BREXIT: TAX IMPLICATIONS FOR INTERNATIONAL BUSINESSES

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AGENDA

- Overview and what it could mean for the UK economy
  - Peter Hemington

- VAT and Customs Duty Implications
  - Glyn Woodhouse and Håkan Henningsson

- Corporate Tax Implications
  - Ingrid Gardner

- Brexit - an Irish perspective
  - Kevin Doyle
BREXIT: OVERVIEW AND WHAT IT COULD MEAN FOR THE UK ECONOMY

PETER HEMINGTON
• Brexit has not happened - the UK has not even formally given notice ("article 50") that it will withdraw. Though this is expected in early 2017 followed by two years of negotiations before final execution.

• The vote to leave the EU has taken many businesses by surprise, resulting in slowing capital expenditures and rising uncertainty in the UK market.

• The pound has plummeted against the dollar, reaching its lowest level in over 30 years. But the overall fall against a trade weighted basket of currencies is only about 6%.

• Consumer and business confidence plunged in the month after the vote, only to recover strongly the next month.

• The FTSE 100 is up 7.5% since the vote, perhaps reflecting its international nature and the decline of the pound, but even the far more UK domestic FTSE 250 is up 5%.

• There is a general sense that things may get difficult as Brexit unfolds, but it’s business as usual at the moment - businesses want to get on with trading and growing.

Source: FT, Bloomberg, ONS
OECD predicts similar economic growth in the UK, USA, Germany and France, following the outcome of the EU Referendum.

The UK growth has slowed down in 2016 to 1.7% in comparison with 2.9% in 2014. The IMF, the OECD and other international institutions have downgraded growth forecast for the UK and the rest of the world for the short and medium term.
BREXIT: OPTIONS

- **Hostile divorce**: No transitional arrangements agreed. No or limited access to the EU single market. Becomes a low tax, light regulation magnet for global businesses and investment. Undercuts its EU neighbours.
  - Implications: Great for the City, but what about the rest of the UK economy?

- **Clean Break**: Relations between Britain and EU are strong enough to arrange a tariff transition and trade terms. UK loses its EU ‘passport’ but controls immigration.
  - Implication: Too much uncertainty for businesses whilst the politicians decide exact terms? London loses its status as the international financial hub.

- **Amicable transition**: UK remains in the single market but on the adjusted terms.
  - Implications: Preferred by businesses as promises certainty. Will the UK forgo its ability to take part in the EU regulatory decision making?

- **Change of heart**: Triggers article 50 but pulls out before the process is finalised.
  - Implications: Political suicide for the UK politicians? The EU may evolve, following future elections in Germany, France, Netherlands and Austria.

Source: FT: ‘Four scenarios: how Brexit process could unfold?’, Bloomberg, ONS
BREXIT:
VAT AND CUSTOMS DUTY IMPLICATIONS

Glyn Woodhouse and Håkan Henningsson
WHERE WE ARE NOW

Probably until Oct/Nov 2018 if not longer

EU MEMBERSHIP
FREE MOVEMENT OF
GOODS SERVICES CAPITAL PEOPLE

EU directives to level the playing field across member states

CJEU overrides UK courts

UCC remains in force

EU trade agreements with 53 territories worldwide

= BUSINESS AS USUAL FOR AT LEAST 2 YEARS

= UNCERTAINTY OVER THE LONGER TERM OUTCOME

...BUT

- Brexit negotiations yet to start
- Currency and markets volatility
- UK “domestication” of EU VAT and customs special procedures
**BREXIT: EXISTING ‘MODELS’ FOR NON-MEMBERS**

<table>
<thead>
<tr>
<th>Model</th>
<th>Key Features</th>
<th>Limitations</th>
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<tbody>
<tr>
<td>European Economic Area (EEA) Model</td>
<td>Remain in the free trade area like EFTA members Norway, Iceland, Liechtenstein</td>
<td>Free movement of people&lt;br&gt;Financial contribution to EU&lt;br&gt;Free movement of people&lt;br&gt;Financial contribution to EU</td>
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<td>Canadian Model</td>
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BREXIT: EXISTING ‘MODELS’ FOR NON-MEMBERS

- **European Economic Area (EEA) Model**: Remain in the free trade area like EFTA members Norway, Iceland, Liechtenstein. Features include free movement of people and financial contribution to the EU.
- **Swiss Model**: Series of bilateral interdependent sectoral tariff agreements with the EU. Features include free movement of people and financial contribution to the EU.
- **Turkish Model**: Only a partial Customs Union for goods. Features include exclusion of services, agriculture, and public procurement, as well as CJEU supremacy.
- **Canadian Model**: Comprehensive Economic and Trade Agreement - although not 100% coverage. Features include financial services and some other goods and services excluded.
- **WTO Only**: Tariffs agreed under WTO rules. Features include no free trade access and free movement of people.
VAT and the Regulatory Framework

- VAT may be abolished (unlikely - 170 countries with VAT/similar, global move towards indirect taxation, we need the cash!)
- UK VAT likely to remain in current form - some political capital/flexibility in rate changes etc.
- No overriding EU framework/no ECJ supervisory function from date of leaving - UK Supreme Court becomes ultimate arbiter in VAT matters - Abuse of Rights, Use and Enjoyment, Human Rights?
VAT

If no preferential trade arrangements granted by the EU, on formal exit date:

Movement of goods into the UK from the EU will become imports

- Customs duty will be payable
- Import VAT will be payable before the goods are released (instead of on a VAT return)
- The VAT will be recoverable on the next VAT return but this will cause a cash-flow delay

Movement of goods to the EU will become exports

- Formal customs documentation will need to be completed each time
- For VAT, formal export evidence will be needed for goods sent to customers in the EU to support the zero-rating of the sale
- EC Sales Lists and Intrastat Returns are not needed as the trade statistics will be collected from Customs documentation
VAT
Specific business issues

Travel Businesses

• Provision of travel services to individuals - no longer in TOM's (Tour Operator Margin scheme)
• This may lead to multiple VAT registration for EU sales

Refunds of EU VAT

• Likely to still be possible, but different rules and paper only

Supply of Electronic Services

• Unlikely to be able to use the Mini One Stop Shop (Moss)
• Multiple registrations likely

Distance Selling

• The distance selling thresholds will no longer apply
• Personal import rules will apply
UK LEAVING THE EU = LEAVING THE EU CUSTOMS UNION

If no preferential trade arrangements granted by the EU, on formal exit date:

- EU’s customs duties will apply to imports from the UK
- UK customs duties will probably be applied to imports from the EU
- UK businesses will have no access to EU’s 34 external trade agreements – so duties on trade with 53 other jurisdictions
- Non-tariff barriers (e.g. export and import declarations) will increase cost and complexity
- Will UK recreate current customs reliefs? (Customs Warehousing, Inward Processing etc.)
- UK will remain in the World Trade organisation
VAT & CUSTOMS - WHAT SHOULD BUSINESSES DO?
Considerations in each key phase of Brexit

Today until Article 50 is triggered

- Business as usual
- Review supply and distribution footprint
- Push on with EU dependent VAT disputes
- Consider IT & accounting systems

Article 50 two year window (and any extension)

- Clarify impact of post Brexit models on your business
- Review internal data systems
- Scenario planning

First two years post Brexit

- Monitor new UK VAT and customs divergence
- Lobby for your industry
BREXIT:
CORPORATE TAX IMPLICATIONS

Ingrid Gardner
CORPORATE TAX IMPLICATIONS

- Direct taxes are a matter of UK not EU law

- Must be compatible with EU law (e.g. the fundamental freedoms)
  - Court of Justice of the European Union (CJEU)

- Unlikely to be any major changes in the near future
  - Short term measures to stimulate inbound investment anticipated e.g. further reduction in corporate tax rate?
  - Whether specific EU elements included in EU law may be reversed once Brexit is finalized remains to be seen
  - Directives will no longer apply

- BEPS actions expected to continue to be implemented
  - Unlikely UK will adopt EU anti-avoidance package measures that deviate from the OECD BEPS actions
  - EU harmonization of corporate tax (Common Consolidated Tax Base) could be accelerated by UK’s exit
CORPORATE TAX IMPLICATIONS

Parent-Subsidiary Directive

- UK does not withhold on dividends
- Dividends received in the UK from EU member states may no longer be able to be paid free of withholding taxes under the Directive
  - Consider appropriate treaty rate of withholding tax - may not be 0%
  - Examples - Germany and Italy

Interest and Royalties Directive

- Need to consider appropriate treaty rate of withholding tax
  - Example - for royalties paid to Luxembourg treaty rate is 5%
  - Consider alternatives for interest where treaty rate is not 0% e.g. Quoted Eurobond exemption
CORPORATE TAX IMPLICATIONS

Mergers directive

- Allows for tax-free cross-border reorganizations within the EU
- May lead to tax charges on transfer of assets to and from the UK from EU member states
- Consider whether pure domestic reorganization provisions would apply instead

Treaty issues

- European treaties with the US often contain an “equivalent beneficiaries test”
- I.e. extension of treaty benefits to company owned by EU/EEA resident whose treaty provides for withholding rates at least as low at those contained in the US treaty recipient company’s jurisdiction
Transfer pricing

- UK TP rules not reliant on EU law/directives, rather OECD guidelines incorporated into domestic law

- However, consider impact of post-referendum volatility in the value of sterling and whether this could impact arm’s length result of existing TP models. E.G.:

  - Foreign currency denominated fixed fees or market prices
  - Functional currency is not sterling and transfer pricing relies on comparable third party prices
  - A UK entity has non-sterling denominated related party debt
  - Do the transfer pricing arrangements correctly reflect the allocation of forex risk?
VIEW FROM THE USA

Mixed reaction

- Optimism around possible further reductions in corporation tax rate and the potential for increased incentives
- Taking advantage of or planning around the depreciation of sterling
- Concerns for businesses selling into the EU and using the UK as an import hub
- Questions about Scotland and Northern Ireland
BREXIT: AN IRISH PERSPECTIVE

Kevin Doyle
BREXIT: AN IRISH PERSPECTIVE

• Over €1bn of bi-lateral trade a week
• Sustains over 400k direct jobs
• 50,000 Irish-born directors on the boards of UK companies
• 2,000 flights a week between Ireland and the UK

“[Post Brexit] there will be no closer relationship, friendship and alliance than the one that exists between the UK and Ireland”

David Davis
8 September 2016
The Challenges

- Impact on the Irish domestic market
- Sterling depreciation and exporters
- The UK’s only land border and The Good Friday/Belfast Agreement
- VAT and Customs
- Movement of people
BREXIT: AN IRISH PERSPECTIVE

The Potential Opportunity - FDI

- Brexit = Uncertainty. 2 years? 5 years? 10+ years?
- Only native English-speaking EU Member State
- Proximity
- Common law system similar to the UK
- Gateway to Europe and EU Passporting
- Low tax and business-friendly environment
- Movement of people and attracting EU talent
Contingency Planning

- Re-run forecasts assuming parity with Sterling
- Consider supply chains - possible Irish & UK M&A activity
- Assumed VAT and Customs costs
- Irish branch or company for UK businesses looking to access EU market or funding?
- Dual passports
- Diversify and consider exporting to other markets
THE BDO NETWORK

BDO INTERNATIONAL

$7.3 billion Revenues

59% Accounting & Auditing
20.4% Tax
20.6% Advisory (Consulting, Corp. Fin., Other)

5,413 Partners
49,952 Professional Personnel
64,303 Total Personnel

154 countries

5th largest accountancy network in the world

1,408 offices

BDO International statistics as of 9-30-15