BREXIT DAY – WHAT COMES NEXT?

After 47 years, today marks the last day of the UK's membership with the European Union. The Withdrawal Agreement, which provides the terms of the UK's exit from the EU, took its last hurdle on Wednesday when it was ratified by the EU parliament in Brussels.

The Withdrawal Agreement repeals the European Communities Act, which took the UK into the EU, but reinstates it immediately until the end of 2020, when the transition period ends. It also contains rules on how the new protocol on Ireland – setting up a customs and regulatory border between Northern Ireland and Great Britain – will work in practice and sets out how the UK will pay its final financial obligations to the EU budget.

But little to nothing will change immediately. The UK and the EU will enter a transition period during which the UK continues to apply EU law in almost all areas. The UK will for now keep many of the benefits and obligations of being in the EU, without being a voting member.

1 February 2020 – little to no changes during the transition phase

During the 11-month long transition phase the UK and the EU will negotiate a free trade agreement (FTA), which both sides aim to have concluded by 31 December 2020. The UK will continue to apply EU law during the transition phase, including EU trade provisions like the EU VAT regime and other tax-related directives (e.g. the Parent-Subsidiary directive), the Single Market and Customs Union rules. The UK must also still allow European citizens to move freely to the UK and take up work until the end of 2020. This means that for the next 11 months goods, services, people and capital will continue to flow freely without checks or regulatory restrictions, tariffs or other import procedures.

The Withdrawal Agreement also provides for a possibility to extend the transition phase beyond 31 December 2020. The UK Government must request a possible extension by 1 July 2020, which is favoured by the UK business community to allow more time adjusting to the new trade rules. However, given the political circumstances an extension beyond 31 December 2020 should not be expected at this stage.

31 December 2020 – end of the transition phase and start of the UK/EU FTA?

By the end of 2020 the UK and the EU aim to replace the transitional arrangement with a comprehensive free trade agreement (FTA), which seems ambitious given the complexities that such an agreement involve. The UK Government has set out its negotiation lines, which provides an exit from the EU Single Market and Customs Union and to cease the arrangements around free movement of people by the end of the year. This represents a significant change of the trading relationship between the UK and the EU and it will potentially increase the administration around movements of goods, people and capital between the UK and the EU. For example, customs declarations and potential tariffs on goods that move between the UK and the EU are likely to be imposed after the transition phase.

The tension during the FTA negotiation will certainly be around the UK's continued tariff-free access to the EU market and its ongoing alignment with the EU's Single Market provisions. The business community certainly favours limited divergence from EU standards, which can be expected as a likely outcome of the negotiations given the size of UK-EU trade. However, a further complication might be that the UK Government intends to simultaneously negotiate an FTA with the United States, which will have its own objectives and could potentially come into force by the end of 2020 as well.

Important – there is a continued risk of a no-deal Brexit

Due to the ratification of the Withdrawal Agreement a no-deal Brexit has so far been avoided. However, there is still a risk that the negotiations for an FTA fail and the UK faces a new cliff-edge Brexit by the end of 2020, which would result in a WTO terms trading relationship with the EU, imposition of EU tariffs and loss of free market access for goods, services and capital. It is therefore important for businesses to prepare for the possible outcomes in 2020.

In view of the two previous postponements to the Brexit deadline (on 29 March 2019 and 31 October 2019) we are already aware of certain preparatory measures the UK Government had intended to introduce on these dates. It is expected that these pre-announced measures will again come into force if a trade agreement is not in place by 31 December 2020. These measures could include:

1. The introduction of a temporary nil rate customs duty tariff for most goods imported in to the UK

In order to facilitate continued movement and clearance of goods at the border, the UK Government plans to reduce the rates of customs duty to nil for the majority of goods (around 87% of all goods imported into the UK).

2. The introduction of a Transitional Simplified Procedure (TSP) for imported goods

This is facilitation measure available to all UK established entities that will ease the importation procedures. It removes the obligation to submit a full customs declaration at the time of arrival of the goods and allows up to 4 days for all the necessary paperwork to be lodged with HMRC. The facility to apply for the TSP has been suspended by HMRC but may need to be reinstated in the absence of a trade deal or if it becomes necessary as part of the trade agreement that is eventually put in place.

3. Introduction of postponed VAT accounting for imports

Payment of import VAT on goods for the EU and non-EU will be deferred from the point of importation and will be accounted for via the importer’s VAT return. This means for the majority of importers there will be no negative cash flow issues as the import VAT can be of set against the respective claim in the VAT return. This procedure is expected to be open to all businesses (both UK established, and non-UK established) that are registered for VAT in the UK. No action will be required to apply for this procedure.

4. Issuing of UK EORI numbers

All importers into the UK are required to have an Economic Operators Registration and Identification number (EORI). As these will be required for goods coming from the EU, the UK Government has automatically issued an EORI to all VAT registered business where they have identified purchases of goods from the EU declared in the VAT returns of the business. If a business does not already have an EORI then it may be prudent to apply for one now in preparation for 31 December 2020.

In summary, whilst there is no specific action required on or after 31 January 2020, and while matters will essentially continue as they are now, for at least the next 11 months, businesses will need to be aware of the outcome of the negotiations for EU trade post 31 December 2020.