



## Brexit: any implications for Asset Management companies?

The decision by voters in the United Kingdom to exit the European Union, known as "Brexit", was a surprising one. What regulatory impact will Brexit have on European based asset managers?



The main EU asset management regime is contained in the Alternative Investment Fund Managers Directive (AIFMD) and the Undertakings for Collective Investment in Transferable Securities Directive (UCITS). This European regulation provide detailed regulatory requirements for EU based asset managers to comply with. Further, they provide passporting rights allowing such asset managers to operate in other EU countries without restrictions (EU Passport<sup>i</sup>).

Assuming the UK proceeds with leaving the EU, the UK based asset managers will not be subject to European regulations such as AIFMD and UCITS anymore. The UK based asset managers might benefit from this, as this means less European intrusion into their domestic market. On the contrary however they lose passporting rights<sup>ii</sup> revoking their access across the EU to carry out their operations.


**"Assuming the UK proceeds with leaving the UK, the UK based asset managers will not be subject to European regulations anymore"**

**Key consequences for UK and European based asset managers**

Below we have identified some of the key consequences that UK's exit might bring for European based asset managers, including the UK.

| UCITS / AIF managers  |  |
|---|--|
|  UK based   |  NL / EU based  |
| <ol style="list-style-type: none"> <li>1. Continue to be licensed in the UK</li> <li>2. Are allowed to continue providing its services to investors in the UK</li> <li>3. Will lose their EU passporting rights and will therefore not be allowed to market EU investors</li> <li>4. Will need to re-domicile to the EU to continue the use of passporting rights in the EU</li> <li>5. In case such managers re-qualify as an AIF manager (see below) marketing to EU investors is possible on the basis of the AIFMD private placement regime</li> <li>6. In case they manages funds set up in an EU country they will need a local EU manager to act as a management company. Any delegation from such local EU management company to the UK manager needs to be amended in accordance with the delegation requirements for non-EU managers</li> </ol> | <ol style="list-style-type: none"> <li>1. Continue to be licensed in the EU</li> <li>2. Are allowed to continue providing its services in the EU</li> <li>3. Will remain their EU passporting rights for their UCITS / AIFMD funds</li> <li>4. Are allowed to continue to manage their funds set up in another EU country or the UK</li> <li>5. Will need to comply with the UK (private placement) rules in order to market the AIFMD / UCITS fund to UK investors</li> <li>6. Do not need a local EU manager to act as a management company</li> </ol> |

In addition to the above, for solely AIF managers the following key consequences apply:

| AIF managers   |   |
|--|---|
|  UK based  |  NL / EU based   |
| <ol style="list-style-type: none"> <li>1. If no re-domiciliation to use passporting rights: marketing to EU investors is possible on the basis of the AIFMD private placement regime in each EU country</li> <li>2. Will not be able to use EU depositaries</li> </ol> | <ol style="list-style-type: none"> <li>1. Not applicable</li> <li>2. Will remain to be able to use EU depositaries (except for the UK)</li> </ol> |

**What access will UK managers continue to have following the Brexit?**

‘Third country regimes’ allow non-EU managers to access the EU market, provided that such managers are authorised in a country which has implemented an equivalent regulatory regime. The UK could implement a regulatory regime equivalent to the regime in the EU so that it is able to access the EU market. However, such third country regimes do not cover all services and activities. For example, there is no third country regime under

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UCITS. Furthermore, there is a third country regime under the AIFMD, but this has not yet entered into force.

Until the EU and the UK have agreed the nature of their post-Brexit relationship, it will not be clear whether a third country regime will be introduced in the UK. In the meantime, the current legislation remain in place and the UK asset managers remain subject to European regulations.

### **Tax considerations**

EU Directives on taxation, such as the Interest and Royalties Directive and the Parent/Subsidiary Directive have been incorporated into UK domestic law and are therefore currently part of the UK tax system. The possible non-applicability of provisions that are derived from EU Directives in relation to cross-border payments may result in the imposition of withholding taxes on cross-border payments made to or by UK residents in the future. However, any charge of withholding taxes will remain dependent on the terms of any applicable double tax treaty between such Member State and the United Kingdom.

Furthermore, upon leaving the EU, UK based funds may be faced with a deterioration in their performance because of increased withholding tax costs. In several EU Member States, EU/EEA based funds currently have a more favorable withholding tax position than funds based in third, i.e. non-EU, countries.

Currently, EU based asset managers are restricted to recover input VAT on costs when they provide financial services to EU based customers. When the UK leaves the EU, customers in the UK are treated as being non-EU and consequently, the input VAT relating to such transactions is no longer restricted anymore. This might significantly increase the VAT recovery ratio for Dutch and other EU based asset managers.

If the UK treats its financial services to EU based customers in the same way (i.e. as being non-UK and therefore no restriction on the recovery of input VAT incurred), the VAT recovery ratio for UK based asset managers might significantly increase as well.

### **Conclusion**

As a result of the UK's vote to leave the EU, asset managers will need to assess their specific situation on a continuous basis and closely monitor regulatory developments in order to preserve its access to the EU and UK market and determine their tax position.

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<sup>i</sup> The EU Passport facility provides EU based asset managers regulated and supervised in their home-country with the possibility to provide their services in other EU countries (host-countries) on the basis of their home country license. As a result no separate license in such a host country is required. Instead a simple notification procedures applies.

<sup>ii</sup> Based on the assumption that legislation will not be amended during the coming years



Caption



Caption

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