
Brexit: Tax Perspective

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Overview

- Europe 101
- EU withdrawal process
- UK constitutional issues
- What might 'Brexit' look like?
- Brexit and indirect taxes
- Brexit and direct taxes
- Other tax implications

Where is the European Union?



- Albania
- Montenegro
- Serbia
- The Former Yugoslav Republic of Macedonia
- Turkey
- [Bosnia and Herzegovina]
- [Kosovo]

Where is the European Union?

THE OUTERMOST REGIONS



France

Portugal

Spain

Overseas territories

British Overseas Territories

Anguilla , Montserrat, Bermuda, Pitcairn Island, British Antarctic Territory , St Helena, British Indian Ocean Territory, St Helena dependencies (Ascension Island, British Virgin islands Tristan da Cunha), Cayman Islands, South Georgia and the South Islands, Falkland Islands , Turks and Caicos Islands, Gibraltar

And then France's, the Netherlands' & Denmark's Overseas Territories...

Overseas territories

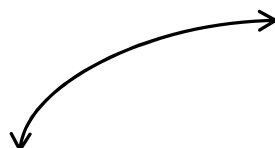
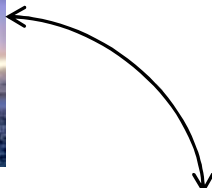
- Overseas territories
- 25 in total
- “Special relationship”
 - No EU law
 - EU citizens
 - One way freedom of movement

EU: Free Movement

ESTABLISHMENT & SERVICES



European Economic Area



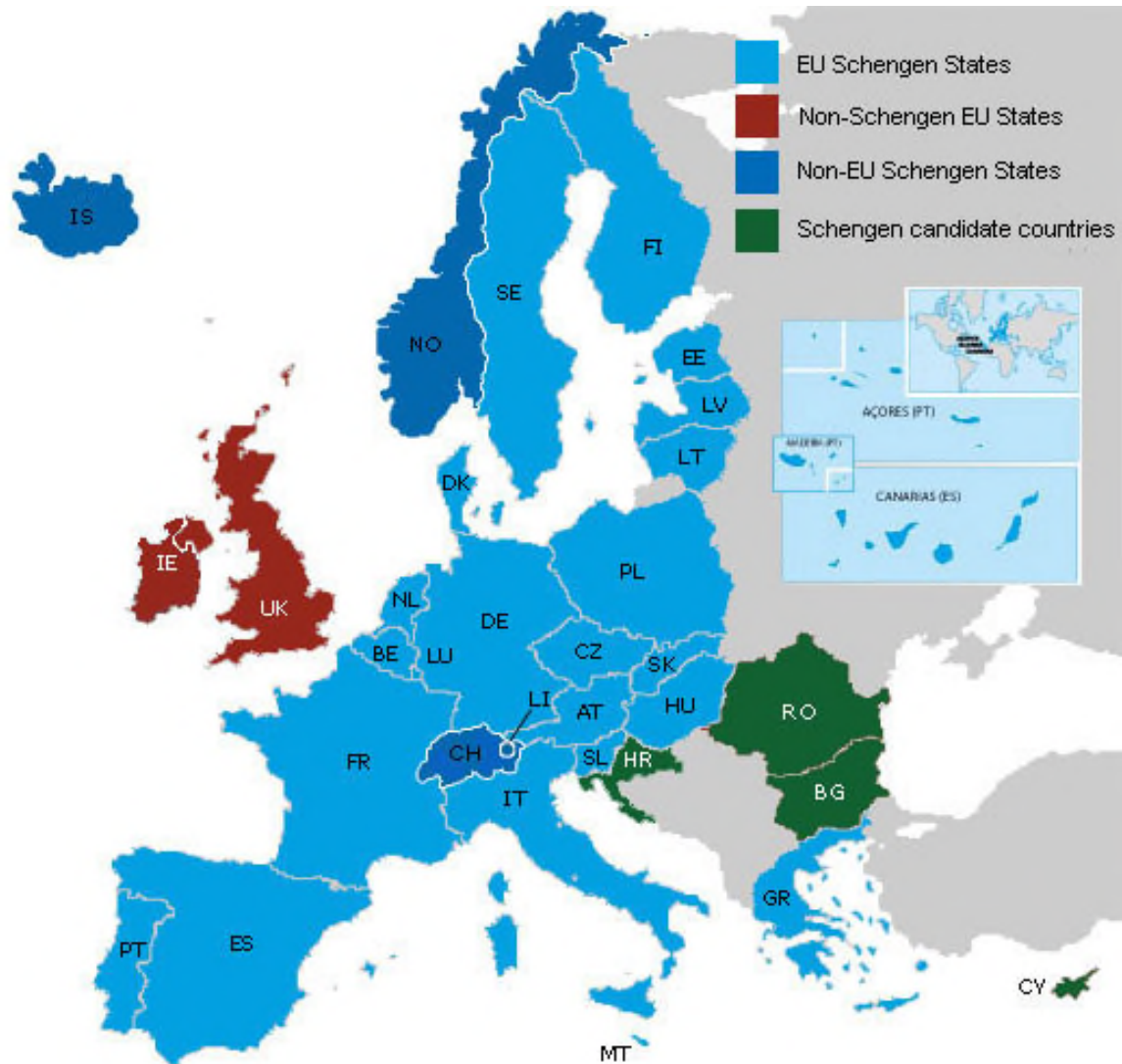
Farms, fish, tax,
justice & foreign policy

Switzerland?

- EU's best non-EEA friend*

* Schengen, EFTA, bilateral agreements...

Schengen Area



Eurozone

- 19/28 EU states IN
- 7/28 EU states NOT QUITE IN
- 2/28 EU states OUT
 - UK
 - Denmark



- BUT some non EU states are also IN
 - San Marino
 - Monaco
 - Andorra
 - Vatican City

EU Customs Union

- Includes EU member states plus:
 - San Marino
 - Monaco
 - Andorra
 - Turkey
 - Channel Islands
 - Isle of Man

European Free Trade Association “EFTA”

- Iceland, Liechtenstein, Norway, Switzerland
- Promotes free trade and economic integration
- Agreement with EEA
 - Switzerland has a separate agreement
 - **Single market**/Internal Market

What are the EEC and EC?

European Community/Common Market

- European Economic Community
- European Coal & Steel Community
- European Atomic Energy Community

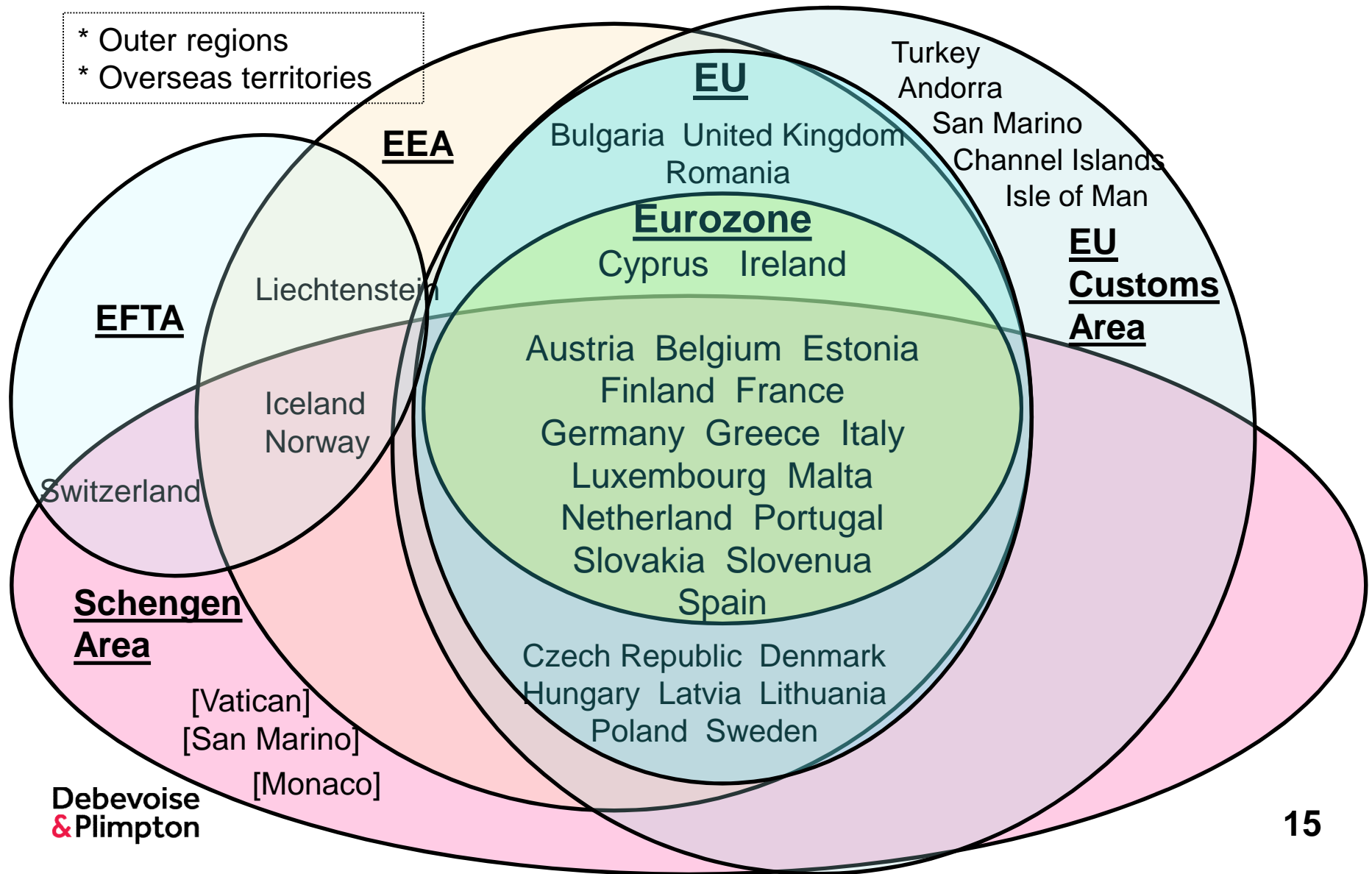
Maastricht
Treaty*
1993

European Union

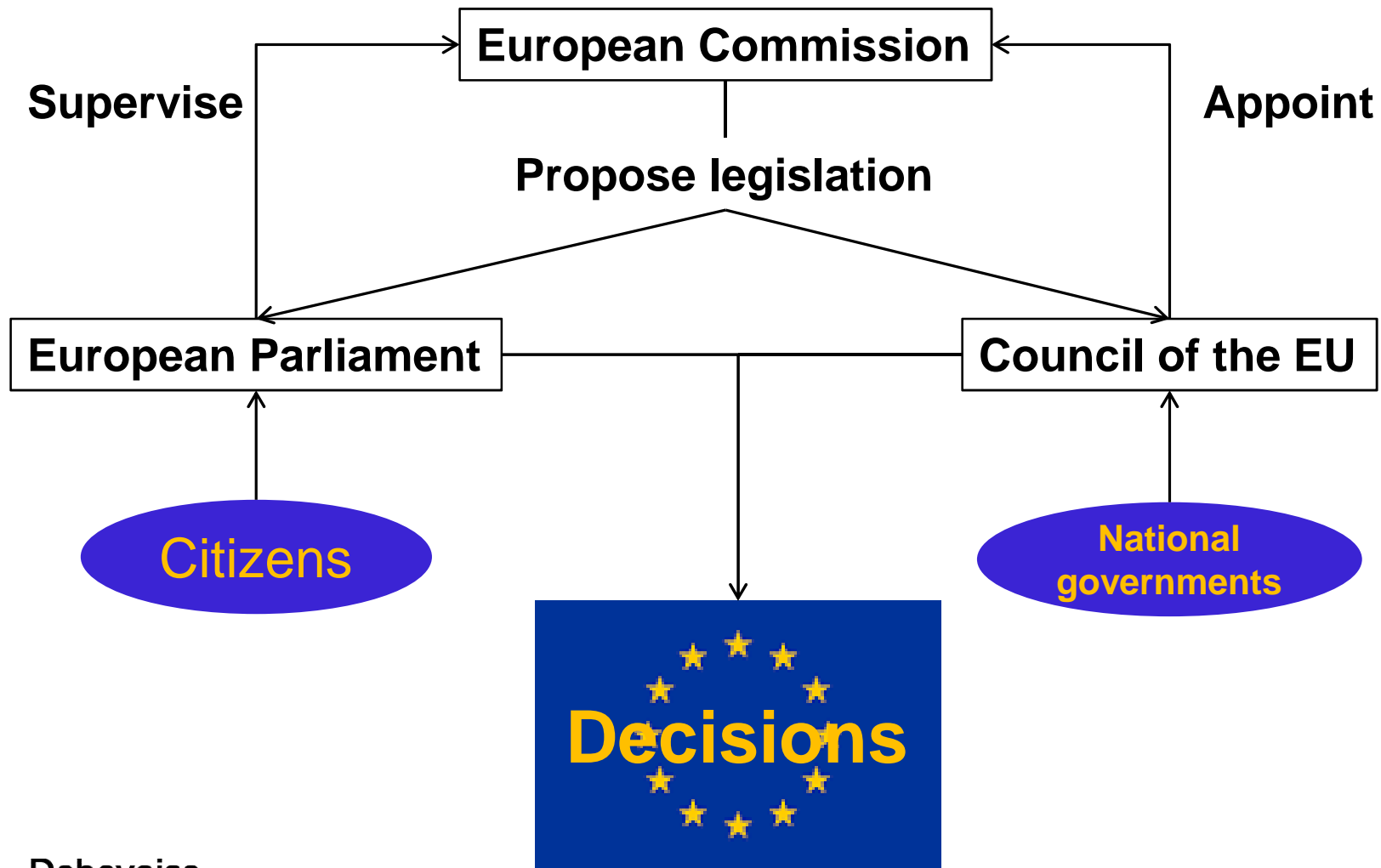
*Treaty on the European Union

Europe (largely) on one slide

- * Outer regions
- * Overseas territories



(Some of) the EU institutions

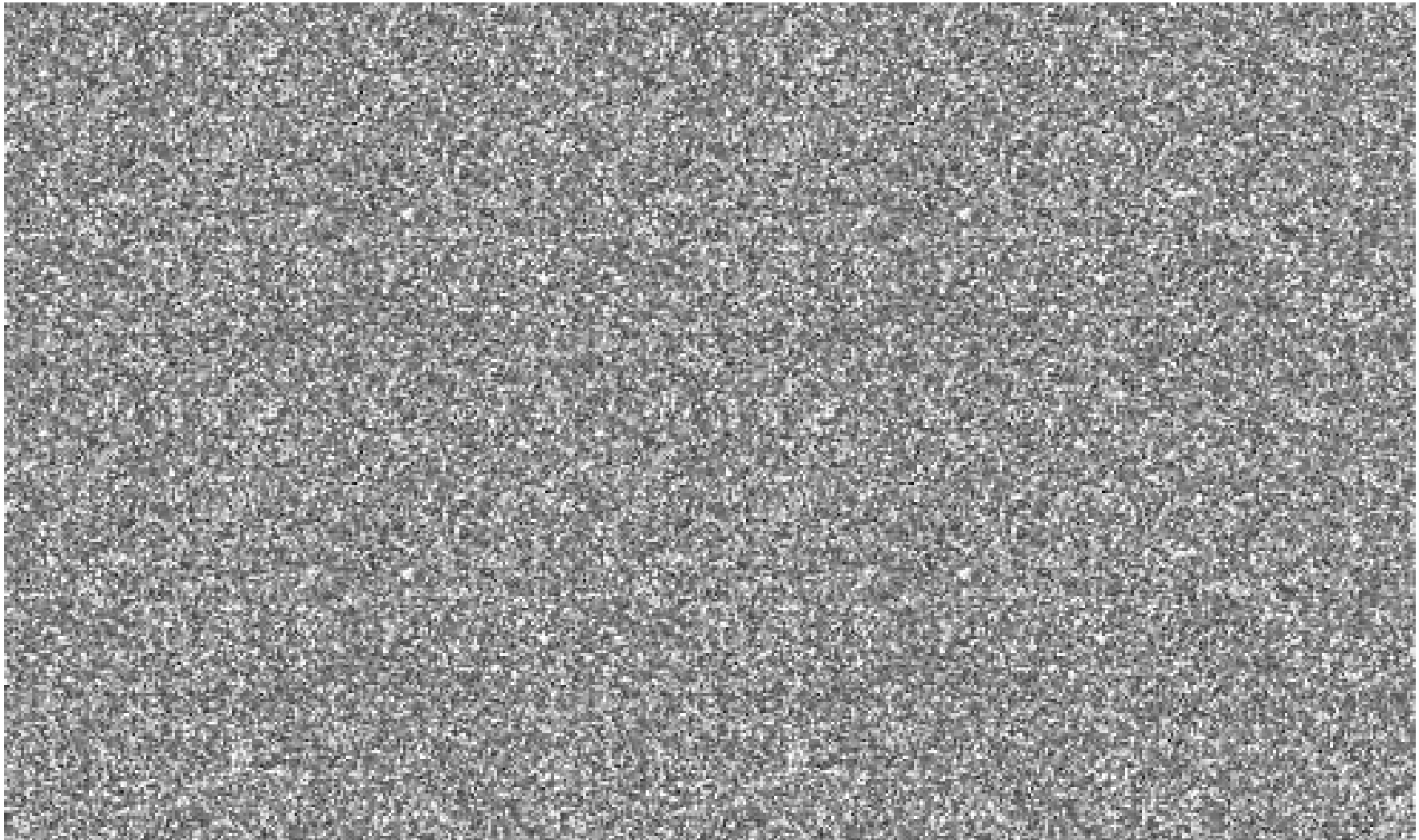


How does the UK withdraw from the EU?

Article 50 of the Treaty on European Union

- 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.*

What are our constitutional requirements?



What are our constitutional requirements?

- Petition for second referendum
 - 5 September debate
- At least 7 private legal challenges
 - Parliamentary approval or Royal prerogative
 - High Court October

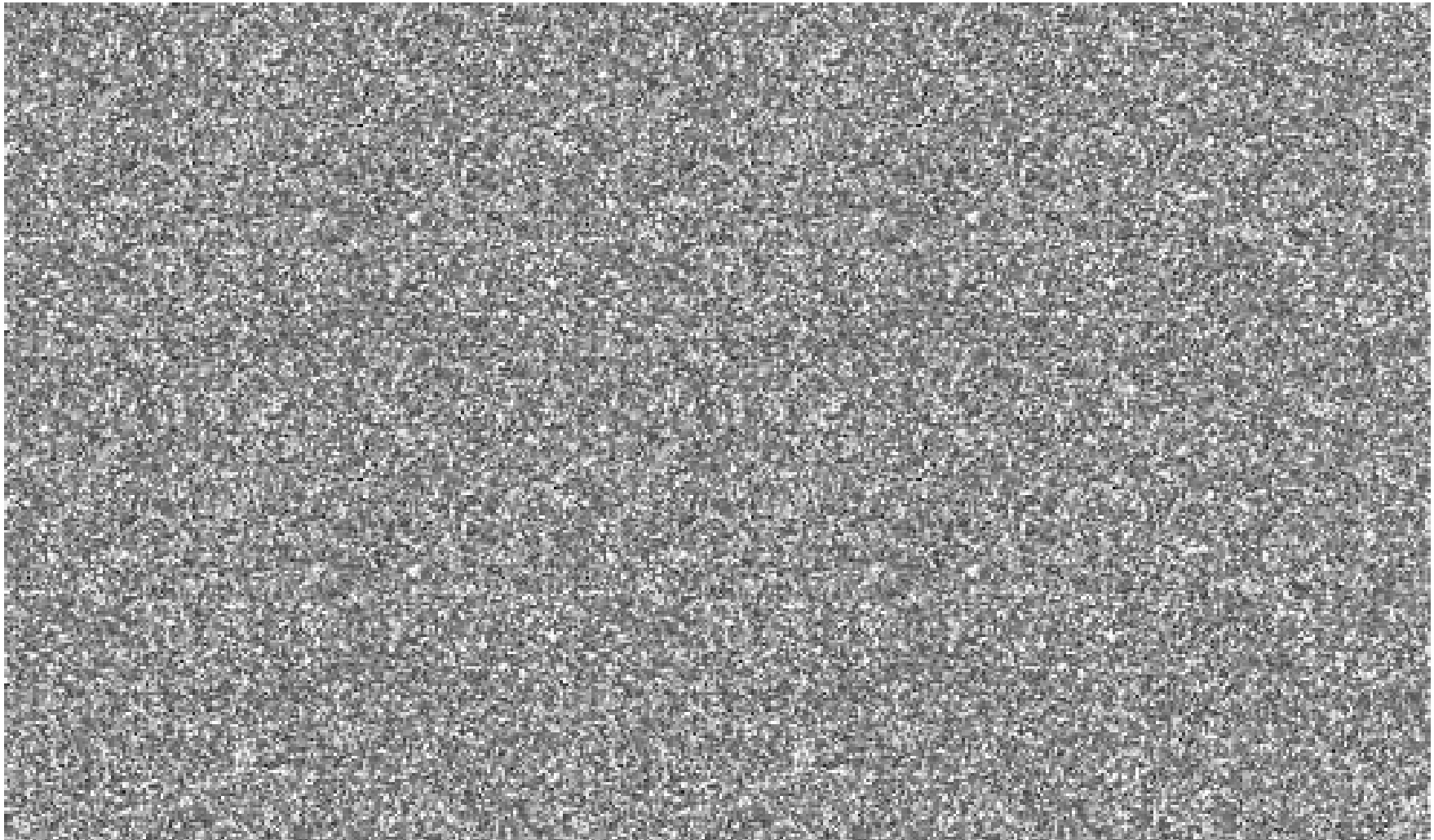
What needs to be agreed?

1. Withdrawal agreement

- UK contributions/receipts
- acquired rights of people
- withdrawal of civil servants
- exit from European Parliament, European Court etc.
- border control

2. Trading relationship

What will Brexit look like?



“Brexit means Brexit”

- Timing
 - Latest announcement: 1 January 2019 at the latest...
 - David Davis, Brexit Minister “before or by the start of next year”
 - Court told not this year
 - May wants to get Scotland on board first
- Post Brexit
 - EU Treaties and EU law
 - UK law implementing EU law would remain in place
 - Domestic law of EU Member States applying to “EU Member States” would no longer apply to the UK

“Brexit means Brexit” – Possible models

Norway

- EEA & EFTA
- fully bound by single market rules including free movement
- not part of EU VAT area

Switzerland

- EFTA
- various bilateral agreements concerning market access in specific sectors
- not part of EU VAT area

Turkey

- EU customs union: no tariff barriers
- not part of EU VAT area

South Korea

- free-trade agreement outside of the EU customs union
- not part of EU VAT area

WTO rules

- not part of the EU single market or customs union
- largely similar to current US-EU relationship
- not part of EU VAT area

EU and Indirect Tax

- **Indirect taxes**
 - VAT, excise taxes and custom duties
 - Governed by EU law. Not national competency.
 - » Common set of EU rules for goods and services
 - Free movement of goods and services
 - » General EU framework of rates, exemptions, etc.
 - CJEU (ECJ) guarantees uniform application

VAT Now

- Common set of EU rules for goods and services
- EU VAT system ensures no double VAT
 - Exemption from VAT for intra-EU supplies
- Little freedom for member states

VAT post-Brexit

- Intra-EU transactions with the UK would become imports/exports with possible application of VAT
- Additional pricing costs resulting from application of VAT
- Structures should be reviewed to estimate possible impact (e.g., management fee for PE funds)
- Additional compliance burden
 - Invoicing and compliance processes should be reviewed
 - Will a VAT representative be required in the EU?

VAT post-Brexit

- Risk of future divergence between UK VAT and EU VAT rules
- UK could choose to introduce a new system to replace the existing VAT (e.g., GST)
- Unlikely given the global trend towards VAT systems

Customs Now

- Common set of EU rules for customs duty
- Free movement of goods within the single market
- No customs duties within the EU
- EU-level free trade agreements negotiated with third countries
- 75% of custom duties collected by EU Member States on imports from outside the EU are remitted to the EU budget

Customs post-Brexit

- Trade with EU Member States would become import/export with possible application of custom duties
- Trade with non-EU Member States could result in additional customs duties as the UK ceases to be a party to the EU FTAs
- Trade agreements to be negotiated

Customs post-Brexit

- Alternatives?
 - » EEA model
 - free movement of goods, capital, services and persons
 - » Turkey model (also Andorra, Monaco)
 - customs union

EU Direct Tax

- **Direct taxes**
 - Corporate and income taxes
 - National competency BUT
 - » Directives
 - » Free movement of goods, capital, services and people
 - » No discrimination among EU workers, consumers, businesses
 - CJEU
 - » UK tax law cannot conflict with EU law

Directives Now

- EU Mutual Assistance Directive
 - Cooperation and exchange of information
 - Including exchange of rulings and advance pricing agreements
- EU Anti-tax Avoidance Directive
 - Prevent aggressive tax planning and increase tax transparency
 - Effective in 2019. What happens if the UK is still a member then?

Directives Now

- **Parent Subsidiary Directive**
 - No WHT on payments of dividends between related EU companies
 - No double taxation of EU parent companies on dividends received from their EU subsidiaries
- **Interest and Royalties Directive**
 - No withholding tax on payment of interest and royalties between related EU companies
- **EU Merger Directive**
 - Deferral of tax on gains in the case of merger, spin off and contributions involving EU companies

Directives post-Brexit

- EU Directives would not apply to transactions involving UK companies
 - UK WHT on dividends / interest / royalties
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- UK double tax treaties may not provide same relief as the current EU directives (e.g., no 0% rate of withholding tax on dividend payments to the UK)
 - EU structures and contracts should be reviewed to identify exposure, e.g.
 - holding structures involving UK entities
 - Gross up and “change in law” clauses in agreements, etc.

Directives post-Brexit

- Alternatives?
 - Bilateral agreement between EU and Switzerland offers similar benefits as the EU Parent Subsidiary directives and EU Interest and Royalties directive

When has the CJEU influenced UK tax law?

- Loss relief (consortium relief and group relief)
- Permanent establishments
- CFCs
- Exit charges
- Tax on dividends
- Capital gains roll over relief
- Stamp duty reserve tax
- Thin capitalisation/transfer pricing

State Aid and Harmful Tax Practices Now

- Treaty on the Functioning of the EU prohibits state aid that is likely to affect trade between EU Member States
 - Scope is broad and includes tax incentives and tax practices
 - » Recent EU investigations for Amazon, Apple, etc.
- EU Code of Conduct requires EU Member States to abolish harmful tax measures and refrain from introducing new harmful tax measures

State Aid and Harmful Tax Practices post-Brexit

- Will the UK become a tax haven?
- Major changes are unlikely, especially in light of the broader discussion within the OECD on Harmful Tax Practices
- EEA Agreement includes state aid rules that are broadly equivalent to the state aid rules in the EU Treaty

Tax implications in other EU Member States

- Structures in other EU Member States should be reviewed for risk of tax leakage or need for reorganization prior to Brexit, e.g.
 - Domestic tax laws applying to “EU Member States” without identifying them would no longer apply to the UK
 - UK companies may no longer be eligible to similar tax treatment as EU companies on the ground of “freedom of establishment”
 - » Payments received from UK company by EU parent may be subject to additional tax charges (e.g., Steria Case)
 - » Tax consolidation may not apply to group including a UK company in a chain, or as parent of, EU companies (Papillon Case)

Tax implications in other EU Member States

- Consider introducing MAC and “change in law” clauses covering Brexit in new agreements involving EU / UK companies
- Rolling the red carpet?
 - Certain EU Member States have announced that they are considering amending their domestic tax laws in response to Brexit to boost attractiveness
 - » France – various suggestions
 - » Spain - tax breaks for banks
- Increased momentum for Common Consolidated Corporate Tax Base/FTT?

Questions?

