Chartered
Accountants
Ireland

# BREXIT - A GUIDE

JULY 2016

# CONTENTS

*FOREWORD* ... 3

1. LEGAL MECHANICS OF BREXIT ... 4
2. BREXIT STATISTICS ... 5
3. EU TRADE LAW – THE BASICS ... 5
4. IMPORTS AND EXPORTS POST-BREXIT – WITH NO OTHER DEALS IN PLACE ... 7
5. POST BREXIT TRADE ARRANGEMENTS – THE NORWEGIAN MODEL ... 9
6. POST-BREXIT TRADE ARRANGEMENTS – THE SWISS MODEL ... 10
7. POST-BREXIT TRADE ARRANGEMENTS – THE WTO MODEL ... 11
8. APPLICATION OF EU LAWS POST-BREXIT ... 12
9. NON TARIFF TRADE BARRIERS ... 12
10. IMPLICATIONS FOR THE BORDER ... 13
11. VAT IMPLICATIONS OF BREXIT ... 14
12. DIRECT TAX IMPLICATIONS OF BREXIT ... 14
13. FINANCIAL SERVICES AND OTHER SPECIAL AREAS ... 15
14. SOME LABOUR MARKET IMPLICATIONS OF BREXIT ... 16
15. FINANCIAL IMPLICATIONS FOR THE EU OF THE UK WITHDRAWAL ... 16
16. THE EUROPEAN COURT OF HUMAN RIGHTS ... 18
17. CONCLUSION ... 18
18. CONTACT US ... 18

## FOREWORD

An in-out referendum was held in the UK on 23 June 2016 that asked voters if they wished the UK to remain in the European Union (EU) or leave. Although the majority of the final day opinion polls pointed to the probability of a 'remain' vote, the actual outcome was 51.9 percent leave versus 48.1 percent remain.

The vote has certainly redefined the future of Europe. It has rattled investors and shocked policy makers. Because of our geographic, social and economic ties with the UK, the island of Ireland will feel the effect of Brexit more than any other region, with part of the island within the UK and part being one of the UK's main trading and cultural partners. It raises questions about the border between North and South and the free movement of people on our island. The economic reality is already being felt through stock market volatility, returns on government bonds and the decline of sterling.

But despite this backdrop many also feel that Brexit offers this island opportunities. With our skilled workforce, our English speaking people in our common law system and continued access for the Republic to the European free trade area, are we well positioned to attract international capital and international trade?

This Guide is primarily a briefing document that outlines some of the factual legal and tax consequences for Irish Chartered Accountants on the island of Ireland, their businesses, firms and clients. It has been prepared by Eoin O'Shea, a Chartered Accountant, Barrister and former member of the European Court of Auditors, with input from the Tax Department of Chartered Accountants Ireland. I hope you will find it helpful.

***Liam Lynch***

***President, Chartered Accountants Ireland***

# 1. LEGAL MECHANICS OF BREXIT

The legal mechanics of Brexit are chiefly contained in Article 50 of the Treaty on European Union (brought into being by the Lisbon Treaty, December 2009). Article 50 provides:-

1. *Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.*
2. *A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.*
3. *The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.*
4. *For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it. A qualified majority shall be defined in accordance with Article 238(3) (b) of the Treaty on the Functioning of the European Union.*
5. *If a State which has withdrawn from the Union asks to re-join, its request shall be subject to the procedure referred to in Article 49.*

Following the vote to leave the EU, it falls upon the UK to officially inform the European Council of the vote and to trigger Article 50 of the Treaty of the European Union.

A period of negotiations between the UK and its EU member counterparts will follow the invocation of Article 50. EU leaders meeting in the format of the European Council on 28 and 29 June 2016 expressed hope that the UK would remain a close partner of the EU. The Treaty provides that UK representatives shall not take part in the summit discussions on the withdrawal treaty. This does not mean the UK and its representatives will not be involved in day-to-day exchanges of views and opinions. It does mean that the UK's people will not be in the room when discussions are being held on the final documents and the UK will not have a vote thereon.

Whether or not a withdrawal agreement is concluded within two years, Article 50 provides for a "hard exit" two years after the Prime Minister officially communicates the result of Brexit unless that period of two years is extended by unanimous agreement.

This two year period, during which the UK will remain a full member of the EU and during which EU law will apply in full in the UK is the one certain island in a choppy sea full of unknowns.

## 2. BREXIT STATISTICS

Various national and international bodies have, recently, provided their views on the implications of Brexit for the UK economy. For example, the OECD has estimated that UK GDP would fall by 3 percent by 2020 and be 5 percent lower by 2030 than GDP would have been if the UK's membership of the EU had continued. The UK Treasury in its April 2016 report on the various options for the UK post-Brexit has estimated that GDP would be between 3.4 percent and 9.5 percent lower in 15 years' time (depending on the post-Brexit model adopted) than would be the case had the UK remained a member of the EU during that 15 year period.

The Irish Government's Summer Economic Statement published on 21 June 2016 considered the impact on Ireland of a Brexit vote. Citing work by the UK Treasury and the UK's National Institute of Economic and Social Research (NIESR), a vote to leave the EU could reduce UK GDP by between 2.3 and 6.0 percent, relative to baseline, under a range of scenarios. An extrapolation of these findings using an economic model developed by the ESRI HERMES implies a possible fall in Irish GDP relative to baseline in the range of 0.5 to 1.2 percent. In addition, the Irish economy would not be immune to the shock to the Eurozone of Brexit.

## 3. EU TRADE LAW – THE BASICS

Humans have always traded. In its basic form, trade law is governed by contract – i.e. an agreement between buyer and seller. The parties usually agree how and by what law disputes are to be settled. They can agree the price, currency, quality and delivery dates. The contract can deal with insurance, credit terms, bank guarantees etc. The agreement may be for a single item or a job lot. The possibilities for agreement between the parties are reasonably endless.

If the law was as pure as previously described, Brexit would pose no trade problems between the UK and Ireland. However nation states have laws and practices that interfere with private contracts for international trade. Examples of this are customs duties, sales tax regimes, quality standards, trade restrictions and protectionism.

Currently, between Ireland and the UK and the rest of the EU, trade law is set exclusively by the EU as part of the "Common Commercial Policy" set forth in Articles 206 and 207 of the Treaty on the Functioning of the European Union:-

***"Article 206***

*By establishing a customs union in accordance with Articles 28 to 32, the Union shall contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and on foreign direct investment, and the lowering of customs and other barriers.*

***Article 207***

*1. The common commercial policy shall be based on uniform principles, particularly with regard to changes in tariff rates, the conclusion of tariff and trade agreements relating to trade in goods and services, and the commercial aspects of intellectual property, foreign direct investment, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies. The common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action.*

*2. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall adopt the measures defining the framework for implementing the common commercial policy.*

***3. Where agreements with one or more third countries or international organisations need to be negotiated and concluded, Article 218 shall apply, subject to the special provisions of this Article.*** *The Commission shall make recommendations to the Council, which shall authorise it to open the necessary negotiations. The Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Union policies and rules. The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it. The Commission shall report regularly to the special committee and to the European Parliament on the progress of negotiations.*

*4. For the negotiation and conclusion of the agreements referred to in paragraph 3, the Council shall act by a qualified majority. For the negotiation and conclusion of agreements in the fields of trade in services and the commercial aspects of intellectual property, as well as foreign direct investment, the Council shall act unanimously where such agreements include provisions for which unanimity is required for the adoption of internal rules.*

*The Council shall also act unanimously for the negotiation and conclusion of agreements:*

*(a) in the field of trade in cultural and audio-visual services, where these agreements risk prejudicing the Union's cultural and linguistic diversity;*

*(b) in the field of trade in social, education and health services, where these agreements risk seriously disturbing the national organisation of such services and prejudicing the responsibility of Member States to deliver them.*

*5. The negotiation and conclusion of international agreements in the field of transport shall be subject to Title VI of Part Three and to Article 218.*

*6. The exercise of the competences conferred by this Article in the field of the common commercial policy shall not affect the delimitation of competences between the Union and the Member States, and shall not lead to harmonisation of legislative or regulatory provisions of the Member States in so far as the Treaties exclude such harmonisation."*

The provisions of Article 207 (3) are important. The Article says that private deals between one EU country and a "third country" are not permissible in the field of tariffs and customs. Given the close relationship between Ireland and the UK, some might say that Ireland and the UK should, in tandem with Brexit, negotiate their own trade agreement. Unfortunately, because trade is exclusively within the competence of the EU, such a bilateral arrangement would not be possible without the consent of Ireland's EU partners. However, because of the common land border between Ireland and the UK, and the history of relations between the parties, some form of bilateral trade and customs agreement between Ireland and the UK will be an imperative. This perhaps could be at an administrative level to simplify the customs, excise and VAT arrangements between the two countries without altering the substance of the Single Market. It would represent both an unfair and disproportionate act by Ireland's EU counterparts to stop such an agreement being made between the UK and Ireland or vetoing such a deal being part of any UK withdrawal agreement.

## 4. IMPORTS AND EXPORTS POST-BREXIT – WITH NO OTHER DEALS IN PLACE

Post-Brexit, the possibilities of UK/EU trade co-operation need to be considered. There are a number of options including the Norwegian model, the Customs Union model, the Swiss model and the WTO model which are discussed elsewhere in this paper. It is proposed however (for the sake of simplicity and to aid understanding), to consider what might happen if there is no agreement between the UK and the EU post Brexit.

Post-Brexit, exports from Ireland to the UK will (in the absence of other interventions) continue as normal. The EU does not generally ban its Member States from exporting. However there are certain sanctions (e.g. it is not possible to sell aviation fuel to North Korea because of UN Security Council sanctions) or environmental considerations (e.g. it is illegal to

export hazardous waste from the EU except in certain circumstances or to trade in endangered species of animals) where restrictions are imposed. “Normal” exporting ought to continue as normal.

Post-Brexit, the UK may adopt its own customs regime, however, meaning that exports from Ireland would become more expensive for the UK buyer of those goods, thus affecting the competitiveness of Irish produce. There is no way of knowing what tariffs the UK would put on external goods but a salient guide might be the EU’s own customs regime. According to the EU document “The EU explained – Trade (November 2014)”

> *“currently almost three quarters of imports into the EU pay no, or reduced, duties. Where duties are still payable, the average rate in 2012 was just 2.2 percent for industrial products and 2.6 percent for all goods overall.”*

Assuming (and this cannot be assumed) that a stand-alone UK customs regime would mirror the current EU external customs regime, goods exporters from Ireland ought to check the current EU customs regime to see what customs tariffs might be in store for their goods post-Brexit. If the EU and the UK remain at loggerheads after Brexit and do not conclude a mutual agreement including trade and tariffs, in 75 percent of cases, Irish goods could well be no more expensive to the UK consumer in customs terms than at present. The remaining 25 percent of cases may, however, involve higher prices for the UK importer. The foregoing assumes that the UK will actually operate a customs regime post-Brexit and will operate it in the same way and with the same tariffs as the EU’s customs regime. The actual rate of the duty, however, is not the end of the matter. The increased administration which would be involved in a new customs regime must also be considered.

Post Brexit, imports to Ireland from the UK will (in the absence of an EU/UK trade agreement) be subject to EU customs duty and payable by the Irish importer. Irish businesses ought to check the presently applicable customs tariffs. Irish purchasers might also take the opportunity to source other suppliers based elsewhere in the EU in case another EU based supplier can be found to supply the necessary imports on a duty free basis.

As can be seen from the previous paragraphs, a pure Brexit - in tariff terms – is more dangerous for UK business than it would be for Irish businesses. An Irish business faced with import duties can switch to another supplier based in the rest of the EU and avoid having to pay such duties. A UK business would not have that luxury meaning that prices would be higher for the UK consumer (because of UK import duties) and UK businesses would become less competitive in the international marketplace (because of UK import duties affecting the price of raw materials and other countries’ duty regimes affecting the effective price competitiveness of the UK’s exports).

The UK, after Brexit, would suffer a double hit because it would not then have access to the EU’s own arrangements with the rest of the world. The EU has a large number of free trade agreements in place, all individually negotiated, which give

EU Member States favourable access to rest of the world markets. It will, of course, take time for the UK to negotiate trade arrangements similar to those EU/third country agreements the UK now benefits from. A UK business facing extra duties both in trading with their former EU colleagues and in the wider world without the benefit of the cloak given by the existing EU Free Trade Agreements might consider altering their production arrangements e.g. by relocating to another EU country.

Customs duties are not the only factors which can legitimately affect trade on a day-to-day basis. Other measures include subsidies (money/worth given to a producer which gives them an advantage over foreign entities) or anti-dumping duties (where specific tariffs are applied to combat lower than normal selling prices undermining local competition). There are softer measures such as restrictions on licences and permits. As both the UK and the EU are members of the World Trade Organisation (WTO) and subject to the rules of the WTO and expected to keep those rules, it is not envisaged that these elements will form a major part of the difficulties apprehended by Brexit. On the other hand, any administrative hiatus in the UK in putting in place all of the new domestic rules and procedures may give rise to the *de facto* imposition of non-tariff trade barriers.

It will be in the UK's interest to negotiate, post-Brexit, a comprehensive arrangement with EU colleagues which includes access to the EU's current external free trade arrangements.

## 5. POST BREXIT TRADE ARRANGEMENTS – THE NORWEGIAN MODEL

Norway is not a member of the EU. Referenda on whether or not to join the EU were held in 1972 and 1994 but were narrowly defeated (53 percent and 52 percent against joining, respectively). Opinion polls show that if a referendum were held today, perhaps 70 percent of Norwegians would vote against EU membership. Norway is an important EU trading partner with around 80 percent of Norway's exports going to the EU and around 60 percent of its imports coming from the EU.

Norway, having been a member of the European Free Trade Area (EFTA) since EFTA's foundation in 1960, became a member of the European Economic Area (EEA) in 1994. Iceland, Norway and Lichtenstein (together with the EU Member States) constitute the EEA.

The EEA is based on the four freedoms of the EU – freedom of movement of people, capital, services and goods. Non EU members of EEA enjoy free trade with the EU. In return, EEA states must automatically adopt EU law connected to the four freedoms. A financial contribution to the EU is also required. The EEA agreement does not cover the Common Agricultural Policy (CAP) or the Common Fisheries Policy.

After the Brexit date, it is open to the UK to re-join the European Free Trade Association (EFTA) which it left in 1973 having joined the EU. From its membership of EFTA, the UK might then join the EEA.

Norway is not part of the EU Customs Union. Although there is the freedom of movement of goods, there are still customs checks which add to the cost of trading with Norway.

Reasons the UK might not wish to join the EEA are that it would still be subject to a considerable body of EU law which the UK would be required to transcribe into national legislation automatically, without having the right of input into same by way of having its own EU Commissioner or Members of the European Parliament or by being represented at EU Council of Ministers meetings. The UK would also have to make a sizeable financial contribution. EEA membership would give the same right of residence and work to foreigners as currently exists in the EU.

To give an example of the size of the financial contribution the UK might have to pay as an EEA member state; Norway currently contributes €866 million per annum to EU and EEA projects, according to the website of the Norwegian delegation to the EU. Given a population difference of 5 million Norwegian versus the UK's 64 million persons, the equivalent UK contribution as an EEA member would be some €11 billion per annum. Based on the relative sizes of the economies, the UK's contribution as an EEA member would be some €5 billion per annum.

The statement published at the conclusion of the European Council meeting on 29 June 2016 included the following paragraph:-

> *"In the future, we hope to have the UK as a close partner of the EU and we look forward to the UK stating its intentions in this respect. Any agreement, which will be concluded with the UK as a third country, will have to be based on a balance of rights and obligations. Access to the Single Market requires acceptance of all four freedoms."*

By including the phrases "rights and obligations" and "requires acceptance of all four freedoms" in its 29 June 2016 statement, the European Council is, perhaps, indicating to the UK authorities that access to the single market on a tariff-free basis (i.e. the best trading outcome for Ireland and the UK) will be predicated upon the UK accepting, as a matter of course, remaining subject to a large volume of EU law, continuing to make substantial payments to the EU budget and continuing to permit EU-nationals to migrate to the UK.

## 6. POST-BREXIT TRADE ARRANGEMENTS – THE SWISS MODEL

Switzerland voted against joining the EEA, by referendum, in 1992. In 2001, the Swiss public voted against opening talks leading to full EU membership by a large margin – 77 percent.

Switzerland (at 7 percent) was the third largest recipient of EU exports in 2015 after the United States (18 percent) and China (15 percent).

Switzerland has had a Free Trade Agreement with the EU since 1972 and also has free movement of people Following rejection of EEA membership, Switzerland signed a series of bilateral arrangements with the EU which, taken together, virtually mirror the legal situation as between the EU and the other EEA states. The UK would need to sign similar bilateral trade agreements with the EU to gain access to the EU market.

For many practical purposes, the differences between the Swiss model and the Norwegian model are nothing to write home about. However there are critical differences between the regulatory models, for example "passporting" for financial services businesses which is available under the Norwegian model, but not under the Swiss model. This is detailed under the section entitled Financial Services and Other Special Areas.

## 7. POST-BREXIT TRADE ARRANGEMENTS – THE WTO MODEL

The WTO was founded in 1995 and is the successor to the General Agreement on Tariffs and Trade (GATT) organisation. GATT came about in 1947, at which time average trade duty rates were approximately 40 percent. The final round of negotiations under GATT, the Uruguay Round 1994, has resulted in average duty rates of 3.6 percent, according to the WTO. The WTO also has concluded detailed rules on such topics as country of origin labelling, anti-dumping, and subsidy alleviation measures and customs valuation.

If, following the Brexit vote, the UK does not wish to follow models such as the Norwegian or the Swiss model, the UK will have to fall back on individually negotiated free trade agreements. The existence of the WTO and its rules means that the UK would not have to completely reinvent the trading wheel.

The WTO allows a country to impose customs duties. There is, however, the concept of "Most Favoured Nation". If Country X offers Country Y a duty rate of 1 percent on a specific item, it must also offer the world access to its markets at a 1 percent duty for that item and cannot charge everybody other than Country Y, say, 3 percent. There are exceptions to this, the main one being free trade agreements where outsiders can be treated differently.

The WTO requires non-discrimination once products enter a market. This is the principle termed "national treatment". Goods from Country Y entering Country X may have customs duties applied at the border but once in free circulation in Country X, have to be treated the same as goods produced in Country X.

The WTO has also standardised anti-dumping rules. Anti-dumping rules allow a state to apply customs duties on incoming goods where the price of those incoming goods is artificially low and, because of that, is negatively effecting domestic production. The aim of the anti-dumping tariff is to eliminate the price difference caused by the artificially low prices. The WTO rules state that anti-dumping tariffs cannot be applied unless there is objective evidence justifying same. There is also an independent dispute resolution mechanism in place to handle disputes such as anti-dumping disputes.

If a third country imposes anti-dumping duties, and then does not comply with a WTO ruling in respect of said anti-dumping duties, the aggrieved country can, according to WTO rules, retaliate with its own tariffs. So, if non-EU Country X upsets an EU country, the EU itself will impose retaliatory sanctions on the non-EU country. A threat of retaliatory action by the EU itself holds far more weight than a threat of retaliatory action from a single member state only.

The existence of the WTO does provide safeguards for the UK in the event of the UK not entering a trade agreement with the EU. However, the WTO does not outlaw tariffs or free trade agreements such as the agreements between the members of the EU. In those circumstances, the UK will be at a significant disadvantage compared to its trading partners should it choose to go down the "WTO model" route.

## 8. APPLICATION OF EU LAWS POST-BREXIT

Article 50 provides that the EU Treaties will cease to apply to the UK after a period of time i.e. 2 years after the Article has been triggered (save for agreements extending or having the effect of reducing the said time period.)

But what about the rest of the EU law that will be in place at the date of Brexit such as EU Regulations and Directives? EU Regulations are EU instruments which directly become law, rather like a domestic statute.EU Directives, on the other hand, are prescriptive – Directives are mandates for EU Member States to implement principles and policies into their national legislation.

Because of the volume of Regulations and Directives already incorporated into UK law, it appears the only way the UK political and legal system could cope with Brexit is if a law is passed in the UK that bind all EU Regulations and UK legislation which incorporate EU Directives as at the Brexit date. If that is done, an issue will arise related to the status of unimplemented Directives on Brexit date and as to what legal force will be given to decisions of the EU Court of Justice – given subsequent to Brexit – on the interpretation and legality of EU legislation which existed at the date of Brexit.

As "the four freedoms" are extremely important to businesses, it is not a big step for it to be thought that businesses would like to be situated in a jurisdiction governed by EU law, in a jurisdiction where the writ of the EU Court of Justice runs and where the business can have the benefit of EU law on such matters as data protection and IP protection. Following Brexit, if a UK-based company wishes to remain under the protection of EU law and the EU Court of Justice, then that business will need to relocate.

## 9. NON TARIFF TRADE BARRIERS

Trade is not only affected by customs duties. It is entirely possible for measures equivalent to customs duties between Member States and measures equivalent to quantitative restrictions on movement of goods to be introduced under the radar or unintentionally. This can be done by outlawing some forms of manufacturing process, or denying branding or

trade descriptions, or deeming certain imports illegal on moral or social grounds. If the UK is unable to negotiate similar protections as now apply via EU law, UK suppliers will face risks to their trade not just from customs duties themselves. The British Treasury's paper (April 2016) on the long term impact of the EU states (at p.23) that non-tariff barriers can have the most significant impact on trade, stating *"Estimates indicate that on average they can add 2 or 3 times as much to the cost of traded goods as tariffs."*

## 10. IMPLICATIONS FOR THE BORDER

If Brexit occurs in the absence of a UK-EU arrangement covering customs or the acceptance by the EU of a customs/trade arrangement between Ireland and the UK, there will be a requirement for customs arrangements to be, once again, put in place on the Irish border.

Brexit cannot but lead to the reintroduction of border controls for customs purposes. If there are to be customs, there will need to be customs controls. It is hoped that the disruption such controls will inevitably cause can be mitigated to some degree using technology.

According to InterTrade Ireland's 2014 report, cross border trade is worth €3 billion per annum, with €1.8 billion South/North and €1.2 billion North/South.

The UK/Ireland common travel area predates the EU's establishment and is protected by protocols to the Treaties. This should mean that the common travel area between Ireland and the UK ought to continue to exist post-Brexit. It is not a certainty, however.

The Good Friday Agreement (1998) and the St. Andrews Agreement (2006) have effected new institutional arrangements between the North and South of Ireland. Products of those agreements have included the North-South Ministerial Council and a number of government bodies with cross border functions including Tourism Ireland (which markets the island as an entity for tourism purposes), Inter-Trade Ireland (which encourages and promotes cross border trade), Waterways Ireland (which manages inland waterways, including waterways which criss-cross the border) and the Special EU Programmes Body which manages cross-border implementation of EU peace funds. While the existence of these bodies will not be affected by Brexit, their presence is perhaps a further reason why Ireland's EU partners ought to be supportive of special arrangements between the UK and Ireland which might, in the absence of agreement from said EU partners, be impossible under EU law.

## 11. VAT IMPLICATIONS OF BREXIT

Aside from customs, it is important to consider the possible impact of Brexit on other taxes such as VAT.

In terms of VAT, the UK has always been empowered to change its VAT rate within the EU framework so it remains to be seen whether the UK would choose to change the VAT rate once outside the EU. While the existing rate is competitive and the system works, if the UK economy suffers economic turmoil, changes to the VAT rate could be used to counter the impact.

EU Member States who do business within the EU have the opportunity to recover VAT paid on certain expenses incurred in the other EU country. As the UK will no longer be an EU Member State, the UK would have to decide whether or not it wishes to continue allowing foreign businesses to recover UK VAT. Norway and Switzerland both allow EU businesses to reclaim VAT in their respective countries but there is no guarantee that the UK will agree to do the same. The total cost of doing business in the UK will therefore rise if companies cannot reclaim such VAT.

The UK will presumably lose access to the EU “one-stop shop” mechanisms that are being introduced to remove the burden for a business which would otherwise be required to register for VAT in up to 28 jurisdictions. Triangulation (goods moving within the EU in the course of a supply chain including VAT registered businesses) is another simplification measure which may not be available to suppliers; thus creating an administrative burden.

For Ireland, import VAT will now become payable up-front on the importation of goods from the UK. This VAT suffered by the Irish business will be reclaimed in the following VAT period so while there is no additional VAT cost, there is a cash flow consequence that will have to be considered.

## 12. DIRECT TAX IMPLICATIONS OF BREXIT

In terms of direct taxes, such taxes are not controlled by EU law to the same extent as VAT. There are however principles in the European tax treaties that control some of the rules. EU law insists on the freedom of capital, people, services and businesses across its borders. This means for example that the UK while in the EU cannot charge an EU owned company a higher rate of corporation tax than it charges a UK owned company. The UK has recently pledged to reduce corporation tax rate to 15percent. In theory, as the UK will be no longer part of the EU, an EU country could therefore charge UK companies a higher rate of corporation tax than other EU companies operating in their country.

The UK will no longer have to comply with EU State Aid rules and it will be free to offer tax and non-tax incentives to UK-based businesses. This may put non-UK businesses at a significant disadvantage.

With regards to corporation tax, there is now a risk of increased pressure on Ireland to concede to closer tax harmonisation. Both Ireland and the UK have traditionally been opposed to closer tax harmonisation. Ireland may now become very isolated on its stance against tax harmonisation within the EU.

Post-Brexit, subsidiaries based in EU Member States will not be able to rely on EU Directives which grant tax exemptions and reliefs from withholding taxes such as the Parent-Subsidiary Directive and Interest and Royalty Directive. This risk is low for Ireland because Ireland and the UK have a comprehensive double tax treaty. For groups of companies operating in countries with which the UK does not have a comprehensive double tax treaty, this could be costly.

## 13. FINANCIAL SERVICES AND OTHER SPECIAL AREAS

According to its Brexit paper released in April 2016, the UK Treasury estimates that 399,000 persons work in financial services in the City of London; 85,000 in Scotland and 98,000 in the North West. Three quarters of the EU's foreign exchange trading takes place in London.

The EU has special rules permitting financial services firms already authorised in one member state, to provide their authorised services throughout the rest of the EU without the need to obtain further authorisations. The rule is commonly called the "passporting rule". Passporting into the EU from the UK will not be possible following Brexit unless a special arrangement can be negotiated. Therefore financial services businesses currently located in the UK will have to establish entities in other EU countries in order to continue to provide services across the EU. A negotiation period, if any, will cause much uncertainty for the industry and companies are likely to be unwilling to wait to see the outcome of Brexit for the industry and may very well seek to move the business to another EU country in the interim.

Another example of an industry specially assisted by the existence of the EU is the airline industry. The UK Treasury paper on Brexit (April 2016) records that, since 1993, the number of intra-EU routes has doubled and the number of such routes serviced by more than two airlines has increased from 93 in 1992 to 482 in 2011.

A further example is the telecommunications industry. EU law has transformed the competitive situation of each nation's telecoms industry. The European Commission announced in the summer of 2015 that it had agreed on single market legislation for telecoms, meaning that the charges for using a mobile phone abroad will reduce during 2016 and disappear altogether in June 2017. The UK, post-Brexit, will no longer be covered by the regulation.

The existence of these special arrangements for particular businesses will mean, post-Brexit, that these businesses may be significantly affected by the absence of the rule of EU law in the territory of the UK.

## 14. SOME LABOUR MARKET IMPLICATIONS OF BREXIT

The “free movement of labour” is one of the four fundamental principles of the EU. This entitles citizens of EU Member States and their families to reside and work anywhere in the EU. This right also applies to citizens of EEA Member States and Switzerland. The inability of the UK to impose limits on immigration from all these countries was an issue in the Brexit debate.

Should the UK decide to stay outside the EEA, the EU could put pressure on the UK to accept the free movement of people principle in return for UK’s access to the EU market.

Should the UK not adhere to the free movement of people principle, it would be free to impose its own controls on EU/EEA immigration as it currently does on non-EU/EEA nationals. This could restrict the flow of migrant workers and result in skill shortages in various sectors.

The sectors with the highest proportion of non-UK EU born workers are accommodation and food services (9 percent), manufacturing (7 percent), and business administration (7 percent). The sectors of the economy with the lowest share of EU workers are the sectors associated with the public sector; public administration and defence (2 percent), health and social work (4 percent) and education (4 percent). The current rate of unemployment in the UK is around 5percent which is very low by worldwide standards. It remains to be seen who would fill the roles above if the free movement of people is restricted and how this would impact businesses in the UK.

Changes to the immigration system are generally unpopular with businesses that hire foreign staff. Keeping up to date with changes to visa regulations causes an administrative burden while the risk of losing key staff due to visa costs and requirements is a possibility for many organisations.

## 15. FINANCIAL IMPLICATIONS FOR THE EU OF THE UK WITHDRAWAL

The EU’s annual budget of some €140 billion is mostly funded by annual payments from its Member States. The amount paid by each member state is determined, in the main, by the size of the member state’s national income. The EU then spends this money on e.g. payments to farmers (the CAP) and e.g. payments to build up infrastructure in less developed regions of the EU (cohesion payments). Funds are also used for humanitarian/development purposes in neighbouring and third world states, for research (e.g. payments to universities to conduct research) and indeed to administer the EU institutions (e.g. staff salaries).

Some EU Member States are net contributors and some are net beneficiaries. The UK has always been a net contributor to the EU. After Brexit, the other 27 Member States will have to shoulder the UK’s former contribution. Different figures for the UK’s financial contribution to the EU were used by different parties during the course of the referendum campaign. Different figures are produced by the European Commission compared to the UK Treasury. According to the

UK Treasury's report on EU finances, published in December 2015, the net UK contribution to the EU was scheduled to be some £8.5 billion in 2015, down from £9.8 billion in 2014. The UK contributed 12.57 percent to the EU total budget on a gross basis compared to Ireland's contribution on a gross basis of 1.28 percent. The European Commission, on the other hand, has said that for 2014, the UK's net contribution was £5.7 billion.

Maintaining the same level of expenditure in the case of Brexit will cost the other Member States approximately £8.5 billion per annum (using the Treasury figures). In Ireland's case, for example, the additional annual contribution, at the gross contribution rate, would be some €260 million (the total EU budget is €141 billion and Ireland's contribution will increase to take account of 12.57 percent of UK funding that will not be present).

A UK withdrawal agreement may come with a request by the other Member States for the UK to pay to the EU its net equivalent funds over the unexpired period of the multi annual budget framework to 2020. If, for example, the UK leaves the EU in 2018, there will be two years of unexpired EU multi annual budgets because the current multi annual timeframe runs from 2014 to 2020. The UK Treasury (in its December 2015 report on EU finances) has estimated a net contribution of some £19.5 billion in respect of these two years.

It is the case that the EU has contingent liabilities e.g. pensions liabilities for EU staff. These contingent liabilities are guaranteed, jointly and severally, by the Member States. On leaving the EU, it might be the case that the remaining members might consider that a leaving guarantor should either continue their guarantee or pay a sum in lieu of same in order to provide for a clean break. The EU's balance sheet was, at the end of 2014, some €58 billion in deficit. The UK's share of this, on a 12.57 percent basis, would be some €7.25 billion.

The Transatlantic Trade and Investment Partnership (TTIP) between the EU and the United States will be the world's biggest bilateral trade and investment deal if it comes to fruition. It is estimated that imports from the EU to the US are worth €2 billion daily.

While the UK may "wait in line" to negotiate a deal with the United States post-Brexit as was suggested by President Obama in April 2016, TTIP could benefit Ireland greatly. Almost half (49 percent) of Irish exports outside of the EU go to the US, compared to the combined average of 16 percent for all Member States, and 25 percent of foreign direct investment (FDI) in Ireland comes from the US.

For the reasons set forth in the discussions regarding the "Norwegian" or "Swiss" models, the EU is likely to request continuing annual payments from the UK in the event that the UK wishes to continue to have the same access to the EU's markets.

The implications for the UK taxpayer of Brexit are mired in many of the uncertainties which befall the trade position.

## 16. THE EUROPEAN COURT OF HUMAN RIGHTS

The European Court of Human Rights (ECHR) is based in Strasbourg, France. The Court is often confused with the European Court of Justice (ECJ) which is based in Luxembourg. While they are both "European" courts, their functions are quite different. There has been a body of opinion in the UK that the UK should withdraw from the European Convention on Human Rights and develop the UK's own framework for the protection of Human Rights.

Notwithstanding the outcome of the Brexit referendum, the UK will still remain subject to the European Court of Human Rights unless the UK agrees to leave that organisation too.

## 17. CONCLUSION

The vote in favour of Brexit will mean years of legal uncertainty for the UK and its EU colleagues. The main (and perhaps only) certainty is that the UK will remain in the EU for at least 2 years and be subject to EU law for at least that period of time. Ireland's relationship with the UK will need to be protected given the mutual land border on the island of Ireland and the close historic relationship between the two nations.

## 18. CONTACT US

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