds*
- *gov.uk: Employers' Liability insurance*
- *Financial Services Authority: The FSA Register*
- *Guidance: Prepare to drive in the EU after Brexit*
- *Association of British Insurers: Travelling to the EU in the case of a No-Deal Brexit*

6. Healthcare for non-UK residents after Brexit

If the UK leaves the EU without a withdrawal agreement, the current arrangements for reciprocal healthcare between the UK and the rest of the EU will seize to apply. This would mean that the cover currently provided by the *European Health Insurance Card* (EHIC) would no longer be available to UK citizens in the EU or EU citizens in the UK.

To address this, the *Healthcare (International Arrangements) Bill*, introduced to Parliament on 22 January 2019, gives the UK government legal powers to fund and implement new bilateral agreements with individual EU member states. Note that the bill itself does not outline what those arrangements would entail; rather it simply enables the government to make secondary legislation to implement any bilateral agreements reached. Hence, the availability of bilateral healthcare arrangements after an unregulated Brexit depends on:

- the timely passage of the *Healthcare (International Arrangements) Bill* into UK law
- the agreement of bilateral arrangements with individual states
- the making of whatever secondary legislation is necessary to implement such arrangements

Since there is likely to be a gap between the UK's exit from the EU and the point at which the above criteria have been satisfied, EU companies in the UK may wish to take out private health insurance for affected staff. Currently, the NHS advises non-EEA citizens to take out private medical insurance when visiting the UK for periods of less than six months. This would then cover the cost of any NHS hospital treatment they might receive during their stay. Such treatment is charged at 150% of the standard NHS rate.

Note that the absence of new healthcare arrangements does not automatically mean that EU citizens working in the UK will no longer have access to the NHS. This is because nationality, tax residence, past or current payment of UK National Insurance contributions are *not* the primary determiners of access to NHS services. In England, for example, patients visiting the UK for periods of between 24 hours and three months can temporarily register with a GP surgery. Accident and emergency services (though not treatment if admitted) are free to all, and access to other hospital treatment is determined by ordinary residence (though this may need to evidenced).

By way of guidance, non-EEA nationals currently usually only class as ordinarily resident when they have indefinite leave to remain, and maybe required to pay the *immigration health surcharge* if staying in the UK for longer than six months.
More information:

- *Healthcare (International Arrangements) Bill 2017-19*
- *House of Commons Library: Healthcare (International Arrangements) Bill 2017-19*
- *NHS: How to access NHS services in England if you're visiting from abroad*
- *Guidance: How the NHS charges overseas visitors for NHS hospital care*

7. UK branches of EU companies (subject to overseas company regime) after Brexit

EU companies that operate branches in the UK are currently subject to the overseas companies regime, but the requirements applicable to them will change. They will become subject to the same information and filing requirements as any other third country's companies' branches. However, those additional requirements are minimal. Guidance on the current requirements can be found here.

An EU company with a branch in the UK that is required by its parent law to prepare, have audited and disclose accounts will be required to file in the UK accounting documents which will include the accounts, any annual report of the directors, any report of the auditors on the accounts, and any report of the auditors on the directors' report. Parent law in this context will be the law of the EEA state where the company is incorporated.

An EU company with a branch in the UK which does not meet this description will, after exit day, have to comply with the provisions of Part 15 of the Companies Act 2006 that have been applied (with modifications) to overseas companies by the Overseas Companies Regulations 2009.

8. Data protection after Brexit.

As an EU regulation, the GDPR is directly applicable in the UK. At the same time, it sits alongside domestic data protection legislation. The key piece of domestic regulation is the *Data Protection Act 2018*, which deliberately set about to incorporate GDPR principles in UK law. This, combined with the fact that the GDPR will (in a hard Brexit scenario) itself be essentially copied into UK law by virtue of the *European Union (Withdrawal) Act 2018*, means that a hard Brexit would not bring about significant change in the UK data protection regime.

As such, UK data protection law will also remain as similar to data protection law in the EU as it is currently. Only new UK or EU legislation that comes into force after the UK's exit could change this. Though the UK government is not planning to introduce any such legislation, the European Commisson's new ePrivacy Regulation (on electronic communication, as opposed to data protection) could be relatively imminent. This new directive would replace the current ePrivacy Directive (2002/58/EC) in the EU, leaving the UK with the older rules (as implemented in the UK by the *Privacy and Electronic Communications (EC Directive) Regulations 2003*).

Although a hard Brexit would not significantly change data protection law in the UK, there are consequences for the actual transfer of data between the EU and the UK. This is because the GDPR – as an EU regulation – is what currently enables the free flow of data within the EEA. Once the UK leaves the EU (and, with it, according to the government's current policy, the EEA), the GDPR will no longer have direct effect in the UK (and live on in the UK only by virtue of its reproduction in domestic law). This means that from a European perspective, the UK will be a third country, to which the free transfer of data is (under the GDPR) only possible when that country's data protection law has been deemed to be equivalent to GDPR standards.

Meeting this standard should not present the UK with a major challenge: as discussed above, the *Data Protection Act 2018* is carefully drafted along GDPR lines. The problem is that the UK can only apply for equivalent status *after* it has left the EU. Thus in a hard Brexit scenario, there will at the very least be a temporary interruption of the current free flow of data between the EU and the UK. This could for example affect subsidiaries of EU companies who send staff data to their EU-based parent companies, or those that rely on a customer database located in the EU.
The *Information Commissioner's Office* (the UK data regulator) has provided detailed guidance (linked below) on how companies can mitigate this risk and continue to transfer necessary data. This explains what kind of data transfers could be affected, and how they may still be made – for example through the implementation of appropriate safeguards, the use of standard contractual clauses, under prescribed exceptions or (for transfers within a group of companies) binding corporate rules. Note that binding corporate rules require approval by an EEA statutory authority.

A hard Brexit would also affect data transfers from the UK to those non-EEA countries for which the EU has already issued adequacy decisions. For this reason, the UK government intends to itself recognise those existing adequacy decisions, so that data transfers from the UK to those other third countries may continue to be made after the UK's exit from the EU. This solution will not, however, work in respect of personal data transfers to the US, as these are enabled by the specific EU/US Privacy Shield agreement. This means that in a hard Brexit scenario, UK businesses will only be able transfer data to US organisations participating in the Privacy Shield if those organisations update their publicly available Privacy Shield commitments to expressly state that they apply to transfers of personal data from the UK.

As this is a complicated area, seeking legal advice in respect of both internal data transfers and contracts with customers and other partners is prudent.

More information:

- *Information Commissioner's Office: Data protection if there's no Brexit deal*
- *gov.uk Guidance: Data protection if there's no Brexit deal*
- *Fladgate Brexit Briefing: Brexit and Data Protection*

9. Intellectual property after Brexit

In the event of a 'no deal' scenario, the government has published a series of technical notices. This information helps businesses understand what they need to do, so they can make informed plans and preparations.

The technical notices on intellectual property were published on 24 September 2018:

- *trademarks and designs if there's no Brexit deal*
- *patents if there's no Brexit deal*
- *copyright if there's no Brexit deal*
- *exhaustion of intellectual property rights if there's no Brexit deal*

More information:

- *https://www.gov.uk/government/publications/ip-and-brexit-the-facts/ip-and-brexit*

10. Taxation of EU-companies with affiliated companies in the UK after Brexit

In the area of taxes on income, after a disorderly Brexit the United Kingdom will have to be treated as a third country in the future. All preferential provisions that can be claimed only in relation to EU/EEA countries are therefore no longer applicable to transactions that take place after the entry into force of Brexit.

For companies, the entry into force of Brexit also removes the provisions of the Parent-Subsidiary Directive, the Interest and Royalties Directive and the Merger Directive in relation to the United Kingdom: For Austrian companies with affiliated companies in the United Kingdom this relates to:

- the assertion of withholding tax exemption for dividends pursuant to § 94 II of the Austrian Income Tax Act 1988, and
- the withholding tax exemption for interest and royalty payments pursuant to § 99a of the Austrian Income Tax Act 1988.

After a no deal Brexit dividends, interest and royalty payments are therefore again subject to the provisions of the Double-Taxation Agreement between Austria and the UK. On 23 October 2018, a new double-taxation agreement was signed in Vienna, which is currently going through the parliamentary process on the Austrian side. According to recent information from the UK Treasury, the new agreement is due to be ratified in the UK in February or March 2019, respectively. If coming into effect this year (subject to ratification) the provisions of the new double

tax treaty between Austria and the United Kingdom will be applied from 1 January 2020. However, in the transition period between the United Kingdom's exit from the EU and the application of the new double tax treaty the provisions of the currently still applicable double tax treaty between Austria and the United Kingdom, BGBl. Nr. 290/1970 as amended per BGBl. III № 135/2010 , are to be applied.

More Information

- *Austrian Ministry of Finance in German: https://www.bmf.gv.at/aktuelles/steuern-brexit.html or English https://english.bmf.gv.at/Brexit.html. (as of 2019/02/07)*
- *PWC, Neues Doppelbesteuerungsabkommen zwischen Österreich und UK: https://steuernachrichten.pwc.at/blog/2018/12/03/neues-doppelbesteuerungsabkommen-zwischen-oesterreich-und-uk/*
- *Republik Österreich Parlament: https://www.parlament.gv.at/PAKT/VHG/XXVI/I/I_00326/index.shtml (full text of new treaty in German and English)*

11. Value Added Tax (VAT) after Brexit

In the case of a disorderly Brexit, there will be a change in the legal assessment – in particular in the case of cross-border service relationships – of the following subject areas, as a rule resulting directly from the Austrian Value Added Tax Act 1994 and affecting entrepreneurs:

Intra-Community deliveries of goods/export delivery
After Brexit, for deliveries to the UK, export deliveries (VAT-exempt with input tax relief; § 6 I 1 in conjunction with § 7 I of the Austrian Value Added Tax Act 1994) take the place of intra-Community deliveries (VAT-exempt with input tax relief; Art. 6 I in conjunction with § 7 I of the Austrian Value Added Tax Act 1994). With regard to the special case that the movement of goods in the context of a delivery began before Brexit and the object of the delivery is already located in the United Kingdom at the time of Brexit (for temporal and material aspect of deliveries please see point 3982 of the Austrian VAT Guidelines (UStR)), the proof of tax exemption – because proof of exportation is de facto no longer possible – can be furnished in the same way as proof of tax-free intra-Community delivery (see Ordinance BGBl. № 401/1996 as most recently amended).

Intra-Community acquisition of goods/importation
After Brexit, for deliveries from the UK, the fact of importation under VAT law (§ 1 I 3 of the Austrian Value Added Tax Act 1994) will again have legal effects. The same applies to the relocation of the place of supply of goods pursuant to § 3 IX of the Austrian Value Added Tax Act 1994 or the obligation (liability) to pay VAT pursuant to § 27 IV of the Austrian Value Added Tax Act 1994. In the B2B sector, this virtually replaces intra-Community acquisition (Art. 1 of the Austrian Value Added Tax Act 1994). Input tax deduction is possible here under the general principles according to § 12 I 2 of the Austrian Value Added Tax Act 1994.

With regard to the special case that the movement of goods in the context of a delivery began before Brexit and the object of the delivery is already in Austria at the time of Brexit (for the temporal and material aspect of deliveries please see point 3982 of the Austrian VAT Guidelines (USRT)), this is an intra-Community acquisition of goods (Art. 1 I of the Austrian Value Added Tax Act 1994) and no import, because it is decisive that the object of the delivery is already in Austria and cannot (can no longer) be released for free circulation.

More information:

- *Austrian Ministry of Finance in German: https://www.bmf.gv.at/aktuelles/steuern-brexit.html or English https://english.bmf.gv.at/Brexit.html. (also including information on taxation of individuals)*
- *Deloitte, Brexit: tax consequences - https://www2.deloitte.com/nl/nl/pages/tax/articles/brexit-tax-consequences.html?id=nl:2em:3cc:4dcom_share:5awa:6dcom:tax*
- *PWC, Where are you on the 'planning for Brexit' scale?: https://www.pwc.co.uk/the-eu-referendum/beyond-brexit-insights/planning-for-brexit-scale.html*

- *EY (not extensive), Navigate through the Brexit tax landscape: https://www.ey.com/gl/en/services/tax/ey-brexit-tax-landscape*

12. Trading after Brexit

If the UK left the EU on 29 March 2019 without a deal there would be immediate changes to the procedures that apply to businesses trading with the EU. It would mean that the free circulation of goods between the UK and EU would cease. Extensive information on customs and excise rules to goods moving between the UK and the EU after a no deal Brexit have been published:

- *UK government "Trading with the EU if there is no Brexit-deal": https://www.gov.uk/government/publications/trading-with-the-eu-if-theres-no-brexit-deal/trading-with-the-eu-if-theres-no-brexit-deal*
- *UK government "Customs procedures if the UK leaves the EU without a deal: Simplified customs processes for UK businesses trading with the EU in the event that the UK leaves the EU without a deal": https://www.gov.uk/guidance/customs-procedures-if-the-uk-leaves-the-eu-without-a-deal*

The UK has submitted both its schedule of commitments under the General Agreement on Tariffs and Trade (GATT), and its schedule of commitments under the General Agreement on Trade in Services (GATS) to the World Trade Organization (WTO). After a no deal Brexit the following UK tariffs will also apply to imports from the EU.

- *UK goods and services schedules at the WTO: https://www.gov.uk/government/publications/uk-goods-and-services-schedules-at-the-wto*

Equally, the EU's common external tariff schedule will apply to UK Exports to the EU:

- *Common external tariff: TARIC, the integrated Tariff of the European Union, is a multilingual database integrating all measures relating to EU customs tariff, commercial and agricultural legislation.*
- *European Commission: Withdrawl of the UK and EU rules in the field of customs and indirect taxation*

All traders engaged in cross-border external trade with third countries (non-EU countries), who are in contact with the customs authorities in the course of their business are required to apply for Economic Operator Registration and Identification (EORI) . The EORI number assigned at the time of registration serves to clearly identify economic operators and other persons who are resident or at least taxable in the EU. Each EU company receives only one EORI number.
UK subsidiaries of EU companies are already required to register for their own EORI number. UK branches of EU companies (subject to overseas company regime) currently operate using the EORI number registered to their foreign parent. After a no deal Brexit a UK branch of an EU company would no longer be able to lawfully use the parent's EORI Number and would have to apply for its own:

- *UK Guidance related to EORI: https://www.gov.uk/guidance/get-a-uk-eori-number-to-trade-within-the-eu?*

Brexit-related legislative initiatives, other legal acts and guidances:

- gov.uk: How to prepare if the UK leaves the EU with no deal
- gov.uk – Bespoke EU exit guidance for your business
- gov.uk: UK Brexit Portal- Prepare your business for EU Exit
- European Commission: Preparedness notices on a huge variety of subjects

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