

Wealth Management update

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Focus Feature

BREXIT update

Summary

As you are no doubt aware, on Thursday 23rd June, the UK voted by referendum to leave the European Union ("EU"). Whilst this remains a moment of significant political drama, it remains to be seen what effect this will have on high-net worth individuals, the investor visa programme, and those working in the private wealth sector.

For your information, below is Baker & McKenzie's client alert setting out what may now follow as a result of Thursday's vote.

We have also set out below some additional points that may be of specific relevance to our Wealth Management clients.

- The majority of UK tax legislation affecting individuals originates from domestic sources and we do not envisage the UK tax system changing significantly in the short to medium term as a result of Britain leaving the EU.
- Specifically, we still anticipate that the upcoming changes to the taxation of UK real estate (announced in the 2015 Budget) will still apply in line with the original timetable set out by the Treasury, although the original timetable for implementation of these changes by April 2017, may now be postponed in light of "Brexit".
- We also still expect that the changes announced in the 2015 Budget, regarding long term UK resident non-domiciliaries, to be implemented as expected.
- It has long been argued by private client practitioners that UK anti-avoidance legislation (often referred to as the "transfer of asset abroad provisions") contain a defence known as the "EU defence", which relies on the EU Treaty's "Freedom of Establishment" provisions to act as a defence where the UK tax authorities look to apply the anti-avoidance legislation against an entity situated within an EU Member State. It remains to be seen what effect "Brexit" will have on the defence, and this is likely to turn on the extent of the UK's access to the Internal Market after Britain leaves the EU.
- In recent years, the UK government has made a push (both domestically and on an international level) towards greater financial transparency and the elimination of 'abusive' tax avoidance. We do not believe that the Government's strategy to promote a reduction in financial secrecy and target those that use offshore vehicles to evade UK tax will change once Britain is no longer a member of the EU.

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Details

Whilst the result of the referendum is not legally binding on the UK Government it is politically so and, furthermore, the governing Conservative Party promised that the referendum would be binding in their manifesto.

Mechanics of leaving the EU and concluding a New Trading Arrangement with the EU

At some point in the near future, the UK Government will trigger Article 50 of the Lisbon Treaty by notifying the European Council of the UK's intention to leave. Article 50 states that it must be triggered by the departing Member State, in accordance with its own "constitutional requirements". There is already a divergence of opinion developing as to what would be deemed to be the UK's "constitutional requirements", with many commentators now saying that a declaration under Article 50 is not possible without having been first authorised by an Act of the UK Parliament.

When Article 50 is triggered, notification will set the timer on a two year countdown within which the UK and the remaining EU Member States ("EU-27") will have to negotiate a withdrawal agreement. This two-year period can however be extended if there is agreement between the UK and the EU-27. The form of such a withdrawal agreement will depend on negotiations and there is no guarantee that the UK will be able to withdraw entirely on its own terms.

Importantly, during the two year negotiation period, EU laws will still apply to and in the UK, and the UK will be able to continue participating in other EU business during this time. However, in terms of the parties to the negotiation of the UK's withdrawal, the UK will be one party, and the EU-27 will be the other party, with the UK having no part in the EU-27 discussions.

Implications of Brexit on your businesses

Many individuals and companies are struggling to understand what the implication of Brexit are. Asking the right questions will help companies identify the potential risks and opportunities that the Brexit scenario causes for their organisations.

We see the implications of the Brexit vote falling into three broad categories: (1) the status of EU law; (2) the UK's trading relationship with the EU-27; and (3) the UK's trading relationship with the rest of the world.

1) Status of EU law

EU law will continue to apply to the UK throughout the negotiation process. This means that there is no immediate change following the results of the Referendum.

Following the UK's exit of the EU, there is a general assumption that the UK will amend the European Communities Act 1972, under which the UK is obliged to follow EU law. This means that, from the date of amendment, the UK will no longer be obliged to follow future EU law with a gradual drift emerging. In addition, EU law contained in EU Directives, that has been implemented in the UK through UK statutory instruments (or SIs), will remain in force, unless the UK decides to repeal the UK SIs that implemented these Directives. Other forms of EU law, such as EU Regulations, will no longer apply directly to the UK unless transposed by appropriate UK legislation.

With regard to European court judgments, English court judges will need to indicate the extent to which English courts should follow European court judgments, past and future. It is possible that in the future, an English court judge might decide that the judgment of a European court is persuasive, and so choose to adopt a similar approach in the UK.

2) UK's trading relationship with the EU-27

Once the two year withdrawal negotiations are over, the UK will have to form a trading relationship with the EU-27. Whether the negotiations around the UK's post-EU trading relationship with the EU-27 will happen concurrently with the withdrawal negotiations, or begin afterwards, is currently unknown. As a member of the EU, the UK enjoyed tariff-free trade with the other Member States, as well as free movement of people and services. It is not certain what form of agreement will be reached with the EU-27, but the current thinking is that the UK will attempt to negotiate a series of free trade agreements ("FTAs") with the EU-27 once it has exited the EU. Negotiations are likely to be extremely complex and lengthy and there are concerns that the UK lacks the manpower and expertise required for such negotiations.

It is likely that the UK will try and achieve its political objectives behind the Brexit vote (namely, controls on the movement of people, reduction in funding payments to the EU, and regained controls of its own laws) with a FTA with the EU. However, whether the EU-27 will be willing to allow the UK to 'cherry pick' the best aspects of EU is far from certain.

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Once the UK has exited, until such FTAs are negotiated, the UK will lose a number of the benefits of EU membership, including (but not limited to) tariff-free trade within the EU and 'passporting rights'. This will mean that imports from the EU-27 will be subject to duties, and financial institutions will no longer be able to freely provide cross-border financial advice, or run branches in other EU Member States.

3) UK's trading relationship with the rest of the world

As a member of the EU, the UK benefited from the multiple FTAs that the EU held with the rest of the world. Since these FTAs are made with the EU, once the UK has exited the EU, it will also cease to be a party to these agreements. This will mean that the UK will, post exiting, also lose out on any benefits that it previously had as a result of these FTAs, such as tariff free trade.

It is therefore important to consider where your business purchases inputs from, and where your business' main markets are, in order to assess whether the loss of FTAs will impact your imports and exports to these countries.

In the absence of these FTAs, the default position will be that the UK reverts to World Trade Organisation ("WTO") rules, which include the rule that equal tariffs must be applied to all WTO members, unless a valid FTA is formed between them. On leaving the EU, the UK will therefore move from duty-free trade with the EU countries and with countries with which the EU has FTAs, to having to re-impose duties when trading with these countries.

Unlike with the EU's FTAs, the UK will remain a member of the WTO since it joined as a original member in its own right, and not as member of the EU. However, the UK does not currently have a separate Schedule of Concessions (a document listing the specific commitments made by the members of the WTO which reflect specific tariff concessions and other commitments in the context of trade negotiations), since it only currently has one as a member of the EU. Therefore, when the UK formally leaves the EU, it will need to renegotiate a separate Schedule of Concessions so that the other members of the WTO understand what the UK is committed to offering. As with FTAs, such renegotiations are likely to be extremely lengthy and complex and the outcome is far from certain.

Baker & McKenzie advice

At Baker & McKenzie we are following Brexit developments as they unfurl and considering the implications of what Brexit might mean for our clients.

The Baker & McKenzie [Checklist](#) outlines the core questions that they should be asking themselves in order to understand the implications for their business.

You can keep ahead of the latest Brexit developments by following the Brexit Blog [here](#). Please do get in touch with your usual Baker & McKenzie contact for further details.

If you have any queries in relation to the above, or if you would like to find out more about this development, please contact your usual member of the Baker & McKenzie team.

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