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Brexit and the return of duty and tax free sales.

Following the June 2016 referendum, the decision by the UK government to invoke Article 50 of the EU Treaty of the European Union in March 2017 initiated a two-year journey for the UK to negotiate its exit from the EU and to become a third country by 29 March 2019,

With the UK's decision to leave the EU, it was recognised by the European duty free industry that one of the few potential positive aspects of this decision could be that, under the terms of current EU fiscal legislation, there was the possibility of a return of duty and tax free sales for passengers travelling to and from the UK and the EU27 when the UK becomes third country and the full body of EU legislation no longer applies. This could result in substantial commercial benefits for the aviation and maritime trade.

The industry in the UK decided to undertake a contact programme with MPs and key government officials to assess if there would be sufficient political support for the return of duty and tax free sales for travellers departing to the EU and received a positive response from both politicians and the administration. At the same time, contact with officials in key Member States and the EU institutions suggested that a return of duty and tax free sales would be in line with the UK becoming a third country as both the EU's Excise Duty Directive and the VAT Directive provide that duty and tax free shopping is available to travellers leaving an EU country with a final destination in a third country.

Even though there is an ongoing debate in the UK about membership of a customs union with the EU, this does not preclude duty and tax free sales to travellers. Both the EU Excise and the VAT Directives are clear that the only concern is whether the final destination of the traveller is a 'third country'. There are instances of third countries in a customs union with the EU, such as Turkey, where duty and tax free sales are available to all travellers. Furthermore, access to the Single Market of the EU27 does not restrict or prohibit duty and tax free sales to travellers. Again, both the Excise and the VAT Directives are clear that the only concern is whether the final destination of the traveller is a 'third country'. For example, Norway and Iceland have full access to the Single Market of the EU and duty and tax free shopping is available to all travellers.

Currently, negotiations are ongoing on the “Withdrawal Agreement” and should it be ratified, the UK will leave the EU on 29 March 2019 and enter a transition period lasting until 31 December 2020 during which time the shape of the future trading relationship with the EU will be negotiated. However, there is no certainty that this will be achieved and therefore, there are serious questions about any future relationship with the EU27. Whilst the international media reports regularly about the ongoing trials and tribulations of these negotiations and the current extensive political debate in the UK on a “hard, soft or no” Brexit, the resultant lack of progress in negotiations with Brussels and the EU27 continues to confound political commentators across Europe.

Should the United Kingdom and the EU27 conclude the “Withdrawal Agreement” as currently drafted, the transitional arrangements contained within the agreement provide that for this period, the United Kingdom although becoming a ‘third country’ will be treated as a Member State for the application of all EU legislation. Once the transition period concludes the United Kingdom will be considered a third country. This time limited “Implementation Period” (as called by the UK) will “allow businesses and authorities to prepare for a smooth and orderly exit from the EU”. This implementation period is scheduled to end on 31 December 2020.

Whilst the industry maintains that the return of duty and tax free sales for travellers between the UK and the EU is not conditional on the UK’s membership of a customs union or the Single Market, a final decision on when the UK formally becomes a third country remains critical to when such sales could return.