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### BREXIT: TAX EFFECTS - UPDATE

The "EU-UK Trade and cooperation agreement" entered into by and between the EU and the UK in order to regulate their relations after Brexit was published on 26 December 2020. It is a particularly complex agreement containing provisions, whose actual scope is still to be defined, as specified by the Italian tax authority in the FAQs of 31 December 2020.

Hence, as of 1 January 2021 relations between the EU and the UK shall be governed in any case by the same rules that apply to non-EU member states, with the tax effects outlined below.

#### 1. DIRECT TAXES

##### 1.1 Dividends, interest payments and royalties

For direct tax purposes, please note that the following tax schemes will no longer apply as of 1 January 2021:

- the reduced 1.2 percent withholding tax on dividends paid to UK companies (section 27(3-ter) DPR 600/1973);
- the withholding tax exemption scheme for dividends paid to UK parent companies (section 27-bis DPR 600/1973);

- the withholding tax exemption scheme for interest and royalties paid to UK subsidiaries (section 26-quater DPR 600/1973);
- the withholding tax exemption scheme for interest arising from medium and long-term loans paid to UK credit institutions (section 26 (5-bis) DPR 600/1973);
- the reduced 5 percent withholding tax on interest paid to UK companies where such interest is intended to finance interest payments and other income from bond loans issued by the recipients (section 26-quater (8-bis) DPR 600/1973).

In this regard, the Italian tax authority's FAQs of 31 December 2020 specify as follows: <<the provisions contained in section 26-quater DPR 600/1973 shall no longer apply to interest and royalties payments made to UK taxable entity as of 1 January 2021, save for specific provisions contained in the agreements reached by and between the EU and the UK in order to regulate their mutual relations at the end of the transition period>>.

Hence, payments of dividends, interests and royalties to UK taxable persons shall be subject to withholding tax in Italy, or, if applicable, to the lower withholding tax as set forth under the DTA.

Similarly, payments of dividends, interest and royalties to Italian taxable persons by UK taxable persons shall be subject to UK withholding tax or, where applicable, to the

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lower withholding tax as set forth under the DTA. The Italian taxable person may claim such withholding tax, fully or in part, by means of the tax credit for foreign taxes pursuant to section 165 of Italian Tax Code (TUIR).

However, the Italian withholding tax exemption scheme for interest on government securities and bonds issued by the so-called "large issuers" still applies, as the UK will continue to provide for an adequate information exchange even after Brexit.

### 1.2 Group tax consolidation

As of 1 January 2021 UK parent companies are no longer entitled to opt for the so-called horizontal tax consolidation, whereby a resident subsidiary or an Italian permanent establishment of a non-resident subsidiary acts as consolidating company (section 117 (2-bis) of the Italian Tax Code (TUIR)).

Moreover, even UK subsidiaries with a permanent establishment in Italy are no longer entitled to opt for tax consolidation as subsidiaries (section 117(2-ter) of the Italian Tax Code).

### 1.3 Cross-border extraordinary transactions

Finally, not even the fiscal neutrality scheme for EU cross-border corporate reorganisation transactions will apply any longer.

## 2. VAT

As of 1 January 2021, the UK will no longer be part of the EU customs and tax territory (VAT and excise duties). Hence, the movement of goods between the UK and the EU shall be deemed equal to trading with a third country.

The only exception is Northern Ireland. The protocol on Ireland and Northern Ireland establishes that EU customs rules on the movement of goods between member states shall continue to apply to Northern Ireland.

### 2.1 Sale of goods and supply of services.

#### 2.1.1 Sale of goods

As far as trade relations between Italy and the UK are

concerned, the main effects will be on the sale and the purchase of goods, which will be no longer deemed intra-Community transactions but:

- exports, if goods are dispatched from Italy to the UK;
- imports, if goods are delivered from the UK.

VAT simplification measures for triangular intra-Community transactions shall no longer apply (unless the UK economic operator appoints a tax representative in an EU country).

For transactions carried out in the transition period, goods dispatched from the UK to the EU or from the EU to the UK are deemed Community goods only if the movement started before 1 January 2021, even though it ended after that date. The economic operator shall provide proof by means of a transport document that the movement of goods started before 31 December 2020.

Hence, goods sold with advance invoice in the EU before 31 December 2020 but dispatched to the UK from 1 January 2021 will be subject to customs duty in the UK and be considered as exports from EU.

UK transactions must no longer be included in the INTRASTAT lists, as they are considered as exports and imports. However, please note that VAT registered UK companies must continue to submit monthly purchase lists even for 2021.

Export and import transactions shall be subject to customs procedures and customs duties shall apply (in case of release for free circulation in Italy). Moreover, in case of release for consumption, excise duties (if any) and the respective VAT shall apply (sections 67-70 DPR 633/1972).

As far as supplies to the UK are concerned, proof of exportation shall be provided by means of:

- customs document (MRN exit results message);
- stamp of the customs office on the invoice (triangular transactions).

Alternatively, proof may be provided for example by means of: document proving payment, transport document (such as AWB), bill of entry in the country of destination.

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As far as purchases and, hence, imports from UK are concerned, VAT shall no longer be paid through invoice supplement (i.e. with VAT credit and debt recorded for the intra-community purchase and subsequent offsetting of the tax burden), but shall be paid at customs.

In order to reduce the impact related to the VAT payment upon importation, it is possible:

- to appoint a tax representative in another EU member state,
- to import goods in that EU member state, paying only customs duties under customs procedure 42 (import of goods into one EU member state with destination in another EU member state),
- to dispatch goods to Italy (or another EU member State) and pay VAT under the reverse charge scheme (avoiding thus a cash outflow).

Alternatively, in order to avoid paying VAT upon importation, it is also possible to place goods in a VAT warehouse. Hence, only customs duties shall be paid upon filing the customs declaration and VAT shall be paid under the reverse charge scheme once the goods leave the VAT warehouse.

### 2.1.2 Supply of services

As far as the supply of generic services pursuant to section 7-ter DPR 633/1972 is concerned, the territoriality principle of the country of establishment of the customer remains unchanged.

Moreover, also the territoriality principle provided for the supply of services relating to immovable property in the respective country remains unchanged.

Hence, the supply of services to a UK customer will not change significantly, except for the fact that the invoice shall include the wording "transaction not subject to VAT" instead of the wording "reverse charge scheme" pursuant to section 21(6-bis)(b) DPR 633/1972 (<<6-bis. VAT payers resident in Italy issue an invoice for the transaction types specified below, even if they are not subject to the tax pursuant to section 7 - 7-septies, stating the relevant

*legal provision under EU or Italian law instead of the amount of tax: a) sale of goods and supply of services other than those pursuant to section 10 (1 - 4) and (9) made vis-à-vis a VAT payer liable for VAT in another EU member state, specifying that it is subject to the reverse charge scheme"; b) sale of goods and supply of services performed outside the EU as "transactions not subject to VAT">>).*

Furthermore, neither services supplied by a UK supplier will change significantly, except for the fact that VAT will be paid by the Italian taxable person through self-billing and no longer through invoice supplement.

Moreover, services no longer require to be included in the INTRASTAT lists.

### **2.2 VAT refunds**

Once fully operational, even the rules on VAT payments and refunds will change.

However, the EU directive provisions continue to be applicable for five subsequent years not only as far as refund applications relating to 2020 filed in 2021 but also as far as refund applications already filed at the end of 2020 are concerned.

Furthermore, article 51 (3) of the EU-UK withdrawal agreement provides as follows: <<refund applications that relate to VAT which was paid in a Member State by a taxable person established in the United Kingdom, or which was paid in the United Kingdom by a taxable person established in a Member State, shall be submitted under the conditions of that Directive at the latest on 31 March 2021>>. Hence, if requirements are met, UK or EU taxable persons that made purchases in the EU or in the UK respectively may file a refund application through the electronic portal at the latest on 31 March 2021 (and not on 30 September 2021).

### **2.3 Direct identification and VAT fiscal representative**

As to UK taxable persons directly identified for VAT purposes in Italy, the Italian tax authority's FAQs of 31 December 2020 initially clarified the following: <<... in the interim, UK operators identified in Italy pursuant to the above-mentioned provisions may consider: cancelling the

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*VAT registration number assigned to them pursuant to section 35-ter of the VAT decree [AN: direct identification] ...and apply for a new VAT identification number [AN: VAT fiscal representative] ...>>.*

Now, however, the Italian tax authority has confirmed in decision 7 as of 1 February 2020 that even after 1 January 2021

*<< taxable entities established in the UK may use direct identification in order to fulfil their obligations and exercise their rights with regard to VAT in Italy as an alternative to the appointment of a fiscal representative as provided for under section 17 (2) of the VAT decree. It being understood that UK operators that already have a VAT fiscal representative in Italy or a VAT identification number, appointed or issued before 1 January 2021, may continue to use them for domestic transactions>>.*

As specified by the Italian tax authority, non-EU taxable persons may use direct identification, provided that the non-EU countries have legal instruments regulating mutual assistance on indirect taxes in place which are similar to those provided for under the EU directives.

Now, the agreement entered into by and between the EU and the UK on 24 December 2020 is provisionally applicable since 1 January 2020 and contains a Protocol on administrative cooperation and combating fraud in the field of Value Added Tax and on mutual assistance for the recovery of claims relating to taxes and duties. Such Protocol is basically similar to the EU administrative cooperation instruments currently in force. As a consequence, the provisions on direct identification continue to be applicable to UK taxable persons.

### **2.4 Mini one stop shop (MOSS), one stop shop (OSS), import one stop shop (IOSS)**

The Italian tax authority's FAQs of 31. December 2020 provide clarifications on the so-called MOSS (mini one stop shop).

More specifically, the Italian tax authority analysis the case of a company established in Great Britain providing telecommunications, broadcasting and electronic services

(TBE services) to final consumers resident in various EU member states. The company is registered with the mini one stop shop (MOSS) in Great Britain (member state of identification), where it fulfils its VAT obligations deriving from the provision of TBE services that are relevant for VAT purposes in the country of residence of the final consumers (member state of consumption) pursuant to article 58 of Council directive 2006/112/EC.

The Italian tax authority's clarifications relate to the following issues:

- Is the company allowed to adhere to the "non-EU MOSS scheme" as of 1 January 2021 and to choose Italy as member state of identification in order to fulfil its VAT obligations for the supply of TBE services?
- Does the first MOSS declaration need to be submitted to the member state of identification as of 1 January 2021 or as of 1 July 2021?

The Italian tax authority clarifies that taxable persons established in non-EU countries that provide TBE services to non-taxable persons (final consumers) established in the EU may adhere to the "non-EU MOSS scheme" and choose an EU member state (including Italy) as member state of identification in order to file and pay VAT due on the supply of services inside the EU.

Furthermore, the Italian tax authority specifies that the following schemes are introduced under Council directive (EU) 2017/2455 of 5 December 2017 amending the VAT directive (directive 2006/112/EC):

- OSS (one stop shop), and
- IOSS (import one stop shop).

The entry into force of the above-mentioned schemes, originally planned on 1 January 2021, is postponed until 1 July 2021 due to the negative effects of the Covid-19 pandemic.

The OSS and the IOSS schemes provide for a centralized and digital European VAT collection system and include the following transactions by extending the scope of application of the MOSS scheme:

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- online sales of goods imported from third territories or third countries (except for goods subject to excise duties) made by suppliers or through the use of an electronic interface, such as a digital market, a platform, a portal or similar devices through digital platforms;
- intra-Community online sales of goods by suppliers or through the use of an electronic interface, such as a virtual market, a platform, a portal or similar devices, directly or through digital platforms;
- domestic sales of goods through electronic interfaces, such as a virtual market, a platform, a portal or similar devices;
- supply of services by taxable persons not established in the EU or by taxable persons established in the EU but not in the member state of consumption vis-à-vis non-taxable persons (final consumers).

Hence, it being understood that these schemes are currently in the course of being transposed by the Italian legislator, as of 1 July 2021 taxable persons established in non-EU countries that supply services (TBE services as well as general services) to non-taxable persons (final consumers) established in the EU may adhere to the "non-EU OSS scheme" and may choose an EU member state (including Italy) as member state of identification, in order to declare and settle VAT due on the supply of services inside the EU. As of 1 April 2021 these taxable persons may pre-register with the OSS scheme. The first quarterly VAT return relating to the supply of TBE (or other) services must be filed in August 2021.

### 3. CUSTOMS

For customs purposes, transactions with the UK shall have an EORI number (Economic Operator Registration and Identification).

In the EU the EORI number is automatically assigned by Customs authorities upon the first customs transaction. However, such number may also be requested in Italy in advance on the website of the Italian Customs and

Monopoly Agency.

If UK economic operators wish to import or export to or from the EU, they shall apply for an EORI GB number (not a UK number). EU economic operators shall apply for their respective EORI number (IT, FR etc.).

For each dispatch of goods a customs export declaration shall be lodged at the respective customs office or at the Italian Customs and Monopoly Agency.

In order to simplify export transactions, it could be useful to use the customs transit procedure (T1/T2) (used with Switzerland).

Moreover, it is advisable to agree precisely on the INCOTERM rules to be used. Until now, in trade with the UK, DDP shipping has had no particular effects, because no duty or customs applied with regard to intra-Community trade. However, from 2021 under DDP the Italian seller shall not only pay import duties but also take care of all customs clearance formalities. If the seller undertakes to grant a "full" DPP shipping, he shall clear the goods for the UK buyer in his own name and on his own behalf by appointing a tax representative. However, it is possible to expressly specify in the agreement that the sale is VAT excluded. In this case, the purchaser acts as importer even for customs purposes.

### 4. WEALTH TAX ON REAL ESTATE ABROAD (IVIE)

Wealth tax on real estate abroad shall be calculated on the purchase price, and no longer on the cadastral value (section 19 of the Italian law-decree 201/2011).

Yours sincerely,

HAGER & PARTNERS