

The Cross-Border Trade Bill

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One would have thought that the Cross-Border Trade Bill, which received its first reading in the House of Commons on 20 November, would be keenly scrutinised, as the underlying issue which it should address - how the UK will trade with the EU and the rest of the world post-Brexit - is one of the two most important economic Brexit issues (the other being immigration). Everyone wants to know what type of trade deal Britain will secure with the EU.

Unfortunately, but perhaps unsurprisingly, the Bill does not really give any clues as to what the trade deal might look like. The Bill simply provides the framework on which, post-Brexit, the UK's import duty, excise duty and VAT regimes for cross-border transactions will hang. It is drafted to allow a hard Brexit, should that be what is required, but also to allow most softer Brexit variants as well.

Import Duty

Import duty - the duty charged on bringing goods into the United Kingdom - is currently an exclusive competence of the EU. The same tariffs are imposed on goods imported from outside the EU by all member States and no tariffs are imposed within the EU.

The majority of the Bill (together with various sets of regulations) will therefore provide the UK with its own import duty regime for the first time

since 1973, as there is currently no relevant UK legislation.

The import duty provisions are broadly based on the existing EU regime, apply to all future importations of goods and purport to apply the same rate of duty regardless of the country of origin of the goods. The Government is then given exceptionally wide-ranging powers to make changes by regulation that are considered to be appropriate in consequence of, or otherwise in connection with, Brexit. Such regulations may therefore amend primary legislation (including the Bill itself).

Given these extensive powers, it can be seen that the Bill does not really inform us about the post-Brexit shape of the import duty regime; it is no more than a starting point.

Excise Duty

Excise duties are imposed on certain categories of goods such as alcohol and tobacco. The objective of the excise duty provisions in the Bill is again to create a fully self-standing excise duty regime post-Brexit. Again, the Bill does not give us any clear indication of what this regime will look like, given the extensive powers to amend it by regulation as the Brexit negotiations progress.

VAT

The UK already has a self-standing VAT regime with its own charge to tax, and so the VAT provisions of the Bill are much shorter. They simply adapt the existing VAT regime to a post-Brexit environment, by making two changes.

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First, the new VAT regime will no longer distinguish between a cross-border movement of goods or services involving an EU member state and a cross-border movement involving a non-EU country.

For goods, this will mean that an import of goods from an EU member state incurs a charge to import VAT on arrival of the goods at the UK port of entry, in the same way as if those goods emanated from outside the EU. Conversely, all exports of goods, without regard to their destination or the identity of the customer, will be zero-rated. At present, the zero-rating of an export of goods from the UK to the EU is effectively restricted to exports to business customers.

Similarly, most supplies of services made to a business person, whether established in the EU or established elsewhere, are effectively zero-rated; and that will not change. Cross-border supplies of services to a non-business person in the EU (such as most consultancy and professional services) will become zero-rated.

Secondly, the Bill also disapplies any EU VAT regulations or other directly effective EU VAT law post-Brexit, although the Principal EU VAT Directive may continue to be “relevant for

determining the meaning and effect of the law relating to Value Added Tax” and the “abuse of rights” doctrine of EU VAT case law (the *Halifax* principle) is preserved.

The VAT provisions in the Bill come into force only if and when regulations are made specifying their commencement date, and the Explanatory Notes indicate that this may never happen, depending on the ultimate outcome of the Brexit negotiations. If, for example, the future trading relationship between the UK and the EU was an arrangement broadly similar to the current Single Market and EU Customs Union, only minor changes to the current UK VAT regime would actually be needed.

Conclusion

Whilst the Bill reminds us that, post-Brexit, a materially different import duty, excise duty and VAT regime could well apply to businesses engaged in cross-border trade, the Bill itself does not provide much clarity of what the final regime will look like, as this will depend on the final outcome of the Brexit negotiations. The Bill is simply good preparatory work to enable the relevant regimes to be brought into effect in short order as and when they are required.

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