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Brexit: Tax

The outcome of the negotiations between the UK and the EU remain uncertain, nonetheless it is still important to identify key areas which are likely to change for Irish businesses with cross border arrangements.

Below we aim to outline the most significant areas for consideration from a tax perspective.

Direct Tax

1. Impact of Brexit on the availability of EU Tax Directives

The EU have a number of directives which reduce the tax burdens within the single market. Brexit will result in the various EU tax directives and accompanying tax reliefs no longer being applicable to transactions between UK companies and EU companies. These include the EU Mergers Directive, Parent-Subsidiary Directive, Interest and Royalty Directive, etc.

The loss of access to the Mergers Directive and Parent-Subsidiary Directives following Brexit may have some unforeseen consequences on planned reorganisation transactions and future dividend flows. Equally, the loss of access to the Interest and Royalties Directive may lead to withholding taxes on such intra-group and third party payments which will add to the cost of doing business with the UK.

Post Brexit, EU businesses will have to rely on the terms of their bilateral double tax agreements with the UK which may result in less favourable taxation on such transfers and payments, and therefore the consequences of this need to be assessed now to avoid surprises later.

2. Financial services directives and passporting

If the UK leaves both the EU and the EEA it will no longer be covered by the EU financial services passporting frameworks, particularly in the areas of insurance, banking and asset management. Irish businesses should revaluate their financial services suppliers and consider the need to use EU based suppliers. Likewise, UK based financial services institutions need to evaluate their ability post-Brexit to operate in the EU.

3. Restriction on use of EU Arbitration Convention:

Brexit will result in the EU Arbitration Convention no longer being available to resolve disputes where double taxation occurs between the EU and the UK. Commonly dealt with under this convention are transfer pricing disputes, which are becoming increasing common and complex. Post Brexit it will be important for Irish businesses to be aware of their rights under OECD international mutual agreement principles if seeking to claim arbitration on transactions with the UK.

Indirect Tax

While the exact nature of any Brexit deal remains unclear, it is clear that more businesses are now considering the actions that should be taken to seek to mitigate the impact of Brexit. We have outlined below some actions that businesses should take which will go some way to addressing how Brexit will impact your business while also assisting with commencing the process of getting Brexit ready.

1. register with Irish Revenue for an EORI number;
2. map existing supply chains to determine what supplies are affected;
3. each product should be reviewed and a product classification code assigned to ensure the correct percentage of duty is being paid;
4. decide if the business will file customs declarations in-house or where such filings will be outsourced, the business should look at engaging a customs agent;
5. various reliefs and simplifications may be available to businesses to mitigate the impact of Brexit, e.g. inward or outward processing relief, customs warehousing etc. The application and relevance of such reliefs and simplifications should be reviewed noting that it can take several weeks to obtain Revenue approval; and

6. consider the impact Brexit may have on the businesses cash-flow and whether getting approval for a customs deferment account is worthwhile. Getting approval will require a guarantee and can take several weeks.

Company Secreterial

EEA Resident Director

As a standard rule all Irish companies much have a director resident in a member state of the European Economic Area (EEA). Where a company does not have an EEA resident director they must either hold a bond in the prescribed form, in force to the value of €25,000 or obtain a certificate pursuant to section 140 of the Companies Act 2014. This is where a company applies for and is granted a certificate from the Registrar of Companies notifying that it "has a real and continuous link with one or more economic activities that are being carried on in the State". In order to obtain a certificate pursuant to Section 140 of the Companies Act 2014 a company must apply to Revenue for a statement confirming there is a "real and continuous link with an economic activity that is being carried on in the State".

Currently the EEA member states are: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom*.

** If the UK leaves the European Union without any deal in place, companies which have only UK resident directors will be required to comply with section 137 Companies Act 2014.*

Subsidiary undertakings

Currently a subsidiary undertaking can avail of an exemption from filing its individual accounts and instead file its parent entities accounts subject to certain conditions, one of which is being a subsidiary of a parent undertaking incorporated in an EEA member state*.

** Again if the UK leaves the European Union without any deal in place, companies which have previously relied on this provision to avoid filing their individual accounts will no longer be able to.*

Changing your year end

An Irish company can change its financial year end every five years. This five year rule restriction does not always apply, in that where an Irish company is part of an EEA group and it is trying to align its year end, it may change its year end again even if it had already changed within the previous 5 years.

Again if the UK leaves the European Union without any deal in place, companies will no longer be able to avail of this exemption for aligning its year ends.

Irish branches

Irish branches of UK companies are currently registered as a branch of an EEA company, post Brexit the branch will be changed to that of a non-EEA company and will be subject to filing annual returns with the CRO under the external company legislation which is more stringent than that of an EEA branch. Non-EEA branches are required to submit a copy of the accounts filed in the country of incorporation and a director's annual report prepared in accordance with the Accounting Directive 2013/34/EU or IFRS. An auditor's report is required if the accounts are audited.

Contact

At Grant Thornton we have a dedicated team of Brexit specialists who understand your business and can assist you with preparing for the potential outcomes of Brexit. Contact our Brexit specialists today.

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