

Customs Bill: legislating for the UK's future customs, VAT and excise regimes Response by the Chartered Institute of Taxation

1 Introduction

- 1.1 We refer to HM Treasury's White Paper 'Customs Bill: legislating for the UK's future customs, VAT and excise regimes'¹ published on 9th October 2017.
- 1.2 As an educational charity, our primary purpose is to promote education in taxation. One of the key aims of the CIOT is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.
- 1.3 The paper gives rise to an unusually complex mix of legal and technical issues within equally complex political constraints. It is not our remit to enter into debate about the political constraints, but a lack of clarity around the political constraints makes the technical analysis somewhat more difficult. We have sought to consider the issues arising from the proposed Bill on their technical merits, but have noted the actual or potential political constraints where appropriate.
- 1.4 The key point, in our view, is that the lack of political certainty (and therefore, detail) around a negotiated settlement means that businesses are forced into preparing for the 'contingency scenario'² of the UK leaving the EU without an agreed customs arrangement. Alternatively, businesses have to 'wait and see', risking being severely underprepared for a sudden and severe change to the way cross border trade operates.
- 1.5 In our view, objectives for the tax system should include a legislative process which translates policy intentions into statute accurately and effectively, without unintended consequences and results in legislation which provides certainty, so businesses and individuals can plan ahead with confidence.

¹ Customs Bill White Paper, October 2017: <https://www.gov.uk/government/publications/customs-bill-legislating-for-the-uks-future-customs-vat-and-excise-regimes>

² Page 19, Customs Bill White Paper, October 2017

2 Executive summary

- 2.1 We welcome HMT's focus on frictionless trade and its recognition of the need for clarity and certainty, in order for businesses and other enforcement agencies to plan effectively for exiting the EU and the future.
- 2.2 The White Paper describes HMT's preferred route; an interim implementation period (with as little change as possible) followed by a 'highly streamlined customs arrangement' where a number of simplification and facilitative measures are adopted.
- 2.3 We strongly endorse the need for an implementation period to allow time for all involved to adopt necessary changes and move towards the end-goal of whatever final agreement is reached between the UK Government and the EU.
- 2.4 In the absence of any real detail, businesses have no option but to plan for the 'contingency scenario' of the UK leaving the EU without an agreed customs arrangement. Alternatively, businesses have to 'wait and see', risking being severely underprepared for a sudden and severe change to the way cross border trade operates. For certain sectors, the time for making decisions about future supply chains is imminent and we are aware of planned supply chains alterations to exclude the UK because of uncertainty.
- 2.5 We fully endorse the need for an interim period to allow time for all involved to adopt necessary changes and move towards the end-goal of the final agreement made between the UK Government and the EU.
- 2.6 We have concerns about the law-making process (whilst appreciating the unusual context in which this Bill is made) particularly around appropriate scrutiny and safeguards). The Bill will introduce primary framework legislation with much of the detail following in secondary legislation; giving wide powers to change primary legislation using delegated legislation such as Statutory Instruments.
- 2.7 We highlight the need for a distinction to be made between (1) the discussion around trade deals (tariffs, quotas, etc) and (2) the critical need for an agreement with the EU on the machinery (systems, infrastructure, information flows, etc). Without some form of cooperation on the machinery aspect, we have strong concerns about the UK's ability to continue operating in relation to cross border trade in the way it needs to if the Government's aim is to secure as frictionless trade as possible.
- 2.8 We continue to have concerns about the combined impact and timing of changes for the Indirect Tax sector with Making Tax Digital and Brexit planned for March / April 2019. Will business be able to cope? Will HMRC?

3 Business needs certainty now in order to plan for exit day

- 3.1 This paper gives a clear indication of HMT's preferred options (an implementation period followed by the highly streamlined customs arrangement). However, this message is undermined by the political debates playing out in the media.
- 3.2 This paper is a wish list with little detail. We understand that until the negotiations progress and a deal has been agreed by both the UK and the EU, the detail will be lacking.

- 3.3 However, with less than 18 months to go until Exit Day in March 2019, this leaves businesses and their advisers (and HMRC) in the difficult position of having to prepare for the ‘contingency scenario’³ of the UK leaving the EU without an agreed customs and trade arrangement. Alternatively, businesses have to ‘wait and see’, risking being severely underprepared for a sudden and severe change to the way cross border trade operates.
- 3.4 Members report examples of businesses already altering supply chains as it is the only way at present to plan with any certainty. For example, stock currently sold from the UK to European customers will now be warehoused within the EU to service that market (never reaching the UK) in order to avoid the potential barriers to trade that cannot be predicted. Certain manufacturers are reviewing supply chains to find the pinch points where parts cross into and out of the UK as part of an integrated supply chain and are seeking to eliminate / reduce this.

4 Time limited Implementation period

- 4.1 We fully endorse the need for a transitional period and consider this to be only realistic way for business, advisers and Government departments to cope with the volume and complexity of changes that leaving the EU is likely to demand.
- 4.2 It should be noted that Making Tax Digital is also requiring substantial changes to record keeping, VAT reporting and submission at the very same time as the Article 50 period is due to end – March / April 2019. This means that internal resource and external advisers in the Indirect Tax sector are being asked to cope with a huge amount of change without any detail, as yet, on which to make plans for systems, processes, etc.
- 4.3 In particular, we strongly support the government’s keenness to explore with the EU a model that would ensure businesses in the UK and the EU only have to adjust to a new customs relationship once; as much as this is possible.

5 The proposed Customs Bill

- 5.1 We understand the Customs Bill is to be published before the end of 2017 and we look forward to commenting on it in detail at that stage.
- 5.2 HMT acknowledges that, “the Customs Bill, **and the secondary legislation** made under it, **must be in place with sufficient notice** to support the implementation of a new, standalone regime and ensure that the excise and VAT regimes function effectively on the day the UK leaves the EU.”⁴
- 5.3 We have received assurances that the Bill is largely in line with the Union Customs Code (the basis of the EU Customs union). However, Para 4.1 of the White Paper states that “The Customs Bill does not presuppose any particular outcome from the

³ Page 19, Customs Bill White Paper, Oct 2017:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/650459/customs_bill_white_paper_web.pdf

⁴ Para 3.1 Customs Bill White Paper, Oct 2017: <https://www.gov.uk/government/publications/customs-bill-legislating-for-the-uks-future-customs-vat-and-excise-regimes>

negotiations with the EU”; highlighting the unusual and challenging objective of this piece of legislation, with a pressing deadline.

- 5.4 We acknowledge the predicament of needing to begin the legislative process before knowing the outcome of negotiations. However, we have concerns around the limited level of scrutiny that this law-making process allows, given the political uncertainty, the potential for large-scale changes and tight timescales.
- 5.5 The Bill will, we understand, have the powers to amend primary legislation using secondary legislation; raising similar concerns around delegated powers as with the EU Withdrawal Bill.
- 5.6 In common with the EU Withdrawal Bill, we question what happens to disputes arising from now until Exit Day – which may be identified after Exit Day? Whilst it seems logical that these would fall under the ‘business as usual’ UCC rules, which jurisdiction would oversee such disputes and what rights and remedies will be available?

6 The preferred option – Highly Streamlined Customs arrangement

- 6.1 HMT’s preferred option (paras 5.8-5.14) introduces customs formalities to UK-EU trade but would seek to minimise these additional requirements as far as possible. For example:
- continued waiver from entry and exit summary declarations;
 - remaining a member of the Common Transit Convention (CTC) meaning that goods do not need to complete import and export declarations each time they cross a new border;
 - the Government will seek mutual recognition of Authorised Economic Operators (AEOs);
 - bilateral implementation of a technology-based solution for roll-on, roll-off ports.
- 6.2 We support the adoption of these simplification procedures, including presentation waivers, use of the CTC and self-assessment.
- 6.3 We urge HMT to focus on what is realistically achievable. For example, the EU plans for law reform until 2025 have already been set out and are unlikely to be amended without further budgetary provision and agreement, which is unlikely to be forthcoming on the EU side. The EU27 has its own timetable for customs changes that have been agreed as part of the UCC implementation and those plans do not include any “exit” scenarios. Changes to the UCC timetable would require Commission sponsoring involvement, which is unlikely. The best we can reasonably hope for is that the EU keeps to its deadlines for implementation of the UCC.
- 6.4 However, some of these planned changes fit with a two-ish year transition for the UK, eg information sharing to be introduced in 2021.
- 6.5 Listed below are some ideas and issues that we believe should be considered alongside this option.

7 Less favourable option – ‘new customs partnership’

- 7.1 This is the concept of a virtual border where the UK, acting in partnership with the EU, operates a regime for imports that aligns precisely with the EU's external customs border, for goods that will be consumed in the EU market (even if they are part of a supply chain in the UK first).
- 7.2 The Government acknowledges that this is an innovative and untested approach that would need to be discussed further with the EU and businesses. As such, HMT states the Customs Bill could not be drafted to specifically provide for the implementation of this outcome.
- 7.3 We believe that the focus should be on what is realistic and achievable within the constraints of time and resource.

8 Leaving without a negotiated agreement – ‘contingency scenario’

- 8.1 In a contingency scenario where an interim period cannot be agreed, customs declarations would be required for UK-EU trade once the UK leaves the EU.
- 8.2 The scale of change that UK businesses and Government Departments would need to undertake in this scenario is overwhelming.
- 8.3 For example, there are between an estimated 130,000-80,000 traders that currently trade only with the EU who would be subject to customs declarations and customs checks for the first time. Certain goods may require import or export licenses, and traders exporting to the EU would have to submit a Single Administrative Document and an Entry Summary Declaration (with additional documentation for regulated goods). The SAD alone consists of eight parts with 54 boxes. Imported goods would be liable to customs duty and import VAT.
- 8.4 Infrastructure, resource, regulatory governance and security systems are required to be in place in order for overseas trade to continue. As well as information systems to gather and report the necessary data.
- 8.5 For example, para 5.36 explains the need for carriers to pre-notify safety and security declarations for imports and exports. In order to facilitate this, work needs to be underway on sourcing the necessary staff, premises, lorry parks, IT systems, etc that would be essential in preventing gridlock at ports and other delays to trade.
- 8.6 Of course, the other EU countries also need to have infrastructure in place for the 2-way process of imports and exports to work effectively.

9 Collaboration across Government and with other countries

- 9.1 To achieve the aim of frictionless trade (as far as possible) a joined-up approach from all the government departments and related agencies operating at the frontier will be required. How and when data is received and shared will be key, together with new technology (eg automatic number plate recognition).

- 9.2 We seek reassurance that this level of collaboration is happening across the relevant Government Departments.
- 9.3 To help strengthen this collaboration, we would like to see, for example, the Border Force represented at the JCCC Customs Brexit sub-group meetings to ensure a more visible level of collaboration.
- 9.4 When importing and exporting there are, at least, two countries involved meaning that even if the UK is fully prepared we will also be reliant on the other country to facilitate the movement of goods.
- 9.5 Belgium, Dutch and French Customs (as the main cross channel port reciprocal countries) will also need to make changes to their systems to accommodate UK imports and exports and this is likely to require involvement and direction from the European Commission: they have budgetary issues too.
- 9.6 We are concerned to hear that a number of EU countries rely on the UK to get information on the UCC and Brexit so the impression at this stage is that other countries do not know of any details so are, presumably, unable to make plans. Have there been bilateral discussions with any other tax authority to date?

10 Authorised Economic Operator (AEO)

- 10.1 We have received mixed views from our members on the benefits and effectiveness of AEOs and what would be the preferred option for the future. In general, our members acknowledge the need for mutual recognition of AEOs in order to facilitate a transition period and work within a compatible arrangement. However, going forward, there are changes that some members would like to see.
- 10.2 The White paper considers an AEO 'lite' model in relation to Northern Ireland (Para 5.24) and this has received a mixed response from our members. Some consider this to be a sensible and pragmatic approach to the Northern Ireland border issues and would even like to see this rolled out further; potentially to trade with the remaining EU 27 and to the SME sector.
- 10.3 In contrast, some members do not wish to see any watering down of AEO if it means that the UK would or could not obtain mutual recognition with the US C-TPAT and the EU in the future. This is particularly relevant to security standards and requirements in the food industry. They would like some assurance that it would be something separate and distinct from AEO accreditation.
- 10.4 We feel there needs to be some clarity and distinction between the AEO(C) and AEO(S). Currently AEO(C) grants you access to customs simplifications, potentially including self-assessment, whilst the Government could offer AEO(S) holders assurances that there would be no intervention from any of the other agencies at the border, with any documentation being filed or presented post clearance to the relevant agencies. This might mean that certain sectors (pharma, food, defence, etc) will need additional checks during the accreditation process, which HMRC would perform as agent for the other Departments.
- 10.5 Mutual recognition of AEOs seems to be an admirable aim. Mutual recognition of AEO(S) (security) is understood internationally. Mutual recognition of AEO(C) (an EU concept) and AEO(C) lite (a talking point concept relating to disparity of scrutiny of

applications by EU customs authorities and disproportionate controls from Customs Freight Simplified Procedures) needs to be explored further.

11 Self-assessment

- 11.1 We are of the view that self-assessment is key to facilitating as frictionless as possible import / export procedures, perhaps linked with AEO(C) status.
- 11.2 In relation to import VAT, we would like to see postponed accounting (the reverse charge) available to businesses; perhaps those that have been granted self-assessment. We understand this already to be available in some other European Countries.
- 11.3 We suggest that the Intrastat form could be converted into some form of self-assessment clearance return; utilising a process that is already embedded within VAT self-assessment.
- 11.4 In the longer term, fiscal controls and any settlement of duty will need to be automated and/or handled away from the frontier for most shipments.
- 11.5 It seems likely that there will need to be some form of customs clearance mechanism away from the borders (as there is insufficient infrastructure at the borders to deal with the significant increase in customs declarations). One aspect of this yet to be discussed is the burden this will create for business, especially in relation to sanctions for errors.
- 11.6 There are bound to be sanctions for non-compliance, but a balance will have to be struck so that business does not take a disproportionate burden of risk. A light touch will be needed as new regimes are introduced.

12 Northern Ireland border

- 12.1 HMT's suggestion of a cross-border trade exemption for Northern Ireland (para 5.23) seems a pragmatic response and we would support this. Some members would like to see this exemption extended further – to all borders or all EU27?

13 Small Businesses

- 13.1 Many SMEs may have never prepared documents for a Customs exit or entry clearance. They may need a "light" regulatory touch to ease them into Brexit and any transitional plan. There are often quite different needs faced by the SME sector; there will be a lack of experience, staff or resources to suddenly deal with significant changes, procedures or paperwork.
- 13.2 AEO status should be available to a wide range of businesses, especially in the SME sector. It may be that SMEs struggle to obtain AEO status and would, therefore, be adversely affected by onerous customs procedures. We suggest that it may be necessary to have an AEO lite status for SMEs, at least initially.

14 Small parcels

- 14.1 The White Paper refers to small parcel consignments which we appreciate is a revenue protection issue for HMRC. We will examine the details of this when published.

15 Customs Declaration Services (CDS) – concerns re delivery?

- 15.1 Not explicitly referred to in the White Paper, the successful delivery of the CDS system is critical for a workable transition from the UCC. What is the latest position in relation to the project timetable?

16 Tax Advisers / Agents

- 16.1 Much of the machinery around trade facilitation is reliant on the private sector playing its part. Businesses often use advisers to make sense of changes and assess the risk and impact they face.
- 16.2 We advise HMT and HMRC to engage openly with the private sector and relevant bodies as, in particular, tax advisers and agents will play an important role in assisting businesses to transition.

17 Making Tax Digital

- 17.1 March / April 2019 is the planned date for the UK to leave the EU and for MTD for VAT to go live. The scale of change for Indirect Tax is overwhelming. It will often be the same internal resource dealing with both and, with less than 18 months to go, there are no firm details for either MTD or Brexit to allow businesses to plan ahead. Will business and HMRC be able to cope?

18 Future vision – what changes might the UK adopt?

18.1 *Resiling from certain UCC requirements?*

Whilst we expect the Customs Bill to largely replicate the UCC, we are aware that there were aspects of it that the UK reluctantly had to accept. Some members would like to see a commitment from the Government to a future review of the Customs Bill with a view to resiling those particular areas, eg additional customs guarantee requirements (which HMRC strongly opposed at the time) as these add a significant burden to smaller businesses.

18.2 *AEOs*

In the longer term – we would support a future scheme being simplified, made more meaningful and crystallising some real benefits such as simplified procedures, presentation waivers and guarantee waivers. The application process could also be made simpler.

18.3 Tariffs – methodology of calculation

Whilst appreciating that Tariff rates will be negotiated as part of the trade negotiations, we urge HMT to consider a more straightforward methodology for calculating duty on certain ranges of products should the UK not reach duty-free agreement with the EU.

- 18.4 For example, duty calculations for the food sector can be very complex. Referred to by the Commission as "composite agrigoods", detailed analysis is required to identify the milk fats, milk protein, starch and sucrose contents in order to arrive at a measuring code, which in turn, determines a fixed rate per 100kg. This is a costly exercise, whether done in-house or with a laboratory, particularly as a product will need to be reviewed again when the recipe is changed.

19 Acknowledgement of submission

- 19.1 We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

20 The Chartered Institute of Taxation

- 20.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT's 18,000 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

The Chartered Institute of Taxation
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