Executive summary

On 23 August 2018, the United Kingdom (UK) Government published its first batch of notes setting out some of its unilateral actions and recommended steps for businesses in a "No Deal" scenario related to Brexit. This scenario would be one where the UK leaves the European Union (EU) on 29 March 2019 without an agreed EU Withdrawal Agreement and without a framework in place for a future relationship between the UK and the EU. However, in such a scenario, the Government does expect that some agreements can still be reached with the EU given the number of inter-dependencies between the UK and the EU’s respective contingency plans.

Mats Persson, EY’s Brexit Strategy Leader, UK & Ireland and Special Advisor to the Prime Minister 2015-2016 commented:

The steps announced today will help reduce some friction in the event of a No Deal scenario mostly for companies that import to the UK. In particular, the pharmaceutical sector will be relieved to see a unilateral recognition of EU testing and authorisation, reducing the need for costly duplications in the short-term, which could have cost some firms millions; allowing for VAT to be dealt with in VAT returns rather than to be paid it at the border will reduce cash flow impacts, particularly for smaller firms; and a selective approach to customs checks will help reduce the risk of delays and costs at the border.
Whilst welcome, these notes can only cover some of the impact businesses face in a No Deal scenario and of course only cover the UK perspective. UK customs waving through a shipment will have limited effect if that shipment is stopped on the EU side and there are delays on that side. The Government is right to challenge the EU to reciprocate some of these arrangements to avoid the most damaging friction, not least for EU-based firms, should a deal not happen.

This Alert summarizes some of the key points for businesses to consider.

Detailed discussion

From a business planning perspective, some of the most interesting notes published today include the notes on how the Government intends to operate its customs and Value Added Tax (VAT) border from 29 March 2019 absent a deal; the actions and recommendations for the pharma sector and the financial services sector; as well as statements of principles on State aid and workplace rights.

This batch of notes illustrates the need for businesses to have their critical impacts identified and corresponding mitigating actions geared towards March 2019 in order to ensure business continuity.

Key points for businesses to note include:

Customs and trade

- **Customs function development**: Businesses will need to develop and expand their customs knowledge, particularly businesses that have no experience in imports and exports outside the EU. This will include evaluating between both their customers and suppliers which Incoterms best fit for trade, whether customs special procedures are suitable and ensuring goods are classified to the HM Revenue & Customs tariff.

- **Future tariff impacts**: The Most Favored Nation rates will be applicable for trade between the EU and the UK, however, the UK may choose to apply new duty rates that differ to the EU. The UK intends to continue offering unilateral preferences to developing countries and to transition all existing EU free trade agreements (EU FTAs). By omission this means exporters using FTAs may lose the preferential treatment.

- **Export controls**: There are significant changes to export controls particularly around the licensing of dual use goods which may require businesses to re-register within both the EU and UK.

- **Trade between Northern Ireland and the Republic of Ireland**: The UK Government states that it will be working on a solution with the EU.

VAT

- **VAT system**: There is confirmation of the continuation of a VAT system after the UK leaves the EU and that the VAT rules relating to UK domestic transactions will continue to apply to businesses as they do now.

- **Postponed accounting for import VAT on goods brought into the UK**: The intention is to introduce this measure which means that UK VAT-registered businesses importing goods into the UK will be able to account for import VAT on its VAT return, rather than paying import VAT on or soon after the goods arrive at the UK border. Customs declarations and the payment of any other duties will still be required (unless the goods are entered into duty suspension).

- **Financial services**: VAT deduction rules for UK businesses supplying insurance and financial services to the EU may be changed.

Sectors

- **Pharma and Life Sciences**
  - Suppliers have been advised to increase their medicines stocks by at least six weeks on top of their usual buffer stocks and to ensure plans are in place to air freight products with a short shelf life that cannot be stockpiled.
  - After 29 March 2019, the Government will continue to accept quality testing, certification and release of human medicines in countries included on a list set out by the Medicines and Healthcare products Regulatory Agency (MHRA). On exit day this would include EU/European Economic Area (EEA) countries and third countries with EU agreements. For products quality tested, certified and released in the UK, the latest guidance from the European Medicines Agency (19 June 2018) requires products to be fully retested, certified and released in the EEA. Companies must ensure the relevant preparation activities are complete in anticipation of a potential No Deal outcome.
  - Centrally authorized products’ Marketing Authorizations will automatically be converted into UK authorizations on 29 March 2019. However, any in-progress regulatory submissions at time of exit will not be valid in the UK, and will require a separate submission to the MHRA.
By the end of 2020, companies with UK Marketing Authorizations must establish a UK-based Marketing Authorization Holder (MAH) and Qualified Person (pharmacovigilance). In the interim, companies can have a local UK contact for MAH and an EU-based Qualified Person.

On exit day, the UK will no longer be part of EU medicines and medical devices regulatory networks. Any sharing of systems and data exchange will therefore end and companies will need to submit regulatory information relating to medicines and devices directly to the MHRA.

Financial Services

The technical note is quite light on detail, instead providing links to other guidance. It does note that HM Treasury is continuing to engage with stakeholders as it drafts the legislation, under the EU Withdrawal Act 2018, to ensure that there is a fully functioning financial services regulatory framework at the point where the UK leaves the EU. It suggests that, at this stage, firms should continue to plan on the basis that an implementation period will be in place from March 2019 to December 2020, and continue to follow guidance from the regulators.

The technical note goes on to point out that unless the EU acts to maintain continuity, then UK financial services firms passporting into the EEA will lose the ability to do that at the point of exit. This may have implications for their ability to meet contractual obligations with EEA-based clients, where to do so without EEA permissions would breach relevant Member State rules and any applicable EU rules that apply to third countries. The UK Government has committed to taking unilateral action, if necessary, to resolve this issue on the UK side. However, as this note points out, this is not sufficient to fully address the risks, and coordinated action with the EU is necessary.

The note also recognizes that how customers of financial services firms will be affected will depend on where they are based, where their firm is based and under what regulatory authorizations they operate, and the services that they access. It suggests that if action by customers is needed, then firms should communicate this to their customers at an appropriate time.

Other key points to note

State aid: In a No Deal scenario, the Government has said that EU State aid rules will be transposed into UK domestic legislation under the EU Withdrawal Act 2018. This will apply to all sectors; and will mirror existing block exemptions as allowed under the current rules. The Competition and Markets Authority (CMA) will then take over as the authority regulating State aid. Any existing commitments will be honored. There is no specific reference to ongoing State aid enquiries.

Workplace rights: A technical notice explains that workplace rights and protections that are derived from EU law will continue to be available to workers in the UK after 29 March 2019 if there is no deal. The EU Withdrawal Act 2018 brings across the powers from EU Directives. In a no deal scenario, there are no expected financial implications or impacts for citizens or businesses operating in the UK (whether UK or EU based) in regard to workplace rights. There are some implications in relation to European Works Councils and the insolvency of employers which are set out in the notice.

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