

RSM InterTax Tax Insights September 2019

Brexit: actions in case of a "no-deal" scenario

RSM BELGIUM INFORMS YOU

A no-deal Brexit on 31 October 2019 remains one of the possibilities.

We therefore want to draw your attention to the actions that should be taken to be ready for a no-deal Brexit.

1. Application for an EORI number

To be able to import and export goods from and to the EU, every company must have an EORI number. If you do not have an EORI number yet (or have an EORI number assigned by the UK), and you are trading or will trade with the UK in the near future, an EORI number must already be requested. An additional EORI number in the UK is also required if you wish to import goods into the UK.

2. Analyse and adjust your ERP systems

Check all the transactions you have in place with the UK (both sales and purchases of goods and services). Not only the mandatory mentions on the invoice must be adjusted, but also the correct reporting of the various transactions to and from the UK (VAT returns, intra-Community listing and Intrastat returns) must be ensured.

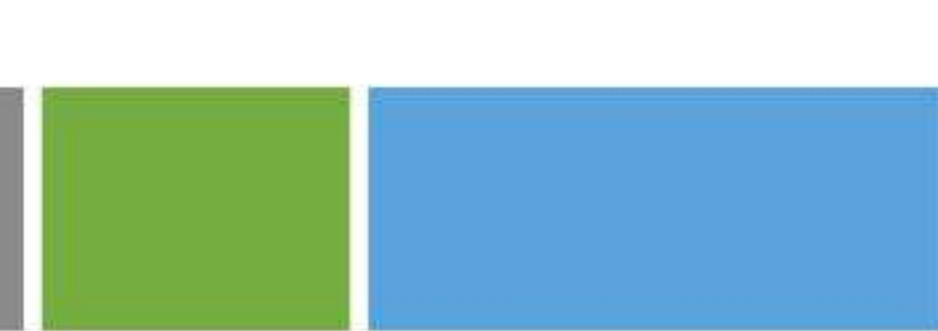
For supply of goods, the mention on the invoices must change from "Exempted Intra-Community supply - Article 39bis of the Belgian VAT Code" to "Exempted export - Article 39, § 1 of the Belgian VAT Code". In addition, an export document must be drafted.

It is also important to note that B2B supplies of goods and services to the UK should no longer be reported in box 44 or box 46 of the VAT return, but in box 47. In addition, these should no longer be included in the intra-Community listing, nor in the Intrastat reports.

If you provide electronic services to individuals or non-taxable persons in the UK, for which you are currently using the MOSS system, you will need to apply for a VAT registration in the UK from 1st November 2019 and charge local VAT.

There will also be changes for incoming transactions, which will need to be reported in the VAT return in a different way. The purchase of goods from the UK will be subject to import VAT and possibly import duties (see also the following points).

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3. ET 14.000 - license: shifting of VAT to the VAT return

If you often purchase goods from the UK, it may be useful to apply for an ET 14.000 license. After the Brexit, these purchases will qualify as imports of goods on which import VAT is due. In principle, you must immediately pay this import VAT to customs at the time of import.

To avoid having to pre-finance high import VAT amounts, you can apply for an ET 14.000 license. This license allows you to shift the import VAT to your periodic VAT return (by means of a reverse charge mechanism), so that the VAT has no longer to be paid immediately at the time of import.

Taking the Brexit into account, you can already apply for this license, but it will only be granted once Brexit is a fact.

4. Refund request for UK VAT

If you, as a Belgian VAT taxable person, have incurred UK VAT during 2018 or 2019, these VAT amounts can still be claimed through 31 October 2019 via the electronic EU refund portal (INTERVAT application VAT Refund). Please note that the deadline for a refund request for VAT from 2018 is, as usual, 30 September 2019. The deadline for VAT claims from 2019 (until 31 October) is 30 September 2020, but electronic requests for UK VAT can only be introduced until 31 October 2019.

Refund requests submitted after 31 October 2019 must follow the more lengthy refund procedure of the 13th Directive (in accordance with UK regulations, i.e. requests must be made per fiscal year from 1 July to 30 June and must be submitted before 31 December of the relevant year).

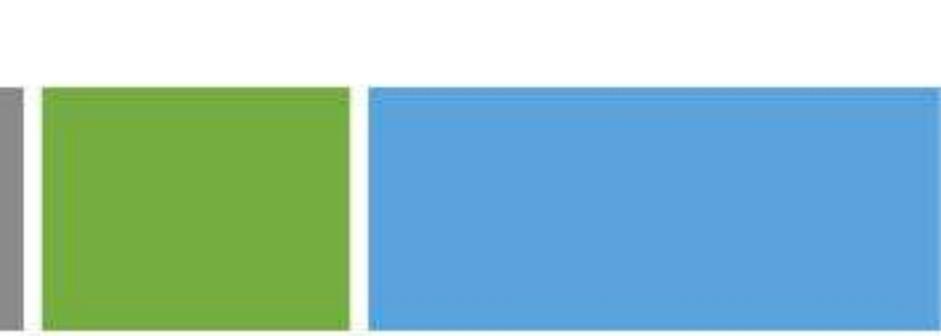
5. Immigration

Once the Brexit of 31 October 2019 will be effective the UK will no longer be subject to European rules on free movement of people and will be free to implement its own immigration system. It is not yet clear what this new system will look like and what impact Brexit will have on the free movement of people in the other EU Member States. Former UK Prime Minister, Theresa May, considered that the European rules on free movement would gradually disappear during a transition period. These plans have already been withdrawn. It is possible that the UK will limit migration from mainland Europe by imposing work and residence criteria on European Union nationals, which is similar to the system that already applies to non-European nationals. After Brexit, the UK may introduce a new immigration system under which EU nationals must meet certain skill or diploma requirements. On the other hand, it is possible that the UK will leave the European Union but would still want to remain a member of the European Free Trade Area and / or the European Economic Area. In this case, the UK may have no option but to accept unlimited immigration from the European Union. We should still wait to see how this discussion will evolve.

6. European Regulation 883/2004 on the coordination of social security systems

The social security regime applicable to persons moving within the European Union is currently regulated by the European Regulation 883/2004 on the coordination of social security systems. This Regulation applies in situations of cross-border employment. This stipulates that a worker can only fall under the legislation of one single country and therefore only pays social contributions in one single country. Moreover, it is stated that the workers always have the same rights and obligations as other nationals of the country in which they are socially insured.

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The principles and rules set out in the Regulation still apply to British nationals living or working in Belgium and this will continue to be the case until the UK leaves the European Union on 31 October 2019.

In the case of a "No Deal" between the European Union and the UK, from 1 November 2019 citizens will in principle be subject to the legislation of the country where they work or reside. This means, for example, if you work in the UK, you are subject to UK legislation and you will have to address the relevant UK authorities. However, from 1 November 2019, the social security rights of British nationals present in Belgium will be further protected. To this end, the Belgian federal government has taken a legislative initiative ensuring that the social security situation of British nationals living or working in Belgium will remain unchanged until 31 December 2020 based on the reciprocity principle between Belgium and the UK. The same applies to Belgian nationals working in the UK on 31 October 2019. In practice, this means that the European Health Insurance Card (EHIC) remains valid until 31 December 2020.

In the context of secondment, there are two possible situations: a secondment of an employee or self-employed person either from the UK to Belgium or vice versa from Belgium to the UK. In the first case, the person concerned will remain subject to UK social security until 31 December 2020 and will have to address the relevant UK authorities. Belgium will recognize the secondment certificates (A1 documents) and will not levy any social security charges in this case until 31 December 2020. In the opposite situation, the person concerned will remain subject to Belgian social security legislation. The existing rules on secondment and contribution payments will continue to apply until the end of next year.

7. European Directive 96/71/EC concerning the posting of workers in the framework of the provision of services

The European Posting of Workers Directive is still applicable in the UK. This Directive guarantees a good working environment for posted workers. Every EU Member State had to transpose this European Directive into its national legislation, including the UK. After the Brexit, this Directive will no longer apply, and the UK will be free to introduce its own rules. In this respect, we will have to wait and see what the new rules on posting to the UK will entail.

8. Actions: does your company have enough resources to accommodate a no-deal Brexit?

Considering the previous action points, it should be verified whether your company has the necessary human and technical capacity to handle these extra tasks. Can you appeal to people with sufficient VAT and customs knowledge? Are your IT systems adapted to the changed situation? Do the logistic flows need to be adjusted (according to the transactions performed)? Do certain permits/certificates have to be applied for (or renewed)? Is your company ready to submit import and export declarations?

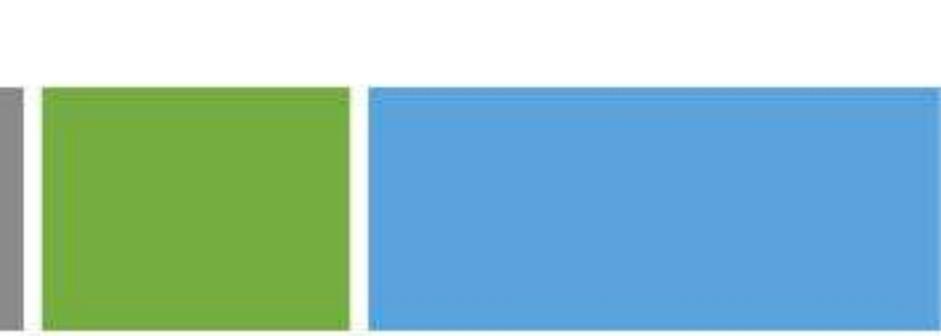
In addition, there can be an impact on flows of goods due to additional customs controls and formalities. Check whether you have enough stock, so that delivery times can be met, even if for example the flow of goods with the UK has stopped for two weeks or more.

Also, possible import duties should not be forgotten, since these can have a major impact on profit margins due to higher purchase costs.

9. Useful information on the websites of the Belgian and British Authorities

The VAT administrations are also preparing for Brexit. Both the Belgian and British VAT administrations have a specific section on their website with useful information about the impact of Brexit.

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Link to the website of the Belgian VAT administration:

https://finance.belgium.be/en/customs_excises/enterprises/brexit

Link to the UK VAT administration website: <https://www.gov.uk/find-eu-exit-guidance-business>

10. How can RSM Belgium help you?

RSM can offer you further assistance with the aforementioned action points and can also help you identify the necessary specific measures that apply to your company.

We will provide you with further updates as soon as new developments occur and further guidelines from the tax authorities are available.

If you require additional information and assistance, do not hesitate to contact the tax team of RSM Belgium.

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