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Luxembourg and Ireland lead Brexit race: experts

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Luxembourg and Ireland are the clear frontrunners in the race to win UK asset management business post-Brexit despite efforts by other fund hubs to attract firms, according to experts.

The UK government will begin the formal process of leaving the European Union today when Article 50 is triggered.

With no clarity on the future relationship between the UK and EU, "many" UK-based asset managers are in the process of setting up entities in Luxembourg and Ireland to protect themselves from the prospect of losing access to the single market, according to experts.

Fund firms at risk of losing the ability to sell their products or services under Ucits, the Alternative Investment Fund Managers Directive or Mifid regulatory regimes are "actively planning and establishing operations" in the bloc, they add.

M&G Investments, a large UK manager that did not have an EU base before the UK referendum result to leave the EU, is one such manager that has since set up a fund range in Luxembourg.

Camilla Spielman, legal director at Eversheds Sutherland, says Luxembourg and Ireland are the clear favourites.

She says: "[Other jurisdictions] are simply not considered, full stop. They are not on the landscape."

Despite efforts by countries such as France to lure business, Ms Spielman says Luxembourg and Ireland are attractive from a cross-border sales point of view.

Given that many firms already have a presence in Luxembourg or Dublin, the "thought process" is to expand on existing operations, she says.

For those setting up a new entity, location decisions will depend on the target market and "potential client base".

"There is a sense that Dublin is more appropriate for institutional fund sales and Luxembourg for retail," says Ms Spielman.

Owen Lysak, senior associate at Clifford Chance, says firms that want to protect their access to the EU are in talks with regulators in Luxembourg and Ireland.

“Many asset managers are having discussions with those regulators directly and getting ready to submit [an application],” he says.

Fund firms are approaching their contingency plans in a variety of ways but many do not want to leave the transfer of business until the last minute and will start implementing their plans once Article 50 is served.

Clients and investors will want certainty as to what Brexit solution and structure they are providing, says Mr Lysak.

Attilio Veneziano, founder of law firm Veneziano & Partners, says asset managers with a pan-European or global outlook will narrow their choice down to Ireland or Luxembourg when thinking about product manufacturing.

“In this case [of portfolio management], we are seeing managers trying to consolidate their presence in the domicile where they have their funds – again Ireland and Luxembourg,” he says.

It is in the area of sales under a Mifid licence, however, that Mr Veneziano believes there could be a divergence from these hubs.

“Malta I believe may be well placed for this,” he says.

Regulatory reasons have been cited as the “crucial” factor driving location decisions by firms. However, tax could also be a driver.

Mark Stapleton, a partner at Dechert, says firms’ decisions in respect of tax may will rest on the “level of presence” they need.

“The thing that is primarily Brexit driven is the marketing concern. It is not clear whether there is a need to do this. Some people are thinking about that,” he says.

Mr Stapleton says some people would consider Malta as a location because, at around 5 per cent or 6 per cent at the low end and roughly 35 per cent at the highest, it has a “good tax rate for individuals”.

Some firms are also considering France because of a tax exemption in place for highly paid individuals for their first five years working in the country.

However, France also has a 33.3 per cent corporate tax rate and a “very high” personal tax rate with social security contributions that could put some firms off from a staffing point of view.

If focused purely on corporate tax then Ireland, with a rate of 12.5 per cent, would appear “very well placed” along with its infrastructure and track record, says Mr Stapleton.

From a staffing point of view, however, the individual tax rate of 52 per cent at the highest rung is “high”, he says.

Luxembourg benefits from a “great tax and regulatory regime” for funds but could suffer from having a general corporate tax rate of roughly 29 per cent.

Alexander Cox, partner at Ashurst, says tax will be a driving factor but at this stage is less of a concern.

“Until there is some more clarity about how Brexit is going to affect the regulatory landscape people are looking at their options.

“[However], that hasn’t led in our experience to people doing anything other than building up a bit of a substance in Luxembourg or Ireland. [Firms] are still applying to have asset management licences in the UK,” he says.

James Burton, partner at Allen and Overy, says Ireland and Luxembourg are the “most high-profile” jurisdictions to set up business from an alternative fund perspective, with tax being a more secondary consideration.

“The regulatory requirements are more than front and centre.

“Firms just need to be happy that the tax fits in with that and doesn’t give rise to an adverse outcome rather than being a primary motivation for their choice,” he says.

Diala Minott, corporate finance partner at law firm Paul Hastings, says the Netherlands has also gained traction with asset managers.

“Many asset managers are ready to migrate funds into Europe and have worked for some time to get their [alternative fund managers] ready and approved.

“Most have chosen the jurisdiction where they will migrate their funds and the main jurisdictions we have seen selected are Luxembourg, the Netherlands and Ireland.

“Some regulators are providing a transitional arrangement for firms, which allows them to increase assets under management over a period of time and accordingly increase the presence in that jurisdiction over a period of time.”

Plans to bolster operations in Luxembourg and Ireland in the wake of Brexit come as concerns over potential regulatory arbitrage across Europe grow.

Esma chair Steven Maijoor said last week that the risk of regulatory arbitrage and need for regulatory convergence has become “even more prominent because of the Brexit issue”.

According to Mr Maijoor, “it is extremely important that the EU 27 do not compete on regulatory or supervisory treatment” as they seek to attract business from the UK.

The competition has intensified with Luxembourg and Ireland lashing out at other member states for deviating from supervisory and regulatory standards.

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