

# Tax Talk


Simplifying the complexities of Tax

January 2021






## The Brexit edition



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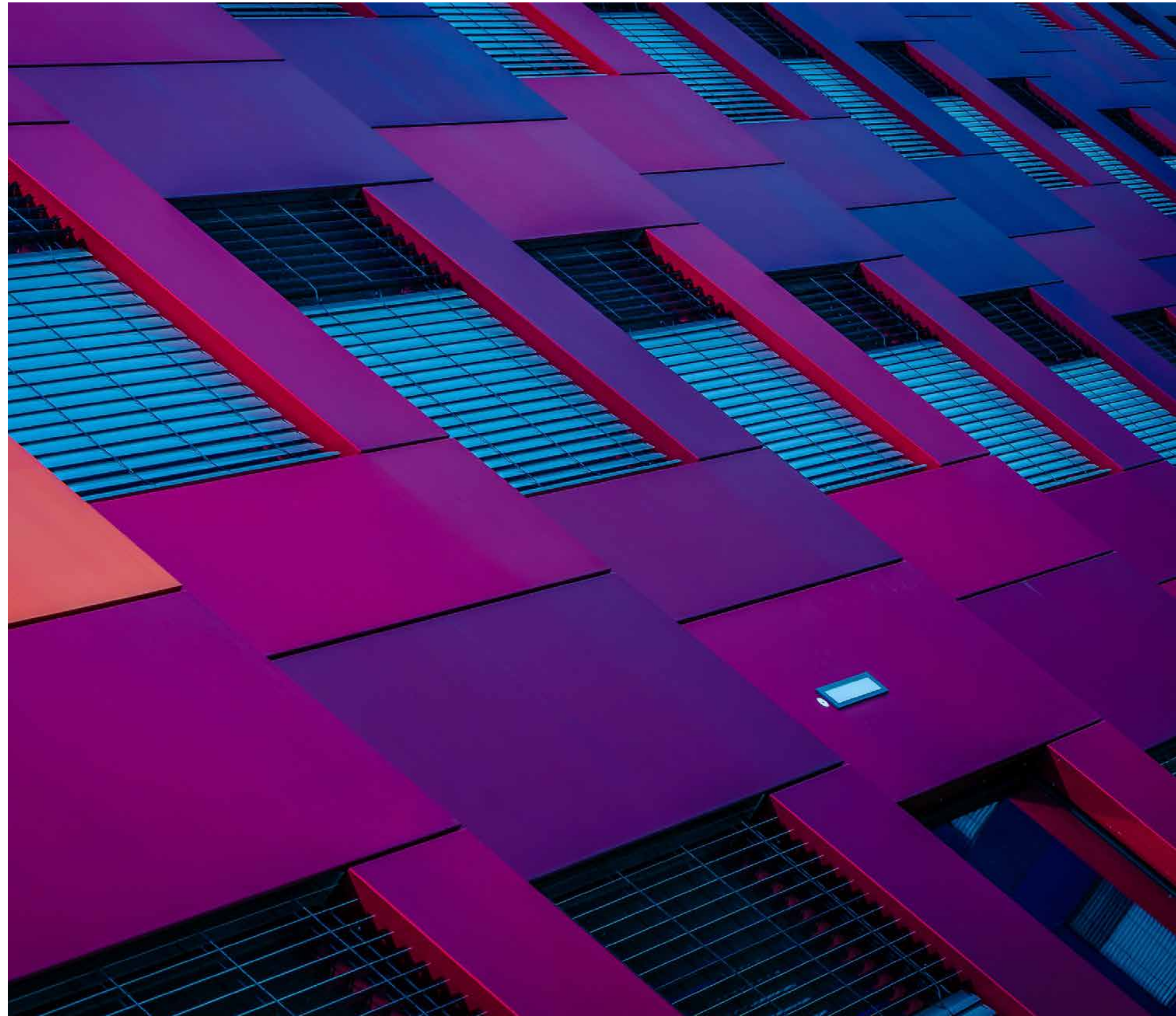
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## Introduction

Now that the UK has come to the end of the transition period and fully left the EU, what are the implications from a tax and customs duty perspective? Our experts have summarised the latest guidance, supplemented by their experience in recent weeks, in this month's Tax Talk.

The changes are in some cases obvious; in other cases, they are more subtle. However, in all cases, the impact of getting matters wrong can be significant – for example, being unable to export your products and upsetting your customers, or failing to apply tax changes correctly which could build up significant liabilities when discovered later. In all cases therefore, as ever, if it appears that a tax change affects your transactions, employees or business structure, you should seek specific advice at the earliest opportunity.



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# Corporate Tax

Now that the UK has now ceased to be an EU member state, the various EU Directives that relate to Corporate Tax no longer apply.

## Interest, royalty and dividend payments

From 1 January 2021, the Interest and Royalty and Parent Subsidiary Directive, which prevented the imputation of withholding taxes on Interest, Royalties or Dividends on payments within EU based groups will no longer apply to UK Recipients or Payees. As a result some EU countries will start to deduct tax from interest, royalty and dividend payments made in the UK

If your company is based in the UK and receives interest, royalties or dividends payments from an associated company in the EU you need to check the terms of the double taxation agreement in place between the UK and the relevant EU country

The amount of tax deducted will depend on the double taxation agreement between the UK and relevant EU country. You can usually apply for full or partial exemption, or claim back some or all of the tax you have already paid under the relevant double taxation agreement. However, you may need to submit a new or revised claim to the tax authorities of the EU country, particularly if you have previously made a claim to reduce under the Directive. Any claims made under a Double Tax Treaty or the Double Tax Treaty Passport should remain the same, subject to the usual provisions.

Equally Companies that are based in the UK will need to reconsider the deduction of withholding taxes for payments of interest and royalties that it makes (the UK does not charge Withholding Taxes on dividends in any event), where previously it may have claimed relief under the Directive. Identifying those claims made previously (which are no longer valid) should be straightforward enough, and replacement claims to relief or lower rates of withholding taxes can then be made under the appropriate tax treaty, if a benefit arises there.

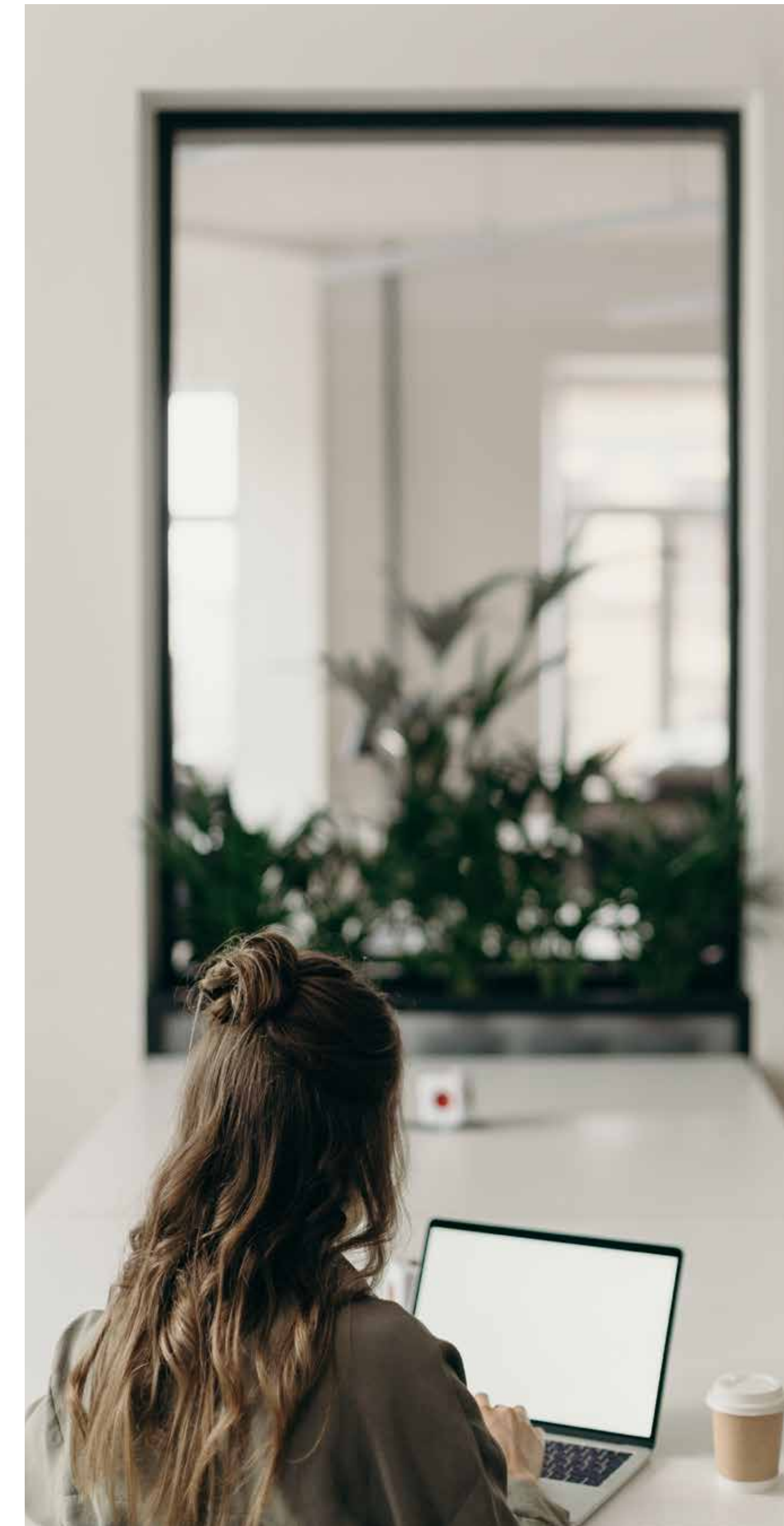
Reliefs in respect of Cross-Border Mergers and Reorganisations involving companies incorporated in the UK and EU member states are no longer possible. Cross Border Mergers were not applied frequently for UK Companies due to the complications and cost of structuring such arrangements under UK Company Law.

However, other routes of tax efficiently re-organising group structures involving EU and UK entities also relied on EU law derived reliefs and exemptions to prevent (or defer) exit charges from applying. Therefore greater care and advance planning of such reorganisations of cross border groups with EU elements are likely to be required in the future, and could become more expensive in tax terms.



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# Brexit and Globally Mobile Employees



The treaty Articles relating to dependent workers, determining an individual's place of tax residence under treaty rules and claiming foreign tax credits will remain as they are.

## **Social security for existing mobile employees who have certificates of coverage/E101s/portable documents**

These certificates will remain valid until their expiry date as per the Withdrawal Agreement, provided the employee continues in the same or a similar role in the same country.

## **Social Security for newly posted workers**

The social security coordination provisions in the Withdrawal Agreement ensure workers who move between the UK and the EU only have to pay into one country's social security scheme at a time. However, the country to which payments are made will depend on whether the EU country has agreed to apply the 'detached worker' rules.

Historically, it has been possible to remain in your home country social security scheme if you work in the UK/EU temporarily. However, the bi-lateral and reciprocal agreements that the UK previously had with the EEA and EU are no longer valid and social security coordination between the UK and EU countries is now governed by the Withdrawal Agreement for those in scope and by the Trade and Cooperation Agreement for others. There are additional bilateral arrangements in place with Ireland reflecting the Common Travel Area.

The UK has negotiated with individual countries in the EEA/EU to determine whether a separate social security agreement will be agreed, applying the 'posted worker' provisions.

Countries that have not yet indicated whether they are agreeable to continuing with the posted worker provisions are: Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Romania, Slovakia, Slovenia, Spain.



# Brexit and Globally Mobile Employees cont

The deadline for the decision from each country is 1 February 2021. If no agreement is reached, when you send workers overseas from the UK you will need to contact the overseas territory to determine what needs to be done.

Each country will have its own rules but essentially any person working in an EU member state that has not signed up to a new agreement with the UK on posted workers will be immediately subject to the social security legislation of the country they are working in.

If you currently have employees temporarily working in Norway, Iceland, Liechtenstein or Switzerland then different rules apply and you should seek specific advice.

Cross border activities involving the UK and the EEA/EFTA countries and Switzerland as well as the EU will be covered by the separate agreements in place at the time of activity.

Frontier workers (people who live in one country and work in another) are protected by the Withdrawal Agreement and are able to apply for a permit to continue their pattern of work/social security contributions.

## HMRC online applications

Additional information will be required to determine eligibility for a certificate of coverage from HMRC. The following will be needed:

- Nationality and place of birth
- Whether the individual and/or their employer has EU Settlement Scheme status
- If the individual or their employer has more than one nationality including details about each one and how they were acquired.
- If the individual or the employer has a family member who is a national of the EU, Norway, Iceland, Switzerland or Liechtenstein with details about the relationship
- Details of any duration of work/Stay in the EU/ EFTA including any gaps or interruptions in their work detailing the reason and including all key dates.

## Residence

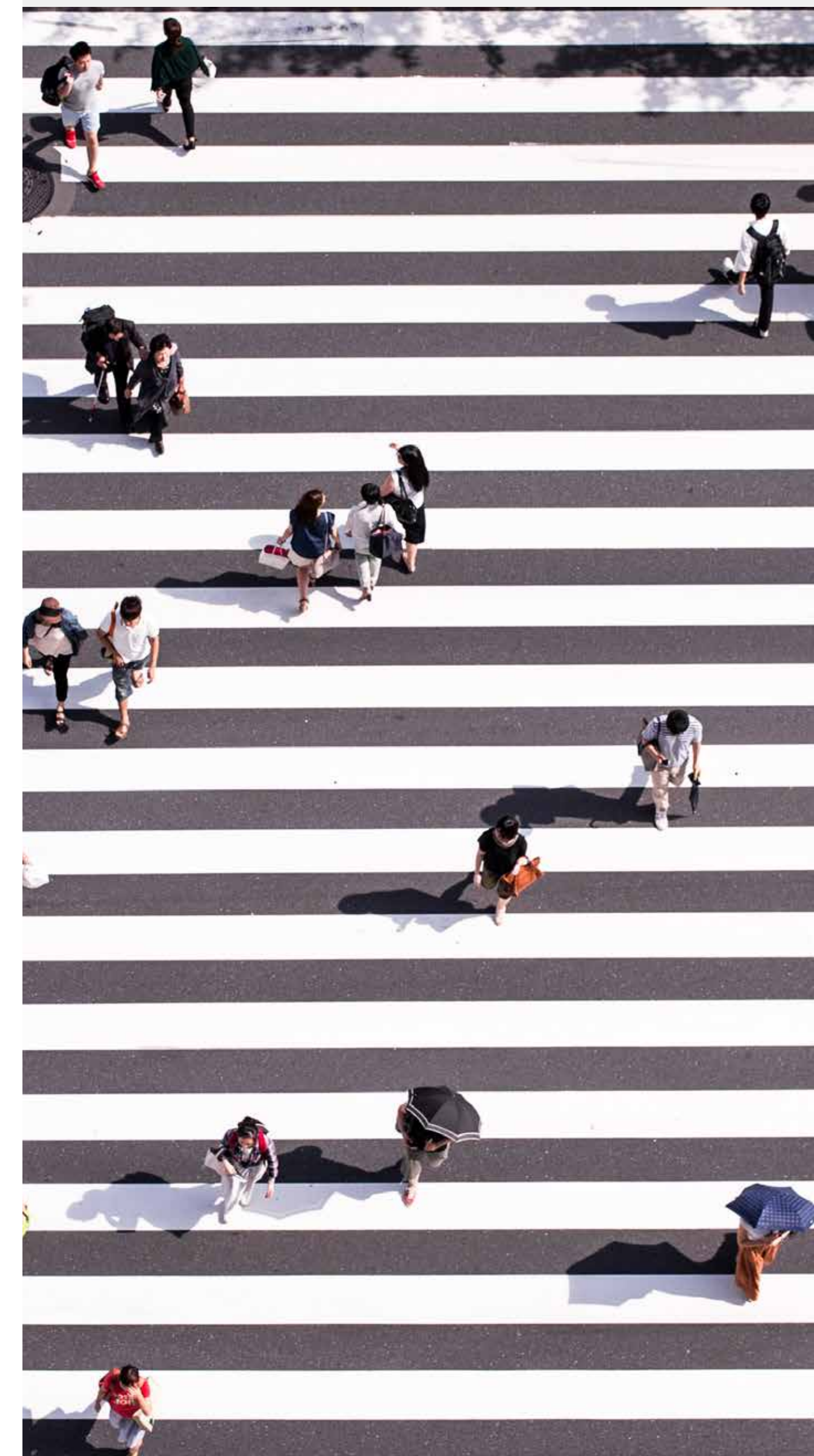
Holding a Certificate of Coverage for social security purposes does not entitle a person to remain living in a foreign country and you should check the immigration rules.

If you are a national of the EU, Iceland, Liechtenstein, Norway or Switzerland and were living in the UK before 1 January 2021 you must apply for EU settled status by 30 June 2021 if you want to protect your right to stay in the UK as well as your social security rights.



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# VAT and the Supply of Goods: FAQs

The end of the transition period has substantial implications for the movement of goods between the UK and EU Member States, as the relevant VAT facilitations for intra-Community movement of goods have been replaced by additional formalities.

We summarise here our responses to some common questions and concerns raised by businesses.

## **We sell goods through our website and online marketplace to consumers in the EU, how are our supplies treated now?**

Until 31 December 2020, sales to EU customers were covered by distance selling rules which essentially allowed you to charge UK VAT on those sales until you breached the threshold for that country (usually €35,000). Once breached, you needed to register in that EU Member State. From 1 January 2021, distance selling simplifications are no longer available, sales become zero rated exports and export declarations are required. If the end customer is deemed to be the importer, then depending on the value of the item, they may be required to pay the parcel operator local VAT and duty before they can receive the goods. If you are the importer, then you will be required to register for VAT in that country. However, you must pay import VAT and Customs Duty at the border, reclaim the import VAT and charge local domestic VAT on the sale.

Depending on the goods being sold, you should also ensure any required export or import licences are held to allow export of the goods from the UK and import of the goods into the EU.

From 1 July 2021, the EU will be introducing new rules for e-commerce supplies and schemes such as the Import One-Stop-Shop (IOSS) which will allow non-EU businesses to act as the importer of record and complete a single VAT return in one EU country and account for domestic VAT to all EU customers in different EU Member States without the requirement to register in multiple countries. No import VAT will be due.

## **I purchase goods from the Netherlands and sell these on to customers in Belgium. The goods are delivered directly to the customer and no UK VAT is charged on my supply. Will this continue to be the case?**

As the goods do not enter the UK, no UK VAT is due. However, you will need to deal with EU VAT locally via an EU registration.

## **From 1 January 2021 will I need to complete Customs declarations for the importation of goods from the EU?**

If you are the importer of record then 'yes', although provided the goods are not controlled for customs purposes, you may be able to defer declarations and the payment of Customs Duties for up to six months under one of the easement measures announced in the Border Operating Model (all easements cease from 1 July 2021).



# VAT and the Supply of Goods: FAQs cont

## If I import goods into the EU for onward sale and my customers are unwilling to be responsible for importing the goods, will I be required to set up a subsidiary company in the EU?

This will largely depend on the specifics of your business activities, supply chains and transport routes. If you are going to be the importer of record you will need an EU EORI number (you only need one number for the whole of the EU). In general, you will be required to be VAT registered in the EU Member State where the goods first enter the EU unless you use Transit which may shift the requirement to the destination country. Some EU Member States may not allow you to register for VAT if you only make supplies to business customers in that Member State, so you will have to consider the impact of this on reclaiming import VAT.

It is not usually necessary to have an EU establishment/company, but it would simplify the VAT registration process and the ability to make declarations. It could also help address other labelling/regulatory issues in the EU.

You should note that having an EU company will have other ongoing compliance costs and tax implications so you should get advice before committing to this.

Without an establishment it is possible that you will be required to appoint a local representative/fiscal representative, which is a local entity that facilitates tax compliance. A fiscal representative usually becomes jointly and severally liable for any mistakes, so their charges may be high or they may require a guarantee to cover their risk.

## How do I pay for VAT and Customs Duties and can these be deferred?

Import VAT and Customs Duty is levied at the border to allow entry of goods into the UK.

You can either pay at the border using the Flexible Accounting System, which is essentially a BACS transfer, or you can defer the payment using your own deferment account or the forwarder's account which they will make a charge for. In all cases you need to make it clear to the Customs agent how you intend to settle the taxes.

The importer of record will quote their UK EORI number on the declaration in the consignee field. This will generate the required evidence for reclaiming import VAT, which can be in the form of a C79 import VAT certificate if the business pays/defers the VAT at import, or an import VAT statement which will be generated monthly if using the new postponed import VAT mechanism. This mechanism is optional, but the agent will need to indicate on the customs declaration if it is being used. It will allow input VAT for all imports (not just EU purchases) to be self-declared on the VAT return (usually an in and out if the business can reclaim the VAT in full). Using this mechanism will improve cash flow and mean that deferment account limits can be reduced.



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# Brexit, VAT and the Supply of Services

The end of the Brexit transition period has VAT consequences for businesses supplying cross border, even where the supplies are of services, and don't physically cross a border.

## If you are receiving services from EU suppliers

Generally speaking, this is the area with least change. Services (other than those subject to special rules below) provided to a UK business from the EU prior to 31 December would not attract VAT, as the supply is treated as made where the recipient is based. Accordingly, a non-UK-supplier would not charge VAT before and won't now.

Depending on the nature of the supply, you may need to apply the Reverse Charge in respect of supplies received from outside the UK, but again, this is not a new requirement.

## If you are providing services to EU customers

Before 1 January 2021, if you provided services to businesses located in the EU that were VAT registered, you would not charge VAT, provided you met the intra-EU invoicing requirements, and then recorded the recipient's VAT number on an EC sales list. These EU recipients now fall into 'Rest of the World' for VAT purposes, and so VAT remains non-chargeable, although you no longer need to meet the intra-EU invoicing requirements and complete an EC sales list.

For non-VAT registered businesses and consumers based in the EU, VAT will previously have been chargeable, but now falls under the same treatment above ie VAT will not apply as the recipient is not in the UK.

Services such as those related to land, hospitality and transport have long been subject to VAT in the UK when provided here, regardless of where the recipient is based, because they are not subject to the general rule described above. Regardless of where the recipient is based, you may be liable to account for UK VAT on these services.

## Do you need to register for VAT in the EU?

You may need to register for VAT in the EU in respect of services if they fall into certain special categories which lead to the place of supply being deemed to be where the customer is based, even if the supplier is in the UK. As previously mentioned, you may also need to register for VAT in respect of land, hospitality and transport services provided in the EU.

If you provided Digital Services to individual customers in the EU, before 1 January 2021 you would have needed to account for local VAT in the jurisdiction in which your customer was based (if an annual threshold was breached) using the Union 'Mini One Stop Shop' ("MOSS") scheme. UK established providers can no longer use the Union MOSS scheme. Unless you are willing to register for VAT in each EU Member State in which your customers belong, you will need to register for the separate "Non Union" MOSS scheme. You may also be required to register for UK VAT if you breach the £85,000 threshold for VATable supplies.





# Brexit, VAT and the Supply of Services cont



In addition, there are certain services where EU Member States have the option to bring the transaction within the scope of local VAT when supplied to non-VAT registered recipients, to prevent tax advantages from arising under the use and enjoyment principles. Unfortunately, these will need to be considered on a case by case basis for each EU Member State, and local VAT registrations may need to be made and VAT charged accordingly. These additional services include advertising, professional services, financial services, equipment hire and the supply of staff.

If you are in a situation where you may need to register for VAT in more than one EU Member State, you may be able to reduce your EU VAT compliance by establishing an EU entity which is capable of servicing the EU market. However, careful planning is required.

## Impact on your VAT recovery potential

For businesses that provide fully taxable services, the changes arising from Brexit may be limited to the reduced administrative consequences of no longer collecting overseas registration numbers and filling in EC sales lists. After all, the need to know the location of your customer and the nature of supply that you make will remain equally relevant.

If, however, you provide exempt services, such as certain Financial Services activities, the change of status of EU customers to 'Rest of the World' may bring further benefits. Exempt services provided to non-UK customers may be treated as 'outside the scope of UK VAT with recovery' which means that in considering your Partial Exemption claim to Input VAT, these supplies are effectively treated as taxable. This re-classification may well increase your ability to recover VAT incurred within your expense base.



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## About PKF

### Simplifying complexity for our clients



PKF is one of the UK's largest and most successful accountancy brands.

We provide a full range of audit, accountancy, tax and advisory services, and are experts at simplifying complexity – we're particularly well-known for working with large, high-profile businesses with challenging issues in fast-moving and highly technical areas.

We are also an active member of PKF International, a global network of legally independent accounting firms that gives us an on the ground presence in 150 countries around the world.

#### PKF in the UK



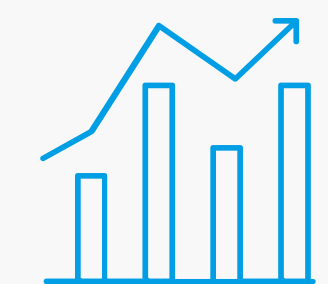
**Ranked 10th** in the UK in the latest Accountancy Daily rankings

**£140 million** annual fee income



**2,030** UK partners and staff

**7th** ranked auditor of listed companies in the UK





## Our tax services At a glance

**We offer comprehensive tax compliance and advisory services to a range of clients, both in the UK and globally, helping them find their way in the increasingly complex world of tax.**

We find practical solutions that we use to our clients' advantage. Our team of experts supports individuals, and businesses ranging from start-ups and SMEs to large international groups, both listed and privately owned.

Where understanding of our clients' sector makes the difference, our experts invest their in-depth industry expertise to provide invaluable support and insights.

"By bringing together the extensive expertise and experience of our tax specialists we can provide a fully rounded service that offers excellent value for money."

We offer the following specialist tax services:



### Corporate and business taxes

Our Business Tax team will ensure that you are both tax compliant and efficient.

We provide specialist corporate and business tax advice on both a local and international level, which includes senior accounting officer and large business compliance, transaction services, due diligence, R&D tax relief, employer solutions and global mobility. We also support both the personal and business affairs of partnerships and LLPs.

[Read more](#)



### Personal tax and wealth management

Our team will guide you through the complex world of taxes, helping you meet all filing requirements and identifying risks and opportunities to help mitigate tax liabilities.

We advise individuals, the self-employed, partners, trustees and executors with their UK and international tax affairs. Our services include all aspects of tax, including Self Assessment, Capital Gains Tax, Inheritance Tax, property (both residential and commercial), trusts, family wealth and estate planning, residence and domicile issues.

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### VAT and Indirect taxes

Our indirect tax team will support you in meeting your VAT compliance objectives and advise you on any VAT issues that your business faces.

We can ensure that your VAT risk is assessed and managed, and that your VAT recovery is optimised. We can also provide advice and compliance services on other indirect taxes, such as Insurance Premium Tax, Customs duty, and Air Passenger Duty.

[Read more](#)



### Tax disputes

HMRC is increasing the number and scope of tax investigations into both individuals and businesses, covering all aspects of potential underpayments of tax, including offshore investments, personal and corporate Self Assessment Tax Returns, PAYE and NIC compliance and VAT.

If an issue arises, our trusted advisors will match the right specialists with your needs to provide you the necessary support – whether for a routine HMRC enquiry or a more complex investigation.

[Read more](#)





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