KPMG Meijburg & Co
Tax Lawyers

Brexit Seminar CFCI / KPMG Meijburg & Co

13 March 2019

KPMG Amstelveen

Introduction

Sylvie Craenen – CFCI

Introduction and agenda

- 9u00: Introduction (Sylvie Craenen – CFCI)
- 9u05: General overview and customs (Leon Kanters – Meijburg & Co)
- 9u30: Supply Chain en Operational Strategy (Ricardo Tülkens – KPMG Advisory)
- 9u45: Legal – consequences for restructuring (Marieke Enneman – Meijburg Legal)
- 10u00: Direct Tax (Bernard van Gerrevink – Meijburg & Co)
- 10u15: Questions / discussion
- 10u30: End

General overview and customs

Leon Kanters – Meijburg & Co

Question 1 - Ireland / Northern Ireland

How long is the border between Ireland and Northern Ireland and how many crossings does it have?

Is this:

A. 80 possible crossing points along the 250km border

B. 115 possible crossing points along the 380km border

C. 200 possible crossing points along the 500km border

Question 2 - Free Trade Agreement

How many pages does the Free Trade Agreement between the EU and Canada have?

Is this:

A. 160 pages

B. 1,600 pages

C. 2,600 pages

Question 3 – UK membership of the EU

In which year did Britain originally join the EEC, now known as the European Union?

Is this:

A. 1963

B. 1968

C. 1973

D. 1983

Question 4 - Customs

How many custom officials would the UK HMRC need to hire in case of a hard Brexit?

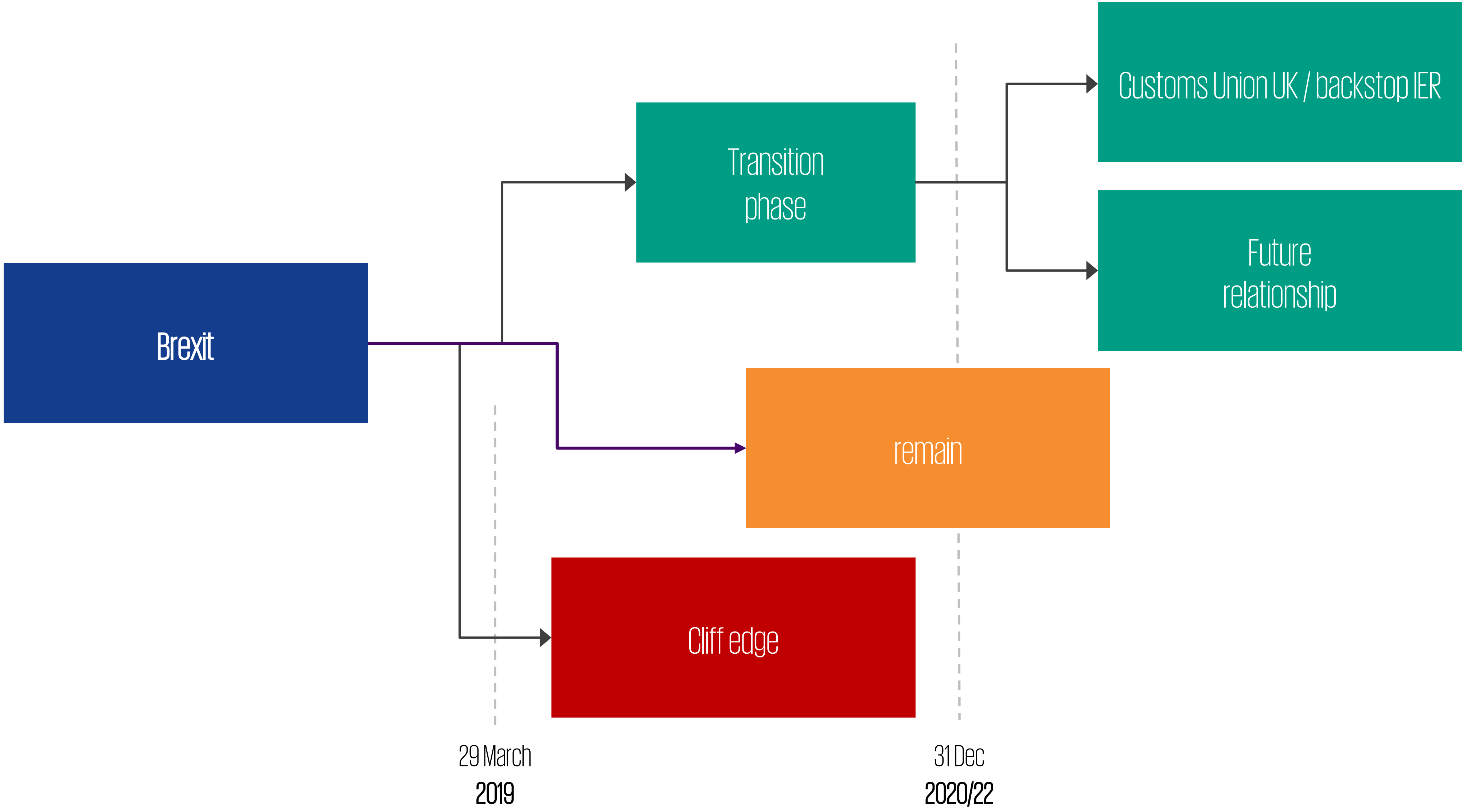
Is this somewhere between:

A. 1,000 – 1,500

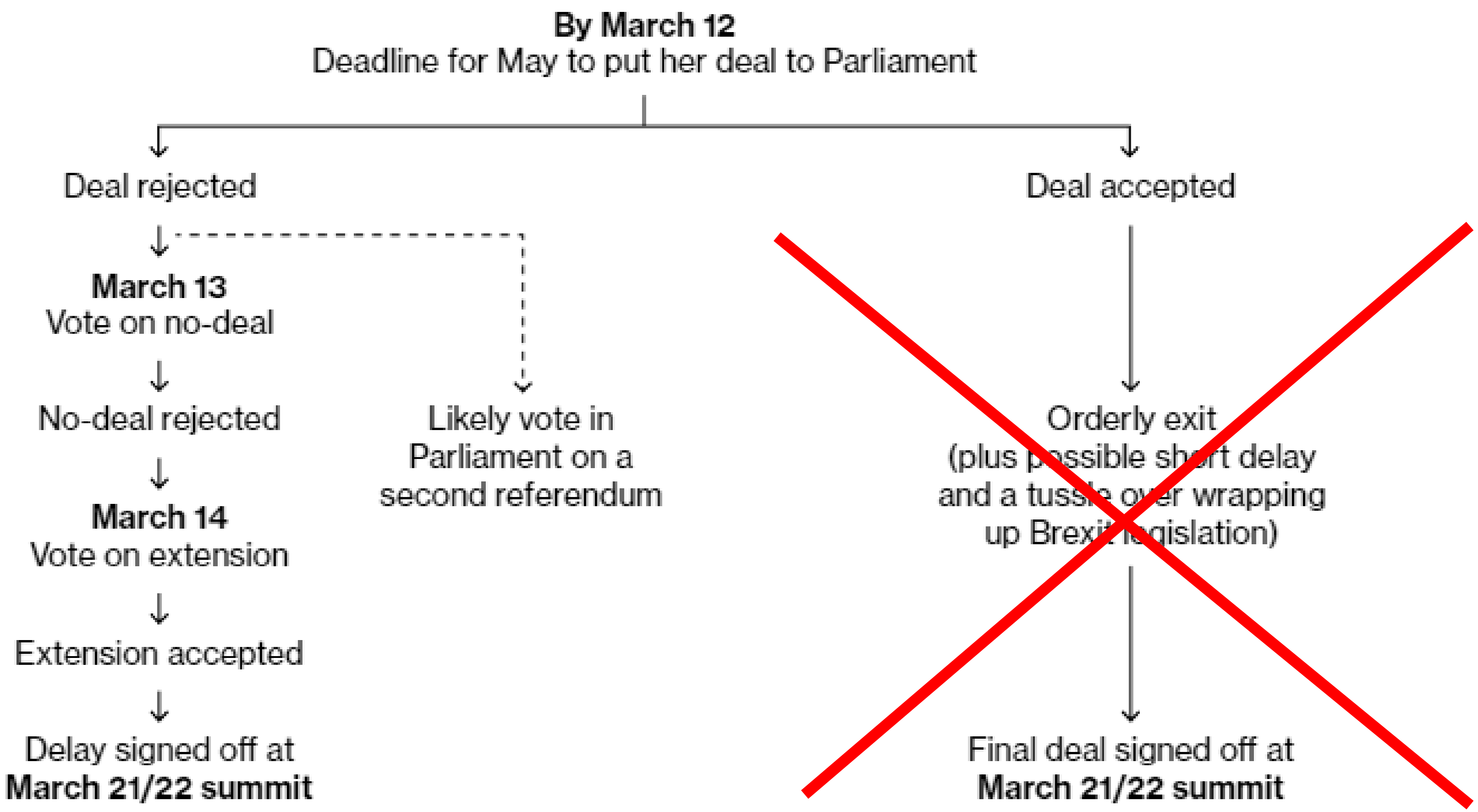
B. 1,500 – 3,000

C. 3,000 – 5,000

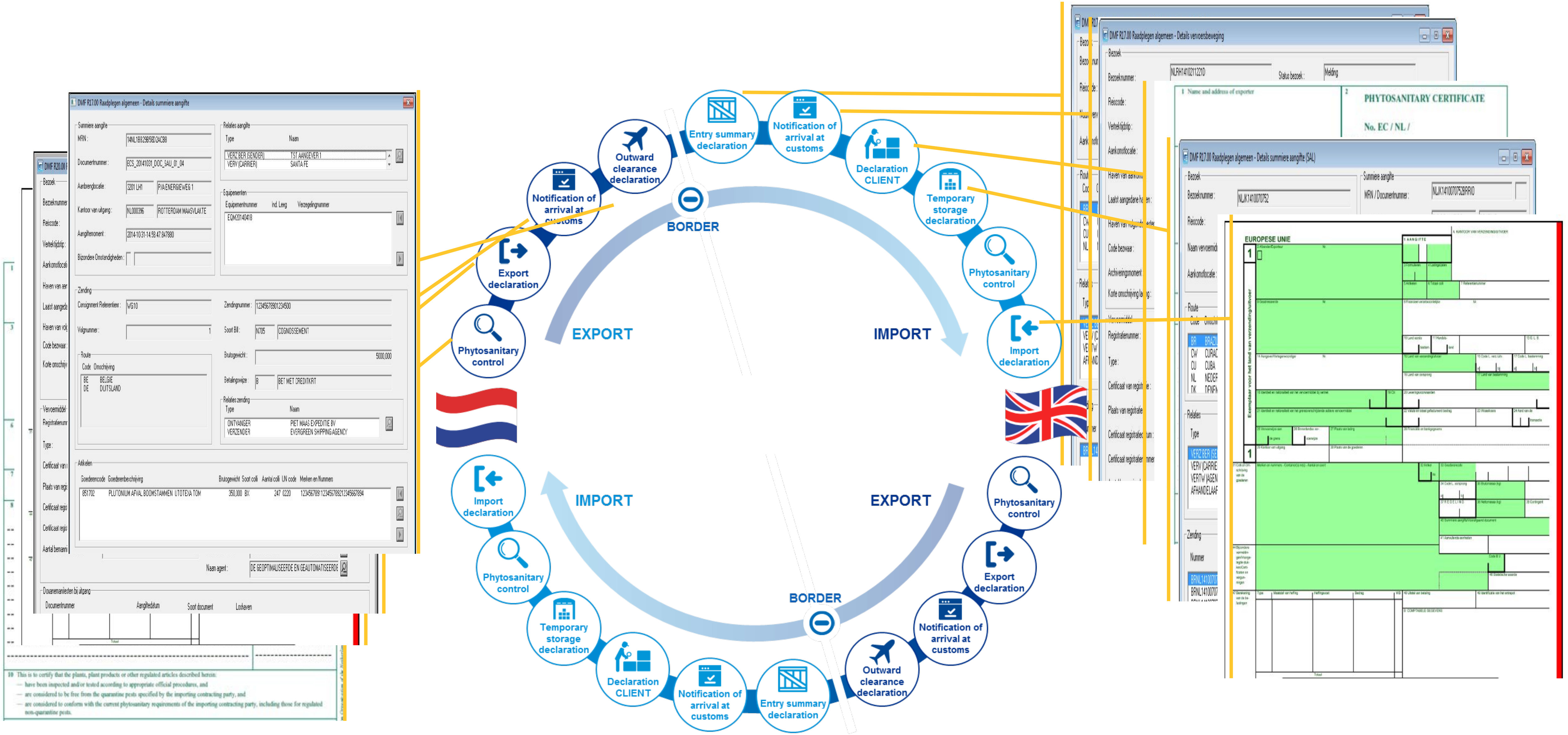
Possible scenarios



What’s next for Brexit?

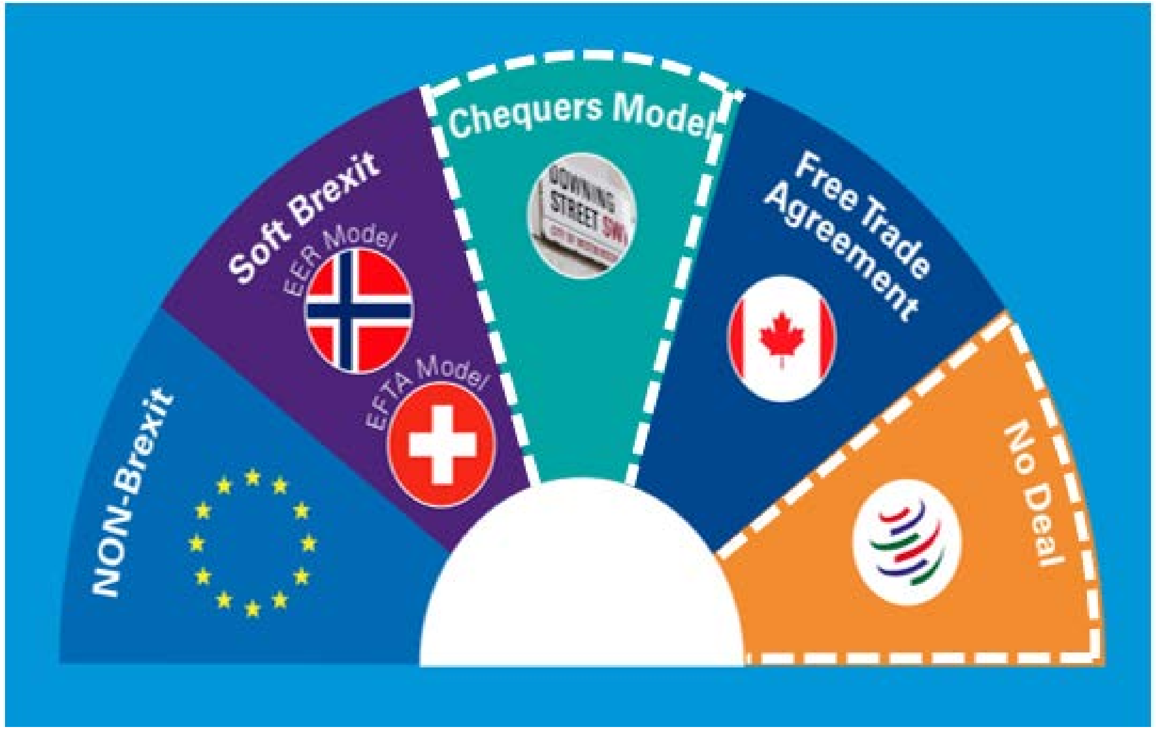


Customs formalities



Free trade agreement

KPMG Brexit Barometer (Quick Scan)



Government not on time	93% UK 59% NL
Consequences known	53%
Cost not known	78%
Sees opportunities	27%

TIS Customs for Brexit

Declaration Data

Statistical Data (intra-EU)

- Intrastat
- Extrastat

Customs Data (non-EU)

- Imports
- Exports

ERP Data

- SAP

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Tariff Content
EU TARIC Database

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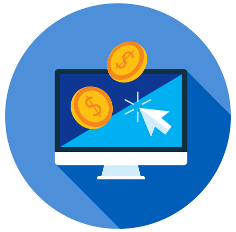

TIS Customs
Tariff and Brexit Module

TIS Brexit Impact Analysis

- Applicable regulations
- Required certifications
- Potential duty increase
- Potential admin costs

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TIS Brexit Impact Analysis

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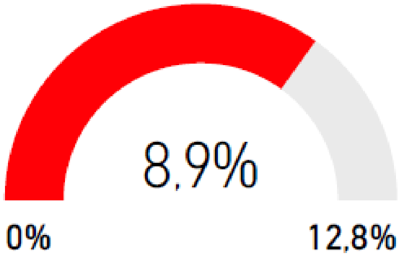
Declaration Cost
- 0
- 10
- 20
- 30
- 40
- 50
- 60
- 70
- 80

Date Range

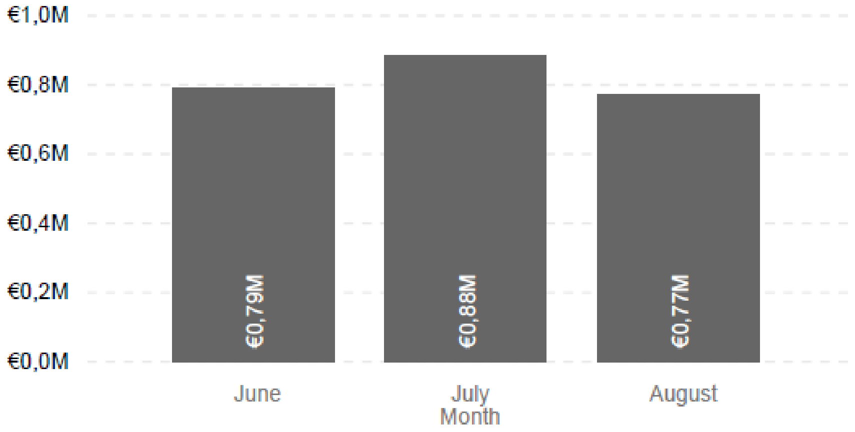
1-6-2018 | 31-8-2018

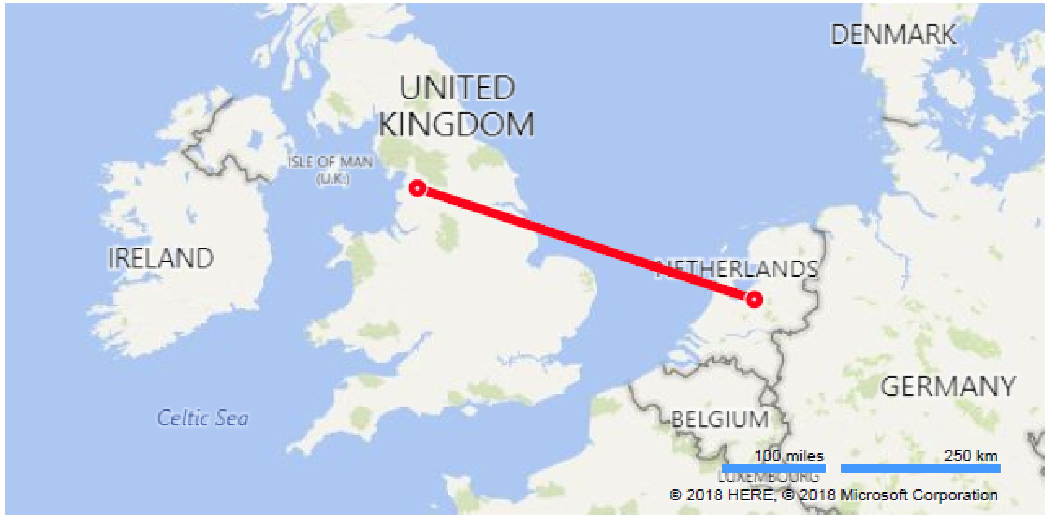
€2,44M	€ 218,69K	€1,25K	22
Customs value	Potential customs duty	Potential declaration cost	Potential measures
€ 23,46K	€ 56,584	€150	
EU Import value	EU Import duty	Import costs	
€ 2,42M	€ 218,64K	€1,1K	
GB Export value	GB Export duty	Export costs	

Average duty rate



Customs value per Month





DISCUSSION PURPOSES ONLY

Supply Chain and operational strategy

Ricardo Tülkens – KPMG Advisory

Understand the Brexit exposure

The major Brexit implications on Organisations and Operations

Integrated Supply Chain Failure

— The interconnectivity and complexity of modern supply chains (both core products and machinery) make them very difficult to manage.

— Organisations need to pay particular attention to the risks posed by potentially vulnerable suppliers or the contractual leverage or bargaining power suppliers may try to pass through increased costs.

— Remember a competitive advantage might come from simply being less affected than the closest competitors.

Border delays

— Business that currently rely on seamless trade between the UK and Europe (including Ireland) need to mitigate for potential customs chaos.

— The Freight Transport Association are estimating that a two minutes in additional customs processing time at Dover could lead to 17 mile tailbacks on Kent's motorways. Six minutes and it's back to the M25!

— The OECD estimates that Inefficiencies relating simply to the process of customs clearance could result in additional costs of up to 10% of the value of the goods.

People and Workforce

— Exposure to EU nationals might not be a primary issue for you, but what about your suppliers or your logistics partners?

— Collectively organisations are expected to struggle to attract the necessary number of staff, or deal with the expected wage inflation caused by devaluation of the pound or scarcity of supply.

Regulatory & Compliance

— Regulatory divergence as a result of leaving the EU could be very disruptive, but remains uncertain.

— New controls and measures will be required if you wish to continuing producing the same products for both the UK and EU if the UK chooses to take an alternative approach to regulation.

Information and Technology

— There will be both direct and indirect implications on IT and other support functions such as Finance, Tax and Treasury.

— We have found that organisations do not fully appreciate the impact until they come to make decisions on mitigation. E.g. the implications on IT functionality caused by changes to order-to-cash or purchase-to-pay processes and potential restrictions on data, or on treasury by carrying more inventory.

Currency and Depreciation

— Since the referendum the exchange rate against the Euro and Dollar has fell by 15% and 8% respectively. The UK is a huge net importer of goods, so this will hit the bottom line of many organisations.

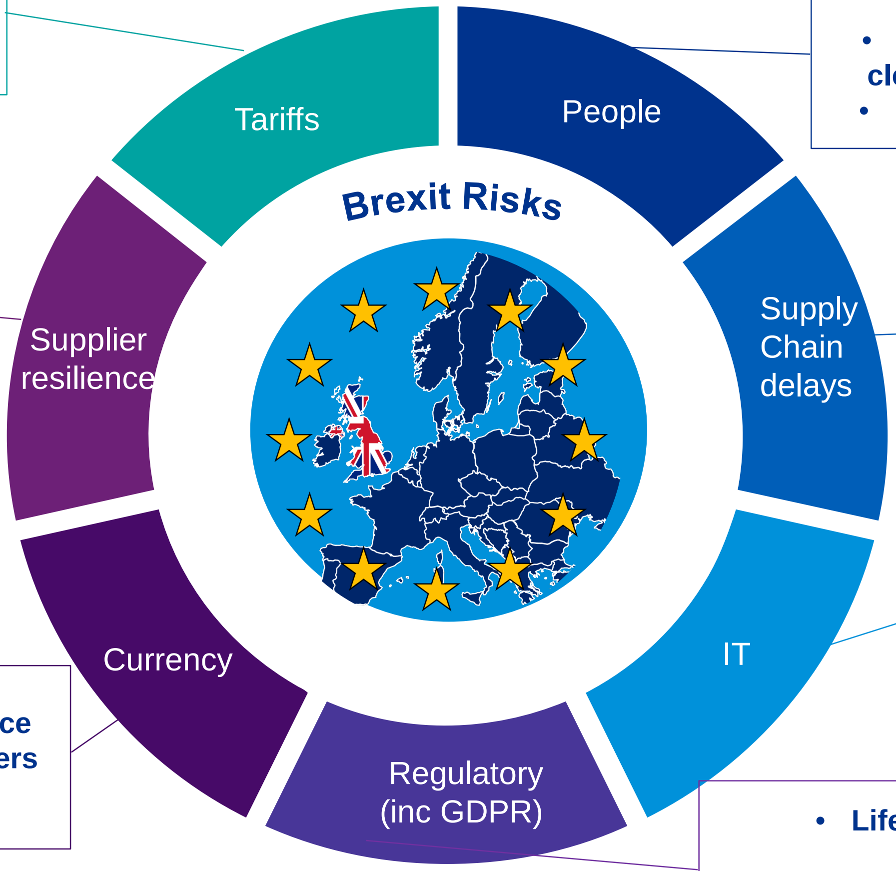
— Businesses need to understand how much will margins be squeezed, in which parts of the business, then begin thinking about ways of improving efficiencies and boosting income.

Who will be affected?

- Port operators
- Freight forwarders
- Any business sourcing product from the EU

- Warehousing/storage
- Outsourcing companies (such as cleaning, security and administrative)
- Logistics providers (lorry drivers)

- Government & local authorities
- NHS
- Heavily outsourced business (e.g. Utilities)



- 3PL’s
- Retail
- Fast fashion

- IT outsourcing companies
- Data owners

- Multinational businesses such as Finance who complete transactions across borders
- Manufacturing companies

- Life Sciences/Pharmaceuticals
- Financial Services
- Utilities
- Food businesses

Legal - consequences for restructuring

Marieke Enneman – Meijburg Legal

Legal consequences - snap shot

- Restructurings
- Financial Services
- Contractual Disputes
- Capital Markets
- M&A
- Arbitration Convention
- Employment
- Anti-trust

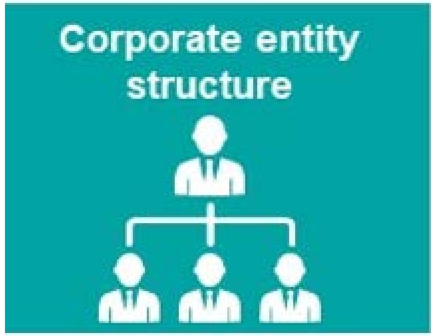
Migrations - cross border restructuring

Legal framework

1. Cross border mergers - EU Directive 2005/56/EC
2. Demergers – Article 49 & 54 TFEU, no EU Directive
3. Conversions – Article 49 & 54 TFEU, no EU Directive, NL proposal for national legislation (2012), case law (Cartesio, Vale, Polbud)

Recent developments

4. Proposal for new EU Directive on cross-border conversions, mergers and divisions (May 2018) ((2018) / 0114 (COD))



Migrations

Cross border mergers

Available to limited liability companies with statutory share capital formed in accordance with the law **of a Member State** and having their registered office, central administration or principal place of business within the **European Community**, provided that at least two of them are governed by the laws of different **Member States**.

<u>Brexit</u>

- UK implemented the EU Directive in its primary legislation that will continue to be part of English law
- UK becomes a “third party” - no longer bound by the EU Directive
- Member States (such as NL) – in relation to UK other the Member States will no longer able to make use of local legislation allowing for CBMs between entities from different Member States

Migrations

Demergers & Conversions

Demergers & Conversions are based on the principles of Section 49 (freedom of establishment) and Section 54 (equal treatment) TFEU applicable to **Member States**

Brexit:

- UK becomes a “third party” – for inbound and outbound demergers and conversions Member States will no longer be able to rely on the TFEU

Core principles - what to miss out on?

Cross border mergers and Demergers

1. **Move of corporate seat**
2. **Universal succession of title**
   - Consequence cannot be influenced
   - Merger: concerns all assets and liabilities
   - Demerger: assets and liabilities mentioned in description drawn up as part of the demerger process
   - Exemptions: property rights and highly personal rights (licenses, board memberships of other companies). May also trigger change of control provisions
3. Disappearing company **ceases to exist without liquidation** (applies to cross border merger and to split-up (*zuivere splitsing*))

Conversion

1. **Move of corporate seat** to new jurisdiction
2. **No transfer** of assets or liabilities
3. **Continuation** of legal entity without liquidation

Consequences and solutions

Pseudo Foreign Entity Act (*Wet op de formeel buitenlandse vennootschap*)

UK entities might become subject to formal requirements applocable to foreign (non- EU) entities doing business in NL

1. Publication annual accounts in accordance with Dutch law provisions
2. Potential Dutch law directors liability for MDs

Solutions

1. Share and assset transfer deals
2. Transitional provisions
3. Amendment to proposed new EU Directive on cross-border conversions, mergers and divisions (May 2018) ((2018) / 0114 (COD))
4. Through jurisdictions using the *siège real* principle

Alternatives- UK as for third party country

No formal legislation → No case law → Not possible?

Solution?
Safety first
- Inbound or outbound restructuring through Member States that use the *siège real* principle (actual seat)

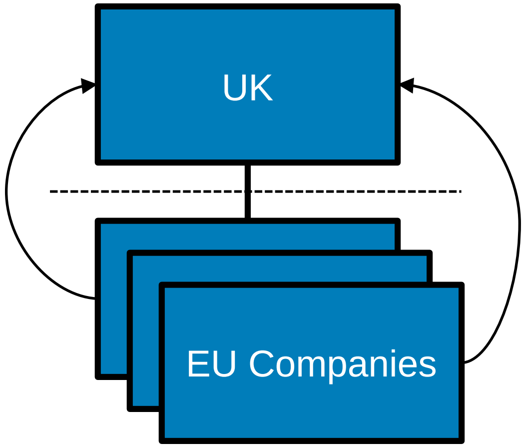
Example:
Cross border merger, demerger or conversion from UK to NL through Luxembourg

Ltd → SARL → NL

Direct Tax

Bernard van Gerrevink – Meijburg & Co

UK Group structures - withholding taxes



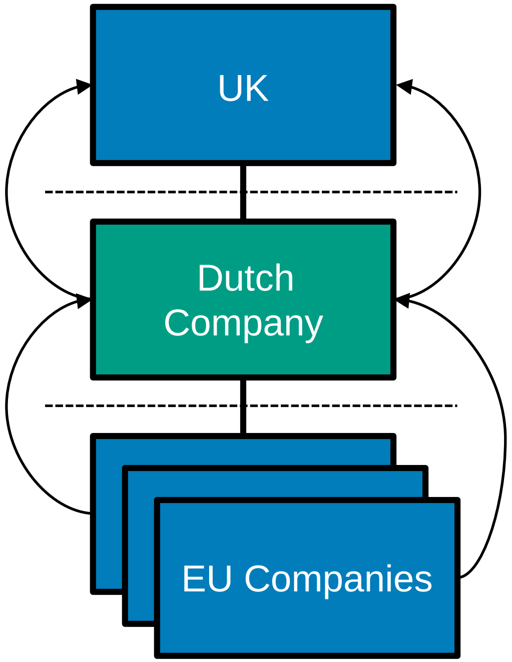
Implications Brexit:

- Dividends, interest and royalties to UK no longer exempt from withholding tax in some EU-countries.
- Dividends, interest and royalties to NL still exempt from withholding tax .
- No dividend withholding tax under DTT NL - UK.
- NL does not levy withholding tax on royalty and interest payments.

Withholding taxes EU - UK under tax treaties

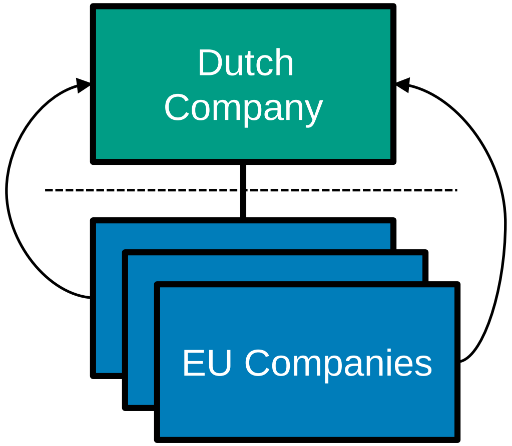
Source countries	Dividend withholding tax		Interest withholding tax		Royalty withholding tax	
	Domestic rate	Treaty rate UK (1)	Domestic rate	Treaty rate UK (1)	Domestic rate	Treaty rate UK (1)
United Kingdom	n/a	See below	0% / 20%	See below	20%	See below
Austria	25% / 27.5%	5%	0% / 27.5%	0%	0% / 20%	0% / 10%
Belgium	0% - 30%	0% - 15%	0% / 30%	0% / 10%	0% / 30%	0%
Bulgaria	5%	0% - 15%	0% / 10%	0% / 5%	10%	5%
Croatia	12%	5%	0% - 40%	0% / 5%	0% - 25%	5%
Cyprus	0%	0% / 15%	0%	0%	5% / 10%	0%
Czech Republic	15% / 35%	5%	0% - 35%	0%	0% - 35%	0% - 10%
Estonia	0%	5%	0%	0% / 10%	0% / 10%	0% - 10%
France	30%	0% / 15%	0%	0%	0% / 31%	0%
Germany	25%	5%	0% / 25%	0%	0% / 15%	0%
Greece	10%	10% *(2)*	0% / 15%	0%	0% / 20%	0%
Ireland	0%/ 20% *(3)*	5% / 15%	0% / 20%	0%	0% / 20%	0%
Italy	26%	5% / 15%	0% / 26%	0% / 10%	0% / 30%	8%
Netherlands	0% / 15%	0%	0%	0%	0%	0%
Poland	19%	0% / 20%	20%	0% / 5%	0% / 20%	5%
Portugal	25% / 35%	10%	0% - 35%	10%	25% / 35%	5%
Romania	5%	10%	0% / 16%	10%	0% / 16%	10% / 15%

Post-Brexit alternative 1



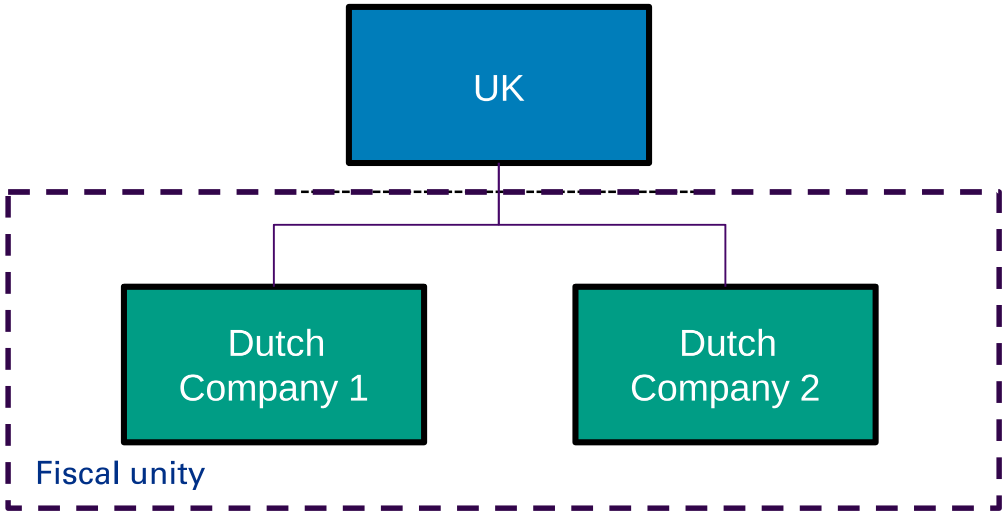
- Dutch intermediary holding company holding EU companies

Post-Brexit alternative 2



- Conversion / migration to the Netherlands

Fiscal unity issues

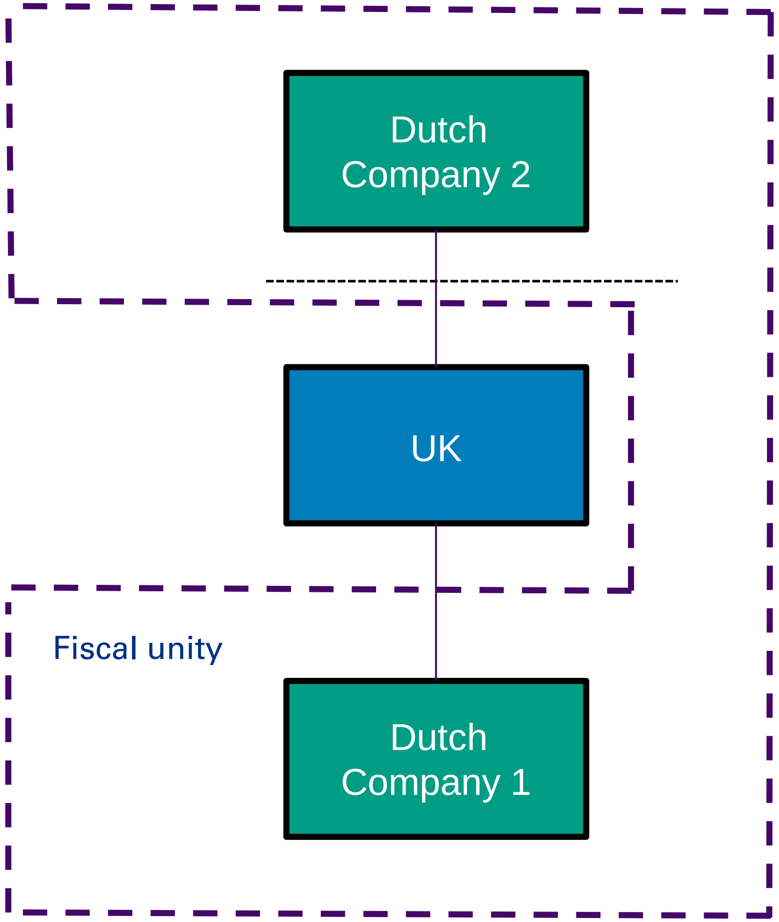


Fiscal unity Dutch corporate income tax

- Following EU-case law, the Netherlands have implemented legislation based on which a fiscal unity can be formed between two Dutch sister companies
- This requires a common EU-Parent that could have been included in a Dutch fiscal unity if it were a Dutch resident corporate taxpayer

- Upon Brexit, these requirements will no longer be met

Fiscal unity issues



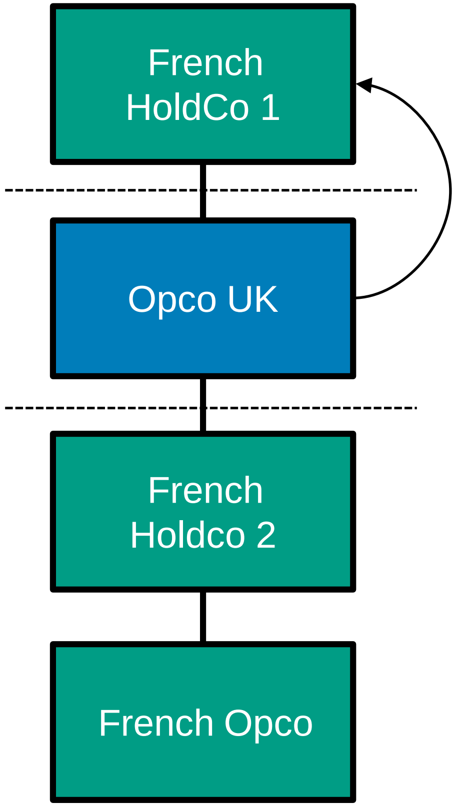
Fiscal unity Dutch corporate income tax:

- Following EU-case law, fiscal unity can be formed between two Dutch companies with an intermediary company within the EU
- This requires an intermediary company resident in an EU Member State that could have been included in a Dutch fiscal unity if it were a Dutch resident corporate taxpayer

- Upon Brexit, these requirements will no longer be met
- → Break-up of fiscal unity
  - Losses can no longer be offset between Dutch companies
  - Trigger of anti-avoidance rules

- A Decree was issued last week providing transitory rules, i.e. UK common parent deemed resident in the EU until end of year

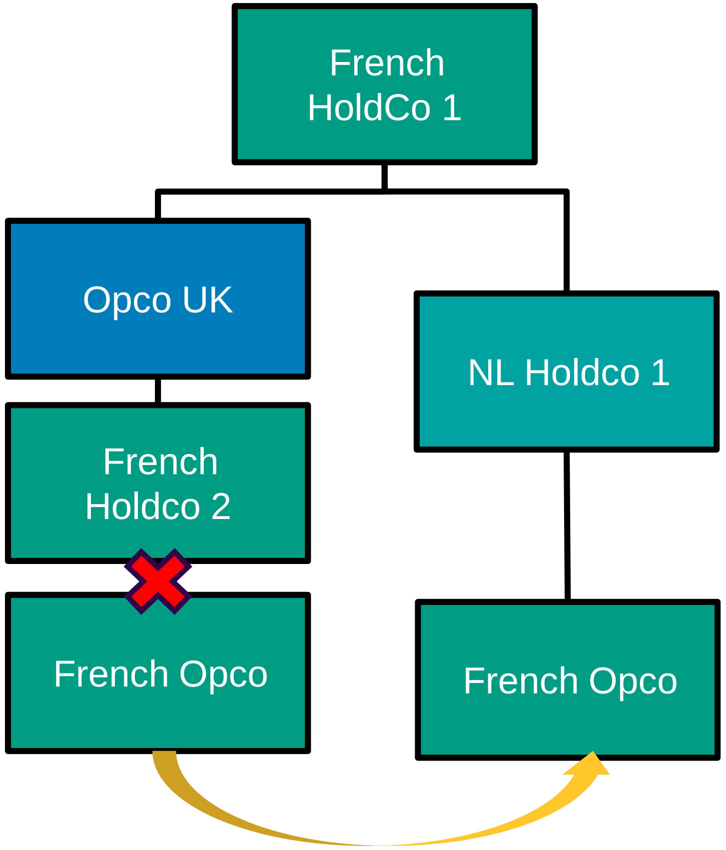
French corporate income tax aspects



French participation exemption regime

- Dividend income from Opco UK currently 99% exempt at French HoldCo1 because Opco UK based in European Union and would be eligible for inclusion in a tax group if it were a French resident
- Upon Brexit, Opco UK no longer based in European Union and participation exemption at French HoldCo 1 – level will be lowered to 95% of dividend income.

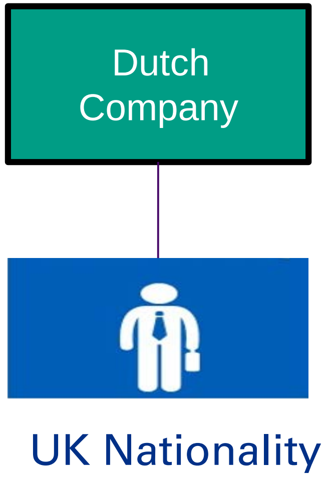
French corporate income tax aspects



Restructuring

- Transfer of French Opco generating dividend income to NL shareholder.
- Avoid 4% of dividend becoming taxable in France at 31%

Individuals - Free movement of persons

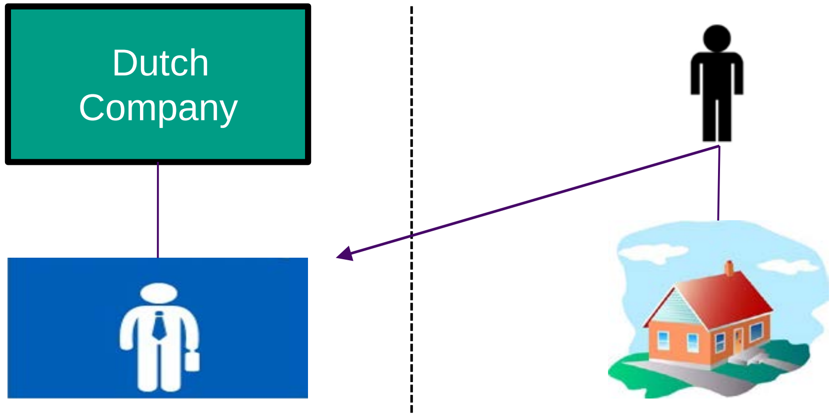


UK workforce in the Netherlands

- About 45,000 people with UK passport working in the Netherlands
  - Will these all require a residence permit as from 30 March 2019?

- Transitional period from 29 March 2019 up to and including 1 July 2020.
  - Persons working in the Netherlands on or before 29 March do not require a permit to live, work or study in the Netherlands
  - UK nationals will receive a temporary permit that also applies to family members
  - Persons moving to the Netherlands after 29 March 2019 will be regarded as coming from third country so need to follow 'regular immigration procedure'

Individuals - UK resident working in the Netherlands



UK workforce in the Netherlands

- Personal benefits in NL Personal Income Tax return may no longer be claimed, e.g.
  - Mortgage interest
  - Premiums for future allowances
  - Personal allowances
  - Costs for study
  - Gifts to charity

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