SQUIRE PATTON BOGGS

Family Office Insights
Brexit and Family Offices

The problem with writing about Brexit, I have discovered, is that your article tends to go out of date before it is published. I have even had occasions when an article I have been writing has gone out of date before I have even finished it.

So, when reading this, please do bear in mind that it may have been superseded by a major development. But that is why my contact details are at the bottom of this piece, so feel free to give me a call to get the latest, which should at least remain complete and accurate until the end of the telephone call.

At the time of writing this at the end of August, some 14 months after the UK voted in a referendum to leave the EU, and five months after the UK triggered Article 50 to begin the two-year process for leaving the EU, we are finally starting to see some degree of clarity on the UK side.

The UK government has recently published position and future partnership papers on matters relating to, for example, customs and trade, Northern Ireland, disputes and data. Unsurprisingly, the response to these papers has been varied, but at least they do contain some detail of the UK's hopes and expectations of the form that Brexit will take, and the need for a transition arrangement, even if the UK does not yet seem to have, or at least has made public, concrete proposals in many areas.

One point that should always be remembered is that the UK's papers are just that: the position of the UK. As the proverb goes, "it takes two to tango", and to the extent that the UK wants both to have the advantages of being in the EU (e.g. access to the single market, frictionless trade) and the advantages of being outside it (e.g. the ability to negotiate free trade agreements, control EU immigration and not be subject to the jurisdiction of the European Court of Justice), the UK is likely to be disappointed. In addition, the question of money – the so-called divorce bill – has not yet been addressed by the UK, let alone agreed with the EU.

Where does this leave family offices? The answer is that UK family offices, or non-UK family offices looking to invest in the UK, are currently unaffected by the Brexit process and, I would expect, be largely unaffected by the ultimate Brexit settlement. Many of the issues that concern stakeholders in the UK and across the world, such as tariff and non-tariff barriers, the Northern Irish question, the ability of London to thrive as a financial centre, etc., are of marginal concern to family offices. It is true that family offices are interested in seeing their investments thrive, and their UK investments may perform less well after Brexit, if growth slows, or the pound weakens further, but this is an issue which, while arising in connection with Brexit, is not directly related to it. Family offices located in the UK may need to consider whether they have any EU employees, and the possible impact of changes to immigration rules on those employees and their families (which I expect will ultimately be negligible); but again, changes after Brexit are unlikely to impact directly on their UK operations, or on the attractiveness of the UK as a place to carry on those operations.

One area where I think we may potentially see some change relates to my main area of practice – tax. The UK is fairly sovereign in the area of taxation – it can largely set its own rules, and rates, without interference from the EU and the European Court of Justice. However, underlying the referendum result are wider social issues relating to the sharing of the benefits of globalisation, and the increasing disparity in ownership of wealth, even while income inequality is narrowing in the UK. And, indisputably, there was a reaction to the existence of a class of super wealthy foreigners, as well as poorer immigrants. Pressure is brought to bear on capitalism if a significant proportion of the population does not have capital.

The taxation of capital is controversial from both an economic and a political viewpoint. Consistently the most widely hated tax in the UK is inheritance tax (essentially a death duty), notwithstanding that very few people will leave an estate large enough to attract it.

Inherent if not explicit in Theresa May's brand of Conservatism, as expressed in the 2017 General Election, was a need to tax capital more to create a fairer society. This brand backfired, with the Conservative Party losing seats in the General Election; but as a tax practitioner, if I were asked to find something that was undertaxed, I would have to point to capital rather than income.

This will leave the UK government with a dilemma. It wants to attract foreign capital, and it wants to attract the foreign wealthy and their family offices, but it may also want to tax them more. The question is, what trade off the UK wants to make in repositioning itself after it leaves the EU and "takes back to control"? It is not inconceivable that significant changes to the taxation of capital could be announced in the coming years.

Family offices need not, and should not, be passive observers in this debate, and we are already partnering with many family offices, not only to review their legal structures and operations, but also to assist on the related public policy issues.

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