

I. General tax related issues arising from Brexit:

1. Customs related matters

1.1. The EU's (TF50) position for an orderly withdrawal of the UK from the Union

“As of the withdrawal date, the United Kingdom will no longer be part of the customs and tax (VAT and excise) territory of the Union. Consequently movements of goods between the UK and the EU 27 will constitute third country trade. [...]

To this end, **the Withdrawal Agreement should determine the customs status (Union and non-Union goods) of goods that enter, leave or transit the customs and tax territory of the Union, the United Kingdom or the EU27, where the movement starts before and ends on or after the withdrawal date, and the legal provisions applicable to them. [...]**“

(TF50 (2017) 13/2 – Commission to UK)

1.2. Issues for discussion on the panel

The position of the UK is not clear yet.

Lack of certainty for business/trade.

Will probably be resolved in a transition period (if such period is agreed upon).

2. Ongoing Union Judicial and Administrative Procedures

2.1. The EU's (TF50) position for an orderly withdrawal of the UK from the Union

“The Withdrawal Agreement should provide for arrangements relating to proceedings before the Court of Justice involving the United Kingdom, and/or United Kingdom residents/legal persons [...], which are ongoing on the withdrawal date, as well as for arrangements relating to judicial proceedings and administrative procedures initiated after the withdrawal date and relating to facts that occurred before the withdrawal date [...].

I. Proceedings before the Court of Justice

The Withdrawal Agreement should ensure that:

- 1. (1) The United Kingdom's withdrawal as such does not deprive the Court of Justice of its competence to adjudicate in proceedings which are pending on the withdrawal date. [...]**

II. Administrative procedures before the Union institutions, bodies, offices and agencies

The Withdrawal Agreement should ensure that:

- (1) The United Kingdom's withdrawal as such does not deprive Union institutions, bodies, offices and agencies of their competence to conduct administrative procedures pending before them on the withdrawal date concerning compliance with Union law by**

the United Kingdom, and/or United Kingdom residents/legal persons. Such procedures include, for example, state aid investigations by the Commission concerning the United Kingdom, or procedures initiated by the European Supervisory Authorities. [...]

(TF50 (2017) 5 – Commission to UK)

2.2. Issues for discussion on the panel

The position of the UK is not clear yet.

Will the UK courts use previous ECJ rulings as legally binding precedent?

Will the ECJ have a role during any transitional period?

If there is a dispute between the EU and the UK post Brexit, will the ECJ be involved?

3. Worldwide tax competition – race to the top or the bottom

The UK is likely to become a tax haven to avoid losing London's predominance as the worldwide capital of finance.

The US seems already keen to aggressively reduce its taxes ("Trump tax reform").

Continental Europe will follow. First premises are already showing (Macron's plan to gradually reduce the French corporate tax over several years).

From a UK domestic point of view, one has to ask if the likely tax reductions, coupled with potential adverse economic effects due to the aftermath of Brexit, will lead to budgetary constraints?

On a macro-economic level, one has to ask further, if a mature and large economy, with an important population and territory, can afford to apply the business model of a tax haven, which traditionally has worked only for small countries, which did not have huge public expenditure needs (e.g., large infrastructures, energy supplies) and did not seek to be a global force in international affairs (e.g., sea, air and land forces, as well as nuclear military capacities)?

II. The place of London in the financial services industry post Brexit:

Currently, various financial centres, such as Frankfurt, Paris, Dublin and Luxembourg, are undertaking lobbying work to attract to them some of the financial services firms/banks.

Internally, some non-UK firms are already stopping to hire non-UK citizens and, in some cases, even repatriating some non-UK teams to their home countries (mainly French and German banks and financial services firms).

Dublin would have the advantage, particularly for the US, to offer access to the single market and the eurozone, while being English speaking and a common law jurisdiction with low taxes.

Luxembourg has several preferential tax regimes and an internationally recognized expertise in the investment funds industry.

Frankfurt and Paris have the advantage of their size and the daily trading volume on their respective stock exchanges.

Notwithstanding the precedent, it is difficult to predict, if one city, or which one, will emerge as a winner from Brexit.

Given that there will eventually be a European dilution, with some businesses moving to one financial centre, and the other ones to others, it is likely that New York will ultimately profit by the loss of business its rival London might suffer.

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