Weil

Brexit
A tax perspective

Immediate considerations

No change

The decision to leave the EU has not triggered any change to existing tax law and any consequential changes are not expected in the short term (currently no changes are expected for at least two years).

Competitive environment

Following the decision (and the eventual exit from the EU) the UK remains focussed on retaining its status as a competitive, business-friendly, jurisdiction; with corporation tax reducing to 17% in 2020 and recent statements from the Chancellor suggesting that it may drop further to 15%.

Exit charges

To the extent that any business is considering migrating out of the UK, the migration could trigger corporation tax exit charges (and such charges may differ if a migration takes place pre or post Brexit) which will need to be factored into the economics when evaluating whether and, if so, when to migrate or not.

Short-term focus

Businesses should remain focussed on the various new tax rules being introduced in the UK (and in theory worldwide) to enact the action points stemming from the OECD's base erosion and profit shifting (BEPS) initiative along with various other domestically generated proposals; including rules to:

- change the way tax loss carry forward applies in the UK;
- combat hybrid mismatches;
- limit the deductibility of interest for tax purposes;
- simplify the substantial shareholding exemption ("SSE");
- introduce secondary transfer pricing adjustments;
- require information gathering and reporting on financial account holders; and
- require the publication of a tax strategy on the internet.

Medium and longer term considerations

Withholding taxes

When the UK eventually leaves the EU, it may lose the benefit of certain EU laws which prohibit withholding tax on cross-border payments of dividends, interest and royalties. Against this, the UK has one of the world's largest double tax treaty networks which should help mitigate any impact. If the terms of the UK's exit from the EU do not include rules equivalent to the current EU law prohibition on withholding taxes, any transactions or arrangements which involve dividend, interest or royalty payments between the UK and the EU which have more than two years of the term remaining should be reviewed to determine whether a double tax treaty would be available to relieve any withholding, which party bears the withholding tax risk and whether and when to consider restructuring.

Taxation of dividends

When the UK leaves the EU, groups may also lose the benefit of a rule which requires that, where a subsidiary pays a dividend to its parent, the parent's jurisdiction must not tax the dividend receipt if the taxation would give to a double tax charge (i.e. both in the subsidiary's and parent's member states). To the extent that you have a European holding structure with a UK subsidiary making dividend payments to a different EU member state, you may wish to analyse whether the loss of this rule would impact the economics of the structure and, if so, whether there might be a more efficient alternative structure which can be put in place.

State aid and preferential tax regimes

The EU prohibitions against state aid, which extend to the provision of selective tax advantages and limit the legislature's scope to implement preferential tax regimes will, in all likelihood, no longer apply in the UK. As such, the UK may choose to consider introducing tax changes to encourage certain preferred businesses / sectors, although whether this occurs will depend, amongst other things, on the terms of any agreement for post-Brexit access to EU markets negotiated by the UK.

Indirect taxes

We anticipate that the biggest changes (some of which may be welcomed by industry) will be to indirect taxes (VAT, insurance taxes, customs duty, and excise duty). However, it is impossible to determine now what those changes will be as they will fundamentally depend upon the exit deal and future deals negotiated by the UK government. As the landscape for the future becomes clearer there may be opportunities for businesses arising from changes in these rules.

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