

# Brexit: list of questions/answers for professionals

The DGFIP provides you with answers on the tax consequences of the new relationship between the UK and the European Union.

## **1- I outsource my research expenses to a Uk research organization, can I continue to benefit from the research tax credit (RTC) for these costs?**

These expenses will no longer be eligible for the Research Tax Credit (CIR).

Indeed, only subcontracting expenditure by licensed public or private providers based in France, in a Member State of the European Union (EU) or party to the agreement on the European Economic Area (EEA) which has concluded an administrative assistance agreement with France to fight against tax fraud and evasion can be taken into account in the RTC's base. Research expenditures entrusted by a French company to a subcontractor based in a third-party country do not fall within the RTC's base.

## **2- A British company is part of a capital chain that has enabled the creation of an integrated group. Can the group continue to benefit from the tax integration regime? Failing that, what are the consequences at the group level?**

British companies will be deemed to be established in the EU under the open financial years before the 31st of December 2020.

After the closing date of these financial years:

- if the British company has the status of a non-resident parent entity, the group will cease, resulting in all the consequences of the termination of a group, unless a foreign company (within the meaning of the tax group scheme and which fulfils its conditions) substitutes itself as a new non-resident parent entity;
- if the British company has the status of a foreign company, all its subsidiaries and sub-subsidiaries will leave the group, with all the consequences of the exit of a member of the group;
- if the British company has the status of an intermediary company, all its subsidiaries and sub-subsidiaries will leave the group, resulting in all the consequences of the exit of a member of the group.

Tax groups have, under conditions, options to avoid or mitigate these consequences, by reclassifying the securities of the subsidiaries concerned within the group, by changing the form of their option for

the scheme, or by having the parent company absorbed by a member of the group that is forming a new parent company.

### **3 - A British company pays dividends to its French parent company. Will these dividends still benefit from the exemption from corporate tax in France (mother-subsidary scheme)?**

The mother-daughter scheme, which provides for the exemption of proceeds fulfilling certain conditions, is not conditional on the establishment of the distribution subsidiary in the EU (excluding non-cooperative tax states and territories), the French parent company receiving proceeds from a British subsidiary will not be deprived of the benefit of this scheme simply because of Brexit.

Nevertheless, the share of costs and expenses (which remains included in the income of the company receiving exempt equity products) is calculated at a reduced rate of 1% when the distribution subsidiary is subject to a tax equivalent to corporation tax in a Member State of the European Union and it fulfils, with the company receiving this distribution, the conditions that would allow them to be a member of the same tax group if that subsidiary were established in France.

In this situation, the proceeds collected in the years opened before the 31st of December 2020, due to a stake in a British company, will be deemed to be from a company established in the European Union.

After the closing date of these years, the income from the mother-daughter-eligible unit from subsidiaries established in the United Kingdom will result in a co-share of fees and expenses calculated at a rate of 5%.

### **4 - Within a group, what will be the withholding rate applied to dividends paid by a French company to a British company after Brexit?**

British companies will no longer be able to benefit from the exemption from withholding tax on French-source dividends, which is provided, in particular, on the condition of a minimum holding threshold of 10% or 5% as appropriate. However, it will be accepted that this withholding tax exemption applies to all distributions paid in the fiscal year opened before December 31, 2020 by a French company for the benefit of its British parent company, subject to compliance with the other conditions under Article 119 ter of French Tax Code (CGI).

After the end of this fiscal year, except in special cases, there are two distinct situations:

- In the event that dividends are paid by a French company to a British company that directly or indirectly owns less than 10% of the capital of the French company, the withholding tax rate may not exceed 15% under the tax treaty between France and the United Kingdom of the 19th of June 2008;
- In the event that dividends are paid by a French company to a British company that directly or indirectly owns at least 10% of the capital of the French company, no withholding tax will be due in France under the agreement.

## **5 - I am a French company and I import/export goods with the UK. What are the consequences of Brexit in this regard?**

Since the UK's exit from the European Union, you have been importing/exporting to or from a third country.

Unlike intra-Community operations, import and export operations require specific declarations to the customs administration and indirect duties at the time of import or export of goods. For export, the tax exemption must be justified in accordance with the provisions of Article 74 of Annex III of the French Tax Code. For import, the tax must be calculated in accordance with the provisions of Article 292 of the same code and paid according to the provisions of Article 1695 of that code.

## **6 - I am a French company and I carry out VAT taxable transactions in the UK. What do I do after Brexit?**

You will have to declare and pay VAT due in the UK to the UK authorities. The modalities and formalities to be carried out are the sole responsibility of the British tax authorities.

## **7 - I am a French company and I do not carry out taxable transactions in the UK. How do I apply for a VAT refund from the UK government?**

There are two distinct situations :

If the application is for expenses incurred before December 31, 2020, you will need to register your application by March 31, 2021 on your business space on the [www.impots.gouv.fr](http://www.impots.gouv.fr) website. Your application will be forwarded by the DGFIP for processing and refund in the UK. Care must be taken to provide all the necessary documents to process the claim;

If the application relates to expenses incurred after the 31st of December 2020, you will have to send directly your VAT refund request to the UK tax authorities according to a procedure that will be set by UK law. There will be no more exchanges between the DGFIP (applicant's member state) and the UK tax authorities (HMRC).

## **8 - I am a company registered at the French mini VAT counter (MOSS) and I pay from this mini- counter British VAT, what should I do after Brexit?**

You will have to declare and pay via the French MOSS before the 20th of January 2021 VAT due in the UK on benefits provided before the 31st of December 2020.

Taxes relating to taxable transactions in the UK from the 1st of January 2021 will no longer be able to be paid via the mini-counter but will have to be reported directly and paid to the UK authorities according to the terms set by the United Kingdom.

## **9 - I am a British company without a stable establishment in France that has to declare VAT in France, should I appoint a tax representative?**

You will not be required to appoint a tax representative to pay VAT. Your file will be managed by the foreign corporate tax department of the Non-Resident Tax Directorate.

## **10 - I am a British company with no stable establishment in France and that does not carry out VAT taxable transactions in France. How do I apply for a VAT refund after Brexit? Do I need to appoint a tax representative to apply for a VAT refund after Brexit?**

A refund of value-added tax (VAT) deductible on expenses incurred after the 1st of January 2021 may, as currently, be requested from the VAT refund service of the Non-Resident Tax Directorate (DINR).

However, the VAT refund procedure changes.

Vat on goods and services acquired in France for the purposes of its economic activity by a tax member established in another Member State of the European Union (EU) may, under certain conditions and on certain terms, be reimbursed. The repayment is then subject to compliance with conditions that apply to the tax payers themselves (they did not have the headquarters of their economic activity in France or a stable establishment from which the transactions were carried out or, failing that, their home or their usual residence) but also to the operations they carry out (they have not delivered goods or services in France) and follows a procedure based on the establishment of an electronic portal in each Member State.

From the 1st of January 2021, the British company will fall under the provisions of the 13th Directive 86/560/EEC of the Council of the European Communities dating of the 17th of November 1986 which grants tax payers in a country outside the EU a refund on declarative terms different from those granted to EU subjects. As well as repayments for EU-based tax payers, repayment is subject to conditions relating to the status of the tax payers and the transactions that have been carried out. Repayment to non-EU tax payers follows a specific procedure characterized in particular by the obligation for non-EU tax payers **to appoint a tax representative** established in France committed to complete the paperwork on their behalf.

Consequently, you will be required to appoint a tax representative to request a VAT refund from the tax authorities under the provisions of the 13th Directive 86/560/EEC of the Council of the European Communities dating of the 17th of November 1986.

## **11 - I am a British company without a stable institution in France that has obligations with regard to withholding tax (PAS) in France, do I have to appoint a tax representative?**

Article 173 of Law 2019-1479 dating back to the 28th of December 2019 regarding Finance for 2020 extends the scope of the exemption regarding the obligation to appoint a tax representative for withholding tax operated by debtors established outside France under the conditions provided by Article 1671 of the French Tax Code to established debtors "*in a non-EU state with which France has a legal tool for mutual assistance with a scope similar to the 2010/24/EU Council Directive of the 16th of March 2010 on mutual assistance for the recovery of claims relating to taxes, duties and other measures , and to the (EU) Regulation 904/2010 of the Council of the 7th of October 2010 on administrative cooperation and combating fraud in the area of value-added tax. The list of these States is determined by decree of the minister responsible for the budget.*"

The United-Kingdom having legal tools for collecting and fighting against tax evasion similar to those existing between EU member states, the UK operators will be exempt from appointing a tax representative.

## **12 - I am a British company without a stable establishment in France and I have a French intra-EU VAT number, do I have to change my number after Brexit?**

There will be no change to your French VAT number. If you no longer carry out taxable transactions in France requiring this number to be kept, you will have to inform the tax department of foreign companies of the Non-Resident Tax Directorate (DINR) so that the number can be invalidated.

## **13 - I am a non-British supplier that ships parcels worth less than 135 £ to English end consumers, what are the consequences of Brexit?**

For deliveries of certain parcels to customers in the UK, new rules apply since the 1st of January 2021 ("*For imports of goods from outside the UK in consignments not exceeding £135 in value*").

These rules aim to treat goods from the EU and non-EU countries in the same way in order to ease the collection of VAT on imported goods by ensuring that foreign sellers are actually paying the VAT expected.

As a result :

1. marketplaces that facilitate the sale of goods, are now liable for English VAT, including on inter-company sales whose value does not exceed 135 £. However, when the business customer is registered for VAT in the UK and provides the seller with a valid VAT registration number, THE VAT will be accounted for by the customer by means of a self-payment."
2. Companies that sell products remotely directly to UK consumers (without the marketplace) of products outside the UK will also have to pay VAT. From the 1st of January 2021, the distance sales threshold for EU Member States no longer applies.
3. As a result, since the 1st of January 2021, businesses established outside the United Kingdom that become liable for VAT in the United Kingdom under the previous provisions must register for English VAT without a registration limit.

<https://www.gov.uk/guidance/vat-and-overseas-goods-sold-directly-to-customers-in-the-uk#overview>

## **14 - I provide services for a British customer, what are the consequences of Brexit?**

Providing services to a UK-based professional:

Since the 1st of January 2021, you have been providing services between third countries in the European Union. Check the territorial rules applicable to your case "Providing service by a subject implanted in France (sale by a French provider)" on our website in order to draw the consequences for your situation: <https://www.impots.gouv.fr/portail/professionnel/prestations-entre-assujettis>

As a matter of principle with regard to the supply of services between subjects liable to tax, the performance, by a taxpayer established in France, of a service for a taxable person located outside the European Union is not taxable on French VAT.

The French provider sets an invoice without VAT. It is marked "TVA non applicable - art. 259-1 of CGI" if the client is a non-EU taxable person for VAT purposes.

To an individual in the UK:

A taxable person for VAT purposes based in France who supplies a service to a non-taxable person (an individual) is subject to French VAT. The location of its particular client in or outside the European Union has no impact. <https://www.impots.gouv.fr/portail/professionnel/prestations-aux-non-assujettis>

## **15 - I buy services from a British provider, what are the consequences of Brexit?**

Services between taxable persons for VAT purposes are subject to VAT at the place where the customer is established, i.e. in France.

Under Article 283 2 of the GTC, when the services referred to in 1° of article 259 of the GTC are provided by a taxable person for VAT purposes not established in France, the tax must be paid by the customer. Therefore, invoices issued by the British provider without a permanent establishment in France must not include VAT.

With regard to the services provided to a non-taxable person for VAT purposes, as a principle the place of taxation is the place of the provider.

Regarding services provided to a non-taxable person for VAT purposes, however, there are many exceptions that you can see when clicking on the link : <https://www.impots.gouv.fr/portail/professionnel/prestations-aux-non-assujettis>

## **16 - I trade goods with Northern Ireland, what are the consequences of Brexit?**

Trade in goods between Northern Ireland and EU member states continues to be regarded as intra-EU trade for a period of four years as from the 1st of January 2021.

## **17 - How do I check a UK VAT number, via the VIES application accessible by internet, after BREXIT?**

From the 1st of January 2021, it will no longer be possible to check the validity of a British VAT number on the European Commission's VIES website ([http://ec.europa.eu/taxation\\_customs/vies/](http://ec.europa.eu/taxation_customs/vies/)).

## **18 - I use the BRITISH mini VAT counter (MOSS), what should I do after Brexit?**

If you are currently registered for MOSS in the UK and would like to benefit from the simplification it offers to businesses, you will be able to use the electronic window set up for non-EU tax payers by registering on the portal of an EU Member State.

Failing that, you will have to make your direct approach to each Member State concerned. In the case of France, you will have to contact the foreign corporate tax department of the Non-Resident Tax Directorate.

## **19 - Can I continue to give donations to Uk non-profit organizations (NPOs) and continue to benefit from the sponsorship tax cut?**

Donations and payments to UK-based non-profit organizations (NPOs) will no longer be eligible for the sponsorship tax reduction.

For the record, the only foreign organizations eligible are those with headquarters in a Member State of the European Union (EU) or in another State taking part to the agreement regarding the European Economic Area (EEA) having with France a convention of administrative assistance to fight against fraud and tax evasion, subject to compliance with the other conditions set out in Article 238 bis of the GTC.

## **20 - I am a collective investment fund (CIF) set up on the basis of UK law that meets the conditions of 1° and 2° of 2 of Article 119 bis of the general tax code, to be exempt from withholding tax on products subject to the same 2: how can we benefit from this exemption of the withholding tax?**

As of the 1st of January 2021, collective investment funds subject to UK law are likely to benefit from the withholding tax exemption provided in 2 of Article 119 bis of the General Tax Code as a CIF subject to the legislation of a state that is not a member of the European Union and which is bound to France by an administrative assistance agreement to fight against tax fraud and evasion. Compliance with the exemption requirement of the CIF for the existence of such a convention implies the effectiveness of the stipulations relating to administrative assistance: the implementation

of these must enable the tax authorities to obtain from the British tax authorities the information necessary to check compliance by a collective investment body with the conditions provided for on 1° and 2° of 2 of Article 119 bis of the General Tax Code.

Collective investment funds that believe they meet all of the statutory requirements presented in paragraph 40 of the BOI-RPPM-RCM-30-30-20-70 may ask their paying institution to refrain from deducting tax withholding. It is up to them to provide the information for this purpose, which allows the paying institution to observe compliance with the exemption conditions required by law.

In this regard, collective investment funds established before January 1, 2021 who have already benefited from the exemption of tax withholding prior to that date may benefit from this exemption on the mere presentation to the paying institution of the BOI-FORM-000089 form containing the declaration on honour of their representative or management company that the CIF continues to fulfil all the requirements to be exempt from withholding tax. This handy solution for evidence applies regardless of the date of the last distribution to the CIF exempt from withholding tax.

The production of this form will allow the CIF to obtain the implementation of the withholding tax exemption by the paying institution in a simplified manner until its situation is changed under the exemption conditions. It will therefore be up to the CIF, in the event of a change in its situation, to inform the paying institution.

The production of a single BOI-FORM-000089 will justify the application for exemption from all distributions in a given year for the benefit of the CIF, which is responsible for notifying its paying establishment before a distribution if its legal situation is changed during the year and no longer allows it to benefit from the exemption.

Collective investment funds to which a withholding tax would have been applied in the first months of 2021 may ask for restitution by the paying institution on the basis that they comply with the exemption conditions. Restitution is then made by the paying institution by way of imputation or reimbursement of the overpayment according to the same principles as those provided for in the BOI-INT-DG-20-20-20-20 for the application of conventional withholding rates. To do this, the CIF for which the UK legislation is relevant provide the BOI-FORM-000089.