Article 50 Edition

Brexit in the boardroom

Issues and implications for Irish Business

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Introduction

The decision by the United Kingdom to leave the EU is an enormously significant decision for global business, 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.

However, it is in everyone's interests that the eventual trading relationship between the EU and the UK remains as business friendly as possible. Ireland is in a unique position as we are the only EU state to share a land border with the UK. Thus the prospect of a 'hard border' has highly negative implications for trade and employment across the island. Such an outcome would add unnecessary complexity and cost to business and every effort should be made to prevent potential disruption to commerce on both sides of the border as a result of Brexit.

The Irish government is playing a leading role in ensuring that Ireland's interests are well represented and we are strong advocates for an outcome that protects trade, investment and employment. 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 that this document is a useful aid in considering some of the issues in relation to Brexit.

Shaun Murphy
Managing Partner
KPMG in Ireland

Article 50 - Business needs to plan for Brexit

The UK government has invoked Article 50 of the Lisbon treaty, formally commencing the process of its exit from the EU. If a deal is to be reached, the negotiations will involve compromises that will affect existing trading and political arrangements. No deal, which is certainly possible, will create a cliff edge impact for all parties. Either way, there will be significant consequences for business.

The Time to Act is Now

In our conversations with Irish business, it is clear that many companies have put a Brexit plan in place so they are ready to respond to the challenges and opportunities Brexit will create – regardless of the uncertainty over the eventual outcome. We are working with them to assess the implications in terms of:

- The strategic and operational impact
- the tax impact on their business
- supply chain issues
- regulatory and legal issues
- data protection matters
- employee mobility and immigration
- financing arrangements and
- transactional and deal opportunities.

We encourage those Irish businesses who to date have adopted a 'wait and see' approach to act now and put a Brexit plan in place using these areas as a framework for their plans.

We are also working with Government, businesses and representative bodies in both the Republic of Ireland and Northern Ireland to help identify solutions to the challenges posed by Brexit and to identify opportunities that may arise. If there are particular views you would like us to consider or represent in any of these discussion please let us know.

A Matter of Politics

Inevitably the outcome of the negotiations between the EU and the UK will be determined by politics. This is likely to mean that what could be seen as shorter term goals of certain sectoral interests will be sacrificed in the longer term interests of EU unity. The British Government has stressed its desire for agreement which will see a strong partnership between the EU and the UK, whilst committing to negotiate in its own best interests. In response, EU President Donald Tusk notes a determined and united group of Member States seeking to protect the interests of the 27.

Ireland is mentioned specifically in the UK notification document with the aspiration that the UK's departure "does not harm the Republic of Ireland." Whilst there are very strong arguments to ensure that arrangements specific to Ireland's particular relationship with the United Kingdom are not disrupted – notably the Good Friday Agreement and the Common Travel Area, ultimately pan-EU considerations will play the key role in determining the overall outcome.

The Irish Government has committed to publishing a consolidated paper providing more detail about its priorities and approach to the negotiations before the European Council meeting on 29 April. The challenges facing individual states or sectors in seeking special treatment are significant. For example it has been reported that the German car industry has already accepted that a special deal for their sector will not be prioritised in the interests of EU unity.

What Next?

Donald Tusk has stressed that EU law will continue to apply to and within the UK for the time being. He intends to proceed with an orderly withdrawal and will provide guidelines for the EU Council to adopt on 29 April. Michel Barnier will lead negotiations on behalf of the EU.

Reaching agreement will not be easy. Angela Merkel's statement on 29 March that she wants the divorce arrangement to be agreed before the terms of a future relationship should be negotiated, notwithstanding the UK's stated desire for these negotiations to run concurrently, is an early indication of the challenges ahead.

To achieve agreement, the withdrawal agreement would need to be ratified by the UK, approved by the European Parliament, as well as by at least 20 out of 27 Member States represented in the Council. These countries will need to make up at least 65% of the population of the EU, or account for around 290 million of the EU's population without the UK. Hence there is likely to be significant interaction between the EU Commission, the EU Council and the EU Parliament throughout the negotiations. If the deal on the future relationship impacts policy areas that EU Member States are primarily responsible for, that agreement would have to be signed off by all of the national Parliaments of the 27 EU Member States.

Ultimately, the implications of Brexit for businesses in Ireland (North and South) depend on the terms of the future EU-UK relationship and on the structure of each individual business as well as the sector in which it operates.

Notwithstanding the uncertainty, having a plan in place will help you manage the challenges and hopefully the opportunities that Brexit will bring. If you would like to discuss these or indeed other related business issues, please get in touch with your usual KPMG contact.

Brian Daly
Head of Brexit Group
KPMG in Ireland

Terry O'Neill
Indirect Tax Partner

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Indirect Taxes

KPMG tool to model the impact of hard border on business

Brexit has generated more business commentary than almost any other topic in the past year. Brian Daly, head of Brexit at KPMG in Ireland says: "Understandably much of the commentary is conjecture as we don't know what the final agreement between the EU and the UK will be."

Given the British government's recently stated position on leaving the single market and customs union, businesses on both sides of the Border are working to identify some of the trade-related implications as a result of Brexit under different scenarios.

Daly, who also chairs the finance & professional services committee of the British-Irish Chamber of Commerce, adds: "Many of these scenarios point to the probability of the UK leaving the customs union, and businesses involved in Ireland-UK trade are now assessing the detail of what the financial impact could be."

Unless there is a tariff-free EU/UK trade agreement, Irish goods will be subject to tariffs and the EU's external border will run through Ireland, with a customs regime between the two jurisdictions.

"Businesses should consider identifying the impacted supply chains now and quantifying the financial consequences of potential additional customs duties, VAT and trade compliance costs," says Niall Campbell, KPMG's head of indirect tax.

Innovation

In this context interesting innovation has been the development of software that helps businesses deconstruct their supply chains and identify where the costs, bottlenecks and opportunities may lie. Campbell has been working with colleagues in London, Dublin and Belfast to develop a technology tool that models the potential Brexit impact.

"Interrogating your data from different angles is critical," says Campbell, who is helping a range of businesses gain an understanding of the implications, based on various Brexit scenarios. Using VAT and Customs filing data, the software can produce a bespoke report quantifying the key customs duty and VAT impacts arising from Brexit. The tool maps the flows of goods into and out of the UK, giving visibility over the elements of the supply chain that are most exposed to additional cost or supply chain risk as a result of Brexit.

"Armed with this insight, businesses can then work to identify specific solutions to the issues raised, which could involve alternative supplier sourcing, revision of trade terms or changes to the logistics process," says Campbell.

One of the key issues in determining the potential duty liability and mitigation strategies is the origin of a product and all of its components. Campbell highlights Britain's car industry as an obvious example of the tax and tariffs issues facing both the EU and UK. For example, the UK's automotive trade body, the Society of Motor Manufacturers and Traders, suggests that of the 30,0000 components in the average UK-built car, almost six in ten (59 per cent) are imported and of that figure, two-thirds are imported from elsewhere in the EU.

The impact of Brexit is also exercising the minds of the business community in Northern Ireland. "Brexit could dramatically change the financial impact of the physical flow of goods in and out of Northern Ireland – including the hugely critical impact on trade with the Republic," says Johnny Hanna, KPMG's Belfast-based head of tax for Northern Ireland.

Solutions

Hanna stresses the value of being able to assess existing supply chains and to use technology where possible to better understand the issues and identify solutions, and says the scale of the Brexit challenge is well understood by cross-Border business. He cites the doubling of North/South trade since 1995 and the fact that 56 per cent of Northern Ireland's goods and services exports go to the EU – with two-thirds of that heading across the Border – as evidence of why the northern business community is so engaged with the subject.

"It is about more than just tariffs and businesses; North and South are extremely concerned about the possibility of a 'hard' Border leading to delays and costs linked to traditional customs clearance processes," Hanna adds.

With economic growth subject to a myriad of external factors, friction in trade flows is clearly unwelcome. "There are attractive opportunities for NI-based business in the Republic. Northern Ireland's costs are competitive, product quality is widely acknowledged and the exchange rate is favourable," says Hanna.

"However, margins are tight and there is intense competition in every sector. The prospect for example of perishable goods supplied across Border by a next day or less fulfilment business getting held up by customs issues, especially in areas such as food and agribusiness, is a major concern."

Regardless of possible eventual Brexit outcomes for Ireland, Niall Campbell believes that businesses who understand their supply chains now and use innovative technology to quantify product, customer or supply chain exposures "will be amongst those best placed for the post-Brexit world – whatever that brings."

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Niall Campbell
Head of Innovation

The VAT and customs challenges of Brexit

The Brexit impact on indirect taxes is likely to be challenging for Irish companies. It is critical that Irish businesses trading in or with the UK start to plan to minimise potential additional costs, negative cash flow and disruption to supply chains.

This exercise will need to be done in parallel with the negotiations which will determine the rules to apply post exit from the Union - not afterwards, as that could be too late to implement meaningful supply chain modifications.

What are the different exit scenarios and what do they mean?

Many commentators have suggested that the most likely scenario is a so called 'Hard Brexit'. However it is worth considering various possibilities which may be negotiated as follows:

The Norwegian Model

In this case the UK would retain its membership of the European Economic Area (EEA) and the European Free Trade Area (EFTA). This results in a free movement of goods, services, people and capital. However, under this model the UK would not be part of the EU VAT area which is likely to result in increased cash flow costs and administration burdens of trading in and out of the UK.

The Swiss Model

The UK would continue to avail of the current bilateral agreements with the EU and membership of EFTA. However, in this case the UK would not have access to current EU Free Trade Agreements (FTA) nor would the UK be part of the EU VAT area. In addition to the VAT challenges of the Norwegian model, the loss of FTA benefits could result in significant extra duties / tariffs and import obligations in respect of trade with the U.K.

The Turkish Model

In this scenario the UK would solely retain Membership of the Customs Union with the EU which would result in no new tariff barriers. However, the UK would not benefit from current EU and EFTA FTAs and it would not be part of the EU VAT area.

Free Trade Agreements Model

Under this model the UK would negotiate a Bilateral Free Trade Agreement with the EU and other major trading partners. However, the UK would not be part of any customs free trade area or trade association. In addition, the UK would not be part of the EU VAT area.

World Trade Organisation Model

Commonly referred to as the "Hard Brexit" model, the UK would not be part of any customs free trade area or trade bloc / association. Furthermore, the UK may decide not to negotiate a preferential trade agreement with the EU and, by default, the most favoured nation tariffs will be applied in line with membership of the World Trade Organisation. Under this model the cost and administrative burdens of trading in and out of the UK would increase significantly, particularly for certain sensitive industries.

In none of the above options does the UK remain within the EU VAT area – accordingly businesses should plan for the resulting changes in the VAT treatment of their supply chains (in and out of the UK) and consider any mitigation strategies which may be beneficial. It should be noted that the VAT rules may not be reciprocal – i.e. the U.K. may decide to implement preferential VAT treatment to replicate the current position but EU countries will be required to treat UK imports like all other imports from non-EU countries.

What does this mean for VAT and customs rules in the UK?

Whichever model is ultimately agreed, Brexit is likely to result in some fundamental changes to the UK VAT and customs environment in which current trade takes place. As the UK is one of Ireland's largest trading partners, it is critical that Irish businesses understand what changes are coming down the tracks. A summary of the impact on the UK rules is set out below.

VAT regulated by EU-wide rules

It is expected that the current UK VAT law will largely remain in place 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. There are many policy choices which the UK government will need to decide on, ranging from incentivising certain industries or transactions to using VAT to increase the total tax take. Fundamentally, it will mean that current VAT zero-rated intra-community supplies of goods are likely to be treated as VATable imports and exports between UK and EU Member States. Apart from the potentially negative cash flow effects, the implication of these changes in treatment includes the need to alter ERP systems, invoicing and VAT reporting processes. It could also lead to disruption or delay in certain supply chains, which may require solutions such as VAT & customs warehousing or other supply chain modifications.

VAT governed by EU legislation and interpretation

Post Brexit, the UK would no longer be subject to challenges by the European Commission or to the jurisdiction of the European Court of Justice (CJEU), in respect of local VAT matters – both of which have positive and negative implications. On one side, it will mean that UK businesses will no longer be afforded protection under EU VAT principles or a right to appeal from the UK courts to the CJEU. In addition, it would means that UK businesses could not rely on CJEU and EU jurisprudence in connection with VAT matters and UK Courts will ultimately decide interpretation of domestic UK VAT legislation. Of course, it is possible that the UK would continue to mirror EU interpretations and take into account CJEU judgments, however, this remains to be seen in practice.

EU VAT Schemes

Under current EU law certain sector specific EU VAT schemes are available such as Tour Operator Margin Scheme (TOMS), the Mini One Stop Shop (MOSS) and

reliefs for SME's. Post Brexit such schemes will no longer be mandatory within the UK. The removal of these schemes from UK VAT law could impact on business within the tourism industry and UK businesses providing certain telecoms, broadcasting and electronically supplied services to EU customers. It is currently unclear if the UK will retain, replace or unwind existing EU rules and arrangements – with the possibility for "cherry-picking" to ensure that the U.K. is as competitive as possible.

Access to internal market

It is unknown if the UK will retain rights to access the single market or if it will enter into negotiations with the

EU for a free trade agreement or membership of EEA/ EFTA. Assuming the UK does not join the EEA post exit from the EU, then the UK will no longer have access to the benefits of the internal market. This could lead to a potential increased costs of goods imported into the UK and for UK goods sold into EU countries. It is certain that this route would result in increased trade costs, increased compliance costs and the need to amend Enterprise Resource Planning (ERP) systems.

Access to EU Free Trade Agreements

The UK may longer be entitled to avail of EU FTAs with third countries such as Mexico, South Africa, Chile, Switzerland, and South Korea (as well as ones in the pipeline e.g. USA, Canada and Japan). As a result, the UK would be required to negotiate new trade agreements with their major trade partners which typically involves a prolonged negotiation process. From the UK's perspective they will have greater autonomy in the negotiation process and greater input into the desired outcomes – although their trade partners will also have their own objectives. In the absence of any successfully negotiated trade agreements, however, the net result could be potential trade barriers as exports and imports in and out of the UK may be subject to significant additional customs duties and compliance procedures. This is particularly relevant for certain exposed sectors in Ireland, such as Agri-business, which trades heavily into the U.K.

Unions Customs Code and EU Regulations

Currently the Unions Customs Code and EU Regulations (to include the current customs reliefs and measures) are the primary source of UK customs legislation. Post Brexit, the EU customs legislation would become redundant in the UK which would potentially result in increased customs duties, revised procedures, increased administrative costs of EU/foreign trade and systems changes.

EU excise duty directive

Excise duty in the UK would no longer be subject to the current EU rules and parameters. This could result in the UK setting preferential excise duty rates to protect UK industries, for example alcohol. This issue will be very relevant to Ireland, given our border with Northern Ireland and the volume of cross border retail activity.

Next steps? Don't wait!

Waiting to see what will happen post Brexit is not an option. Given the major indirect tax implications Brexit may have on businesses trading in and out of the UK, it is essential to start planning now. Businesses who have a good understanding of their supply chains and have quantified their Brexit exposures in detail at a product, customer or supply chain level will be placed to create the most competitive solution which is fit for the post-Brexit world – whatever that brings.

KPMG's Indirect Tax Impact Assessment Tool

We have developed a unique technology tool which models the potential Brexit impact - specifically identifying the impacted supply chains and quantifying the financial impact by way of potential additional customs duties, VAT and trade compliance costs.

Using your VAT and Customs filing data, the KPMG indirect Tax Brexit tool can produce a bespoke report quantifying the key Customs Duty and VAT impacts arising from Brexit for your company.

The tool maps the flows of goods into and out of the UK giving you visibility over the elements of the supply chain that are most exposed to additional cost or supply chain risk as a result of Brexit. Armed with this insight, businesses can then go about the process of identifying specific solutions to the issues raised, which could involve alternative supplier sourcing, revision of trade terms or changes to the logistics process.

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. Although the British government has ruled out some of these options, it would be premature to predict the eventual outcome.

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.

Gordon Wade
Legal Services

Data protection, Brexit and the implications for Irish business

Brexit will have implications for Ireland in many sectors, not least of which will be the area of data protection. This is all the more significant pending the introduction of the EU General Data Protection Regulation (GDPR) in May 2018.

Post-Brexit, the UK will be considered a "third country" and any transfers of personal data, even within a group of companies, will be considered to be a transfer outside the EEA. Irish and European data protection laws require certain conditions to be met before any personal data may be transferred to a "third country", one of which is the designation by the EU Commission, following a review of the UK's data protection laws, of the UK as a country offering an "adequate" level of data protection equivalent to that protection offered in the EU.

Matt Hancock, the UK government minister responsible for data protection, made it clear on the publication by UK Government of the "White Paper on the United Kingdom's exit from and new partnership with the European Union" that the GDPR will come into effect in the UK on 25th May 2018. Therefore data controllers and data processors in the UK will be bound by the GDPR until the Article 50 process is complete. Importantly, Minister Hancock noted that he did not foresee any significant changes being made to UK data protection law.

EU regulators and courts have adopted a very strict interpretation of "adequacy" effectively requiring substantial equivalence with the EU data protection regime. So far, only Switzerland, Guernsey, Argentina, Isle of Man, Faroe Islands, Jersey, Andorra, Israel, New Zealand and Uruguay have been approved in full. Canada has been approved for certain types of personal data and the transfer of advance airline passenger data to the US, Canada and Australia has also been approved.

"The Snoopers Charter"

Whilst the UK have committed themselves to the GDPR, it may be noted that considering the UK recently passed the Data Retention and Investigatory Powers Act 2016 (aka the Snoopers' Charter), giving sweeping powers of surveillance and retention to UK law enforcement agencies, it is questionable whether the EU Commission will so readily approve the UK as providing "adequate" levels of data protection. Indeed, the Court of Justice of the EU (CJEU) has already called the Snoopers' Charter into serious question, giving the sense that should it still be in force following Brexit, the UK may be unlikely to get the EU stamp of approval for data transfers.

Whilst the initial introduction of the GDPR will mean business as usual between Ireland and the UK in terms of data transfers, what happens once Brexit formally happens is crucial. If the UK receives formal approval from the Commission for data transfers, then any concerns Irish companies may have will fall away. However, if the Commission feels that the UK's laws do not meet the "adequacy" standard, businesses in the UK would be subject to the same restrictions that currently apply to data transfers from the EU to the US – namely, they can happen only in certain specified situations which includes the use of:

- EU Standard Contractual Clauses (general type of contracts prepared specifically for data transfers by the Commission) (SCCs);
- EU Binding Corporate Rules (legally enforceable privacy/data protection codes of practice) (BCRs); or
- a bilateral agreement similar to the (now invalid) EU–US Safe Harbour or the (currently in limbo) Privacy Shield.

It should be noted that implementing SCCs or BCRs can be both costly and complex for Irish businesses and any bi-lateral agreement would need both EU and UK approval. It should also be noted that although officially a non-EU member state post-Brexit, the UK will nonetheless bound by the GDPR as it will still apply as a matter of EU law to UK businesses in relation to their sales of goods and services into, or monitoring individuals in, the EU.

Payroll Issues

To put this issue into perspective, where an Irish company has a UK-based operation and holds, for example, payroll data about Irish or other EU nationals in that UK base, it may need to start considering whether another EU country should act as the base instead. Alternatively, the company may instead have to adopt compatible standards to the new EU rules (such as BCRs). Otherwise, unless and until the UK receives Commission approval or some form of bi-lateral agreement is reached, any transfers of payroll data from Ireland to the UK post-Brexit will fall foul of the GDPR. It should also be noted that any company found to have transferred payroll in breach of the GDPR may be subjected to a fine of 4% of its global turnover or €20m, whichever is higher."

If the UK retains the GDPR post-Brexit, the UK courts, although not bound to have regard to decisions of the CJEU, are likely to be heavily influenced by the CJEU, either because they will be conscious of the "adequacy" issue or because the CJEU's approach closely aligns with a modern, universal approach to data protection. In any event, Irish business with UK operations need to be aware of the data privacy challenges that Brexit poses and should monitor the progress of Brexit with this very much in mind.

> "Irish business with UK operations need to be aware of the data privacy challenges that Brexit poses."

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?

Aoife Newton
Legal Services

Employment and immigration

The focus on immigration in recent Brexit discussions appears to have somewhat broadened from the speculation of what Brexit could mean for the mobility of employees between Ireland and the UK to include a political focus on border control and general security concerns.

Politicians on both sides of the Irish Sea appear to favour the retention of the Common Travel Area, however, our EU partners may take a less collegial view of this special arrangement which we enjoy with what is destined to become a non EU Member State.

The Common Travel Area (the "CTA") is a unique arrangement which allows for full freedom of movement of people between Ireland and the UK. The CTA led to the development of the Short Stay Visa Waiver Programme (the "Programme") which enables certain non-EEA visa required nationals to travel between Ireland and the UK without performing any additional immigration formalities.

The Programme facilitates individuals travelling from certain countries in Eastern Europe, the Middle East and other parts of Asia who have a valid UK Visa, to lawfully travel to Ireland for up to 90 days or to the end of the period of their leave to remain in the UK (whichever is shorter). It is interesting to note that the Programme is not reciprocal - possession of an Irish visa does not allow travellers enter the UK. Anybody who is visa required by the UK and who wishes to enter the UK, must be in possession of a valid UK visa. This includes those wishing to visit Northern Ireland.

The Programme was launched in July 2011 with a view to promoting tourism from emerging markets. The Programme has since been extended and will now run until 31 October 2021 - a point in time when much of what Brexit means for immigration will be beyond speculation.

The CTA has also led to the creation of the British Irish Visa Scheme which permits Chinese and Indian nationals visiting the UK on a short term basis to travel to Ireland and vice-versa without additional immigration requirements. This means that Chinese and Indian business and tourist visitors can travel between Ireland and the UK on a single visa.

It is far from clear at this point whether the CTA will continue following Brexit, however, it is likely that the CTA will feature significantly in the negotiations on immigration matters between Ireland and the UK.

> "One of Ireland's challenges is to balance the political issues associated with the border whilst fulfilling its responsibilities as a member of the EU."

It has been suggested that Ireland may have to increase its border security as part of an agreement with the UK to help manage its concerns regarding immigration security post Brexit. Such focus could be viewed by the EU as an erosion of the free movement of workers between EU Member States; however, this may be an essential element of the maintenance of the CTA. It is clear that one of Ireland's challenges is to balance the political issues associated with the border whilst fulfilling its responsibilities as a member of the EU in maintaining the free movement of workers across the EU.

What this means for employers with a pan European workforce has yet to be established; however, we already know that the State is dealing with increased passport and employment permit applications. In that regard, as previously advised, further delays in processing applications may become a reality and HR practitioners will come under increasing pressure to manage timelines of establishing new recruits in Ireland. Accordingly, we advise HR practitioners to consult with KPMG's Employment and Immigration team early in their recruitment process.

Michael Rooney
Head of Global Mobility

Brexit and global mobility

This upheaval to the EU principles of the free movement of people brought about by Brexit will mean a period of uncertainty for both employers and employees whilst the 30-40 years of EU legislation is unravelled.

Brexit - Personal taxes and social security

The power to control domestic tax policy has remained to a large extent with the Member States of the European Union. However, one of the 4 pillars of the EU is the freedom of movement. In order to facilitate this, the EU had a common social security regulation for at least 30 years to enable workers crossing EEA (and Swiss) borders on a temporary basis to remain in their home country social security system for a period usually up to 5 years. It has a number of benefits, namely that workers and their families are covered under the local health system when they travel. In addition they do not accumulate a number of different pension entitlements in Member States which can become an administrative nightmare on retirement.

Social Security

Brexit will mean that UK nationals coming to work in Ireland or any other Member State will not be covered by the EU social security regulation. In theory any person seconded from the UK to Ireland will have to pay Irish social security (PRSI) from Day 1. At current rates this may benefit their employer as the Irish employer PRSI rate of 10.75% is lower than the UK employer national insurance rate of 13.8%.

Conversely, any Irish employer sending employees to work in the UK will have to pay UK social security at a higher rate so the costs will increase. However, for employees (especially higher earners) there will be an additional cost as the Irish employee PRSI rate is 4% as opposed to 2% in the UK for any earnings in excess of the threshold of £43,000.

It is unknown when, or if, the UK will be allowed to negotiate a social security agreement with any EU Member State post Brexit or they may seek to become a member of European Economic Area (EEA) similar to Norway and Iceland. To do this they would have to uphold the principle of free movement of people (within the EEA) which will become a political consideration.

Workers are not the only ones affected by Britain leaving the EU, even day trippers or holidaymakers are entitled to health insurance cover in the Member State they are travelling to if they hold a European Health Insurance Card (EHIC), formerly known as an E111. This has particular ramifications for those travelling across the border in Ireland and also for holidaymakers to the UK. Whilst the UK has a generally free health service for UK residents, will Irish nationals be able to benefit from it and similarly for UK nationals coming to Ireland where the heath service is not free, will all individuals need to take out holiday insurance to cover health care that they did not necessarily require previously?

State benefits

If you have worked in Ireland and in one or more EU Member States, your social insurance contributions from each State can be taken aggregated with Irish social insurance contributions to help you qualify for one of the Irish social welfare payments listed below. In the case of some payments (e.g. Jobseeker's Benefit, Illness Benefit and Maternity Benefit) your last social insurance contribution must be paid in Ireland in order to qualify.

Brexit creates uncertainty in respect of the treatment of past contributions made by Irish citizens to the UK national insurance system. If those who made contributions in the UK, intend to retire in Ireland and receive an Irish state pension, how will those UK contributions be treated in determining eligibility for a State pension in Ireland?

Once Brexit occurs will Ireland automatically adopt the existing Bilateral Agreement with the UK (like it has with the US, Canada and others) to protect social security payments made in those countries? Ireland currently has a Bilateral Agreement with the UK currently in force to cover the Isle of Man and the Channel Islands which are not within the EU.

It is conceivable that this agreement will be used on an interim basis on Britain leaving the EU or used as the basis for adopting a new Bilateral Agreement between the UK (as a whole) and Ireland. One major difference with EU regulation is that a temporary worker can be seconded to another Member State and still remain within their home country social security system for up to 5 years but under the Bilateral Agreement above the time period is restricted to 3 years.

Taxation

Member States of the EU have always had control of their taxation policy and accordingly Brexit will not impact the personal taxation rules of globally mobile individuals. The interaction of taxation between the UK and Ireland is governed by a Double Tax Treaty which is independent of the EU. Accordingly, for anyone moving between Ireland and the UK the principles of taxation will not change.

Any person performing duties in Ireland will be taxable in Ireland, unless they can gain an exemption under a Double Tax Agreement, in general this means they work in Ireland for less than 183 days in a 12 month period, are employed by a non-Irish employer and their costs are not recharged to Ireland. It is worth noting that these rules for gaining an exemption in the context of Irish PAYE withholding requirements have been tightened recently by Irish Revenue.

Remittance basis of taxation

Both the UK and Ireland have adopted a remittance basis of taxation for non-domiciled individuals. In general, an individual who is not of Irish origin and does not consider Ireland his/her permanent home will in all likelihood be considered non-domiciled in Ireland. There is favourable tax treatment for these individuals in that their overseas investment income and gains are taxed on the remittance basis. This means that they are only taxed in Ireland on this income if they bring it into Ireland.

Whilst the UK has been an attractive location for globally mobile individuals, because of the remittance basis of taxation, Ireland has similar tax rules in place and may offer an attractive alternative to some non-domiciled individuals (both UK and non UK). Additionally, whilst the UK has sought to restrict the availability of the remittance basis of taxation, it will no longer be available for long term residents (15 out of the last 20 years) from 6 April 2017 there are no signs that Ireland will adopt a similar approach in the foreseeable future.

Sterling volatility

The Sterling to Euro exchange rate plummeted after the UK Euro referendum result was announced in June 2016 and the volatility has remained since. The consequences of this fall in Sterling value for expats in Ireland is that any employee who is paid in Sterling but living in Ireland has seen a significant reduction in their Euro spendable income. An expat paid in Sterling and sent to Ireland on 1 January 2016 would have an exchange rate of STG1: 1.35 Euro on that day. As of March 2017 that rate is fluctuating at about STG1: 1.15 Euro which is a drop of 15% in terms of gross income when converted to Euro. This will cause serious concern for expats living in Ireland and employers will need to review their contractual arrangements with affected employees and consider the need to compensate employees for the

exchange rate volatility or perhaps introduce a local Cost of Living Allowance. Conversely, the employee costs recharged to Ireland may be lower and employers social security costs may reduce which will mean a saving for some employers.

An age of uncertainty

All the aforementioned issues will mean significant changes to the rules on social security, payment of state pensions and benefits and the freedom to work and travel. Whilst it is conceivable that agreement will be reached between the Ireland and the UK in due course, we are one of 27 countries that will be on the list of countries seeking agreement and certainty for their nationals' interests.

There will be a period of transition and employers should review which employees will be affected by Brexit, both secondees and business travellers. Employers may need to review immigration requirements, look at their travel insurance arrangements, health cover for mobile employees and the cost of paying social security in the UK or Ireland. In addition, employees may require greater certainty from their employer that they will not be at a disadvantage by paying into the UK social security system in terms of their state pension and benefits aggregation.

KPMG's Global Mobility Services team can advise on the implications of Brexit for your employees and make sure that your company is flexible and agile to deal with the people issues that Brexit will bring.

Brian Daly
Head of Brexit Group

Getting Ireland Brexit ready

Coinciding with Budget 2017, the Department of Finance issued a paper entitled "Getting Ireland Brexit Ready". It provides an overview of the policy responses that have been included in the Budget to help Ireland remain competitive and protect the public finances from Brexit-related shocks.

The paper acknowledges that with around 16% of all exports going to the UK and a similar share of imports depending on the UK, Brexit is expected to have a negative impact on the economy and future growth. However, the severity of the impact is acknowledged to be difficult to gauge as the terms under which the UK will leave the EU are not yet clear.

Budget 2017

The Government announced a number of taxation measures in Budget 2017 to get Ireland "Brexit ready". These include:

- Small and medium enterprises (SMEs)
- Irish exporters
- Entrepreneurship
- The agri-food sector

The commitment to establish a "rainy day fund" and a new lower debt to GDP target (a ratio of 45% to be achieved by the mid-2020s) are also influenced by Brexit concerns. Meanwhile a new Government cabinet committee has been established, and a new Second Secretary General has been appointed in the Department of the Taoiseach to oversee the integration of international, EU and Northern Ireland functions.

Customs duties

The final shape of Brexit will determine whether there are customs duties to be paid on imports, whether there are restrictions on certain goods and services, and whether the customs procedures are relatively simple or complex. The Revenue Commissioners are reviewing customs procedures to assess potential problems and identify ways of minimising business costs and maximising the facilitation of trade.

At present it is not possible to resolve these issues but merely to seek to scope them and be adequately resourced to respond to problems that may emerge.

Sectoral exposures

In light of Ireland's close trade and financial links with the UK, the paper states that the pass-through of any losses from the UK economy to Ireland (or indeed from any third country trading partners that are themselves impacted by Brexit) are likely to be material but can be mitigated by targeted measures. The sectors identified by the Government as being highly exposed to and reliant on trade with the UK include:

- Food and beverage
- Electrical equipment
- Materials manufacturing
- Traditional manufacturing

All of these share a number of common features:

- Relatively high levels of exports to the UK
- High levels of imported intermediate goods coming from the UK which are used in the production process (with the exception of the food and beverage sector)
- Relatively high volume/low value products, which would be significantly affected by the introduction of Trade Tariffs
- Significant employers outside the Dublin region, with the border region the most exposed relative to others
- High local economy multiplier ranging from 1.2 (electrical equipment) to 1.5 (food and beverage)
- Significant number of SMEs with a high share of indigenous ownership.

Whilst services sectors in general would not be affected by trade tariffs to the same extent as manufacturers, the likes of tourism and hospitality are significantly exposed to the Euro-Sterling exchange rate and this sector is also seen as a Brexit-exposed sector within the economy.

Sectoral Tax Policy Reponses

The specific tax policy responses included in the Budget to assist these sectors stay competitive and to trade in diversified markets are:

- Reduced capital gains tax to help entrepreneurs
- An extension and amendment of the Foreign Earnings Deduction to help Irish exporters diversify their export and import markets
- An extension of the Special Assignee Relief Programme (SARP) to assist businesses to relocate key staff to Ireland
- An increase to the Earned Income Tax Credit for self-employed taxpayers to encourage entrepreneurship
- The introduction of an income averaging "step-out" in the agriculture sector to help with expected volatility in demand for agri-food products following severe price fluctuations,
- The retention of the 9% VAT rate to help the tourism and hospitality sector to maintain competitiveness in light of recent currency movements
- A €150m loan fund for farmers to improve cash flow management and reduce costs of short term borrowings
- A proposed review in 2017 of the application of the 1% stamp duty to Irish stocks and marketable securities

FDI

The Government's paper acknowledges that Pharmaceutical Manufacturing, and Financial and ICT services sectors, which tend to have high foreign ownership, also have significant export relationships with the UK. The paper indicates that the following are key policy measures to assist the FDI sector to continue to attract jobs to Ireland:

- The ongoing commitment to the 12.5% corporation tax rate
- The R&D Tax Credit regime
- The Knowledge Development Box regime
- The extension of the SARP regime

Whilst acknowledging that the decision to invest into Ireland will be driven by a number of factors, not just taxation, the paper acknowledges that the Government will need to respond to any changes made by the UK to strengthen their overall tax offering, so that Ireland can continue to be relatively attractive compared to the UK from an overall taxation point of view.

The Department of Finance's paper provides some interesting insights on the sectoral impact that Brexit may have on the Irish economy and it is helpful to have an overview of the policy responses in Budget 2017. Undoubtedly further responses will be needed when more details emerge on the terms on which Brexit will take place. It will also be very helpful to have similar policy responses emerge from other parts of Government and the Financial Regulator. This would help ensure that appropriate actions are taken to minimise the adverse impact of Brexit whilst also taking advantage of whatever opportunities may emerge.

A Brexit timeline - how might it look?

23 June 2016

2016

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

Q1 2017

2017

- UK invokes Article 50 of the Lisbon Treaty on 29 March 2017
- Remaining EU counties meet to discuss withdrawal (excluding UK from discussions)
- European Council mandates EU Commission to undertake negotiations with UK

Q2/Q3 2017

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

June 2017

2017

- France: Presidential election

Q4 2017

2017

- Germany: Parliamentary election

May 2019

2019

- European elections

Q2 2020

2020

- Germany: Parliamentary election

Declan Keane
Head of Regulatory

Outside the single rulebook for EU financial services

In February the UK Government published its White Paper on exiting the EU. This follows the UK Prime Minister's speech outlining 12 principles for Brexit. So what are the implications for financial services?

The White Paper reiterates the Prime Minister's announcement that the UK will not be seeking membership of the Single Market, it also recognizes the possible challenges associated with a 'cliff edge' exit situation two years after Article 50 is triggered. As such, the UK intends to propose that in areas such as immigration controls and regulatory frameworks, phased implementation of the outcomes of the exit negotiations are put in place.

In the context of financial services, the White Paper states that the UK will be seeking the "freest possible trade in financial services between the UK and EU Member States." The White Paper also states the UK's belief that due to the highly integrated nature of financial services in Europe that there would be a "legitimate interest in mutual cooperation arrangements that recognises the interconnectedness of markets."

Interconnectedness of Markets

As a result of the June Brexit referendum, a number of studies and reports sought to assess both the extent of the concentration of financial services in the UK and the interconnectedness of financial markets across the EU. The following are a number of relevant statistics from these reports.

Approximately:

- 78% of EU 27 capital markets activity is conducted in the UK
- 76% of European hedge fund assets are based in the UK
- 76% of all MiFID passporting is done by UK firms
- 74% of EU trading in OTC derivatives occurs in the UK
- 52% of all MiFID firms in the EU are based in the UK
- 45% of global FX trading in Euro, takes place in the UK
- 40% of European assets are managed in the UK
- 37% of EU initial public offerings occur in the UK

These statistics reflect the consistent and concerted effort by EU Member States and EU Institutions to build and develop a single market for financial services.

Two of the principal aspects of the single market for financial services are the European Union Passport for Financial Services and the so-called 'Single Rulebook' for Financial Services Regulation.

Currently, EU financial services legislation provide for a passporting mechanism which allows asset managers, banks and insurers, authorised in the European Economic Area (EEA), to sell their services freely across the EU, without the need for separate authorization in each of the States where they wish to provide services.

The earlier statistics reflect the fact that one of the outcomes of the passporting regime is that the 'City of London' has emerged as the pre-eminent centre for Europe's capital markets, with a large proportion of EU financial market activity, across the asset management, banking and insurance sectors taking place in the UK.

Automatic access to EEA markets via the passport mechanism is recognised as a major benefit and any termination of that access for UK financial services firms will have a disruptive impact on financial markets in the UK and across the remaining EU 27.

The second important factor in EU financial services interconnectedness is the legal harmonization that has taken place in the area for more than 25 years. In that time the individual financial services laws of many Member States have been developed or replaced by an increasingly detailed single rule book for European financial services regulation. This rulebook has further assisted the successful use of the passport mechanism by enabling supervisory

cooperation between national competent authorities and an increase in regulatory convergence across the EU.

It is planned that existing levels of harmonization will be further integrated by the EU's Capital Markets Union (CMU) package of reforms that is currently underway and seeks by 2019 to propose a number of pieces of legislation to promote investment, growth and further integration of EU capital markets.

Until the exit negotiations under Article 50 conclude, the UK remains a full member of the European Union and consequently it will continue to implement both the remaining components of the post- crisis legislative reforms such as the Packaged Retail and Insurance-based Investment Products Regulation ('PRIIPs'), MiIFD II and any of the CMU initiatives that enter into force prior to exit.

In this regard Brexit presents a challenging outcome as the UK will be exiting the single market at a time of increasing harmonization and integration of EU financial markets legislation. It is also possible that a divergence in rules and supervisory approaches may emerge between the UK and the rest of the EU, which could lead to uncertainty for firms and investors leading to a negative impact on the smooth functioning of financial services markets.

Third Country Equivalence

In the absence of access to European markets by means of the passport, alternative mechanisms will need to be explored.

One such alternative is that of third country equivalence. In summary, this is an empowerment granted to the European Commission, to decide on whether certain 'third country' regulations and supervision suffice for EU regulatory purposes.

The equivalence empowerment does not confer a right on third countries to be assessed or to receive a positive determination, even where the third country believes that it has fulfilled the criteria. An equivalence decision is not only a discretionary decision of the EU, it is also a unilateral, in that all of the decisions, including variations and amendments to or any repeal of an equivalence decision is solely at the discretion of the EU Commission. For example, an equivalence decision can in some instances be revoked on as little as 30 days' notice.

There is no single comprehensive third country equivalence regime across financial services. Where it is provided for it is contained in individual pieces of legislation. As each equivalence decision is developed individually for each specific act, it is not always clear as to what level of assessment is needed. Finally, as a general rule the third country provisions are not as extensive as the EU passporting regime set out in the same legislation.

It is also worth noting that equivalence is granted to countries and not individual firms, which could lead to considerable uncertainty for UK financial services firms.

Of the 40 pieces of financial services legislation adopted after the financial crisis, only 15 contain 'third country provisions'. A more detailed summary of existing financial services legislation with third country equivalence provisions envisaging passporting-like arrangements is set out in the table on the next page.

Examples of existing third country equivalence provisions in financial services legislation

Financial Services Sector	Key EU Legislation	Key examples of positive equivalence assessments	Overview of equivalence envisaged which may constitute an alternative to the EU passport
Banking	CRD IV/CRR	N/A	CRD IV/CRR does not provide for 'passport-like' third country equivalence. The equivalence that is envisaged is in the limited circumstances concerning the prudential treatment of certain types of exposures to ewntities located in non-EU countries
Investment Management	AIFMD	Positive assessment not yet granted	Facility for management & marketing passport to be granted to non-EU managers. Not yet activated. National Private Placement Regime may present an alternative in the interim
	UCITS	N/A	No equivalence contemplated
	MiFID II/ MiFIR	Positive assessment not yet granted	3rd country firms may be able to operate anywhere in the EU to serve professional clients & eligible counterparties
Insurance	Solvency II	Bermuda, Japan, Switzerland	'Passport like' rights for reinsurance companies only
Market Infrastructure & Securities Markets Legislartion	Market Abuse Regulation	Australia, Brazil, Canada, China, Hong Kong, India, Japan, Korea, Mexico, N.Zealand, Singapore, South Africa, Switzerland, UAE, US	3rd Country Central Banks and Public Debt Management companies may be exempt from certain Market Abuse Requirements. The Market Abuse Regulation does not contain direct passport-like equivalence
	Prospectus Directive	Positive assessment not yet granted	Prospectuses prepared according to rules of an equivalent third country may be used in public offers in the EU
	Transparency Directive	Positive assessment not yet granted	Non-EU firms subject to EU rules on transparency may be allowed to fulfil those obligations in accordance with third country equivalent disclosure standards
	EMIR	Australia, Brazil, Canada, Dubai International Finance Centre, Hong Kong, India, japan, NZ, South Korea, Mexico, Singapore, South Africa, Switzerland, UAE, US (CFTC)	'Passport like' rights for central counterparties i.e. provision of clearing services to clearing members or trading venues established in the Union
	SFTR	Positive assessment not yet granted	3rd Country Central Banks and Public Debt Management companies may be exempt from certain transparency requirements. A trade repository established in an equivalent 3rd country may be recognised

While the UK's unique position as an exiting EU Member State, should see it well placed in terms of a technical assessment of regulatory equivalence, at least in the short term. The path to previous positive equivalence decisions has often been lengthened by political considerations, such as the importance of the equivalence decision in question to the functioning of the internal market, risks arising from the level of interconnectedness and whether there are any risks of circumvention of EU rules.

So even in cases where third country provisions are currently operating, because equivalence is granted to countries and not individual firms, existing UK financial services firms will still have to wait for the UK to receive a positive assessment before they can avail of the equivalence mechanism in question.

In the event that a positive equivalence decision is reached with respect to the UK, in order to maintain that decision the UK will have to continue to mirror the EU financial services rulebook with little or no influence on how further regulatory initiatives are drafted or implemented.

Even where third country equivalence is operational, its effect can be restricted either by Member States having the right to 'opt-out' of certain third country regimes. For example, under MIFID II it is permissible, for retail clients to be serviced by branches of third country firms but there is no obligation on Member States to allow such branches to be established. In the case of the insurance sector, a limited third country regime exists in relation to the issuing of contracts of insurance. However, Member States enjoy discretion as to whether direct authorization is granted to branches of third country insurance firms.

Accordingly, while third country equivalence can provide a solution to certain scenarios which may result from the cessation of the UK firms automatic access to EU financial markets, it is:

- Limited in its coverage
- Idiosyncratic in its application, and
- Subject to both regulatory and political challenges at European and national level.

By way of an example of the transition from EU Passport to a third country equivalence regime, UK-based Central Counter Parties ('CCPs') and Trade Repositories ('TRs') as well as the counterparties wishing to use their services are currently subject to EMIR. EMIR contains third country provisions and positive equivalence determinations have been made under same by the European Commission. Should the UK becomes a third country, then these UK based CCPs and TRs would have to apply for third country recognition from the European Commission after a technical assessment by the European Securities and Markets Authority ('ESMA') in order to continue to provide services to EU counterparties. If this results in a protracted process then it is likely to cause considerable business disruption in the provision of existing services.

Absence of third country provisions

While no substantive proposals have emerged, the European Commission Staff Working Paper on EU equivalence decisions has noted, "ultimately the reduction of regulatory gaps and overlaps with non-EU jurisdictions is beneficial also to the wider EU economy." It has been suggested that the European Commission is contemplating an examination of the existing equivalence regimes in financial services with the view to proposing legislative reform.

Notwithstanding the challenges noted above with the UK third country equivalence regime, there are a number of areas in financial services that do not envisage a third country regime. Examples of these services include, deposit taking, lending, mortgage lending, insurance mediation and distribution and activities under the undertakings for collective investment in transferable securities ('UCITS') legislation.

In the case of UCITS, UK domiciled UCITS will have to re-domicile elsewhere in the EU in order to maintain their brand and status as UCITS funds, otherwise they would become a non-EU (and non-UCITS) retail funds governed by AIFMD. UK UCITS mangers could also be affected in that they would lose their existing right under UCITS to manage UCITS funds based in other EEA domiciles and their automatic right to passport UK domiciled UCITS funds. This may result in affected entities having to consider re-structuring or seeking re-authorisation as UCITS management companies in another EU Member State.

Delegation of certain activities

On the assumption that no equivalent access agreement is concluded between the UK and the EU then the primary remaining option that firms should consider is establishing a subsidiary in another EU Member State and applying for it to be authorised by the national competent authority in that jurisdiction. As an authorised entity in an EU Member State that subsidiary would be able to passport services across the EU. This solution would require UK firms to re-structure their business such that services currently passported from the UK, would be passported by the new subsidiary.

Any new EU subsidiary will have to demonstrate substance in the Member State where it is seeking to be authorised, e.g. that decision making will be vested in the proposed new entity.

A key question for firms to explore is the extent to which it may be possible for the new EU subsidiary to delegate or outsource certain functions/activities to the UK entity. The outcome of these assessments will be based on reflect the specific fact scenario of the firm in question.

Transitional Arrangements

The UK Government has acknowledged that many British companies across all sectors have concerns about a potential "cliff edge" effect of Brexit, whereby the conclusion of the Article 50 exit negotiations will result in the UK leaving the EU without any kind of replacement arrangement on access to the single market or customs union.

Accordingly, point 12 of the UK Government's White Paper states that in order to avoid a cliff-edge the UK will seek to consider the need for phasing in any new arrangements that are required as UK and the EU move towards a new relationship The paper further states that the UK would like to reach an agreement about that future relationship by the time the exit negotiations under Article 50 have concluded, reflecting a phased process of implementation, in which the UK, the EU institutions and Member States prepare for the new arrangements that will exist between them. They believe that this will be in the mutual interest of both the EU and the UK.

The objective of this phased or transitional arrangement is to provide businesses with enough time to plan and prepare for those new arrangements once they are finalized. The White Paper acknowledges that the detail of any such arrangements are likely to be a matter for negotiation.

While the UK's opening negotiation position on 'phased implementation' may be difficult to envisage, it is important to consider that all negotiations are unlikely be one-way. The EU will be concerned about the impact of restrictions on firms in the EU 27 who will be unable to passport into the UK post Brexit, as well as the overall market impact given the concentration of financial services in the UK and the interconnectedness of EU Markets.

Johnny Hanna
Brexit Lead
KPMG in Northern Ireland

Northern Ireland and Brexit

The impact of Brexit on Northern Ireland is hugely significant both politically and economically. The issues related to the land border and close economic ties with the Republic have focused the minds of the Northern Ireland business community and their Southern counterparts.

According to Johnny Hanna, KPMG's Belfast based Head of Tax; "It isn't just about customs tariffs – businesses North and South are also very concerned about the possibility of a 'hard' Border leading to delays and costs linked to conventional customs clearance processes." To illustrate the point, he refers to an OECD estimate of trade costs which suggest that inefficiencies around border clearances alone could add costs of up to 10% of the value of goods traded. Then there is the issue of staff needing to be trained and or hired to deal with these new requirements.

Northern Ireland's costs are competitive, product quality is excellent and the exchange rate is favourable," says Hanna. However margins are tight, competition is intense and any material cost increases arising from Brexit will be a concern.

There are also worries for example of perishable goods supplied across Border by a NI business being delayed by customs requirements, especially within the food and drink sector."

While Hanna welcomes the UK governments desire to achieve as frictionless an EU/UK border as possible he feels we should not underestimate the efforts which will required to achieve this, once the UK leaves the EU single market and customs union. He believes some form of customs border (on or around the island) will be inevitable - not least to address the risks and concerns for the EU27 around the origin of goods coming from NI and GB businesses.

So what are the other main concerns for Northern based business?

North/South trade has doubled since 1995 and evidence suggests that about 56 per cent of Northern Ireland's goods and services exports go to the EU – with two-thirds of that heading across the Border. In that context, Hanna highlights the issue of supply chain clarity and the business imperative of not delaying in assessing existing supply chains whilst using technology where possible to "better understand the issues and identify solutions."

While the mood music in recent weeks offers some hope that a transitional arrangement will be reached (so as to avoid a dreaded "cliff edge" in March 2019), the clock is ticking and businesses need to at least plan for the worst which would most likely mean World Trade Organisation (WTO) tariffs. In such a scenario, highly vulnerable sectors such as agribusinesses could be subject to tariffs as high as 60 per cent in some cases.

Northern Irish agribusiness also depends significantly on EU supports, and whilst the UK government has committed to stepping into the breach in the short term, there remains deep uncertainty as to how this funding can be secured in the future. Unlike the rest of the UK, Agribusiness accounts for over half of cross-border trade for NI businesses – highlighting why business and policy makers are, according to Hanna in constant dialogue about "how to mitigate and plan for Brexit now."

Currency movements are also playing their part – making Northern goods more competitive but also pushing up input costs. Johnny Hanna notes that certain sectors such as tourism are benefitting as a result of the weakness of Sterling, with strong occupancy levels supporting a high quality tourism product. However, industry representatives have also pointed out that around 20% of the staffing levels in the Northern tourism sector are accounted for by EU nationals from outside Northern Ireland. According to Hanna; "The people issues around Brexit are also significant with cross border mobility concerns relevant not just to hospitality, but also to sectors such as food and agribusiness."

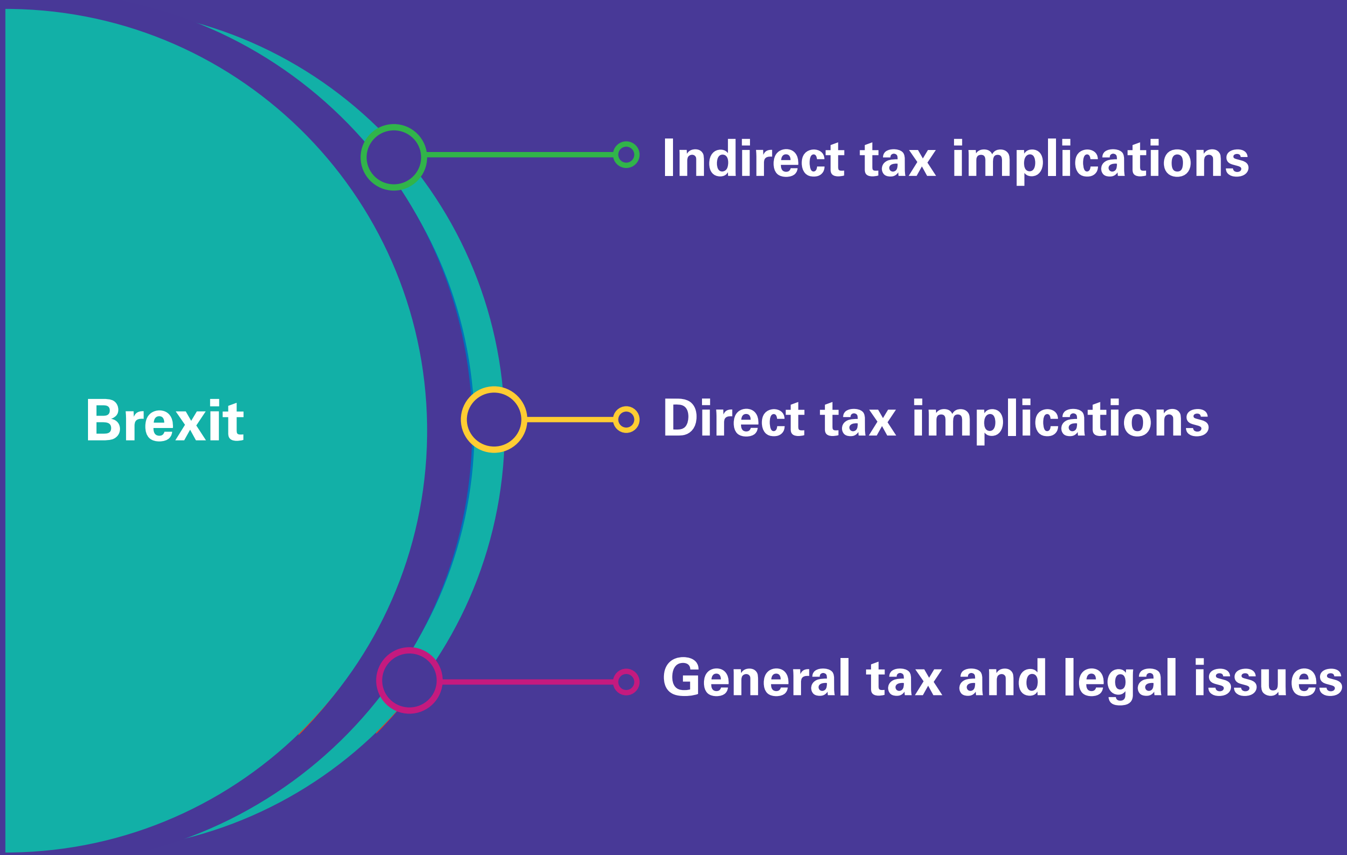
Preservation of the Common Travel Area is absolutely critical. This is not just to ensure that the many thousands of workers who commute to work daily across the border from North to South and vice versa will continue to do so unimpeded but also those travelling across the border to schools and hospitals. There is also the issue around the rights of non-Irish/UK EU nationals currently living and working in N. Ireland who are unlikely to benefit from a preserved CTA.

"Northern Ireland needs both trade and inward investment," believes Hanna, who argues that it is imperative that "Barrier-free trade is a key component of any deal struck with the EU." He concludes by emphasising the advantages of doing business in Northern Ireland and the need for a frictionless border in helping local business maintain its success and deliver on its potential for further growth and employment.

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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