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Brexit – Tax and legal consequences
from a Dutch perspective

1. Summary
A small majority of the people of the UK have voted to leave the EU. In the short term, a vote in favour of leaving the EU will have little, if any, immediate impact on indirect or direct taxes. Following secession it is possible that the UK's approach to taxation could diverge from the current position, as future governments could have additional freedom of choice. Some of the possible models for post-EU arrangements would include continued adherence to the EU's direct tax obligations, though. The UK's freedom to amend its domestic legislation is, however, dependent on the alternative relation with the EU. The Brexit can also have an impact on the remaining 27 EU Member States. These will be discussed in more detail below.

"It's not only British voters who have doubts about European cooperation"

Mark Rutte
Prime Minister Netherlands

Some indirect taxes are highly EU regulated taxes: principally VAT and customs duty. From a UK perspective, the UK would need to introduce its own customs duty system, as the current customs duty system is based on an EU Regulation (and, thus, did not needed to be implemented in UK domestic law). VAT is part of UK law as it is an implementation of the EU VAT Directive, and would in principle continue to be applicable on its own, As such, the UK technically is allowed to amend its VAT legislation in the future without taking into account the wording of the VAT Directive or switch to a totally different turnover tax regime. From an EU – or Member States' – perspective issues could arise in relation to the mini One-Stop-Shop for VAT purposes and import structures. Effectively, the UK is no longer part of the EU VAT system or customs union and, therefore, is treated as a third country for indirect tax purposes. The consequences of this classification are discussed below.

In direct taxation, the consequences for the UK of a Brexit should be limited. The UK is not expected to develop a whole new tax system. It would surely be surprising if future governments were to make fundamental system-wide changes. They are, however, no longer bound to secondary EU legislation and CJEU case law. As, however, much secondary EU legislation was implemented in the UK's domestic tax laws, it is not expected that they instantly radically change their system. From an EU perspective, on the other hand, it could be questioned whether all EU law is still possible in outbound situations to the UK, or inbound situations from the UK. The exact impact will depend on the followed alternative, but some Directives, and the implemented domestic legislation that is a consequence of that, refer to requirements in EU Member States. As such, discussions could arise in the upcoming negotiations between the EU and the UK.

All potential tax consequences mentioned below are, however, highly dependent on the chosen alternative to full EU membership. It would depend on the extent to which the UK is granted accession to the internal market and customs union to give a more specific overview of the real Brexit consequences. This should become clearer in the upcoming period. From an EU perspective, we expect a Brexit to have the most impact on:

a) **Capital flows and the financial services industry**

b) **Import structures**

c) **Mini One Stop Shop (VAT)** and

d) **EU workers in the UK (and vice versa)**

Besides that, legal requirements in the financial sector are based on EU rules as well. Think, in that respect, of prospectuses and several IP related requirements. Discrepancies between UK rules and the rules in the remaining EU Member States could occur as well. All differences should become clearer in the near future.

2. Way forward

2.1 Legal requirements

As said, a small majority of the people of the UK have voted to leave the EU. In the short term, a vote in favour of leaving the EU will have little, if any, immediate impact on indirect or direct taxes. Technically, it is now up to the UK to start the exit procedure. Article 50 of the Treaty on European Union (TEU) provides a Member State with the right to "withdraw from the Union in accordance with its own constitutional requirements". After the UK has made the formal notification of its secession from the EU, negotiations on a post-EU relation between the EU and the UK can start. In principle, the UK should leave the EU formally two years after the formal notification. This term, however, can be delayed if all EU Member States unanimously accept the delay. The UK would remain an EU Member State until a secession agreement had been concluded. Few changes are likely to occur while the secession negotiations take place and the scope of future changes would be determined by the outcome of those negotiations.

The UK leaving the EU will affect England, Wales, Scotland and Northern Ireland. Quite likely one or more of these areas - in particular Scotland and Northern Ireland - will try to remain in the EU. The Channel Islands and the Isle of Man are part of the UK, too, and so are other associated areas, such as Gibraltar and some Caribbean islands. As such, these areas are currently partly governed by EU law and its application (either in full or in part) would technically be abolished after secession.

2.2 Possible alternatives to membership of the EU

One of the key difficulties of determining the implications of leaving the EU is that there are a number of different alternatives to full EU membership. These alternatives offer different balances in terms of advantages and disadvantages, both from an EU and UK perspective. The alternative relations with the UK in a post-EU situation are described below. However, as a starting point, it deserves mentioning that the UK referendum technically only was advisory and the UK did not yet send the notification of a real exit to the EU. As such, from a formal perspective, it is still a real option that the UK in the end will not leave the EU. However, as Cameron indicated that he would follow the result from the referendum, the options for EU-UK relations, if it would actually come to a Brexit include:

Membership of the EEA – "the Norway model". Norway as well as Iceland and Liechtenstein are a member of the European Economic Area (EEA) but are not in the EU. The EEA model allows access to the Single Market and thus includes many of the key obligations of EU membership, including financial contributions (approximately 80% of an EU Member State's annual financial contribution). EEA members must follow most of the rules of the

Single Market, though without a vote or vetoes on how those rules are made. EEA members have to accept the free movement of persons. Unlike the UK, Norway, Iceland and Liechtenstein have all joined the Schengen Area. Besides that, Norway, Iceland and Liechtenstein are joint in the European Free Trade Association (EFTA). Potentially, the UK should join EFTA under this scenario.

- **Negotiated bilateral agreement**
  The Switzerland model. Bilateral agreements with the EU typically offer limited access to the Single Market (i.e. some combination of tariff-free trade, specified access to the services market and guarantees that companies operating in these markets are treated in a fair and non-discriminatory way). Bilateral agreements rarely go far in establishing a Customs Union or addressing non-tariff barriers. Switzerland's arrangements with the EU go furthest in replicating the benefits of EU membership, but bring an increased proportion of the obligations, including accepting the free movement of people, making a significant contribution to EU spending, and compliance with the majority of rules governing the Single Market.

- **Advanced Free Trade Agreement**
  The Canada model. This would bring less access to the Single Market. The EU-Canada agreement does not give tariff-free access to all Canadian manufactured goods, does not cover a number of key sectors, and requires Canada to accept EU rules when exporting to the EU. Specifically, the Canadian agreement does not cover services, which is a key part of the UK economy.

- **WTO membership**
  The World Trade Organisation sets out rules governing trade between WTO members (which include the UK). WTO rules do not include any preferential access to the Single Market, or to any of the 53 markets with which the EU has negotiated Free Trade Agreements.

3. General consequences

3.1 Secondary EU law and CJEU

Under the assumption that the UK will actually leave the EU, several general conclusions can be drawn. The first is that – in the field of both indirect and direct taxation – many secondary EU law exists to which the UK no longer needs to comply with. Regulations have direct effect without them being transposed into domestic law at all. These currently existing Regulations now need to be replaced by new domestic UK law. Directives need to be implemented into domestic tax law. Only if they are not, or not in time, being implemented correctly a direct appeal to the Directive itself can be made under certain conditions. Otherwise, taxpayers have to refer to the text of the implemented directive into national law. Since secondary EU law in the form of Directives in principle is considered to be implemented in UK domestic law, the effect is expected to remain existing for the next couple of years after secession. However, the UK would be entitled to replace elements of the, e.g. VAT system or dividend withholding taxes, without taking into account the EU Directives. In general, it could be said that national law derived from EU rules continues to apply until it is amended or abolished. Right now it is completely opaque as to how the UK will be dealing with this.

Furthermore, the UK is no longer bound by the case law of the CJEU. It seems probable, however, that, even after secession, there will be disputes between taxpayers and HMRC over transactions that predate it, and where EU law will still be in point (with the potential for the tribunals and courts to need to refer questions to the CJEU). Plainly, such instances will diminish over time. In a while, the UK courts will revert to interpreting the UK provisions and not the CJEU.

More widely the whole context of the harmonized legislative framework will be different as it needs to be borne in mind that also soft EU law like interpretations, non-binding rulings, arbitration and policy will no longer have (direct) effect.

3.2 State Aid rules and Harmful Tax Practices

The EU Treaties' State Aid provisions also can be relevant for direct tax, as seen in the Commission's actions in the Spanish goodwill cases, Starbucks, Fiat, Apple, Amazon, McDonalds, Belgian Excess Profit Rulings, etc. Any state aid litigation in respect of pre-exit matters would be likely to continue. EU law would continue to apply to pre-exit years and it would be highly unlikely for any secession agreement to terminate litigation before the CJEU (or lower courts) for those years. It could, however, well be that the European Commission no longer will start state aid procedures against the UK anticipating on the potential Brexit.

State Aid provisions similar to those in the EU Treaties are, on the other hand, included in the EEA Agreement as well. However, it is not yet clear that there is any EEA institution equivalent to the Commission to investigate possible infringements of the State aid provisions in the way the Commission has.

The EU has a Code of Conduct for business taxation, dating back to 1997. The EU's Code of Conduct Group was established by the Council of Ministers and mainly deals with assessing the tax measures which fall within the scope of the Code of Conduct for business taxation and overseeing the provision of information on those measures. The Code of Conduct is not a legally binding instrument, but its adoption requires the commitment of member states to abolish existing tax measures that constitute harmful tax competition and refrain from introducing new ones in the future.

Leaving the EU would mean that the UK would no longer remain committed to the Code of Conduct, nor fall under the remit of the Code of Conduct Group. However, the Code of Conduct Group's work overlaps to a marked extent with that of the OECD's Forum on Harmful Tax Practices, which is mandated to identify and eliminate harmful features of preferential tax regimes in OECD member countries. As an OECD member country, the UK would see little if any change in this area on exiting the EU. The EU's political pressure on specific UK measures will be expected to diminish though.

4. Brexit consequences for Indirect Taxes

4.1 Customs Duty

Perhaps the biggest customs related change that businesses are likely to see will be the recognition of trade between EU countries and the UK as imports and exports. As a consequence of the Customs Union, there are no customs duties within the EU's territory, and Member States share common external tariffs with third countries. Depending on the outcome of the secession negotiations, this may mean that duty is payable when goods move to and from the UK and this, and the related import and export formalities, may (or may not) result in some impediment to trade. The following changes with respect to customs are expected:

If no trade agreement can be agreed upon, in whatsoever form, the UK would become a third country from a customs law perspective. This would imply that:

- The UK will need to draft its own customs legislation;
- The UK will need to develop its own customs procedures;
- The UK is no longer part of Free Trade Agreements concluded by the EU.

The EU is a customs union which implies that the members of the union apply the same tariff and other common policy measures in connection with trade in goods between the union and countries or territories outside the customs territory of the EU. At the same time, the movement of goods within the EU is free, so no tariff or other common policy measures are applicable for this intra-union trade.

As the UK would no longer be part of the customs union, this will trigger payments of customs duties and raise the costs for doing trade with the UK. Customs duties are calculated on the basis of the classification, value and origin of goods. For all these elements, the UK will need to implement its own system to determine import/export duties.

The customs union is a uniform system for handling goods upon importation, exportation and transiting which is implemented by a common set of rules (the Union Customs Code). This harmonization cuts red tape for businesses active in several member states of the EU. In this respect, simplifications such as centralized clearance, makes it easy for companies to set up centralized customs procedures in the EU.
The UK will no longer be able to benefit from these harmonized customs procedures. Companies will need to adapt their operating procedures to the new standards that will need to be implemented in the UK. This will not only increase the administrative burden, companies will also need to adapt their IT systems.

One of the cornerstones of the EU customs strategy are Free Trade Agreements (FTAs). As trade is globalized, customs unions and countries around the world are seeking to conclude FTAs to enhance trade. The EU has already concluded several FTAs and the application is successful. Leaving the EU implies that the UK will be left behind of these advantageous FTAs. Companies who benefit from FTAs, will need to analyse their sourcing schemes and prepare for probable adaptations of their supply chains.

Next to the impact from a fiscal point of view (financial), a customs union triggers also non-fiscal measures. These measures relate to market access and are considered non-fiscal barriers to trade. In a wide range of industries, companies who want to import in the EU need to have authorizations, registrations, etc. The common agricultural policy provides regimes for the import of agricultural products. REACH requires registration for import of chemical products. Imported goods need to comply with EU quality standards. All these aspects will need to be assessed by UK importers before trading with the EU. The inbound flow into the UK could also become subject to new market access restrictions and trade barriers. The UK could even implement an anti-dumping/anti-subsidy policy on imports from the EU. Vice versa, imports from the UK after the secession could become subject to the EU's anti-dumping/anti-subsidy policy.

4.2 Excise Duty

Excise duties within the EU have been harmonized to some extent but Member States enjoy a great deal of freedom in this respect. If the UK leaves the EU it may maintain excise duties but also amend or abolish them. As with customs duty, movements of excise goods between the UK and EU Member States will be treated as imports or exports. Excise duties are due in the state where goods are consumed. Hence, excise duties levied in the UK are relevant to all goods subject to excise duties if they are consumed there, irrespective of whether they are UK manufactured or imported into the UK. Subject to any agreements reached during the secession negotiations, such movements are likely to be subject to different procedures than the current "intra-EU trading" rules, also influencing costs on consumption.

Following secession, EU level influence on UK excise duty would be released. However, since Excise Duty rates are not fully harmonised, of itself, this is unlikely to result in material changes to rates in the UK market, albeit some changes would be possible.

4.3 VAT

The fact that the UK will no longer have to comply with EU VAT law (on rates of VAT, scope of exemptions, zero-rating, and so forth) will mean that, following secession, the UK will have more flexibility in those areas. Future governments could consider changes to, for example, restore the zero-rating of domestic fuel and power and reinstate the VAT relief for energy saving products. Even a replacement of the VAT system by a totally different regime, perhaps with a goods and services tax, a sales tax of some kind or even something like the UK's old purchase tax, collected at the wholesale stage, could be possible, even though this appears highly unlikely. It is not possible to forecast any possible changes but no doubt any future government will need to consider possible changes in the context of its revenue position.

Local VAT rules are to a large extent governed by the EU VAT Directives and Regulations, and decisions from the CJEU, etc. Therefore VAT should be materially affected by secession from the EU. From an administrative perspective, the Brexit may require considerable planning and resource to implement the changes described below within the ERP systems and compliance processes currently used by businesses to account for VAT. For example, tax codes and client reference data may need to be thoroughly reviewed and updated and compliance procedures, as well as spreadsheets or automated tools used in the VAT return preparation process, would need to be amended.

In respect of day-to day VAT matters for businesses, the practicalities of cross-border transactions may change following secession. Invoicing and reporting protocols could be revised in respect of cross-border supplies and certain sectors will potentially see wholesale changes in respect of how they account for VAT. For example, businesses in the travel sector may no longer be required to account for VAT under the Tour Operators Margin Scheme ("TOMS"). Suppliers of B2C e-services to the remaining EU countries will have to consider the impact on VAT accounting under the EU's Mini One Stop Shop. The UK would probably introduce its own version for businesses selling to UK consumers. It is also unclear if other margin schemes would be retained post-secession.

With effect from the date of secession the more material VAT consequences would be:

a) Import VAT

The most tangible consequence of Brexit would likely be the imposition of "import" VAT when goods enter the EU from the UK, and when EU goods enter the UK. The system of Intra Community Supplies and Acquisitions will no longer apply. This could also affect the way in which related obligations like European Sales listings but also the whole intra EU matching system and electronic refunds etc. will be altered. A practical example would be the use of a Dutch fiscal representative to avoid negative VAT cash flow on imports from the UK.

b) Additional VAT pro rata deduction

When UK leaves the EU financial transactions between EU and the UK will, from an EU perspective, be considered to be VAT-exempt with the right to deduct. This will have a direct benefit for EU (and NL) businesses.

c) Mini One Stop Shop

For EU businesses supplying electronic services to consumers in the UK, the Mini One Stop Shop or MOSS mechanism will no longer apply. Most likely, a local VAT registration in the UK will be required. The European Commission has plans to expand the MOSS to sales of goods as well. Clearly that will also not apply for the UK anymore.

Additionally, the current EU regime for distance sales (direct sales by companies to consumers in other EU member states) will no longer apply to these supplies of goods to and from the UK

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d) Intrastat

Intrastat declarations must be filed when goods are moving from one Member State to the other. With the UK leaving, there would also be impact for the intrastate filings.

e) UK legislative and administrative amendments.

Given that EU law will no longer (automatically) apply any changes to legislation will need to be enacted through UK legislative and administrative amendments.

4.4 Capital Duty

Under the current wording of the Capital Duty Directive, existing capital duties are still allowed but need to be reduced to 0% in due time. The UK currently levies a stamp tax over the value of share transfers. The EU Capital Duty Directive applies to this tax. Following secession, the UK would no longer be bound by the Capital Duty Directive and related case law. Stamp duty is unlikely to be abolished.

4.5 Unaffected indirect taxes

Other UK Indirect Taxes such as Air Passenger Duty, Landfill Tax, Climate Change Levy and Aggregates Levy will not be affected directly by an exit from the EU, since they are not governed by EU law (albeit they might be affected by wider taxation reviews following Brexit and the fact that the EU's "state aid" rules will no longer be applicable might also influence the direction of travel of indirect tax policies). Since, however, the freedom to provide services is also no longer applicable in relation between the EU and the UK, this could have consequences for car registration taxes as well, as CJEU numerous case law in this respect, taking into account the period of actual use for registration tax purposes, is no longer to be complied with.

4.6 Systems and controls

It may require considerable planning and resource to implement the changes described above within the ERP systems and compliance processes currently used by businesses to account for VAT and Customs Global Trade. For example, tax codes, tax logic and client/vendor reference data may need to be thoroughly reviewed and updated and compliance procedures, as well as spreadsheets or automated tools used in the VAT return preparation process, would need to be amended.

Typically within ERP systems there are three key considerations in the overall tax system design:

a) Enterprise Model
The business model (such as legal entities, tax registrations, inventory, etc) needs to be mirrored in the enterprise model within the ERP system.

b) Tax Determination
The tax logic should automatically determine the correct tax rate/treatment.

c) Tax Reporting
The output of the system should generate tax compliant reports (invoices, VAT ledgers, customs reports, etc.).
When the UK is no longer part of the EU each of these areas will be affected.

Enterprise Model
The entities established, having branches or registered in the UK should no longer be considered as EU entities within the enterprise model of the ERP system. The same applies for its customers/vendors. The effort is mainly updating master data fields and certain tables used in the Tax determination and reporting process.

In some instances an EU entity can obtain a relief to register in other EU countries based on certain VAT simplifications (e.g. for triangular deals). In case those can no longer be applied, additional VAT registrations may be required, thus impacting the enterprise model in the ERP system. Also foreign entities making use of such relief regimes in the UK will be impacted.
The classification of products and the inventory management design may be impacted significantly, as products which are currently customs cleared and/or stored in the UK need to be reclassified as non EU products.

In SAP the impact mainly relates to the setup of company codes, plants (abroad) and registrations. In Oracle, changes can be made via the so-called Legal Entity Configurator and the inventory module. For both SAP and Oracle, master data setting for both customers, vendors and materials/products have to be updated.

Tax Determination
This area is highly impacted in case of a Brexit. Some key considerations:
- The tax determination process is based on master data setups. This does not cover only the customer/material or vendor master but also the Tax master data.
    - Typically the core framework in SAP (Tax Procedures, Tax Codes) or Oracle (eBusiness Tax Regime to Rate) have to be modified. For instance tax (rate) codes should no longer be used for Intra EU transactions for transactions with the UK. Some particular exemption and reverse charge tax rate codes may have to be revisited, etc.
    - In both SAP and Oracle the calculation of VAT on AP/AR transactions is typically automated, based on a tax logic or setups in the customer/vendor master. In SAP the impact to the tax logic (condition logic) and Oracle (eBusiness Tax Rules) and any other procurement/billing system is very significant. Not only should the intra EU transactions be modified but also complex rules when simplifications are used, for instance in chain transactions, have to be re-designed.
- Intercompany: typically in both SAP and Oracle pre-defined logic is designed to handle the tax determination process for intercompany transactions (especially if they are on the same ERP platform). This either levering some standard tax logic mentioned above, or specific intercompany tax tables. Those tables will have to be adjusted.
- Typically Customs requirements are automated via Trade solutions such as SAP GTS, Oracle GTM or other third party solutions, such as Track on Trade. Again, in case of a Brexit, all the items listed in the previous section will have impact on the system design as well as the master data and logistic movements feeding those systems.

Tax Reporting
A whole range of tax reports will be impacted when the UK is no longer part of the EU. For instance:
- Intrastat: logistic reports registering the move of goods within the EU are no longer applicable. In SAP this requires changes in either the foreign trade reporting functionality or GTS for both the UK Company and its vendors/customers. In Oracle the inventory module and reporting functionalities are impacted.
- Invoices: since UK is no longer part of the EU the text messaging on invoices will have to modified (in particular for certain zero rated transactions).

- EU purchase and sales listings: the UK is no longer part of the EU and therefore purchases and sales between the UK and an EU company should not longer be reflected on those listings. This will not only impact the settings of the UK entities but also of its vendors/customers.
- In case of addition of new VAT registrations, local country tax reports should be designed.

5. Direct Tax on companies

5.1 What is relevant EU law for direct tax

In principle, direct tax is less likely to be directly affected by the UK leaving the EU. Unlike indirect taxes, direct taxes are not explicitly dealt with by the EU Treaties nor is full harmonization in place by secondary EU law. As many decisions of the CJEU recite, direct taxes are solely a national competency, which must be exercised in accordance with EU law.

However, in the field of direct taxation, Member States have chosen to implement a number of directives to aid intra-EU trade and investment, as well as administrative cooperation. Directives include:

- **Parent/Subsidiary Directive**
  Which concerns the elimination in certain cases of withholding taxes on dividends paid to "parent companies", the elimination of double taxation at parent company level and the avoidance of double non-taxation in case of hybrid instruments within an EU context

- **Merger Directive**
  which concerns deferral of tax on gains that become due at company or shareholder level for certain cross-border mergers, (partial) divisions, transfers of assets and exchanges of shares taking place within the EU.

- **Interest and Royalties Directive**
  Which eliminates certain withholding taxes on certain payments of interest and royalties. Note that Gibraltar, for example, relies on the direct application of the Interest & Royalties Directive, which could particularly impact on the financial services and gaming sectors.

- **Mutual Assistance Directive**
  On assistance in connection with recovery of tax etc.

- **Recovery Assistance Directive**
  On assistance in connection with recovery of tax etc.

- **Whilst not a Directive**
  The Transfer Pricing Arbitration Convention is also relevant EU law.

5.2 What would change if the UK left the EU?

5.2.1 The UK perspective

If the UK leaves the EU, in principle, the Directives (and EU Transfer Pricing Arbitration Convention) would no longer apply. However, from a UK perspective, not that much is expected to change in the short term. The domestic legislation into which the Directives have been transposed will presumably remain in force unless future governments chose to repeal it. Some reliefs are offered specifically in relation to EU member states and it would not be surprising to find those reliefs withdrawn, subject to a possible EEA membership.

If the UK to leaves the EU but remains within the EEA it would still need to make sure domestic law complies with the Treaty freedoms referred to since they are broadly the same in the EEA Agreement as in the EU Treaties. An issue that should be resolved is the relation between the UK and the other non-EU Member States of the EEA.

Whilst the Mutual Assistance Directive and Recovery Assistance Directive would not apply if and when the UK left the EU, the UK, and many other countries, have signed the OECD/Council of Europe Multilateral Convention on Mutual Administrative Assistance in Tax Matters. This has similar scope to the two EU Directives, but the details are not identical.

5.2.2 The EU/Member States' perspective

As most corporate income tax law related directives are implemented into domestic tax law, the consequences of a Brexit can be reasonably limited. However, where, for instance, in the implementation process references to Directives or annexes thereto are included in domestic tax law requirements, the scope of that legal provision would exclude UK companies or EU incorporated companies that are tax resident in the UK. Also European Companies (SEs) with a seat in the UK could be required to leave the UK as of the Brexit. From an EU perspective, mostly capital related income and the financial services industry could feel the consequences of a Brexit.

Not being able to rely on the corporate tax directives reduces the protection against withholding tax becoming due on payments vis-à-vis the UK (dividends, interest, royalties); on this point the tax treaties between the EU member states and the UK become relevant. Further, tax neutral cross border (de)mergers, transfers of assets and exchanges of shares with companies in the UK may not be possible anymore once the UK has left the EU.

The fact that the Mutual Assistance Directive is no longer applicable could have an effect to EU-UK relations as well. Infringements of domestic tax law on the free movement of capital can generally be justified if there is automatic exchange of information between the countries concerned. Since this is arranged by the Directive in the relation between EU Member States, the justification ground could only still sort effect in relation to the UK if a comparable provision is included in the tax treaty between the UK and the EU Member State concerned.

6. Direct Tax on individuals

In the field of individual taxation, most integration has taken place by CJEU case law. In that respect, the CJEU case law no longer will influence the UK. Harmonization has mainly taken place in the field of social security.

6.1 Immigration and Labour law

a) Persons who are an EEA national who have at least 5 years residence in the UK

Any EEA national with 5 years continuous residence in the UK can apply for Permanent Residence, and thus gain reassurance that he will be protected from any future legislative changes. To apply for Permanent Residence, the worker will need to demonstrate that he has been resident in the UK, exercising treaty rights, i.e. been in employment or self-employment, for at least the last 5 years. Any EEA national who has 5 years residence, or who will have 5 years residence before the official date of exit from the EU, is encouraged to apply for permanent residence.

b) Irish nationals and the Common Travel Area

At present there is a Common Travel Area made up of the UK and Ireland. There are some indications that the Common Travel Area will remain and therefore Irish nationals will continue to be able to move freely and work in the UK. This will need to be confirmed during the negotiation period so much like other EEA nationals, if you are an Irish national working in the UK and you meet the necessary requirements, you should apply for Permanent Residence to make sure that your position is protected.

c) Persons are a UK national currently working in the EEA

During the period of negotiation, the EU will decide how UK nationals currently living and working in the EEA will be treated. UK workers who have been resident in an EEA country, exercising a treaty right (e.g. working in employment or self-employment) for the past 5 years you may qualify for Permanent Residence in that country. To protect that position it is advisable to make an application for Permanent Residence if the worker qualifies. If they move after a formal Brexit, administrative difficulties could be established.

d) New UK Immigration legislation to be drafted

Prior to the official exit date, the Home Office will be working on new immigration legislation to address:

i. The treatment of EEA nationals already resident in the UK
ii. The treatment of Irish nationals and the common travel area
iii. The criteria for non-UK nationals to qualify for work permits to work in the UK after the official exit date

e) Persons who are an EEA national who will move to the UK in the future

Until the official date of exit from the EU, EEA nationals can continue to move freely in and out of the UK, and to take employment without restriction while in the UK. New legislation to be drafted will confirm how

EEA nationals will be treated after the date of exit. At present indications are that any EEA national in the UK working, prior to the official exit date, may be permitted to stay.

f) Persons or their family potentially qualify for dual nationality
Many UK nationals qualify for dual nationality with another EEA Member State however have not applied as their British passport allowed them free movement throughout the EEA. You may now wish to re-assess if you or your family members qualify for nationality with the other EEA member state.

6.2 Social Security

Within the EU, social insurances are coordinated through a Regulation. In short, this provides for residents of Member States to only be insured in a single Member State. There they pay their contributions and receive their benefits. Since Regulations are not implemented in national rules, the UK's national rules will apply as soon as it leaves the EU. This can affect the following situations:

a) Persons are an EEA national currently working in the UK
In the short and possibly medium term, nothing will change. The status of employees working in the UK with A1 certificates (assignments up to 5 years) will not change and you will remain exempt from UK National Insurance.

b) Persons who are an EEA national who will move to the UK prior to the official date of exit from the EU
New internationally mobile employees applying for A1 certificates, will have the applications considered under the existing rules. UK outbound internationally mobile employees will continue to remain subject to the UK social security system if there is an A1 certificate. EU-wide rules on sickness, pension and unemployment benefits remain in force and both UK and European authorities will have a 'business as usual' approach in the near term.

c) Persons who are an EEA national who will move to the UK after the official date of exit from the EU
The Social Security treatment of an EEA national in the UK after the Brexit is still uncertain. However, this could include a complete exit or alternatively an approach that retains formal links such as those enjoyed by the EEA countries. Whatever model of exit is chosen, there will be a lengthy period of negotiation and the legislation which applies to individuals moving internationally may change significantly.

The authorities in the UK and their counterparts are very focused on employee protection and even if the legislative landscape is confused in the medium term, the expectation is that there will be a focus on preserving the entitlements of current internationally mobile employers wherever possible. As very few treaties have been concluded in terms of social insurances, this will either very easily trigger a double obligation to take out an insurance or result in the total absence of an obligation to take out an insurance. The UK will most likely start to conclude treaties to prevent this from happening. Ultimately, new social security treaties are likely to provide solutions to questions of coverage and benefits, but this may be many years away, and at this stage, with very few certainties, it is too early to take steps to mitigate any changes in this area.

7. Influences on tax treaties

The influence of a Brexit on bilateral tax treaties between EU Member States and the UK should be limited. As the CJEU constantly indicates, a bilateral tax treaty only allocates taxing powers amongst the contracting states. In principle, that would not lead to infringement with EU law.

This could be different, however, where bilateral treaties foresee in requirements that are more lenient towards residents of the UK. In that respect, advantages granted by an EU Member State to the UK compared to EU residents under their respective tax treaties could have to be extended to those EU residents. Furthermore, it should be taken into account that a Brexit can affect LoB clauses in bilateral tax treaties. Currently, tax treaties between an EU Member State and the UK cannot differentiate between taxpayers, shareholders and companies for LoB-purposes based on the residence in one of the contracting states or another EU Member State. However, as of the moment the UK would no longer be classified as an EU Member State, this equalization no longer has to be maintained. As a consequence, a LoB clause limited to UK residents or companies listed in the UK or the contracting EU Member State does not seem to be problematic from a UK perspective anymore. From an EU perspective, however, this is something that is still open for discussion.

Furthermore the relevance of tax treaties will increase related to the withholdingtaxes on dividends, interest and royalties, because from a perspective of the EU member states the Directives are not applicable anymore. So dividend, interest and royalties paid to the UK are subject to the rules in the tax treaties. Dividend, interest and royalties paid from UK to the EU are also subject to the tax treaties unless the UK opt to continue to apply the Directives.

Also tax treaties between EU Member States and non-EU Member States could be affected. Some of those treaties, for instance the treaty between The Netherlands and the US, contain LoB provisions referring to EU listed companies or EU residents. It should be kept in mind that UK listed entities would no longer qualify for LoB purposes and, as such, treaty benefits could be denied.

8. Regulatory & IP

a) Regulatory

The Brexit will have a significant impact on the applicability of numerous EU Directives and their local UK implementations and EU regulations (with direct effect). This covers several domains, health care, consumer protection rights, telecom, product safety (e.g. CE), finance, and fundamental/human rights, such as privacy/data protection. Most of the Directives and Regulations are relevant to the EEA.

b) Privacy/Data protection

In relation to data protection, the Brexit shall lead to additional technical or organizational requirements and administrative actions for MNE’s in order to legitimately transfer personal data from the EU to the UK. This may specifically impact companies running data centers or cloud services in and/or from the UK. These companies may face more administrative burdens and/or may no longer profit from EU free flow of data initiative c.q. EU Digital Single Market initiatives.

c) IP

The exit of the UK from the EU will in particular have important consequences for intellectual property rights. UK IP laws are predominantly derived from Directives and Regulations. As indicated before, the EU Directives may continue to be applicable if the UK remains in the EEA. This is important with regard to the exhaustion of IP rights whereas, currently, IP rights are exhausted once goods are put on the EEA market with the IP owner's consent. Depending on the model adopted, the UK could choose to restrict imports into the UK from the EU.

d) EU Trademark / Design registrations

With the exit of the UK, the protection territory for EU trademarks and designs rights will be limited. At this point, there are a lot of uncertainties about the exact consequences of the Brexit for EU trademarks and designs.
After the Brexit has become final, EU trademarks and design can only be registered in the UK by way of a national registration. Considering that the UK is a member of the Madrid Protocol, a national registration can also be obtained through the international system. A design can only be registered through the national route, because the UK is not part of The Hague Agreement, concerning international registrations of designs.

e) Patents

The Brexit does not impact current EU patent law as the European Patent Convention (EPC) is not limited to EU members. The UK is a signatory to the EPC and therefore a UK patent could still be obtained via the EPC system. However, it will have a direct impact on the Unified Patent and Unified Patent Court (UPC) which only applies to participating EU member states. The UK was deeply involved in the UPC process and there was even going to be a court location in London. The launch of the UPC was expected in 2017, however, there will certainly be a delay now.

9. Other implications likely to impact on taxes

Tax managers will no doubt want to participate in strategic discussions within their organisations in advance of a secession, to evaluate the potential tax impact of any proposed commercial or corporate structural changes. For example, financial services groups may need to restructure to adjust to the loss of EU passporting rights.[1] Substantial corporate restructuring may necessitate a wholesale review of the business' tax operating model.

As regards Company Law and Accounting Directives, and the EU's recommendation concerning the definition of micro, small and medium-sized enterprises, the definitions would presumably not change in the short term. After leaving the EU the UK could, however, change them if it wishes. After leaving the EU the UK would no longer need to apply the EU-endorsed IFRS, but could use IFRS. Mainly cross-border legal mergers and the creation and treatment of European Companies (SEs) will be harmed by the Brexit.

Clearly the impact of the referendum on the new legislative tax landscape is highly uncertain. Companies are now already exploring the impact of these changes and are reassessing their current business structure. In our view the following three areas will be most affected by the Brexit discussions.

- When it comes to new investment decisions into the European area companies will take the uncertainties in the UK into consideration and this may result in different decisions. Especially companies who are looking for a new gateway into Europe will consider for other locations.
- Businesses that are highly dependent on EU rules such as banking, insurance and aviation. At this moment it is uncertain whether these type of regulations will change but given that access to the EU market is vital to some of these business they will certainly consider locations outside the UK.
- A lot of uncertainty is expected to arise around mobility of people and this is typically a sensitive area for companies. If the workforce becomes more restricted in terms of business travel, home location etc. this will impact businesses who have an international workforce with a high level of mobility. This element will therefore be an important aspect to consider for companies when deciding on the best location for a pan European activity.

10. Contact

If there are any questions related to topics discussed in this memo or other EU-related topics, you can contact Jasper Korving, Pascal Schrijver, Harm Prinsen or Aart Nolten.

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[1] A financial services firm authorised in an EEA state is entitled to carry on permitted activities in any other EEA state by either exercising the right of establishment (of a branch and/or agents) or providing cross-border services. This is referred to in Financial Services and Markets Act 2000 (as amended) as an EEA right, and the exercise of this right is known as 'passporting'.

Possible alternatives to EU membership

Multiple options

		EU member	EEA	EFTA	Customs Union	MFN	'Duty-free'
		28 European member nations	*Norway, Liechtenstein, Iceland*	*Swiss*	*Turkey*	*Australia*	*Monaco, Singapore*
Free movement of goods, services, and capital		Yes	Yes	Yes	No	No	No
Free movement of people		Yes	Yes	Yes	No	No	No
Free to negotiate trade deals and set tariff levels with non-EU countries		No	Yes	Yes	No	Yes	In principle, but slower
EU laws and regulation	**Influence**	Yes	Very limited	No	No	No	No
	Compliance	Yes	Yes	Yes, but some opt-outs	Some	No	No
Fiscal contributions		Yes	Yes (83%)	Yes (52%)	No	No	No
Common Agricultural Policy		Yes	No	No	No	No	No