

# Direct taxes

- The field of direct taxes is directly impacted in certain aspects as a mere consequence of the UK no longer being an EU Member State. Moreover, indirect effects may be expected as a consequence of some form of policy re-positioning by the UK, reflecting its new legal and competitive situation (being less, or possibly not at all, bound by EU rules any longer).
- The EU Directives in particular the Parent Subsidiary Directive, will no longer apply to the UK. Among these are notably the Parent Subsidiary Directive and the Interest and Royalties Directive. These two directives seek to facilitate cross-border transactions for qualifying intra-group constellations by providing for exemption from withholding tax (WHT) for dividends, interest and royalties, and furthermore for exemption of the received income at recipient level.
- Dividends: In the absence of the Parent Subsidiary Directive (PSD), a subsidiary may no longer be able to distribute dividends to its parent free from dividend withholding in EU-UK constellations. This may lead to a definitive WHT burden, which might render the UK less attractive as a holding company location. However, concretely in the Belgium-UK context, will not give rise to new obstacles, as long as domestic laws in both the UK and Belgium continue to exempt dividends also in non-PSD situations.
- Interest and Royalties: The absence of protection by the Interest and Royalties Directive may, in EU-UK constellations, render the UK less attractive as a financing location, provided that a definitive WHT burden will arise. This is the case if the applicable bilateral income tax treaties (the validity of which remains unaffected by Brexit) allow source taxation on interest and / or royalties. Concretely in the Belgium-UK context, however, the impact may be limited, given the current tax treaty rules for interest on loans between enterprises (full exemption instead of 10% source taxation) and for royalties (full exemption).
- Companies will no longer be available to invoke beneficial treatment under the EU Merger Directive. This may negatively affect company mergers, acquisitions, and reorganizations. It will need to be clarified whether UK companies may benefit from the Merger Directive for a transitional period through a grandfathering regime.
- The UK will probably no longer be restricted by EU law prohibiting fiscal (and other) state aid. This may cause the UK government to establish favorable tax regimes, e.g. for specific industries.
- Also, UK tax legislation is expected to be no longer bound to apply equal treatment to EU companies. So, the UK could discriminate against non-UK corporates in tax legislation to favor domestic industries.
- Transfer pricing disputes can currently be solved through procedures pursuant to the EU Arbitration Convention. This is likely to change. That said, measures taken as a result of Action 14 of the OECD/G20 BEPS Action Plan may pave the way for arbitration also outside the EU.
- Once the UK has lost status as an EU Member State, it will no longer form part of the EU direct tax initiatives such as measures under the Anti-Tax Avoidance Package, in particular the Anti-Tax Avoidance Directive of the Council of 12 July 2016, or the renewed proposal for a Common (Consolidated) Corporate Tax Base of the European Commission (CCTB / CCCTB). As the UK has always been a strong opponent, its departure from the EU may improve the chance of a successful further harmonization of direct taxes. A number of other Member States, though, have substantial concerns about the introduction of a C(C)CTB. As EU legislation in direct tax matters requires unanimity, the C(C)CTB project may thus be confined to an implementation in only some Member States (“enhanced cooperation” of at least 9 Member States).

# Indirect taxes

## customs and excise duty

- Goods exported from Belgium to the UK and goods imported from the UK in Belgium might be subject tariff and non-tariff barriers depending on the exit scenario. This shall lead to a potential increased cost for goods sold on the UK or the Belgian market.
- Increase administrative costs of trading due to the re-imposition of customs formalities and delays in customs clearance.
- Customs duties may be imposed in UK exports to EU countries. The UK may impose customs duties on imports from EU countries.

# VAT

- Intra-community supplies of goods in a B2B-context will be considered as exempt export of goods from Belgium to the UK.
- Intra-community acquisitions of goods in a B2B-context will be considered as taxable import of goods from the UK to Belgium, for which the Belgian VAT at importation will be due by the Belgian importer. This could potentially lead to a VAT prefinancing burden, unless the importer disposes of a Belgian import VAT deferral license.
- No EC sales list for services rendered between UK and EU businesses.
- Goods supplied from Belgium towards a.o. private individuals in the UK, will not be subject to the “distance sales” regime, but will be treated as VAT exempt export of goods from Belgium to the UK. In the opposite case, where goods are imported from the UK into Belgium, Belgian import duties and VAT at importation may be due from the recipient of the goods.
- Certain services rendered by Belgian service providers to UK recipients in a B2C-context (i.e. accounting, legal, financial...) will be deemed to take place in the UK, where the recipient is established.
- UK VAT incurred by Belgian businesses not disposing of a UK VAT ID-number, can no longer be recovered via the procedure foreseen in Directive 2008/9/EC, but via the cumbersome 13th EU VAT Directive reclaim procedure.
- Belgian businesses holding a UK VAT ID-number as non-resident might be obliged to appoint a fiscal representative in the UK. UK established “VATable” entities holding a Belgian VAT ID-number as non-resident should appoint a fiscal representative in Belgium which requires in principle a bank guarantee in favor of the Belgian VAT administration. In case the UK established “VATable” entity disposes of a fiscal representative in Belgium, he could additionally benefit from a reverse charge mechanism on certain incoming transactions.
- UK businesses will no longer have access to certain simplifications and sector specific EU schemes, such as simplified triangulation, call-off stock, etc.
- Certain Belgian resident financial institutions (banks, insurance companies,...) might be confronted with a higher Belgian input VAT deduction right, in case they provide certain banking, insurance,... services towards UK based customers (both B2B and B2C).
- Businesses must take into account also the cost associated with the necessary adjustments to ERP systems, because the UK will be considered as a ‘third country’ which requires changes to accounts, records and reporting systems.

# Social security

- Most importantly, the European regulations on social security will no longer apply. EEA or Swiss nationals may need to pay into the UK system when working in UK, while under the current regulations it is possible to remain under their home system provided certain conditions are fulfilled. Vice-versa UK nationals might not be able to stay under the UK social security system when working in EEA or Switzerland and lose the option to stay under the UK system.
- Consequently, employers and employees might be faced with contributions to more than one social security system.
- Creating uncertainty and negative consequences on the social security benefits for the employees. Adding administrative complexity for employers and self-employed.
- Old bilateral social security treaties concluded between UK and EEA/Switzerland might again come into play and ease some of the complexities emerging after Brexit. But ultimately, cross-border employment and the social security consequences in EEA/Swiss and UK relationship will still become more complex and burdensome.
- Some of the EU social security regulations currently also apply to third country nationals employed by an EU employer. Also for them, their employers will be confronted with a much less unified and unclear social security playfield once the Brexit comes through.