Brexit, NL and corporate taxation

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IJK will be ‘unequivocally pro-business’ after Brexit, Theresa May tells American investors
Prime minister touts plan for one of lowest corporation tax rates among leading industrialised nations
UK Corporate income tax rate

Corporate income tax (top combined rates)
UK vs G20, 2010-15

Withdrawal Agreement 14 November 2018

- Entry into force **30 March 2019**
  - UK will leave EU 29 March 2019
- Transition period up to **31 December 2020**
  (Art. 126-132 WA)
  - Aim: Brexit happens in orderly manner
- Annex IV: Level playing field arrangements applicable after transition period!
Political declaration for the future relationship - Taxation Clause

- Part II, Art. XIV ‘Level playing field for open and fair competition’
  - The future relationship must ensure open and fair competition
  - Provisions to ensure this cover state aid, (...), (...) and relevant tax matters, building on the level playing field arrangements provided for in the WA

Summary
Transition period

- Main rule = **EU-law** shall be applicable to and in the UK during the transition period (Art. 127 WA)
  - **Free movement** of companies is ensured
    - *Cadbury Schweppes, Marks & Spencer etc.*
  - **Directives** in the field of corporate taxation remain applicable
    - *PSD, MD, IRD, ATAD1, DAC*
  - **State aid** control continues

Ongoing EU (taxation) issues 31-12-2020

- ECJ stays competent to pending cases (Art. 86 WA)
  - In case of **preliminary rulings**, the request from UK courts must be made before 01-01-2021
- EC can initiate **infringement** procedures until 2024 (Art. 87 WA)
- EC can initiate **state aid** procedures until 2024 (Art. 93 WA)
Annex 4, Good Tax Governance Clause  (Art. 1, par. 1)

• Commitment EU/UK to implement:
  – Principles of good governance in the area of taxation, including
    • Global standards on transparency and exchange of information;
    • Fair taxation; and
    • The OECD/BEPS standards

Annex 4, Freezing UK law implementing 3 directives  (Art. 1, par. 2)

• UK shall continue to apply the provisions of domestic law transposing the following directives:
  – DAC
  – ATAD1
  – PCBC investment firms and credit institutions
Annex 4, Code of Conduct
business taxation
(Art. 1, par. 3)

• UK reaffirms its commitment to the CoC, including the guidance relating to the CoC as applicable at 31-12-2020
  – This groundbreaking!
    • No harmful preferential tax measures
    • CoC guidance includes participation exemption regimes, ruling practices, NIA-regimes etc.
  – Black listing possible?

EU-list of non-cooperative jurisdictions for tax purposes

• Initial 17 jurisdictions currently 5
  – American Samoa, Guam, Samoa, Trinidad/Tobago, US Virgin Islands

• Screening criteria
  1. Tax Transparency
  2. Fair Taxation
  3. Anti-BEPS Measures
Fair Taxation subcriteria

1. Preferential tax measures regarded harmful according to CoC criteria
   – (almost) zero taxation ≠ harmful
2. Offshore criterion for (almost) zero tax jurisdictions
   – Controversial criterion
   – Will the British Crown Dependencies remain off the EU black list?
     • Jersey, Guernsey and Isle of Man

No deal, end of transition period, future relationship (I)
No deal, end of transition period, future relationship (II)

No deal, end of transition period, future relationship (III)
No deal, end of transition period, future relationship (IV)

CCTB/CCCTB