

## Introduction of a UK carbon border adjustment mechanism from January 2027

### Response by the Chartered Institute of Taxation

#### 1 Executive Summary

- 1.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our 20,000 members, and extensive volunteer network, in providing our response.
- 1.2 The CIOT broadly agrees that the introduction of a carbon border adjustment mechanism (CBAM) will encourage behavioural change to reduce carbon leakage by incentivising a move to less carbon-intensive production methods.
- 1.3 We note however, that this will bring costs to affected businesses; the financial burden of the tax itself as well as the costs of in-house resources and that of external parties, for verifications and professional advice. The costs of the tax and of the resources to remain compliant in its administration will place a disproportionate burden on smaller businesses.
- 1.4 Businesses would like certainty at the earliest opportunity on the CBAM reporting position for imports of CBAM products into Northern Ireland.
- 1.5 To ensure compliance with the HMRC Charter, we would like businesses to be able to use a tax agent to assist with the preparation and submission of CBAM registration applications and not just with CBAM return submissions.
- 1.6 We are concerned that the proposed rolling 365-day period for the 'look-back' CBAM registration test is overly burdensome, and should be aligned with the monthly registration tests used for VAT or plastic packaging tax.
- 1.7 We would like see the deregistration rules expanded to accommodate further reasons to deregister such as the sale or cessation of business.

- 1.8 We would like to see a penalty regime developed for deliberate non-compliance with CBAM reporting requirements to dissuade bad actors from evading CBAM fiscal obligations.

## **2 About us**

- 2.1 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. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.
- 2.2 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.
- 2.3 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.
- 2.4 Our members have the practising title of ‘Chartered Tax Adviser’ and the designatory letters ‘CTA’, to represent the leading tax qualification.

## **3 Introduction**

- 3.1 We welcome the opportunity to respond to the consultation, ‘Introduction of a UK carbon border adjustment mechanism from January 2027’, which seeks views on proposals for the design and administration of the UK carbon border adjustment mechanism (CBAM). The government’s aim for the CBAM is to effect behavioural change to reduce carbon leakage by incentivising a move to less carbon-intensive production methods.
- 3.2 Our stated objectives for the tax system include:
- A legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences.
  - Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
  - Greater certainty, so businesses and individuals can plan ahead with confidence.
  - A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).
  - Responsive and competent tax administration, with a minimum of bureaucracy.
- 3.3 We note that the introduction of new taxes and the costs of the resources for its ongoing administration place a higher burden on smaller businesses.

#### **4 Chapter 5 - Applying the UK CBAM**

**4.1 Question 4: Do you agree that scrap aluminium, scrap glass and scrap iron & steel do not pose a carbon leakage risk and should not be within scope of the CBAM? If not, please provide evidence to support your response.**

4.2 We agree that scrap goods or offcuts only suitable for the purposes of recycling, should not be within the scope of the CBAM.

4.3 We note that in the past, HMRC has set up taskforces to target the scrap sector due to increased risks with tax fraud. Whilst imports of scrap products are proposed to be free from CBAM charges, HMRC should consider what risk areas arise could arise via this CBAM-free import route, such as opportunities for the diversion of CBAM materials misclassified on import as scrap product, and how such risks would be managed. We comment on the penalty position for cases of fraud in our response to question 41 (paragraph 6.31).

#### **5 Chapter 6 - Calculating the UK CBAM liability**

**5.1 Question 5: Do you agree that the government's definitions of 'direct' and 'indirect' emissions accurately describe the embodied emissions a CBAM ought to place a carbon price on, in line with those emissions within scope of the UK ETS? If not, please explain why not.**

5.2 We agree with the definition descriptions set out at paragraph 6.08 of the consultation document.

**5.3 Question 6: Do you foresee any issues with calculating the emissions associated with precursor goods in CBAM goods? Please provide evidence to support your response.**

5.4 Where precursor goods are imported as opposed to sourced from UK suppliers, we would anticipate that it may be more difficult for businesses to obtain the relevant data necessary from the overseas supplier, particularly where there are multiple overseas parties in the supply chain, but we do not have further evidence to comment on this.

**5.5 Question 9: Do you have views on how a percentage based mark-up (in addition to global average emissions weighted by production volumes of embodied emissions intensities of the UK's key trading partners) could impact the use of default values and actual reported emissions data? Please outline.**

5.6 We agree in principle that a percentage based mark-up could reduce the risk of under-pricing of default values as set out in paragraph 6.21. We note that increases to published default values by means of applying a percentage based mark-up would create uncertainty for businesses in being able to plan and budget for CBAM costs beyond any pricing review periods. Although the consultation document indicates at paragraph 6.27 that initial default values will be used for the period 2027-2030, it is not currently known how frequently the mark-up adjustments would be reviewed in this timeframe.

**5.7 Question 10: Do you have any initial views on the considerations and/or aims of a future review into the use and functionality of default values? Please outline.**

5.8 We would support a future review into the use and functionality of default values and appreciate that it will be a developing policy area not only in the UK but other jurisdictions.

5.9 **Question 18: Do you agree that the CBAM rate calculation set out a fair reflection of the price paid in the production of goods in UK? If not, please explain why not.**

5.10 We agree that the principles used to determine the calculation basis appear to be fair.

5.11 **Question 19: Does setting a CBAM rate for each sector on a quarterly basis strike the right balance between tracking the UK ETS market price and giving importers certainty for financial planning? If not, please explain why not.**

5.12 We agree that using quarterly rates provides a straightforward, consistent approach.

5.13 **Question 28: Do you agree that where a CBAM good has been subject to multiple carbon prices, the total carbon price can be offset from the UK CBAM liability? If not, please explain why not.**

5.14 We agree that the total carbon price should be offset from the UK CBAM liability.

## 6 Chapter 7 - Administration, payment and compliance of the UK CBAM

6.1 **Question 29: Do you foresee any difficulties with the arrangements for where the tax point arises, including which rates will apply? Please explain where you have any difficulties with the proposed policy.**

6.2 We agree with the proposed tax points set out at paragraph 4.04 of the consultation document as they align with the tax point rules for other taxes due at import such as VAT (where postponed VAT accounting is not used) and customs duty, which importers of CBAM goods will already be familiar with. Having aligned tax point rules for imported products across numerous indirect taxes simplifies the position for businesses, advisers and HMRC officers.

6.3 **Question 30: Do you foresee any risks with our proposal to base the CBAM liability on the CBAM good which is processed into a non-CBAM good before it is released into free circulation? Please explain the risks.**

6.4 We anticipate that there may be difficulties in obtaining all of the correct CBAM data from the supplier of the non-CBAM goods, particularly where this supplier purchases via complex supply chains, which may include purchases of CBAM goods from other international suppliers.

6.5 **Question 31: Do you agree that the proposal for designating the liable person is appropriate or are there likely to be unintended consequences? If you do not agree, please explain your reasons.**

6.6 Whilst we agree with that the responsibilities for registration, submission and payment of returns remains with the liable person, we note that it is proposed that a tax agent may only be appointed for the submission of returns and the consultation document is silent on whether an agent may complete the registration on behalf of the liable person, though we suspect not, as is the case for other indirect taxes (except VAT). The HMRC charter indicates that a business may appoint an authorised person to act on their behalf so we would like to see CBAM registrations included within the scope of an agent's services.

6.7 **Question 32: Do you agree that there should be a minimum threshold below which a person should not be required to register for the CBAM? If not, please explain why not.**

6.8 We agree with having a minimum threshold that balances capturing the bulk of CBAM imports whilst removing the obligation to register for the CBAM for smallest importers or infrequent importers of CBAM products,

thereby removing the disproportionate administrative and fiscal burden for these businesses that may not have either the internal resources or capacity to pay for professional advice.

- 6.9 HMRC should consider if there is any risk from disaggregation to avoid the CBAM by diverting multiple imports of CBAM products via associated businesses, which would cumulatively exceed the minimum threshold. If a risk is identified and rules introduced, we would recommend that they are aligned as far as possible with the existing disaggregation rules for VAT.
- 6.10 **Question 33: Do you agree that an annual value of £10,000 is an appropriate level at which to set the minimum threshold? If not, please explain where you think it should be set and your reasoning.**
- 6.11 The CIOT does not comment on the setting of rates or setting the value of thresholds. We note however that the minimum threshold is a cumulative amount covering all of the different CBAM product types rather than a threshold for each type of CBAM product. While a business may be a frequent importer of one or more of the CBAM products, we anticipate that there may be an increased risk of errors for infrequent or low value imports of non-routine CBAM products. The government may wish to consider whether an additional low value threshold should apply to ad hoc imports of CBAM products that are outside of the normal business model, where businesses may have increased difficulty in obtaining CBAM data retrospectively on ad hoc small value imports from non-routine suppliers.
- 6.12 **Question 34: Do you agree with the tests set out in Figure 15 for assessing whether a person has met the minimum threshold? If not, please explain how you think the threshold should be assessed.**
- 6.13 We agree with the 'next 30 days' test in Figure 15; it aligns with the long standing next 30 days test for VAT registration so will be familiar to businesses and tax advisers.
- 6.14 Whilst we agree in principle with a look back test over the previous year, the current proposal of a rolling 365-day period would require constant daily monitoring for businesses when they near the threshold, which seems over burdensome. There is no clear reason stated in the consultation document as to why this look back test has been proposed as a daily test, and not aligned with the monthly look back test for VAT registration or Plastic Packaging Tax. We would anticipate that there would be increased error working out the right registration date when having a rolling daily registration threshold, particularly as businesses would need to be clear on the dates that products were brought into free circulation rather than the date of their import.
- 6.15 **Question 35: Do you consider the registration and deregistration requirements set out above to be appropriate? If not, please specify why not.**
- 6.16 We agree with the proposed effective date of registration set out at paragraph 7.13, though note our comments above in respect the look back test in question 34 at our paragraph 6.14. Further, we agree that having a 30 day notification period is acceptable and aligns with other indirect tax notification periods.
- 6.17 Whilst we support having a clear indication of the data required for registration at paragraph 7.14, we anticipate that for some businesses it may take longer than 30 days to obtain all of the data for the tonnage of goods imported for each CBAM commodity code over the previous 12 months, particularly when the test for registration is value based. The government may wish to consider whether the tonnage information is something that must be declared at the time of notification of a registration, or if the registration application may still be submitted on time without it for businesses that need more time to obtain this data, particularly as HMRC state at paragraph 7.15 that they may take some months to process CBAM registrations in the first year.

- 6.18 Feedback from some members has indicated that for plastic packaging tax, data gaps have been the cause of some delayed registrations or failure to register, so the CBAM policy team may wish to consult with the plastic packaging tax team to discuss these experiences.
- 6.19 The proposals for tax accounting periods in paragraph 7.16 appear reasonable.
- 6.20 We are concerned that the deregistration rules at paragraph 7.17 appear restrictive, only allowing deregistration in cases of error or after four consecutive quarterly returns with no liability. Where a business continues to trade but no longer imports CBAM materials, it seems reasonable to submit four nil returns to ensure that no CBAM liability becomes due on imports for that period. However, there will be other reasons that a business may need to deregister more quickly, for example (but not limited to), when a business is sold or transferred as a going concern and the seller ceases to trade; when a sole trader retires or dies, when a business is dissolved following the cessation of trade. We recommend that the deregistration rules accommodate more examples to reflect normal business circumstances.
- 6.21 **Question 36: Do you foresee any difficulties with the arrangements set out for completing and submitting returns, including the content required on the return? If so, please specify the difficulties and why they would arise.**
- 6.22 The return data requirements that are largely within the control of the importer should be straightforward to compile as they will already be required for the customs import declaration, that is, the commodity codes, dates of imports, and many (but not all) weights. The ability to use a default value where a business is not able to ascertain the total carbon emissions by the deadline allows for this data to be completed on time but there is a risk that the default value may be more expensive than the actual carbon emissions price. Businesses may be able to retrospectively adjust earlier declarations once the data is available but this would take internal resource to administer, creating further cost. Where there are delays in being able to determine and evidence any effective overseas carbon price, this too would become a cost to businesses if they cannot subtract this value from the CBAM due, and the resource cost of making retrospective adjustments may outweigh any benefit of providing the accurate data.
- 6.23 **Question 37: Do you think that allowing 5 months from the end of the first accounting period until returns are due allows sufficient time for a liable person to obtain data about the carbon content of their CBAM goods? If you think a different period should operate, please explain why.**
- 6.24 In principle, five months would appear to be a reasonable amount of time to prepare the first return covering the whole of 2027 and to obtain the data.
- 6.25 **Question 38: Do you agree with the proposal to move to quarterly accounting period from 2028 and, if not, why not?**
- 6.26 We support the change to quarterly reporting in 2028.
- 6.27 **Question 39: Do you foresee any difficulties in moving to a system of four fixed accounting periods a year from 2028, with returns/payments generally due a month later? If so, please explain your concerns and any suggestions for dealing with those concerns.**
- 6.28 In principle, as businesses will have reported for the annual CBAM return covering 2027, procedures should be in place to capture the data. There may be difficulties for some businesses to obtain the tonnage value where such information is not required for the customs duty import documentation, and particularly where such product is purchased from a new supplier. The business may well be able to calculate and pay the correct

amount of CBAM on time but could be prevented from submitting a corresponding return due to missing weight data in the month following the submission period.

**6.29 Question 40: Do you consider that HMRC's approach to enforcement powers and penalties is appropriate? If not, please specify why.**

6.30 We support the proposals at paragraphs 7.26 to 7.30 of the consultation document that intends that the CBAM compliance and penalty regimes be aligned where possible with other indirect taxes. We also agree with aligning the CBAM penalty regime with the penalty points system that was introduced for VAT for late submission of returns or late payment. Having aligned penalty rules across taxes simplifies the position for businesses, advisers and HMRC officers.

6.31 We also support the introduction of a general penalty for non-compliance specific to CBAM, and that they are comparative to the ETS and penalty values applicable to other taxes. As CBAM will be an entirely new tax, we would like to see an initial light touch approach for a suitable period, where HMRC focus on education rather than punishment for non-deliberate behaviour.

**6.32 Question 41: Do you have any other concerns or suggestions around potential compliance risks? Please outline.**

6.33 We note that at paragraph 7.31 of the consultation document it states that the government will consider introducing criminal offences for a liable person who is knowingly involved in the fraudulent evasion of the CBAM. It is not clear why this is presented as being 'considered' whilst other penalties are set out as intentions. In our experience, there are always a minority of bad actors that will set out to defraud the tax regime, and there appear to be opportunities to do that in the CBAM regime, for example, deliberate misclassification. We recommend that a suitable penalty regime for deliberate non-compliance is developed.

6.34 Businesses would like certainty at the earliest opportunity on the CBAM reporting position for imports of CBAM products into Northern Ireland.

## **7 Acknowledgement of submission**

7.1 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.

The Chartered Institute of Taxation

13 June 2024