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Tax and trade implications of Brexit

Impact and what to expect

Chair: Matthew Lovatt, London

Antonio Russo, Amsterdam

Frederick Burke, Ho Chi Minh

Joshua Odintz, Washington DC

Brexit | Setting the Scene

- What happened, why, and when will it take effect?

WHAT

Non-binding vote (advisory) to leave the EU

WHY

Immigration; economy; sovereignty

WHEN

Exit negotiations must be triggered by UK Government (this will be by end of Mar 2017) **Until formal “divorce”, UK remains an EU Member State**

Brexit | Where Do We Currently Stand?

- Key updates:
- **New Prime Minister:** Theresa May
- **Three Governmental Departments:**
 - New Department for Exiting the European Union
 - New Department for International Trade (ex BIS)
 - Foreign and Commonwealth Office
- **Legal challenge** – whether entitled to use prerogative powers to give notice
- **EU Negotiating Team - Commission v. Council:**
 - Michel Barnier: chief Brexit negotiator for European Commission



Department
for Exiting the
European Union



Department for
International Trade



Foreign &
Commonwealth
Office

Procedure

Article 50 | Triggering Leaving Process

ARTICLE

Prime Minister has said she will serve formal notice under Article 50 by end of March 2017

Process has to be completed within two years, unless there is mutual agreement to extend. Cannot withdraw from process once it begins?

Not clear if Article 50 withdrawal negotiations will be concurrent with “what next” negotiations

EU laws will continue to apply in the UK and the UK will remain part of Single Market until Brexit occurs

Extended period of uncertainty until negotiations finalised regarding terms of future relationship between UK and EU and implications for third countries which trade with them

What Next?

– Three key questions:

1

What is the UK's trade relationship with the EU-27?

- Complex, lengthy negotiations; cherry-picking will be difficult

2

What is the UK's trade relationship with the rest of the world?

- Third countries may not want to deal with the UK until the EU-27 / UK relationship is agreed (and may seek to renegotiate agreements with the EU-27)

3

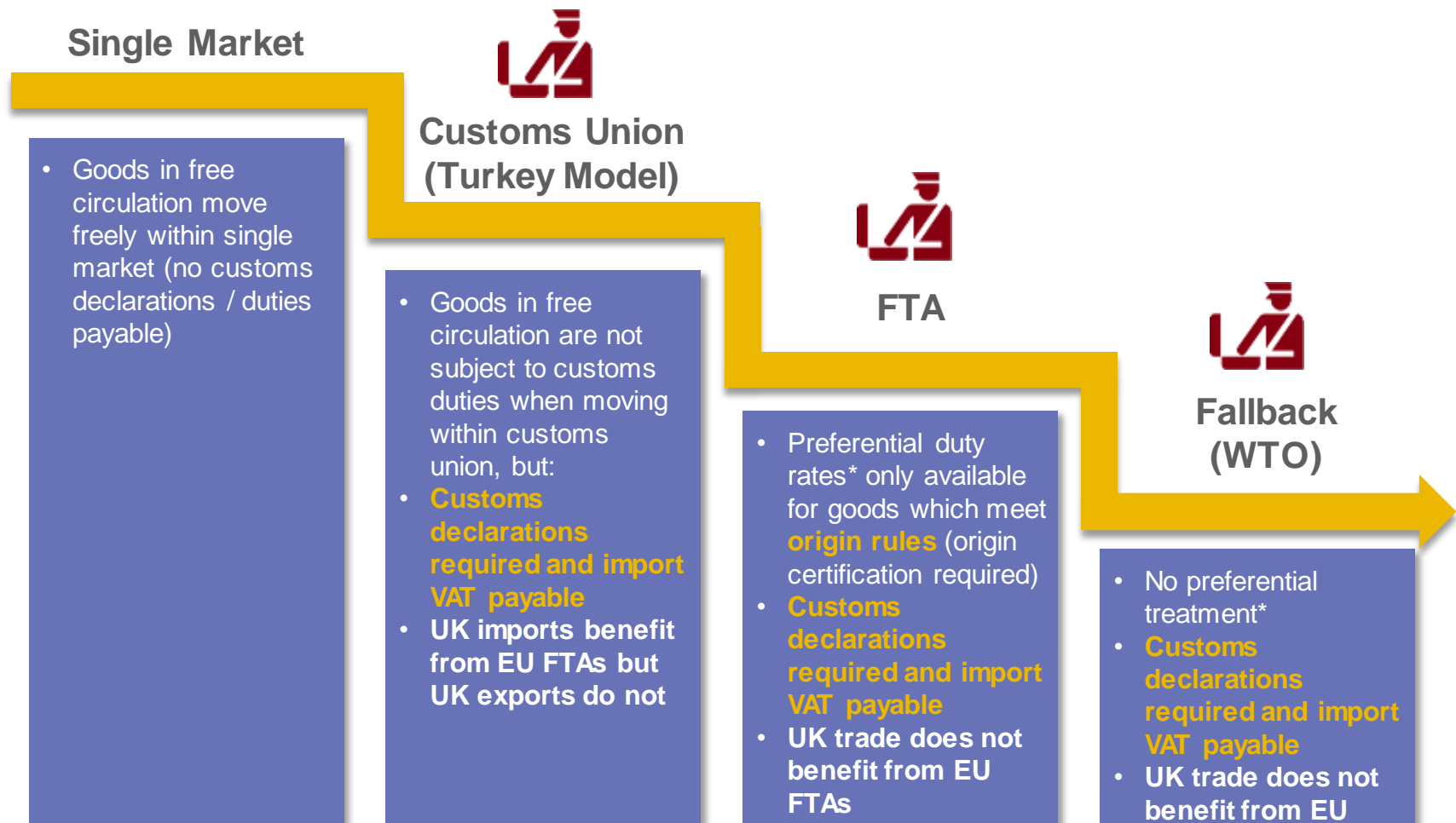
What is the status of EU law in the UK?

- European Communities Act 1972 to be repealed



Trade and customs

Movement of goods between UK and EU27

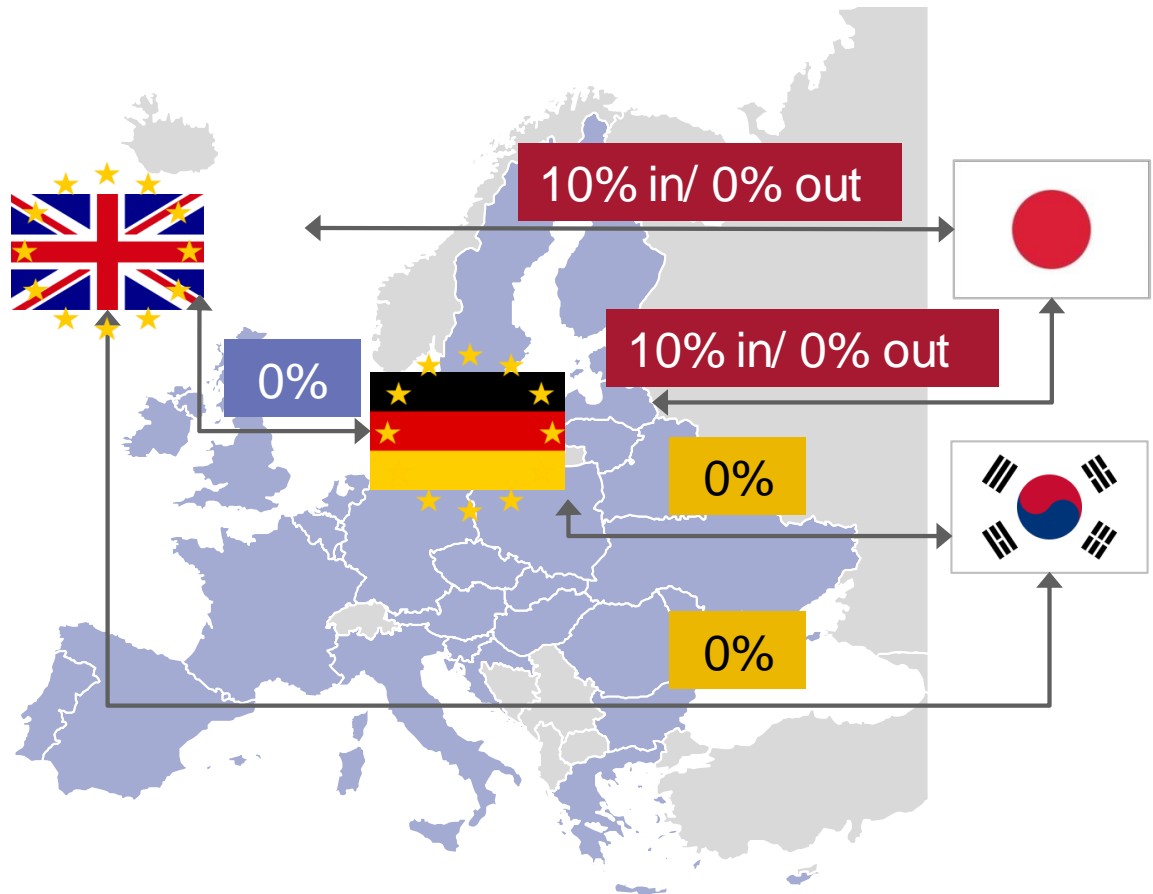


* only of concern for dutiable products

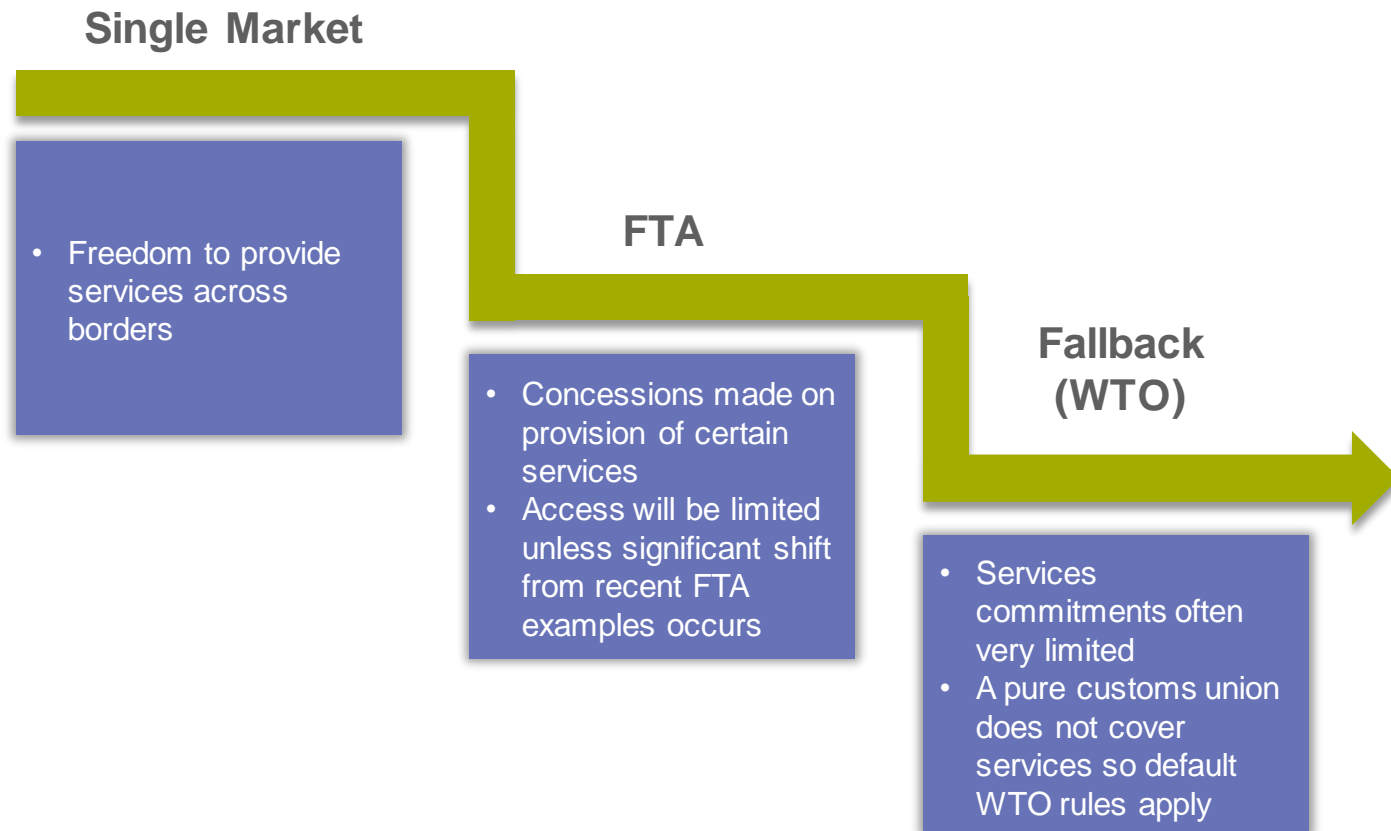
Movement of Goods | Single Market



- Free movement within the EU of goods in free circulation, **irrespective of origin**
- Common EU external tariff
- Common external trade policy (including FTAs)
- 75% of customs duties collected by Member States sent to the EU (~11% of EU budget)



Impact of Models on Movement of Services between UK and EU



Impact on the EU-27

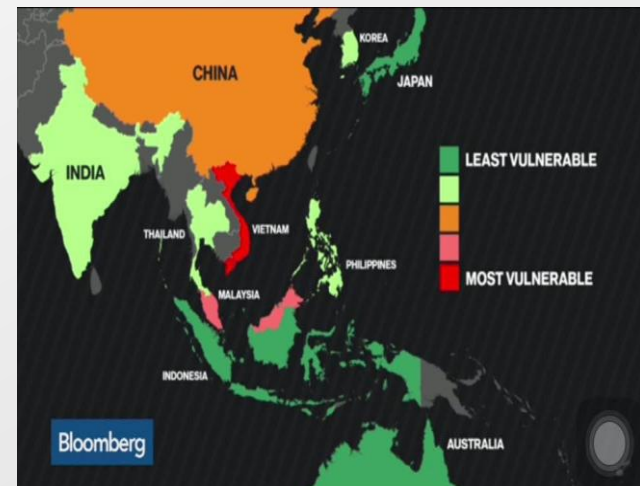
Consider:

- Impact on trade with UK and movement of goods if restrictions and trade barriers are put in place
- Impact of movement of workers between EU-27 and UK
- Impact on pending agreements (e.g. CETA, TTIP)
- Impact on existing FTAs – will counterparties want to renegotiate terms?

Impact on Third Countries

Consider:

- Impact on existing FTAs and similar agreements now that the UK is not party to them
- Impact on pending agreements (e.g. CETA, TTIP)
- Opportunity for new agreements with the UK?





Corporate income tax & WHT

How the EU has shaped UK tax law

Treaty basis for EU legislation

- Harmonisation of VAT
- Harmonisation of other taxes
- Unanimity required for legislative action

VAT

- Framework: Directive 2006/112/EC
- Direct effect of Regulations
- CJEU decisions: binding effect
- UK law to be read to comply with EU law

'Soft-law'

- Code of Conduct for Business Taxation
- Commission Tax Transparency Package

The fundamental freedoms

- Freedom of establishment
- Free movement of capital, goods, services and individuals

Non-discrimination

- Prohibition of discrimination on grounds of nationality

State Aid

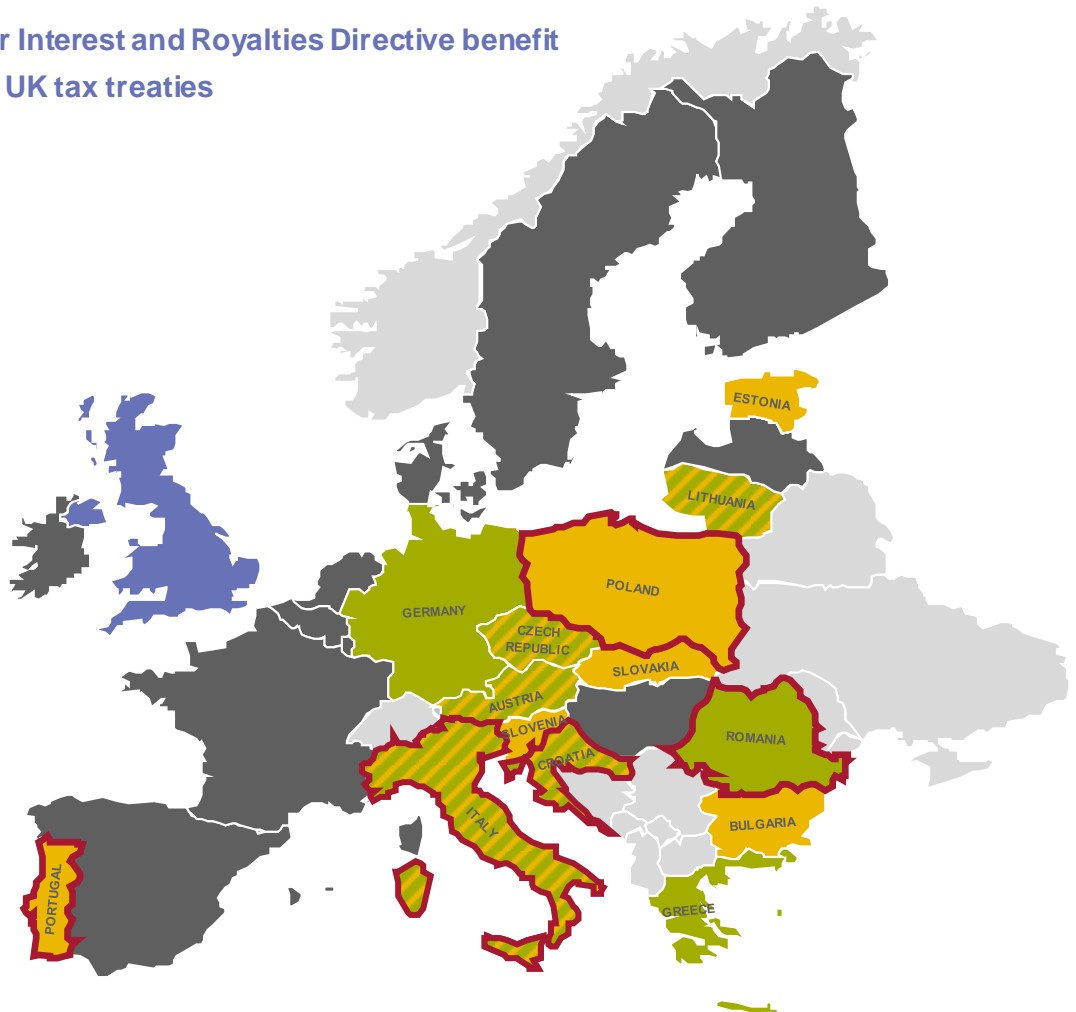
- Prohibition of “aid granted by a Member State...in any form whatsoever which distorts or threatens to distort competition”



Withholding tax

- Possible that no Parent/Subsidiary Directive or Interest and Royalties Directive benefit
- UK regional headquarters may need to rely on UK tax treaties
- Treaties may not reduce WHT to nil

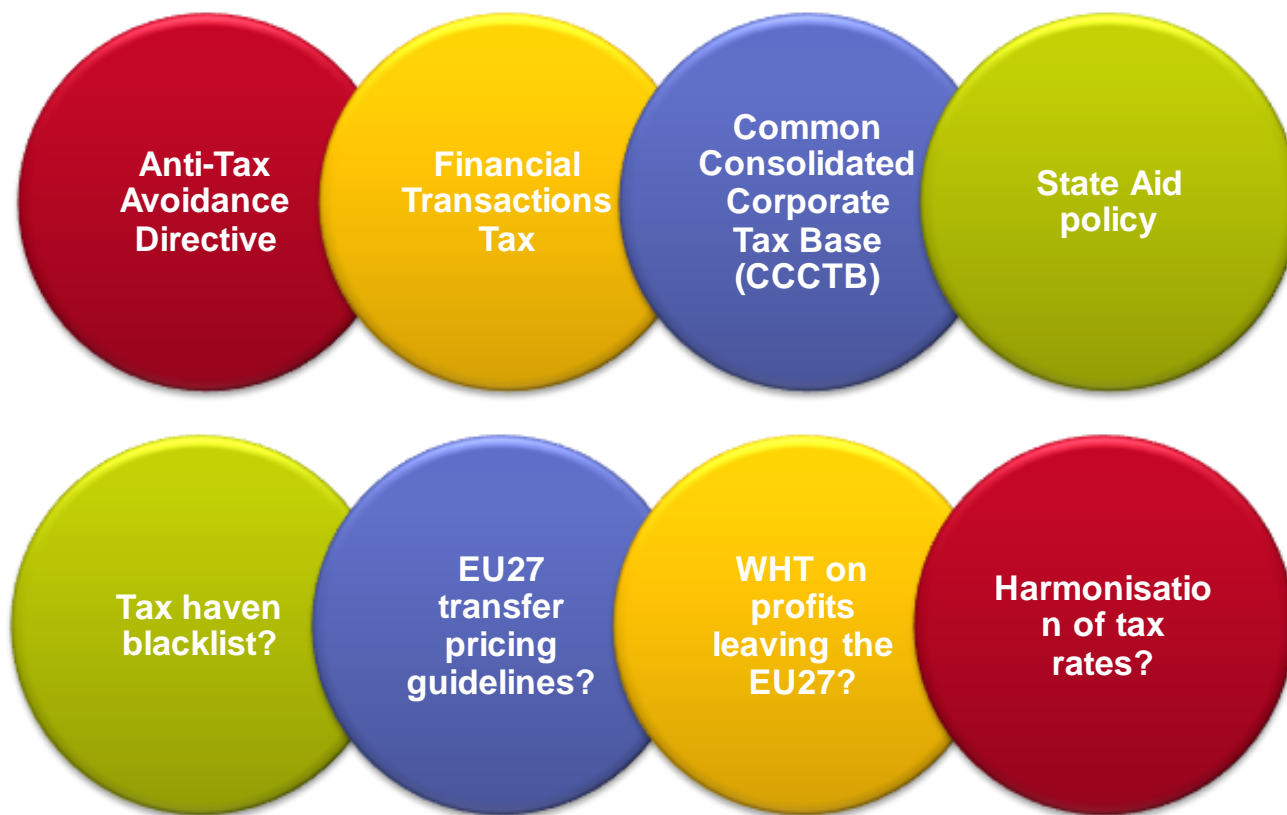
	Dividend WHT	Interest WHT	Royalty WHT
Austria	5%		10%
Bulgaria			5%
Croatia	5%	5%	5%
Czech Republic	5%		10%
Estonia			10%
Germany	5%		
Greece	10%		
Italy	5%	10%	8%
Lithuania	5%		10%
Poland		5%	5%
Portugal		10%	5%
Romania	10%	10%	15%
Slovakia			10%
Slovenia			5%



A conceptual image featuring a man in a dark suit walking away from the viewer on a paved path. The path starts as a single line and then splits into two separate paths that curve outwards, leading into a vast, flat landscape of tall grass. The sky is a deep blue with several large, white, fluffy clouds. The overall tone is contemplative and symbolic of a choice or a future path.

Where do the UK and EU27 go from here?

Future direction of EU27 Tax Policy





Value added tax

VAT: Governing law

Currently: UK law must be interpreted in conformity with EU legislation and decisions
Future: Status of EU law?



UK laws implemented prior to Brexit expected to be interpreted in conformity with EU law

Likely that EU law supersedes UK law for period before Brexit

Introduction of legislative changes by UK Government could be interpreted without reference to EU law
UK may still look to mirror EU VAT law

Post-Brexit period: EU legislation and CJEU decisions will cease to have direct effect
UK Supreme Court will be most senior court regarding interpretation of UK VAT law (subject to the UK remaining a member of the single market)

VAT: Impact on compliance

Introduction of **import and export rules** for supplies between the UK and EU27

Increase in duty deferral facility to cover import VAT and possibly customs and excise duties relating to imports from EU countries

Abolition of EC Sales Lists for sales from the UK to the EU27 and **Intrastat** for movement of goods to and from the UK

Registration in every EU27 Member State for distance sales, movements of own goods *etc?*

Distance selling **thresholds no longer apply for small value exports** to EU27



Points of interest for
stakeholders in Asia Pacific

Points of interest for stakeholders in Asia Pacific



States reported to have already approached the UK:
China, Australia, Singapore, South Korea, India

Impact on Vietnam / EU FTA ratification process and prospects?

Lessons for ASEAN?
Impact on EU law as adopted in APAC
commercial and fiscal laws?



UK as Principal - Comparison of treaty Dividend WHT rates

Payer	China	Hong Kong	Japan	Singapore	South Korea
Ireland	0%	0%	0%	0%	0%
Luxembourg	5% assumes minimum 25% shareholding	0% assumes minimum 10% shareholding	5% assumes minimum 10% shareholding	5% assumes minimum 10% shareholding	10% assumes minimum 10% shareholding
Netherlands	5% assumes minimum 25% shareholding	0% assumes minimum 10% shareholding	0% assumes minimum 50% shareholding	5% assumes minimum 25% shareholding	10% assumes minimum 25% shareholding
United Kingdom	0%	0%	0%	0%	0%





Where next?

Brexit | Form a Brexit Plan

1 Establish a **Brexit Working Group**

2 Carry out a **Brexit Assessment** (challenges/opportunities) and contingency planning; and establish immediate actions

3 Determine your **Brexit Strategy** (in particular what to lobby for and how)

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