

# Dr. Brexit

Webinar transcript - 11 November



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## The Hague Business Agency – 11th November

### Webinar - transcript

*Philip Mulder:* Hello and a very good morning to everybody. We are live from a famous hotel situated in a beautiful location in the heart of The Hague. Today we are going to discuss the implications of the Brexit during this webinar. Brexit is a very important topic to discuss and this topic is going to cause a lot of challenges for businesses and entrepreneurs in both the EU and the UK. We are broadcasting this webinar from Hotel Des Indes which is a very special place for several reasons. The hotel was built in 1858 and was originally a palace for Baron van Brienen. He bought it for 150 kilograms of gold and what can you buy for 150 kilograms of gold you may ask. Well a majestic building. If you just look into the details, it's simply stunning. So if you ever have the chance to be in The Hague or even stay at this hotel, please, I would highly recommend it, definitely. In addition, another reason that it's such an interesting place is regarding the history of it, because there have been many, many famous people who have stayed in this hotel. Think of Paul Kruger, Theodore Roosevelt, Dwight Eisenhower, Igor Stravinsky and Michael Jackson. This is just a short list of the many people who stayed here before. We could add to it by saying, Sir Winston Churchill and Tony Blair stayed here as well. Now let's move ahead with the webinar. I want to start by introducing myself. My name is Philip Mulder. I work for the agency and we are a publicly funded organisation that helps foreign companies to settle in The Hague, to expand their business and mostly to operate at the local European and sometimes global level of business. We help companies with their initial search for a new location and with the learning process, and we try to connect them with local service partners such as accountants, lawyers, real estate agents and so on. Once companies have settled then, of course, we try to stay in touch and help where we can. Now reverting back to the webinar. Dr Brexit, you may ask. Well, of course, there is a lot of general information available on the Internet and through the media. However we could compare it to the human body because no business is exactly the same. Therefore we would like to focus on some specific issues fed by the questions that you have sent to us or will send to us during the webinar. As you may know, the negotiations between the EU and the UK are still ongoing. So a lot of matters are still very unclear at this point. That is something that we have also seen in the questions that you have sent to us beforehand. Of course, we cannot answer all the questions due to the negotiations that are still taking place, but we believe we can give you some guidance in this turbulent time. I do want to give you a little bit of context from where we are right now. The UK has left the EU on January 31st of 2020. So Brexit basically is in effect. In January, a withdrawal agreement was signed and then we headed into a transition period. This transition period will end on 31<sup>st</sup> December of this year. After this date, the UK will no longer be part of the customs union. So the free movement of goods and people between the EU and the UK will not be the same. That is very important to know. Our panellists of today are specialised in legal and tax related questions. However we did receive quite a few questions on emigrations, immigration and then the movement of people. So this could be considered to be a legal matter. It does fall out of the expertise of our panellists, but we did do some research on the questions that we received beforehand. We also have some general remarks on this. Before 31<sup>st</sup> December the freedom of movement still applies to people from the UK and the EU who can travel around, work and live wherever they want. However UK nationals who want to live in the Netherlands and would like to continue living in the Netherlands after 31<sup>st</sup> December can easily apply for a residence permit. They just have to go to the municipality in the Netherlands before the 1<sup>st</sup> January and register with the personal records database. This is quite a straightforward process.

## The Hague Business Agency – 11th November

### Webinar - transcript

It is a formality, but seemingly it is quite difficult because six to ten thousand UK nationals haven't done this so far. So if this applies to you or one of your peers, please tell them to go to the municipality because due to Covid and the high demand due to Brexit the waiting times will be a bit longer. After 31<sup>st</sup> December and for the countries within the European Union, nothing will change so they can move, live and work wherever they want. However for UK nationals, it is going to be a little bit different if they want to travel to the European Union. This is possible but they will be treated like a third country compared to people coming from the USA. This means they can travel in the Schengen region for 90 days in a period of 180 days. So that's quite easy. It changes when you want to work in the European Union. In that case, they have to apply for a residence or work permit. Please note that when you have a visa, you can travel around all the European Union. When it comes to working, it is a national agreement. So if you want to work in a certain country, you have to apply for a residence or work permit in that country in particular. Different countries may have different rules. There are several ways to obtain a visa. It is quite an extensive topic. I don't want to get into that too much. Let's get back to you after the webinar and we will send you some additional resources on this. Today we will start with two presentations from our panellists, they will take you to some of the business areas that may be affected after 31st December. First, we will start with Duy Nguyen, Owner of Blue Turtle Tax. Duy will explain more about Customs, Tax, Supply-Chain and Digital Services. After that, we will move ahead onto the topic of the legal services where our speaker will tell you more about commercial contracts, marketing and PR. After the presentations we will quickly draw our attention to the questions. We would actually like to spend most of the time answering your questions.

*Philip Mulder:* Let's move ahead, please introduce yourself and tell us everything about Tax.

*Duy Nguyen:* Thank you for the nice introduction, Philip. I am the owner of Blue Turtle Tax and I am tech specialist today. I want to guide you through the practical impact of the Brexit for the Customs. I will do that by showing you three cases, simplified cases for obvious reasons. I hope I can make you aware of the impact of the Brexit as of 1st January 2021. Let us refer to the first case.

*Duy Nguyen:* What you see here is the current situation, a very straightforward case with the trading between a UK and EU company. Let's take the Netherlands for today. That is where we are now and not to forget in this beautiful location in The Hague. Trading from the Netherlands to the U.K. and from the U.K. back to the Netherlands. What you see is that we don't have customs borders now, which is very disappointing for people like me, because I don't have a lot to do and it is carried out for free. It is also quite simple because at this moment we have zero rated trading within the E.U, therefore it is merely a reporting obligation where you don't charge to each other. However that will change if we can go to the situation as of 1st January.

*Duy Nguyen:* There is a lot more tax, even if you don't know what it means yet, you just have a feeling that it is not good. That's correct, because there is a new fact. There is a customs border, the red line. The U.K. is out of EU Customs Union.

## The Hague Business Agency – 11th November

### Webinar - transcript

*Duy Nguyen:* What does that mean? You will have to deal with customs formalities. You have to report export from the UK through the EU and you have to report on imports in the EU, the Netherlands in this case for the Jam (referred to on the slide as an example).

*Duy Nguyen:* So that means that you need to have a registration for customs that is called an EORI number. This is necessary for the UK and for the Netherlands EU. The second thing is that you also need to have customs brokers because you can't do it yourself. So you need a customs broker in the UK to report to export and a customs broker in the Netherlands to report the imports of the jam (an example). The other thing is that you need to know how much duty is due the UK, so you need to know the value of the goods that is coming into the Netherlands. The valuation question, you need to know the tariff, the tariff qualification of your products. A third thing, you need to know the origin in this case, very simple. In the next case we are talking about, it might become more difficult and in terms of customs you need to do a lot more. So the time is very short. I will come to that later. So I urge you to act as soon as possible. There is also quite a lot to do before 31<sup>st</sup> December. You need to register now in the current situation. You don't need to register in foreign countries for 1st January. You need VAT registration. If you are a UK business and you are selling through various EU countries, you need to see whether you have to register in all those EU countries and you have to pay import VAT if you import the goods in all those countries. If you are non-EU company, which the UK will be of 1<sup>st</sup> January, certain countries like Italy, they require VAT representation with bank guarantees. So you have that in multiple EU countries, that's not very effective for your supply chain and your business. My recommendation is to assess your operations to supply chain and to simplify your VAT and custom set up and choose one country. Make that your European hub only due to import to that country and then distribute from that country over the rest of Europe. The Netherlands is historically used a lot by foreign traders as a hub for the European continent. The Netherlands has very flexible tax authorities and has an article twenty three, which means that if you have this license, you don't have to pay VAT for the importation. The Netherlands is a fantastic logistic country, a distribution country. If we can go to the second case, I think this is quite simple case, we only apply the situation per 1<sup>st</sup> Jan and we have added a third party, a non-EU party.

*Duy Nguyen:* Let's take, for example, Korea. The EU has a free trade agreement with Korea. This means that there are preferential rates, mostly zero rates, and currently the UK falls under the FDA with Korea. From 1st January, the UK has no access to the Korean EU FDA anymore. That means that when you are now importing from Korea without duty as of 1<sup>st</sup> January, you will have to assess whether duty is due. So that makes the origin of your goods very crucial. So you have to check that.

*Duy Nguyen :* I think you also need to know that you must avoid a situation where you pay duty twice. So if you are now importing UK and you are distributing it through the Netherlands, you only pay duty once. If it is coming from the US you pay duty when it is imported to the UK. If you

## The Hague Business Agency – 11th November

### Webinar - transcript

distribute to the Netherlands, there is no duty at all in a new situation, you will pay in duty when it comes from the US to the UK and you will pay duty when it goes from the UK to the Netherlands.

*Duy Nguyen:* here are special procedures to avoid that risk. For example, you can store goods at a Customs warehouse in the UK if you know it will go further subsequently to the Netherlands. However the customs warehouse is of course, more expensive than a normal standard warehouse. So there are solutions, but you really have to assess and weigh up what the profits are of the solutions and what the disadvantages are of the solutions. For VAT, it is similar to the first case. So for registrations please avoid registrations everywhere. Choose one HUB for your VAT registration and distribute from that HUB to the rest of Europe. I think for now these are the two cases of importing goods. I have made a summary with important points in the next slide. So please consider these points I mentioned; for customs formalities and customs brokers get a EORI number. If you are a UK company obtain a EORI number and the same applies if you are an EU company. One important issue is that you cannot do exports and you don't have access to EU FDA if you are a UK company as of 1st January. Therefore if you have stock in Germany and you want to export it to Switzerland, you cannot do that anymore. From 1<sup>st</sup> January, you have to find a solution for that. There are solutions, but it comes with a price and you have to assess the amount of duty you have to pay. So think about federalisation, tariff qualification, the origin of your goods and VAT registrations. Assess your VAT registrations now and the situation as of 1st January will be made easier for you. Also, use special procedures where possible. In the Netherlands, we have Article 23. You don't have to pay VAT on import with this article which means this is very good for your cash flow. The last thing is that with VAT registrations, various EU countries require VAT representation and the bank guarantee. So please consider that for VAT.

*Duy Nguyen:* I want to wrap up for now and go to the first a third case. It is about e-commerce, but I will also touch base on digital services later.

*Duy Nguyen:* For e-commerce and I am now talking about webshops, the selling of goods over the Internet. There will be a change as of 1st January for the obvious reasons. We just talked about the customs border, but there will also be a change as of 1st July next year. That is an internal EU change on the VAT and Customs rules for Commerce. So the current rule is there is no duty due within the EU. So no customs formalities for the UK companies selling to the EU. However there is a VAT duty. So UK VAT. If you reach a threshold of the destination country, the Netherlands, it's 1000 euros. You have to charge Dutch VAT. From 1st January you will also have to pay customs duties at the border. That is a new thing. There is also an exemption as of 1st January for goods below 20 euros for VAT. So that will change drastically in the next year. From 1<sup>st</sup> July 2021 there will also be a new change because the exemption of 22 euros for importations from the UK will be obsolete. So you will have to pay VAT from the first euro you are selling as a UK webshop to the EU.

## The Hague Business Agency – 11th November

### Webinar - transcript

*Duy Nguyen:* We will show you an example. So you see er a UK company, it sells webshop goods products to a Dutch consumer. We have product A 200 euros, product B, 100 euros and product C, 20 euros.

*Duy Nguyen:* If we see how it works out now, the pricing and whether VAT and duty is due. Now there is no duty due. If we go to the middle row, you see that of 1st January, you have to pay duty over the goods and for the goods below 150 euros, you don't pay duty, but for the product A, it's 200 euros. You have to pay duty.

*Duy Nguyen:* You will notice that the price for the consumer will increase, although the consumer or your client will pay more, you will make less money. So that is quite strange. The price increases because of duties, but it is not for yourself. What you have to do is you have to make more costs for the customs formalities and customs brokerage and the VAT formalities in the Netherlands. So that means that your client will pay more. You will make less money, so you really have to assess your business on these new changes. If we go to the last row, you will see how the pricing works out as of 1<sup>st</sup> July next year. So you see also the price change for the product of 22 euros, because that exemption for 22 euro products below 20 euros will still be intact as of 1st January. However you will not have it anymore on 1st July. So the price also will change again. So what you see here is within a half year, your customer will see pricing changing drastically and you will have to cope with that and assess your business.

*Duy Nguyen:* Our recommendation is to assess and see whether you can bring your fulfillment into the E.U. instead of leaving it outside the E.U., because then you avoid these situations.

*Duy Nguyen:* I just want to go also to the next slide about the one stop shop. So this is a compliance system in the E.U. I just want to revert to the services first.

*Duy Nguyen:* The first two points are for services. So if you are selling digital services, the UK is currently still EU. So that means that you can make use of the one stop shop. So that means you don't have to register everywhere in the EU, but you just comply with all the EU VAT obligations with HMRC.

*Duy Nguyen:* You cannot do that anymore. As of 1<sup>st</sup> January UK is out of the EU and you cannot make use of the HMRC, one stop shop. The UK company has to go to a new EU country and register in that country and then make use of the one stop shop in that country, for example, you can go to Netherlands as a one stop shop country, register here or appoint a VAT representative to make use of the one stop shop here. This is a very important point for UK businesses doing B2C services.

*Duy Nguyen:* For webshop goods as of 1st July, there will be a one stop shop and there are two types of one stop shop, one for EU companies, the union, one stop shop and one for non-EU companies, including one stop shop. The UK can choose a country in the EU, for example, the Netherlands, to

## The Hague Business Agency – 11th November

### Webinar - transcript

make use of the one stop shop but then you will get a non-union one stop shop and there are small differences. What can make a difference for your company and operations? For example, if you are under the non-union one stop shop, you have to raise correct invoices and take into consideration that we have 27 EU countries and each one of them have slight differences regarding invoicing regulations. If you are not able to comply to those obligations, you can get penalised. If you are an EU company, you don't have an invoice obligation, which is quite an easement.

*Duy Nguyen:* An important thing is point four is when you sell B2C goods, so webshop sales and you do it via platform Amazon or Bol.com, the platform will be liable for the fee as of 1st July next year. The fifth thing I want to mention and what is very important to add, the new rules for 1st July next year are only applicable on goods below 150 euros. Maybe we can go to a wrap up on the next slide as the UK becomes a non-EU country. I just want to mention that there are quite some differences between the treatment of EU and non-EU companies and I have put this put down in a few bullet points.

*Duy Nguyen:* Just to make you aware that for various countries they require VAT registration and bank guarantees for non-EU companies and not for EU companies. For the one stop shop for shop sales for non-EU countries this comes with invoice requirements in 27 countries. EU companies don't have any invoice requirements, and non-EU companies cannot act as an export to any EU. Very important. If you are doing business with Russia, Turkey, Switzerland, Norway from an EU warehouse, non-EU companies don't have allowance to the EU FDA framework anymore. So that's also very important for UK companies and indirect tax customs representation is required for non-EU companies. Indirect customs representation means that the customs representative is several and jointly liable for your duty. That means that they are bearing a lot of risk and they are not really eager to do that. If they do that, the prices will be quite high, much higher than direct customs representation where they are not liable for your duty.

*Duy Nguyen:* These are some of the points that differs for non-EU countries and EU companies. Maybe there are also some points from a legal point of view, but maybe you can discuss that later. Let's revert to the next slide. One last thing I just want to mention to you is that in practice we see that the lead times are very high now. They are very long with the HMRC, but also with the tax story in Europe, where you have a registration number in the Netherlands within three or four weeks. It now takes eight weeks. In the U.K., it takes 10 weeks. So you must act because December is a very short month also for the tax authorities. If we skip Christmas and New Year's celebrations, it's only two and a half weeks therefore you only effectively have five max six weeks to act. In our experience, you can set up a full operational Dutch business in four to six weeks. We have done this a lot of time and it is feasible, but my recommendation is act now. This is my piece for taxation. It is only a small piece and from a legal point of view there is also a lot to say, but that is done by Famke. So I would be happy to be give the word to our next speaker, Famke van Dam.

*Famke van Dam:* Let's start with commercial contracts first. We can go to the first slide. In respect of commercial contract, there are a lot of questions regarding continuation and termination. Following Brexit, companies may want to have the ability to earn and terminate the contract or to renegotiate,



## The Hague Business Agency – 11th November

### Webinar - transcript

so it is recommended to have your standard clauses reviewed in these respects, to see what is possible and to avoid needless disputes with your contracting parties. In some cases, commercial contracts may already include clauses that cover material changes, and arguably Brexit may constitute a force majeure event.

*Famke van Dam:* With respect to future contracts, companies ask us if it's wise to include a Brexit clause into contracts, a Brexit clause in the sense of a change clause or a Brexit clause, which effectively says Brexit will not affect this contract.

*Famke van Dam:* It is good to remember that there is no one size fits all approach to make your contract Brexit proof, it really needs to be judged in individual cases apart from termination possibilities.

*Famke van Dam:* Another item to assess in your contract is territory. References in your contract to the EU or to another geographical location may be affected by Brexit. Therefore, it is important to have your distribution, your franchise, IP licensing or other commercial contracts checked in this respect with a definition of the European Union changing that will need review, particularly if there is a reference to the European Union from time to time, because, for example, in IP licensing agreements, that could mean that a licence or a licensee loses its rights or opportunities in the UK.

*Famke van Dam:* Brexit will also have an impact on how cross-border disputes with a European dimension are conducted. Regardless of any Brexit deal, there will be no substantial change to the rules on applicable law. If we look into jurisdiction, that's another story, a no deal Brexit after the end of the transition period, could increase the risk of disputes about which countries courts have jurisdiction to hear a case. It is good to know that we see an increased interest in arbitration these days.

*Famke van Dam:* International arbitration as a means of dispute resolution is not affected by Brexit, so that's why it becomes more popular. Finally, in contract, you often see clauses regarding regulatory compliance, authorities effectively say that they comply with all applicable laws and regulations. You may want to check whether there is any change in laws and regulations applicable to your business. From here, we can go to the second legal topic of today, CE marking post Brexit. After Brexit, any products applied in the EU by any manufacturer based anywhere in the world, including the UK, will still need to bear the C mark if that product currently needs to be C marked.

*Famke van Dam:* The C mark shows that a manufacturer has checked that these products meet EU health, safety and environmental requirements.

*Famke van Dam:* For products that will be placed on the U.K. market after Brexit, the market can continue to be used for a time limited period to show compliance with applicable U.K. regulations.



## The Hague Business Agency – 11th November

### Webinar - transcript

For the UK, only the U.K., C mark can be used to show compliance with applicable U.K. regulations, but the U.K. market will not be recognised in the EU.

*Famke van Dam:* So for products placed on both the UK and EU markets, both the UK Mark and the C mark will be needed.

*Famke van Dam:* I drafted a checklist on the next slide that you can follow up on in this respect.

*Famke van Dam:* First of all, it is important to check which rules apply. Is CE marking required for your product category? Then check if you need to change your conformity assessment. That is not required in all cases. Check whether your U.K. notified body is taking steps of its own so that you can continue to export to the EU without needing to find an EU notified body yourself. If you use an authorised or responsible person, check whether you need an EU based one. Finally, it is important that you check whether your legal responsibilities are changing. If you are using an EU distributor that will become an importer after the 1st of January.

*Famke van Dam:* Let's proceed to the third legal topic of today, data protection after the transition period, transfer of personal data to the U.K. will not be treated as sharing of data within the union. It will need to comply with the relevant union rules applicable to transfer of personal data to third countries.

*Famke van Dam:* If your organisation operates in the EU, you will need to comply with both UK and EU data protection regulations at the end of the transition period. You may also need to appoint a representative in the EU. Your best preparation for data protection at the end of the transition period is to comply with GDP now. You will need to comply also with the UK data protection regime for your activities in the UK. If you have offices, branches or other establishments in the EU, your European activities will be covered by EU law. If you are only based in the UK, but you offer goods or services to individuals in the EU or monitor the behaviour of individuals in the EU, you will still need to comply with the EU data protection regime in relation to these activities.

*Famke van Dam:* Let's go to the final slide on data protection. There are different ways to comply with the rules applicable to transfers of personal data to third countries to the UK after the transition period, aside from the possibility of an adequacy decision.

*Famke van Dam:* There are other possibilities and adequacy decision is a decision by the European Committee basically saying that the UK needs adequate level of data protection, that an adequacy decision is not in place yet.

## The Hague Business Agency – 11th November

### Webinar - transcript

Famke van Dam: We have to look at other options to be in compliance with the requirements for transfer to third countries. It is also possible based on appropriate safeguards. In case of a derogation, appropriate safeguards are standard protection clauses in contracts are applied. There are also standard protection clauses provided by the commission. You can also choose for binding corporate rules or for codes of conduct and certification. In the absence of an adequacy decision or appropriate safeguards, transfer of data may take place. In the case of a derogation and engage with irrigation, a transfer in specific cases is allowed. So from a legal perspective, we looked at commercial contracts, we looked at marketing and we looked at GDP, and this is what I would like to to appoint today. Thank you for your attention.

*Philip Mulder:* Well, thank you very much for your insight.

*Philip Mulder:* There is a lot that we haven't covered and a lot to prepare for.

*Philip Mulder:* Right now I want to move ahead to the questions we received, quite a few already before we started the webinar and today as well. The questions are coming in. So a lot of unclear matter. I do have a first question, Brexit plus Covid. What is the effect on the timelines for establishing a business in the Netherlands and also a question with regards to the fees. Is this still possible pre Brexit? So can we elaborate on this.

*Duy Nguyen:* As I mentioned during my presentation, the timing is very tight now. December is a very short holiday month, but in practice, you can set up a fully operational business in the Netherlands within four to six weeks. So that means that you have to find an office, but I think Philip can help you with that as he is representing the Business Agency. Philip is definitely in agreement.

*Duy Nguyen:* We can refer you to the right kind of people to get in touch with or refer you to companies for taxation. You have to register now. You have to set up a BV first. We can help you with that. We work with notaries and we can do that within a few days.

*Duy Nguyen:* Then you have to register at the tax authorities. That will take us some weeks. Then in principle, if you have an office and people, you can start a business in the Netherlands.

*Duy Nguyen:* What is also important. You need to do bookkeeping and administration here. So if you have all those aspects, in principle you can start a business in the Netherlands, a small business, but you have something in the Netherlands. I think it is quite feasible still, but you have to act quickly.

*Philip Mulder:* Well that is it for the business part and with regard to fees it will be tight. It really also depends on whether or not you have a connection to the Netherlands already. If you have a

## The Hague Business Agency – 11th November

### Webinar - transcript

registered company or a home address in the Netherlands, you can apply for the residence permit and otherwise you have to travel through a different route. Please bear in mind that life is going to be much easier if you act before the 31<sup>st</sup> December. After the 31<sup>st</sup> December, the Netherlands and the UK do want to trade together and help each other out. So it is still going to be possible to register a business, apply for a visa, get a residence permit. It's just going to take a little bit longer than normal.

*Duy Nguyen:* I think I did forget to mention. If you are a trading company and you have to do the registrations for customs but also find a broker across America and maybe a logistics company then we can also help you with that.

*Philip Mulder:* In this case of the company who asked this question, just get in touch with us. If you want to move quickly, we will definitely help you out and work with you together. I want to move ahead to the next question. Will the British need a visa to come to the Netherlands and vice versa? Well, no, not to travel, not for a business meetings, not for leisure purposes. Only if they want to work in the Netherlands, they are going to have to apply for a residence or work permit. Next question. As a director of an EU registered company, even as a UK citizen, will there be restrictions on movement in the EU from January 1st 2021? Well, freedom of movement, as I just explained, but I assume you may have a tie to the Netherlands already. In that case, it would be interesting to check out if you can get either a residence permit or work on cross-border commuters permits.

*Philip Mulder:* We will send you some more information afterwards. I would like to get in touch with you as well and see how we can help you on this topic.

*Philip Mulder:* Another question. Is there anything we can prepare in our ERP even before we know when a deal is uncertain?

*Duy Nguyen:* It is still uncertain, but I think the chances are quite high that there could be a no deal. The thing that you really need to know is that whether we will have a deal or not, we will have a customs border as of 1st January. That is why you have to prepare. All trading companies have this question. Do we have to prepare our ERP? Yes, you have to prepare your ERP and prepare your ERP for the situation of Customs Border. That means that you are faced with customs formalities, customs duties. So that will change drastically. Also for VAT. That will also change drastically as you will have VAT registrations in the UK and the UK companies will have two or three registrations in the Netherlands, for example.

*Duy Nguyen:* So, yes, you have to prepare. I think that is my recommendation as a tax expert. Maybe it is good to add that that we offer our consultancy hours.

## The Hague Business Agency – 11th November

### Webinar - transcript

*Philip Mulder:* Some cases are that specific and take so much time to cover. We will offer some complementary one on one consults after this webinar. So if you're interested in those, just drop your name in the Q&A box and we will get in touch with you and then you can get a free consult in the weeks to come.

*Duy Nguyen:* So you have to ask yourself the question while implementing ERP system is, for example, where are my customers? What sales channels do I have? B2B, B2C, retailing, distribution. Where do I hold stock and do I also have stock consignment stock. How is my reverse to logistics look like? Now it is quite simple selling to the UK and it comes back for 1st January. You have to do an export and import in the UK when you it comes back you also have customs formalities. So you really have to assess your operations and supply chain in that respect.

*Philip Mulder:* Thank you very much. Another question to address. Will more content require translation in order to meet legislation requirements. I guess that one is for you Famke.

*Famke van Dam:* No, not that I'm aware of, but I can look that up.

*Philip Mulder:* OK, then we will get back to you on this specific question after the webinar. Another one you talked about the foreign trade agreements, this one applies to that. What are the consequences for Canadian companies that ship to the UK via the Netherlands under the CETA Free Trade Agreement?

*Duy Nguyen:* The CETA is not a final free trade agreement and is not already in place. In principle, this is the same for all non-EU companies trading with the EU and the UK. The question is when the goods are coming to the EU and then subsequently to the UK, you really have to assess your supply chain again because you will be dealing with two customs borders once it comes from Canada to the Netherlands. Secondly, when it goes from the Netherlands to the UK and under the free trade agreements, most products have preferential tariffs and that means mostly generated. However you still have to deal with customs formalities. You need a customs broker. If you are a non-EU company, you need an indirect customs broker. The same accounts when you are shipping the goods from the Netherlands to the UK, you also need a customs broker and that will cost money. The second thing is that you will also be dealing with VAT formalities. You have to pay import fees. You can avoid that in the Netherlands with the article 23 license, but you still need a VAT representative here, in order to get that license. The same accounts for the U.K., you need a VAT registration in the UK. So maybe if there is an opportunity, you can ship it from the UK directly from Canada, if that makes sense business wise in your case. I think there will be quite some changes in this case and yes you will have to deal with more obligations, more taxation, maybe more costs. So be smart and there are solutions.



## The Hague Business Agency – 11th November

### Webinar - transcript

*Philip Mulder:* Thank you. Another question. We are a services company and generally do our UK team need a work visa to deliver services in the Netherlands? Well, the short answer is yes. If your employees want to work in the Netherlands, they need to apply for assistance or a work permit. This could be a project based, but it really depends on the nature of your business. So in this case, again, I would like to get in touch with you after the webinar. Of course, we are going to send you the resources and I would like to have a conversation as well as to how we can work that out for you. There are ways to deal with this. I have got some more questions coming in. Has there been any research that is looking into how many companies will be leaving the UK? Well, there is a lot of research, but it's very unknown. I know in February that the Netherlands posted a press release where they said that we have been in touch with 400 UK companies that are about to leave and 140 that already left to the Netherlands. To be honest, I know that a lot of companies have been waiting. They have been waiting for Brexit to come. Right now everybody is getting a little bit nervous to see whether or not they should move to Europe. It doesn't always mean they move. Sometimes they just want to open an additional branch in Europe to have access to the Customs Union in the European Union. It could be the other way around as well. Dutch companies could move to the UK if they want to have access to debt markets and avoid tax and customs and so on. That really depends on the size of your business.

*Duy Nguyen:* Maybe I can add to that. I think three or four weeks ago, Amazon announced on their website that they will be cutting off the UK from the Pan-European FBA model. That means that for webshops selling via Amazon into Europe, they cannot use the UK warehouse anymore to put their goods into. So they really have to go to for example to a German or French warehouse to put their goods into the UK system, into the Amazon model FBA model. Since that announcement, we see a lot of UK companies reacting like, OK, but if Amazon is cutting us off from that model, we really have to act. It is really an overload of UK companies coming to the Netherlands and asking whether they can set up something here.

*Philip Mulder:* Well, thank you very much. I have got something to ask to Famke. How can one deal with the current privacy rules in the EU and the UK. You have touched upon this already, but maybe there is something you would like to emphasise.

*Famke van Dam3:* As I mentioned before, the best way to prepare in this period is to comply with the data protection rules that are applicable right now to GDP. Secondly, if you also have data processing activities in the UK, be aware that you will have to comply with the UK data protection rules as well.

*Philip Mulder:* Thank you very much. Another question. How will UK owned Dutch subsidiaries be affected by Brexit? For example? Will Dutch national ownership requirements come into force. I don't know if any of you have something to say about this. Will Dutch businesses who are owned by a UK entity be affected.

## The Hague Business Agency – 11th November

### Webinar - transcript

*Duy Nguyen:* I think in principle not, but for taxation that could be in certain situations for direct taxation. That is not really my expertise, but my colleagues can react on that if we can have a direct conversation after this. As I already have explained about the customs issue, I think if you are operating via the UK and via Dutch subsidiary and the UK parent, there are good flows between them, you really have to check the Customs impact on that for the valuation so that you don't pay customs twice. If you are having goods coming from China to the U.K. and then to the Netherlands to your subsidiary, it will be impacted, of course. For direct taxation there could also be some transfer pricing. It could also be affected. For the Customs and Transportation, I think you should check that.

*Philip Mulder:* That is clear. I think that is something important to know that we don't expect that the companies with foreign ownership will be affected. There will be agreements between the Netherlands and the U.K. or the European Union and U.K. so I wouldn't worry about that too much at this point. I have got other questions. We have got a small team split across two small medium enterprises, one in the U.K. and one in the Netherlands on different projects. We need to share personal data for a variety of project tasks. Where should we store the data and can we continue to share it or do we need to change the contracts between our two organisations? Well, I guess that's a good question.

*Famke van Dam:* After the transition period, the data transfer is seen as a data transfer to a third country. We don't have an adequacy decision as yet with respect to the UK. So, yes, you will need to have your contract reviewed in this respect to see if it is possible to draft a contract that forms a safeguard as required for the transfer to a third country.

*Philip Mulder:* Thank you very much, very clear. Next question. I am a freelancer working in the Netherlands, but paying my tax in the U.K. as I don't live in the Netherlands. After Brexit, how will the tax be calculated and do I need to pay for that? Do I need to engage with a tax consultants?

*Duy Nguyen:* Yes, you need to engage with a tax consultant. I think there will be a slight changes in your situation. Of course, I think it is a good idea that we dive deeper into your case, but let's do this with a direct conversation after this webinar. If you are in services, then you will have to do something with VAT and registration.

*Philip Mulder:* Thank you very much. I have got a question from the same person. Am I still able to do trades providing IT service. Meanwhile, working on getting the VAT registered and can I do this online and also how is this affected by Covid.

*Duy Nguyen:* So the person is living in the UK and working in the Netherlands but paying tax in the UK.

## The Hague Business Agency – 11th November

### Webinar - transcript

Your clients are in the Netherlands I think, and it is an I.T. person, so for distance selling. So you're operating from the UK. So I think that means that you will issue an invoice to the Dutch company and in principle you can put the invoices chargeable in the Netherlands. You don't put VAT on it, but you have to register in the UK for VAT. I assume you already did, although in the UK there is an exemption for businesses below, I think seventy or eighty thousand pounds then you don't have to register. However let's go into the details later and get in touch.

*Philip Mulder:* The next question. When providing services, for instance, rental equipment from the UK service provider to a Netherlands company for use offshore. Can the client do the imports and exports so that the supplier doesn't have to be registered in the Netherlands?

*Duy Nguyen:* So it's only services and equipment goes from the UK to the Netherlands to be used offshore and then it comes back to the UK. So in principle you have to do the formalities. There are special procedures to avoid that. You have to pay duty twice because if you export and import and then export and import, you have to pay duties all the time. So there are special procedures for those kinds of situations, but they do come with a cost and you really have to get the licenses. You still have to do the customs formalities, so you can't avoid that, but you can avoid paying duty all the time when you know that it's only used for a short time and comes back.

*Philip Mulder:* So there is a solution for refining that. Well, that's great to hear, but some work to be done. The next question. If a UK owned group with a Dutch subsidiary has UK based workers that do work remotely for a Dutch subsidiary for example, desktop reports, professional analysis, what are the implications? Are local payroll taxes due in relation to the workers who are not resident in the Netherlands, but effectively working there? So is a Dutch subsidiary required to enforce the UK with a Dutch VAT applied. Would that give any implications?

*Duy Nguyen:* For services, these kinds of services. I don't think there are drastic implications, but there will be slight changes in invoices and procedures, etc, because the UK will become a non-EU company and sometimes it is a bit different and you will be treated a bit differently in terms of VAT. I don't think we should go into the detail now because we don't know the exact situation and maybe we are giving the answer based on half of the information and making assumptions. Maybe we can discuss it afterwards in more detail.

*Philip Mulder:* Officially we ran out of time. It is 11 o'clock. If people want, we can hang on a little bit longer. We still have some questions still to answer, so please stay tuned if you still want your questions to be answered, we will continue a little bit more. If you can't make it, the recordings of the webinar will be shared with you and published online for those who have to leave to go to the next meeting. So let's just continue for the people who want to hang on.

## The Hague Business Agency – 11th November

### Webinar - transcript

*Philip Mulder:* We are a small services business and found a Dutch bank account incredibly slow to set up because we did not have a Dutch resident director and we had an awful experience. Well, that's something we see as well, opening a Dutch bank account in the in the European Union because of you know your customer regulations. It's really hard if you experience those troubles so please get in touch with us. We deal with it quite a lot. We cannot speed up the process, but we can help you making the process a little bit more efficient. Yes, it can be tough. That's something that we have noticed as well. Moving on. I am not sure to whom it applies, but there is a slight difference between B2C and B2B?

*Duy Nguyen:* I think B2B will be less drastic in terms of changes. However it is good to review your invoices. So in principle B2B will stay the same. The rules are for the UK and the EU, but the invoicing rules can be slightly different. Another thing that will drastically change is that if you are doing B2B services, you can do it without VAT, but you have to report it in your VAT return, but also in your sales listing. So that means that you can only charge without VAT to another company in another EU country if you have the valid EU VAT number of the customer. Of course, the UK VAT number will not be a valid EU VAT number anymore. So that will be changing and that process will not be in place anymore, therefore you will have to assess that and see what you have to do as of 1<sup>st</sup> January. The changes are less drastically for B2B, but there will be changes.

*Philip Mulder:* Thank you very much. Another question. If working offshore outside the 12 mile zone, do you have to be registered? For example, if the UK trade with Norway, we have to pay Norwegian VAT within the 12 mile zone, but outside they don't. How does it work for the European Union? I guess this is offshore work and for example for people probably working on vessels or working in the wind industry.

*Duy Nguyen:* It is quite a complex question because I need to explain how the VAT works. In principle if it is B2B, you have a seller and the recipient and it's either taxed in one country or of the seller or it's taxable in the country of the recipient. Mostly it is forbidden to be taxable in the country of the recipients. However there are like a lot of exceptions in some work or immovable property. It's taxable where the immovable property is located. So I can imagine if the work qualifies as work on immovable property like something in the sea or offshore drilling platform, then it's taxable there. Also, of course, if it's outside of international waters, there is no country that will tax you.

*Philip Mulder:* In this case, this is a very specific subject. So I guess we would like to get back to you after the webinar as well. Do we still have people hanging on and should we continue. So let's move ahead. Do you know anything about employing UK nationals that are still based in the UK and don't plan to move here? For example a Dutch company who have UK nationals. I think in that case we have to consider work permits to see whether they are going to be eligible for this. I will send you some additional resources, but it could be a commuter case.



## The Hague Business Agency – 11th November

### Webinar - transcript

*Philip Mulder:* The next question we would like to respond to. What are the implications of the Brexit for invoicing services provided to a UK company and the invoicing of costs shared within a partnership consisting of EU and UK companies.

*Duy Nguyen:* There will be changes in invoicing rules for B2B and for invoicing within the European Union. You need a VAT number of the customer and you have to report it. Then you can charge the rates. That will be different. I think you don't have to charge VAT, but the system of invoicing and reporting will be a little different. Of course, what I already said, we have a lot of exceptions within VAT therefore it really depends on what kind of service and what type of service you are providing. If you are like a real estate broker and you have a deal for a certain piece of real estate, then it's taxable in the country of the location of real estate. Therefore you pay VAT to that country where it is due. There are a lot of exceptions so maybe it's better to answer the question in more detail after the webinar.

*Philip Mulder:* If a UK company has rental equipment based already on a Dutch chart, which they will deploy in the EU and keep in the Netherlands, will they have new tax customs and documentation requirements? To sum up; they have equipment in the European Union, in the Netherlands in this case, and they want to deploy it within the European Union and keep it in the Netherlands.

*Duy Nguyen:* No, for customs If it stays in the EU territory and it doesn't pass a Customs border, there are no customs implications.

*Philip Mulder:* We are almost running out of questions. Is a visa required to work offshore for the Netherlands for UK personnel to fly to the Netherlands, then onto an offshore vessel? I would like to get back on this specific situation as well. You are technically not working in the Netherlands. I will get back to you on this. If I provide IT services from the Netherlands to the U.K. and I am VAT registered. Do I need to make changes?

*Duy Nguyen:* For IT services that are B2B. In principle, you don't charge VAT now and you will not be charging VAT as of 1<sup>st</sup> January, but your invoicing and reporting will be different.

*Philip Mulder:* All right. So I guess that we have answered most of the questions, so I would like to thank you today and of course, a special thanks to you both, Duy and Famke.

*Philip Mulder:* Thank you very much for giving your insights and helping the people to prepare again. Duy and Famke have offered one on one consults and as The Hague based agency, we are also here to help. So please get in touch with us. Email us at [business@thehague.com](mailto:business@thehague.com) or drop your contact details in the Q&A box. The recordings will be published online and as promised, we will send you additional resources after this webinar. Well, thanks again. Stay healthy and have a very nice day. Goodbye to everybody.

# The Hague Business Agency – 11th November

## Webinar - transcript