



# UK-EU Trade and Co-Operation Agreement ('TCA') overview

Four and a half years after the June 2016 Brexit referendum, the UK and the EU have reached an agreement on their future trading relationship. The complete text of the UK-EU Trade and Cooperation Agreement ('TCA') spans some 1,246 pages and took effect from 1 January 2021.

Whilst the TCA now provides much welcome clarity for businesses, and details the many wider issues they need to consider, it is also important to acknowledge that many areas key to businesses were not covered by the deal, with further negotiations ongoing. These include final decisions on data adequacy and financial services equivalence. Furthermore, this TCA in its current form will not be the last Brexit agreement, with either side able to terminate it on 12 months' notice, bring us back to a potential 'no deal' scenario. One thing is clear, Brexit is by no means over and the UK's relationship with Europe will continue to evolve over the coming months and years ahead.

The following is a brief summary of what is contained within the TCA, the high-level impacts and what they mean for business.

## Tax & Customs

### **VAT, Customs and Quotas**

The TCA is the first in EU history to provide for zero tariffs and no quotas. To qualify for tariff-free access, organisations will need to meet Rules of Origin requirements, proving that the goods originated in the UK. Additional complexities exist for moving goods in and out of Northern Ireland, with the operation of the Northern Ireland Protocol.

### **Transfer pricing**

Brexit has caused many local and international businesses to review their end-to-end supply chain in order to protect continuity of supply, understand costs and drive efficiencies (e.g. implement changes to reduce tariff and logistic costs). Due to the historic dependence on both trade between the UK/EU and the use of the 'UK land bridge' to both import and export goods, many local companies have dramatically changed their structures. Reorganisations to internal supply chains, financing flows, incorporation of new entities (for regulatory, customs or other commercial reasons) may change the location of significant people functions, risks and assets.

Some of the questions to consider:

- Are there more activities being undertaken here?
- Should there now be management charges raised to assist with any new UK company activities. Have there been changes to your supply chain?
- Should there be allocations of profits for the increased risk of which entity is now responsible for stock management or logistics. Is there a newly incorporated entity in the UK, which is needed to preserve UK trade and the business is now a newly created group?
- Intercompany transactions should be reviewed and how each jurisdiction will be remunerated needs to be determined. Who is absorbing increased costs/admin services or are these being passed on to your customers? This additional expense should be allocated depending on the entity undertaking these additional activities and costs.

The OECD Transfer Pricing Guidelines acknowledge that changes can be needed to restructure a group or create new subsidiaries to retain competitiveness and profitability. Such restructurings should be accompanied by a review of the intercompany charges and associated allocation of profits to ensure any changes are consistent with the 'arm's-length' principle. It is also important that intangible assets are accounted for correctly and any exploitation in other jurisdictions have appropriate 'arm's length' charges in respect of the use of such assets.

### **DAC 6 – the EU Mandatory Disclosure Requirements**

As part of the TCA, HMRC made the unexpected announcement that reporting under DAC6 would only be required for arrangements that meet hallmarks under Category D. Category D broadly deals with arrangements that undermine reporting obligations and obscuring beneficial ownership and is aligned to the Mandatory Disclosure Rules developed by the Organisation for Economic Co-operation and Development (OECD), which the new regime will become. The reporting requirements under Hallmarks A, B, C and E have been repealed.

### **Withholding Taxes ('WHT')**

The TCA provided for no continuity (with the UK) of the EU Parent-Subsidiary Directive or the EU Interest & Royalties Directive. These Directives applied (while the UK was a Member State) to exempt WHT applying to payment of dividends, interest or royalties.

From 1 January 2021, the payment of dividends, interest or royalties from the EU to the UK may now carry a withholding tax burden. This could be a 'sunk cost' where the applicable treaty rate is not zero, or where the tax is not available for credit against UK taxes. This is a particular issue for dividends, as the receipts of dividends by a UK company are often 'exempt' such that there is no ability to claim 'double tax relief' and recover any WHT suffered.

In the absence of renegotiated double tax treaties to replicate the pre-Brexit position, many companies will need to take action to manage their cashflow position and avoid potential 'sunk costs'.

## **People**

### **Social Security**

Under the TCA, individuals working temporarily in either the UK or the EU can continue to pay social security in their 'home' country under the 'detached worker' rules and all EU member states have indicated that they will apply these rules. Broadly, when UK workers are sent to work in the EU, they can continue to pay UK National Insurance Contributions (for up to 24 months) and be exempt from paying social security in the EU jurisdiction. Likewise, EU workers sent to the UK can remain liable to social security in their EU country of residence.

### **Short term visas**

As part of the TCA, visa-free, short-term business trips which are limited to 90 days in any 180 day period are permitted between the UK and the EU for specific purposes such as attending meetings, training seminars and trade fairs, purchasing goods or services and taking orders or negotiating the supply of services or goods.

### **Immigration rules**

Free movement of people for the UK has ended and the introduction of the new points-based immigration system means new barriers to recruiting EU nationals.

For EEA Nationals that arrived in the UK before 11pm on 31 December 2020, they have the right to remain and need to apply for 'Settled Status' before 30 June 2021. Businesses should review their staff audit undertaken during Brexit planning and ensure all new joiners are up to date with any 'Settled Status' obligations.

## **Legal, Data & Regulation**

### **GDPR**

The TCA provides for a temporary 4-month arrangement from 1 January 2021 to allow data to continue being transferred between the EU and the UK. This temporary arrangement may be extended to 6-months provided the UK does not alter its data protection laws.

While, during the Brexit negotiations, the UK government confirmed that data can continue to be transferred from the UK to EU Member States, the EU have yet to reciprocate. Data adequacy did not form part of the TCA, however the EU will undertake an 'adequacy assessment' to determine whether data can continue to be transferred from EU Member States to the UK after the temporary period expires. As a result, UK businesses who may be required to transfer data from EU Member States should consider the introduction of 'standard contractual clauses' to maintain such data flow.

You may also wish to consider appointing an 'EU GDPR representative' if you are you a non EU-based company offering goods or services in the EU but don't have an establishment in the EU. An EU representative acts as a point of contact for EU individuals and local data protection authorities. The purpose of appointing the EU representative is to ensure any EU data subjects (customers, employees, etc.) will be able to contact your organisation in order to exercise their GDPR Data Protection rights as well as to enable the EU data protection authorities an access method to you.

### **Financial Services**

There is still more detail to be provided in respect of access to financial services markets.

### Mutual Recognition

The previous mutual recognition of professional qualifications (MRPQ) has not been included in the TCA, however it allows for agreement to be negotiated on a profession-by-profession basis so we may see some developments in this area in the near future.

### Funding & Ownership

#### Public Procurement

Both the UK and EU have agreed to keep public procurement access to both markets, therefore for the majority of businesses there should be no change.

Over 1,450 people operating from offices in Belfast, Dublin, Cork, Galway, Kildare, Limerick and Longford.

 [www.grantthorntoni.com](http://www.grantthorntoni.com)

 @GrantThorntonNI

 Grant Thornton (NI) LLP

### Contact our experts



**Peter Legge**  
Partner, Tax  
T +44 28 9587 1081  
E [peter.legge@ie.gt.com](mailto:peter.legge@ie.gt.com)



**Lee Squires**  
Director, Indirect Tax  
T +44 28 9587 1095  
E [lee.squires@ie.gt.com](mailto:lee.squires@ie.gt.com)



**Lorraine Nelson**  
Director, International Tax  
T +44 28 9587 2311  
E [lorraine.nelson@ie.gt.com](mailto:lorraine.nelson@ie.gt.com)



**Mark Bradley**  
Director, Corporate Tax  
T +44 28 9587 1122  
E [mark.bradley@ie.gt.com](mailto:mark.bradley@ie.gt.com)



**Clare Fitzgerald**  
Associate Director, Corporate Tax  
T +44 28 9587 1114  
E [clare.m.fitzgerald@ie.gt.com](mailto:clare.m.fitzgerald@ie.gt.com)



**Jane Lee**  
Associate Director, Employer Solutions  
T +44 28 9587 2314  
E [jane.lee@ie.gt.com](mailto:jane.lee@ie.gt.com)

© 2021 Grant Thornton (NI) LLP. All rights reserved. Regulated by Chartered Accountants Ireland (CAI) for a range of investment business activities in the United Kingdom.

'Grant Thornton' refers to the brand under which the Grant Thornton member firms provide assurance, tax and advisory services to their clients and/or refers to one or more member firms, as the context requires.

Grant Thornton Ireland is a member firm of Grant Thornton International Ltd (GTIL). GTIL and the member firms are not a worldwide partnership. GTIL and each member firm is a separate legal entity. Services are delivered by the member firms. GTIL does not provide services to clients. GTIL and its member firms are not agents of, and do not obligate, one another and are not liable for one another's acts or omissions.