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Issue 4: Lex et Brexit — The Law and Brexit

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As we enter the second half of August, no substantial progress has been made towards finalising Britain's objectives in the upcoming Brexit negotiations. The EU and the UK seem to have accepted that there will be no quick triggering of Article 50 before the end of the year. Nevertheless, it is to be hoped that once the corridors of power in Westminster and Brussels fill again after the summer break, some picture of a plausible UK negotiating position might begin to emerge.

In the fourth edition of Lex et Brexit, we consider Brexit's implications for fiscal policy in the UK. Specifically, we examine how Brexit might impact the UK's existing tax regime and the proposed changes to the UK's tax regime arising out of various international and EU initiatives. We also discuss what Brexit might mean for the UK's continued attractiveness as a corporate tax jurisdiction – and whether this may, in fact, be bolstered by Brexit. We conclude that Brexit presents an opportunity for the UK to enhance its credentials as a flexible and well-balanced corporate tax jurisdiction, but that the UK will need to balance healthy tax competition against preserving its reputation as a 'good citizen' in the international tax world. It remains to be seen what approach the UK Government will take.

We then examine the impact of Brexit on the regulation of credit rating agencies in the UK. UK CRAs are currently directly regulated by the European Securities and Markets Authority, which means that Brexit will inevitably have consequences for their regulation. We conclude that, although the European legislation contains mechanisms for the regulation of third country CRAs – which is what the UK CRAs would become following the UK's withdrawal from the EU – it is unclear whether these will be sufficient to enable UK CRAs to continue to operate in the same way as they do today. We expect that UK CRAs may be pressurized to move certain of their EU activities from the UK and into the EU, where these activities can be directly regulated by ESMA.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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