



How taxing is Brexit?

Our tax team considers the implications of an exit from the European Union on taxation in the UK

VAT

Brexit would not immediately remove VAT as, although an EU tax, it is implemented in the UK mainly by UK legislation.

Although, upon Brexit, the UK would no longer be tied to the requirements of EU directives and could abolish VAT altogether, this is not considered to be very likely, given the government's need for tax revenue. The UK government may generally wish to vary the items chargeable to VAT and applicable rates. However, major changes are unlikely, due to VAT's contribution to Exchequer revenues.

Without doubt, a Brexit would, at least in the immediate aftermath, cause confusion amongst the business community and wider public, in particular where cross border suppliers are involved. It would potentially disrupt a well-established pan-European tax and the VAT laws in other EU jurisdictions, as well as the UK, would need to be considered.

Insurance Premium Tax

This is a UK tax and so it would not be directly affected by Brexit, although principles of EU law have been used to determine the place of establishment and the location of risk. The legislation may need clarification upon Brexit. Insurance is exempt from VAT.

Customs duties

Brexit would, in the absence of specific agreement with the remaining EU to the contrary, take the UK out of the EU Customs Union.

It would be essential to legislate a new UK customs code, most likely in line with World Trade Organisation agreements, including coverage of the import and export of goods to and from the EU. With the co-operation of the remaining EU customs union, it may be possible to negotiate at least some appropriate rates from the date of a Brexit. Future customs arrangements would be heavily dependent on the exact terms of the Brexit, the model the UK adopts and also any existing international trade agreements, in particular the World Trade Organisation rules. If the UK left the customs union of the EU, then, whatever customs rules were put in place immediately thereafter, would, no doubt, be subject to many future changes, as the UK started to negotiate its own network of trading arrangements.

Direct Taxes (income tax, capital gains tax, corporation tax)

Direct taxes are a competence of individual member states and so are imposed by UK and not EU law. In theory, therefore, there should be little immediate effect on direct taxation of a Brexit.

In practice, however, although a responsibility of member states, direct tax rules still have to comply with treaty freedoms and other relevant EU laws. These constraints would, in theory, no longer apply.

The UK has adapted many of its taxes to be EU compliant, but much of this is now enshrined into legislation, and so without UK legislative change, would remain in force.

The UK's ability to make changes which would conflict with EU law may, of course, be restricted under the terms of any future agreement with the EU allowing full or partial access to the single market.

State Aid

In theory, EU State Aid rules might cease to apply and the UK may be free to introduce tax reliefs that would otherwise count as state aid. In practice, it is questionable whether a UK government would wish to do this to any great extent, as to do so would conflict with the UK's general economic approach to free trade. Also, and as indicated above, maintaining many EU rules could well be a condition of any free trade agreement with the EU.

Transfer taxes

The UK's stamp duties are not likely to be affected, however the Capital Duties directive may no longer apply, giving the UK freedom to impose stamp duty on new share issues, should the Government so wish.

Corporate tax base, harmonisation

This has not progressed very far in the EU, largely due to UK and some other member states' opposition. However, it has recently been raised again by the Commission in connection with supporting OECD initiatives to improve international tax compliance. The harmonisation may progress faster in an EU without the UK and the possibility arises of the UK having to fall in line, as a condition of market access and in order to maintain acceptable Double Taxation Agreements going forward with EU member states.

International agreements

Tax law in the UK also derives from international agreements. The UK is a party to OECD agreements, double taxation conventions and other international agreements and is a member of bodies such as the World Trade Organisation. Double taxation agreements, for example, will continue. With time, however, beneficial positions may prove more difficult to retain as agreements come up for renegotiation. Other agreements may, for the time being, offer limited protection against higher tariffs and duties.

The EU has the benefit of a number of free trade agreements, to which the UK would lose access. Post Brexit, the UK would then have competence to conclude its own trade agreements, although on what terms and how quickly is uncertain.

The UK could join the EEA and/or EFTA. Joining the EEA is considered under the Norway model in the five scenarios in the Eversheds published Brexit analysis. Joining the EEA would involve accepting around 10% of EU law, including far-reaching measures relating to the free movement of people, goods and services, with limited ability to influence that legislation. As a member of the World Trade Organisation (WTO), any new UK customs rules will need to conform to those of the WTO.

For a more detailed review of how taxation might be affected by Brexit, please email nicolawoodness@eversheds.com for the full article.

What happens next?

If you would like to know more please get in touch.



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