Issue 3 October 2016

KPMG

Brexit in the boardroom

Issues and implications for Irish Business

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Introduction

The people of the United Kingdom have voted to leave the EU and the British Government has indicated that it will trigger Article 50 of the Lisbon Treaty by the end of March 2017. Brexit is an enormously significant decision for global business and for the island of Ireland and businesses based here - both North and South. Many of the implications of the result are very negative and others will evolve over time.

It is important to re-affirm the many positive fundamentals that already exist in the Irish - UK economic relationship. We are both significant markets for each other's goods and services and this will not change. Inevitably and depending on the outcome of the exit negotiations, there may be some notable alterations to the terms of this trade.

These negotiations may be protracted and the medium term economic impact of the referendum result remains highly uncertain. The short term impact is certainly very negative. It is in everyone's interests that the eventual trading relationship between the EU and the UK is as business friendly as possible.

The Irish government can and should play an important role in ensuring that Ireland's interests are strongly represented and we are very supportive of all efforts to ensure that outcome. We are also highly supportive of the efforts of state agencies to promote Ireland's continued appeal as an excellent location for business.

We hope this document is a useful aid in considering some of the issues in relation to Brexit. Irish business is entering a new era and KPMG is here to work with you to help prepare for any scenario and to provide support in the months ahead.

Shaun Murphy
Managing Partner
KPMG in Ireland

10 Brexit considerations for Ireland

01

Trade & People - Two way trade between the Republic of Ireland and the UK stands at over €1bn per week. Meanwhile, approximately 400,000 people born in the Republic of Ireland live in the UK and almost 230,000 people born in the UK are resident in the Republic of Ireland.

02

Exports - The UK is Ireland's largest export market. According to the Irish Exporters Association, goods and services exports to the UK totalled €30bn in 2014 - accounting for 17% of total Irish exports in value terms. The UK ranks as Ireland's No.1 market for services exports and No.2 for goods exports.

03

Domestic Business - Irish SMEs are more exposed to the risk of Brexit as they have a higher proportion of their trade with the UK. Conversely, larger companies tend to have a more diversified range of export markets.

04

FDI - It has been suggested that Brexit would make Ireland more attractive than the UK as a 'Gateway to the EU'. The UK has lowered Corporation Tax and in 2014 attracted record volumes of FDI. Whilst Ireland's FDI appeal is undeniable, competition from the UK for FDI could become more intense as a result of Brexit.

05

Trade Treaties - As a result of Brexit, Ireland's trading agreements with the UK will be determined by EU negotiations that would apply to all EU states and there are several potential post-Brexit scenarios.

06

Agribusiness - Ireland and the UK are each other's single biggest export markets for food and drink. According to Bord Bia, the UK accounts for over 50% of Ireland's beef exports and almost one-third of dairy exports. 70% of Irish ingredients and prepared food are sold to UK customers.

07

Exchange Rate Volatility - Given the importance to Ireland of the UK market the weakening of sterling could have a negative impact for sectors trading heavily with the UK.

08

Cross-Border Trade - Estimated by the ESRI at €3bn - €1.8bn from North to South and €1.2bn in the opposite direction. The possibility of the reintroduction of border controls and associated delays is a potential inhibitor and additional cost to business.

09

Northern Ireland - The Northern agribusiness sector is due to receive an estimated €3bn in EU aid between 2014 and 2020. There is no guarantee that following Brexit that this loss of funding from Brussels will be replaced by similar funding from the UK government in the long term.

10

Timing - There is a two year headline timeframe for the negotiation of a post Brexit trade agreement between the UK and the EU. However, the duration of trade negotiations between the EU and other states has, in the past, taken between four and nine years.

Brexit - the certainty of uncertainty

Membership of the EU guarantees 'Four Freedoms.'

1. The free movement of goods
2. The free movement of services, and freedom of establishment
3. The free movement of persons including the free movement of workers
4. The free movement of capital

Brexit will fundamentally alter the "Four Freedoms" of goods, services, people and capital guaranteed by EU membership.

The extent to which Irish business is affected will depend on how much it benefits from the Four Freedoms and how much the Four Freedoms are affected by Brexit. For example, a business operating on an all-Ireland basis would face significant uncertainty under all four of the freedoms.

It has also been suggested that something approaching 40,000 pieces of legislation will have to be considered by both the EU and the UK as a result of the UK vote to leave.

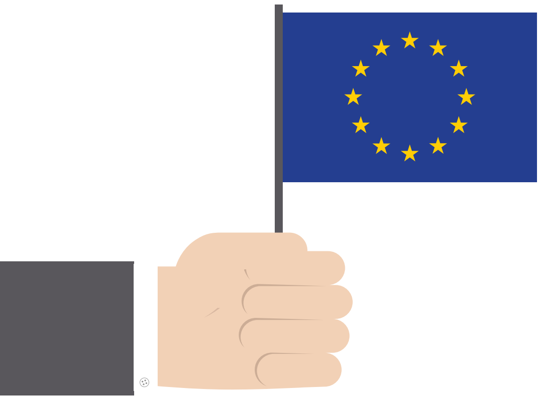
Perhaps the biggest area of uncertainty is how a separation from the EU would work. According to the rules of the Lisbon Treaty, a 'leave vote' would be followed by up to two years of negotiations.

The eventual outcome – the UK's future legal and trading relationships with the EU including Ireland – will hinge on these negotiations. There is no absolute guarantee that such negotiations will conclude within a two year time frame set out under Article 50 of The Lisbon Treaty – adding additional uncertainty for Irish business.

It is of course possible that the final outcome will leave very few changes. At the other extreme, a deeper separation could see the UK fail to reach any agreement with the EU. Thus, we could see a return to World Trade Organisation rules and trade tariffs on certain goods.

Other possible outcomes includes a new EU relationship for the UK based on those held by other non-EU states such as Norway, Switzerland or Turkey.

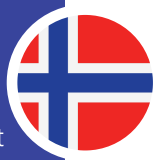
It is of note (particularly for Irish companies with UK subsidiaries for example) that the EU has negotiated terms of trade with many other countries including the US, China and Japan. As the UK is leaving the EU it will no longer be party to these agreements and will have to renegotiate its own trade terms with each country and with the EU.



Post Brexit models for the UK

Post Brexit there are a number of different scenarios that may, subject to negotiation, define the UK's relationship with the EU.

The Norwegian/European Economic Area (EAA) model



In effect this is the closest to full EU status but without actual membership. It offers access to the single European market with the exception of agriculture and fisheries. Under this type of agreement the UK would still have to accept free movement of labour and abide by single market rules without having any vote. Furthermore, it would require the UK to make significant payments to the EU budget.

The Bilateral/Free Trade Agreement (FTA) OR Swiss model

Sometimes known as the "Swiss Model" the UK could negotiate a bilateral agreement with the EU to cover issues such as reciprocal market access, travel and immigration. One variant of this option offers significant market access to the EU but does require contributions to the EU budget as is the case with Switzerland. It's important to note that the EU retains the right to negotiate FTAs on behalf of all of its members. As a result of Brexit, Ireland and the UK will not be in a position to agree a bilateral trade agreement with each other.

The Turkish Model (Customs Union)

Under this model, the UK would have partial access to the Single Market, for some goods only and not for services. It would involve participation in the EU Customs Union which must offer non-EU countries the same trade terms as agreed with the EU. The UK would be required to enforce rules equivalent to those in the EU, for instance under competition and State Aid as well as implementation of EU external tariffs. It would have no role in EU decision-making, make no contribution to the EU budget and would not benefit from EU or EFTA FTAs.

The World Trade Organisation (WTO) Model

This scenario applies in the context of the greatest break with the EU. It does not involve any UK obligations in terms of free movement of people, EU budget contributions or complying with EU rules. By way of background the WTO is a global framework for trade relations. All EU countries, including Ireland and the UK, are members of the WTO. Such an agreement implies tariffs on UK goods and services, non-tariff barriers and the possibility of reciprocal tariffs on EU trade into the UK.

Brexit - checklist

01 **Who are our UK customers, suppliers and outsourcing providers?** What impact will the 'leave' vote have on them and our business interactions with them?

02 **What impact might future political or economic volatility have on our UK business?** How would the uncertainty caused by protracted negotiations impact on our business?

03 **What are the cross-border implications?** To what extent are we exposed to additional time and compliance matters on a cross-border trade basis?

04 **What impact will Brexit have on our workforce?** Especially if we also have UK operations in terms of immigration, cross-border working, workforce mobility and employee availability.

05

How might Brexit impact on our current financing arrangements? What is our exposure to Sterling? What about other direct financial implications such as transfer pricing, tax jurisdictional matters and exchange rate issues?

06

To what extent does our UK business depend on EU grants or trade agreements? Following Brexit might our UK businesses align voluntarily with EU requirements? What might this cost?

07

How might energy supplies and the overall energy market be affected? There is an All-Ireland electricity market jointly regulated by both states. As a result of Brexit, the UK may decide to alter its perspective on how this responsibility is shared. What are our energy dependencies and what risks may arise in the event of a change in regulation?

08

What are the regulatory implications? Ireland and the UK often adopt similar positions in terms of economic regulation. What might the regulatory impact be on our Irish based business when the UK is outside the EU and no longer an ally on these matters?

A Brexit timeline - how might it look?

2016

23 June 2016

- UK referendum on EU membership takes place
- UK votes to leave the EU
  (51.9% Leave ¦ 48.1% Remain)

2017

Q1 2017

- UK to invoke Article 50 of the Lisbon Treaty by the end of March 2017
- Remaining EU counties meet to discuss withdrawal (excluding UK from discussions)
- European Council mandates EU Commission to undertake negotiations with UK

2017

Q2/Q3 2017

- EU Commission and UK may begin negotiations; negotiations may last for up to two years
- UK begins bi-lateral trade discussions with non-EU countries

Agreement within a 2 year period

- UK leaves the European Union. No longer covered by EU treaties and new agreements come into effect.
- If the UK wants to re-join the union at a point in the future, it could invoke Article 49 of the Lisbon Treaty.
- It would be highly unlikely the UK could replicate its current special status within the EU.

No Agreement within a 2 year period

- Negotiations may be extended further but only with the agreement of all remaining EU countries
- If agreement is reached to extend negotiations, negotiations will continue
- If no agreement is reached to extend negotiations, the EU treaties cease to apply to the UK and the UK will leave the EU
- The UK Parliament must repeal the 1972 European Communities Act and replace with a new agreement. However unlikely, failure to reach any agreement with the EU could see a return to WTO rules and trade tariffs on certain goods
- There is no guarantee that negotiations will conclude within two years with speculation that it could last between 5-10 years, creating uncertainty for businesses across Europe

2017

June 2017

- France: Presidential election

2017

Q4 2017

- Germany: Parliamentary election

2019

May 2019

- European elections

2020

Q2 2020

- Germany: Parliamentary election

The future of financial services regulation

Following the UK's vote to leave the European Union there has been more speculation than information on the agreed relationship between the UK and EU. An area for particular interest for Ireland is the potential impact on financial services.

The legal process for leaving the EU comes via Article 50 of the Treaty on European Union (TEU). The intention to withdraw from the EU is notified to the European Council by the government of the withdrawing State pursuant to this provision. Once triggered Article 50 acts as the catalyst for the negotiation process for the transitional and also any future arrangements between the EU and the leaving State. These negotiations are conducted under the provisions set out in Article 218(3) Treaty on the Functioning of the European Union ('TFEU') over the course of a two year timeframe. In the absence of an agreement to extend the negotiations, if no agreement is reached within those two years then EU law will cease to apply to the UK and it would become a so-called third country. The UK trading relationship with the EU will then most likely be governed by World Trade Organization rules, which will cause considerable challenges for the UK financial services sector.

An Issue of Timing

The UK government has indicated that they will trigger Article 50 no later than the end of March 2017. Presently, it appears that the political challenge will be to strike a compromise between the competing forces of control over immigration and cessation of contributions to the EU Budget and participation in the internal market. However as the EU has consistently stated that there will be no informal negotiations prior to Article 50 being triggered, so therefore the ability to assess both the nature and the ultimate outcome of the negotiations may not begin to materialize with any certainty until the spring of 2017.

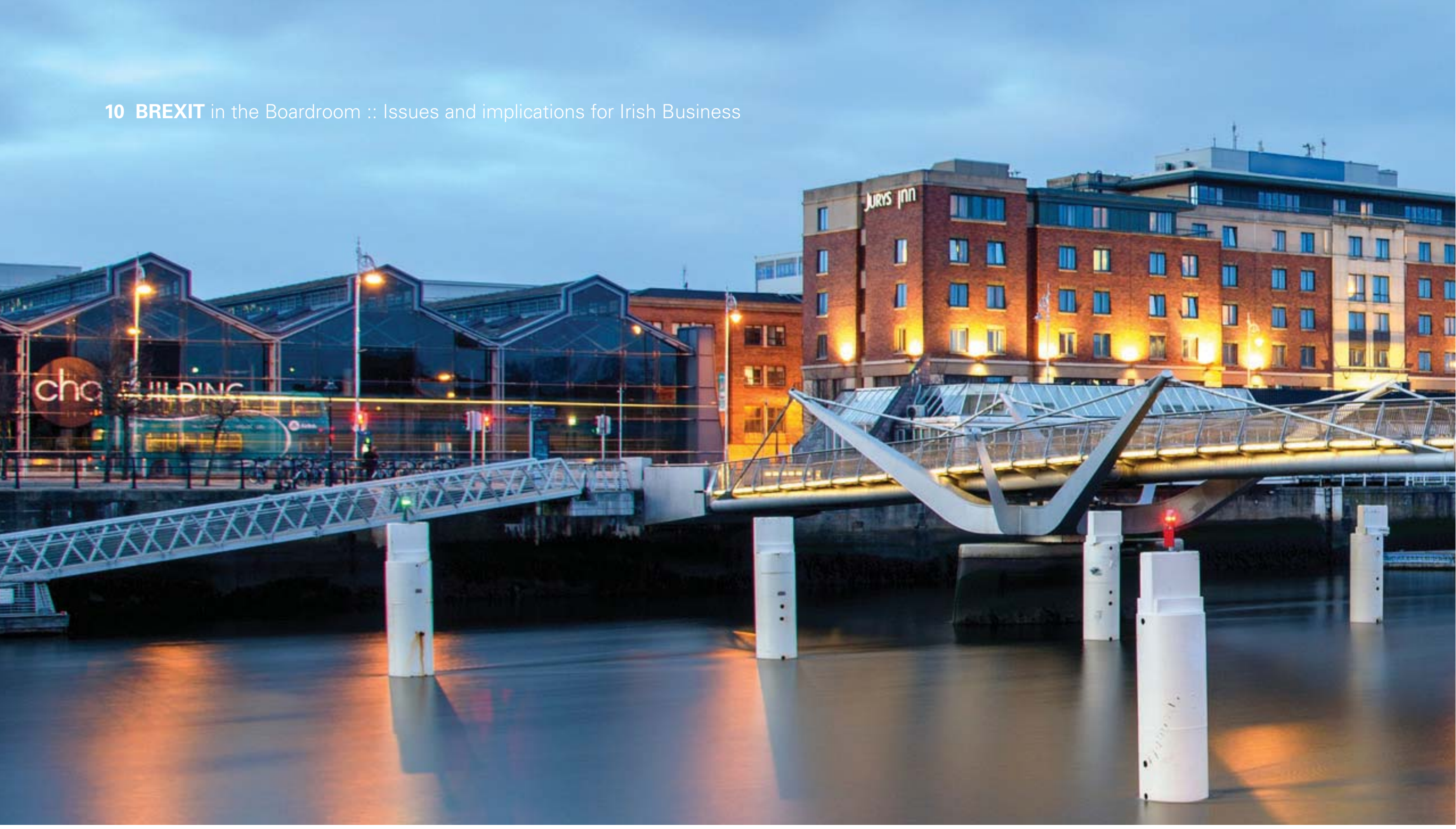
The EU are also likely to use this time to formulate their approach to the negotiations. As a Member State has never left the EU, the complexities of departure is both without precedent and has the potential for detrimental ramifications for the EU.

European Financial Regulation

The EU Financial Services arena, is one where many of the challenges associated with withdrawal from the EU will be exemplified. Since the creation of the 'single market in financial services', was first envisaged in the 1999 Financial Services Action Plan, there has been a sustained period of legal harmonisation, resulting in many Member State financial services laws being developed or replaced by an increasingly detailed single rule book for European financial regulation.

A key benefit of this integration is the resultant ability of Member State credit and financial institutions being able to carry on business and sell services throughout Europe without necessarily establishing an authorised presence or similar in each individual Member State, so called 'passporting'. It has also enabled non-EU credit and financial institutions to avail of the passporting regime, contingent on their establishment of an authorised subsidiary in a Member State.

If the outcome of the withdrawal negotiations does not result in the UK maintaining access to the internal market (under the current model this would be best achieved via membership of the European Economic Area ('EEA')) then this could pose particular challenges for the City of London and result in UK financial institutions not being able to continue to offer a full range of financial products and services to their existing and prospective customers.



Examples to consider –

The Alternative Investment Fund Managers Directive ('AIFMD') introduced a new passport system for the marketing of alternative investment funds ("AIFs") in the EU. The marketing passport is automatically available to authorised EU alternative investment fund managers ("AIFMs") managing EU AIFs. However, if post-Brexit the UK becomes a third country then UK AIFM will lose their EU marketing passport.

Further, an EU AIF, with a UK AIFM may need to consider appointing an EU AIFM, becoming self-managed or appointing a third party AIFM in another EU jurisdiction.

Finally, EU credit institutions and investment firms automatically qualify as providers of depository services under AIFMD, third country entities do not. Given the restriction on the entities that can act as a depository for EU AIFs, a UK-based bank currently providing custody services to such an EU AIF may not be able to continue to do so if it ceases to be an EU credit institution or investment firm.

The Markets in Financial Instruments Directive ('MiFID'), also provides for a passporting regime which enables EU credit and financial institutions/investment firms to conduct investment business across the EU by regulating the conduct of investment services, such as the trading of securities and derivatives, the execution of client orders and portfolio management on a Union wide basis. Depending on the outcome of the negotiations there is potential that UK-based firms will lose their MiFID passports and therefore will not be able to deal with EU-based clients and would need to consider establishing a subsidiary in another EU Member State.

The Capital Requirements Directive ('CRD') contains a passport regime that allows deposit-taking institutions to conduct services, such as lending and deposit taking throughout the EU using their home Member State authorisation. Without at least EEA membership, UK banks would lose the automatic EU passport for banking services.

Prospectus and Transparency Directives ('PD') The issuance of securities in Europe is facilitated by a pan-EU regulatory regime, provided by the Prospectus and Transparency Directives ('PD') and ('TD'). For example, the PD allows the use of one prospectus to offer securities in multiple jurisdictions across the EU. In the absence of EEA access the UK would have to draft domestic prospectus and transparency legislation and accordingly each request for admission to trading on a UK market would need to be approved by the relevant national authority in the UK and similarly by each Member State authority where a request for admission was being made by a UK entity.

UK-based Central Counter Parties ('CCPs') and Trade Repositories (TRs) as well as the counterparties wishing to use their services are currently subject to the European Market Infrastructure Regulation ('EMIR'). If the UK becomes a third country, then these UK based CCPs and TRs would have to apply for third country recognition from the European Securities and Markets Authority ('ESMA') in order to continue to provide services to EU counterparties, this could be a protracted process and could cause considerable business disruption. UK based clearing houses who are currently engaged in euro-denominated clearing may also have to consider establishing a presence in the Eurozone in order to continue to provide for the clearing of certain products.

If necessary, the resolution of a number of these issues may be achieved by UK credit and financial institutions being able to avail of third country equivalence recognition. This is possible to varying degrees under the respective 'third country regimes' contained in the relevant EU legislation such as AIFMD and EMIR. The forthcoming MiFID II regime also provides for third countries doing business with EU entities, introducing different provisions for retail clients and professional clients. Such that the conduct of regulated investment business with a retail client in a Member State if the third country investment firm has established a branch in that Member State.

For the provision of investment services to a professional client, the establishment of a branch may not be necessary, as long as the third country investment firm is registered with ESMA and an equivalence decision has been adopted by the European Commission for the country where that investment firm is established. If the UK enact 'preserving legislation' to retain the existing EU financial services framework, this should assist any third country equivalence decision. However, experience to date, has shown that such equivalence decisions can be protracted as well as political in nature and any divergences from the relevant EU law could impede a positive outcome.

The UK will also have to assess the impact on legal certainty of the Brexit negotiations on other aspects of EU law relevant to financial services, such as the application under the EU Rome I and Rome II Regulations that determine the governing laws of contractual and non-contractual obligations. The establishment of court jurisdiction and reciprocal recognition of judgments is also governed by EU law in the form of the Brussels Regulation.

As a final note, it is worth remembering that as EU law will continue to apply in the UK until the negotiations are concluded or the two year time period has elapsed. This will mean that Packaged Retail Investment and Insurance Products Regulation, Securities Financing Transactions Regulation 16, MIFID II/MIFIR, 4th EU Anti Money Laundering Directive and the Insurance Distribution Directive will all enter into application in the UK before the withdrawal negotiations have been completed.

While this is likely to assist with any future equivalence assessment, credit and financial institution will need to consider, both their domestic UK and EU operations, the services they provide and the location and type of customers they provide those services to. Such an assessment will inform decisions on establishment of new or restructuring of existing regulated entities in each relevant jurisdiction from both a commercial as well as a regulatory compliance perspective.

> "The forthcoming MiFID II regime also provides for third countries doing business with EU entities, introducing different provisions for retail clients and professional clients."

Irish CEOs on Brexit

Our 2016 survey of Irish CEOs, 'Now or Never', conducted following the UK referendum and published in late September, shows that Irish CEOs have mixed views on the impact of Brexit.

The study found that Irish CEOs are more negative about the impact Brexit will have on their business when compared with their global counterparts with over a third (36 percent) anticipating a negative impact on revenue growth versus 19 percent worldwide.

However, Brexit will affect different sectors in different ways – reflected in the finding that just over half (52 percent) of Irish CEOs anticipate no impact on revenue growth and one in eight (12 percent) predicting a positive impact on revenues.

Meanwhile, a majority of British CEOs surveyed by KPMG in the UK are assessing the possibility of relocating headquarters or operations outside the UK.

Irish CEOs are also divided in their view of the impact that Brexit will have on business confidence in the global economy. Just under a third (32 percent) predict a negative impact, 20 percent think the impact will be somewhat positive and the remainder (48 percent) say that Brexit will have no impact.

According to KPMG Managing Partner Shaun Murphy: "Most CEOs I speak to, whilst concerned, are fairly pragmatic about Brexit because the final outcome remains unclear. The preferred result for Ireland is obviously maximum access to the UK market and minimum disruption to trade and freedom of movement. Our role as business advisors is to work through the implications of various scenarios and see what mitigating actions may be put in place to manage issues or indeed take advantage of opportunities."

Given the aforementioned potential challenges to trade and freedom of movement, it is also no surprise that 48 percent of Irish CEOs predict a negative impact on the complexity of doing business. Furthermore, over half (52 percent) of Irish CEOs expect the impact on access to capital markets to be negative and 44 percent anticipate a negative impact on raising capital.

However, sentiment about the impact of Brexit on supply chain and hiring plans is largely positive. Attitudes towards the impact on operating costs are also relatively benign with four in 10 Irish CEOs expecting no impact and 36 percent anticipating a "somewhat" or "significantly" positive impact.

> "The preferred result for Ireland is obviously maximum access to the UK market and minimum disruption to trade and freedom of movement."

To find out more see our 2016 CEO Outlook Survey at kpmg.ie

Northern Ireland and Brexit

The impact of Brexit has some unique implications for Northern Ireland writes Johnny Hanna, Partner and Head of Tax with KPMG in Belfast.

Northern Ireland business people and those who promote enterprise here have proven themselves a hardy lot. Our local market is small, the level of economic subvention is probably unsustainable and many of our brightest and best seek their fortunes elsewhere. Add Brexit to the mix and the list of issues to manage become even longer.

In our view, and to help resolve many of these challenges, Northern Ireland needs to trade its way to a better economic future. Anything that inhibits or hinders this objective must be addressed as a priority. There are two main areas of focus that can help chart a way forward – foreign direct investment and the further development of domestically owned business.

Firstly, the potential loss via Brexit of unrestricted access to the EU market is a major concern in terms of our ability to attract FDI and any deal that the UK cuts with the EU must have a strong NI input. The importance of local political consensus on this is essential as Northern Irelands unique circumstances are not always understood or appreciated elsewhere. Whatever the final outcome of Brexit negotiations, the need for continued easy access to both the Republic and the rest of the EU is vital for all businesses. In this context we also need clarity on Corporation Tax. The announcement of a 12.5% rate locally from 2018 was welcome but has been undermined somewhat by Government plans for a UK wide rate of 17% from 2020. We need to explore how NI might enjoy a continued positive differential in this regard.

Despite the very serious challenges of Brexit, it is also important not to underestimate what we do well here. Northern Ireland enjoys a competitive cost base, attractive levels of personal taxes and a skilled workforce. Our international reputation has been enhanced through increased visitor numbers and a range of globally famous attractions. We also have a track record of success in many sectors such as software development, legal outsourcing and financial services and no doubt InvestNI will continue to promote the benefits of a cluster effect in these sectors to potential new investors. We also produce high quality goods and services for which there is proven market demand and our most successful exporters are maximising their potential across the water, in the Republic and elsewhere - both EU and non-EU.

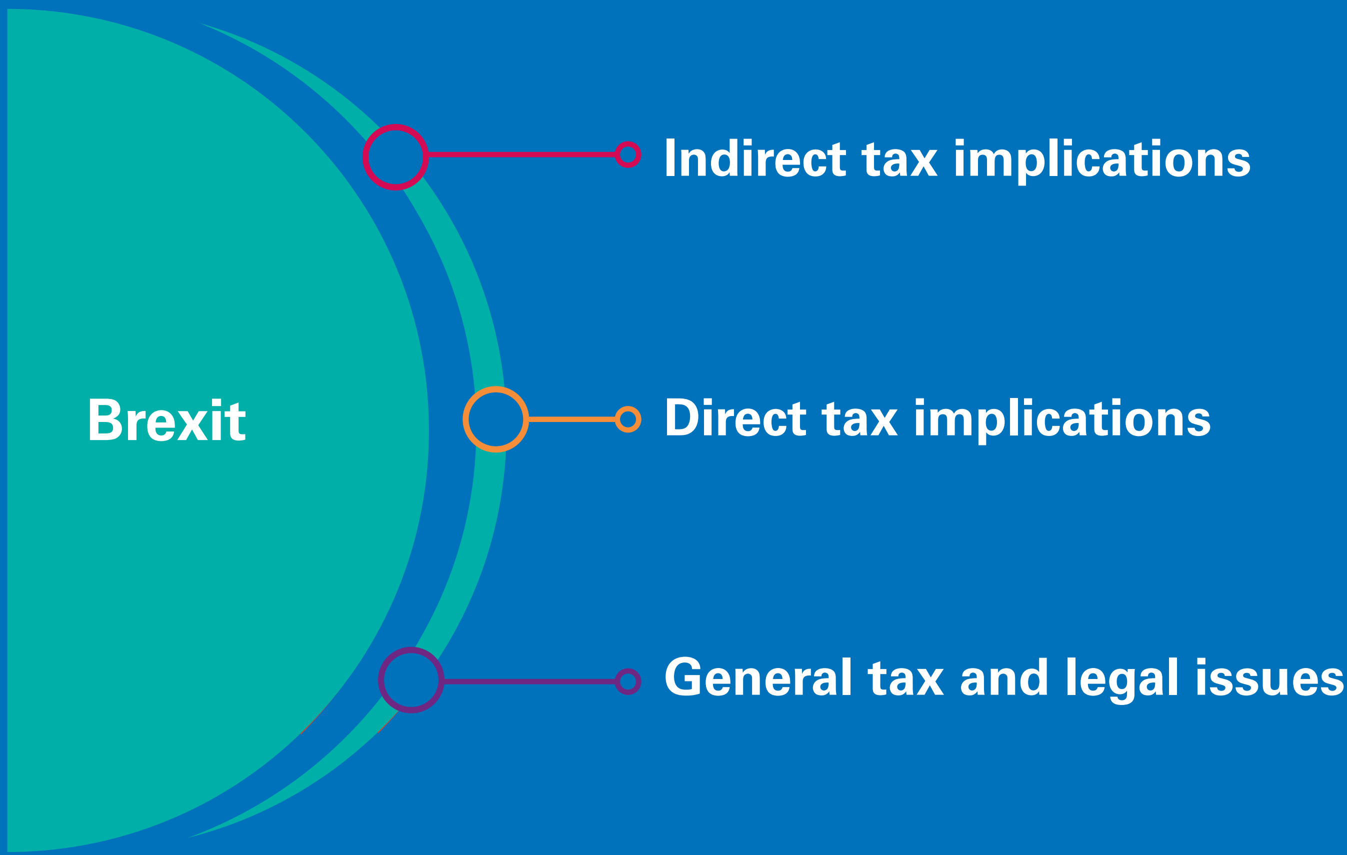
However the development of economic policy has not always been a political priority and as a result we are having to play catch up on issues ranging from infrastructure to education. The negative impact of Brexit should be driving a real sense of urgency on a range of topics for the benefit of both inward investment and domestic business. For example in education, the vital importance of STEM (Science, Technology Engineering and Maths) cannot be underestimated and placing an increasing priority on these subjects is an economic priority. Meanwhile we need to develop a more coherent infrastructure policy for air transport, the North South electricity market and the road and rail network including links to Dublin and the rest of the island. Such policy ambitions were recently underlined in a joint North /South CBI and IBEC report highlighting the economic benefits of joined up thinking. For example, upgrading the A5 and A6 roads to international standards will make it easier for business in the North West to move goods around the island and further afield as well as provide people with enhanced mobility for work. The proposed £100 million Investment Fund to invest in private sector led projects is now essential.

If we fail to address these issues as a matter of urgency, we will end up counting the cost in terms of employment potential right across Northern Ireland. Whilst we face major additional challenges as a result of Brexit, it may also act as a catalyst in driving economic policy to the top of the agenda and keeping it there.

Brexit - UK tax implications

Potential issues for UK tax payers

The following pages are designed to help navigate the potential issues for UK taxpayers and assess the implications of the various exit scenarios



Indirect tax - Customs and excise duty

Issue	Explanation
Access to internal market	• UK will no longer have access to the internal market (assuming the UK does not join the EEA at the end of the two year negotiation period) • Customs duty may apply to EU imports and exports
Access to EU Free Trade Agreements ('FTAs')	• UK will no longer be able to avail of EU FTAs with third countries such as Mexico, South Africa, Chile, Switzerland, South Korea (as well as ones in the pipeline e.g. USA, Canada, Japan)
Union Customs Code and EU regulations are the primary source of UK customs legislation	• EU customs legislation becomes redundant in the UK

	Implications	Post Brexit uncertainties	Who's affected?
	• Potential increased cost of goods imported to UK and for UK goods sold into EU countries • Increased compliance costs and bureaucracy • Redesign Enterprise Resource Planning ('ERP') systems • Potential period of EU trade instability	• Unknown if UK will retain rights to access single market or if it will enter into negotiations with EU for a free trade agreement/membership of EEA/EFTA • Long negotiation process	• All Multinational Enterprises ('MNEs') trading goods into/from UK • UK companies selling to or buying from EU counterparties
	• Potential barrier to trade as UK exports and imports may be subject to significant customs duties in absence of FTAs • Increased compliance costs and bureaucracy • Redesign ERP systems • Potential period of international trade instability	• UK will need to negotiate trade agreements with major trade partners which can be a long process (in absence of ascending to the EEA or EFTA) • Terms may be more, or less favourable than current conditions • Complete autonomy for UK in negotiation process and desired outcomes	• All UK MNEs availing of EU FTAs • UK companies selling or buying from countries outside EU with FTAs
	• Increased customs duties • Increased administration costs of EU/foreign trade • No priority/special treatment in the EU • Invoicing and systems changes required • Could lose benefit of mutual agreements, cooperation and recognition put in place by EU • No referral to the CJEU • Potential period of international trade instability	• New customs regime for the UK required – no clarity on what that would look like	• MNEs with cross border supply chains and availing of EU customs measures

Indirect tax - Customs and excise duty

	Issue	Explanation
	**Customs reliefs and measures**	• No access to EU customs reliefs and special measures
	Anti–dumping measures	• EU anti–dumping legislation no longer applies in the UK
	EU excise duty directive	• Excise duty no longer subject to EU rules and parameters

	Implications	Post Brexit uncertainties	Who's affected?
	• Increased cost of business as companies potentially lose benefit of customs reliefs and measures e.g. inward processing relief • Increased administration costs of EU/foreign trade • No priority/special treatment in the EU • Companies lose out on mutual recognition of Authorised Economic Operator ('AEO') status	• New customs regime for the UK required – no clarity on what that would look like	• MNEs with cross border supply chains • MNEs availing of customs reliefs and AEO status
	• Lose benefit of EU wide anti–dumping legislation and investigations • Greater competition and price pressure from foreign competitors • Potential to introduce UK anti–dumping measures in favour of UK corporates	• Unknown what measures UK would introduce to replace EU rules	• UK corporates in certain industries e.g. steel industry, solar panel industry
	• Potential to set preferential excise duties to protect UK industries, for example wine or beer producers • Potential higher duties levied against UK companies in EU markets • Potential period of EU trade instability	• Unknown if UK will retain rights to access single market or if it will enter into negotiations with EU for a free trade agreement	• UK suppliers and purchasers of goods subject to excise duties

Indirect tax - VAT

Issue	Explanation
VAT is a tax regulated by consistent EU–wide rules	• Intra–community supplies of goods and services will now be treated as imports and exports between UK and EU Member States • UK rules and interpretation may diverge with EU over time
Specific EU VAT schemes no longer apply	• Sector specific EU schemes, such as Tour Operator Margin Scheme ('TOMS') and the Mini One Stop Shop ('MOSS') potentially no longer applicable
VAT is governed by EU legislation and interpretation	• UK no longer subject to challenges by European Commission or to the jurisdiction of the CJEU

	Implications	Post Brexit uncertainties	Who's affected?
	• Transaction–level VAT treatment and hence invoicing and systems requirements would need to change • Potentially some VAT leakage in certain supply chains • No EU reliefs available e.g. triangulation relief • Potentially no more statistical reporting (Intrastat) and associated compliance • Greater autonomy over VAT rates and reliefs	• It is expected that the current UK VAT law (legislation and case law) will remain but it is currently unknown if the UK will retain its domestic VAT rules in the same form and how it will interact with EU counterparts	• UK companies selling or buying goods or services with EU member states • MNEs selling into/from UK and/or with UK operations in supply chain
	• Potential upside for UK as an 'offshore' non–EU location in some cases • Greater administrative burden for UK businesses supplying telecoms, electronic and broadcasting services to EU consumers	• Unknown if UK will retain, replace or unwind existing EU rules and arrangements and how this will interact with EU VAT law	• MNEs in tourism industry and UK companies providing certain telecoms, broadcasting and electronically supplied services to EU customers
	• UK corporates no longer afforded protection under EU VAT principles or a right to appeal to CJEU • Cannot rely on CJEU and EU jurisprudence for VAT matters • UK courts decide interpretation of UK, domestic VAT legislation	• Possible that UK would simply continue to mirror EU interpretations and take into account EU judgments	• UK companies selling or buying goods or services with EU member states • MNEs selling into/from UK and/or with UK operations in supply chain

Direct tax

	Issue	Explanation
	Withholding Tax ('WHT') — EU Parent/Sub Directive	• EU subsidiary companies no longer able to remit dividends free of WHT under the EU parent/sub directive

Implications	Post Brexit uncertainties	Who's affected?
• Potential WHT costs • UK potentially less favourable as a holding company location • WHT will apply at the lower of the domestic rate or the Double Tax Agreement ('DTA') rate • In many instances this should still result in a 0% rate of WHT • However, in some instances, the dividends remitted could suffer WHT (e.g. 10% WHT on dividends from Greece and Portugal; 5% WHT on dividends from Austria, Croatia, Czech Republic, Germany, Italy, Luxembourg, Romania) • EU resident holding companies which receive dividends from UK subsidiaries may also be affected. Whilst the UK does not levy WHT on dividends, in certain jurisdictions the dividend may be subject to tax in the hands of the recipient. The parent/sub directive generally provides an exemption for dividends received from within the EU. Once the UK leaves the EU, this exemption may not be available	• Effect will vary depending on the country of the counterparty, DTA rates of WHT and the form of Brexit model that is negotiated • Depending on the arrangements with each jurisdiction, there may be a change in the administrative and compliance requirements • Depending on the model adopted there are various options for the future of dividend withholding taxes. EEA membership for example may mean that the directive still applies	• All MNEs • UK holding company structures • Societas Europaea companies • EU holding companies with material UK subsidiaries

Direct tax (continued)

	Issue	Explanation
	WHT — EU Interest and Royalties Directive	• Intra EU payments of interest and royalties will attract WHT in certain circumstances
	State Aid	• UK is no longer subject to EU law which prohibits state aid (measures which distort competition or inhibit the fundamental freedoms)

	Implications	Post Brexit uncertainties	Who's affected?
	• Possible WHT costs for EU subsidiary companies • UK potentially less favourable as an IP holding or financing location • WHT applies at the lower of the domestic rate or the DTA rate. In many instances this will still equate to a 0% WHT rate • However, interest and royalty payments from the following countries could suffer WHT (this list is non exhaustive): • Interest: Belgium, Italy, Portugal Romania, Malta, Cyprus • Royalties: Croatia, Italy, Luxembourg, Poland, Portugal, Malta, Romania	• Effect will vary depending on the country of the counterparty, DTA rates of WHT and the form of Brexit model that is negotiated • Depending on the arrangements with each jurisdiction, there may be a change in the administrative and compliance requirements • Depending on the model adopted there are various options for the future of interest and royalty withholding taxes. EEA membership for example may mean that the directive still applies	• All MNEs • UK holding company structures • EU resident companies receiving interest and royalty payments from the UK • Societas Europaea companies dealing with their UK subsidiaries
	• UK government may be able to establish favourable tax regimes for specific industries • EU countries will be free to discriminate in certain areas against UK corporates, and new market entrants and investors to the UK may be discouraged • On the other hand where there are genuine market failures the UK government may be able to step in	• Outcome uncertain as it depends to what extent the UK faces 'moral' pressure to play by EU state aid rules, and indeed, the form of Brexit model that is negotiated • The state aid rules in the EEA agreement are broadly equivalent to the state aid rules in the EC treaty which apply across the EU • In any event the UK is likely to have some form of state aid rules in place, whether these have a general scope or are more targeted	• All MNES and domestic corporates • Foreign Direct Investment • New market entrants and start–ups currently launching their business

Direct tax (continued)

Issue	Explanation
EU reliefs based on mergers directive	• Potential loss of tax relief on certain company mergers, acquisitions and reorganisations — making, for example, cross–border mergers into a branch structure more problematic
Discrimination in corporation tax measures	• UK tax legislation no longer required to treat all EU corporates equally

Implications	Post Brexit uncertainties	Who's affected?
• Tax cost to UK corporate reorganisations, acquisitions and mergers • UK potentially less favourable as a headquarters location • Status of Societas Europaea companies unknown • Timing of the implementation will be crucial as deferral of taxes will be possible up to the point of exit • Increased administration and regulation on EU/UK mergers if no agreement is reached • The opposite effect of this is that there may be a decrease of regulation and administration surrounding non EU/UK mergers	• UK may well retain its own relatively liberal reorganisation rules • There is uncertainty over whether the UK company access to the merger directive be grandfathered. Both the EU and the UK would need to reach an agreement on the length of the transition process	• All MNEs with UK companies • Particularly MNEs considering M&A activity • Foreign Direct Investment
• UK may discriminate against non–UK corporates via tax legislation to give a competitive advantage to the domestic industry and vice versa in Europe • Non–EU members cannot currently refer discrimination to CJEU and cannot benefit from EU arbitration legislation. However, depending on the form of Brexit model negotiated there may be a possibility of appealing to the EFTA court (EEA/EFTA members only) and perhaps the CJEU • Depending on the form of Brexit model negotiated, cross border loss relief may no longer be available • We may see smaller UK companies benefiting from the discrimination and not having to bear the costs associated with non–discrimination measures currently in place. This will be the case especially if a high percentage of exports are made to non–EU countries	• Impact depends on UK political events. Recent tax history suggests it is unlikely that the government would enact anything to make reorganisations more difficult • There is a possibility that some domestic exemptions could be reintroduced • It is unclear how the courts will move forward in case law interpretation, especially if new laws and prior case law conflict	• All industries but in particular regulated industries such as pharmaceuticals and financial services • Corporates with a high percentage of exports to the EU with subsidiaries in EU countries will be hit twice by this type of regulation and the cost is unlikely to be offset entirely by the benefits of discriminatory policy

Direct tax (continued)

	Issue	Explanation
	EU direct tax initiatives	• UK is no longer subject to EU direct tax initiatives such as the Anti Tax Avoidance Package and the proposed EU 'Common Consolidated Corporation Tax Base
	EU Arbitration Convention	• UK is no longer party to binding arbitration under the EU enhanced convention

	Implications	Post Brexit uncertainties	Who's affected?
	• There is a possibility that UK tax rules become 'out of sync' with EU counterparts although both should still be within the BEPS framework which will minimise the differences. The benefit for the UK is that it will not also have to comply with the EU interpretation of BEPS (the 'ATAD', or anti–tax avoidance directive) • Some components of the ATAD are already being adopted by the UK (e.g. the anti–hybrids legislation). It is unclear at what point the UK will stop adopting new EU legislation • The financial transaction tax is unlikely to apply now	• Extent to which UK would come under moral pressure to mirror EU changes unknown • Extent to which the UK is going to have to continue implementing new initiatives is unknown	• All corporates
	• Slower resolution of Transfer Pricing ('TP') disputes, Mutual Agreement Procedure ('MAP') negotiations and corresponding adjustments • Increased risk of double taxation • Cash flow cost to businesses who will not benefit from the three–year timeline to recover tax wrongfully charged • Currently EU Member States are able to benefit from EU MAP, OECD MAP and specific provisions within DTAs. EU MAP unlikely to still be available to the UK on EU exit (EU MAP is not available to EEA countries or other non EU countries). It would therefore be necessary to rely on OECD MAP and/or DTAs. Some countries have not adopted the OECD model or have not adopted it in full so this could become more complex	• BEPS Action 14 may make arbitration more straight–forward for all countries signed up, but implementation is still some way off	• All MNEs

General tax and legal issues

Issue	Explanation
Migration	• Potential restrictions on free movement of people between the EU and the UK
Social security	• Depending on nature of exit, EU/EEA reciprocal social security arrangements may no longer be available
Employment law	• Many employment laws derive from European legislation. UK legislation implementing European principles will not automatically fall away • Brexit may see a review of employment law, including the Working Time Directive

	Implications	Post Brexit uncertainties	Who's affected?
	• Impact on global mobility of employees in MNEs • UK businesses employing EU workers may need to take action to ensure they still have a right to work in the UK • UK potentially less favourable as headquarters location, with impact on value chain and international tax structuring	• The extent of any restrictions, including whether current non–EU quotas would be affected	• Employers attracting EU workers to UK • UK employers sending employees to EU • Employers attracting non–EU workers to the UK • UK as headquarter location
	• Impact on social security contributions payable by and in respect of individuals moving within the EU (including to the UK)	• UK may or may not negotiate to remain part of EEA • UK may or may not negotiate separate Social Security agreements with EU member states	• UK Citizens in the EU • EU workers in the UK • Employers attracting EU workers to UK • UK employers sending employees to EU
	• Changes to UK legislation deriving from European principles may arise, particularly in relation to agency workers' rights, working time, holiday pay and TUPE • European legal principles and court decisions could be disapplied, meaning further changes in areas such as the calculation of holiday pay	• Changes to employment laws are unlikely to be politically expedient or a priority and may take time • Changes are likely to be on detailed points, rather than overarching principles. The extent of any review is unknown	• UK employers, workers and employees (regardless of nationality) • Overseas employers with workers and employees in the UK

General tax and legal issues (continued)

Issue	Explanation
Mutual Assistance, Administrative Cooperation and Fiscalis Programme	• UK no longer subject to EU mutual assistance and enhanced administrative cooperation with other EU tax authorities
Regulation (tax consequences of)	• UK no longer viable as a EU hub location for regulatory passporting of certain goods and services into the EU
Transitional provisions	• Transitional provisions will be necessary to cover the exit negotiation period

	Implications	Post Brexit uncertainties	Who's affected?
	• Potential reduction in mutual assistance and coordination of EU multi–territory tax audits • HMRC loses access to funding for mutual cooperation initiatives under Fiscalis programme such as communication, audit and IT projects	• In current political climate it is very possible that HMRC would continue to cooperate on multi–territory audits	• HMRC and EU tax authorities • All MNEs
	• Potential relocation of business functions outside the UK will attract exit charges • Permanent Establishment ('PE') issues as a result of local establishment required to provide regulated services/goods in EU country	• UK may negotiate to remain part of EEA and preserve passporting rights • A period of instability and uncertainty is inevitable	• Financial services industry • Pharmaceutical industry • Other regulated industries
	• The extent of any transitional provisions (if any) are at this stage unknown	• Some commentators have suggested that 'full Brexit' could take up to 10 years. This would require a raft of transitional provisions, creating an uncertain environment for business in the medium term	• All stakeholders

Notes

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Irish CEO Outlook 2016

of Irish CEOs believe the next three years will be **more critical for their industry than the previous 50.**

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