Brexit

FAQs for Asset and Wealth Managers preparing for 29 March 2019

Contacts

Robert Mellor
EMEA Asset Management Brexit Leader at PwC

T: +44 (0)7734 607485
E: robert.mellor@pwc.com

James Stewart
Mainstream Funds UK Tax Leader at PwC

T: +44 (0)7469 033107
E: james.w.stewart@pwc.com

What does the first meaningful vote outcome mean for Asset and Wealth Managers?

The result of Tuesday's Meaningful Vote shows that the certainty Asset and Wealth Managers ('AWMs') are seeking is still out of reach. Until a way through can be found, it is important to remember that 'no deal' is the default outcome. AWMs in the UK and EU need to accelerate their no deal contingency plans. For those who haven't started implementing no deal actions, there are still steps you can take to minimise disruption. But the longer you leave it, the more difficult this will be.

Should Theresa May's Plan B, due to be presented on Monday 21 January, result in a revised Withdrawal Agreement ('WA') deal being passed by a vote in the House of Commons, with any revisions to the negotiated deal being agreed quickly by the EU, then there should be a transitional period beyond 29 March 2019. This is anticipated to be helpful for Asset and Wealth Managers as it could allow a continuation of service during that period. The industry will know it has at least until 31 December 2020 (with an option for this period to be extended by no more than one or two years) to reorganise its affairs for life after Brexit. That's the final day of the transition period agreed in the Prime Minister's current WA deal, during which time all current legal and regulatory structures will remain in place.

If the Government eventually loses all its attempts to get the WA passed, there are a number of possible scenarios, including the UK leaving the EU without a deal, or another EU referendum (only possible if the Government is able to get legislation enacting it passed in a vote in the House of Commons).

Some of these options may involve delaying the official Brexit date of 29 March by a few months to allow time to renegotiate a deal. However, it is still uncertain whether the EU would grant an extension to Article 50 (to delay the leaving date) to allow the UK to have second referendum. As a second referendum could take months, not days or weeks, to happen the UK runs the risk of leaving the EU without a deal on 29 March by default due to the extent of the internal political challenges.

With so many different potential outcomes, AWMs should be urgently activating their no deal plans now, while still preparing for both a deal and no deal outcome.

Are AWMs able to rely on Article 50 being cancelled and the Brexit process being halted?

In short, no. The UK will leave the European Union on 29 March 2019 regardless of whether there is a deal with the EU. The Brexit process can only be halted if there is a change in UK law. The ECJ has ruled that the UK could cancel the Article 50 Brexit process without the permission of the EU27 members but this would require a vote in the House of Commons.

What time frame are AWMs working to?

As noted above, our experience, and our Brexit survey results show that most AWMs have already been working to put contingency plans in place that assume there will be a 'no deal' Brexit and no transitional period, so are working towards 29 March 2019.

pwc

What does a 'no-deal' Brexit mean for AWMs?

- **UK funds marketed to EU investors** –If the Government eventually loses all its attempts to get the WA passed and the UK leaves the EU without a deal, current EU passporting rights will end on 29 March 2019; EU investors may have to be transferred into EU domiciled funds (Investor capital gains tax and portfolio tax implications arising from such fund reorganisations will need to be managed). Alternatively, some jurisdictions may implement temporary permissions regimes or some marketing to professional investors may be possible in some countries under domestic regulatory provisions known as national private placement regimes ('NPPRs').

- **EU funds marketed to UK investors** –existing funds will need to enter the Temporary Permissions Regime ('TPR') by 29 March 2019, but this won't be an option for new funds launched after that date (other than sub-funds with an umbrella UCITS fund inside the TPR). New launches will have to rely on the NPPR if they're aimed at professional investors, or Section 272 of the FSMA in the case of retail products.

- **UK AIFMs, UCITS, ManCos and MiFID firms with EU funds and investors** – Given the limited time now available, managers may need to appoint a third-party ManCo, AIFM or super ManCo in the EU27 to ensure no break in service after 29 March 2019; in the longer term, they may choose to establish their own ManCo, AIFM or super ManCo in the EU27. Assuming the FCA signs a memorandum of understanding with its opposite numbers in EU member states, firms will be allowed to delegate portfolio management back to the UK provided they comply with the substance requirements in the member state in question. Naturally, any reorganisation of contracts and payment flows, could have a range of potential tax issues for the management group and these will need to be assessed and managed.

- **EU AIFMs, UCITS, ManCos and MiFID firms with UK funds and investors** – these firms must enter the TPR by 29 March 2019 and will need the appropriate regulatory permissions from their own member state; EU AIFMs would also need to rely on co-operation agreements for the exchange of information between their national regulators and the FCA. Note that the TPR is not available for new managers established after 29 March 2019.

- **Immigration** – for people travelling from or leaving the UK, each country's immigration and visa requirements will need to be assessed although there will be no material impact for individuals currently in the UK or arriving by 29 March 2019. Additionally, the Common Travel Area between the UK and Ireland is expected to continue even in the event of a 'no deal' Brexit.

- **Social security** – individuals in the UK working in other European locations will no longer be able to rely upon the European social security regulations and we await clarification with regards to whether the pre-existing bilateral social security agreements will be available to help mitigate against social contributions in multiple jurisdictions.

In each case, there is considerable work to do to achieve these goals – and precious little time do to it. We're advising AWMs that aren't already doing so to urgently activate their no deal plans, while still preparing for both a deal and no deal outcome. The time to act is now.