



Brexit – Tax Advisory – Ireland

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The decision of the United Kingdom to leave the European Union was one of shock and regret for most Irish businesses. Ireland is the UK's closest neighbour and the member state with the deepest political, social and economic ties. As the only native English speaking common law jurisdiction remaining within the EU, Ireland is uniquely placed to benefit from some opportunities that will arise, particularly in the financial services industry.

Similar to many areas the potential impact of Brexit in the area of taxation is difficult to assess, not least because of the uncertainty as to the precise manner and timing of the UK's exit from the EU and the nature of its future relationship with the EU. While taxation is largely within the competence of individual member states under EU law, the influence of the EU Treaty and its fundamental freedoms, EU directives and regulations in the field of taxation as well as case law from the Court of Justice of the European Union have had a considerable effect on shaping the domestic tax policy of the UK and the other member states. As such, a departure from the EU and cessation of the application of EU law could have significant implications for the UK tax code and for businesses operating in UK.

While the potential impact of Brexit is uncertain and is likely to remain so for some time, we set out below our views on what Brexit may mean in tax terms for the UK generally, its potential impact on Ireland's tax system and its potential impact on clients in terms of the tax treatment of existing transactions, transactions with the UK and for those UK clients who are considering a move to Ireland.

Tax Impact for the UK

While indirect taxes such as VAT, customs and excise duties are harmonised across the EU, member states retain competence in the sphere of personal taxes and corporation taxes. Nevertheless, the fundamental freedoms contained in the EU Treaty as regards free movement of goods, persons, services and capital across the common market, as well as European regulations, directives and case law in the field of taxation have had a significant influence on shaping tax law within the UK. Untethering the UK from these EU law restrictions may provide opportunities to enhance the competitiveness of the UK tax system. However, the manner in which the UK exits the EU and the potential continued influence of EU law such as EU State Aid rules if, for example, the UK were to become a member of the EEA remains uncertain. In addition, while EU law can restrict domestic tax policy it can also confer various protections on businesses operating within the EU against unfair tax competition, double taxation, and withholding taxes as well as providing a number of tax simplification measures to ease the compliance burden of operating across the EU.

VAT

Brexit could enable the UK to repeal VAT entirely thus removing sales tax on goods and services supplied within the UK or received from outside the UK. However, with an estimated 20% of the UK Government's tax revenues coming from VAT, repeal or wide-ranging reform of VAT is relatively unlikely. Nevertheless, freedom to set the effective rates of VAT and extend VAT exemptions may increase the competitiveness of certain UK businesses. On the debit side, the removal of access to EU VAT simplification measures including the EU 'one-stop-shop' which can remove the requirement to register for VAT in up to 28 member states could increase the administrative and compliance cost for UK businesses transacting with the EU and vice-versa.

Customs duties & trade tariffs

A departure from the EU's common market could have a significant impact in terms of the potential re-introduction of customs duties and tariffs on trade between the UK and the remaining member states. In practice we would expect that arrangements will be reached to



effectively replicate many of the current rules whether in the form of EEA/EFTA membership or bilateral customs union arrangements. This is likely however to be a significant element in the negotiations on the manner of the UK's exit. Ireland in particular will keen to ensure that free trade is maintained with its closest trading partner.

Direct Taxes

Brexit could inevitably confer freedom on the UK to amend its direct tax rules in the field of personal and corporate income taxes and taxes on capital gains to no longer have to comply with EU legislation and case law, which have influenced or restricted the UK's tax provisions to date in fields such as transfer pricing, group relief, controlled foreign company (CFC) rules etc. This may enable the UK to distinguish between UK and non-UK resident taxpayers and favour UK residents. However, this may encourage the remaining member states to adopt a similar approach and the temptation for outright tax competition may be tempered by the desire to maintain the UK's attractiveness as a hub for international business and as a holding company location.

The manner in which tax policy is being influenced by international tax cooperation and external pressures, in particular, the OECD's Base Erosion and Profit Shifting (BEPS) project, is also likely to constrain the UK's approach to its corporate tax policy irrespective of the manner of its exit from the EU.

While an exit from the EU will confer more freedom on the UK as regards its tax policy, membership of the EU has also conferred substantial tax benefits which may be lost post-Brexit. The benefit of the Parent/Subsidiary Directive and the Interest and Royalties Directive which can apply to eliminate withholding taxes on payments between residents of EU member states, may no longer apply to UK residents which could negatively impact multinationals located in the UK and the position of the UK as a favourable holding company location. While the UK has an extensive double tax treaty network, the position of multinationals operating in the UK post-Brexit will need to be carefully considered.

Brexit could also contribute to and/or negatively impact cross-border restructurings which may become most costly and cumbersome from a UK tax perspective.

Tax Impact for Ireland

Brexit should not have a direct impact on Ireland's tax policy nor should it impact Ireland's position within the EU. As a member of the EU, Ireland benefits from various protections afforded under EU law, including the benefit of the Parent/Subsidiary Directive and the Interest and Royalties Directive which can apply to eliminate withholding taxes on payments between residents of EU member states. Ireland also has an extensive double tax treaty network and various domestic provisions which can substantially reduce or eliminate withholding taxes on non-Irish source income, as well as facilitate the repatriation of profits outside of Ireland in a tax efficient manner. Ireland also has a double tax treaty with the UK which, regardless of what agreement is reached on exit, will facilitate investment between the two jurisdictions.

Case law from the Court of Justice of the European Union is binding on Ireland and, as a member of the EU, Ireland benefits from this jurisprudence in a wide range of areas including tax. Decisions in areas such as the utilisation of cross-border losses and freedom of establishment have benefitted businesses transacting across the EU and will continue to do so despite the UK's exit.

Sovereignty in the field of direct taxation, in particular in the setting of corporate tax rates, is critical to Ireland. Ireland is committed to its 12.5% corporation tax rate on trading profits which remains the cornerstone of Ireland's corporate tax strategy. Successive Irish governments have reaffirmed Ireland's commitment to retaining this rate and the UK leaving the EU will not have any impact on this position which remains a core competence of Ireland. While the UK has been a key ally with Ireland in seeking to shape EU tax policy, and in particular in their shared resistance, with other member states, to the introduction of an EU common consolidated corporate tax base (CCCTB), the requirement for unanimity among member states in areas such as taxation will continue despite the UK's decision to exit.

The harmonisation of VAT across the EU benefits trade between EU member states and eliminates distortions in the treatment of intra-EU supplies of goods and services. As a member of the EU Ireland has access to the EU 'one-stop-shop' measures which can remove the requirement to register for VAT in up to 28 member states. The elimination of customs and tariffs within the common market is a key benefit of EU membership. As Ireland's most important trading partner, Ireland will be keen to ensure that free trade between the UK and Ireland is maintained despite the UK leaving the EU whether this is agreed on a pan-EU or bilateral basis. It is also expected that Ireland will be a strong and vocal ally of the UK in seeking to influence the terms of the UK's exit from the EU with the remaining member states.



Tax Impact on Existing Transactions

Regardless of the manner in which the UK's exit from the EU is ultimately effected, there should generally be no tax impact as a result of Brexit on any capital markets or aviation finance deals done through Irish resident SPVs. While transactions with UK counterparties will need to be assessed, the Irish tax treatment of Irish resident vehicles should be unaffected and the existence of the UK/Ireland double tax treaty should generally eliminate withholding taxes between the two jurisdictions irrespective of EU membership. In particular, Irish SPVs borrowing from UK lenders will be unaffected as the withholding tax position will remain unchanged.

Tax Impact on Irish Clients Transacting with the UK

Uncertainty as to the potential impact of Brexit on indirect taxes such as VAT and customs duties and tariffs could inevitably impact Irish clients transacting with the UK. In the context of VAT, assuming a full exit, the UK would become a "third country" (similar to the US) from the perspective of other member states which would have implications for the imposition of VAT on cross-border supplies involving the UK. VAT may need to be charged on transactions which are currently exempt or outside the scope of VAT and Irish businesses may need to be registered in the UK and vice-versa where they are not currently required to do so. However, Irish based financial services companies may benefit from improved VAT recovery entitlements (as income earned from certain financial services would be classified as "qualifying activities" for Irish VAT purposes).

The reintroduction of customs duties and tariffs could result in a significant barrier to trade between Ireland and the UK, particularly along our shared border. However, again we would expect that both jurisdictions will be keen to ensure that free trade between the UK and Ireland is maintained despite the UK leaving the EU whether this is agreed on a pan-EU or bilateral basis.

Tax Impact on Businesses moving to Ireland

Ireland's favourable corporate tax regime will be attractive to companies looking to establish operations in Ireland. The 12.5% corporation tax rate on trading income is one of the lowest in the EU and one of the lowest 'onshore' statutory corporate tax rates in the world. A higher 25% corporation tax rate applies to non-trading income (i.e. passive income).

As a member of the EU, Ireland also benefits from the various protections afforded under EU law as are outlined above. Ireland's extensive double tax treaty network and various domestic provisions can also substantially reduce or eliminate withholding taxes on non-Irish source income, as well as facilitate the repatriation of profits outside of Ireland in a tax efficient manner.

In addition, Irish companies can also avail of the provisions of the Cross-Borders Mergers Directive to effect mergers with companies in other EU member states in a tax neutral manner. This may prove attractive in corporate restructurings which may inevitably take place during this transition period before the UK's exit from the EU.

Business as usual until Article 50 is triggered

The full impact of Brexit cannot be fully considered until the UK government commences the process to notify the European Council under Article 50 of the Lisbon Treaty of the UK's intention to leave the EU, and the negotiations commence. Pending that decision and the outcome of the negotiations, the UK remains a member of the EU and will continue to enjoy the benefits of EU membership in the field of taxation and be subject to its constraints and restrictions. In that respect it remains "business as usual" on the tax front although inevitably the uncertainty caused by the outcome of the referendum will cause businesses to reflect on their current operations and the potential tax impacts of an exit, positive or negative.

Walkers Tax team

As an international law firm, with an office in London, Walkers is an active participant in various industry associations considering the potential impact of Brexit in the field of taxation and will continue to monitor developments in this area and will work closely with clients to assess their post-Brexit strategy.



Key Contacts

If you have any specific concerns about the impact of Brexit on your business, please contact the following:



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This advisory is part of a series of client advisories on the potential impact of Brexit prepared for clients of Walkers' office in Ireland. The full series may be found in the Brexit section of our website.

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