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Editorial by Prof. Kirchdörfer  
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## Brexit hardships for German companies

Accompanying law leaves many questions unanswered / What will happen with tax-law-related deferrals?

BERLIN, 11 December. At 11 p.m. on 29 March 2019, Great Britain will leave the European Union. Given the opposition to the draft Brexit agreement within the British Conservative Party, the danger of an exit triggering tumultuous consequences is far from over. Therefore it seems urgently imperative to address the tax consequences in Germany and prepare for a worst-case scenario. A welcome step in that direction was the Federal Ministry of Finance's presentation in October of the draft of a Brexit-related accompanying law on taxes. This law aims to cushion the impact of the status change of Great Britain from an EU member state to a third country. The Ministry's action reflects the logic that the settlement of actions started before the change in status occurs should be brought to a conclusion as if the change in status had not taken place.

The following rules are concretely stipulated in the accompanying law on taxes: tax adjustment items for assets transferred to the United Kingdom will not have to be dissolved at a profit. Those using the home ownership pension saving scheme known as "Eigenheimrente" or "Wohn-Riester" will not be forced to repay allowances or tax reductions they have received. In the Transformation Tax Act, retroactive taxation of the contribution gains for certain contributions that were already made will be avoided from the time of the status change and beyond. VAT-related special rules for the Isle of Man will be revoked and additional provisions for coverage eligibility of British assets

for German covered bonds and for securing existing assets from building societies in the United Kingdom are to take effect.

The list of measures is commendable. But it is far from adequate. As it stands, family businesses and their shareholders in particular remain exposed to significant tax risks resulting from Brexit. The British withdrawal from the EU carries the threat, for instance, that exit taxation may be imposed on owners of German family-owned businesses who live in Great Britain. Exit taxation affects undisclosed reserves in company shares from stock corporations, for example when a resident taxpayer permanently transfers his or her residence from Germany to abroad. When relocation involves EU countries, the tax requirement is deferred indefinitely and at no interest. By contrast, deferral is limited to five years when a relocation involves a third country, and can be extended only once in certain cases.

In the accompanying law, the Federal Ministry of Finance unfortunately refrains from specifying an explicit provision to continue the favourable deferral for EU transactions. Only in the justification of the draft law does the Ministry articulate the legal opinion that the United Kingdom's change in status would not in any case lead to a revocation of a deferral that had already been granted. That does not create any legal certainty. It cannot be ignored that parts of the legal literature contain substantial arguments for the idea that certain actions lead to revocation. An exacerbating result of this viewpoint is the

fact that the Foreign Tax Act's wording "is to be revoked" fundamentally excludes the exercise of any discretionary power. Only a legal clarification that previously granted deferrals remain in effect for perpetuity would establish the desired legal certainty.

There is also a need for legal clarification of inheritance tax law. Wage cost determinations for relief from inheritance tax and for the exemption needs test also include company employees in an EU country and in the European Economic Area. It should be clarified that the change in status will result in no negative legal consequences for a period of five or seven years for the respective wage-cost period under review. Brexit will have a significant negative impact on numerous German companies in any case. The goal of a German accompanying law on taxes must therefore be to avoid additional hardships for companies and their shareholders and to swiftly establish legal certainty.

### **RAINER KIRCHDÖRFER**

The author is chair of the Advisory Board and an Executive Board member of the Foundation for Family Businesses.