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International Tax Conference – IFA Germany



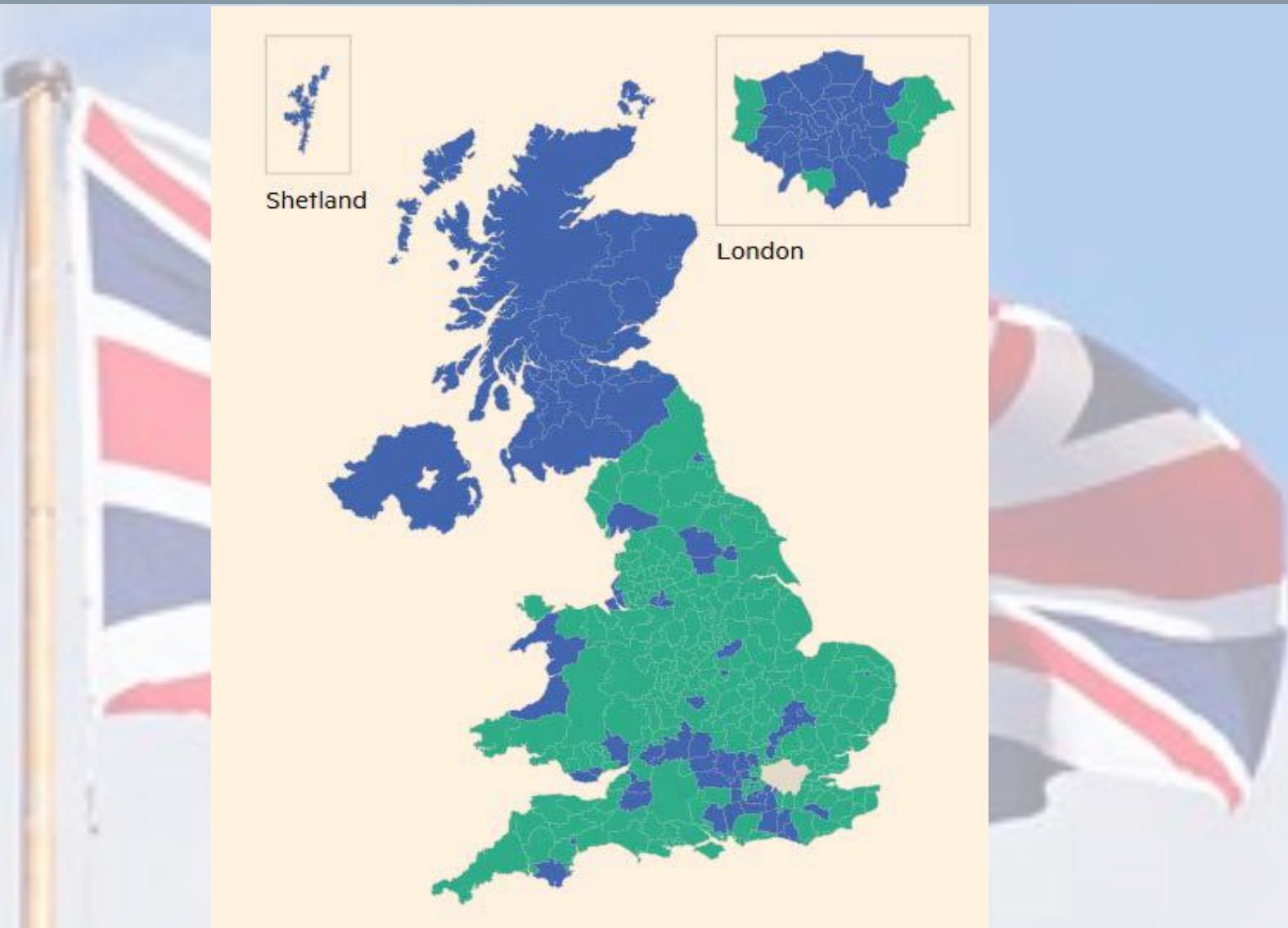
INDUSTRIELAND
IN DEUTSCHLAND INVESTIEREN
STÄRKEN

Brexit and its implications for Europe....



BREXIT and its implications for Europe...

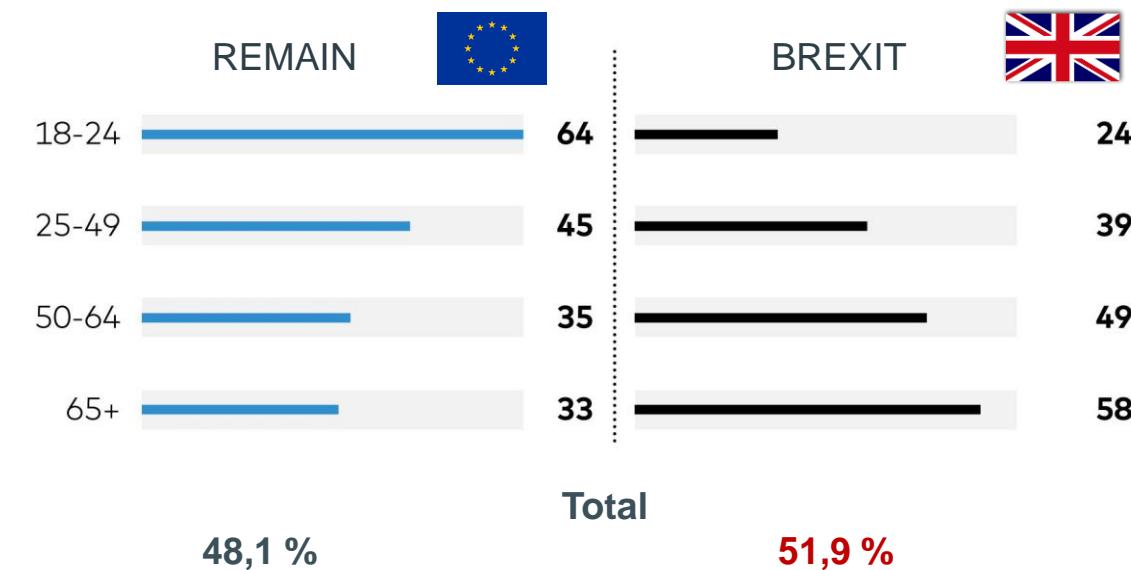
BREXIT-Election



BREXIT and its implications for Europe...

BREXIT-Election

Older People voted for BREXIT – Younger People voted for REMAIN

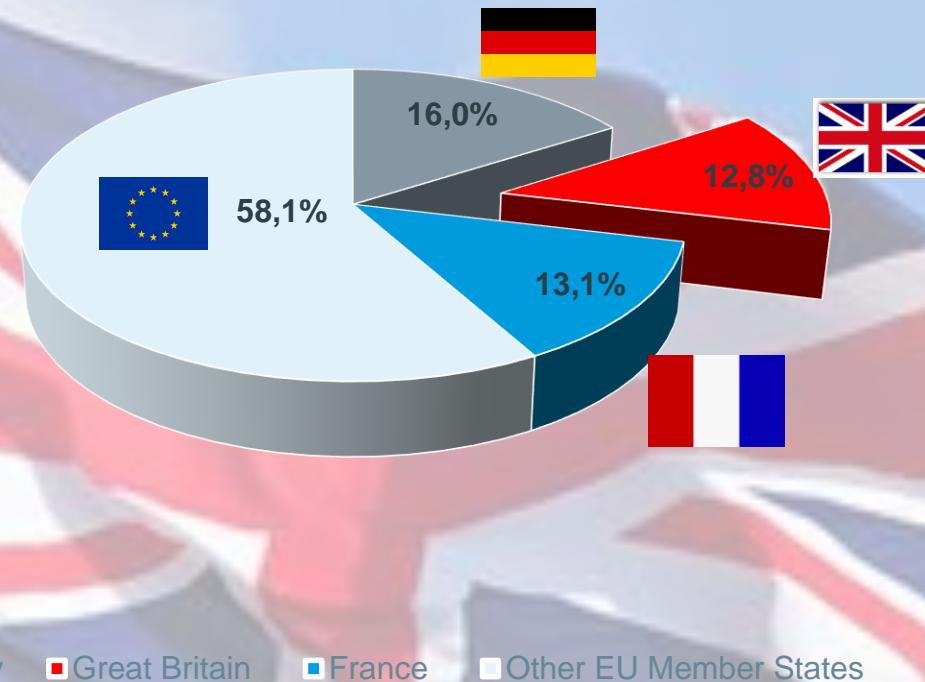


BREXIT and its implications for Europe...

BREXIT-Election

EU 28 → EU 18

European Union – Population in %

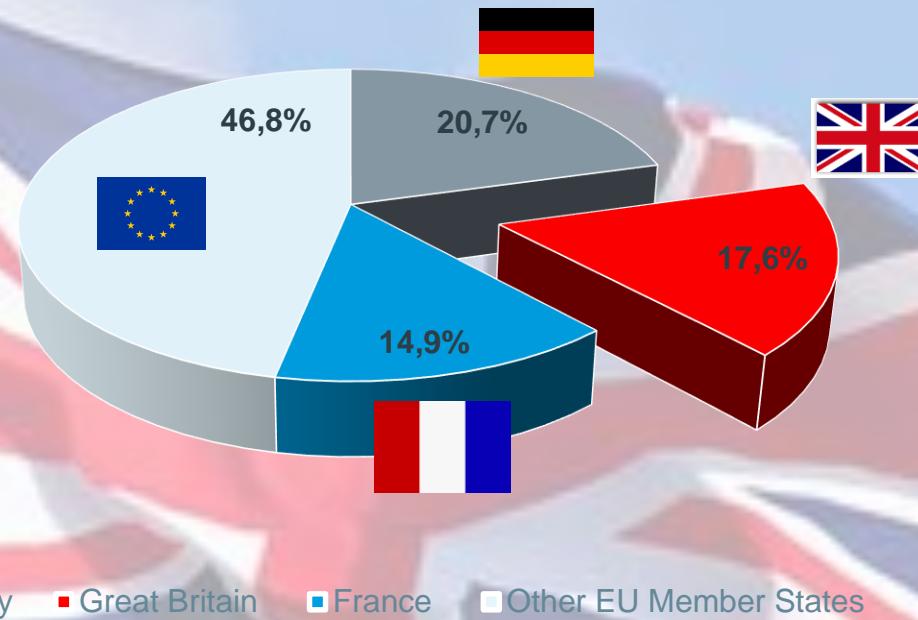


BREXIT and its implications for Europe...

BREXIT-Election

EU 28 → EU 8

European Union – GDP in %



**Economic Power of GB →
20 smallest EU Member States**

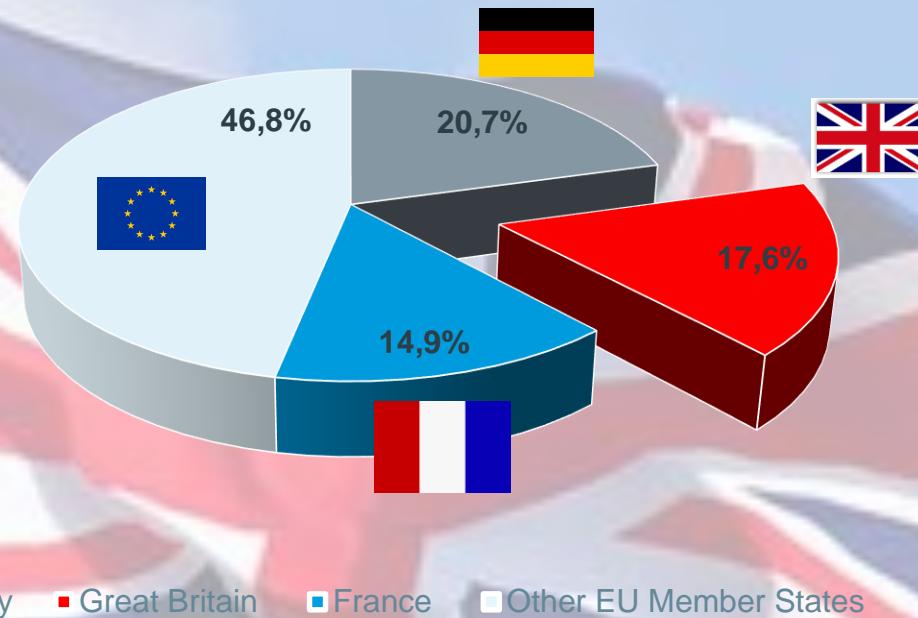
BREXIT and its implications for Europe...

BREXIT-Election

List of EU 8 (economic power)

Germany
Great Britain
France
Italy
Spain
Netherlands
Sweden
Poland

European Union – GDP in %



BREXIT and its implications for Europe...

BREXIT-Election

**List of 20 smallest
EU Member States
(economic power):**

Belgium

Austria

Denmark

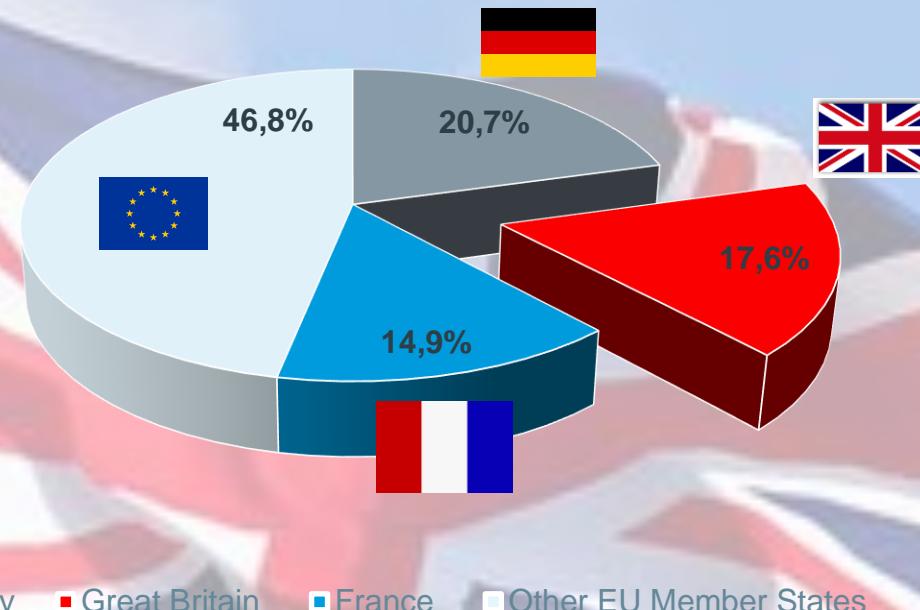
Ireland

Finland

Portugal, Greece Czech, ... , Luxembourg, ...

Cypres, Malta

European Union – GDP in %



BREXIT and its implications for Europe...

EU Task Force



Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50 TEU

12 April 2017

Chief Negotiator

Michel BARNIER

Policy Assistant: Barthélémy PICHE

Secretariat: Claire SAELENS, Silvana PATAT

Deputy Chief Negotiator

Sabine WEYAND

Policy Assistant: Justyna LASIK

Secretariat: Véronique DEPOVERE

Administrative Assistants: Anouk MERTENS DE WILMARS, Emmanuelle MINNE

Strategy, coordination and communication

Director
Stéphanie RISO (acting)

Policy Assistant
Marco ABATE

Inter-institutional Affairs
Team leader: Georg RIEKELES
Tristan AUREAU
Randolph DE BATTISTA (rotating presidency secondment)

Legal Affairs
Eugenio DUMITRIU-SEGNANA

Relations with think tanks & communication
Seconded Head of Unit: Stefaan DE RYNCK
Matthieu HEBERT (speechwriter)
Daniel FERRIE (in SPP)

Administrative Assistant: Isabelle MISRACHI
Secretariat: Nathalie NDJALI YA LONGO

Horizontal issues, cross-cutting policies and level playing field

Head of Cluster

Nicola PESARESI

Competition

Secretariat:
Jeanne KINDERMANN

Ward MOHLMANN: financial stability
Tadhg O'BRIAIN: energy and climate, environment

Aurora MORDONU: economic analysis
Thomas LIEFLAENDER: level playing field

Internal market and sectorial policies

Head of Cluster

François ARBAULT

Internal market in goods and non-financial services

Secretariat:
Giovanna DI RUBERTI

Marie SIMONSEN: free movement of citizens, employment
Peter SORENSEN: aviation

Budget, spending commitments and programmes

Head of Cluster

Philippe BERTRAND

Financial settlement

Secretariat:
Jeanne KINDERMANN

Bence TOTH: agriculture, fisheries and maritime policy
Norbert GACKI: budget

International agreements and customs

Head of Cluster

Antonio FERNANDEZ-MARTOS

Trade and customs

Secretariat:
Giovanna DI RUBERTI

Nina OBERMAIER: external relations and foreign and security policy
Stefan FUHRING: justice and home affairs, health and food safety (external aspects)

BREXIT and its implications for Europe...

BREXIT-Election – panel discussion

- **Mike Williams**
Director Business and International Tax at HM Treasury.
- **Martin Kreienbaum**
Director General at the Federal Ministry of Finance
- **Dieter Weber**
Tax Partners
- **Thor Legaard**
KPMG
- **Stephan Eilers**
Freshfields

Thank You....



BDI

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Bundesverband der
Deutschen Industrie e.V.

Brexit and its implications for Europa and US

International Tax Conference
(IFA Germany)

Prof. Dr. Stephan Eilers, LL.M. (Tax)
07 July 2017



Today's agenda

- Background and timing
- Negotiating objectives and red lines
- Implications for business
- Contingency planning
- Q&A

Background and timing

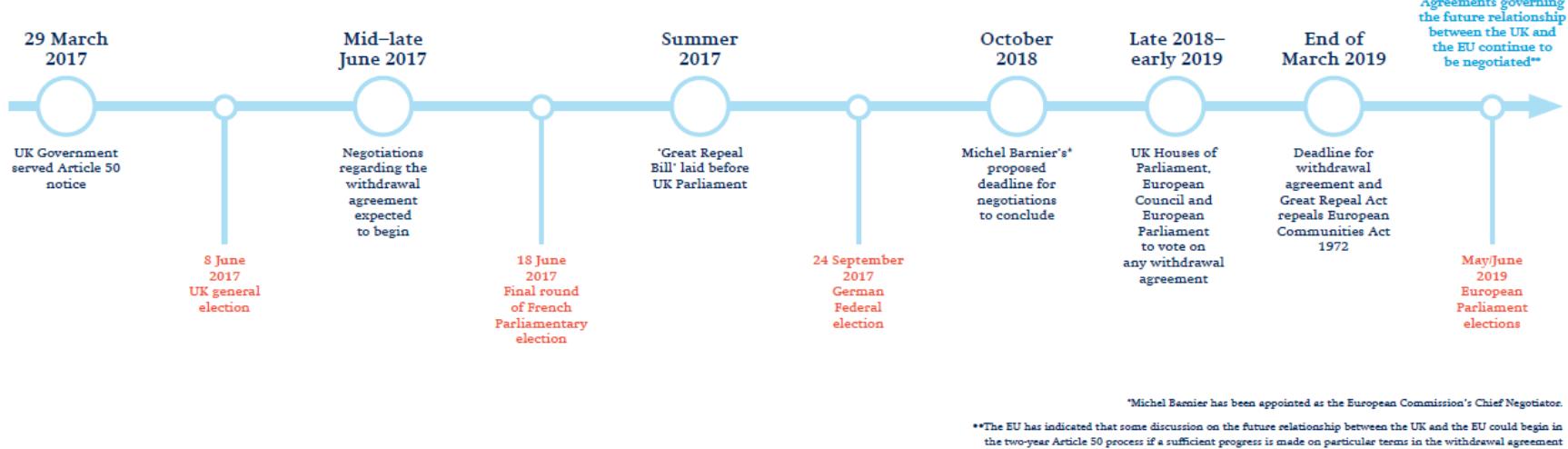


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The two agreements

Withdrawal agreement

- Withdrawal agreement to deal primarily with immediate disentanglement, including in relation to:
 - Financial settlement ie ‘divorce bill’
 - Citizens’ rights
 - Technical adjustments
- Not a trade agreement governing future – but may take into account ‘*framework for [the UK’s] future relationship with the Union*’

Future relationship agreement

- Future relationship agreement subject to different procedure and timeline
- Likely to require unanimity and ratification of all EU27 Member States
- Timing? Transitional provisions?

Negotiating objectives and red lines

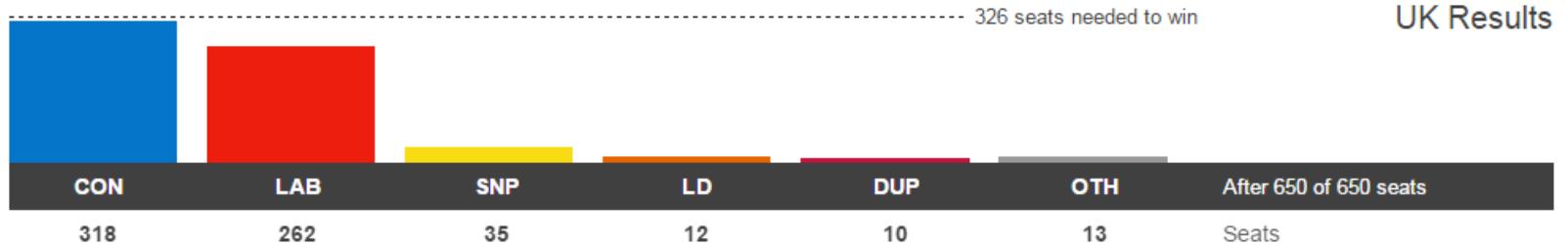


UK's pre-election position

- No free movement of people
- No jurisdiction of the CJEU
 - Therefore UK not in Single Market
- Ability to set own customs tariffs
- Ability to enter into own trade agreements with third countries
 - Therefore UK not in Customs Union
- But a deep, ambitious free trade agreement to ensure ‘frictionless’ trade
- Transitional agreements to smooth passage between withdrawal and new relationship

* Can it be turned around?

Uncertainty introduced by the UK election



Source: BBC News (19 June)

- Loss of Conservative majority
- ‘Deal’ with the DUP
- Potential for softer Brexit – although position remains unclear:
 - Longer transition period? Chancellor Hammond: “*we need to get there via a slope, not via a cliff edge.*”
 - Looser immigration rules?
 - Arrangements to operate in Single Market or Customs Union for longer period?

EU's position

- Unity of the EU27
- Cannot have a better deal outside EU than inside
- Indivisibility of the 'four freedoms'
- No sectoral approach
- No separate agreements between UK and individual EU Member States
- Transitional arrangements must be clearly defined, limited in time and subject to effective enforcement mechanisms

Implications for business



The big issues for business

- Customs and border procedures
- Non-tariff trade barriers
- Movement of people
- Financial regulation
- Professional services
- Data services



The big issues for business – tax: the big picture

No immediate changes from a tax perspective

- EU law continues to apply in the UK as previously; and the UK continues as an EU Member State for the purpose of other countries' tax regimes

Post-Brexit: non-application of EU Directives in respect of the UK

- Parent/Subsidiary Directive
- Interest and Royalties Directive
- Capital Duties Directive
- Cross-Border Mergers Tax Directive
- Also: Directive on Administrative Cooperation; Mutual Assistance Directive; Anti-Tax Avoidance Directive(s); and the Accounting Directive

Post-Brexit: VAT, customs and excise

- Intra-EU supplies will become imports/exports, with consequent compliance and cashflow costs
- Risk of tariffs and non-tariff trade barriers, including in respect of intra-group supply chains

The big issues for business – tax: the big picture (*continued*)

Post-Brexit: non-application of EU fundamental freedoms in respect of the UK

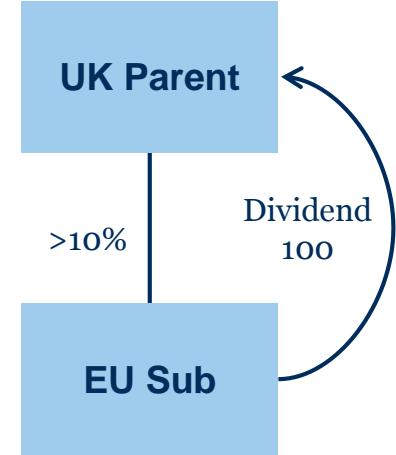
- UK may seek to reinstate domestic rules that have previously been found to be in breach of the free movement of capital/establishment, eg utilisation of foreign losses
- Similarly, UK companies may cease to benefit from favourable treatment in other EU jurisdictions, eg higher thresholds for CFC status of subsidiaries established in an EU Member State
- BUT depends on the nature of the arrangement ultimately agreed between the UK and the EU



The big issues for business – tax: UK (intermediate) holding companies

Parent/Subsidiary Directive ('PSD')

- Exemption from WHT on dividends paid by EU subsidiary companies to their EU parent companies
- Also requires elimination of 'double taxation' of dividend income at the level of the EU parent company by exemption or credit
- Requires the parent to have a 10% equity holding
- Optional requirement for a minimum holding period
- Now incorporates a general anti-abuse rule



Inbound dividends

- If PSD no longer applies, UK parent will need to rely on double tax treaties. Not necessarily nil rate

Outbound dividends

- Possible taxation of UK dividends received by EU parent in jurisdictions, such as Ireland, where treatment varies between EU and non-EU source dividends

Restructure?

- PSD general anti-abuse rule
- BEPS Action 6/treaty abuse rules
- Beneficial ownership challenges

Post-Brexit dividend withholding tax rates (PSD = nil)
Austria 5%; Bulgaria 10%;
Croatia 5%; Czech Republic
5%; Germany 5%; Greece
10%; Ireland 5%; Italy 5%;
Portugal 10%; Romania 10%.

The big issues for business – tax: the German perspective

Tax consequences depend on negotiation outcome

- Tax consequences will depend on the negotiation outcome → many taxpayer-friendly German provisions refer to EU/EEA membership of the other involved jurisdiction
- They are mainly based on EU directives/EU law, which are implemented in German domestic law
 - **Exit taxation:** Right to pay the exit tax in instalments (sec. 4 par. 1 sentence 3, 4, sec. 4g German Income Tax Act respectively sec. 12 par. 1 German Cooperation Tax Act) is only granted in EU situations → retroactive abolition of mitigation caused by Brexit?
 - **CFC taxation:** Cadbury–Escape (sec. 8 par. 2 German Foreign Tax Act) only applies in EU/EEA situations; UK is for German tax purposes considered as low tax jurisdiction
 - **Restructuring:** Restructuring Tax Act Provisions which allow transfer of hidden reserves only apply to EU/EEA situations; → retroactive abolition of such restructurings due to sec. 22 par. 1 No. 6 Restructuring Tax Act?
 - **Repayment of contributions:** Tax neutral repayments of contributions are only possible, if the distributing cooperation is based in the EU (sec. 27 par. 8 German Cooperation Tax Act)
 - **Trade tax:** Intercorporate privilege (sec. 9 No. 7 sentence 4 ff. German Trade Tax Act) is only granted, if additional requirements of DTA are fulfilled

Soft landing?

- German legislator can/should adapt domestic provisions to allow a soft landing ('hop or top' provisions)

Brexit: Corporate Implications

Company law

- No effect on English-law entities with headquarters in England. English-law entities with headquarters in Germany no longer possible absent change in German law

Re-organisations

- We are seeing some businesses reorganise and redomicile (particularly certain financial institutions). Uncertainty over use of EU Cross Border Merger Directive after Brexit

Listed company regulation

- UK: Current status remains unchanged. Longer term outlook depends on form of relationship with EU
- UK: Corporate Governance reforms expected. Several issuers have had to report on Brexit related issues in their annual reports and prepare for questions on Brexit and their plans to deal with it at AGMs

Equity capital markets

- Future regulation dependent on relationship with EU. EU/UK offerings might need prospectus clearance in both EU and UK
- UK: Pipeline for IPOs relatively robust although companies considering their choice of listing venue often see Brexit as a negative factor for London. Many processes are run as dual-track processes with some likely to follow the M&A route

Contingency planning



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Contingency planning

- What are we seeing?
 - Some pre-emptive actions being taken in regulated sectors e.g. FIG, aviation, pharmaceuticals – where there is heavy reliance on passporting or harmonised regulations
 - Less so in other industrial sectors due to uncertainty as to what rules will apply
- Could Brexit lead to opportunities elsewhere, eg US, Asia, Australia?
- Influencing the result
 - Businesses in the EU and the UK need to engage with governments now to make sure they fully understand the implications of an exit without an agreement, and how an implementation/transition period could operate to minimise the impact of a cliff-edge



IFA Germany International Tax Conference

Dieter Weber, Partner
Tax Partner AG, Zurich
Berlin July 7, 2017



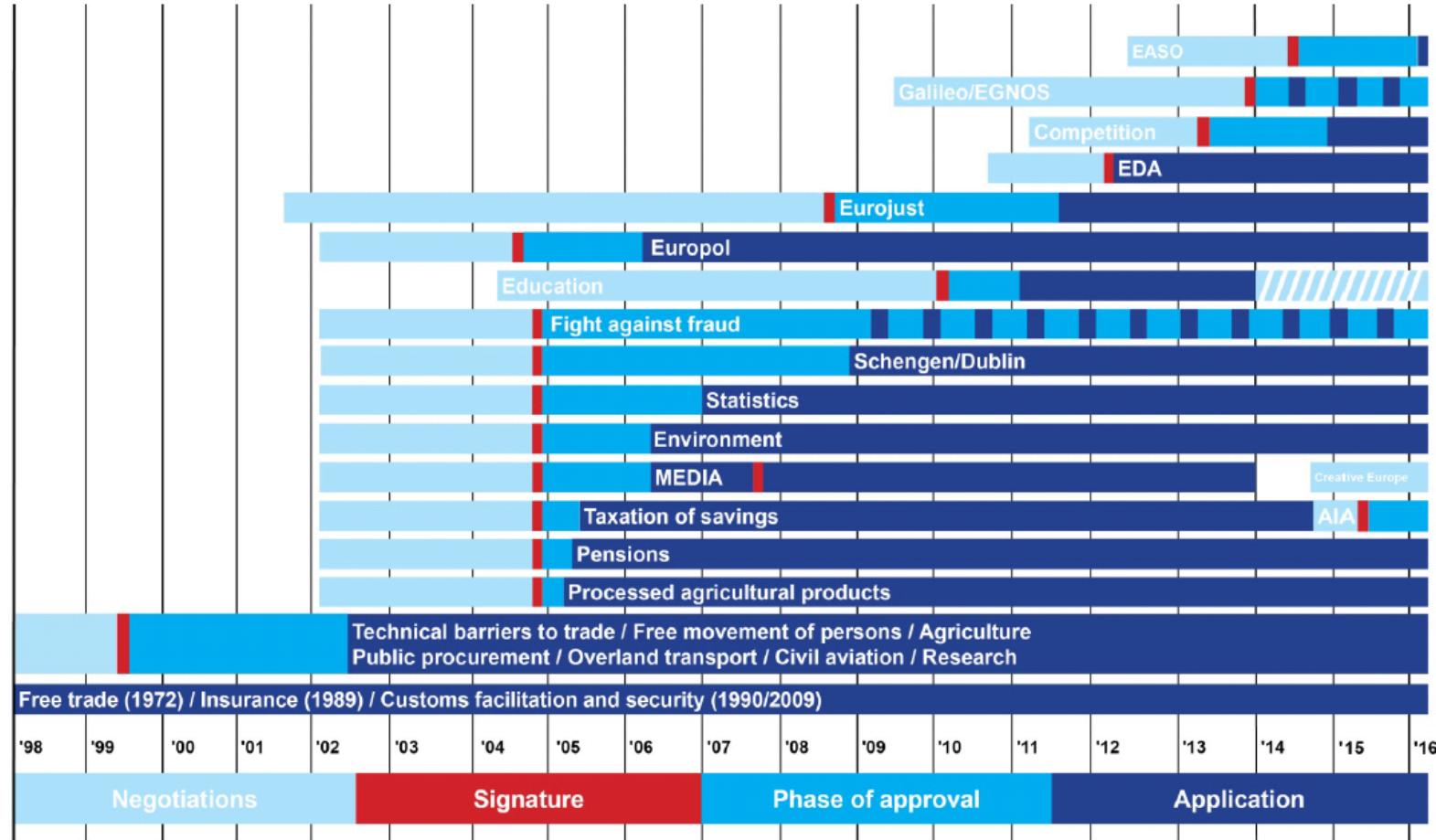
The «Swiss Model»

1960	EFTA	Today: Switzerland Norway Island Liechtenstein
1992	EEA / EWR, with 12 EU-countries 7 EFTA-countries	Rejected in Switzerland, public vote in 10/1992
1999	Bilaterals I	EU – CH
2004	Bilaterals II	EU – CH
?	Agreement on institutional issues	EU - CH



Bilateral agreements Switzerland–EU

B.I B.II





The first bilateral agreements

1972 Free trade of industrial products

Abolition of obstacles to trade (duties, quotas)
for industrial products

1989 Insurance

Equal rights of establishment for insurance
companies (excluding life insurances)



1990 (completely revised, 2009) Customs facilitation and security

Regulation of controls and formalities in goods
transport (24-hour rule)



➤ Relevance: Mutual market access





Bilaterals I (1999)

1. Free movement of persons (AFMP)
2. Technical obstacles to trade
3. Public procurement market
4. Agriculture
5. Research
6. Civil aviation
7. Overland transport

➤ **Relevance:** Easier access to **labour, goods and service markets**





Bilaterals II (2004)

1. Schengen/Dublin
2. Taxation of savings
3. Fight against fraud
4. Processed agricultural products
5. MEDIA (Creative Europe)
6. Environment
7. Statistics
8. Pensions
9. Education, vocational training, youth

➤ **Relevance: Enhanced cooperation in other areas, improved economic environment**



Taxes: Taxations of savings agreement 2005 – 2016 (Bilaterals II)

- Taxation of cross-border interest payments
- 15 % - 35 % taxation at source on interest paid to EU-residents or voluntary declaration
 - > next chart
- Increase in voluntary declaration from 38'000 (2010) to 328'000 (2015)
- 0 % withholding on dividends between affiliated companies (Mutter-Tochter- Richtlinie)

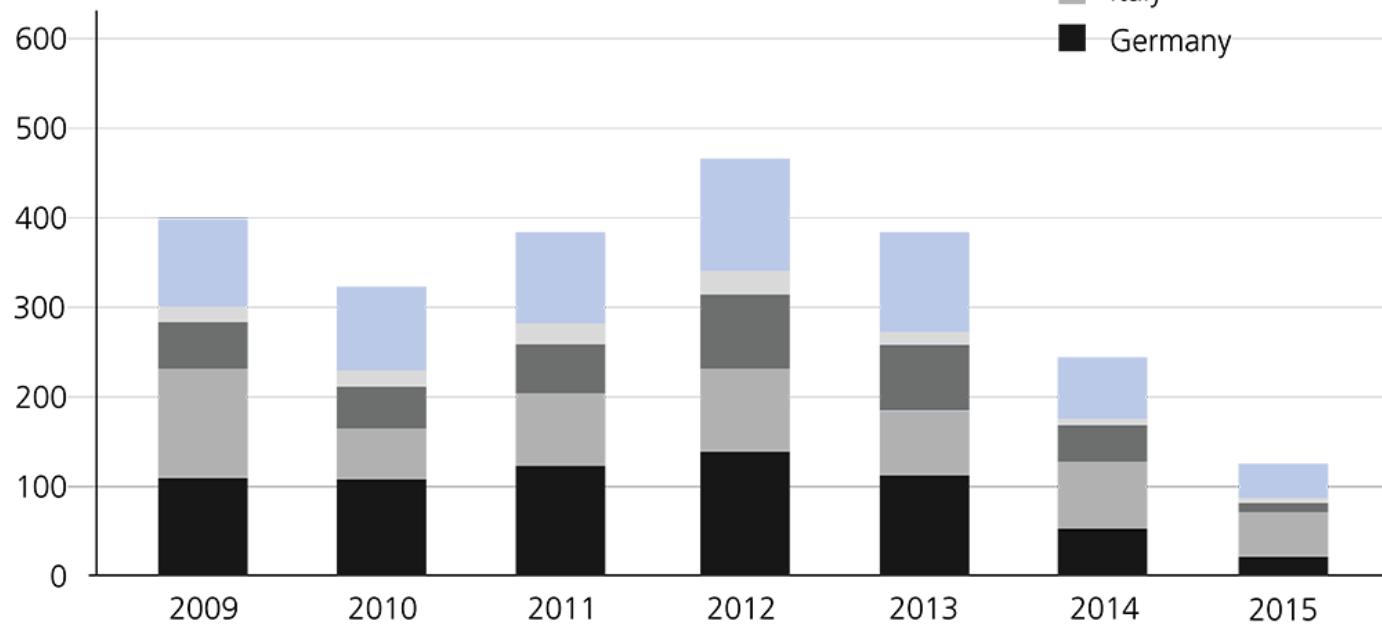
Revenue from Swiss taxation of savings income for EU countries

Revenue from Swiss taxation of savings income for EU countries

Source: FDF

The taxation of savings income agreement provides for increasing withholding tax rates: 15% up to June 2008, 20% up to June 2011 and 35% thereafter.

in CHF mn



Taxes: AIA agreement EU – Switzerland signed 2015

- Replaces from 2017 the taxation of savings agreement
- Applicable for all 28 EU member states
- OECD global standard for AEOI
- Exchange data as from 2018
- Abolition of taxation at source on
 - Dividends
 - Interest
 - Licence feesbetween affiliated companies

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BREXIT

A Norwegian tax perspective



Thor Leegaard, LLM Partner KPMG Law Advokatfirma AS

—
7 July 2017

What is the EEA Agreement

Treaty law, but implemented in domestic legislation

No vote, but many obligations

On freedom of workers, Articles 112-3 of the EEA Agreement, give members 'safeguard measures' which allow parties to unilaterally take 'appropriate measures' if serious economic, societal or environmental difficulties are liable to persist."

Tax policy is outside of the treaty – tax directives do not apply

Domestic legislation provides for equivalent treatment to a degree, e.g. Merger Directive
Equivalent treatment under domestic law of other EEA Member States

The fundamental freedoms and state aid rules are in the treaty

Jurisprudence from CJEU after 1992 is not part of the treaty but is effectively binding on domestic courts, e.g. Rt. 2000.1811 and Rt. 2002.391

Supreme Court seeks to reach interpretation of domestic law that avoids conflict, e.g. Rt. 2012.1380 *Statoil Holding* and E-3/13 og 20/13 *Fred Olsen and others*

"Best in class"

Few cases of conflict, as in practice, significant case law is incorporated in domestic law

Effect of BREXIT from the EEA

Separate process for leaving the EEA Agreement (Article 127)

Bilateral negotiations needed for the areas covered by the Agreement – probably after UK negotiations with the EU

Tax effects mainly related to the fundamental freedoms

Withholding taxes on dividends to the UK will apply under domestic law

- Under the tax treaty, an exemption applies for participations of 10% or more
- No withholding tax on interest or royalties under Norwegian domestic law or treaty

Deferral of exit taxes (payable over seven years) would no longer be possible

- And no credit for deemed UK tax

Norwegian tonnage tax would no longer be available for a UK company

- UK flagged vessels would impact on allowed assets under the scheme

Group relief would no longer be available for a Norwegian branch of a UK company

If the UK corporate tax rate is lowered to 15% or less

- Exemptions for dividends and gains from the UK would not apply
- UK subsidiaries may become CFCs
- Tax neutral cross border mergers and demergers would no longer be possible

Effect of BREXIT from the EEA

Effect on VAT

Norwegian businesses using registration in the UK for trade in the EU would need to change to an EU Member State;

- Businesses using the rules for simplified reporting for trade in other EU Member States
- Sales of goods to individuals in other EU Member States (distance sales)
- Sales of services to individuals in other EU Member States (Mini One Stop Shop)

Refund of VAT is assumed to become more burdensome in the UK



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