Brexit

The referendum results are in and the media focus has moved from the referendum campaign to the implications of the UK EU exit.

There are a number of ways in which the UK can exit from the EU, and the Lisbon Treaty provides for a two year period in which to negotiate a withdrawal agreement.

While the UK has voted to leave the EU, it is possible that a deal could be agreed between the UK and the EU, so that some of the mutual economic benefits of EU membership are retained.

Some of the existing tax legislation dealing with reliefs and exemptions extends to the European Economic Area (EEA) countries as well as to the European Union (EU), so if the UK remains in the EEA, the impact of the exit on existing Irish tax provisions will be reduced. However if the UK opts to leave the EEA as well as the EU the relevant tax reliefs will no longer apply to UK businesses and companies unless the Irish tax legislation is amended.

Capital Acquisitions Tax

Agricultural Relief

Agricultural relief currently allows agricultural property in an EU member state to qualify as agricultural property for the purposes of agricultural relief.

The agricultural relief provisions were updated following on from an EU case involving agricultural property (*Theodor Jaeger v Finanzant Kusel - Landstuhl C-256/06*). The upshot of the EU case was that to avoid a barrier to the free movement of goods and capital, property situated anywhere in the EU should qualify for agricultural relief, and the Irish definition of agricultural property was extended to cover all EU land in the Finance (No 2) Act 2008.

The UK exit from the EU will mean that UK located agricultural property will not qualify for agricultural relief and not be considered as agricultural property for the purposes of the 80% farmer test if the CAT legislation is not updated.

Dwelling House Relief

Interestingly, dwelling house relief is not limited territorially, so if the conditions of the relief are met, the location of the dwelling has no impact on the relief. The UK exit will not impact on the dwelling house position of UK located property.

Business Relief

Business relief is not limited territorially, and business assets located in the UK will continue to qualify for the relief after the UK exit.

Double Taxation Agreement

The CAT Double Taxation Agreement (DTA) between Ireland and the UK, which works to prevent the double taxation of inheritances in both the UK and Ireland, does not make any reference to the EU, so the UK exit should not impact on the DTA.

Value Added Tax (VAT)

VAT law is EU generated and applies in a similar way

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in all EU member states. Unless the UK strikes a deal with the EU, the current VAT provisions will not continue to extend to the UK.

The implications for Irish businesses remain to be seen. The reverse charge position would be affected, as Irish businesses would no longer operate the reverse charge on supplies received from UK businesses. There would be no need to obtain a UK VAT number to apply the 0% rate on supplies to the UK, as all supplies to non EU clients fall outside of the scope of VAT.

Customs

The UK exit from the EU will result in a customs border between the UK and the EU, but an agreement may be forged, similar to the EU agreement with Turkey, which allows tariff free access to EU markets if EU rules and regulations are complied with. In the absence of any such agreement, the UK will be treated in the same way as the US and other non-EU countries.

Stamp Duty

Stamp duty generally applies to instruments which are executed in the State, or which relate to property situated in the State or any matter or thing done or to be done in the State. There is an exemption for foreign property in S. 98 Stamp Duty Consolidation Act 1999 (SDCA 99) so UK property would not generally come within the charge to Irish stamp duty, and the exit from the EU would have limited impact on Irish stamp duty.

However, one area that may be affected is S. 80 SDCA 99, which provides for stamp duty relief on a reconstruction or reorganisation of a company. The relief is available to companies incorporated in the EU or the EEA, so unless the UK agrees to remain an EEA state, the relief under S. 80 SDCA 99 would fall away in respect of a company incorporated in the UK.

Capital Gains Tax

Reliefs such as PPR relief, retirement relief and the relief on the transfer of a business to a company are not restricted territorially, so Brexit will not impact on the tax position for UK located business assets or UK located principal private residences.

However, the 7 year relief introduced by Finance Act 2012 applies to land or buildings situated in any EEA state, so if the UK does not remain in the EEA and the legislation is not updated, the relief would fall away for UK located property. One would expect that the tax legislation would be updated on the basis that taxpayers would have qualified for the relief when the investments were made.

Reconstructions and Corporation Tax

Many of the sections providing for CGT relief on the restructuring of companies extend to EU/EEA located companies, so if the UK remains an EEA state these reliefs will continue to be available. If the UK leaves the EEA the tax legislation may be updated to extend the reliefs to UK entities.

Similarly, corporation tax group relief extends to EU or EEA companies, and the legislation will need to be updated if the UK opts to leave the EU and EEA and Ireland wants to extend the reliefs to UK entities.

Income Tax

The impact on income taxes should be minimal, but the Employment and Investment Incentive (EII) introduced by Finance Act 2011, allows the relief to apply where a company in which the investment is made is incorporated in an EEA state. If the UK does not remain within the EEA, and the tax legislation is not updated, EII relief will not be available to an investor in a UK incorporated company, despite the fact that the investment would have qualified when the investment was originally made.

Miscellaneous

The MARD legislation dealing with the mutual assistance on the recovery of debts provides for the cooperation of tax authorities on the recovery of tax debts due in one EU country from residents of another EU country.

The UK exit will mean that the UK and Ireland will not be able to use the directive for UK residents defaulting on an Irish tax liability and vice versa.

The double taxation agreement between the UK and Ireland in respect of income tax and capital gains tax would remain in force as it does not link into EU membership. The UK may need to enter into a new agreement with Ireland to cover social welfare entitlements for mobile workers.

Conclusion

Many of the tax implications of Brexit are dependent on whether the UK remains in the EEA after it exits from the EU. If the tax authorities want to extend reliefs to the UK, it will not be clear to what extent the tax legislation will need to be updated until an exit strategy is agreed between the EU and the UK so the full impact of Brexit will not be known for some time.

The corporation tax and VAT rates in the UK will no longer be restricted by EU rules, and may be reduced if that will provide a competitive advantage.

From an Irish perspective, it is likely that the economic uncertainty created by Brexit may impact on the €1bn of spending increases and tax cuts signalled recently by Minister Michael Noonan, which were expected to be included in Budget 2017, in October.

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Caveat: *These notes are intended as a general guide to the tax impact of Brexit. Formal tax advice should be obtained before any steps are taken that may have a tax effect.*