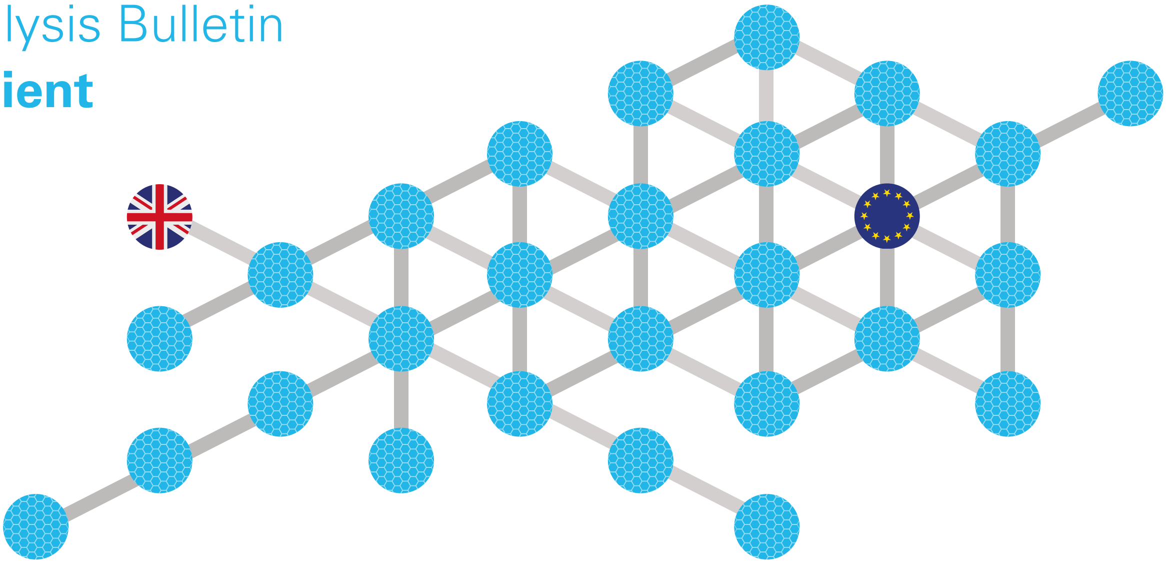
Brexit Analysis Bulletin

Private Client



On the whole, the EU has taken limited action in relation to trusts, succession and personal taxation. These areas are largely controlled and regulated by the government of each respective member state, and as such, there are likely to be few legal implications impacting on these areas as a consequence of a Brexit.

Tax

The EU heavily regulates indirect taxation, VAT for instance, whilst imposed by UK legislation, derives from various EU VAT Directives. On the other hand, direct taxation, such as income tax is governed purely by UK law with little interference from European regulation.

Whilst the same is also true for inheritance tax, a UK exit may lead to the restriction of various tax reliefs and exemptions that currently exist because of the UK's membership of the EU. Two examples are to availability of agricultural property relief in relation to farmland situated in other EU countries, and the tax exemption for gifts to charities located in other EU member states.

The removal of such exemptions and reliefs would not be an automatic consequence of the UK leaving the EU (they are contained within the relevant substantive UK legislation) but as the relevant provisions were introduced in order to ensure that UK law complied with various fundamental EU principles, their continued existence cannot be guaranteed if the UK left the EU.

Succession

The law of succession is generally a matter for each individual member state, and even within the UK, there are differences between the various jurisdictions. Therefore, (at least until recently) the laws of succession were not affected to any great extent by EU regulation.

The general position is that the law of succession applying to an individual's estate is the law of their domicile or habitual residence. However, there is the possibility of the laws of another jurisdiction applying to particular assets located in other jurisdictions. This is typically an issue regarding land and buildings and, for example, if a Scottish domiciled individual owns a second home in France they will be subject to the French law of succession in relation to that property and their Scottish Will may have a limited impact on it.

Recently there has been an attempt by the EU to regularise the laws of succession applying throughout the EU, and the EU Succession Regulation will apply to estates of individuals dying after 17 August 2015. The regulation attempts to harmonise the approach to succession across the EU and allows individuals to elect for the succession laws of only one jurisdiction applying to administer their entire estate. For example this would allow a person "habitually resident" in Spain, but owning property in France to apply Spanish law in relation to the succession of the house in France.

The UK has opted out of the regulation and so it does not apply to assets located in the UK. While that is the case, due to the way in which the regulation has been drafted, it may allow British individuals to take advantage of it and elect for UK law to apply to property located in other member states. Whether this is possible is likely to remain uncertain until the relevant parts of the regulation are considered by the European Court of Justice, however, in the event of a Brexit, the chance of the regulation applying will be removed.

Assets Located in the EU

Over and above the potential application of the EU Succession Regulation, a Brexit could have other implications for UK nationals owning assets in other EU states (such as holiday homes). The first issue is whether UK individuals will still be able to enjoy visa free travel to the remaining EU countries. While there is a theoretical possibility of visa controls being introduced this is very unlikely. What is less certain is the continued right of expats to remain resident in remaining EU countries after a Brexit – much will depend on the terms of the final agreement reached between the UK and other EU countries post Brexit. A further issue for expats relates to their UK state pension entitlements. While a Brexit should have no impact on who may qualify for the state pension, only UK citizens resident in certain states automatically qualify for increases to the state pension and so UK citizens resident in other countries (such as Spain) may see their state pension entitlements effectively frozen.

A potentially bigger concern is that of taxation. As was noted above, there are aspects of the UK taxation system that have been amended so as to ensure that they apply equally to assets/entities located in the EU as well as in the UK. The same is true of the tax systems of other EU member states and the general principle is that the same tax treatment should be applied to all residents of EU and EEA countries in accordance with the principle of the free flow of capital within the single market. If the UK withdrew from the EU then this protection may be lost and UK citizens could find themselves subject to a more punitive taxation regime in relation to their assets located in the EU. Whether this will come to pass will depend on the eventual deal reached between the UK and EU in the event of a Brexit, for instance if the UK remained in the single market some of the relevant protections would remain. In addition the wide network of double tax treaties that Britain has agreed with EU countries is likely to remain intact and should offer a degree of protection.

SHEPHERD AND WEDDERBURN'S BREXIT ADVISERS

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With the EU referendum now only months away, members of our dedicated Brexit Advisers will continue to interrogate the 'what if' questions, relating to specific sectors, that will emerge when the UK decides whether to remain in or leave the EU.

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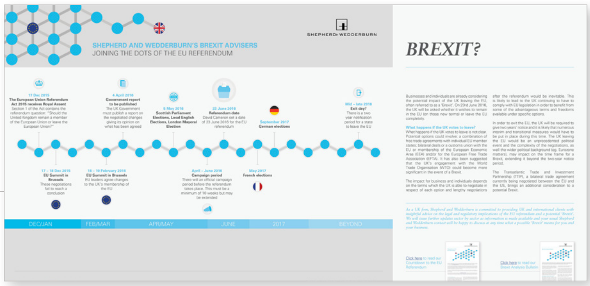

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