experts' point of view

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Bâloise Assurances

Bâloise Vie Luxembourg

January 2020: BREXIT Update for Partners of Baloise Vie Luxembourg S.A.

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No one can be sure how Brexit will impact the ability of Baloise partners across the EU to passport services into the UK; the long-term trade agreement between the EU and the UK is as yet unknown. However, we can be sure that Brexit will not affect the fiscal validity of new or existing insurance contracts issued by Baloise and owned by clients resident in the UK.

The 1st February 2020 will be the first day the UK stands outside of the EU for over four decades. How will this event impact your clients owning or considering to purchase a Baloise policy, or any other 'foreign' life insurance contract?

The Politics

In December 2019 Boris Johnson won a resounding victory in the UK General Election. There can be little doubt that he will deliver upon his promise to "Get Brexit Done". Yet, despite knowing that the UK will leave the EU on the 31st January 2020 there is no certainty beyond the immediate 'transitional' period. The Parliamentary machinations of 2019 determined that the UK could not leave the EU without a transitional agreement; one now exists until 31st December 2020. For all intents and purposes nothing changes to the Single Market in Financial Services during 2020.

Questions to consider include:

- will the transitional period be extended?
- will the UK strike a deal with the EU within the year or exit without one?
- what will be the substance of a deal and will it include the existing passporting regime?

The Freedom to Provide Services

As stated above, nothing will change immediately to the passporting regime for financial services between the UK and EU; advisers and product providers carry on their business as usual during 2020.

Furthermore, to ensure stability in the market, both the PRA and the FCA (UK regulatory bodies) permit existing passporting rights to be extended for up to 3 years from the date of Brexit. The Temporary Permissions Regime (TPR) facilitates an extension to existing new business permissions.

Beyond the certainty of the transitional period intermediaries must consider if:

- a trade agreement will be in place supporting the existing passporting regime as we know it
- a trade agreement will be in place but the passporting regime is amended in some way
- the UK leaves the EU (with or without a trade agreement in place) but passporting is not possible. In that situation:
  - Regulated entities continue existing services under the TPR

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- EU entities succumb to direct regulation by a UK authority
- EU entities cease new business activity in the UK

NB Run-Off arrangements have been announced by the UK regulators such that existing policyholders will not be left without support by EU based insurers

The continued validity of New and Existing Contracts.

HMRC (UK Inland Revenue service) has clear and well known regimes for the taxation of contracts issued by a/. UK insurers or b/. Non-UK insurers (a distinction is made as the internal funds of UK insurers are subject to direct taxation). The well-known tax advantages of life policies are available to those contracts eligible under the 'Chargeable Events' regime.

When assessing 'foreign' contracts for eligibility HMRC makes no distinction based upon where the insurer is located. Whether the issuer is within the EU, in a UK Crown Dependency, in a UK Overseas Territory, or in some other unconnected 3rd country state is not relevant. Brexit will not affect how HMRC views policies issued by EU insurers.

Furthermore:

- The law of the contract (the law upon which the contractual relationship between the policyholder and insurer is based) is of no relevance to its taxation.
- Where the policyholder was tax resident when the contract was purchased is of no relevance to its potential eligibility (in situations where a client moves to the UK owning a contract).
- The nationality of the policyholder and their UK tax status is not relevant; the rules apply to all UK residents.

HMRC will simply look at a plan, for what it is as measured against its own rules, during the period of time the contract holder was resident in the UK.

Is the contract something HMRC will recognise as a plan eligible to be taxed under the Chargeable Events regime?

- Is it a life policy (i.e. a contract written subject to the uncertain continuation of human life)?
- Is it an annuity?
- Is it Capital Redemption Bond? NB Capital Redemption Bonds as defined by HMRC require a minimum guaranteed value at the end of a set term. Many 'EU' style Capitalization contracts will fail this test.

Is the contract a Personal Portfolio Bond (PPB)?

The PPB rules are 'anti-tax-avoidance' rules with a penal tax regime to deter contracts being used as tax shelters for private portfolios (A Baloise guide to these rules is available). Provided the contract operates within HMRC rules the expected tax advantages of the Chargeable Events regime will apply.

Summary

Unless the UK remains a full member of the EU's single-market it is difficult to anticipate how Brexit will not have an impact upon the existing passporting of financial services.

However, HMRC rules to tax life policies have never been based upon membership of the single market, or a contract being issued in the UK, or a contract being written on UK Law; the well-known taxation of life policy plans will persist until such time as specific legislation changes them.

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