BERWIN LEIGHTON PAISNER
PRIVATE WEALTH

Brexit: private client summary

There should be no immediate changes to the UK's tax rules as a result of the decision to leave the EU – although rates could be changed in an Emergency Budget.

There should also be no immediate impact on the position of EU nationals living in the UK, or UK nationals living elsewhere in the EU.

Here we look at what impact the vote could have on the tax rules in the longer term.

BREXIT: WHAT DOES IT MEAN FOR PRIVATE CLIENTS?

24 June 2016

KEY POINTS

- There should be no immediate changes to the UK's tax rules. The Government must give two years' notice to terminate EU membership, and it is unlikely that there would be significant changes to the tax regime until the UK has formally left the EU. However, rates could be changed by a budget, emergency or otherwise.
- There should be no immediate changes for UK nationals living elsewhere in the EU or EU nationals living in the UK.
- Rates of UK tax may have to increase and certain reliefs may be restricted – income tax and inheritance tax (IHT) may be the targets for tax rises.
- Further details on the changes to the taxation of UK resident, non-UK domiciled individuals, in particular in relation to the taxation of non-UK trusts, are now unlikely to be published before the Autumn, and may be delayed until early 2017. However, it is unlikely that those changes will be abandoned or delayed beyond April 2017. You should therefore be considering options now, rather than waiting for the guidance.
- It is unlikely that there will be any slow-down in the drive for tax transparency, or exchange of information between jurisdictions.
- The degree to which the UK can benefit from any upsides of leaving the EU, from a tax perspective, will depend substantially on its ability to renegotiate beneficial terms with its trading partners.

UK TAX – DIRECT TAXES

Direct taxes, like income tax and capital gains tax are governed by UK law with little interference from the EU. This means that leaving the EU will not of itself have a direct impact on these taxes – the UK government will continue to set the rates of tax as before.

Tax rates may have to rise if the UK economy suffers as a result of the vote to leave. Before the referendum the Government suggested that income tax and inheritance tax (IHT) would be likely targets for tax rises. There has been a suggestion of an Emergency Budget although this has not been confirmed.

The UK tax system has been shaped, over the last 15 years or so, by the requirement not to discriminate against individuals or entities resident in other EU member states. It is possible that these protections may be lost or watered-down so that individuals or entities resident in other EU member states holding assets, or investing, in the UK could in future be taxed more harshly than UK resident individuals/entities. This will potentially impact on UK resident, non-UK domiciled individuals who hold EU assets or investments through non-UK resident entities. However, that risk is partially offset by the fact that the UK will still be seeking to encourage inward investment.

Likewise, a number of UK tax reliefs which apply across EU member states may be restricted.

UK RESIDENT, NON-UK DOMICILED INDIVIDUALS ('NON-DOMS')

Before the referendum, we understood that further details of the changes to the taxation of non-doms, in particular the taxation of non-UK resident trusts, which are due to take effect from 6 April 2017, would be published before 21 July (when the UK Parliament goes into Summer recess). It is possible, given the turmoil created by the leave vote, that we will now not get further details, or draft legislation, before the Autumn. This will reduce the time available to plan for the 6 April 2017 changes, but that is nothing new. It does mean that clients should be considering options now, rather than waiting until we have the guidance. It is unlikely, even with a change in the leadership of the Government, that these changes will be abandoned, or delayed to 2018.

We are also still waiting for further details of the proposal to subject all UK residential property held by non-doms through non-UK entities to UK IHT, also due to take effect from 6 April 2017. It is arguable that this proposal could be delayed, as the fact that the changes have already been announced is already acting as a disincentive to non-doms purchasing UK residential property through non-UK companies.

TAX INCENTIVES

Because of the EU rules on State Aid, the UK tax system had to dismantle a number of generous tax incentives. Leaving the EU might allow the UK to create further tax incentives.

EXPANDING THE UK TAX BASE

From a business perspective, being a member of the EU has resulted in the UK tax system becoming more territorial, taxing UK profits in full, and taxing non-UK profits only where those profits have been artificially diverted from the UK. The new Diverted Profits Tax is unlikely to be affected, although it is possible that some of the proposals under the ongoing Base Erosion and Profit Shifting Project (BEPS) could be watered down. Also, withholding taxes on cross border intra-group dividends, interest and royalties have been removed or reduced within the EU, so could potentially increase.

Being outside the EU may also give the Government the opportunity to raise more tax revenue by enlarging the tax base by moving away from a purely territorial approach (for example re-imposing tax on dividend income from non-UK companies). However, the Government will keep in mind the importance of the UK tax regime remaining competitive internationally, and some flexibility may be lost depending on how the UK chooses to negotiate trade agreements etc with EU member states.

Leaving the EU will not mean that the many double tax treaties the UK has with the rest of the world cease to apply (these treaties normally prevent double taxation and in many instances reduce or eliminate local withholding tax on income such as interest, royalties and dividends). However it may mean that some jurisdictions seek to renegotiate the terms of those agreements.

VAT (VALUE ADDED TAX)

The UK has had to apply the EU VAT system, which allows EU member states only a limited discretion to decide their own detailed VAT rules in specific areas. Leaving the EU means the UK will no longer have to apply the EU VAT system. The UK could dispense with VAT altogether (perhaps replacing it with a US-style sales tax) or maintain some type of VAT system. There will continue to be some form of turnover or sales tax as it generates considerable funds for the Government. For the time being the current UK VAT system will remain in place – but the risk that UK VAT may be changed in the future should be reflected in any contracts or agreements being entered into now.

TRANSPARENCY AND EXCHANGE OF INFORMATION

The UK has been at the forefront of international moves for tax transparency – for the automatic exchange of financial account information and beneficial ownership information. This will not change following the vote to leave the EU; the UK rules which require financial and beneficial ownership information to be reported to the UK authorities will remain in place and the UK will continue to be party to agreements with other countries for the exchange of this information.

SUCCESSION

The UK did not sign up to the EU Succession Regulation which came into force in August 2015, and therefore leaving the EU will not affect succession rules in the UK.

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