

AIJA M&A SEMINAR BREXIT RESTRUCTURINGS – AN INITIAL ASSESSMENT

27 January 2017, La Clusaz



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Introduction

- The panel

Overview:

- Introduction to Brexit;
- Key Issues for Clients;
- Tax Considerations;
- Impact on M&A Structuring; and
- Q&A.



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Brexit: a bit of history

- EEC and the Treaty of Rome
- Applications, rejections and membership
- 1975 referendum
- Opt-outs and rebates



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Brexit: why and where are we now?

- ERM/single currency
- Growth of Euroscepticism/UKIP
- General election and negotiations
- 2016 referendum, court cases and challenges



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Brexit: what next?

- Article 50 trigger
- Parliamentary approval
- 2nd referendum/general election?
- Hard Brexit?



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Key Issues for Clients

- Nothing has changed yet – too much talk?
- Watching and waiting
- But many issues to consider...



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Key issues for Clients

- Free movement of:
 - Workers
 - Existing employees?
 - New talent post-exit?
 - Goods
 - Services
 - financial services / "passporting"



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The UK as a destination for business

- Underlying fundamentals largely unchanged
 - Major economy
 - Proximity and cultural ties to Europe
 - Ease of doing business
 - Regulatory environment
 - Access to talent
 - Tax
- No real sign of companies leaving, many still coming (but early days)



Tax: Inward Investment into Europe

- Foreign companies investing into Europe are interested in international tax rules
- International tax rules impact on tax arising on cross border money movements:
 - dividends
 - royalties
 - interest
- Cross border flows of goods impacted by sales/value added taxes and customs duties
- Companies want to eliminate or minimise taxes on payment flows and domestic taxes on profits



Impact of Brexit on International Tax

- Membership of EU impacts on tax arising on money movements through the application of:
 - Directives:
 - EU Parent Subsidiary Directive – eliminates tax (WHT and income tax) on dividend flows between EU states
 - Interest/Royalties Directive – eliminates withholding taxes on royalties and interest flows but only between direct parents/subsidiaries
- Fundamental freedoms of establishment, capital, movement of goods and services and movement of people supplemented by State aid rules and decisions of the Court of Justice of the European Union ("CJEU")
- Brexit likely to impact on the application of these rules to the UK



Potential impact of Brexit on UK Taxation

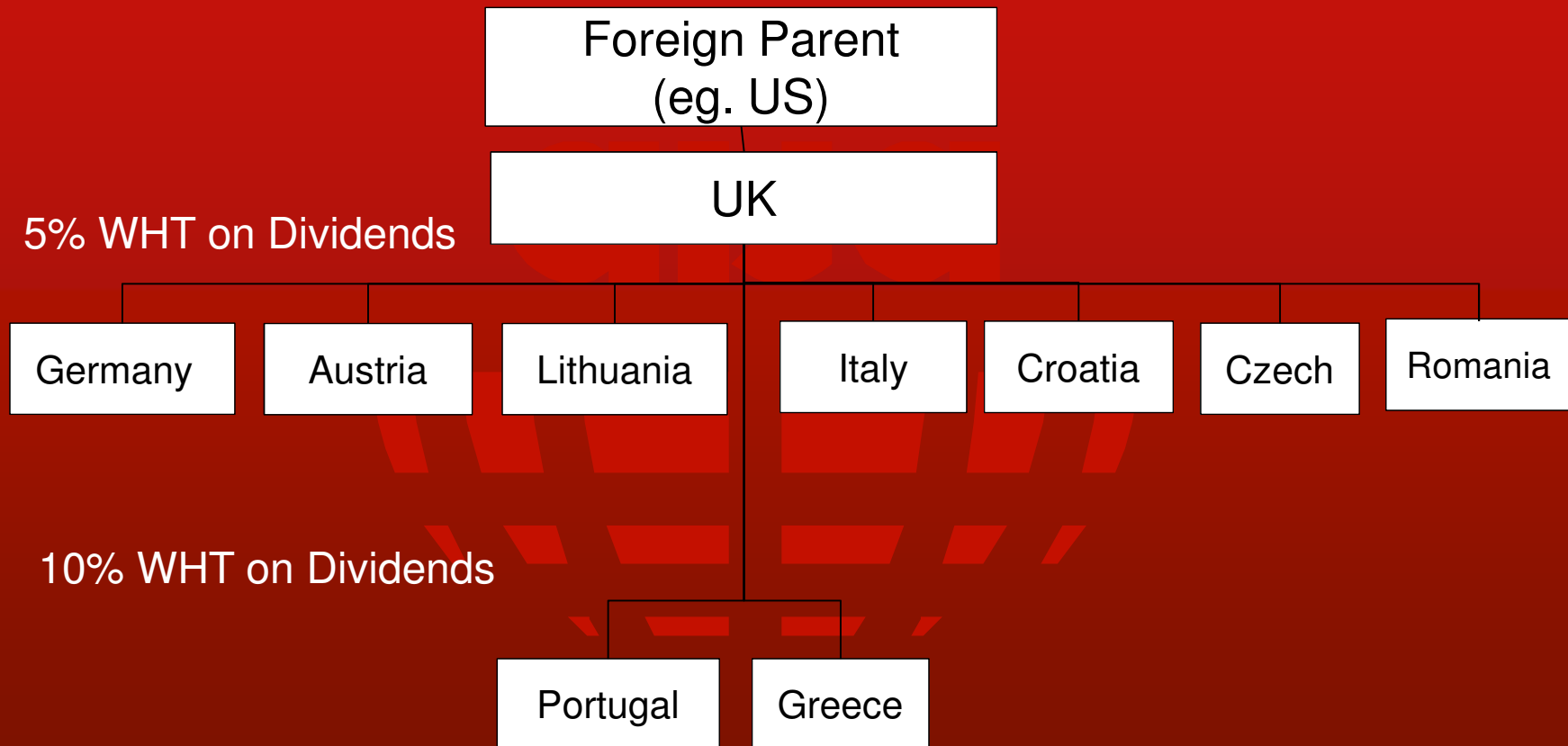
- UK has a competitive holding company regime for inward investment into Europe
- Main alternative jurisdictions for European holding companies:
 - Ireland
 - Luxembourg
 - Netherlands
 - For private structures – Malta and Cyprus
- Impact of Brexit likely to depend on whether we have:
 - "Soft" Brexit – assume that equivalent arrangements to EU Directives still apply to the UK (no significant tax changes) – e.g. Swiss model
 - "Hard" Brexit – assume no EU Directives, no EU law, no authority of CJEU, no State Aid – e.g. Canada, WTO models
- Hard Brexit seems the most likely outcome

Potential Impact of Hard Brexit

- Companies expanding into Europe today may consider planning for "worst case" scenario of hard Brexit
- Some advantages of the UK tax regime expected to remain:
 - No withholding taxes on dividends under UK law
 - Dividend participation exemption (dividends from subsidiaries generally not taxable)
 - Capital gains participation exemption (substantial shareholding exemption)
 - Wide treaty network with generally favourable treaty rates (i.e. cross border dividends, interest and royalties generally at nil or low WHT)
 - Good CFC rules (active trading subsidiaries not caught)
- However, some Treaties with EU Member States allow for WHT on dividends etc.



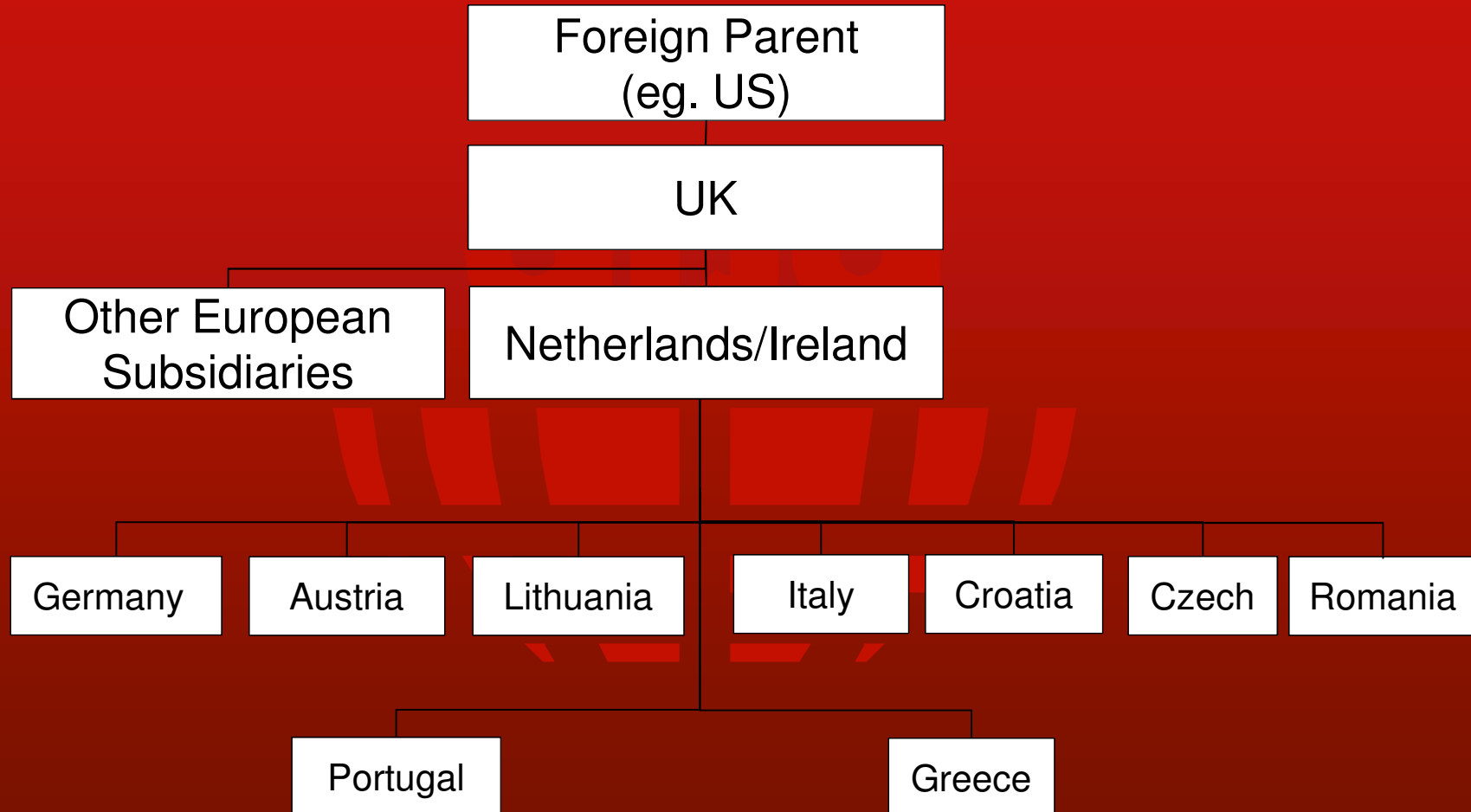
Group Structure Illustration



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Possible Solution



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Impact on M&A Structuring: the market

- Immediate impact
 - Shock
 - (Surprisingly) business as usual (the 4%...)
 - Exchange rates
- High profile / high value deals
 - News UK/Wireless Group (Talksport) £220m
 - Softbank/ARM £24.3bn
 - Micro Focus / HP Enterprises \$9bn
 - Outfit7 / United Luck Consortium \$1bn
- Deal volumes



Impact on M&A structuring

- Due diligence for Brexit issues
 - Business confidence / demand
 - Contractual terms
 - Currency fluctuation
 - Tariffs
 - References to EU
 - Dispute resolution/enforcement – more arbitration?
 - Workforce nationality/flexibility



BREXIT RESTRUCTURINGS – AN INITIAL ASSESSMENT

- Q/A's?



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William is a partner in the Corporate Finance and Private Equity groups and is head of the Paris office at Travers Smith LLP. His clients include institutional investors and UK and overseas quoted and private companies.

His practice is based on a mixture of UK and international M&A work. He also specialises in private equity and, in particular, in UK and international buy-out, early-stage and development capital work as well as joint ventures, corporate restructurings and general advisory work.

As well as acting for institutional investors and management teams on investments and divestments, William regularly advises private equity-backed companies on M&A and other corporate matters.

William is an English qualified lawyer and speaks English and French.



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Robert is a partner in the Tax and Incentives group at Taylor Wessing. He has a broad domestic and international client base, ranging from multinational groups to start-ups and encompassing a number of private wealth clients.

He has particular expertise in the fields of international M&A, corporate structuring, reorganisations, financings and re-financings. He also advises on venture capital investments and real estate transactions (investments and developments) in the commercial and residential sector.

Robert is an English qualified lawyer and a UK Chartered Tax Adviser. In 2013 Robert was named one of the "Top 40 Under 40" tax practitioners working in the UK by the Tax Journal, a leading UK tax publication.



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Philip is a corporate partner specialising in advising overseas emerging growth and listed corporations on mergers and acquisitions and corporate reorganisations particularly in the technology, media and communications, life sciences and specialised manufacturing sectors. He also advises on general corporate matters and mentors a number of earlier stage UK tech clients and is a regular in the firm's Tech City office.

Philip advises overseas companies on the establishment, operation and growth of business in the UK, Europe and beyond and is a regular speaker on the topic. He regularly runs international projects, working closely with Taylor Wessing's international offices and partner law firms via the firm's international networks.



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