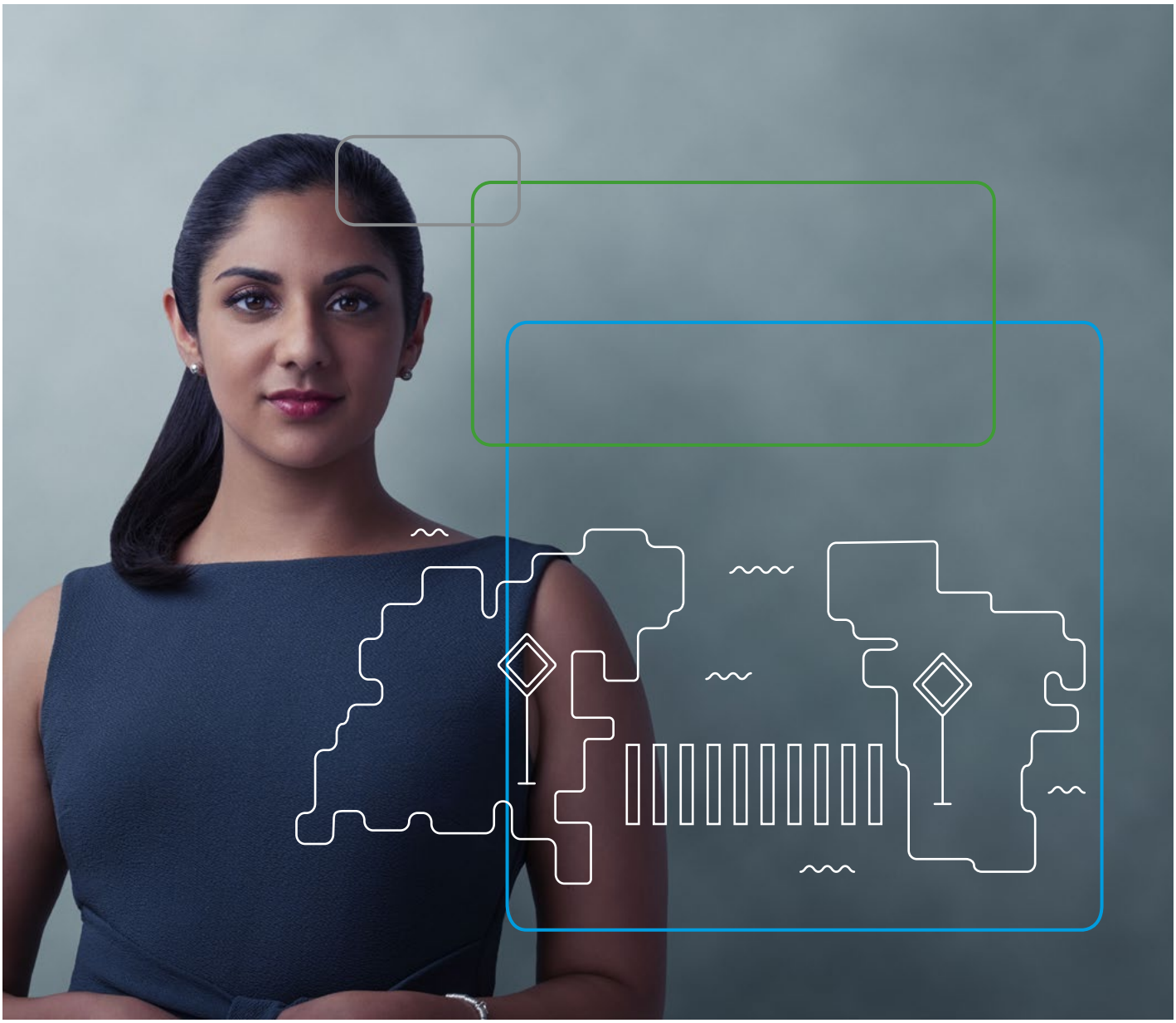


AFTER BREXIT

RSM – Partner of the middle-market:
Even in times of crisis we are there for you and inform you about relevant topics for you and your company – with bundled information in this newsletter and, of course, still in direct contact with your contact person.

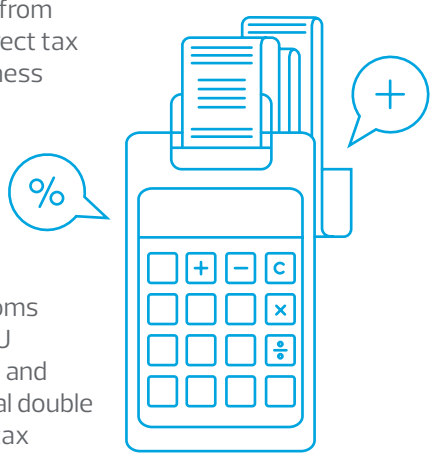
THE POWER OF BEING UNDERSTOOD

AFTER BREXIT – GERMAN-UK TAX ASPECTS

On 24 December 2020 the negotiators from the European Union (EU) and the United Kingdom (UK) reached an agreement on a new partnership. This agreement sets out the rules that apply between the EU and the UK as of 1 January 2021.

The EU member states approved the agreement on 29 December 2020. The UK parliament's approval followed on 31 December 2020. The European Parliament will approve the agreement in 2021. On 1 January 2021 provisional application of the agreement took effect and the new rules entered into force.

This agreement marks the end of the transition period and the UK will be fully separated from the European single market and customs union. This has also a significant direct and indirect tax impact for EU companies with business activities in the UK and UK companies with business activities in the EU.



CORPORATE TAX ASPECTS

Regardless of the outcome of the negotiations on a possible free trade agreement, customs After Brexit, the UK is not entitled to benefit from tax related EU directives such as the EU Parent-Subsidiary Directive (exemption of dividend withholding tax) and the EU Interest and Royalty Directive (exemption of interest and royalty withholding tax). Instead, the bilateral double tax treaty between Germany and the UK (German-UK Treaty) and the specific national tax regulations are applicable regarding the limitation of withholding taxes in future.

1. **Dividend withholding tax**

The German-UK Treaty determines the withholding tax rate on dividend payments from Germany to the UK. According to the treaty dividends paid from a German corporation to the UK can be taxed in Germany but such withholding tax is limited to:

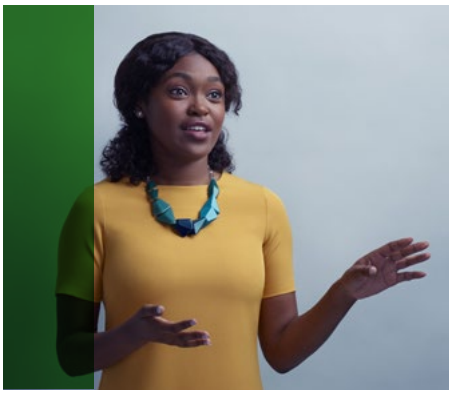
a. 5% of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 10 per cent of the capital of the company paying the dividends;

b. 10% of the gross amount of the dividends if the beneficial owner is a pension scheme;

c. 15% of the gross amount of the dividends in all other cases.

These regulations limit the German national withholding tax rate of 25% plus solidarity surcharge (together 26.375%) to the reduced treaty rates. However, the treaty rates are applicable only if the receiving entity in the UK fulfils certain substance requirements. Please note that these substance requirements are significantly higher than for EU companies applying for a withholding tax exemption under the EU Parent-Subsidiary Directive.

Dividend payments from the UK to Germany should still benefit from a withholding tax exemption in the applicable national tax law in the UK.



2. **Interest and royalty withholding taxes**

After Brexit, the EU Interest and Royalty Directive is no longer applicable on interest and royalty payments from Germany to the UK or vice versa. In general, the German-UK Treaty determines the withholding tax rate on interest and royalties now. Since the German national tax law provides no withholding taxes on interest payments on ordinary loans the treaty is irrelevant for the limitation of withholding taxes on interest payments from Germany to the UK.

Based on the German-UK Treaty, royalty payments from a German company to a UK company can only be taxed in the UK and vice versa. Please note that for the respective payments from Germany to the UK certain substance requirements must be met to benefit from the withholding tax reduction from 15.835% according to the German national tax law to 0% according to the treaty.

3. **Cross border reorganisations**

With the EU Merger Directive, a common system of taxation applicable to cross-border reorganisations of companies in the EU was put in place in 1992 and improved in 2006. It was adopted in German legislation and it was consequently possible to implement a tax beneficial cross border merger between a German tax resident company and a company with a UK tax residency. Since 1 January 2021, the EU Merger Directive is no longer applicable with UK resident companies.

4. **Application of EU Court case law**

From 1 January 2021 the EU Court of Justice ("ECJ") has no longer competence in the UK regarding cross border tax rulings. Nevertheless, in relation to arrangements between Germany and the UK the ECJ case law could still be relevant from a German tax perspective. This should be carefully assessed on a case-by-case basis to avoid any negative impacts or legal uncertainties.

VAT

Since 1 January 2021 the United Kingdom is officially no longer a member of the European Union. Amongst other things this has significant VAT consequences for British and German companies as well.

In a letter dated 10th December 2020 the German Federal Ministry of Finance (Bundesfinanzministerium or short "BMF") has already laid out the VAT implications for German companies caused by the Brexit as follows:

1. **Different treatment of the UK and Northern Ireland**

As of 1 January 2021, the UK and Northern Ireland are generally each to be seen as a third country from a German VAT perspective according to sec. 1 para. 2a sentence 3 UStG (German VAT Act).

An exception applies for Northern Ireland, as it was determined that European VAT law should be applicable for the supply of goods towards and from Northern Ireland.

In future, a distinction will have to be made between Great Britain and Northern Ireland in terms of the VAT treatment.

As of 1 January 2021, the following will therefore apply:

- For the supply of goods and services to or from the UK and the supply of services from or to Northern Ireland the VAT rules for third countries are applicable and
- For the supply of goods to or from Northern Ireland the European VAT regulations for intra-Community supply of goods will be applicable.

2. Movement of goods between the EU and the UK

As the UK except for Northern Ireland is treated as a third country for VAT purposes from 1st January 2021 onwards, the supply of goods to UK companies are no longer to be qualified as (zero rated) intra-Community supplies but as export supplies.

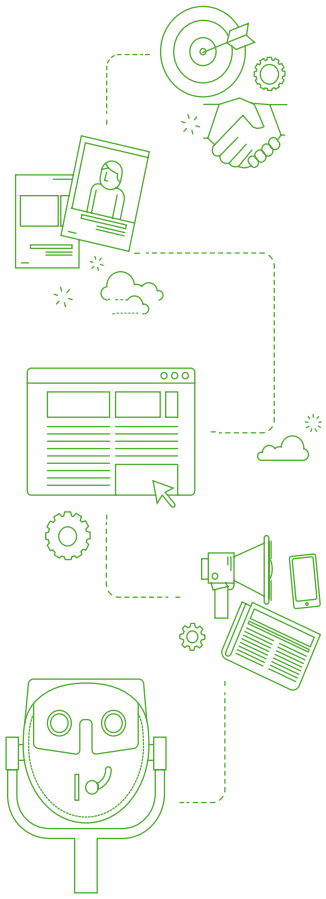
It should be noted that from 1 January 2020 the zero rate for export supplies is also applicable for supply of goods to private individuals as well. Any obligation to register for VAT purposes in the UK and a corresponding obligation to issue an invoice showing UK VAT should be checked in each single case.

Vice versa, supplies made by UK companies to German companies are imports of goods instead of intra-Community acquisitions from 1 January 2021 onwards.

The classification as a third country for VAT purposes causes inter alia the following VAT changes:

- Different requirements for the proof of export supplies instead of intra-Community supplies
- No declaration of sales to the UK in German EC sales lists and Intrastat returns, but submission of customs declarations (by using the ATLAS procedure)
- VAT-ID number of Northern Ireland companies will show the country code "XI" as of 1 January 2021 onwards
- Invalidation of the VAT-ID number of UK companies as of 1 January 2021 onwards

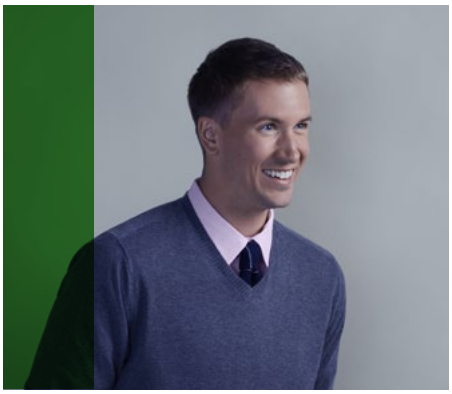
The simplification rule for the intra-Community triangulation simplification is no longer applicable for parties from Great Britain.



3. Specifics for permanent services

In the case of the supply of services that exceed the date of withdrawal no distinction needs to be made between Great Britain and Northern Ireland with regard to the VAT implications.

The date of supply is decisive for VAT purposes. If the supply of a permanent service starts before 1 January 2021 and ends after 31 December 2020 the circumstances at the time of finishing this service are decisive for the assessment of the entire service.



4. **Mini-One-Stop-Shop/VAT on e-Services**

The "mini-one-stop-shop" procedure can still be used for sales made to private customers in the UK by a company resident or registered in Germany before 1 January 2021 according to sec. 3a para. 5 of the German VAT Act and for sales made to private customers in Germany by an entrepreneur resident or registered in the UK.

Please note that VAT returns for assessment periods up to the 4th quarter of 2020 or earlier have be received by the German Federal Tax Office (Bundeszentralamt for Steuern or short "BZSt") by the end of 20th January 2021 at the latest. Further details can be found on the website of the German Federal Tax Office https://www.bzst.de/DE/Unternehmen/Umsatzsteuer/MiniOneStopShop/minionestopshop_node.html) regarding this topic.

5. **Further rulings**

The letter from the German tax authorities also explains open issues with respect to the European Union VAT refund procedure, the confirmation process of VAT-ID-numbers according to sec. 18e German VAT Act, the obligations for operators of electronic marketplaces and official administrative assistance.

6. **VAT refund procedure**

VAT refund applications for UK input VAT caused before 31 December 2020 can be submitted until 31 March 2021 via the electronic procedure of the Federal German Tax Office.

Input VAT invoiced after 31 December 2020 can only be refunded by using the third country procedure.

INCOME AND PAYROLL TAXES

1. **Cross border employees**

1 January 2021 marked the end of the free movement of people between the UK and the EU. In addition to the new points-based immigration system now in effect in the UK, Brexit will start impacting how people work, live, and travel between the UK and the EU. UK citizens, who have worked in Germany already before 31 December 2021 should still be allowed to work in Germany. UK nationals who moved to or started working in Germany after 31 December 2021 will need a residence and working permit entitling them to life and work in the country.

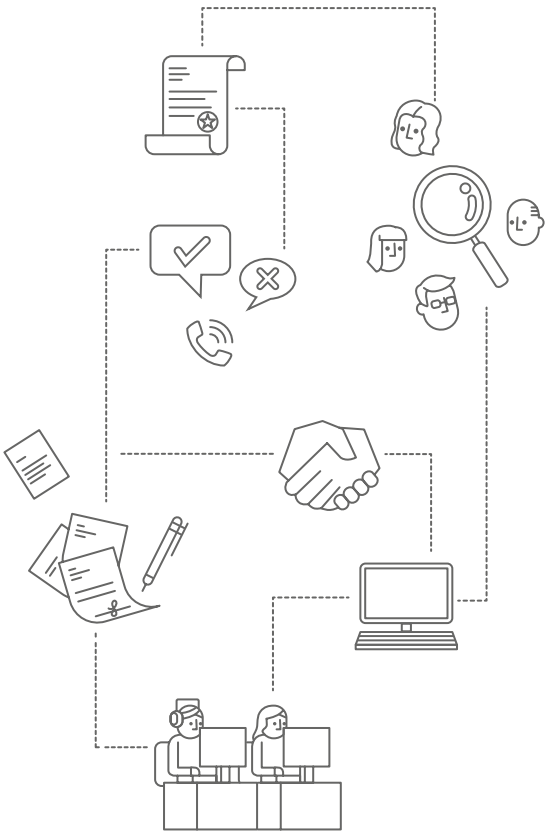
The employees of an UK employer are liable for taxation in Germany with their salaries, wages and other similar remuneration in respect of an employment if they are (a) present in Germany more than 183 days in any twelve-month period, or (b) the remuneration is paid by, or on behalf of, an employer who is a resident in Germany, or (c) the remuneration is borne by a permanent establishment which the UK employer has in Germany.

2. Social security

In general, each EU country has its own social security laws. And the obligations and rights under these laws are the same for all workers in that country, whether local or from abroad. However, EU rules coordinate national systems to make sure people moving to another EU country do not lose their social security cover (for example pension rights and healthcare) and always know which national laws apply to them. This regulation prevents a double social security liability. Since 1 January 2021, the regulation will no longer apply and at this moment there is no agreement between the EU and the UK about a new arrangement in place.

MORE INFORMATION?

For more detailed information and questions please contact your trusted RSM advisor.



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