



Brexit: 100 days to go

September 2020



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When the Brexit transition period ends on 31 December 2020, the UK will leave the EU's Single Market and Customs Union. It will then begin a new economic relationship with the EU – either with a trade deal or with 'no deal'. For business planning purposes:

- ▶ The limitations on the scope of any Free Trade Agreement (FTA) are known. The published [UK](#) and [EU](#) draft texts set clear boundaries for the scope of what can, and crucially what can't, be achieved through negotiations.
- ▶ 'No deal' would mean the UK reverting to World Trade Organization (WTO) terms. The implications of this outcome are mostly known.

What impacted organizations should be doing in the time remaining

Change is inevitable and with limited time to prepare, organizations should be asking themselves the following questions:

▶ What do we need to do now to continue operating after 31 December 2020?

With political noise increasing, businesses cannot afford to wait for final certainty on the outcome of the UK/EU negotiations. The focus should turn to practical, commercial, no-regret solutions that mitigate negative impacts of change.

▶ Are any existing Brexit plans still fit for purpose?

The COVID-19 pandemic, together with the removal of earlier published easements, means that preparing for Brexit is now significantly different than previous Brexit deadlines. Any previous planning assumptions should now be reassessed.

▶ What actions can still be taken in the time remaining?

The lead time for implementing many mitigating strategies has passed with other deadlines rapidly approaching therefore relevant actions must be taken urgently.

▶ What should we be considering now for 2021?

To fully take advantage of the new trading environment that will result after the transition period, successful businesses will likely need to reassess their wider operating and trade models including supply chain, provision of services, workforce strategy and data.

This document sets out the key commercial actions that businesses can still take with 100 days to go. We consider all business functions, including those responsible for:



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Supply chain

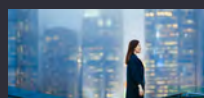
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Trade in goods and customs

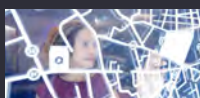
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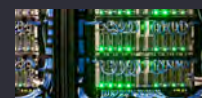
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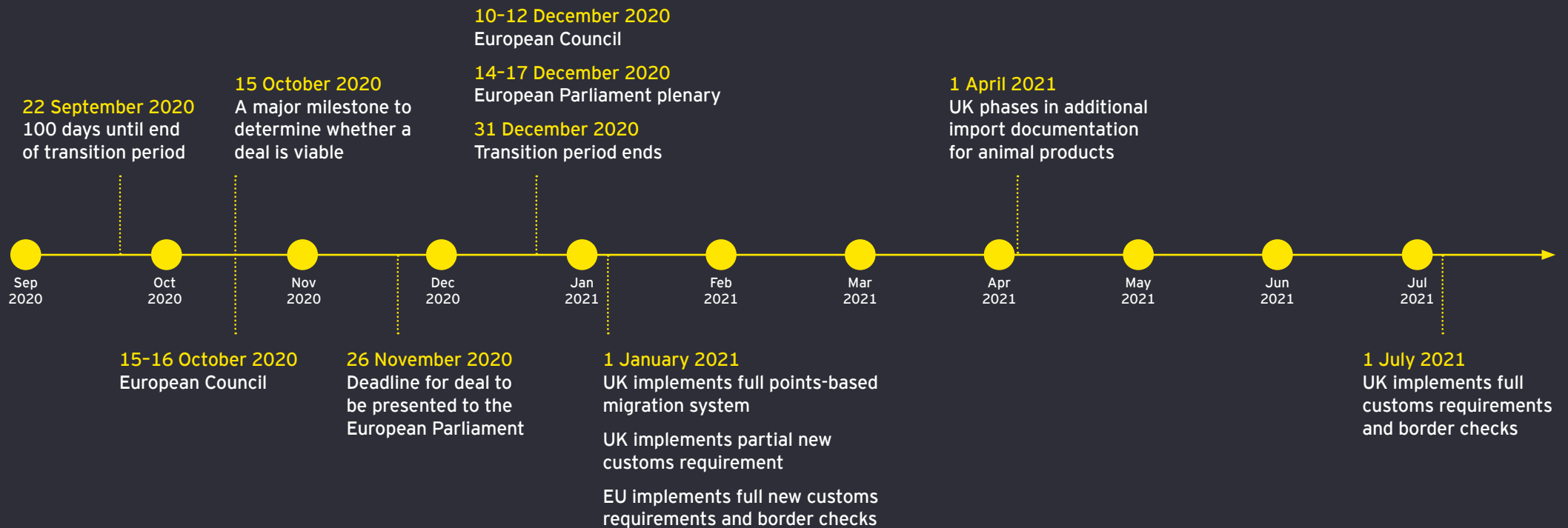
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The path to 31 December 2020

The UK and EU have given their negotiators until 15 October to reach an agreement on their future relationship. If both sides are able to agree on a deal, then it will need to undergo the necessary decision-making processes on both sides, including the European Council and European Parliament in order for the agreement to be ratified and enter into force in time for 1 January 2021.

Against this backdrop, the UK is also in the process of trying to finalize the remaining continuity trade agreements which the EU currently has with third countries as well as launching new trade negotiations with the US, Australia and New Zealand.





Supply chain

Brexit may lead to delays at the border. These delays could impact on all goods coming into the UK – not just from the EU – but most particularly goods entering the EU from the UK. This is because the EU is implementing full border formalities from 1 January 2021, whereas the UK is phasing its formalities in over six months.

Businesses which were previously straightforward distributors or suppliers will become the importer and exporter of record for customs purposes and the EU importer for product safety purposes. This comes with many additional regulatory and legal obligations. As a result, those who are unprepared for the changes may experience additional cost and delays along their whole supply chain.

Top tips for supply chain

- ▶ Map out the physical flow of your goods from country of origin through to the final destination, from raw materials to finished goods.
- ▶ Identify who in your supply chain has responsibilities in relation to goods movements and assess whether they are prepared (e.g., INCOTERMS which decide who would be the importer/exporter). Remember that your business might still encounter commercial pressures due to increased costs even if you are not the direct importer or exporter.
- ▶ Assess which inbound/outbound transport routes may give rise to logistical pressure points for your key goods flows. These routes will most likely present the highest delivery risk.
- ▶ Identify inbound/outbound shipments due around Brexit cut-off dates and define how you would create end-to-end visibility and closer monitoring of the flow of these goods.
- ▶ Assess availability and feasibility of risk mitigation strategies – such as rescheduling or alternate transport options as well as contingency plans for up and downstream supply chain disruption.
- ▶ Prioritize key customers and service priorities, recognizing that you may not be able to service all of your customer base as you might wish.
- ▶ Establish a 'control tower' to oversee supply chain operations in the run up to 31 December 2020, providing an early warning system to deal with possible disruptions.

How EY teams can support

We can help by:

- ▶ Assessing supply risk and readiness, including contract terms and conditions by leveraging EY's extensive Risk Assessment & Stress Testing playbook and capability to rapidly define relevant risk scenarios, including mitigating action plans.
- ▶ Scenario planning and impact assessment of likely implications for production, cost, cash and revenues from delays and/or changes in the supply chain.
- ▶ Supply chain planning to improve the efficiency of commercial operations with a focus on customer service levels, considering alternate sourcing, inventory and potential tariff and non-tariff barriers.

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Trade in goods and customs

As a result of the UK leaving the EU Customs Union, there will be additional customs formalities and checks. This will impact on all goods coming into the UK – not just from the EU – and goods entering the EU from the UK. Applicable customs duties on trade from third countries into the UK will also change, in line with the UK Global Tariff.

Top tips for trade in goods and customs

- ▶ Confirm your customs fundamentals are in place to keep goods moving compliantly and efficiently. First validate your border requirements per flow and that all necessary registrations and/or authorizations (e.g., EORI numbers) are in place. Then assess that you have the people, processes, data and technology to manage those requirements effectively.
- ▶ Where your business is responsible for Great Britain (GB) imports, familiarize yourself with the staged customs arrangements and deferred declaration process as announced by the UK Government, and determine whether these arrangements will work for your business.
- ▶ Complete a duty impact and mitigation assessment based on the UK Global Tariff for UK imports, and EU Common External Tariff for EU imports. Using an existing EU Free Trade Agreement (FTA) as proxy, assess per product your ability to meet and manage the requirements. Understand alternate strategies to reduce duty costs, such as inward and outward processing.
- ▶ Directly engage with your supply chain stakeholders to define customs and borders roles and responsibilities to ensure a clear, common understanding of the practicalities and the handovers in the chain to avoid unexpected costs and delays, and to set expectations of participation in FTA or other cost reduction programs.
- ▶ Ensure customs brokers or internal declaration capability and capacity are in place where required to be the importer and/or exporter.

How EY teams can support

We can help by:

- ▶ Applying EY's Customs Compliance Framework to conduct a gap analysis of where you are and where you need to be, then help you meet deadlines.
- ▶ Using machine learning and AI techniques to accelerate master data improvement, including the customs critical fields of classification, value and origin.
- ▶ Applying trade data analytics to rapidly identify trade compliance obligations, assess key cost drivers, test whether products meet FTA requirements and identify efficiency opportunities based both upon landed cost calculation and scenario planning.
- ▶ Providing experienced customs capacity from one-off volume tasks such as mass classification to ongoing FTA management programs and trade operations outsourcing. Support is delivered by our dedicated trade centres of excellence and powered by the latest global trade management software.

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Trade in services

Services companies will enjoy considerably less access to the EU Single Market under an FTA when compared to membership of the Single Market. Assessing the impact is critical and should be done as soon as possible to give time to adjust.

Top tips for trade in services

- ▶ Identify key staff who might be impacted by changing regulatory requirements and travel restrictions and review EU Member State work requirements to understand changes to types of services which can be delivered by business visitors.
- ▶ Plan for potential disruptions due to any operating/legal structure changes required to ensure your business can continue to provide services into your key markets.
- ▶ Budget for additional cost and time required for your employees or your business to obtain any new relevant professional qualifications, authorizations, licences or certifications from 1 January 2021.

How EY teams can support

We can help by:

- ▶ Reviewing how market access will change, to map changing requirements and restrictions on the provision of services across different countries.
- ▶ Working with key functions to create a dynamic trade strategy that will improve where/how services are provided, based on identifying and costing trade barriers across different countries.
- ▶ Legal restructuring of businesses including feasibility studies, due diligence and implementation.

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Talent – workforce and people

From January 2021, the UK will have a new points-based immigration system. EU and EEA citizens resident in the UK before 31 December 2020 will have the right to settle provided that they apply to the EU Settlement Scheme before 30 June 2021.

All businesses should consider their talent and mobility plans and be prepared for restricted rights to work, changes to rules on business travel and social security.

Top tips for workforce and people

- ▶ Ensure that EU (in UK) and UK (in EU) employees have complied with the applicable immigration registration and legal requirements.
- ▶ Inform your travelers, remote workers and business stakeholders on the vastly different immigration landscape from 1 January 2021 and how this will impact you and them: personal and corporate risk; permitted activities and operational resilience; speed to deployment and cost. For example, the UK immigration cost will increase for EU arrivals from £0 to £9,500 for a five year work visa and lead times will change.
- ▶ Identify those mobile employees among current assignee population who are currently living and working in the EU, their nationalities and current countries of residence, and that any A1 certificates extensions into 2021 are in place before 31 December 2020. Monitor ongoing developments on social security cooperation between the UK and EU.
- ▶ Brexit-prepare your cross-border remote working/'work anywhere' models (compliance risk, talent retention and attraction).
- ▶ Strategic workforce planning, including:
 - ▶ Undertake a workforce risk analysis identifying any key personnel or material numbers of employees, who may pose a flight risk if they will no longer prefer to work in the UK/can no longer work remotely in the EU without immigration permission.
 - ▶ Incentivise staying in the UK where possible by helping employees with the registration processes.
 - ▶ Looking at alternative workforce models and supply of staff, checking terms and conditions of key personnel for notice periods and covenants.
 - ▶ Assess the benefits of expediting any recruitment of key roles or talent moves before 31 December 2020.
 - ▶ Ensure adequate right to work checking is in place that 'lean-in' to available government flexibilities.

How EY teams can support

We can help by:

- ▶ Supporting immigration and visa processes for personnel moving across the UK/EU borders.
- ▶ Reviewing immigration strategy and workforce planning to improve where and how employees are deployed across Europe.
- ▶ Brexit-proofing 'work anywhere' policies.
- ▶ Assessing the viability of travel and effective use of business travel.
- ▶ Assisting manage social security and other remuneration costs.
- ▶ Devising communication strategies, policies and contracts to analyze workforce fears and concerns, and to reduce/limit against individual and corporate regulatory risk.

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Regulations and compliance

There is still some uncertainty regarding what 'behind border' trade barriers might be erected between the UK and the EU once the transition period ends. These barriers could include new regulatory requirements, licensing obligations, type approvals, labelling and marking, conformity assessments and so forth. This is because the extent and nature of the changes depend on the scope of the UK-EU trade agreement as well as any unilateral measures each side might take to manage resulting changes in the short term.

Top tips for regulations and compliance

- ▶ Identify day one changes to your compliance obligations under product safety and similar legislation. This will apply for EU trade into UK and for UK trade into the EU.
- ▶ Identify the actions required for the following changes for a UK company trading in the EU and a EU company trading in UK:
 - ▶ Product registration – identify if your finished product, intermediate product or raw material registrations needs to be transferred to an EU/UK entity.
 - ▶ Product labelling – assess if your product labels need amending to identify the correct EU/UK importer.
 - ▶ Product certificates/testing – review which products need re-certifying/tested by a notified body/safety assessor based in EU/UK.
 - ▶ Designated persons – assess whether your products need the presence of a designated or qualified person in EU/UK.
 - ▶ A branch of a UK company may no longer qualify as an EU entity for all these purposes – review if there is a need to change your corporate structure.
- ▶ Identify whether any actions are needed to continue trading in the UK/EU where people, assets or registrations are moved to UK/EU to deal with anticipated changes.

How EY teams can support

We can help by:

- ▶ Evaluating sector and product/service specific regulatory changes associated with new and altered compliance regimes.
- ▶ Quantifying the associated impact, including safety harmonization and conformity checks, labelling, professional qualifications, importer/distributor obligations, notified bodies, and authorized representatives.
- ▶ Working with you to transform business models post-Brexit.
- ▶ Assisting with identifying alternative locations in which to perform activities.
- ▶ Advising on compliance and governance when setting up of new entities and operations.

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Tax and finance

The extent of certain tax changes will depend on the provisions of any FTA. However there remain several changes which will apply regardless of what is agreed between the UK and EU, including import VAT, loss of EU VAT simplifications, changes to systems and reporting, and withholding tax.

Top tips for tax and finance

- ▶ Analyze short- and medium-term cash flow and working capital requirements.
- ▶ Review plans to obtain UK and EU grants as firms may not be eligible to continue to claim. Continue to review UK government policy as the new UK and devolved administration State Aid regime is established.
- ▶ Assess future withholding tax costs arising from dividends, interest or royalties payable.
- ▶ Register for additional VAT obligations and update systems accordingly. Great Britain will no longer be treated as part of the EU VAT area for goods, and both Great Britain and Northern Ireland will no longer be treated as part of the EU VAT area for services from 1 January 2021. The impact will be lost EU VAT simplifications which could result in new compliance obligations – firms should consider what obligations they will have.
- ▶ Prepare for changing VAT reporting and evidence requirements. For VAT purposes, intra-community supplies of goods between the EU and Great Britain and domestic supplies of goods between Northern Ireland and Great Britain will be redefined as imports and exports. Firms should review and prepare for the changing reporting and evidence requirements.

How EY teams can support

We can help by:

- ▶ Providing tax advice on restructurings and other changes that impact on a business's tax profile.
- ▶ Modelling of cash flow and working capital for impact assessments.
- ▶ Identifying cash improvement strategies.
- ▶ Data analytics to help model pinch points and opportunities.

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Legal and contracts

The exact nature of the legal and contractual challenges facing businesses will depend on their corporate structure, regulatory landscape and the provisions of the contracts and legal relationships they have with suppliers, customers and services providers. Delays in supply chains, changes to regulatory laws, or in tariffs, could have unforeseen financial or regulatory implications when understood in light of specific contractual obligations or a corporate structure that, for example, doesn't have EU subsidiaries but only a UK branch structure.

This is before considering the potential for legal divergence from current EU regimes such as competition and State Aid laws, changes to intellectual property rights, and potential difficulties in enforcing contracts on current jurisdiction clauses.

Top tips for legal and contracts

- ▶ Check contract terms to assess risk of increased financial/regulatory liability, termination or claims related to changes in law, references to EU law, Material Adverse Change (MAC) clauses, force majeure, jurisdiction, territorial limitations and specific Brexit clauses. Update if appropriate.
- ▶ Confirm your suppliers/customers and other commercial partners are ready and whether contract liability is 'back to backed' for any unprepared third parties.
- ▶ Document agreements reached with any third parties on which you intend to rely to ensure evidence is gathered in the event any claims are required.
- ▶ Review your corporate structure and governance obligations and understand: your 'real seat' (i.e., the law of the country where the company has its management and control center) risk, the third country rules and compliance processes for UK branches in the EU. If you intended to use the cross-border merger regime to restructure – have you tested other options where pre-31 December 2020 court dates can no longer be secured?
- ▶ Identify if Brexit related changes to company operating models alter the exposure for board directors in terms of managing their statutory duties as where changes might impact on corporate governance requirements, decision making processes and responsibilities within the group.
- ▶ Review your intellectual property (IP) rights and licences. Only those EU Trademarks (EUTM) applications completed prior to 31 December 2020 will be cloned to UK marks, so monitor ongoing applications and check for any renewal dates close to 31 December 2020. Identify if licences in or out of the business are sufficient, whether they need amending for territorial reasons and if they need to be extended to new UK Trade Marks (UKTM); check whether the licence requires registration and if you are involved in parallel trade, verify whether you require EEA-based IP

rights holder's permission to export goods to the EEA; Transfer EURid domains to an EU/EEA holder.

- ▶ Ensure Brexit diligence forms part of any corporate transactions involving companies with cross-border trade (UK/EU or expansion), including on financial impacts on valuation, inclusion of earnouts and MAC clauses.

How EY teams can support*

We can help by:

- ▶ Performing contract reviews to identify Brexit-impacted terms.
- ▶ Advising on and supporting contract renegotiations.
- ▶ Providing guidance on how existing IP protections might change and help identifying approaches to reduce risk.
- ▶ Assessing the impact of new UK legal regimes and regulations, including in relation to State Aid and competition law.
- ▶ Supporting any corporate restructuring and/or M&A activities.

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IT, systems and data

Unless a data adequacy ruling is granted for the UK from the EU (or some other separate legal agreement is reached), additional safeguards will be needed to protect the continuity of cross-border flow of personal data from the EU into the UK, including non-digital data forms such as paper archives. Data requirements may change, leaving companies at risk of penalties for data compliance breaches, significantly increasing the financial consequences.

Where UK companies process the personal data of EU27 based data subjects, they may need to appoint a representative in the EU (and vice versa for EU businesses). Companies should also be looking to their IT systems and infrastructure to assess what additional requirements are needed by various business functions to implement the necessary Brexit changes, e.g., customs, procurement and HR.

Top tips for IT, systems and data

- ▶ Map EU27 to UK data flows and review location of cloud based personal data. Assess whether any remediation is required. For example, primary systems may be hosted in a UK-based environment, but data recovery or backup for those systems may be offshore in Europe.
- ▶ Assess the need for standard contractual clauses and review any current EEA-approved binding corporate rules for transfers in and out of the UK to ensure they take account of the UK's new third country status.
- ▶ UK-based data controllers that have no presence in the EEA but transfer data to/from Europe should consider appointing a local European representative under Section 27 of GDPR before the end of 2020.
- ▶ Review all GDPR documentation, policies and boilerplate text (e.g., on a website) and update as appropriate to reflect the separation between EU law, UK law and especially where they differ (e.g., Privacy Shield currently) with regard to UK-EU data transfers. These will probably have to be continually updated in the near term as the rules get defined and embedded.
- ▶ Ensure that key technology and data suppliers have their own Brexit contingency plans in case an adequacy decision is not granted by the European Commission from 1 January 2021. If data transfers are made to the US, ensure that the US contracts contain references to the UK and not just EU Privacy Shield clauses.
- ▶ Identify any business-critical additional system requirements needed and assess resources and time needed to implement changes.
- ▶ Identify critical IT infrastructure updates due to take place near to or after 31 December 2020 and assess viability for rescheduling. Verify for interdependencies with other business changes occurring as a result of Brexit and any new changes to IT systems, process and procedures required in support.

How EY teams can support

We can help by:

- ▶ Data flow assessments, including updating data protection agreements to enable cross-border flows of data and drafting the appointment of a data representative.
- ▶ Reviewing and updating documentation, policies and boiler plate text (e.g., on a website, in contracts, T&Cs).
- ▶ Reviewing IT system readiness, to identify and implement changes required, including any bespoke tax and customs solutions.
- ▶ Providing comprehensive transformation support and management – strategy, gap analysis, planning and implementation for IT and cyber issues/changes related to Brexit.

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Northern Ireland

Now is the time to understand what the Protocol on Ireland/Northern Ireland means for businesses operating in Northern Ireland. Organizations need to prepare to comply with the new administrative requirements, formalities and procedures around customs, VAT and regulations, which will align with the EU as well as the UK in many regards.

Top tips for Northern Ireland

- ▶ Familiarize yourself with the UK Government's Brexit guidance on moving goods under the Northern Ireland Protocol. As import and export customs declarations and VAT will be required regardless of whether an FTA is agreed, make sure you understand the new requirements, including the complexity of different VAT and regulatory regimes for goods and services, and updates systems and reporting for businesses.
- ▶ As regulatory checks will be introduced for some goods, prepare contingency plans for supply chains in the event of delays to shipments.
- ▶ Consider the additional resources required to manage the impact of increased administrative requirements including on working capital and additional staffing.

How EY teams can support

We can help by:

- ▶ Bespoke analytics, to help determine rules of origin requirements and assess improvement opportunities.
- ▶ Advice on potential outcomes and their consequences.
- ▶ Tax advice on VAT changes and cash flow modelling for working capital.

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