Client Alert “BREXIT”

The German tax world after BREXIT

UPDATE

Contents

A. Problems resulting from Great Britain’s exit from the EU

After tough negotiations, the United Kingdom of Great Britain and Northern Ireland (hereinafter: Great Britain) finally left the EU as of January 31, 2020, according to the “Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community” (Official Journal L/29 of January 31, 2020); therefore, the EU member states are in a transitional period until the end of 2020. During such transitional phase, EU law continues to apply in relation to Great Britain despite the BREXIT. From an intergovernmental perspective, the BREXIT will de facto only take place at the end of 2020.

After such date, Great Britain will – subject to any other agreements concluded in the meantime – be treated as third country in relation to the remaining EU member states. This will have far-reaching legal consequences. For tax purposes, the mere fact that Great Britain will be a third country as of January 1, 2021, may result in an amended tax assessment of cross-border issues. This entails the risk that taxation will be triggered or that there will be a tax disadvantage compared to the status quo ante, without the taxpayer haven taken any action. Possible implications could be that arrangements which had been examined from a tax perspective and implemented in reliance upon Great Britain’s EU membership will now, contrary to planning, have negative tax effects as of the end of 2020.

In order to protect taxpayers’ confidence, the German legislator adopted the “Law on tax and further regulations accompanying the United Kingdom of Great Britain and Northern Ireland’s exit from the European Union” (Brexit Tax Implementation Act – Brexit-StBG – German Federal Law Gazette 2019 I 357), which came into effect on March 29, 2019. Such law regulates, also for the period after the transitional phase, for Great Britain to still be treated as EU member state for certain cross-border transactions. This is supposed to prevent tax disadvantages from arising only due to the fact that Great Britain will be treated as third country after 2020.

Due to such new developments, our client alert “BREXIT” (from November 2018) has been adjusted accordingly.

B. BREXIT effects on EU law’s applicability

1.1. Effects on the applicability of EU primary law

In a first step, BREXIT will affect the level of so-called EU primary law. Such law directly protects the EU citizens’ fundamental freedoms, i.e. the free movement of capital, services, goods and persons in the form of the freedom of establishment and free movement of workers.

As of 2021, Great Britain will be given the status of a third country; therefore, the direct preservation of fundamental freedoms will be limited to the free movement of capital as of such date. This is the only fundamental freedom also applicable to relations with third countries.

2. Effects on the applicability of EU secondary law

BREXIT will also have implications on secondary law. Secondary law includes, inter alia, regulations and EU directives the applicability of which is generally restricted to the EU. This affects, for example, the Parent-Subsidiary Directive, the Merger Directive, and the Mutual Assistance and Recovery Directive. This is of interest in particular in connection with future directives on the combating of tax avoidance structures. After BREXIT, Great Britain will no longer be bound by EU secondary law.

C. BREXIT tax effects on Germany

For tax purposes, the decisive aspect is the fact that Great Britain will have a third-country status for tax purposes after the transition period, provided no corresponding regulations will be adopted in the meantime. The following explanations will outline the main tax effects for Germany resulting therefrom by taking into account the regulations pursuant to the Brexit Tax Implementation Act in order to mitigate these effects.

1. Income tax effects on …

1.1. Dividends, interest and license payments

Parent-Subsidiary Directive

The Parent-Subsidiary Directive serves to avoid additional tax burdens in international groups within the EU. It regulates that the subsidiary's state of residence must not raise withholding taxes on dividend payments and the parent company's country of residence exempts the dividends received.

In application of the Parent-Subsidiary Directive, British and Germany subsidiaries, respectively, can distribute dividends to their German and British parent companies, respectively, without having to withhold tax at source in case the parent company holds a share of at least 10% in the subsidiary.

Upon Great Britain's withdrawal from the EU, the Parent-Subsidiary Directive and the full withholding tax exemption will no longer be applicable. According to the currently applicable Income Tax Treaty with Great Britain, dividends from intercompany participations (at least 10 % direct participation) to the British parent company will then be subject to a withholding tax rate of 5 %. Such tax will be credited on the British parent company's level. Vice versa, a British subsidiary's distribution to its German parent company can be taxed in Great Britain with no more than 5 % according to the Tax Treaty. I+n Germany, such income must be exempt at the German parent company’s level.

Interest and License Directive

In case of a minimum participation of 25 %, the withholding tax rate for interest and license payments within the EU amounts to 0 % due to the interest and license directive. Based upon the Income Tax Treaty with Great Britain, no withholding tax is imposed on interest and license payments. Insofar, BREXIT does not have any implications.

1.2. Reorganizations

Merger Directive

Cross-border reorganizations generally result in a realization of profits and a tax-effective disclosure of undisclosed reserves related with the assets. The Merger Directive’s objective is to avoid the undisclosed reserves’ disclosure, thereby providing tax neutrality for reorganizations within the EU.

After Great Britain’s withdrawal from the EU and its qualification as third country, reorganizations would no longer be protected by such Merger Directive and could no longer be made in a tax-neutral manner. They would rather result in a disclosure of undisclosed reserves and immediate taxation. Due to the Brexit Tax Implementation Act, Art. 1 Sec 2 UmwStG was amended in such a form that it provides, in conjunction with Art. 122m UmwG, for a British corporation’s tax-neutral merger into a German company for a certain period of time. For that purpose, the merger agreement must have been notarized prior to January 1, 2021 and the merger must be filed for registration in the commercial register immediately, however, no longer than two years after such date.

Gains from the contribution of shares

Besides future reorganizations, already implemented reorganizations might also be affected by BREXIT. For example, the tax-neutral contribution of shares into a corporation or a partnership’s tax-neutral change of legal form into a corporation is subject to certain requirements subsequently to the implemented reorganization. If the taxable shares are sold within a period of seven years, this will result in a retroactive taxation pro rata temporis. Such detrimental sale of shares (*schädlicher Anteilsverkauf*) is, inter alia, equivalent to the shareholder’s (contributor) loss of residency within the EU.

According to the BREXIT Tax Implementation Act, Great Britain’s withdrawal from the EU must not be considered as detrimental event in connection herewith. Pursuant to the new Art. 22 Sec. 8 UmwStG, the BREXIT per se will not result in a retroactive taxation of gains from the contribution of shares. This only applies to contributions made prior to January 1, 2021.

1.3. Relocation of individual assets, businesses and companies

Taxation provisions pursuant to Art. 4 Sec. 1 in conjunction with Art. 4g EStG and Art. 12 Sec. 1 KStG (taxation of an outbount transfer of assets, “*Entstrickungsbesteuerung*”)

If a taxpayer subject to unlimited tax liability in Germany (individual or corporation) transfers a German permanent establishment’s (“PE”) fixed assets to a foreign PE, Art. 4 Sec. 1 EStG and Art. 12 Sec. 1 KStG (German Corporate Income Tax Act), respectively, assumes a withdrawal by disclosure and taxation of the undisclosed reserves. However, if the asset is transferred into another EU member state, the taxpayer can establish, pursuant to Art. 4g EStG, a balancing item in the amount of the undisclosed reserves which must be released over a period of five years.

If, after December 31, 2020, an asset will be transferred to a British PE and as such into a third country, such transfer will result in an immediate taxation of the undisclosed reserves.

If, however, an asset has already been transferred into a British PE and the corresponding balancing item has already been created, that the Brexit Implementation Tax Act will prevent, through the new Art. 4g Sec. 6 EStG, that such balancing item must immediately and fully be released only because of Great Britain’s withdrawal from the EU.

Rather, the balancing item will still be released over a period of five years.

Relocation of a (British) corporation pursuant to Art. 12 Sec. 3, 4 KStG

If a corporation relocates its place of business or place of management, thereby withdrawing from unlimited tax liability in an EU or EEA member state, such corporation is deemed to have been resolved. This results in a forced realization of the undisclosed reserves which are subject to final taxation within the scope of liquidation (*Liquidationsschlussbesteuerung*).

In the new Art. 12 Sec. 3 sentence 4 KStG, the Brexit Tax Implementation Act illustrates that the BREXIT per se does not trigger an assumed dissolution and the related final taxation during liquidation. Only relocation into another third country with a simultaneous withdrawal from tax liability in Great Britain would be detrimental.

At the same time, the new Art. 12 Sec. 4 KStG ensures that the business assets of a corporation with its place of residence in Great Britain and with its place of management in Germany will continue to be attributable, for tax purposes, to such company after the BREXIT, even if, after the BREXIT, such company is legally treated as OHG (general partnership) or GbR (partnership under German civil law) (for tax purposes, a Limited will still be treated as corporate income taxpayer due to the type comparison). Therefore, this will not result in a disclosure of undisclosed reserves.

Consequently, the status quo remains for British corporations.

Interest on instalments in the absence of a reinvestment in the EU

If the sale of certain assets is followed by a reinvestment within the EU, taxes on the achieved profit can be paid interest-free in five equal annual instalments (Art. 6b Sec. 2a EStG).

Through the new Art. 6b Sec. 2a sentence 7 EStG, the Brexit Tax Implementation Act determines that in case of a reinvestment in Great Britain no interest will be payable if the application for payment by instalments has been filed prior to January 1, 2021.

Cross-border relocation of operations

When relocating a business abroad, such business retires from the German tax regime. The transaction is deemed to constitute a taxable termination of a business pursuant to Art. 16 Sec. 3a EStG and is subject to immediate taxation. If the business is relocated to another EU/EEA member state, tax due on the termination profit may be paid, upon application, in five equal annual instalments (Art. 36 Sec. 5 EStG).

If a business will be relocated to Great Britain after December 31, 2020, the due tax can no longer be paid over a five-year period. The tax due on the termination profit will be due and payable immediately.

If the business was relocated during the last five years prior to December 31, 2020, there is a risk for the outstanding tax to become due within one month.

Please note that the Brexit Tax Implementation Act does not provide for a mitigating regulation in connection herewith. With regard to a relocation of individual assets, Art. 4g Sec. 6 EStG provides that the BREXIT will not result in an immediate taxation but provides for a continued release of the balancing item over the five-year period. In our opinion, the fact that no similar regulation applies in case of a relocation of the entire assets within the scope of a company relocation is inconsistent.

It must be observed that the German Federal Ministry of Finance recently published a draft bill on the Anti-Tax Avoidance Directive which provides for an amendment of Art 4g and Art. 36 Sec. 5 EStG. For more details, please refer to our article “Anti-Tax Avoidance Directive” of January 15, 2020.

Requirements for a controlled subsidiary’s registered office

A tax group consists of the controlling company and the controlled subsidiary company. Both together form the tax group. Pursuant to Art. 14 Sec. 1 sentence 1 in conjunction with Art. 17 Sec. 1 KStG, only a corporation with its place of management in Germany and registered office in an EU/EEA member state can be a subsidiary. After BREXIT, the recognition of existing tax groups will be jeopardized if the subsidiary’s registered office is in Great Britain and as such in a third country. The Brexit Tax Implementation Act does not provide for a regulation preventing such consequence.

The controlling company is not facing this problem as it is not subject to location-related requirements in terms of residency.

1.4. CFC (Controlled foreign corporation) rules

Substantial proof (*Substanznachweis*) in case of EU/EEA companies

Pursuant to Art. 8 AStG (German income tax law in connection with foreign transactions), passive income which is generated by a foreign corporation being controlled by German shareholders and being subject to low taxation (income tax burden lower than 25 %) is subject to CFC rules.

If the foreign corporation being controlled in Germany and subject to low taxation has its registered office or place of management in the EU or the EEA, if it performs actual economic activities in such state, and if the foreign country provides administrative assistance (substantial proof), CFC rules do not apply.

The current corporate income tax rate in Great Britain is 20 % and would provide for an application of CFC rules. Upon termination of Great Britain’s membership in the EU and return to a third-country status, the option of substantial proof will no longer exist; passive income generated in Great Britain will then be subject to CFC rules.

In future, it might be easier to meet the requirements for an application of the CFC rules. The draft bill on the Anti-Tax Avoidance Directive demands in particular stricter requirements as to controlled companies (*“Inländer-Beherrschung”*). For more details, please refer to our article “Anti-Tax Avoidance Directive” of January 15, 2020.

Foreign family foundations

Assets and income of a family foundation having its registered office and place of management abroad will be attributed to the founder (or his relatives/descendants) being subject to unlimited tax liability in relation to his share and will be taxed in Germany. In case of family foundations having their place of management or registered office in the EU or EEA must verify, in order to avoid the application of CFC rules, that the founder (or his relatives/descendants) have no legal and actual control over the foundation assets and that the exchange of information is guaranteed on the basis of the Administrative Assistance Directive or a comparable agreement. After BREXIT, such verification option will no longer exist.

1.5. Use of losses

Pursuant to Art. 2a EStG, certain losses are subject to a restricted loss compensation prohibition against own loss carryforwards for certain foreign losses. Such foreign negative income may only be compensated with the same type of income from the same country. Art. 2a EStG only covers negative income from third countries and therefore does not apply to negative income from EU or EEA member states. Consequently, this affects, inter alia, losses from a commercial PE located in a third country.

Negative income from an active commercial PE in a third country is excluded from the application of Art. 2a EStG. This includes, for example, the production and delivery of goods – other than weapons – and the performance of commercial services. The restricted loss compensation prohibition does not apply in such cases.

After Great Britain’s withdrawal from the EU, the loss compensation prohibition pursuant to Art. 2a EStG will apply to certain losses generated in Great Britain.

1.6. Individuals

Deduction of maintenance payments and joint assessment pursuant to Art. 1a EStG in case of an assumed unlimited tax liability pursuant to Art. 1 Sec. 3 EStG

Citizens of an EU or EEA member state who are subject to unlimited income tax liability due to their place of residence or habitual abode (Art. 1 Sec. 1 EStG) or who must be treated as being subject to unlimited income tax liability pursuant to Art. 1 Sec. 3 EStG, may deduct maintenance payments to the divorced spouse, not being subject to unlimited income tax liability in Germany, as special expenses pursuant to Art. 1a EStG, if such spouse’s place of residence or habitual abode is in an EU/EEA member state.

Pursuant to Art. 1 Sec. 3 EStG, individuals having neither a place of residence nor habitual abode in Germany will be treated, upon application, as being subject to unlimited tax liability if they generate domestic income pursuant to Art. 49 EStG. This applies only if, during the calendar year, at least 90 % of their income is subject to German income tax or if their income not being subject to German income tax does not exceed the basic exemption (*Grundfreibetrag*) pursuant to Art. 32a Sec. 1 sentence 2 No. 1 EStG.

After BREXIT, the tax relief pursuant to Art. 1a EStG will no longer apply. The application for an assumed unlimited tax liability pursuant to Art. 1 Sec. 3 EStG can still be filed after BREXIT.

Joint assessment

If a British citizen is subject to unlimited income tax liability due to his place of residence or habitual abode (Art. 1 Sec. 1 EStG) or has to be treated as being subject to unlimited income tax liability pursuant to Art. 1 Sec. 3 EStG, he may apply to be jointly assessed in Germany with his not permanently separated spouse having his/her place of residence or habitual abode outside of Germany (Art. 1a Sec. 1 No. 2 EStG).

After BREXIT, the option for a joint assessment of British citizens will no longer exist unless both spouses are subject to unlimited tax liability in Germany pursuant to Art. 1 Sec. 1 EStG.

Pension schemes

The Brexit Tax Implementation Act contains a grandfather clause in connection with “Riester” incentives.

The amendments in Art. 92a Sec. 1 sentence 5 EStG protect existing cases in connection with retirement provision assets for the creation of owner-occupied residential property (*Altersvorsorge-Eigenheimbetrag*) to the extent that an apartment located in Great Britain will not be deemed as detrimental use even after the BREXIT.

According to the new Art. 95 Sec. 1 sentence 2 EStG, the fact that the beneficiary’s residence or habitual abode is located in Great Britain is not detrimental. The granted pension allowances and tax relieves, if applicable, must not be returned. This requires that the contract has already been concluded prior to the Brexit referendum on June 23, 2016 and that the residence or habitual abode has been in Great Britain since June 22, 2016 without interruptions.

The Brexit Tax Implementation Act also provides for a grandfather clause in case of a transfer upon death. According to the amended Art. 3 No. 55c sentence 2 lit. c EStG and Art. 93 Sec. 1 sentence 4 lit. c EStG, the subsidized pension assets can still be transferred to the surviving spouse with a domicile or habitual abode in Great Britain tax-exempt and with no detrimental effect on the tax incentives. Similarly, the amended Art. 92a Sec. 2 sentence 5 No. 2 EStG provides for a transfer of the housing subsidy account (*Wohnförderkonto*) to the surviving spouse with a residence or habitual abode in Great Britain. This requires, inter alia, that the agreement has already been concluded prior to the Brexit referendum on June 23, 2016 and that the spouse’s residence or habitual abode was located in Great Britain already prior to January 1, 2021.

Tuition fees, donations and membership fees

BREXIT will also affect the deductibility of tuition fees, donations and membership fees. After BREXIT, such payments can no longer be taken into account as special expenses as both provisions require for the recipient to be a resident of an EU or EEA member state.

Artists’ and supervisory board remuneration

With regard to income generated in Germany from artistic, athletic, entertaining or similar performances, income from such performances’ realization in Germany, and income granted to members of the supervisory board, the debtor of such remuneration (who must deduct taxes on behalf of the taxpayer subject to limited tax liability) can deduct operating or income-related expenses from such income pursuant to Art. 50a EStG.

A deduction of operating or income-related expenses requires, inter alia, for the taxpayer (being subject to limited tax liability) to be a citizen of an EU or EEA member state and to have his place of residence or habitual abode in one of such member states’ territory.

After BREXIT, the option to deduct operating and income-related expenses will be excluded. Consequently, the artists’ and supervisory board remuneration’s gross amount will be taxed.

Application of the progression proviso (*Progressionsvorbehalt*)

Income being exempt from taxation pursuant to an Income Tax Treaty is subject to the progression proviso pursuant to Art. 32b Sec. 1 sentence 1 No. 3 EStG. This means that the exempt amounts must be included when determining the tax rate. In case of positive income, this will increase the tax rate applicable to (non-exempt) income.

The progression proviso does not apply, inter alia, to income from a passive PE located in the EU or EEA, or to income from the rent and lease of immovable assets, if such assets are located in an EU or EEA member state.

Therefore, after BREXIT, profits and losses from the progression proviso will no longer be suspended in connection with certain income generated in Great Britain. Positive income from a PE located in Great Britain or income from rent will generally be subject to the positive progression proviso after BREXIT.

However, due to the limitation of loss deductions pursuant to Art. 2a EStG, losses generated in Great Britain will most likely not be subject to the negative progression proviso.

Exit taxation

If an individual, who has been subject to unlimited tax liability in Germany for at least ten years, moves abroad by abandoning his or her unlimited tax liability and if such person, at the date of relocation, holds in his/her private assets a share in a corporation of at least 1 %, such participation is deemed to have been sold at the date of the unlimited tax liability’s termination (Art. 6 Sec. 1 AStG). The assumed capital gain is subject to income tax.

However, if the taxpayer moves to another country within the EU/EEA, the owed tax will be deferred, interest-free and without security deposit, for an unlimited period of time.

In case of a relocation to Great Britain after December 31, 2020, the deferral requirements will no longer be met which will result in an immediate taxation of the assumed capital gain.

In case of an already existing deferral due to a previous relocation to Great Britain, the BREXIT Tax Implementation Act determines, pursuant to the new Art. 6 Sec. 8 AStG, that the BREXIT per se does not result in the deferral’s revocation. However, other detrimental events may result in the deferral’s revocation: for example, if the taxpayer who relocated to Great Britain transfers the shares to another person who is a resident of Great Britain or if the shares are transferred to a third country without disclosing the undisclosed reserves.

2. Effects on inheritance tax

Loss of tax relief for business assets

In Germany, an inheritance tax relief is granted to the free transfer of business assets by means of donation or inheritance. Such tax relief does not only apply to domestic business assets but also to the free transfer of foreign business assets, provided such foreign assets belong to a PE located in the EU/EEA.

Likewise, a tax relief is also granted to the transfer of shares in corporations if a decedent or donor holds a minimum direct share of more than 25 %, provided the corporation's registered office or place of management is located in Germany or an EU or EEA member state.

After BREXIT, such inheritance tax relief will no longer be available in relation to Great Britain.

Loss of tax relief for properties rented out for residential purposes

In connection with the transfer of properties being rented out for residential purposes by way of donation or inheritance, Art. 13d ErbStG (German Inheritance Tax Act) provides for such properties to be recognized with 90 % of their value for tax calculation purposes. This requires, inter alia, for the properties to be located in Germany or an EU or EEA member state. After BREXIT, such tax relief will no longer be available.

Loss of tax relief for the family home

Pursuant to Art. 13 Sec. 1 No. 4a and 4b ErbStG, a tax relief is also granted for the transfer of family homes. This, too, requires for the property to be located within the EU or EEA.

Maintenance of status quo for acquisitions prior to BREXIT

In the new Art. 37 Sec. 17 ErbStG, the Brexit Tax Implementation Act provides for Great Britain to still be deemed as EU member state for acquisitions made by the end of 2020. This will maintain the status quo for such acquisitions which is of practical importance in particular for the payroll regulation's application.

3. Effects on trade tax

BREXIT may also have effects in connection with trade tax. Art. 9 No. 7 GewStG (German Trade Tax Act) provides for foreign dividends to be deducted from trade income if the German entity has been continuously holding a share of at least 15% in the foreign subsidiary since the beginning of the assessment period and if the distributing subsidiary generates active income pursuant to Art. 8 Sec. 1 No. 1 to 6 AStG.

In relation to EU member states, a verification of such activities is not necessary. Furthermore, EU companies being subject to Annex 2 of the Parent-Subsidiary Directive must hold a share of at least 10 % at the beginning of the assessment period.

After BREXIT, the subsidiaries’ activities must be verified in case a British subsidiary makes distributions to the German parent company. Furthermore, the participation must have continuously amounted to at least 15 % since the beginning of the assessment period.

In certain cases, there are reductions pursuant to Art. 9 No. 8 GewStG.

4. Effects on real estate transfer tax (RETT)

Due to BREXIT, a British Limited with a domestic place of management is going to be treated as OGH, GbR or sole proprietor. In order to prevent such treatment from resulting in acquisitions subject to RETT, the Brexit Tax Implementation Act, pursuant to the new Art. 4 No. 6 GrEStG generally clarifies that Great Britain’s withdrawal per se will not result in a RETT burden.

Pursuant to Art. 6a GrEStG (German Real Estate Transfer Tax Act), certain legal transactions subject to RETT which are initiated within a group due to a transformation (e.g., merger), contribution or another acquisition on the basis of the articles of association, no RETT will be raised.

This requires for the RETT group pursuant to Art. 6a GrEStG to be maintained for five years after the legal transaction. In order to provide for the grandfather policy to apply to group restructurings prior to BREXIT, the new Art. 6a sentence 5 GrEStG provides that the tax privileges pursuant to Art. 6a GrEStG will not lapse only because of Great Britain leaving the EU.

The benefit pursuant to Art. 6a GrEStG for corresponding reorganizations due to another EU or EEA member state’s law will, however, lapse after BREXIT for reorganizations with the involvement of British group companies.

5. Effects on value added tax (“VAT”)

The Directive on the common VAT system (“VAT Directive”) has largely standardized the EU member states’ VAT law. The Exit Agreement (“Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community”) provides for a transition period until December 31, 2020, during which the VAT Directive and as such EU VAT law will continue to apply in Great Britain. Until such date, neither deliveries of goods from the EU to Great Britain and vice versa nor services will be subject to any amendments.

If, until the end of the transition period, no corresponding regulations will be made or solutions will be found, Great Britain will become a third country for tax purposes as of January 1, 2021 and will no longer be bound by the VAT Directive. Great Britain will then be able to restructure its VAT laws independently from the EU.

At the end of the transitional period, deliveries from the EU to Great Britain, which previously qualified as intra-Community deliveries, will become, from an EU perspective, export deliveries and deliveries from Great Britain into the EU, which previously qualified as intra-Community acquisitions, will constitute imports. Insofar, particularities pursuant to customs and foreign trade law as well as the levy of import VAT, customs and further import duties must be taken into account. This also applies to own goods transported from the EU to Great Britain and vice versa. Furthermore, various EU regulations, such as the simplification rule for intra-community triangular transactions or the mail-order provision will no longer be applicable.

In connection with services, too, there might be a change of the place of performance.

For further details, please refer to our newsletter “A little Bye Bye: The Brexit and its VAT-related consequences” of January 30, 2020.

6. Implications on customs

Within the EU, the principle of the free trade of goods applies. Within the EU, no customs are levied.

So far it is not clear what the economic relations between Great Britain and the EU will look like after the transitional period as of January 2021. A customs agreement with the EU or the conclusion of bilateral agreements with individual EU member states would be desirable. In case of a cold BREXIT, goods imported from and delivered to Great Britain will be subject to the import and export procedures and, if applicable, other customs procedures mandatorily required pursuant to the EU Customs Code.

D. Conclusion and recommendation for action

Both for Great Britain and the remaining EU member states, BREXIT will be hard to digest. Both British and German entrepreneurs and private individuals will be facing fiscal disadvantages after the transitional period’s expiry. Companies will also have to face amended registration requirements and burdens of proof as well as formalities. Both British and German companies will incur costs due to BREXIT. Customs and import duties might have to be charged to end customers. Therefore, it is hardly surprising that British enterprises are toying with the idea of establishing branches in the EU.

In the interest of all parties involved one would hope that the worst-case scenario, i.e. Britain becoming a third country for tax purposes, is not going happen and that a viable solution can be found for all parties. Until the end of 2020, Great Britain continues to be treated as EU member state, whereas such phase will be used in order to further negotiate Great Britain’s future status in relation to the EU. For the time being, no one knows where the journey will ultimately take Great Britain and the EU.

From a tax consultant’s perspective, we can only recommend examining whether the regulations affected by BREXIT as described in this information letter will affect your business processes. As this client information only describes the most important but not all tax effects of BREXIT, we recommend identifying your business relations with Great Britain and having them examined with regard to possible implications of BREXIT. Subsequently, the processes relevant for your company can be addressed in a target-oriented manner as soon as further regulations with Great Britain will emerge.

Christian Hensell
Attorney-at-Law, Tax Advisor
Partner

Melanie Strauß
Tax Advisor

Friedrich Wamsler
Tax Advisor
Partner