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Leaving the EU: Tax, legal and people impact of Brexit on German businesses

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Introduction

The UK's vote to leave the EU shocked currency and stock markets, and has led to an environment of business, economic and political uncertainty. Some effects have already been felt in mainly the foreign exchange movements but the medium and long term implications are still to be seen.

Recently the UK has given more insight in their position in the upcoming Brexit negotiations. Amongst others through a speech of the Prime Minister Theresa May and the recently published White Paper by the UK government, it became clear that the UK anticipates leaving the EU Single Market, regain autonomy from the European Court of Justice and have control over immigration into the UK. In addition, some important political hurdles have been taken for example through the widely expected Parliament's acceptance of a law beginning March to authorize the UK Government to trigger 'Article 50' and start negotiations. It is expected that, despite some critical comments from the House of Lords, invoking Article 50 happens on 29 March 2017, after which the 'exit negotiations' and the negotiations determining the UK's future relationship with the EU will start.

This publication looks at the tax, legal and people impact of Brexit on German businesses. It seeks to provide clarity around the post-vote landscape. It also provides a clear framework which enables businesses to assess and plan for the future. This should give you the ability to manage risks, spot opportunities and respond quickly to a changing market.

PwC is ready to assist you!

On behalf of the PwC Europe and German Brexit Offices,

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Brexit: the context

After the vote to leave the EU, the question on many people's lips is what the UK's future relationship with Europe will look like. For example, for determining how the trade between the EU and UK is impacted upon the UK leaving the EU. This is relevant as the current four fundamental principles of free movement of people, capital, goods and services within the EU, will no longer apply.

In this regard, two main factors can be distinguished. First, the market access arrangements, which are highly likely to make it more difficult to trade. Second, the price effects that could result either because of exchange rate volatility or the erection of tariff and non-tariff barriers.

Potential outcomes

PwC has identified four main scenarios that capture the different degrees of integration that the UK may have with the EU in the future. However, following Theresa May's Brexit speech on 17 January 2017 and the UK government's White Paper of 2 February 2017 addressing the intentions of the UK for its future relation with the EU, it has now become clear that the UK is not looking to stay in the EU's Single Market and accordingly the "Canadian model" as outlined below is most likely to be pursued by the UK.

Details on the exit scenario will become more apparent once the UK has invoked the so called Article 50 of the Treaty on European Union, setting in motion the procedures for leaving the EU which should (in principle) be completed within 2 years. The UK Parliament is expected to approve a law authorising the UK government to start the exit procedure from the EU shortly. It is expected that invoking Article 50 happens before on 29 March 2017. After this date two negotiations will start:

- the so called 'exit negotiations' determining the terms for the UK's withdrawal from the EU; and
- the negotiations determining the UK's future relationship with the EU.

Whether those negotiations can happen in parallel is partly an open question.

Timeframe

The UK government will need to create the capacity to re-negotiate trade agreements in place of the EU's existing trade deals (with 53 countries). This will take time. The UK has not single-handedly negotiated a trade deal in the past 40 years and the government will need to build capacity and capability. The negotiations establishing the UK's future relationship with the EU will thus likely stretch beyond the two year period of the exit negotiations. It is therefore good to take into account that Brexit is a process not an act. As such, the UK and the EU are anticipated to avoid a disruptive cliff-edge but rather to pursue a phased process of implementing the Brexit. Our scenario analysis suggests that a long period of adjustment could follow.

For business this means a longer period of uncertainty. Apart from the immediate reactions in the currency markets, organisations should directly start thinking through its exposure in terms of trade and supply chains, regulation, Foreign Direct Investment (FDI), labour market, tax and legal structures and any other sector specific impacts and make necessary adjustments in their value chains. Business can in our view not afford waiting for full clarity as it will take time to design, develop and implement value chain changes.

Potential outcomes from negotiations

	Free Trade Agreement (Canadian model) 1	**EEA member (Norwegian model)** 2	**Bilateral Agreement (Swiss model)** 3	**No access agreement (WTO/ MFN)** 4
Situation	The UK negotiates a Free Trade Agreement (FTA) with the EU	The UK becomes an EEA member and keeps the four freedoms of people, capital, goods and services	The UK negotiates a bilateral integration treaty with the EU	The UK does not establish any new trade agreements with the EU
Potential implications	*Potentially tariff-free trade between the UK and the EU*	*The UK would need to contribute to the EU budget and comply with EU social, employment and product regulation*	*The UK would have access to some areas of the Single Market, at the cost of adopting the relevant EU regulations*	*Only WTO terms apply – UK goods and services would be treated in the same ways as those of third countries*

The Canadian model is most likely, however a number of variations could be negotiated

DE-UK tax, legal and people impact of Brexit

As there is more clarity now on the likely scenario, the impact for the UK-DE relation/businesses has become more clear. As mentioned, the UK government's aim is to have a Free Trade Agreement (Canadian model) with the EU. Separately, it will need to be determined to which extent the UK will (be able to) remain part of the EU customs union or whether some form of customs union deal between the UK and the EU will be agreed upon and how this will look like. As the negotiations on a trade deal are likely to take more time than the two years mentioned in Article 50, it is a realistic scenario that there will be a period during which there is no Free Trade Agreement and hence the WTO terms apply.

Depending on ultimately what Free Trade Agreement is reached, the impact on the flow of goods between the UK and Germany will severely be impacted by the Brexit. Movement of people will likely be restricted but this would need to be arranged separately, in addition to the trade agreement. The UK VAT system will no longer need to be aligned with the EU based VAT system and UK corporate taxation will no longer be bound by EU directives and case law. Hence, we expect significant differences in legislation in the medium to long term.

However, if no agreement has been reached within two years after Article 50 has been triggered, the EU Treaties will no longer be applicable and there will be no access agreement during the period of further negotiations. The two year period can only be extended if so requested by the UK and provided that all 27 remaining EU Member States agree to such extension.

Tax

Customs

The EU Member States together form a customs union, meaning that the EU is treated as a single territory for customs purposes and that, in principle, the same rules and rates apply in each Member State. Once goods are in 'free circulation' (i.e. all duties paid and import formalities completed) in one Member State they can move freely to other Member States, without further payment of customs duties or further customs formalities. Furthermore, the EU Member States share common external tariffs vis-à-vis third countries. And as such all Member States benefit from the preferential tariffs agreed under the EU's Free Trade Agreements.

Customs duties

When the UK becomes a third country following its exit from the EU, without further arrangements, customs duties will become due in the trade of goods between the EU and the UK. This potentially has a high impact on international trade, but will only become clear once Brexit negotiations will proceed and a trade agreement will be in scope (please keep in mind that this is not an easy task, the average time to negotiate a free trade agreement is between 7 and 9 years). In this regard the UK will want to take advantage of the opportunity to negotiate their own preferential trade agreements around the world (without any restrictions from the EU) whilst ensuring that cross-border trade with the EU will remain as frictionless and seamless as possible. It is yet to be seen to which extent the EU is willing to agree on these points. Furthermore, regardless the type of trade agreement ultimately being agreed upon, all goods moving cross border (EU/UK) must be declared and cleared through customs (customs declarations must be filed and proof of origin to claim any potential lower duties rates agreed in the trade agreement). This process will be subject to costs, additional administrative procedures and possibly also time delays.

EU legislation

Another area that will be affected is the EU legislative system on customs authorisations that apply cross-border (for example, a single authorisation for the storage of goods in a customs warehouse with storage in different Member States). Where such authorisation was granted and is managed in the UK, it will be necessary to relocate such authorisation to one of the remaining 27 EU Member States to keep it in place. This, however, will require sufficient substance of the company in that Member State to support the administrative processes and allow customs authorities to properly audit the authorisation. In line with this, a practical implication may also be that EU customs rulings (on tariff classification – Binding Tariff Information and origin Binding Origin Information) will no longer be binding for HMRC (the UK's taxation authority), or those issued by HMRC may no longer be valid in the EU.

Excise duties

Finally, we note that although excise duties are a national levy, in principle charged by the country in which the goods are consumed, however there is an EU Directive in place to assure a uniform system applies within the EU under which excise goods may move between Member States under duty suspension (Tax Warehouse & EMCS). Once the UK leaves the EU, the UK may be excluded from this system and excise goods may be deemed to be exported from the UK and imported into the EU and vice versa. Again a consequence of this may be that additional formalities, and possibly the provision of additional guarantees, may be required.

On the basis of the above, we expect that the movement of goods between the UK and Germany will become subject to more complexity and higher transactional costs.

We therefore recommend to evaluate the current (and foreseen future) flows of goods involving the UK territory or involving UK based legal entities, the customs authorisations and applicable rulings, and to determine the potential consequences. PwC has developed a Brexit Impact Assessment tool which allows you to easily calculate the potential additional customs duties, import VAT and costs for customs declarations based on the number of transactions from/to the EU. To find out more about this service offering please check out the tool and watch the video: **http://bit.ly/brexit-indirecttax**

Customs – What should you already do?

Fields of business	Risk	Action
Customs authorisations or rulings issued in UK	Authorisations issued in the UK will become invalid in the EU – rulings are likely to be invalidated	Determine alternative scenarios (such as application in EU)
Customs authorisations or rulings issued in EU but (also) used in UK	HMRC likely to be not bound to EU issued authorisations and rulings	Determine alternative scenarios (such as application in UK)
Flows of goods to/from UK	Customs declarations to be filed	Investigate impact (time and money spent)
Customs value based on transaction involving a UK based entity	Value might no longer be accepted for application of transaction value method (customs valuation)	Assess risk and investigate alternative scenario's
Importation in EU via UK, from UK to EU countries	Additional costs (import duties)	

VAT

After the Brexit the UK will no longer be bound to the European Directives and Regulations in which the EU VAT system has been laid down. This means that the UK will have its own VAT system. The new UK VAT system may look very similar to the current system, but there may be differences between the VAT system in the UK and in Germany. This might result in a higher risk of double taxation or create situations of non-taxation in the event of cross-border transactions with respect to VAT.

Supply chains

Post Brexit the UK will be regarded as a third country from a VAT perspective also creating an import/export border with the EU. All supply chains to, from and via the UK will be affected by changing VAT treatments and reporting obligations even when goods do not physically move through the UK, but are supplied to or by a UK entity. Export supplies of goods to the UK and vice versa might require evidence for zero rating other than previously used for intra-Community supplies. Adverse cash flow implications may arise for German companies trading on the UK domestic market e.g. in relation to the requirement to register for VAT purposes and the related filing requirements, the recovery of UK import VAT (the UK currently does not have a system like the German import VAT deferment license) and with respect to recovery of UK VAT incurred on UK domestic costs.

Examples of consequences can be found e. g. in possible changes in UK VAT rates and UK VAT reporting requirements (no EU Transactions Listings or Intrastat declarations would be applicable in the UK). Certain beneficial EU provisions (e.g. simplified triangulation) would no longer apply (we refer to the e-commerce section as well). Finally, effective use and enjoyment provisions may apply to certain services purchased from or rendered to companies or bodies established in the UK.

ERP system impact

These VAT changes will need to be translated into ERP adjustments when implemented, which can be a time consuming and cumbersome process. Hence, businesses should make a timely assessment of the impact on their operations and systems.

E-commerce (Business-to-consumer)

An impact on e-commerce will be that the Mini-One-Stop-Shop regime (‘MOSS’) for electronic and telecommunication services to private individuals can no longer be applied using the UK as prime registration country. Non-EU companies currently registered for these purposes in the UK have to investigate the re-location of such registration to another EU Member State. EU companies cannot apply the MOSS for electronic services etc. supplied in the UK anymore; in the same vein, UK businesses will need to relocate their registration as well for such services performed in the EU.

There will also be an impact on e-commerce and retail, as the distance selling regime for goods sold cross-border to private persons (e. g. through web shops or catalogues) only applies to EU Member States. Hence, VAT registration and reporting requirements could be impacted. The supply chains should therefore be reviewed from an import and supply to end-customer perspective.

Financial services

One of the specific areas that might be amended and could have a significant impact for the financial services industry, is the scope and application of VAT exemptions on insurance and financial services. To counter this, the UK government may wish to broaden or limit the application of these VAT exemptions. This might for example be the case for VAT exemptions for outsourcing in the financial services sector. Input VAT recovery positions of parties involved in financing activities/financial services may be impacted as well.

VAT – What should you already do?

Fields of business	Risk	Action
Supply chains	EU provisions (e.g. simplified triangulation) will become inapplicable	Assess impact on operations
Supply chains	Reporting requirements are set to be changed	• Monitor extra administrative requirements • Be prepared for ERP system adjustments
E-commerce	• MOSS will no longer apply • Distance selling regime will no longer apply	• Prepare for assessment of B2C supply chains and alternative EU Member States of registration • Evaluate VAT registration requirements
Financial services	Application of VAT exemptions wider/ narrower	Assess potential impact on operations and profit/loss forecast due to decreased/increased recoverable VAT

Direct tax

Direct taxes such as corporate income tax are not within the direct competence of the EU but are the prerogative of each of the Member States even though Member States have agreed to regulate certain direct tax matters through directives. These directives have also been implemented into the UK tax system. In addition, the four EU freedoms of movement of people, capital, goods and services (which are relevant in EU case law) are currently of course also leading principle for direct taxes in the UK. The UK's exit from the EU has no direct impact for Germany on those provisions in UK tax legislation. Instead the UK may choose to keep, adapt or remove them.

In addition to potential UK tax law changes, businesses should be aware that there are a number of provisions in German domestic tax legislation which directly refer to the EU/EEA as a condition to grant a beneficial tax treatment. As a potential consequence of the UK leaving the EU, Germany will no longer be bound to apply those beneficial tax rules in relation to transactions with the UK, so various protections would potentially be lost although through the double tax treaty between the UK and Germany the effects may be reduced. Below we look at some specific cases.

EU Parent-Subsidiary Directive

Under the EU Parent-Subsidiary Directive, no dividend withholding tax may be levied on the distribution of dividends from an EU company to its parent company which is tax resident in another EU Member State, provided certain conditions are met. At the same time, the country of the EU parent company has to eliminate any additional/double taxation on the profits distributed as dividends to it by its subsidiary resident in another EU Member State. When the EU Parent-Subsidiary Directive no longer applies to dividends paid to companies in the UK, the UK-DE double tax treaty is applicable, under which the withholding tax on dividends paid from Germany to the UK is reduced to a 5 percent rate under certain circumstances while a dividend paid from the Netherlands may benefit from a 0 percent dividend withholding rate under the UK-NL double tax treaty, if all requirements are met. For dividends paid by a UK company, the UK does not levy an outbound dividend withholding tax under its own domestic law. In respect of the EU Parent-Subsidiary Directive the Brexit has low impact.

Based on the above Directive it may be attractive for holding companies domiciled in the UK to operate via an EU-based holding company with a favorable inbound and outbound dividend treatment such as the Netherlands. In this scenario the UK headquartered group could own their EU subsidiaries from the EU Directive via a Dutch holding company. This could for example be achieved by transferring the effective management and control of a UK company to the Netherlands.

EU Interest and Royalty Directive

A similar arrangement exists for interest and royalties under the EU Interest and Royalty Directive. On the basis of this directive, no withholding tax may be levied on the payment of interest or royalties between companies in EU Member States, provided certain conditions are met. When the EU Interest and Royalty Directive no longer applies to the UK, the system will revert to the UK-DE double tax treaty. Germany will not levy a withholding tax on interest on straightforward loans, while it does levy a royalty withholding tax under domestic law. Under its domestic laws, the UK does levy withholding taxes on both outbound interest and royalty payments under circumstances. However, based on the UK-DE double tax treaty the withholding tax on interest and royalties between the UK and Germany can be reduced to zero percent.

Since the Interest and Royalty Directive extends to certain EU-based sister companies owned by a common EU parent as well, there may be a certain impact for such "horizontal" interest and royalty payments in individual cases, though.

EU Merger Directive

Under the EU Merger Directive, profits realized on cross-border mergers between companies domiciled in EU Member States may under some circumstances be exempt from corporate income tax. When the EU Merger Directive no longer applies to the UK, cross-border mergers between companies domiciled in Germany and the UK will no longer be governed by the EU Merger Directive. As a result, the profits realized on these mergers will no longer be exempt from corporate income tax.

European case law: cross-border loss relief and group taxation

In the last decades the European Court of Justice (ECJ) issued various rulings which are of high relevance for the application of domestic tax provisions of the Member States. When the UK ceases to be a Member State, this case law may partially or wholly lose its relevance for the UK. For example, following various ECJ rulings, a Member State must under certain conditions allow a business of that Member State to set-off losses incurred in another Member State (cf. ECJ Marks & Spencer, ECJ Lidl Belgium, or ECJ Deutsche Shell). The same would apply for the ECJ case law which allows indirect or horizontal tax groups with intermediate EU entities. Also these types of tax groupings, and hence the potential to offset profits and losses, may no longer be available post-Brexit where the UK could otherwise have been considered as the “intermediate” or common parent company.

Another example of an ECJ ruling that could negatively impact business can be found in the ECJ Saint Gobain ruling. As a consequence of this ruling, a branch in a Member State of a head office which is located in another EU Member State, has access to bilateral tax treaties between the Member State of the branch and third countries. This may be relevant for withholding tax reductions and for the application of the rules for the elimination of double taxation. When the UK ceases to be a Member State, for example a UK branch of a German company (or vice versa) will in principle no longer have “automatic” access to bilateral tax treaties between the state where the branch is located (in this example, the UK) and third countries.

EU relevant provisions in bilateral tax treaties

Another area of potential impact for business is included in the fact that a number of bilateral tax treaties contain provisions that require a person to be domiciled in an EU Member State in order for the tax treaty to be applicable. An example is the derivative benefits clause within the Limitation on Benefits (LoB) clause in the 2006 tax treaty between the US and Germany. When the UK ceases to be a Member State, a German company which is UK owned may no longer apply the benefits being granted to it, when it receives a payment from the US but does not fully qualify itself under all requirements of the LoB-clause.

EU relevant provisions in German tax law

Under the German Organschaft group regime, in short, a German-resident parent company and its German-resident subsidiaries (if the parent owns – directly or indirectly - more than 50% of the voting shares), may enter into a profit and loss transfer agreement and file a consolidated tax return through the parent company which includes the taxable profits or losses of the subsidiary. Within an Organschaft tax group, the profits of one company can be relieved by the losses of another company forming part of the Organschaft tax group. Furthermore, profit transfers within the group are tax neutral, and certain trade tax addback rules which apply for stand-alone companies are eliminated within an Organschaft group. Following ECJ case law, the German Organschaft group tax rules have been amended such that it allows the formation of a direct tax Organschaft group between

- a parent company which is either tax resident in Germany or which owns the subsidiaries as part of its German business property such that the income is subject to non-resident taxation in Germany and
- a subsidiary company which is effectively managed in Germany but can have its statutory seat in other EU or EEA country.

Consequently, if the UK leaves the EU, an Organschaft between a UK company owning a German subsidiary through a German permanent establishment or through a German partnership, or between a German parent company and a company with its managed in Germany but with a statutory seat in the UK, is no longer possible. Likewise, existing Organschaft tax groups involving UK entities in those scenarios based on this legislation would be terminated upon the UK leaving the EU.

The Brexit will have consequences for UK-DE companies in the field of corporate income tax and trade tax. The effects will most likely result in the non-application of favorable EU rulings, and to an increase of corporate and trade taxes , e.g. with respect to trade tax treatment of UK source dividends received by German business shareholders, or with respect to UK subsidiaries of German parents which are considered controlled foreign companies under the German CFC legislation. We recommend companies to identify possible extra tax levies and to understand the effects on their business model.

Income and wage tax

The UK and Germany have a double tax treaty in place in order to assign the country to levy taxes in international situations. After the Brexit this double tax treaty stays in force, which will result in low impact for UK-DE income and wage tax situations.

European regulations are of less importance for UK-DE wage and income tax purposes. However, based on European case law, international employees, can have some extra benefits. For example, a UK resident who is considered as a German non-resident can apply to be treated like a German resident if his/her income from German sources is either at least 90% of his/her worldwide income or his/her non-German source income does not exceed € 8.820 (€ 17.640 for married couples) for

Partly this benefit has been implemented in German Dutch law, however, a larger group will likely no longer benefit from further EU/EEA specific benefits like join return filing of spouses, due to the Brexit. This can have a high impact on the net income or salary costs for those employees. We advise companies to investigate the possible cost effects for these employees and to review their employment contracts.

Direct tax – What should you already do?

Fields of business	Risk	Action
UK (holding) structures	EU Directives will no longer be applicable to UK (holding) companies	Use EU based (holding) companies to benefit from EU Directives and favorable double tax treaties with the UK (e.g. by migrating a UK company to, e.g., the Netherlands)
Group re-structuring	Taxation of profits from cross-border mergers	Identify alternative re-organization opportunities and costs
Applicability of EU case law	EU case law will no longer be applicable (e.g. set-off losses incurred in the UK or termination of Organschaft tax group).	Identify impact and consider restructuring

Legal

It is fair to assume that the administrative burden and costs will increase for companies with exposure to both the EU and the UK. Brexit will also impact EU based company law, privacy legislation and state aid rules. We have identified a number of areas of law on which Brexit will likely have an impact in due course.

Contracts

In contracts, the Brexit vote has already caused some parties to invoke a so-called 'material adverse change' clause in an M&A contract or to argue that a long-term commercial contract should be re-negotiated because of an unforeseen change in circumstances. Special attention should be given to situations where long term contracts are concluded about, for example, who will be responsible for additional tax/customs costs post-Brexit. Furthermore we advise to check the territorial scope of important contracts. Limitations in territorial scope are quite common with regard to non-compete clauses or in distribution contracts. If the territorial scope of a contract (clause) is limited to "the EU" there may be uncertainty whether that will still include the UK after Brexit.

Passporting regimes

For the financial services industry, UK access to the so called EU 'passporting' regime post-Brexit seems more and more unlikely. The European passporting regime facilitates the free provision of services by financial institutions which have been granted an authorization or license by the English Financial Conduct Authority or by the Prudential Regulation Authority (the Bank of England) in the whole EEA based on one single authorization or license. This also applies for non-UK financial institutions who have been granted a permit by their local Supervisory Authority. They can also provide their services in the UK. The European passport also makes it possible for legal entities to provide cross-border services, through a 'branch' (satellite office without legal personality). This possibility would expire after the Brexit. Dependent on the situation, this could require the financial institution to incorporate and license a subsidiary.

When the UK no longer is part of the European passporting regime this will also influence the issuance of listed securities and the application for a listing. European companies with a listing at the London Stock Exchange should follow the prospectus approval procedure of the UK Financial Conduct Authority. Currently the regulation for the listed market within the EEA is harmonised and the Brexit entails the risk that listed companies need to comply with different regulations.

Similarly, the European Medicines Agency (EMA) which regulates the access of medicines to the EU member states, is currently based in London and would need to be relocated. Based on the "Canadian model" expected to be favored by the UK Government, the UK would no longer be covered by the EMA based system and would need to devise a framework to ensure authorisations for existing products are maintained for both new and existing medical devices.

Merger control

For merger control and competition, it is anticipated that there will be parallel (and possibly diverging) legal frameworks in the EU and the UK, requiring companies to make double filings and to deal with a supervisory authority both in the EU and in the UK.

Corporate structuring

Cross-border restructuring, such as a legal merger, de-merger or cross-border conversion, is currently based on the 10th EU Directive and case law of the ECJ. After Brexit the 10th EU Directive and the case law is no longer applicable for UK companies. Since German company law does not provide for a legal framework to legally merge with non-EU/EEA legal entities, it will be most likely no longer possible to perform a legal merger or de-merger between a German legal entity and a UK legal entity. The same applies for cross-border conversion. It is not sure what the status will be after Brexit of European legal entity forms, such as the Societas Europaea (SE), European Economic Interest Grouping (EEIG) or the European Cooperative Company (SCE), which presently have their seat in the UK.

Intellectual property rights

With respect to intellectual property (IP) rights, it is uncertain whether, after Brexit, EU registrations will also offer protection in the UK and vice versa. Parallel registrations in the UK may be advisable in order to secure the protection of your intellectual property rights in the UK.

Data protection

The General Data Protection Regulation (GDPR) contains increased compliance requirements for all organisations processing personal data of European citizens and is backed by heavy financial penalties (up to 20 million euros or 4% of the annual worldwide turnover for groups of companies).

The GDPR will become fully effective as from 25 May 2018. By this date - despite the Brexit decision - the UK will still be a member of the EU and therefore be fully bound by the GDPR requirements (it is unlikely that the Article 50 procedure for the UK's formal withdrawal from the EU will be completed before that date).

The UK government has announced in January 2017 that, upon Brexit, it will opt to retain the GDPR by incorporation within national legislation. Should that not be the case by 25 May 2018 and if the UK decides not to join the EEA, all personal data transfers from EU Member States to and from the UK will then require alternative legal protections such as individual consent from data subjects or contractual arrangements.

Investigate legal exposure

The Brexit vote has caused considerable uncertainty for all of the legal topics mentioned above. At this point in time, it is not yet possible to assess the consequences and solutions with precision. What companies can and should do is to make sure that they investigate their (potential) exposure to Brexit and its legal consequences.

Legal – What should you already do?

Fields of business	Risk	Action
Contracts	There may be grounds for termination of the contract due to Brexit. UK may no longer be covered in the territorial scope of the contract (if it refers to the "EU"). Risk of uncertainty regarding costs	Review the existing contracts, specifically the clauses with regard to: territorial scope, choice-of-law, material adverse changes, allocation of tax/customs costs
Financial institutions	European passporting regime will no longer be applicable in relation to the UK	Investigate whether the business requires restructuring and whether new licenses need to be applied for
Corporate structuring	European (case) law will no longer be applicable for UK companies. This means that certain common cross-border corporate restructuring procedures will no longer be possible after Brexit.	Take Brexit into account when choosing your place of business, in order to remain flexible for future cross-border restructuring
Intellectual property rights	Uncertain whether EU registration will offer protection in the UK and vice versa	Assess your intellectual property rights and if you want to secure your 'crown jewels' already apply for a UK registration of the specific intellectual property right

People

The consequences of the UK leaving the EU on the German nationals living and working in the UK, as well as UK citizens living and working in Germany can be of high impact. How and when will they be affected? Should companies amend their global mobility policies already? What will happen to social security? How should companies communicate with employees in those uncertain times? We will zoom in on some of the key employee tax areas below.

Immigration requirements

Following the UK's intention to leave the EU's Single Market, the Brexit would imply the end of the EU's current free movement of persons in the UK. This would impact German nationals seeking to work, study, or simply move to the UK, and also UK nationals wanting to move to or continue to live/work in Germany. It also impacts businesses' ability to recruit and deploy high and low skilled individuals from the UK to Germany or vice versa.

A possible new agreement between the UK and Germany may still give partial access and allow some free movement of persons. In this regard it is worthwhile mentioning that the UK government's White Paper has expressed its intent to control the number of people coming to the UK from the EU but the UK will always welcome genuine students and highly-skilled immigrants. However, it is yet to be seen how these rules will be designed following the exit negotiations. Therefore, we recommend employers to assess the potential implications for their workforces, the impact for hiring new employees, and make sure they are ready for a new immigration landscape of border controls and work- and residents permit requirements, in the event that such a scenario becomes reality.

Social security coverage

At this moment, the applicable social security legislation in cases of cross border employment between the UK and Germany is coordinated in EU Directives. The social security legislation of the home/posting country may exclusively (and mandatorily) apply under the relevant EU regulation. Once the UK is no longer in the EU, this EU directive will no longer be applicable. Certificates of coverage ("CoC", form A1) have been issued by the German social security administration and accepted by its UK counterpart so far. The EU rules continue to apply up to the end date of the CoC or as long as no changes to the underlying personal facts of the multi-state employments take place.

Any future treatment is depending on the outcome of the "exit negotiations" as well as on "the negotiations determining the future relationship with the EU". It is possible that the EU concludes a contract with the UK to continuing the application of the current EU Directive. A further approach is also to adjust the social security convention of 1961 between the UK and Germany and/or to separately agree on the coordination of the UK/German social security system.

Based on EU rules the social security rights are cumulated based on employment history within the EU. How the rights are structured in the future depends on the upcoming negotiations.

As an employer you will need to ensure you have a clear understanding of the current social security position of your global mobile employees in the UK and Germany, to be able to ascertain how these may change, both in order to advise your employees but also to understand the potential cost implications for your business.

Pension accrual/pension payments

Existing EU directives in this area may no longer be applicable upon a Brexit under the "Canadian model".

The EU is currently planning a Pan-European Pension Product (PEPP), which defines uniform standards for private pension schemes (and maybe occupational pension schemes as well) in the whole EU. Due to those standards, a financial support (such as tax deductibility) would be possible all over Europe. A termination of existing contracts and making new ones when moving from one EU country to another will no more be necessary. Creating private pension provisions will get far easier and much more effective.

Problems may arise during the pension payment phase in respect of the transfer of accrued pension rights/assets (e.g. increased administrative burden or tax implications relating to transfers of assets or pension entitlements). Furthermore, the rules for raising protective income tax assessments are more stringent in the event of an emigration to a non-EU country such as providing a collateral for the accrued pension entitlements.

We recommend employers to understand the effects of the Brexit for the employees' pension rights and pension build up, including the extra costs and administrative burden.

Compensation and assignment policies

It is important to immediately assess the impact of the (potential) fluctuating value of the GBP on compensation strategies. Review and corrections might be required in respect of the global mobile workforce to ensure that cost of living adjustments, assignment costings, payroll and shadow payroll calculations remain accurate. Furthermore, existing assignment policies should be reviewed to ensure that they are clear on points such as immigration assistance, social security, possible higher tax levels and sustained foreign exchange volatility.

People – What should you already do?

Fields of business	Risk	Action
Commuters	Benefits of European case law will no longer be applicable for UK-DE employees	Investigate the possible cost effects for international employees and review the existing employment contracts
Immigration	End of the EU's current free movement of persons	Assess the impact for hiring new employees, and make sure to be ready for a new immigration landscape of border controls and work- and residents permits requirements
Assignments	EU rules still apply to multi state worker as well to employee on assignment. Rules for assignments and cross border workers starting after the effective date of the exit have still to be negotiated	Address these social security changes already with your new UK-DE assignees. Phrase the assignment or multiple employment contract open for early termination or adjustment based on the upc
Pension	No longer applying the EU Directives resulting in lower pension benefits and higher administrative burden	Understand the effects of the Brexit for the employees' pension rights and pension build up, including the extra costs and administrative burden
Assignment policies	Changes in income and benefits for the employees	Review assignment policies to ensure clarity on changes in income, fringe benefits, exchange rate and assistance

Conclusion

In this Brexit publication, we have paid special attention to the tax, legal and people impact of the Brexit for German businesses. In determining a strategy for the following years, business should have a balanced position reducing negative impact and making use of opportunities that will also surface.

Cross border German businesses should start assessing factors which will be of particular relevance to their tax, legal and people position upon a UK exit from the EU. There is a need to be as fully informed as possible. You should begin the process of understanding what changes may be required and show awareness.

A Brexit impact assessment is an important first step to manage your business through a successful transition to a post-Brexit environment. Preparing for the tax, legal and people consequences of Brexit will contribute to a company's 'Brexit readiness' and allow for timely action before Brexit becomes effective.

Depending on your business model, Brexit may result in cost increases for the movement of goods between the UK and Germany and vice versa, as well as an increase in costs of employment. Some companies may consider (upfront) changes to their current business model as a consequence.

This may result in additional tax considerations around business restructuring rules. While the actual legal changes will only become clearer once the negotiations between the UK and the EU have started, a restructuring which is conducted within the next two years while the UK still belongs to the EU may benefit from a more favorable tax treatment than a restructuring which is undertaken once the UK is "out".

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Links for more information:

PwC Europe:
www.pwc.nl/nl/eu-referendum.html

PwC Germany
www.pwc.de

PwC UK:
www.pwc.co.uk/the-eu-referendum.html
For the Brexit Impact Assessment tool watch the video: http://bit.ly/brexit-indirecttax
This tool can help businesses model the impact of Brexit on their global and EU supply chains.
To find out more about this service offering please check out the video.

PwC Global:
www.pwc.com/gx/en/issues/brexit.html

This document was concluded on 20 March 2017. Subsequent developments have not been included.

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