

The exit of the United Kingdom from the European Union, also known as BREXIT, brings with it several tax consequences in Spain. As a summary, from the L&K team, we would like to compile those that we consider most relevant for our clients.

1. Deliveries of goods.

As per January 1, 2021, BREXIT implies, among other issues, that the flow of goods between Spain and the United Kingdom will no longer be considered intra-Community operations but foreign trade, i.e. imports and exports, subject to customs formalities.

This implies, in the case of the introduction of goods into the Spanish VAT territory (Peninsula and Balearic Islands) from the United Kingdom, the payment of import VAT at Customs, unless the company opts for the deferred payment of import VAT.

The taxable base for import VAT is the customs value plus the following items as long as they are not already included:

- Taxes, duties, levies, and other charges accrued on the import, except VAT.
- Accessory costs, such as commissions and packaging, transport and insurance costs incurred up to the first place of destination of the goods within the EU.

On the other hand, goods transported from Spain to the United Kingdom will be considered exports and will be VAT exempt.

If Spanish companies make deliveries of goods to the UK private customers, the distance selling regime will not apply, thus they will be treated as delivery of goods considered exports and, therefore, VAT exempt.

Trade in goods with Northern Ireland will be treated in the same way as trade with a EU Member State under the Ireland-Northern Ireland Protocol.

2. Supplies of services.

The taxation regime relating to supplies of services to or from companies established in the United Kingdom and Northern Ireland has a unique treatment, so that the whole territory is considered a third country and transactions relating to services are treated as foreign trade.

Since the United Kingdom is no longer a territory of the European Union, it will have to be taken into account the localization rules provided for in Articles 69 and 70 of the Spanish VAT Law, which will have important consequences, especially concerning some services, as their taxation will differ from what it has been established until now.

Companies established in the United Kingdom who supply telecommunications, broadcasting and electronic services to private customers resident in the European Union through the Mini One-Stop Shop (MOSS) will have to change their MOSS identification and register in a EU Member State under the non-EU regime.

For the same reason, companies established in Spain who provide telecommunications, broadcasting and electronic services to private customers resident in the United Kingdom must be registered in the United Kingdom, in accordance with the UK domestic legislation.

In the event that they have to amend any MOSS - VAT return for 2020 or earlier, in the part corresponding to services supplied in the United Kingdom, they may do so until December 31, 2021.

3. NIF-VAT and form 349.

Since the transactions carried out between Spain and the United Kingdom are no longer considered intra-Community transactions, they will not have to be reported in the recapitulative declaration of intra-Community operations (form 349).

Spanish companies that carry out transactions with the United Kingdom will not be obliged to identify themselves by means of a EU VAT number.

In the case of carrying out customs operations (imports or exports), they must have an EORI number.

4. Refund of input VAT paid in the United Kingdom by companies established in Spain.

Companies established in the Spanish VAT territory who acquired goods and services in the United Kingdom in 2020 will only be entitled to request the refund of the VAT paid until March 31, 2021. This must be done through the Spanish Tax Authorities' website following the procedure applicable to EU Member States (form 360).

Companies established in the Spanish VAT territory who acquire goods and services in the United Kingdom from January 1, 2021 on and desire to apply for a refund of input VAT, will no longer be entitled to file their refund application electronically through the Spanish Tax Authorities' website under Council Directive 2008/9/EC, but will have to do so before the UK Tax Authorities and in accordance with the UK domestic legislation. It should be noted that there are several limitations imposed by the UK Tax Authorities on Spanish companies about the refund of input VAT paid in the United Kingdom.

On the other hand, they will still be entitled to file their refund application electronically through form 360 when it refers to input VAT paid in Northern Ireland on the acquisition or imports of goods. The refund of input VAT for services located in Northern Ireland will be applied for under the corresponding domestic rules.

5. Refund of input VAT paid in Spain by companies established in the United Kingdom.

Companies established in the United Kingdom and not established in Spain or the EU who acquire goods and services in the Spanish VAT territory (Peninsula and Balearic Islands) and desire to apply for the refund of input VAT, will no longer be entitled to file their refund application electronically, under Council Directive 2008/9/EC, and will have to do so under Council Directive 86/560/EEC, i.e. through the procedure foreseen for companies established in third countries with which reciprocity exists (form 361).

It will be necessary for the applicant to designate a representative resident in the Spanish VAT territory and that there is a reciprocity of treatment in the United Kingdom for Spanish companies, except in certain cases.

According to the Resolution of January 4, 2021 of the Spanish Directorate General of Taxes, there is the reciprocity of treatment in the United Kingdom, without the company having to provide documentation to justify it. However, since there are several limitations imposed by the UK Tax Authorities on Spanish companies regarding the refund of input VAT paid in the United Kingdom, nor will be refunded by the Spanish Tax Authorities the input VAT paid in Spain by companies established in the United Kingdom in some cases.

Companies established in Northern Ireland and not established in Spain or in the EU may continue to file their refund application electronically, in accordance with Council Directive 2008/9/EC, but only in respect of input VAT on the acquisition or import of goods in Spain. Regarding input VAT on the acquisitions of services located in Spain, it will apply the same conditions as the rest of the companies established in the United Kingdom.

In the case of input VAT paid in Spain before January 1, 2021 by companies established in the United Kingdom, the refund application must be filed until March 31, 2021 and the reciprocity requirement, the obligation to designate a representative, and certain limitations and additional conditions will not apply. However, the Spanish Tax Authorities may require the applicants to prove their status as a taxable person and provide the relevant invoices.

**This document is of informative nature and it does not imply individualised tax advice.*