"BREXIT BITES": TAX IMPLICATIONS FOR THE UNITED KINGDOM

Date: 17 June 2016

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This is the twelfth in our series of "Brexit Bites" which focuses on Tax.

NATIONAL TAX COMPETENCE REGAINED?

Taxation is largely a Member State competence under current EU law. However, there are a number of significant tax consequences that need to be addressed should the United Kingdom leave the EU.

Indirect Taxes in the United Kingdom
Indirect tax (including value added tax (VAT) and customs and excise duties) is an important exception to Member State tax competency since harmonisation of indirect taxes across Member States is seen as an essential element of an effective Single Market.

VAT - RIP?

VAT is a sales tax on goods and services consumed in the EU with various common rules across Member States, including rules relating to permitted minimum and maximum VAT rates and nil or zero-rates for certain items such as books and children's clothing. UK VAT currently contributes roughly 20% of the UK Government's revenues and so wholesale reform of VAT is relatively unlikely.

Brexit would end the EU's shared competence in VAT, including removing the restrictions on the UK's current limited discretion in setting the effective rates of VAT. Extrinsic policy drivers may well then affect VAT in different sectors.

CUSTOMS DUTIES & TRADE TARIFFS - FORTRESS UNITED KINGDOM?

Customs Duties and Tariffs (relating to the physical importation of goods into the EU) are potentially a significant issue should the UK leave the EU's Single Market. However, in practice we would expect the long term impact to be less significant. It is likely that EEA or EFTA membership or bilateral customs union arrangements between a post-Brexit UK and the EU would in some way effectively replicate many existing intra-EU rules. Businesses which import and export goods into the United Kingdom and EU or operate international transportation will need to monitor the position closely.

DIRECT TAXES IN THE UNITED KINGDOM

In relation to direct taxes (including individual and corporate income, profits and gains taxes) following a Brexit, UK legislation may no longer have to comply with the overarching provisions of the EU Treaty that guarantee the free movement of goods, persons, services and capital across the Single Market. There is a substantive body of case law where the European Court of Justice has ruled that particular rules of a Member State's tax code breach these overarching provisions (including, for example, UK rules relating to the tax consolidation of cross-border groups). It is unlikely that following a Brexit all ECJ rulings would simply be annulled, especially in light of the likely requirements which would be imposed in the event of any UK membership of EEA or EFTA post-Brexit.

THE UNITED KINGDOM AS THE "EUROPEAN" HOLDING COMPANY JURISDICTION OF CHOICE?

Following a Brexit, UK tax resident companies would not automatically benefit from certain business friendly directives such as the Parent/Subsidiary directive or the Interest and Royalties Directive. The Parent/Subsidiary Directive facilitates the repatriation of subsidiary or investee company profits to the parent or investor, essentially by removing any obligation to apply a withholding tax on distributions. The Interest and Royalties Directive similarly removes the need to apply withholding tax on payment of interest and royalties between entities in different Member States. Given the large number of European groups that are headquartered in the UK, the loss of the benefits of these Directives could be significant as the UK has become a favoured jurisdiction for European holding companies. It may be possible to mitigate the effect of the loss of these Directive through double tax treaties. However, the global business strategies for Multinational Enterprises operating in a post-Brexit UK (and the EU) will need to be reviewed in detail.

BRITAID FOR STATE AID?

The UK Government competency in relation to taxation must also currently be exercised in accordance with EU State Aid rules, which may no longer effectively apply post-Brexit - this may affect particular sectors, including those that are tax favoured such as Research & Development, Intellectual Property and Media. However, any post-Brexit membership of the EEA would require continued compliance with EU State Aid rules.

FAREWELL TO INTERNATIONAL TAX COOPERATION?

There are a number of EU instruments relating to the exchange of information and co-operation to tackle cross-border tax evasion and avoidance. It is likely that, following a Brexit, any UK Government would continue to seek to implement these international consensus-based proposals.

WHATEVER NEXT?

It should not be assumed that, following a Brexit, current EU rules could simply be disregarded. The precise structure of the United Kingdom's post-Brexit relationship with the EU will need to be monitored in relation to a wide range of business sectors.

BREXIT AS THE LOBBYISTS' CHARTER?

A number of lobbying opportunities may arise following a Brexit in relation to the UK Government's tax policy objectives currently inhibited by EU taxation competency.

BREXIT AS THE ISOLATIONISTS' CHARTER?

Brexit would mean that the UK would not form part of the EU's plans for a Common Corporate Tax Base, which could conceivably gain traction once its most vocal opponent had left the EU. However, Brexit concerns should not distract from the many current global tax initiatives with potentially far reaching consequences for Multinational Enterprises, including the OECD sponsored BEPS and CRS, which are effectively Brexit neutral.

Please contact a member of the London Tax Team to identify the United Kingdom's tax Brexit sensitivities for you and your business.

For information about our Brexit Task Force please, click here.

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