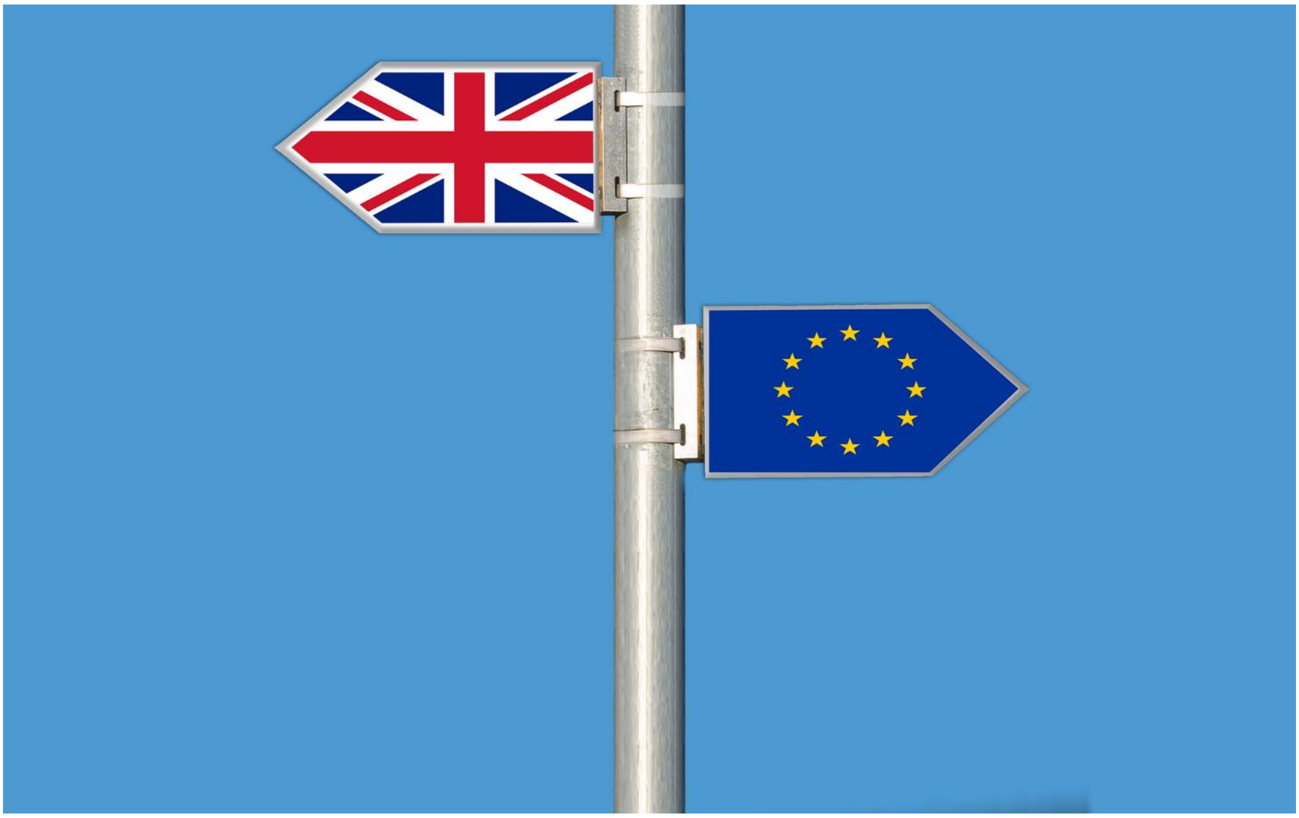

BRADLEY TAX CONSULTING

Irish tax implications of Brexit

While we do not know the shape of the final deal that the EU will reach with the UK or what legislative changes Governments will introduce in their attempts to adapt to the post-Brexit environment, we are nonetheless in a position to highlight some of the key tax concerns that arise from Brexit.

Direct Taxes

Income tax

There should be no major implications from the perspective of an individual's income tax position as our existing Double Taxation Agreements should continue to apply for the purposes of the availability of relief from double taxation. However, it should be noted that the Employment and Investment Incentive (EII) provides tax relief for certain investments within the EEA. If the UK does not remain an EEA state, the EII relief may not be available in respect of UK investments, including existing investments, unless there is a legislative change.

Corporation tax

Group relief for trading losses

Group relief is available to Irish companies, subject to certain conditions, in respect of trading losses incurred by their non-Irish subsidiary companies that are resident in EU Member States and EEA states with which Ireland has a double tax treaty. Unless the UK remains an EEA Member State, it may not be possible to off-set the losses of UK subsidiaries against the profits of Irish group members.

Group relief for transfers of capital assets

In order to be in a qualifying capital gains tax group for the purposes of transferring capital assets on a tax neutral basis, all entities must be EU resident or resident in an EEA State which has a double tax agreement. If the U.K. does not have EEA status, then the presence of a UK entity in a group may limit the ability to transfer assets between group members on a tax neutral basis. If the UK leaves the EEA, it may also result in a claw back of reliefs previously claimed in respect of such transfers.

EU Directives

The relief from withholding taxes on dividends (Parent/Subsidiary Directive), withholding taxes on interest and royalties (Interest and Royalties Directive), and the deferral of capital gains taxes on certain company reconstructions (Mergers Directive), could all cease to apply in respect of transactions involving Irish and UK entities, unless new legislative arrangements are introduced. However, it should be noted that in many cases, alternative forms of relief may be available under Irish legislation and existing Double Taxation Treaty arrangements.

Capital Acquisitions Tax (CAT)

Of all the main CAT reliefs i.e. business relief, agricultural relief, and dwelling house relief, only agricultural relief is likely to be impacted by Brexit. Therefore, under current legislation agricultural property located in the UK will not qualify for agricultural relief post-Brexit and should not be considered as agricultural property for the purposes of the 80% farmer test.

Capital Gains Tax (CGT)

Most of the main reliefs from CGT, such as Principal Private Residence relief and retirement relief are not restricted to assets located in a specific territory, so Brexit should not have an impact on these reliefs. However, the 7 year CGT exemption on disposals of certain property that was introduced by Finance Act 2012 that applies to land or buildings situated in any EEA state may be impacted by Brexit. Under this relief, gains relating to the first 7 years of ownership of certain EEA land and buildings are relieved from CGT. If the UK does not remain in the EEA, the relief would cease to apply to UK located property. This assumes that the legislation will not be subsequently updated.

Stamp Duty

Generally speaking, Brexit should have very few stamp duty consequences. However, stamp duty relief on a reconstruction or reorganisation of a company is only available in respect of acquiring companies (the company making the acquisition) which are incorporated in the EU or the EEA. If the UK does not remain an EEA state or Irish legislation is not changed, this relief will cease to apply to UK companies. Associated company relief in respect of intra-group transactions should continue to operate as it currently does as there is no territorial aspect to this relief.

Indirect Taxes

VAT

In the absence of any future agreement, the UK should not be a VAT State for EU VAT purposes, and hence what was an intra-Community supply of goods or services for VAT purposes will become an import/export. This means that:

VAT at the point of entry would be charged on the import of goods from the UK, which in many cases will lead to an upfront cash outlay for importers despite the VAT being reclaimable at a later date.

An export of goods or services to a taxable person in the UK will continue to be zero rated. There will be no need to obtain the customers UK VAT number.

Reverse charge provisions would continue to apply to imports of services from the UK.

Customs

The UK exit from the EU may result in a "hard" border between the UK and Ireland and the re-imposition of long abolished tariff regimes. The hope is that an agreement may be reached, similar in nature to the EU-Turkey agreement, to allow tariff free access to EU markets subject to compliance with certain EU rules and regulations. Without such an agreement, the UK will be treated in the same way as the US and non-EU countries for customs purposes.

Excise Duty

As this tax head is largely a matter for individual Member States, not much change is expected here. However, movements of excise goods between Ireland and the UK within the EU will be treated as imports and exports as opposed to intra-EU transactions. This may result in additional compliance costs due to procedural changes.

Conclusion

Given the importance of the economic ties between Ireland and the UK, it is assumed that many of the above issues will be addressed by domestic legislation, if not by a more comprehensive agreement at European level. However, there is still a lot of uncertainty regarding the outcome of the Brexit process. The risks associated with the Brexit process can be significantly mitigated by seeking detailed tax advice on the best way to approach specific transactions, both from the point of view of minimizing risk and maximizing potential gains.

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