Smith & Williamson

Doing Business in the UK:

Are you Brexit-ready? UK opportunities after Brexit

9 December 2020

Speakers

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Agenda

1. The political context of Brexit
2. Indirect tax and Brexit
3. Withholding tax and treaty network implications
4. Employment tax and social security considerations
5. After Brexit: the UK as a hub for Europe
6. Q&A

Disclaimer

By necessity, this briefing can only provide a short overview and it is essential to seek professional advice before applying the contents of this article. This briefing does not constitute advice nor a recommendation relating to the acquisition or disposal of investments. No responsibility can be taken for any loss arising from action taken or refrained from on the basis of this publication.

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Tax source: Gov.uk, year 20/21

The political context of Brexit

Alistair Shaw

Partner, Corporate Tax

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The politics of Brexit in Coronavirus times

DO WE HAVE A DEAL YET?

- After nearly 4 ½ years, Brexit is almost here. Talks are still ongoing, but time is running short.
- Concessions need to be made by both sides on fishing rights, environmental policies, consumer standards, and an acceptable state aid policy.
- A “skinny deal” very late in the day is a possible outcome.
- The UK and EU want a deal; neither side wants a WTO-rules Brexit in the middle of a pandemic.
- The discussions have had a serious political impact in both the UK and EU.
- The remaining 27 EU member states will be watching carefully to see how the UK “survives” in a post-Brexit world.
- UK: concerned about relations with China, no FTA with the US, and no FTA with the EU – the UK may feel a little lonely post Brexit, or a great place to do business!
- Businesses need to prepare for both an FTA and a WTO-rules deal, although in many cases the preparation is similar.

The economics of Brexit

The EU is the UK's biggest single trading partner.

2019: 43% of UK exports and 51% of UK imports

A desire to minimise border controls and customs checks

Businesses need a ‘frictionless’ border in a world relying on the movement of goods for ‘just-in-time’ deliveries

Focus of the Brexit debate has been on UK/EU trade in goods in a post-Brexit world

After Brexit: 47% of all products imported into the UK will have zero tariffs, compared with 27% when imported into the EU.

Analysis of supply chains and incoterms, particularly for those moving perishable goods

Discussions concerning tariffs and WTO tariffs if no agreement

The average EU tariff is low (≈2.8% for non-agricultural products), but high in some sectors e.g. cars and dairy products.

Movement and mobility of workforces around the UK/EU

Indirect tax and Brexit

Sunil Parmar

VAT Director

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Brexit and Indirect Tax

- The impact of Brexit on your business from an Indirect Tax perspective is dependent upon whether you are involved in:

  1. Goods or services?
  2. If services, regulated or non-regulated?

- For many UK incorporated businesses or US businesses with UK customers, there will not be any change on 1 January 2021

- The nature of your business and sector largely determines how much analysis / planning / structuring is required prior to 31 December 2020

- Some issues span both goods and services:
  - Reclaim of EU VAT incurred by UK VAT registered business

Brexit and Indirect Tax - goods

Top Indirect Tax issues for those moving goods between UK and EU:

- The potential bottom line cost of Customs Duties and related compliance burden should be assessed
- The delivery terms or "incoterms" are key to the potential impact
- For imports into the UK from both EU and non-EU, postponed VAT accounting for import VAT applies which simplifies the process but customs duties may apply
- Business-to-Consumer (B2C) e-commerce rules:
  - 1 January 2021 changes
  - 1 July 2021 changes

Actions required:

- **Review supply chains and contract terms**
- **Apply for GB and EU Economic Operators Registration and Identification (EORI) numbers?**
- **Register for VAT in the UK and EU and appoint a fiscal representative?**
- **Review ability of IT and accounting systems to deal with overseas VAT and postponed accounting**

Brexit and Indirect Tax - services

Top Indirect Tax issues for service providers:

- Knock on impact for those in regulated services e.g. Financial Services, Pharmaceutical
  - New corporate structure outside UK?
    - Transfer Pricing impact on irrecoverable VAT?
- For FS businesses, VAT recovery could improve as a result of 'specified supplies'

- Providers of digital / electronic services on B2C basis to EU consumers
  - Mini One-Stop Shop (MOSS) registration currently in UK?
    - Separate MOSS registration and UK VAT registration post 1 January 2021

Actions required:

- **Understand any internal projects undertaken from a regulatory or other non-tax perspective**
- **Understand and analyse impact of any new intercompany charges / transfer pricing agreements**
- **Review partial exemption methods to understand how specified supplies are treated for VAT recovery purposes**

Withholding tax and treaty network after Brexit

Alistair Shaw

Partner, Corporate Tax

Smith & Williamson LLP

Direct tax implications of Brexit

Loss of EU directives

- Access to EU directive benefits likely to fall away for interest, royalties and mergers from 1/1/21. After Brexit, double tax treaties and domestic law provide relief instead.
- In most cases no withholding tax will be due because of double taxation treaties. Where the tax treaties do not reduce withholding tax to nil (e.g. Germany) there may be an absolute cost to a group.
- Procedural changes are likely, even where there is no change in tax rate as treaty applies, e.g. withholding tax clearance.

Current UK law and double tax treaties

- No withholding tax on dividends out of the UK
- UK dividend exemption
- Exemption on disposals of qualifying trading subsidiaries – substantial shareholding exemption
- Double tax treaties in place with all EU27 member states

Action required

- Review group structure and identify any withholding tax implications
- Consider distributing profits to/through UK before 31/12/2020 while withholding tax may be lower
- Do you need to obtain new HMRC withholding tax clearance if previously based on the EU Directive?

Impact of changes to operating model after Brexit

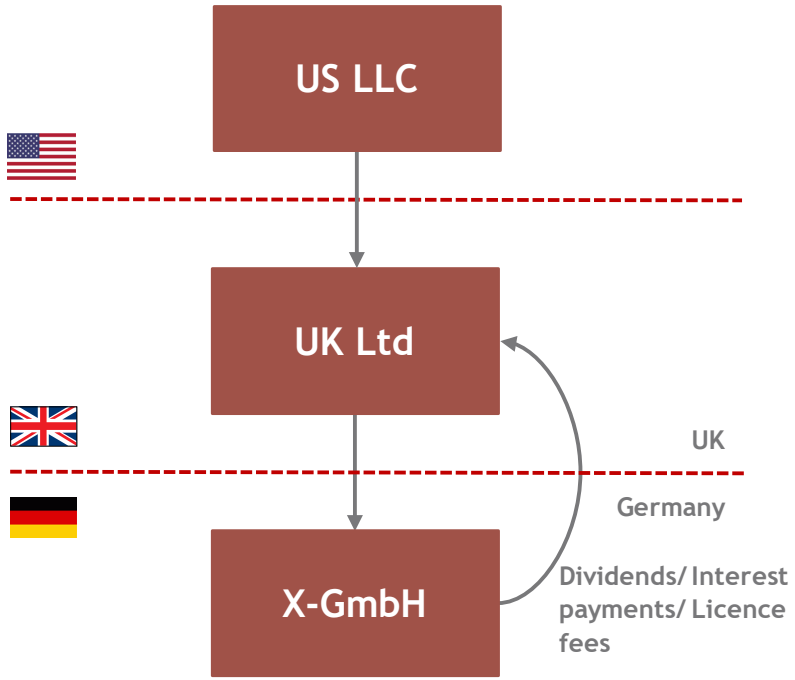
Are there any capital gain/exit taxes triggered in the UK/other territories by transferring assets or functions?

How does this impact your transfer pricing policy?

How tax efficient will the new policy be?

Withholding tax implications on additional cross territory charges i.e. royalty payments

German subsidiary - withholding tax considerations



Note

Disadvantageous changes for German Inbound Structures expected concerning dividend payments.

Until now:

- Interest and Royalty Directive: No withholding tax imposed on interest payments and license fees between affiliated companies in the EU
- Parent-Subsidiary Directive: No withholding tax imposed on distribution of profits between companies of the EU when at least 10% shareholding

After Brexit:

- To check: withholding tax according to German law?
- To check: reduction of the withholding tax rate because of double taxation agreement?

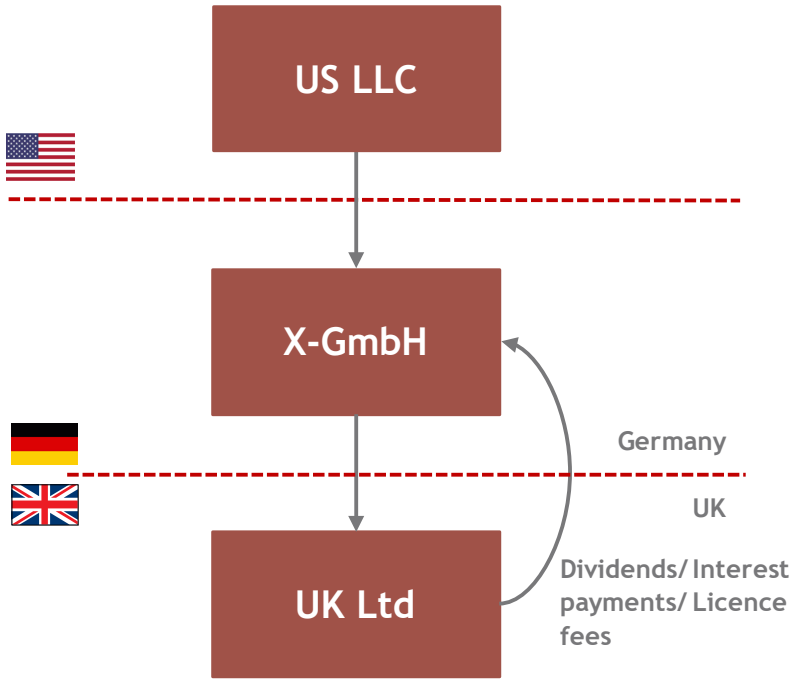
Withholding taxation:

	GER	DTA
Dividends	26.4 %	5 %** / 15 %
Interest payments	0 %*	0 %
License fees	15.8 %	0 %

* Bank interest excluded

** at least 10 % shareholding

UK subsidiary - withholding tax considerations



Note

There are no disadvantageous changes for German Outbound Structures expected.

Until now:

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After Brexit:

- To check: withholding tax according to UK law?
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Withholding taxation:

	UK	DTA
Dividends	0 %	5 %* / 15 %
Interest payments	20 %	0 %
License fees	20 %	0 %

* at least 10 % shareholding

Employment taxes and social security after Brexit

David Yewdall

Partner, Employment Solutions

Smith & Williamson LLP

Social Security

Current rules:

- Social security within the EU and EEA is governed by EC regulation 883/2004;
- This means individuals are covered by the legislation of one country;
- HMRC have clarified the position for anyone remaining with a cross border link/as long as an individual “continues without interruption”

Loss of EU directive:

- It is possible that an EU/UK future agreement could be reached in the next few weeks or, if not, the EU and UK could agree a separate agreement on social security coordination;
- Worthing knowing that the UK historically negotiated a series of bilateral social security agreements with various EU member states, which were replaced by the EUSS rules. However, these agreements are not always fit for purpose;
- It is possible that an EU/UK future agreement could be reached in the next few weeks or, if not, the EU and UK could agree a separate agreement on social security coordination.
- Draft texts indicate consistency with previous rules, but the process may be different.

Impact of changes to operating model post Brexit

Social security:

- Many organisations that have moved will have to an extent moved workforces to being EU based. This will likely give rise to local social security contributions in the country of work. Is it worth trying to enter into a voluntary regime for the UK?

- If this is the case, multi state workers will be protected by the existing EEA regime – i.e. only paying contributions in one country. The problem may arise where they are also undertaking work in the UK if we do not progress negotiations.

Actions required:

- **Review international workforce and assess how their mobility will impact the social security liability;**
- **Know your problem areas and mitigate liabilities**

The UK: A hub for Europe after Brexit

Alistair Shaw

Partner, Corporate Tax

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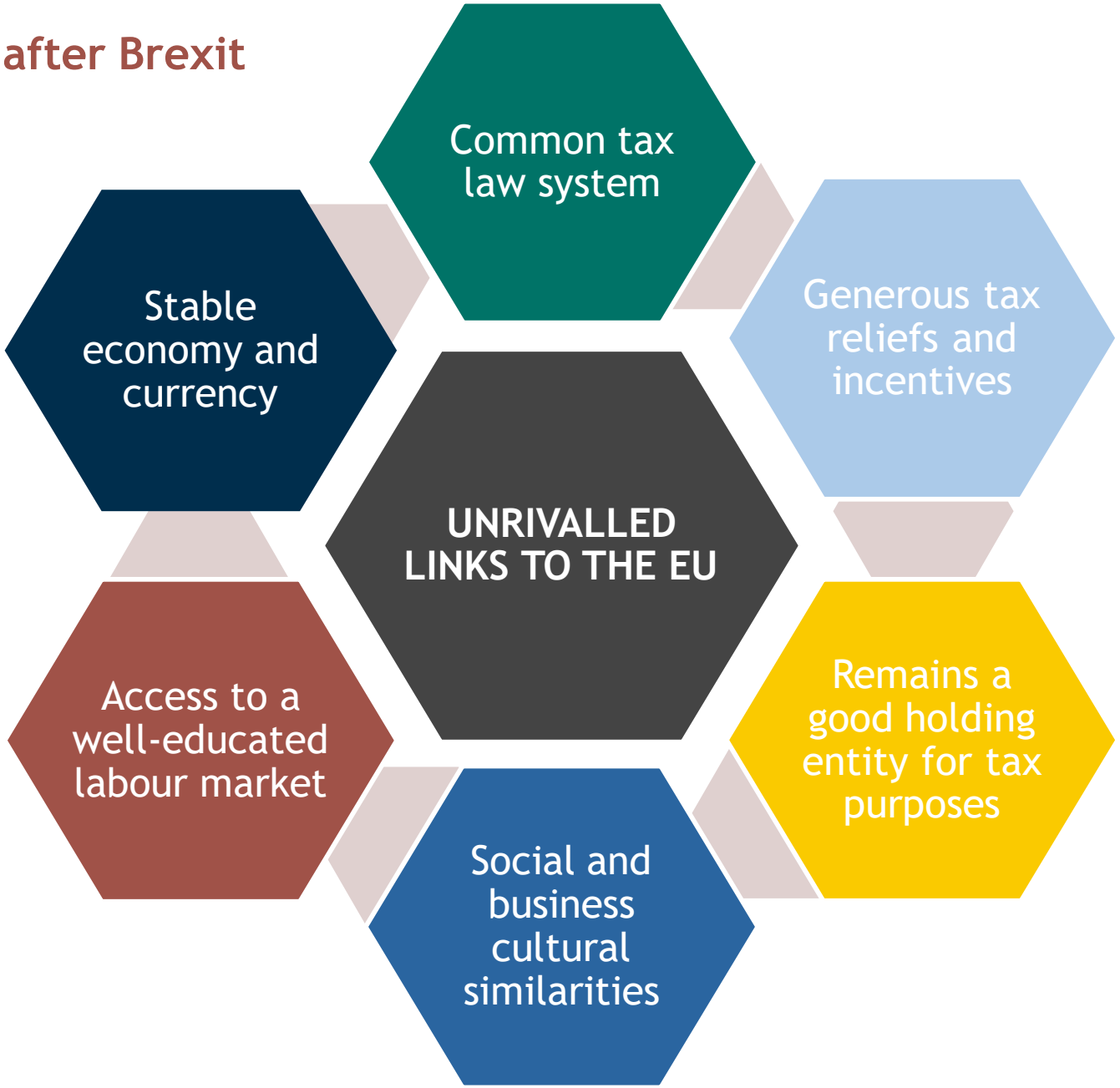
A hub for Europe after Brexit



Innovation incentives and tax reliefs in the UK

R&D relief

- SMEs: extra 130% tax relief or 14.5% cash tax credits for loss-making companies
- Large companies: 13% tax credit
- Available to UK permanent establishments of foreign companies

Patent Box regime

- Preferential 10% tax rate for profits from patented products
- Applies to profits from the worldwide sales of patented products
- Available even if the patent only applies to a small part of the total product

Branch exemption election

- Exempts foreign permanent establishments of UK companies from UK corporation tax
- Includes exemption from capital gains
- Elections are needed for each company, and are irrevocable. Modelling is required.

Q&A with the speakers

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