

A few initial thoughts on Brexit and cases to the CJEU from the UK

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This is by no means the biggest question on anyone's lips at the moment - nor should it be - but if in the past you have successfully argued (or are in the process of arguing) that free movement of capital and freedom of establishment apply so that tax provisions (most usually anti-avoidance provisions) have to be read purposively so that they are compatible with these rights guaranteed by the TFEU (or if they cannot be so read, that they will not be applied) then in the lead up to yesterday's referendum you may have wondered what would happen to such arguments in the event that the UK voted to "Brexit".

Well, at the moment, absolutely nothing. The UK remains a member of the EU, and is still bound by its obligations under TFEU. Any argument that you had relying on free movement of capital or freedom of establishment, remains. This is confirmed by the Treaty on European Union, Article 50, which explains "... [t]he [TFEU and TEU] shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2 [formal notification of withdrawal to the European Council], unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period". So the treaties remain relevant today, and will do so until the UK has negotiated its withdrawal agreement, or two years (if less) and possibly longer, if agreed by the European Council. Of course, it is also highly likely that they will remain potentially relevant after "Brexit" in historic cases (it seems probable that a withdrawal agreement will not have retrospective effect in this respect).

Additionally, any cases currently scheduled to go before the CJEU should continue to move forward and be heard by the CJEU (though it is possible the CJEU could decide to "put off" all UK cases, though again, this seems unlikely).

The key point for tax advisors, however, is that reliance can still be placed on these freedoms in relation to tax charges and this should be the position for some time to come. EU arguments should not be abandoned simply because of the referendum.