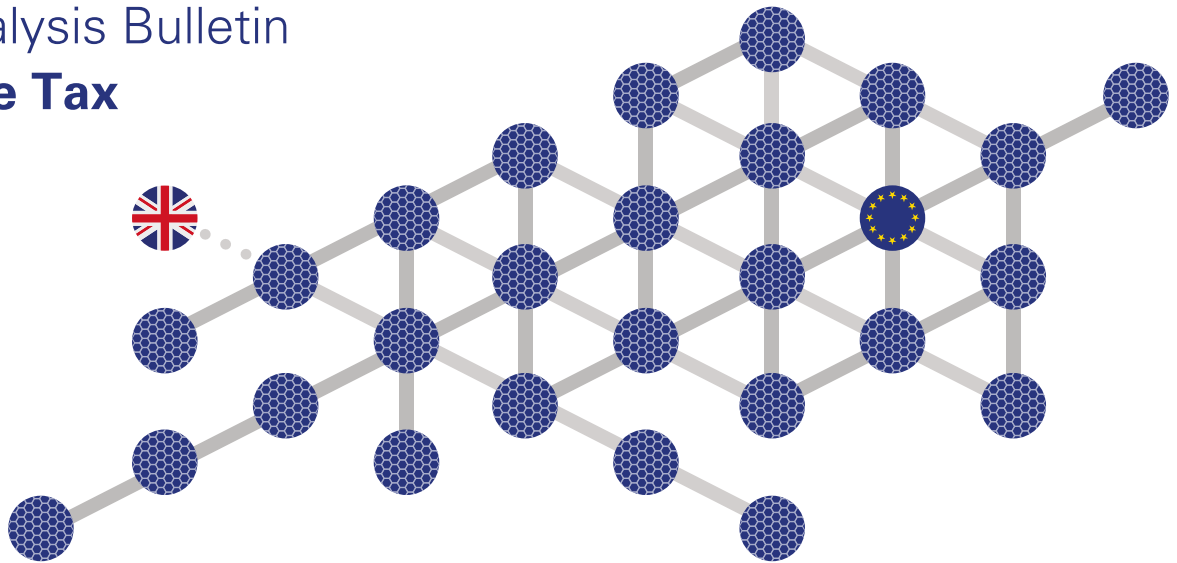


## Brexit Analysis Bulletin

### Corporate Tax



#### What might Brexit mean for the UK's tax landscape?

The UK's membership of the EU has impacted on the UK tax system in a number of ways, such as the introduction of VAT and the need for the UK tax system to comply with general principles of EU law. Therefore leaving the EU could have a significant impact on the UK's tax regime. However, now the UK must seek to negotiate a continuing commercial relationship with the EU and the outcome of those negotiations may require the UK to retain some of the current EU rules that impact on the UK tax system. As such it is difficult to predict with absolute certainty what the tax impact of a Brexit might be. Nevertheless there are a number of areas of tax law that would likely be affected by the UK leaving the EU.

#### VAT

One of the major areas that will be affected by Brexit is VAT. VAT is a truly European tax. While from a domestic point of view, the UK VAT rules are contained in UK legislation and associated HMRC publications, the underlying principles of VAT (which apply across the EU) are derived from the EU VAT Directives. This has two consequences:

1. When interpreting the VAT rules, the UK courts must have regard to the EU VAT legislation and also cases of the European Court of Justice.
2. Businesses operating in the EU have the confidence that a common set of rules will apply to transactions undertaken within the EU.

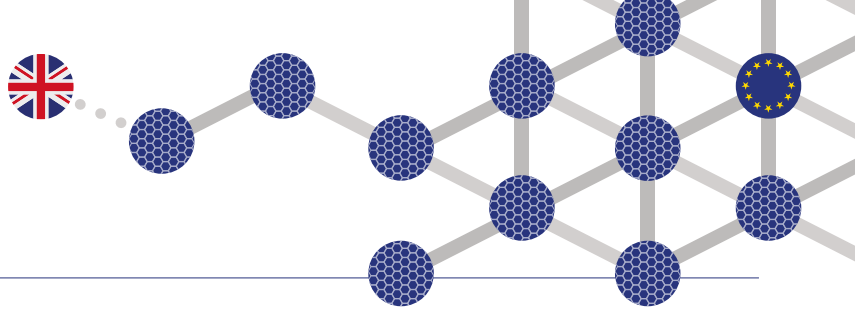
So as VAT is an EU construct, when the UK leaves the EU would that mean an end to VAT in the UK? The answer is almost definitely 'no'. VAT currently raises around 21% of government revenue in the UK, so simple economics mean that VAT is likely to remain as part of the UK tax landscape for the foreseeable future.

While it is likely that VAT would remain in place,

the UK would most likely enjoy substantially greater freedom in its ability to set its own VAT rules – e.g. in relation to which goods and services might qualify for exemption or zero-rating. What is less clear is how the UK VAT rules would interact with the EU VAT regime. At present, transactions undertaken within the EU are treated differently from those undertaken with non-EU countries, and so for UK businesses trading with the EU there would be a degree of uncertainty as to how the post-Brexit rules would operate, especially as the two sets of VAT rules may diverge over time.

#### State Aid

At present the EU rules which seek to prevent state aid can impact on the UK tax system in a number of ways. For instance, at present if the UK wishes to make changes to the tax incentives offered under the various venture capital systems, care must be taken to ensure compliance with the State Aid rules and therefore the tax reliefs must be carefully targeted and cannot be overly generous. The UK's ability to offer tax incentives to particular businesses, with a view to attracting them to the UK, is restricted. Such restrictions may no longer apply post-Brexit.



## Conflicts with EU Law

There have been a number of instances where the UK tax rules have been found not to comply with aspects of EU law, such as the controlled foreign company rules and the UK group loss relief rules. This has led to changes being made to these rules so as to ensure that they do not discriminate against companies located in other parts of the EU. There is no guarantee that these changes wouldn't be reversed and so the tax affairs of corporate groups located in the UK as well as across the EU might become more complex.

A similar issue is that, as the EU Parent-Subsidiary Directive will no longer apply, UK companies may need to rely on double tax treaties to ensure that distributions of profits between group members (where one is located in the UK and the other in the EU) will not suffer withholding tax. This may lead to increased compliance costs for international groups.

There are a number of other elements of EU law which impact on tax and which would most likely no longer apply post-Brexit. Examples are the Merger Directive (which

deals with cross border company mergers), the Capital Duties Directive and the EU Social Security agreements (which seek to apply only one social security regime to workers working in multiple states within the EU).

## Customs Duties

At present no duties are charged on the movement of goods between the UK and other EU member states. If goods are imported from outside the EU into the UK (and therefore into the EU), EU customs duties are charged.

In theory at least, the EU Customs Duty Regulations would no longer apply to the UK, and this would leave the UK without any customs duties. As the UK will no longer be part of the EU, the existing regime of EU customs duties will apply on exports from the UK to the EU.

It is highly likely that the UK government will now seek to negotiate some form of customs agreement with the EU so that duties will not be charged on exports from the UK to the EU (and also to ensure that goods from the EU could come to the UK without being subject to customs duties).

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## SHEPHERD AND WEDDERBURN'S BREXIT ADVISERS

### JOINING THE DOTS OF THE EU REFERENDUM

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#### What next?

Shepherd and Wedderburn has been for many years offering balanced and impartial advice on how the different scenarios might play out in the event of constitutional change.

Now that the vote has been cast to leave the EU, members of our dedicated Brexit group continue to interrogate the regulatory and commercial issues and to advise clients on next steps and outcomes.

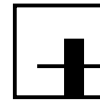
#### For further information in the first instance, please contact:



Stephen Miller  
**Partner**  
T +44 (0)131 473 5227  
M +44 (0)791 206 9344  
E [stephen.miller@shepwedd.co.uk](mailto:stephen.miller@shepwedd.co.uk)

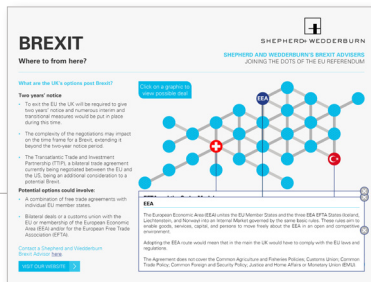


Douglas Sinclair  
**Associate**  
T +44 (0)131 473 5710  
M +44 (0)770 347 1262  
E [douglas.sinclair@shepwedd.co.uk](mailto:douglas.sinclair@shepwedd.co.uk)



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