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The Brexit and its effects on German companies

Brexit

On 31 January 2020 the United Kingdom left the European Union. There was great relief on both sides, as negotiations have dragged on since the referendum results, 24 June 2016. However, the conditions under which the United Kingdom will leave the EU have not yet been clarified. There will soon be a transitional period until 31 December 2020. After that, the trade agreement yet to be agreed will enter into force.

Although it is not yet clear whether 'hard Brexit' will occur and whether the United Kingdom should therefore be considered as a third country, it is already clear that contractual and corporate relations between the United Kingdom and German companies will be tested.

Value added tax

Since the introduction of the Value Added Tax System Directive (VAT System Directive) at the end of 2006, the objectives of harmonization and simplification of VAT law between the EU/EEA member states have been pursued. This directive has become obsolete with the Brexit and leads to the following changes in terms of VAT:

Reverse Charge – international services:

Transactions between businesses within the EU lead to a reverse charge on the recipient. The so-called reverse charge procedure enables the supplying company to avoid the registration and declaration obligations in the EU/EEA country of the recipient.

The Brexit does not initially change the reverse charge procedure. However, a check must be carried out on any registration and declaration obligations in the United Kingdom. German companies can no longer rely on the VAT Directive and the registration obligation that has lapsed as a result.

Intra-Community supply

The tax-free intra-community supply to the United Kingdom will now become a tax-free export supply. This means that the submission of the recapitulative statement and the Intrastat declaration are no longer required. However, an export delivery requires increased verification obligations according to §§ 8 - 12 UStDV, such as export confirmation from the border customs office, shipping documents or other commercial documents. When crossing the border into the United Kingdom, import VATand possibly customs duties could be levied in future. For German companies, export to the United Kingdom will therefore probably be more expensive.

The import of goods from the United Kingdom to Germany is not an intra-Community acquisition, but an import that is also taxed with import VAT and possibly customs duties.

Intra-Community Movement

If a German trader supplies goods to the United Kingdom to himself and the introduction of these goods is not temporary, there was an intra-Community transfer prior to the Brexit. Although the German entrepreneur had to register in the United Kingdom, he could pay VAT and claim input tax at the same time. After the Brexit, a border crossing into the United Kingdom is taxable with import VAT and customs duty. This is a problem, for example, for building contractors or car manufacturers who operate a building site or business premises in the UK and regularly transport goods for their own use.

Intra-Community triangular trade

The intra-Community triangular trade is also eliminated after the Brexit. This regulation simplifies the registration obligations for deliveries between three entrepreneurs from different EU/EEA states who use different VAT identification numbers and conclude sales transactions on the same goods.

Income taxes

Dividends – Parent-Subsidiary-Directive

The Parent-Subsidiary Directive aims to create a level playing field with regard to direct taxation within the EU

internal market. It is intended to reduce taxation with capital gains tax on dividends and other profit distributions. In the case of a holding between parent company and subsidiary of at least 10%, the distribution of a dividend is tax-free at the parent company. A withholding tax deduction in the country of residence of the subsidiary is not possible.

After the Brexit, the DTT has priority. At that time, a withholding tax deduction of at least 5% is provided for under Article 10 sec.. 2 lit. a) DTT Germany/United Kingdom. In the event of a distribution by the German subsidiary to the UK parent company, 25% capital tax income plus 5.5% solidarity surcharge is initially withheld, unless an exemption certificate is available. The British parent company can then claim a refund of the difference of 21.375% at the Federal Central Tax Office. Whether the German withholding tax is creditable for the parent company in the United Kingdom depends on British law.

Exit taxation for companies

If a German company relocates its headquarters to the United Kingdom, after the Brexit this relocation is followed by compulsory liquidation and the disclosure of all hidden reserves. The company is now no longer subject to unlimited corporation tax liability in the EU/EEA area. This law only applies to companies that have transferred their headquarter to the UK after the Brexit.

Asset stripping

If German companies transfer their assets to their British permanent establishments, hidden reserves are disclosed in addition to the VAT aspects. Before the Brexit, the taxation of the hidden reserves could be spread over five years with the formation of an equalization account. This is now no longer possible. The hidden reserves must be directly disclosed and taxed in full.

Additional taxation

The supplementary taxation simulates a distribution of profits for certain profits of foreign companies. The following conditions must be met:

* Participation of more than 50% in the foreign company
* More than 1% in the case of interim income of an investment company which consist of holding and management of liquid assets and cash equivalents, receivables and securities
* Foreign company generates passive income (e.g. interest income)
* Low taxation abroad: 25% or less

As the United Kingdom currently has a tax rate of 19% and this is expected to be reduced to 17%, the top-up tax would be triggered in principle, provided that the other conditions are also met. European companies can avoid the supplementary taxation if they can prove that the foreign company is engaged in an actual economic activity. After the Brexit, this proof no longer prevents the supplementary taxation. However, it is still pending to what extent a limited motive test will also be possible for third countries, which is already provided for in the draft of the Anti-Tax Avoidance Directive ATADUmsG.

Legal form of the Limited

The legal form of the Limited is considered in the United Kingdom as a limited liability company. If the company relocates its registered office to Germany after formation, Germany is forced to adopt the legal treatment of the United Kingdom due to the freedom of establishment. Thus, the Limited has also been regarded as a limited liability company in Germany. According to the Brexit, the seat theory is to be applied instead of the formation theory. According to the seat theory, a type comparison is to be made due to§ 1 sec. 1 German corporate tax law, to which the Limited is only to be regarded as a limited liability company if it is comparable with a domestic limited liability company. According to the prevailing opinion, the Limited should be regarded as a partnership - in the case of a commercial enterprise as a German OHG, otherwise as a German GbR. This results in a fundamental change in the taxation of the shareholders, which can make the shareholders (as natural persons of the company) liable.

Summary

The Brexit will make contractual relations between German and British companies more difficult in the future and will have economic consequences. It will no longer be possible to benefit from the tax breaks between the EU/EEA states. However, it remains to be seen whether the trade agreement will grant the UK possible tax relief compared to other third countries.

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