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The Taxing Consequences of Brexit

Stephen Daly*

I. INTRODUCTION

The European Union is a complex and confusing instrument even for those well-versed in its institutions, procedures and *acquis*. When searching for a means of justifying its idiosyncrasies to the general populace, one is reminded of French Poet Charles Baudelaire's cutting satirical remark that one should never offer the public a delicate perfume as it 'exasperates them. Give them only carefully selected garbage'.¹

EU Laws in respect of taxation to this end are unsurprisingly complicated. The impact of the UK's decision to leave the EU in turn arouses an enormity of questions in respect of the post-Brexit settlement. One can speculate about what this might look like and what EU Laws in respect of taxation the UK will continue to subscribe to. However, this would be mere speculation as the eventual settlement will be the result of a negotiation between the UK and the EU, and in a negotiation, everything is potentially up for grabs. This article will seek to highlight the extent to which non-EU members can be subject to EU rules. As a prerequisite to this analysis however, it is first necessary to elaborate upon the UK's current relationship with the EU in respect of taxation.

II. THE EU AND THE UK

Wetherill has written that when States are interdependent, the exercise of sovereignty creates victims and that accordingly there is a case for co-operation.² In an era of highly mobile capital and globalisation, tax is an obvious area wherein the exercise of national sovereignty in respect of tax will have an impact upon other countries. Understanding however the fundamental importance of the right of the State to levy taxes, EU developments in respect of tax have been incremental, relatively restrained and generally introduced by way of unanimous consensus of the Member States. Against this background, and with the goal of illuminating the EU tax law which applies in the UK, this section will first set out the EU's right to promulgate tax legislation, thereafter briefly analysing the EU's activity in this area.

The Division of Competences

As a starting point, EU Law is granted supremacy over UK law³ (to the extent that this is compatible with the European Communities Act 1972)⁴ and the EU may only act within the limits of the competences conferred upon it by the EU countries in the Treaties to attain the objectives provided therein. Competences not conferred upon the EU in the Treaties remain with the EU countries. There are three types of competence: exclusive, shared and 'supporting'. It is the first two that are relevant in respect of taxation.⁵

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¹ Charles Baudelaire, *The Flowers of Evil & Paris Spleen*.

² Stephen Wetherill, *Law and Values in the European Union* (OUP 2016) 2.

³ *Flaminio Costa v ENEL* (Case 6/64) [1964] ECR 585. See also: *R v Secretary of State for Transport, ex p Factortame (No 1)* [1990] 2 AC 85.

⁴ On which, see: *R (HS2 Action Alliance Ltd) v Secretary of State for Transport* [2014] UKSC 3; *Pham v Secretary of State for the Home Department* [2015] UKSC 19; [2015] 1 WLR 1591.

⁵ The third general category of competence is provided for by Article 2(5) TFEU, see: Paul Craig and Gráinne de Búrca, *EU Law: Text, Cases, and Materials* (6th edn., OUP 2015)).

The EU has exclusive competence, meaning that only the EU can act, in respect of the customs union.⁶ This relates to the abolition of internal customs tariffs and setting of one common customs tariff for non-members.⁷ Measures purely in respect of these are adopted under the ordinary legislative procedure requiring only qualified majority voting.⁸

Meanwhile, where a competence is shared between the EU and Member States, both are able to legislate and adopt legally binding acts. EU countries exercise their own competence where the EU does not exercise, or has decided not to exercise, its own competence. Put another way, Member States can only legislate in respect of those areas where the EU has not exercised its competence or has explicitly ceased to do so.⁹ As variances in indirect taxes between Member States are considered to be more distortive of competition than direct taxes, the EU was expressly provided with shared competence in the Treaty of Rome in 1957¹⁰ in respect of ‘turnover taxes, excise duties and other forms of indirect taxation’.¹¹ Member states have competence of other indirect taxes (taxes on insurance contracts, taxes on betting and gambling, stamp duties and anything that can be characterised as turnover taxes)¹² so long as they do not result in barriers to cross border trade. There is a need generally for unanimity between Member States for indirect tax measures.¹³ Proposals are submitted by the European Commission (‘Commission’) to the European Council (‘Council’) which acts unanimously after consulting the European Parliament and the Economic and Social Committee.¹⁴

Competence on direct taxes meanwhile remains *primarily* with Member States. To this end, in respect of direct taxes and where the EU has not exercised any competence in relation to indirect tax,¹⁵ Member States remain free to set their own tax policy. This is limited in several respects however. National tax measures must not undermine the four fundamental freedoms,¹⁶ or breach the non-discrimination principle (to which there are several defences such as fiscal neutrality, or the need to protect finances).¹⁷ National tax measures must not meanwhile conflict with State Aid provisions.¹⁸ National tax measures also cannot conflict with Article 110 TFEU, meaning Member States cannot impose internal taxes on products from other Member States in excess of that levied on similar domestic products.¹⁹ Importantly for present purposes, the EU is not barred from legislating in respect of direct taxes, given that it has shared competence in respect of the internal market.²⁰ Accordingly Article 115 TFEU allows the Council, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, to issue directives for the approximation of such laws, regulations or administrative provisions of the Member States directly affect the establishment or functioning of the internal market.

⁶ Article 3(1)(a) TFEU.

⁷ Article 28 TFEU. See also Articles 30, 31 and 34 TFEU.

⁸ See however Jean-Michel Grave, ‘The Impact of the Lisbon Treaty on Customs Matters: A Legal Assessment’ (2010) (5)3 Global Trade and Customs Journal 95.

⁹ See Article 2(2) TFEU.

¹⁰ HM Treasury, ‘The Government’s review of the balance of competences between the United Kingdom and the European Union: Call for evidence on taxation’ (November 2012) [3.12]. See now Articles 110-113 TFEU.

¹¹ Note that Articles 191-193 TFEU provide a specific legal basis for environmental and energy taxation.

¹² HMG, ‘Review of the Balance of Competences between the United Kingdom and the European Union Taxation’ (July 2013) 16-17.

¹³ Article 223 TFEU.

¹⁴ Article 113 TFEU.

¹⁵ Article 2(2) TFEU.

¹⁶ Freedom of establishment has been a particularly fruitful area for litigation, with a notable case being *Marks & Spencers plc v Halsey (Inspector of Taxes)* (C-446/03) [2005] ECR I-10837.

¹⁷ See for instance Case C-308/14 *Commission v UK*. See also: Stephen Daly, ‘The CJEU’s Approach to Matters of Direct Taxation: A Critical Analysis’ [2013] COLR 1.

¹⁸ Articles 107-109.

¹⁹ Case 77/69 *Commission v Belgium* [1970] ECR 237.

²⁰ Article 4(2)(a) TFEU.

Finally, in respect of both direct and indirect tax measures, Article 5 TEU should also be taken into account. This provides for subsidiarity and proportionality. These require that areas should only be legislated for by the EU if it is not possible for the issues, which affect the market, to be resolved at a national level and only in a manner which does no more than necessary to achieve the required aims.

EU Tax Activity

Legislative Activity

Analysis of the division of competences provides the impression that all matters of tax, other than those in respect of the customs union, must be passed through the special legislative procedure. The clean distinction is however subject to a narrow range of exceptions. For instance, measures may be passed under the ordinary legislative procedure, thereby avoiding the need for unanimity, where the following conditions apply: first, there is a clear main non-tax purpose, and second, that only a secondary, incidental tax objective is pursued.²¹ Similarly, the Council may make regulations in respect of State Aid,²² acting by qualified majority on a proposal from the Commission and following consultation with the Parliament, for the application of the State Aid provisions (Articles 107 and 108 TFEU).²³ Likewise enhanced cooperation²⁴ can be applied and has been mooted in respect of a Financial Transactions Tax.²⁵

Leaving aside these exceptions, EU legislative activity in respect of tax has most notably been witnessed in respect of indirect taxes. This should come as little surprise given the importance placed upon the smooth running of the single market.²⁶ The EU to date has sought to harmonise VAT²⁷ and excise duties (tobacco,²⁸ alcohol²⁹ and energy set minimum rates³⁰). This considerably restrains Member States' ability to alter practical matters concerning these taxes. The standard rate of VAT for instance in all Member States must be at least 15%. Member States are allowed to subject certain goods and services to a reduced rate of at least 5% additionally.³¹ Owing to a historical anachronism likewise, the UK still have several zero-rated goods and services. A list of goods and services are also exempted from VAT. The lists of goods and services which are zero-rated, exempt and subject to the reduced rate is fixed at an EU level.

As for direct taxes, EU legislative activity has been reserved for cross-border issues concerning corporations. Thus, the Mergers Directive put in place a common system of taxation applicable to cross-border reorganisations of companies situated in two or more Member States. The

²¹ Case C-155/91 *Commission v Council* [1993] ECR I-00939. The European Emissions Trading Scheme Directive (Council Directive 2003/87/EC) is an example of such a measure.

²² Article 109 TFEU.

²³ See for instance the State Aid General Block Exemption Regulation.

²⁴ Articles 326-334 TFEU.

²⁵ On which, see: <http://ec.europa.eu/taxation_customs/taxation/other_taxes/financial_sector/index_en.htm> accessed 27 September 2016.

²⁶ European Parliament, *Fact Sheets on the European Union: General Tax Policy*, available at: <http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_5.11.1.html#_ftnref2> accessed 27 September 2016.

²⁷ On which, see: <http://europa.eu/youreurope/business/vat-customs/buy-sell/index_en.htm> accessed 27 September 2016.

²⁸ On which, see: <http://ec.europa.eu/health/tobacco/policy/index_en.htm> accessed 27 September 2016.

²⁹ On which, see: <http://ec.europa.eu/health/alcohol/policy/index_en.htm> accessed 27 September 2016.

³⁰ On which, see:

<http://ec.europa.eu/taxation_customs/taxation/excise_duties/energy_products/rates/index_en.htm> accessed 27 September 2016.

³¹ Member States are entitled to have two reduced rates of at least 5%.

Directive was first adopted in 1990.³² The Parent-Subsidiary Directive abolished withholding taxes on dividend payments between group companies residing in different Member States and prevented double taxation of the parent companies on the profit of the subsidiaries.³³ The Interest and Royalties Directive put in place a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States.³⁴ The Savings Directive, which was largely repealed in 2015,³⁵ previously provided for tax administrations to have access to information about “private savers”. The Mutual Assistance in Recovery of Taxes Directive³⁶ allows recovery assistance for all taxes and duties levied by Member States and by their territorial or administrative subdivisions. The Anti-Tax Avoidance Directive meanwhile lays down rules against tax avoidance practices that directly affect the functioning of the internal market.³⁷ Sensing the importance finally of cross-border co-operation between revenue authorities, the Administrative Cooperation Directive has been adopted.³⁸ It is the essential piece of legislation in respect of cooperation between Member States on tax matters. The Directive established all the necessary procedures for better cooperation between tax administrations in the European Union.³⁹

Non-legislative activity

Just as it would be incorrect to assume that legislation in the field of EU Tax Law could only be adopted by way of unanimity, it would similarly be incorrect to state that it is only legislation which can be adopted as a means of harmonising tax norms in the EU. Worthy of consideration at this juncture are the roles of the courts and the Commission.

Norms in respect of taxation can be ‘negatively’ introduced through enforcement by the EU courts. Member States in respect of tax policy are still subject to the other provisions of the Treaties, most prominently in respect of the fundamental freedoms and in respect of State Aid. As noted by Panayi, the CJEU has ‘frequently held that the powers retained by the Member States must be exercised consistently with Union Law’.⁴⁰ To this end, the Courts and Commission can play an important harmonising role by taking actions against Member States whose tax laws fail to comply with other provisions of the Treaties. In respect of the non-discrimination principle, for instance, the Court has regularly struck down National Tax measures which discriminate between EU non-nationals (or non-resident EU companies) in the host Member State and nationals (or companies) of that state. Thus owing to this principle, for instance, the CJEU in *Marks & Spencers*, held that the UK

³² On which, see:

<http://ec.europa.eu/taxation_customs/taxation/company_tax/mergers_directive/index_en.htm> accessed 27 September 2016.

³³ On which, see: <https://ec.europa.eu/taxation_customs/business/company-tax/parent-companies-their-subsidiaries-eu-union_en> accessed 27 September 2016.

³⁴ On which, see:

<http://ec.europa.eu/taxation_customs/taxation/company_tax/interests_royalties/index_en.htm> accessed 27 September 2016.

³⁵ Council Directive (EU) 2015/2060 of 10 November 2015 repealing Directive 2003/48/EC on taxation of savings income in the form of interest payments.

³⁶ Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures [2010] OJ L84/1.

³⁷ Commission, ‘Proposal for a Council Directive laying down rules against tax avoidance practices that directly affect the functioning of the internal market’ COM/2016/026 final 2016/011 (CNS). See here for update on progress: <http://europa.eu/rapid/press-release_MEMO-16-2265_en.htm> accessed 27 September 2016.

³⁸ Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC [2011] OJ L64/1.

³⁹ On which, see: <http://ec.europa.eu/taxation_customs/business/tax-cooperation-control/administrative-cooperation/enhanced-administrative-cooperation-field-direct-taxation_en> accessed 27 September 2016.

⁴⁰ Christiana Panayi, ‘Reverse subsidiarity and EU Tax Law: can Member States be left to their own devices?’ [2010] BTR 267, 267.

was required to amend its existing legislation in order to grant relief for terminal losses.⁴¹ It is worth noting however, that Member States may introduce discriminatory measures where they pursue a legitimate purpose (compatible with the treaty) such as ‘Reciprocity’,⁴² ‘Territoriality’,⁴³ and ‘Fiscal Competence’,⁴⁴ and if those discriminatory measures go no further than is required to achieve that objective: in other words that they are proportionate.⁴⁵ Similarly, Member States may not introduce tax measures which conflict with the Treaty provisions on State Aid.⁴⁶ It is notable that State Aid is an area where there is increasing attention being given in respect of National Tax measures,⁴⁷ and in particular, the practices of the revenue authorities of Member States.⁴⁸

As Guardian of the Treaties, the Commission may also enforce EU Law, including Treaty provisions not specifically relating to tax, through the use of Decisions.⁴⁹ By having a binding legal basis, they can be distinguished from what is another means by which the EU may influence tax norms within countries. This is namely through the use of non-binding soft-law. These are instruments which urge Member States to adopt particular practices, or to refrain from using harmful practices. Thus, Recommendations⁵⁰ may be issued by the Commission, in addition to the use of bilateral or multilateral consultations resulting in ‘Codes of Conduct’ confirmed by Council ‘Resolutions’, ‘Communications’ and ‘Notices’.⁵¹ Influential in this respect is the report which the Commission produces every year on Tax Policy in the Member States.⁵² An example of the use of soft-law is the 1997 Code of Conduct for business taxation, which was set out in the conclusions of ECOFIN of 1 December 1997. The instrument is not legally binding but does have political force, by the adoption of which Member States undertook to roll back existing tax measures that constituted harmful tax competition and to refrain from introducing any such measures in the future.⁵³ In 1999, as part of the commitment to roll back harmful tax measures, the Code of Conduct Group identified 66 harmful tax measures in EU Member States and dependant or associated territories within its report. The Group has since been monitoring the rollback of these measures and Member States’ commitment not to introduce harmful tax measures.⁵⁴

III. THE UK OUTSIDE THE EU

That these are all rules that the UK subscribes to as a result of EU Membership does not flow as its converse that the UK *would no longer be subject to them if it were not a member of the EU*. Rules in respect of the four freedoms, which can have an impact on tax as already seen, are applicable to members of the European Economic Area,⁵⁵ namely Norway, Iceland and Liechtenstein. Switzerland on the other hand, although not a member of the EEA agreement, largely follows the EU’s VAT rules

⁴¹ *Marks & Spencers* (n 16).

⁴² See Case C-376/03 *D* [2005] ECR I-5821.

⁴³ See Case C-250/95 *Futura Productions* [1997] ECR I-12471.

⁴⁴ See Case C-336/96 *Gilly* [1998] ECR I-2793.

⁴⁵ Case C-436/00 *X and Y* [2002] ECR I-10829.

⁴⁶ See for instance Case 75/97 *Belgium v Commission* [1999] ECR I-3671.

⁴⁷ See for instance, Commission, *Press release: State aid: Commission concludes Belgian "Excess Profit" tax scheme illegal; around €700 million to be recovered from 35 multinational companies* (January 2016).

⁴⁸ Commission, *Press release: Commission decides selective tax advantages for Fiat in Luxembourg and Starbucks in the Netherlands are illegal under EU state aid rules* (October 2015).

⁴⁹ For instance, *ibid.*

⁵⁰ Article 288 TFEU.

⁵¹ Ben Terra and Peter Wattel, *European Tax Law* (6th edn., Wolters Kluwer 2012) 232.

⁵² See for instance, Commission, ‘Tax Reforms in EU Member States 2014: Economic and Financial Affairs Tax policy challenges for economic growth and fiscal sustainability’ (June 2014).

⁵³ See: <http://ec.europa.eu/taxation_customs/taxation/company_tax/harmful_tax_practices/index_en.htm> accessed 27 September 2016.

⁵⁴ HMG, ‘Review’ (n 12) [340].

⁵⁵ Articles 14-15 EFTA Agreement introduce the principle of non-discrimination.

and their cooperation in the field of VAT fraud is governed by bilateral agreements with the EU.⁵⁶ Other agreements exist, such as the Customs Union with Turkey,⁵⁷ whilst Georgia, Ukraine and Moldova are members of the Deep and Comprehensive Free Trade Area with the EU. The agreements in respect of the latter provide for the progressive removal of customs tariffs and quotas, and harmonising laws, norms and regulations in various trade-related sectors.⁵⁸

At the same time, the directives that have been adopted in respect of tax specifically are on the whole fairly desirable. With cross-border trade in the EU accounting for such a significant proportion of UK exports and imports, it would be highly unlikely that the UK would not seek to continue to operate in some shape or form the various EU tax directives. Meanwhile, with VAT being such a significant contributor to UK finances, it is highly unlikely that the UK would seek to make any grave changes to the current regime.⁵⁹

Other than such a cursory overview, there is little merit in hypothesising on the eventual post-Brexit tax settlement. A more fruitful endeavour is to highlight the degree to which the UK would be subject to EU rules, *to which the UK had not agreed*. Put another way, whatever legislative and Treaty rules will apply in the future in the UK will be the result of negotiation and compromise. However, soft-law rules which will arise and apply will not be the result of a consensual two way agreement. Soft-law has a varied definition. It may encompass those rules which are not strictly legal, in the sense of having an explicit statutory base such as primary or secondary legislation, but may have some legal effects.⁶⁰ In *Heubach v Commission*,⁶¹ for instance, the Court of First Instance noted that the Commission's Guidelines on the method of setting fines imposed pursuant to particular EU provisions⁶² gave rise to legal rights.⁶³ On the other hand, soft-law, such as Commission Recommendations, is also used to describe those rules which have no legal effect, but rather seek to encourage people or entities to act in a certain way. It is this type of soft-law on which the present article seeks to focus. These Recommendations have political force, but are not legally enforceable. Thus, Member States can refuse to implement them, and shall merely suffer political consequences. There is no legal stick with which to beat Members. Soft-law Recommendations however adopt a decidedly 'hard' edge however for countries which are not in the European Union.

For instance, a 2012 Commission Recommendation, which was endorsed by EU Finance Ministers at ECOFIN in May 2013,⁶⁴ seeks to 'persuade' third countries to adopt minimum standards of good governance in tax matters.⁶⁵ These minimum standards include i) legal, regulatory and administrative measures concerning transparency and exchange of information; ii) not operating harmful tax measures in the area of business taxation.⁶⁶ In respect of the latter, tax measures which

⁵⁶ Arttu Makipaa and Josina Kamerling 'Briefing Note for the European Parliament's Economic and Monetary Affairs Committee: Overview of EU rules applicable to EEA/EFTA countries in financial services, competition and taxation' (November 2008)) 3.

⁵⁷ On which, see here:

http://ec.europa.eu/taxation_customs/customs/customs_duties/rules_origin/customs_unions/article_414_en.htm accessed 27 September 2016, and here is the actual agreement:

http://www.avrupa.info.tr/fileadmin/Content/Downloads/PDF/Custom_Union_des_ENG.pdf accessed 27 September 2016

⁵⁸ Commission, 'Memo: The EU's Association Agreements with Georgia, the Republic of Moldova and Ukraine' (June 2014). For the Ukraine agreement, see: 'Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part' [2014] OJ L 161/3.

⁵⁹ See for instance, HMRC, 'HMRC Tax and NIC receipts' (July 2016) 11.

⁶⁰ See for instance Robert Baldwin, *Rules and Government* (Clarendon Press 1995) 80-85.

⁶¹ Case T-64/02 *Heubach v Commission* [2005] ECR II-05137 [35].

⁶² Article 15(2) of Regulation No 17 and Article 65(5) of the European Coal and Steel Community Treaty.

⁶³ *Heubach v Commission* (n 61) [35].

⁶⁴ 'Communication from the Commission to the European Parliament on the Council on an External Strategy for Effective Taxation' COM (2016) 24 final.

⁶⁵ Commission, 'Commission Recommendation of 6.12.2012 regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters' C(2012) 8805 final.

⁶⁶ *Ibid* 4.

provide for a significantly lower effective level of taxation than those levels which generally apply in the third country in question are to be regarded as potentially harmful.⁶⁷ Member States are also encouraged to take account of the conclusions reached in the Code of Conduct Group (business taxation) in regard to tax measures it has assessed as harmful.⁶⁸ This might be regarded as a means of operating the Code of Conduct through the back door: applying it to countries who have not actually signed up to it. Thereafter, where a Member State adjudges that the third country in question has adopted harmful tax measures, it is encouraged by the Commission to publish blacklists of, or add to existing lists, third countries not complying with minimum standards.⁶⁹ If the Member State has agreed a Double Tax Convention meanwhile with the third country, it is encouraged to either seek to renegotiate the convention, suspend or terminate the convention.⁷⁰

Following from this Recommendation, steps were taken at an EU level in order to co-ordinate Member States' approach to good tax governance in third countries. In 2015, the Commission published a consolidated list of all third country jurisdictions which were blacklisted by Member States.⁷¹ This helped to demonstrate divergences between Member States' approach, as a result of which Member States demonstrated a new interest in working towards a more coherent approach to listing third countries and applying common defensive measures.⁷² The idea is to work towards a united list, at which point Member States in Council should formally agree to use it 'instead of national lists to address external base erosion threats'.⁷³ This later development underlines the ability at an EU level to consolidate actions of Member States' towards non-EU members and thereby increasing the power of soft-law through unifying Member State sanctions.

IV. CONCLUSION

The power to introduce tax legislation at an EU level begins with a straightforward starting point, but the line becomes blurry towards the margins. Meanwhile whilst EU activity in respect of taxes should largely be reserved for indirect taxes, it becomes necessary to intervene in other areas of the law in order to ensure the smooth running of the internal market. Intervention likewise need not be reserved to legislative activity. The UK as a member of the EU currently subscribes to the entirety of this. But it does not follow that the UK would be completely free of EU laws outside the EU.

Most interesting in this respect is the degree to which the UK may be subject to rules to which it had not subscribed. This is often highlighted in respect of hard-law. Members of the EEA for instance subscribe to the vast bulk of EU rules, but have no formal say in their drafting. Soft-law has such a tendency also. The episode concerning minimum standards of good governance in tax underlines three important lessons. Firstly that soft-law rules, such as the Code of Conduct in this case, can be applied to non-signatories. Secondly, the EU has an ability to force consensus between Member States and thereafter use that collective power to force the hand of non-EU members. To this end, the fact that the EU intervened in order to more fully align the actions of Member States and to thereafter require, by effect, all Member States to follow the same course of action aptly illustrates this point. Finally, the sheer power of soft-law against non-EU Countries becomes readily apparent, thereby contrasting with its more benign effect against Member States. With this in mind, one can

⁶⁷ *Ibid* 5.

⁶⁸ *Ibid*.

⁶⁹ *Ibid*.

⁷⁰ *Ibid*.

⁷¹ 'Communication from the Commission to the European Parliament on the Council on an External Strategy for Effective Taxation' COM(2016) 24 final. See however Vanessa Houlder, 'Tax blacklist provokes offshore fury' *The Financial Times* (London, 22 June 2015).

⁷² 'Communication from the Commission to the European Parliament on the Council on an External Strategy for Effective Taxation' COM(2016) 24 final.

⁷³ *Ibid*. See also: Commission, *Press Release: Fair Taxation: Commission launches work to create first common EU list of non-cooperative tax jurisdictions* (September 2016).

wonder about the degree of autonomy in respect of tax policy that the UK will be entitled to exercise outside the EU. Shortly after the vote on the 23rd of June, and shortly before he was replaced as Chancellor, George Osborne intimated that the UK would reduce its headline corporate tax rate to below 15%.⁷⁴ Northern Ireland is already set to introduce a corporate tax rate of 12.5% from April 2018.⁷⁵ Post-Brexit, it is certainly possible that the EU could frustrate any such reforms.

⁷⁴ George Parker, 'George Osborne puts corporation tax cut at heart of Brexit recovery plan' *Financial Times* (London, 3 June 2016).

⁷⁵ HMRC, *Northern Ireland Rate of Corporation Tax: Draft Guidance on the NI CT Regime* (September 2016).