Brexit: What does this mean for Australian businesses?

24 June 2016

The Referendum has run and the votes are in. The people of the United Kingdom (UK) have voted to leave the European Union (EU). This decision will have an enormous and reverberating impact on the UK, Europe and the global business environment. There is simply no precedent for a member state leaving the EU, with the exception of Greenland in 1985.

Does this matter to Australia?

In 2014 two-way merchandise and services trade between the EU and Australia was worth A$83.5 billion with one quarter of that trade being with the UK. The EU is Australia's largest services export market, valued at nearly A$10 billion in 2014 with nearly 50%, or A$4.9 billion, of those exports being to the UK.

Most importantly the EU is Australia's largest source of foreign investment and second largest trading partner. In 2014 the EU's total stock of Foreign Direct Investment in Australia was valued at A$959 billion.

However one half of that investment, A$484 billion, is held by the UK – greater than aggregate for China, Hong Kong, India, Japan, Taiwan and all ASEAN members.

Consequently given the large trade and investment sums involved the Brexit result does matter to Australia.

What happens next?

In framing the Referendum the UK Prime Minister David Cameron indicated that he intended to invoke Article 50 of the Treaty on the European Union (The Lisbon Treaty) without delay in the event of an "out" vote. Article 50 sets out the mechanism under which member states may voluntarily leave the EU. This process, which has never been used, allows a member state to withdraw from the EU in accordance with its own constitutional requirements.

However, in response to the Referendum result Mr Cameron has announced his resignation as Prime Minister, although that he will remain for a short caretaker period for short term stability until October. In his resignation announcement Mr Cameron has indicated he believes it will be appropriate for the incoming Prime Minister to be the person to take the decision on the timing of delivering the Article 50 notice. There will as a result be a delay on the exercise of the trigger step to departure.

The future with the EU

There are a number of options available to the UK for its future relations with the EU. The UK could:

- become a member of the European Economic Area and European Free Trade Area in a way similar to Norway;
- agree bi-lateral agreements with the EU like Switzerland has negotiated, noting the Swiss relationship is comprised of 120 separate bi-lateral agreements;

- agree a free trade agreement with the EU;
- follow the example of Turkey and join the EU customs union; or
- rely on the rules of the World Trade Organisation.

What does this mean for Australian businesses?

All we know at this point in time is that there will now be an extended period of uncertainty. We expect the financial markets and the Pound Sterling to be volatile for some time until it is at least established which option the UK will take in its future relations with Europe.

There is currently no free trade agreement between the UK and Australia nor the EU and Australia. Practically, therefore this means that there is unlikely to be an immediate noticeable difference for Australian companies trading with UK companies.

In November 2015 the Government of Australia and the Presidents of both the European Council and the European Commission agreed in a joint statement to start the process towards a comprehensive and high-quality Free Trade Agreement. It is expected those talks will proceed, now without the UK's involvement.

In time, we expect that where there are quotas in place for imports into the EU which include the UK, there may be some resetting of those quotas to ensure that a situation does not arise where a country is able to flood the EU market with goods or services in the absence of the UK from total quota levels.

Considerations for Australian businesses

Contracts: Certain clauses may be activated such as force majeure, grounds for termination, change in circumstances or breaches of financial ratios in financing agreements. The terms of each individual contract will need to be reviewed to understand the specific implications.

Intellectual Property: The UK has recently joined the European unitary patent system and leaving the EU would likely prevent it from continuing to participate in the system and also from EU trademark and design regulations. IP registrations will need to be reviewed to ensure they have force in EU and UK jurisdictions.

Employees: Where Australian companies are conducting business in the UK and their UK based employees are relying upon EU passports for rights to work in the UK, there will need to be a review of the visas utilised by employees, however it will take time for the UK to determine what new arrangements will apply to EU nationals already present in the UK.

Financial Services: Companies that currently 'passport' their financial services licensing into the UK through other EU countries, such as Malta, will need to consider obtaining a UK financial services license in order to conduct operations in the UK. The likely loss of the ability to market financial products and to raise capital utilising the EU “passporting” regime will make the raising of capital across European borders a more complicated process.

Mergers and Acquisitions: We expect that contractual negotiations may need to include contingencies for contract termination, applicable jurisdiction and the relationship to any EU regulation such as copyright or other EU specific issues.

Taxation: Other than in the area of VAT taxation is not an area of competency of the EU. There are bilateral tax treaties between Australia and the UK and Australia and individual members of the EU. We expect that there will no changes to the arrangements currently in place in the near term.