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Tax after the EU referendum

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Background

Taxation is very largely a Member State competence. The implications of the UK lying outside the EU are likely to be less significant for taxation compared with other policy areas.

The major exception to this generalisation is indirect tax: primarily VAT – for which there is a substantive body of EU law establishing common rules across Member States – and, to a lesser extent, excise duties. It has long been recognised that the harmonisation of indirect taxes across Member States is an essential element to the achievement of an effective Single Market. Unlike most internal market measures, which use qualified majority voting, the harmonisation of taxation is decided by unanimity. The consequences of the EU's shared competence in indirect tax is most frequently discussed in the context of the UK's limited discretion in setting the rates of VAT on individual goods and services. In addition many commentators have raised concerns about the UK's ability in the future to maintain its existing range of VAT reliefs (such as the zero rates of VAT which apply to food and children's clothes) from any further harmonisation of VAT law.[1]

However, the relative importance of VAT to the Exchequer – accounting for around 17% of all government receipts – suggests that future governments would be unlikely to substantially increase these reliefs or abolish the tax, even while exit from the EU would give them this power.[2] Writing in the *Tax Journal* before the referendum, Ben Jones, partner at Eversheds LLP, noted, "there is no practical likelihood that VAT will be abolished by the UK following Brexit. It is not even the case that it would be necessary to take significant legislative steps to preserve VAT in the UK, given that the EU VAT rules have been mainly implemented by UK legislation." Mr Jones went on to note, "UK governments would have greater flexibility to use changes to the VAT system to further political objectives ", and it (e.g. by widening zero-rating, exemption rules or the use of lower rates)."[3] Indeed during the referendum campaign it had been argued that Brexit would enable the Government to introduce a zero rate of VAT on domestic supplies of fuel & power.[4]

1 For details see, *VAT : European law on VAT rates*, Commons Briefing Paper SN2683, 20 May 2016.
2 VAT receipts are projected to be £116 billion in 2015/16. Public sector receipts are set out in table 4.6 of the Office for Budget Responsibility, *Economic and Fiscal Outlook*, Cm 9212, March 2016.
3 "Brexit: the tax issues at stake", *Tax Journal*, 15 June 2016. Mr Jones concluded, ""the conclusion is that no conclusions can be drawn at this stage."
4 "EU Referendum: Vote Leave wants power to axe fuel VAT", *BBC News online*, 31 May 2016

There are no equivalent provisions with regard to other taxes, though all national legislation has to comply with the overarching provisions of the Treaty guaranteeing the free movement of goods, persons, services and capital across the single market and prohibiting discrimination. There is a substantive body of case law where the European Court of Justice has ruled that individual provisions of a Member State's tax code fail this test. Member States' powers to act in relation to taxation must also be exercised in accordance with State aid rules.

Finally, there are a number of EU instruments relating to administrative cooperation to exchange information and help tackle tax evasion. In the latter case it seems likely that outside the EU the UK will seek to maintain some form of bilateral agreement akin to these provisions, given the growing consensus between governments that there is a very important international dimension to taxing multinational corporations fairly and effectively tackling tax avoidance.[5]

In July 2013 the Coalition Government published its report on the respective powers of the UK and the EU with regard to taxation, as part of its Balance of Competence Review. This report found that "respondents and interested parties were content with the current balance of competence on taxation, taking account of the protections offered by unanimity voting. Whilst individual respondents suggested areas where existing measures could be updated to reflect modern business practice and development, no respondents identified any major gaps in the existing tax legislation."[6]

Some respondents to the review cited proposals for an EU-wide financial transactions tax as an area "where they questioned the appropriateness and utility of EU-level action." The European Commission had proposed an EU-wide tax on financial transactions in September 2011. As this failed to attract unanimity, in January 2013 eleven countries, excluding the UK, agreed to pursue this option on a smaller scale. Negotiations have continued, although there has never been any question of the UK having to take part.[7]

Details of the areas of EU competence in taxation are given on the site of the Commission's Taxation & Customs Union Directorate.[8]

Reactions

Following the referendum vote, there have been a number of statements by relevant organisations – such as the Bank of England – as well as some speculation about the possible impact of Brexit on the tax system.[9] No immediate changes have been made to taxes, as HM Revenue & Customs have been advising taxpayers on their helpline.[10]

On 27 June the then Chancellor, George Osborne, suggested that there was likely to be a Budget statement this autumn. Prior to the vote Mr Osborne had indicated that in the event of a vote to leave the EU, the Government would have to make immediate changes

[5] This issue is discussed at length in, *Corporate tax reform (2010-2016)*, Commons Briefing Paper SN5945, 20 June 2016 (see sections 5.3 & 6.2),

[6] HMG, *Review of the Balance of Competences between the United Kingdom and the European Union: Taxation*, July 2013 p6

[7] For more details see, *The Tobin tax: recent developments*, Commons Briefing Paper, SN6184, 15 May 2014. See also, PQ22411, 18 January 2016

[8] European Commission, EU Tax Policy Strategy [accessed 14/7/2016]. The site also provides a full list of EU tax legislation.

[9] In the latter case see, "20 questions on Brexit", *Tax Journal* , 1 July 2016 & "Breaking away", *Taxation*, 30 June 2016.

[10] "EU referendum: HMRC issues 'carry on' message", *BBC News online*, 27 June 2016

to its tax and spending plans.[11] In a statement Mr Osborne said the following: "as I said before the referendum, this will have an impact on the economy and the public finances – and there will need to be action to address that. Given the delay in triggering Article 50 and the Prime Minister's decision to hand over to a successor, it is sensible that decisions on what that action should consist of should wait for the Office for Budget Responsibility (OBR) to assess the economy in the autumn, and for the new Prime Minister to be in place."[12] Subsequently Mr Osborne argued that as part of its ongoing strategy to attract business investment the Government should aim to cut the rate of corporation tax further to its existing plans for a 17% rate from 2020.[13]

However, on 13 July Theresa May succeeded David Cameron as Prime Minister, and appointed Philip Hammond to be Chancellor. In his first interview Mr Hammond ruled out an emergency Budget, while confirming that he would set out the Government's revised economic strategy in the Autumn Statement.[14]

Beyond this, there does not appear to have been any substantive discussion of the implications of this outcome for UK taxes.

[11] See, for example, "George Osborne: vote for Brexit and face £30bn of taxes and spending cuts", *Guardian*, 15 June 2016

[12] HM Treasury press notice, *Statement by the Chancellor following the EU referendum*, 27 June 2016

[13] "Osborne puts corporation tax cut at heart of Brexit recovery plan", *Financial Times*, 2 July 2016. In answer to an urgent question on his plans, Mr Osborne said, "we should aim for a rate of 15% and preferably lower, because if we are pro-business, we are pro-jobs, pro-living standards and pro-working people" (HC Deb 4 July 2016 c622).

[14] "Philip Hammond: Financial markets 'rattled' by Out vote", *BBC news online*, 14 July 2016; "New chancellor Philip Hammond to scale back austerity", *Financial Times*, 14 July 2016