



# Doing Business in the UK

Alistair Shaw & Stephen Drew

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## With you today...



### **Alistair Shaw**

International Tax Partner, London

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Alistair has extensive experience of successfully providing a broad range of tax and business outsourcing services to UK inbound and multinational groups.

He predominantly works with US inbound businesses and so is active, knowledgeable and proactive in managing the relevant tax issues for such groups.

Alistair joined Smith & Williamson in 2017 from EY, having worked with large private equity backed, privately owned and listed businesses for 10 years. Prior to EY, Alistair worked for PWC.

Alistair heads up Smith & Williamson's Large Corporate and International tax team and has recently been appointed to the Global Tax Committee for Nexia International.





## With you today...



### **Stephen Drew**

Managing Partner, Birmingham & Head of international Services

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Stephen has extensive experience of assurance and advisory work. He advises on acquisitions, disposals, IPOs, exit planning and business reviews.

A number of his clients have international operations and he has worked with businesses with North American, Latin American, European and Asian connections. In particular, Stephen has spent time working in the US, Brazil and the Asia Pacific.

Stephen joined Hereward Philips in 1988 from Coutts & Co bankers. He qualified as a chartered accountant in 1991 and became a partner in Smith & Williamson in April 1999 when Hereward Philips joined the firm.

Stephen is Managing Partner of our Birmingham Office, Chair of the firm's International Services and Quoted Companies groups and chairs Nexia International's Business Advisory Committee.



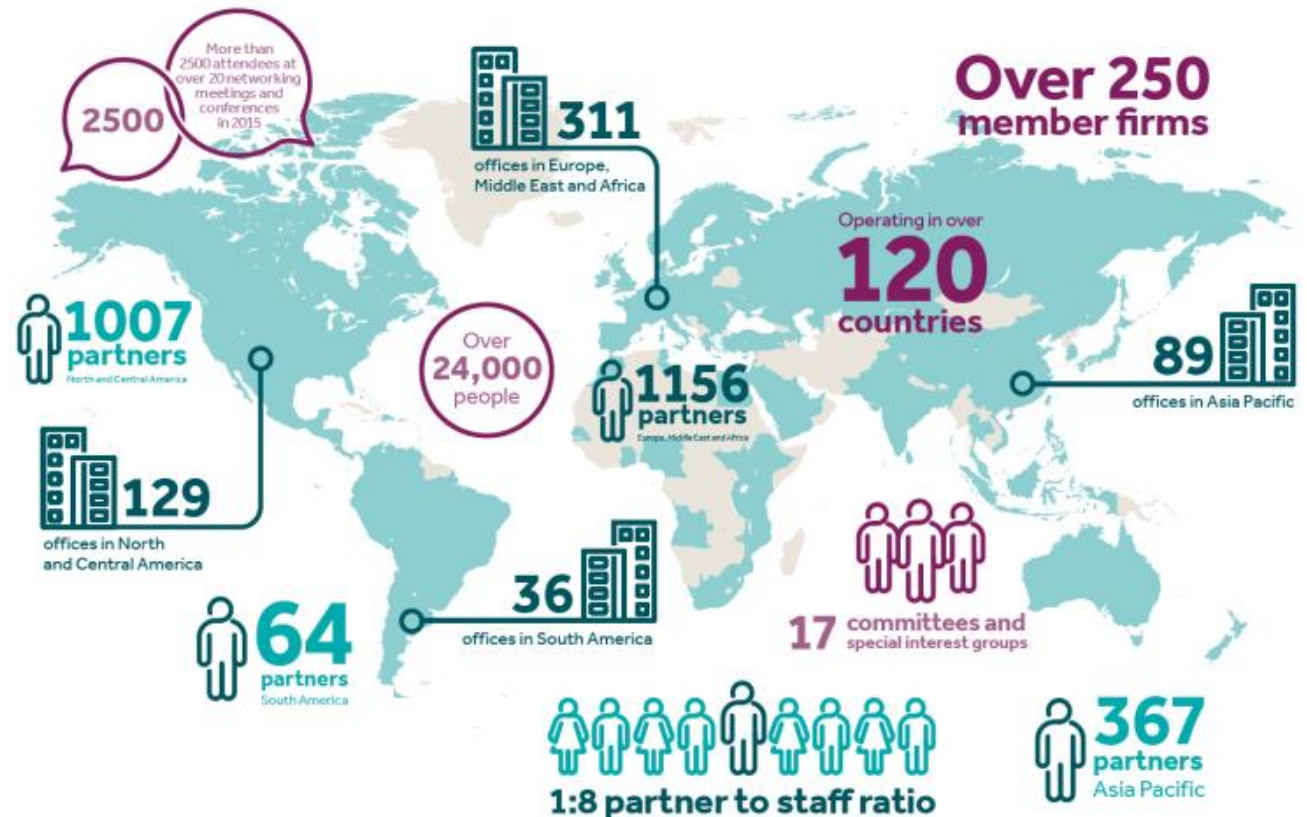


# Smith & Williamson - About us

## Our UK & Irish firm



## Our Global Network - Nexia International







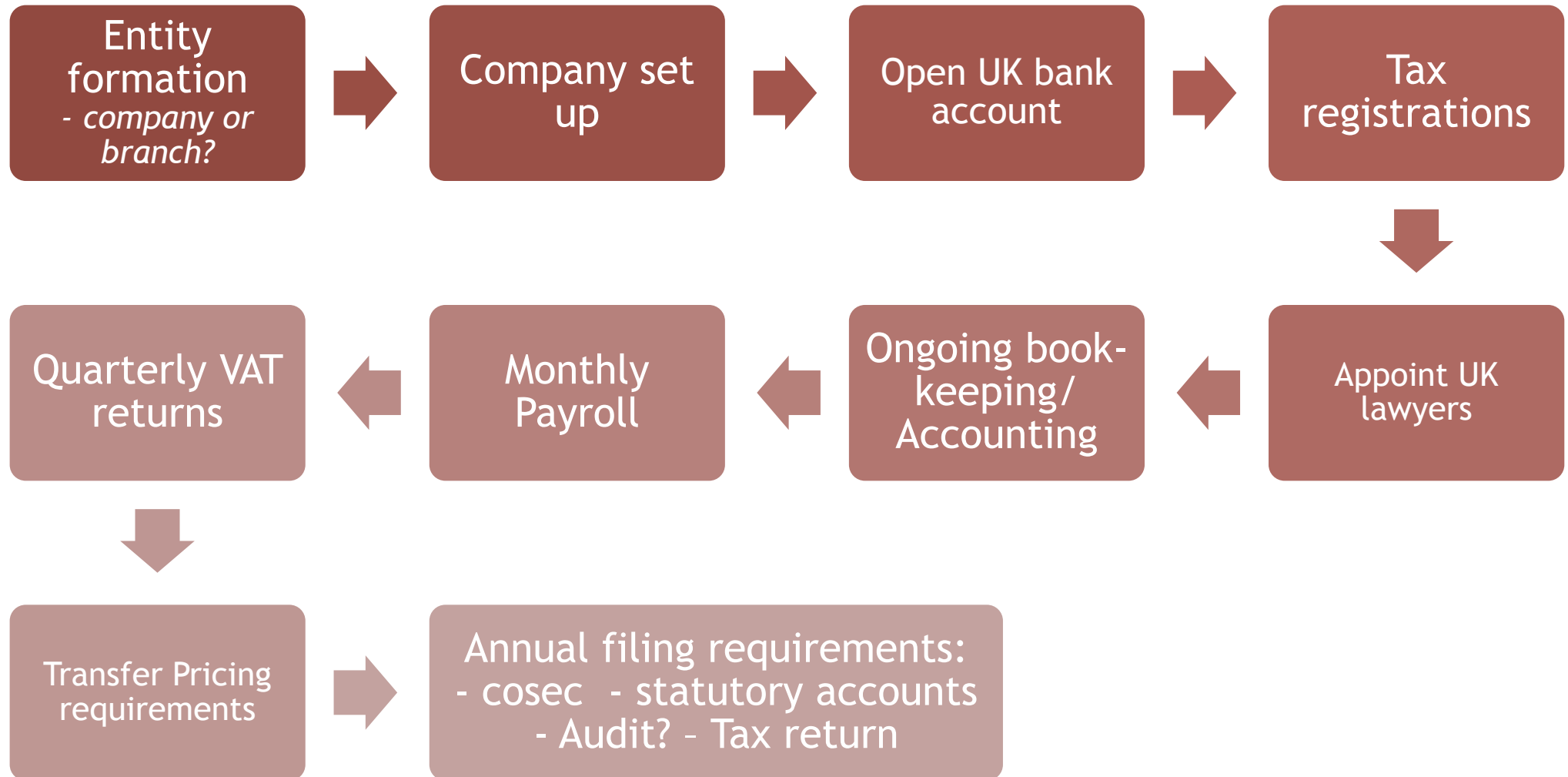
## Establishing a UK Presence



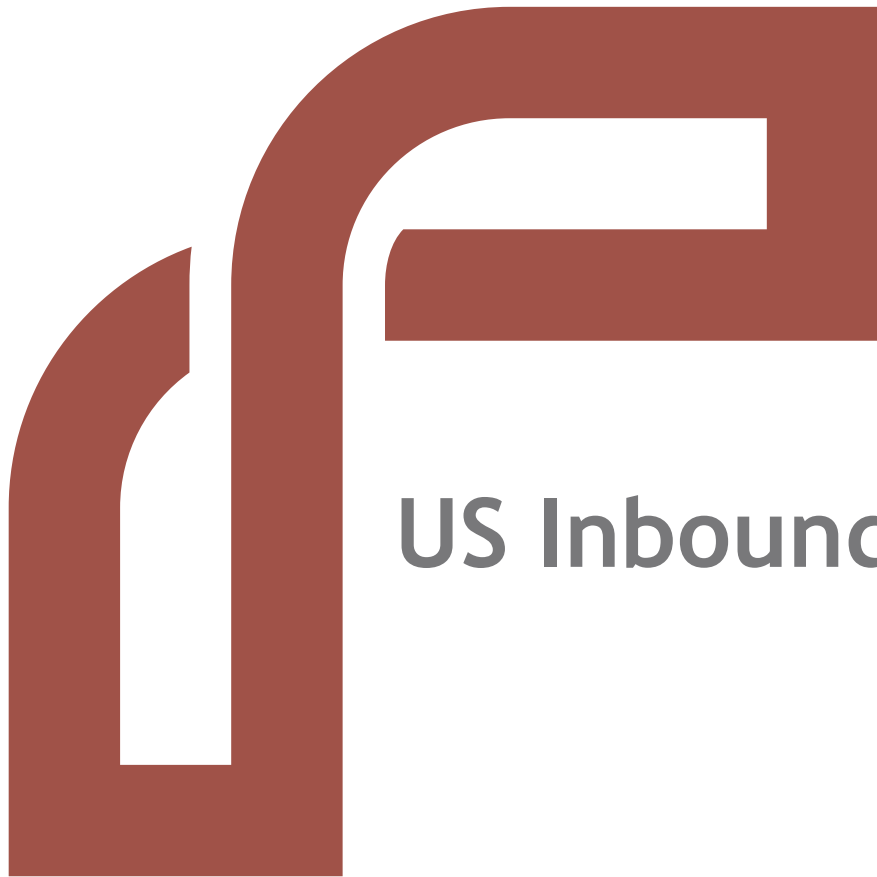




# Establishing a UK Presence







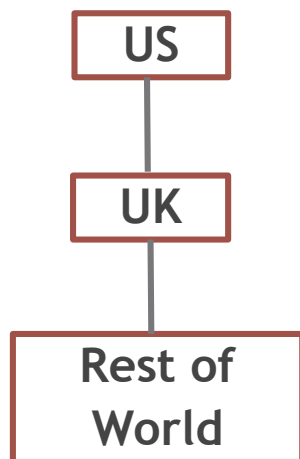
## US Inbound Investment to the UK





# US Inbound investment to the UK

Common US/UK structure prior to US tax reform



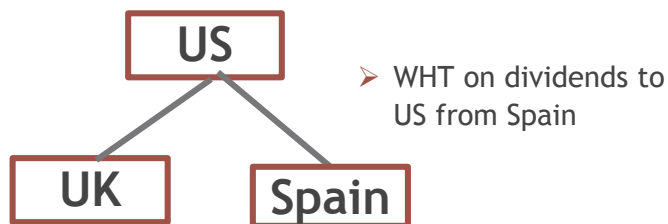
Summary of benefits:

- UK has strong double tax treaty network
- UK has dividend exemption and substantial shareholding exemption for stock disposals
- No withholding tax on dividend distributions
- No requirement to pay dividends to US

Is a UK holding company still attractive for future investment into the UK?

A recent example - Spanish acquisition:

Option 1:



Option 2:



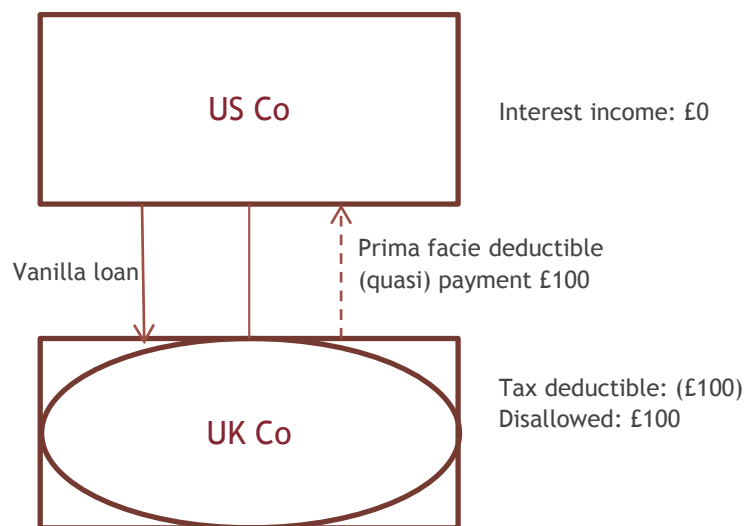
- Client had a commercial desire to lead European expansion from, and already had substance in the UK
- No WHT on dividends from Spain to UK
- No WHT on dividends from UK



# UK Hybrid Mismatch Rules - from 1 Jan 2017

- Intended to counteract UK deductions from cross-border transactions resulting in a difference in tax treatment which gives rise to a tax mismatch or advantage, i.e., non or under taxation in one or more jurisdictions.
- Applies to all UK payments or quasi-payments (e.g. interest, royalties, cost of goods); disallows UK deductions.
- Look for hybrid entities (e.g. partnerships), quasi-equity debt instruments, UK co, foreign PE / foreign co, UK PE.
- Rules are complex and mechanical - no motive test - common area of issue is where US headed with disregarded UK subs.
- UK directors will need to do work to ensure they are signing off on compliant return - auditors may ask to see.

## Simplified example - loan from US to disregarded/checked UK subsidiary



DD mismatches can occur where the transactions of an investor and a hybrid entity are treated differently for tax purposes.

An amount may be deducted by both the investor and the hybrid entity.

This may result in a mismatch and UK deduction may be disallowed.

May occur in disregarded entities.





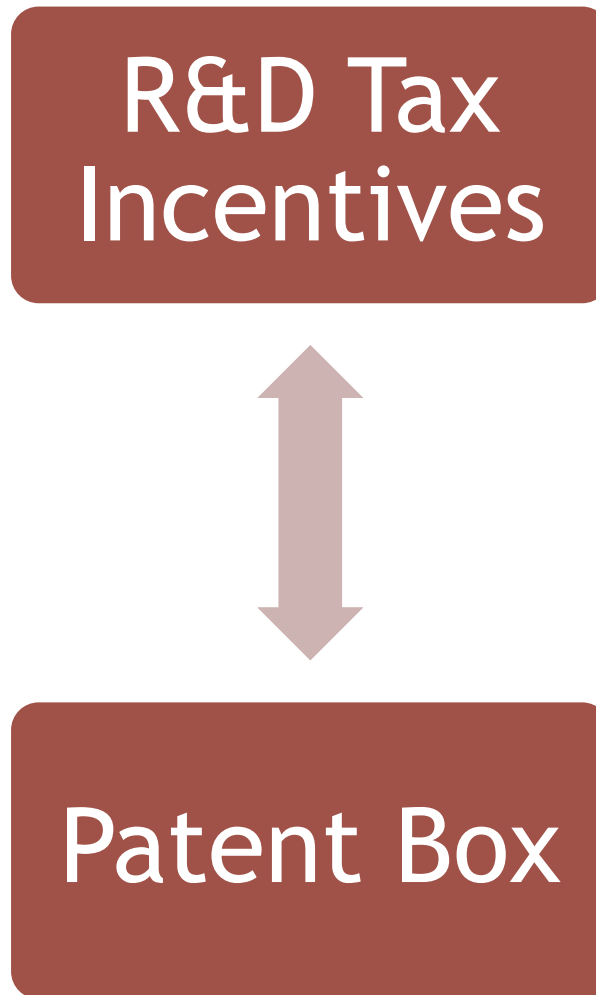
**Are you maximising available UK  
tax incentives and reliefs?**





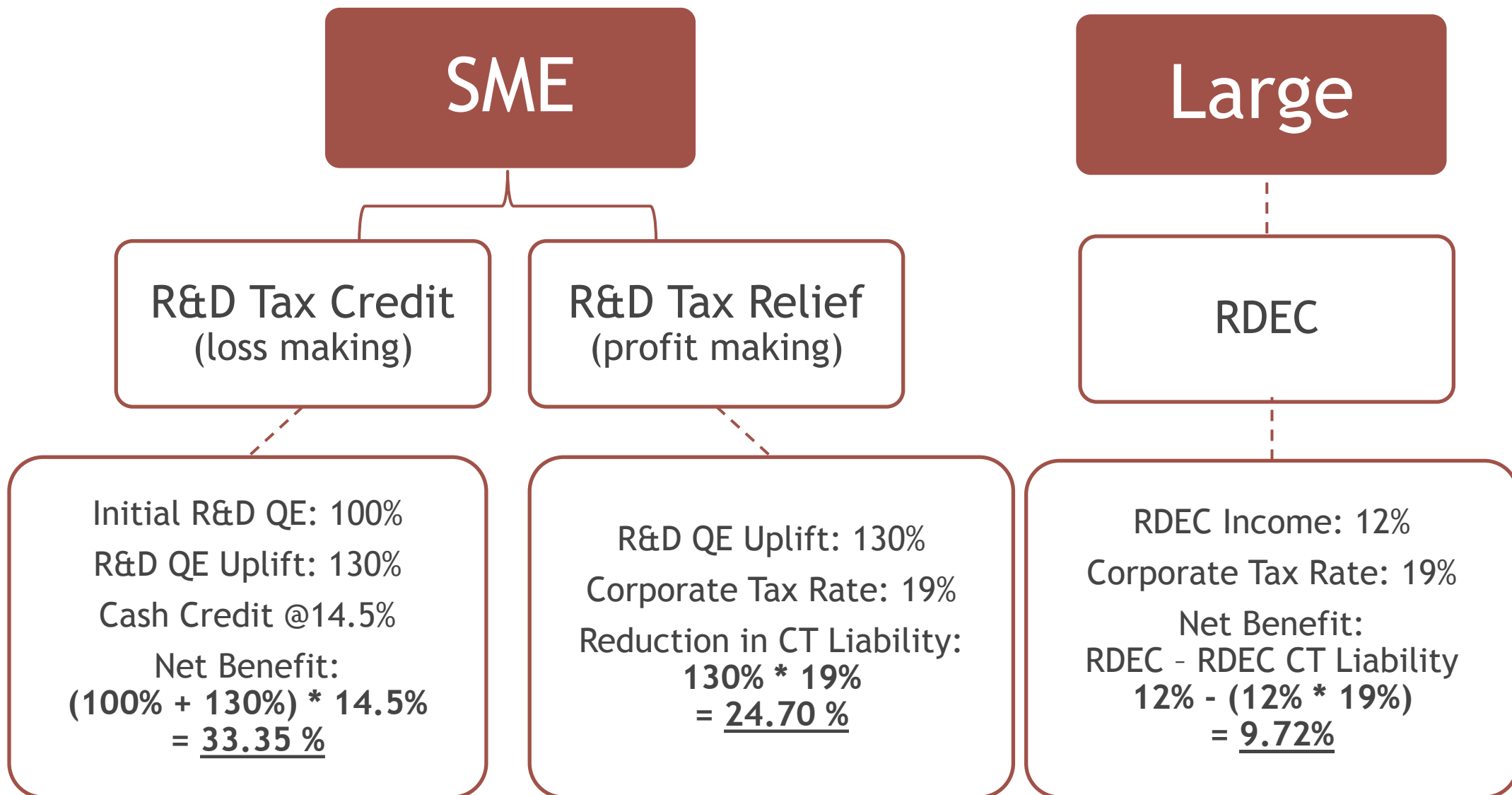
# R&D Incentive Landscape

The two key funding mechanisms in the UK to encourage and support R&D and innovation include:





# R&D Tax Incentives

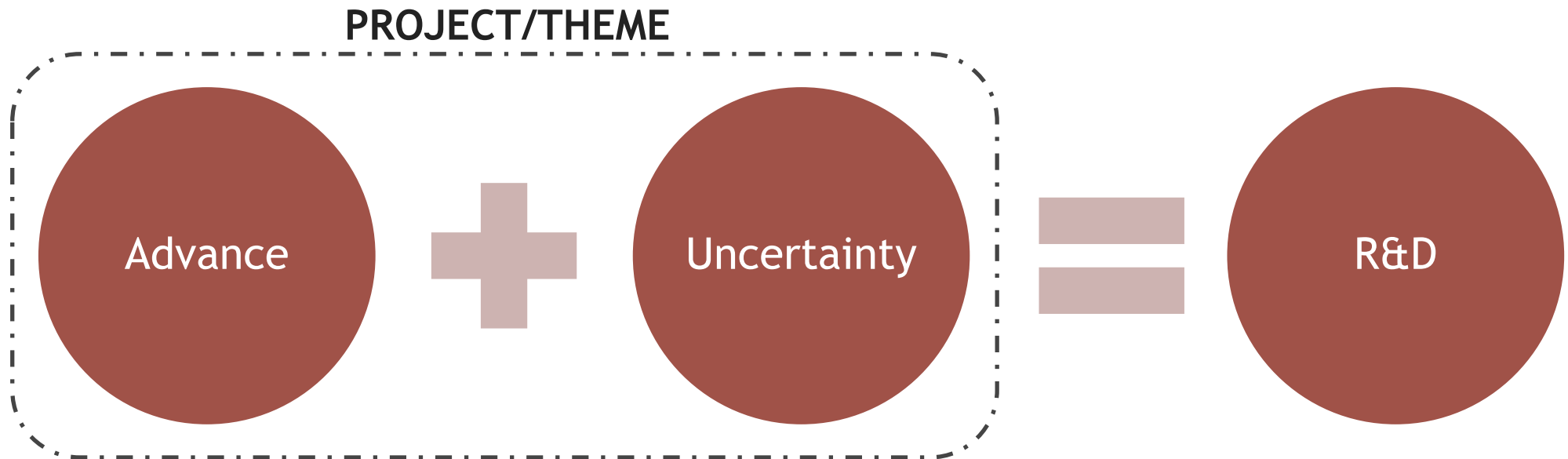




# R&D Tax - Eligibility

Broad HMRC definition of R&D:

R&D takes place when a project **seeks to advance a field of science or technology** through the **resolution of scientific or technological uncertainty**.



A broad definition is provided by HMRC so that multiple industries can be included, such as:

- Construction
- Technology & Software
- Pharmaceutical & Biotechnology
- Energy i.e. oil, gas, wind, solar, etc.



# Patent Box

The UK Patent Box Regime has been in place since 2013 with the aim of increasing the investment in patent development.

- Enables companies to apply a lower rate of Corporation tax to profits earned from patents.
- Relief was phased in from April 2013 - businesses now receive an effective CT rate of 10% on Patent Box profits.
- HMRC have reported that £942m has been claimed through Patent Box relief in 2016/17.
- Only 1,025 claims made - just 3% of companies with eligible patents and claiming R&D tax credits are taking advantage of this benefit.





# Patent Box - Who can benefit

## Companies only

- Companies that invest in relevant R&D and are liable to UK Corporation Tax

## Profits from exploitation of patents

- Must have undertaken qualifying development
- Must own exclusive licence in the patent

## Eligible patents

- UK Intellectual property Office
- European Patent Office
- Certain EEA Patent Offices

## Qualifying development

- Significant contribution to:
- creation or development of patented invention; or
- a product incorporating the patented invention





# UK tax landscape: Increased focus on Compliance and Governance



# Corporate Criminal Offence

## *Failing to prevent the facilitation of tax evasion*

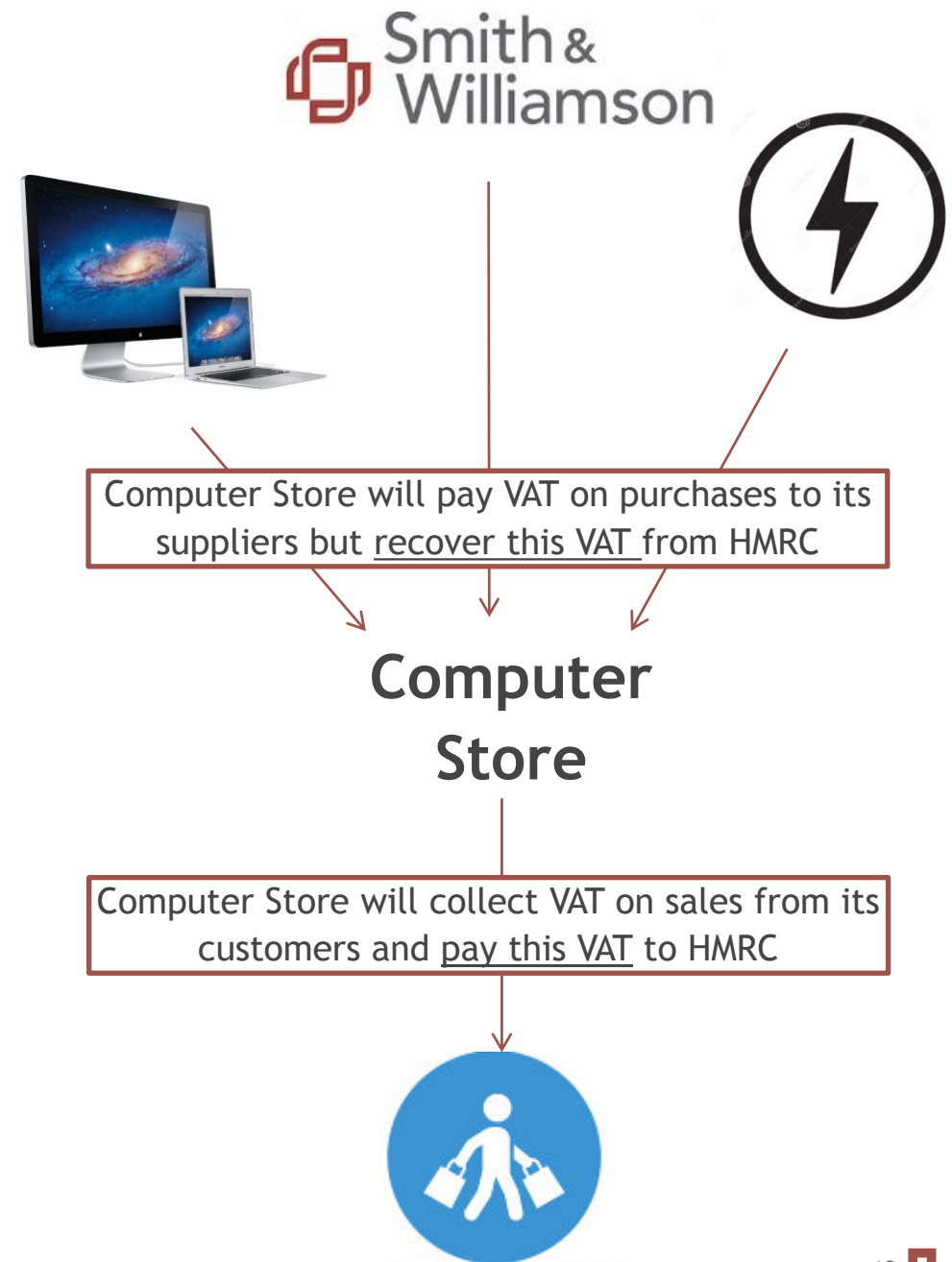
UK tax authorities have introduced corporate criminal rules in relation to the facilitation of tax evasion





# Recap - How does VAT work?

- VAT is an EU tax levied on the sale of goods and services sold by businesses.
- UK VAT rates (different per EU state):
  - 20%
  - 5%
  - 0% (VAT recovery on costs)
  - VAT exempt (no VAT recovery on costs)
- Where applicable, VAT is collected by businesses and paid to HMRC.
- Taxable businesses can wholly or partly recover VAT charged to them on business purchases
- VAT returns are usually filed quarterly. Annual and monthly returns can be submitted under certain circumstances.





# Current “hot topic” for VAT - What is Making Tax Digital (MTD)?

Step towards ‘real time’ reporting

Aim is to remove manual intervention and reduce human error

3 key elements:





# When will MTD impact you?

- VAT return periods starting on, or after, 1 April 2019 for VAT registered businesses with a taxable turnover above the VAT threshold (£85k p.a.)
- Delayed implementation until 1 October 2019 for:
  - VAT groups/divisions
  - Businesses making payments on account
  - Businesses established overseas
- Voluntary for ‘smaller’ VAT registered businesses
- Limited exemptions





# Other new/topical UK tax compliance areas

## 1 - Senior Accounting Officer (SAO) requirements

- Applies to Group where total UK aggregated turnover exceeds £200m p.a. or Assets of £2bn
- UK Group needs to nominate SAO who will certify there are appropriate accounting procedures in place
- Personal and corporate penalties and reputational implications for non-compliance

## 2 - Country by Country Reporting (CBCR) requirements

- €750m global turnover threshold
- UK annual notification requirement to HMRC if reporting requirement met by Holding company in US

## 3 - Tax Strategy publication

- Applies if either : (i) UK group exceed SAO thresholds; or (ii) globally CBCR thresholds exceeded

## 4 - Short term business visitor to the UK requirements

- Increased HMRC focus on business visitors to the UK from overseas group entities.
- Employee workdays in the UK could create a UK income tax withholding and NICs obligation for employer.
- Penalties, interest and back-taxes where a company does not fulfil reporting requirements.

## 5 - New IR35 requirements from 2020 - payroll implications for contractors

- Under new rules (effected from April 2020), payroll requirements can fall on companies, even where the company engages with the contractor through a personal service company

## 6 - DAC 6 disclosure

- Under new rules (effected from 2018), cross border transactions bearing certain 'hallmarks' required to be disclosed to HMRC from 2020









# BREXIT - Where are we now?

**23 June 2016** - UK votes to Leave - Leave Campaign wins by 51.9% to 48.1%

**13 July 2016** - Theresa May becomes PM

**29 March 2017** - Article 50 triggered, kick-starting a 2 year countdown to Brexit

**8 June 2017** - Snap general election - May loses majority and has to do a deal with DUP to stay in power

**25 November 2018** - Withdrawal agreement published - Backstop angers both the DUP and Tory Brexiteers

**15 January & March 2019** - Meaningful votes on Withdrawal agreement defeated on 3 occasions

**29 March 2019** - date of original exit date. Exit date extended to 12 April

**April 2019** - Indicative votes - MP's votes on a series of options to see what alternative Brexit options demand a majority - no options provide a majority

**11 April 2019** - May and EU leaders agree to a 'Flextention' to 31 October 2019

**24 July 2019** - Boris Johnson replaces May as Prime Minister

**September 2019** - Johnson loses majority after expelling MP's / Johnson parliament closure deemed unlawful

**31 October 2019** - Brexit date, deal or no deal...

**Late 2019** - General election considered likely

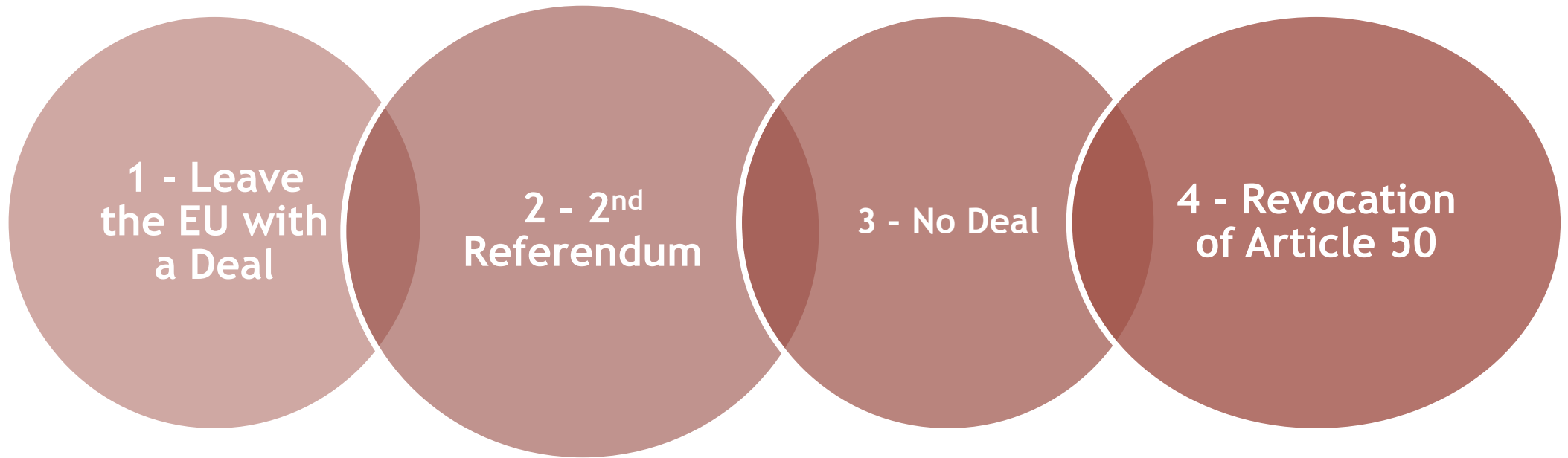
**31 December 2020** - Transitional period ends, assuming UK leave the EU on 1 June

**31 December 2022** - possible extension date to transitional period





# Deal, No Deal, Another Referendum, No Brexit - What next?







# Selling goods

Almost all the debate over the last 2½ years has been about the UK's trade with the EU in goods post Brexit, and what that will look like

- Union Customs Code
- Desire to minimise border controls and customs checks
- A “frictionless” border is key to the movement of goods for “just in time” deliveries

## Implications:

- 1 in 7 EU companies using UK suppliers have moved part or all of their business out of the UK to reduce supply chain exposure
- Thousands of lorries per day pass through the UK
- Significant additional red tape costs and delays if the UK exits the EU
- Major impact for EU business as well as UK





## Selling services

Services make up approximately 80% of the UK economy, and the EU accounts for approximately 40% of the services the UK exports.

**BUT**

We have had very little debate about the supply of services post Brexit.



## Regulated service providers

- Passporting rights are key
- Move of financial services to Frankfurt, Paris, Milan and Dublin
- UK financial institutions have significantly reduced the expected job losses in the city of London
- Action should already have been taken

## Non regulated service providers

- In the period immediately following Brexit we will see few major changes to UK Tax rules, so should be few issues for EU suppliers





# What are our clients doing?

## Financial Services sector

- offshored/offshoring parts of business requiring passporting rights

## Other sectors

- To date, many clients waiting and seeing...
- More businesses now starting to undertake Brexit readiness/impact assessments
- Customers seeking supply chain security - stockpiling products in UK and/or Europe
- Customers demanding European substance/footprint
- Some UK businesses setting up EU subsidiaries as a protective measure
- Some deals now impacted by Brexit





# Is your business ready for a 'no deal' Brexit?

Through our clients we are seeing the following 'no deal' preparations:

1. Heat mapping areas of risk to better understand how disruption will impact the business
2. *Revision of supply agreements* - minor contract changes to trading terms may significantly increase the risks for individual businesses. Companies may force difficult terms on suppliers to minimise their Brexit risk.
3. *Consultation with distribution partners* - businesses are ensuring that their procurement departments are fully engaged with their distribution partners, flagging any potential problems as early as possible.
4. *Revisiting supply chains* - are there potential pressure points, and what are the alternative networks?
5. *People* - if businesses are heavily dependent on management or labour from EU countries, what are the alternatives?
6. *Treasury management* - consider the impact of any future change in exchange rates and whether any adverse changes can be mitigated
7. *Reviewing EU footprint* - should you incorporate an EU presence? Should you move any parts of your business and what would be the tax implications of this?
8. *Understanding and quantifying risks* - companies are modelling the potential impact of tariffs/delays/ other Brexit implications



# Tax impacts of 'no-deal' scenario

## Customs duty

- Currently, goods move freely among the UK and EU countries. Post Brexit, customs duties may be imposed on import in a “no-deal” scenario. This could lead to a financial cost as well as administration burden / delays

## VAT

- Confirmation that UK to continue operating VAT system after leaving the EU and no major ‘day 1’ changes for most businesses
- Intention to introduce postponed accounting for import VAT to reduce cash flow impact on businesses

## Direct tax

- UK will no longer be subject to EU law including EU directives
- WHT obligations on dividends, royalties and interest would be dependant on double tax treaties - there may be little or no impact, but this should be considered
- Corporation Tax generally embedded in UK law so unlikely to be other significant changes





# Overview of Brexit impact on Customs Duties

**Remember:** Customs duties are paid in addition to VAT and are a specific percentage applied to the value of the goods entering the country

## Pre Brexit

Customs duties are paid on goods when they enter Europe.

Subsequent movement of goods between EU member states do not attract further customs duties.

## Post Brexit

Customs Duties will be due on goods entering the UK from any country.

Customs Duties will also be due on goods entering Europe regardless of whether customs duty has or will be paid in the UK!

**Double customs duties!!**

HMRC have confirmed that as a temporary measure post Brexit, 87% of goods coming into the UK will be subject to 0% duty!

## Recommendations

Consider custom duty regimes including custom duty warehouses and duty deferment schemes

Apply for an EORI number in the UK - registration number necessary in order import goods into the UK post Brexit







**What would a change of  
Government mean?**







## Disclaimer

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