Brexit update: Why we should all pay attention to the ‘Customs’ Bill

General Features **Indirect Tax**

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The CIOT has commented on the Taxation (Cross-border Trade) Bill. Whilst commonly known as the ‘Customs Bill’, it also significantly impacts VAT and Excise law. The CIOT has strong concerns about the government’s approach and the wide use of delegated powers.

Published on 21 November 2017, this Bill relates to customs, VAT and excise and gives ministers unprecedented power to create tax legislation with very limited opportunity for scrutiny. The powers are extraordinary, without time limits and of deep concern to us. The government’s decision to hastily redraft UK customs law ahead of Brexit will, we believe, lead to unnecessary uncertainty for business and runs counter to the government’s stated policy of simply incorporating existing EU law into UK law at the time of our departure from the EU.

The CIOT has set out its views in a submission sent to the public bill committee considering this Bill.

We question whether a rewrite of customs law or such unprecedented delegation of power is necessary to implement Brexit. Instead, we have suggested that, by mirroring the approach of the EU (Withdrawal) Bill and giving effect to the EU’s Union Customs Code (plus a limited number of amendments required to reflect the UK’s departure from the EU) as the starting point for a post-Brexit customs system, a great deal of uncertainty and possible litigation could be avoided. See our press release.

The extensive use of statutory instruments (particularly under the negative procedure) will result in tax policy making by ministers’ discretion. We call for greater parliamentary scrutiny and further consideration of the combined impact of Making Tax Digital (MTD) for VAT with these changes; both are due to come into

force within days of each other in March/April 2019.

Engaging with policy makers

In December, a customs focussed roundtable event was held in Parliament to inform the wider debate over the Customs White Paper and Taxation (Cross-border Trade) Bill, with the ultimate aim of contributing to a customs system post-Brexit that works for all those concerned with it. This resulted in the CIOT's work being quoted in parliamentary debates several times.

The CIOT's customs spokesman, Jeremy White, gave oral evidence to the Public Bill Committee in January along with other customs experts, business representatives and witnesses. A summary of the proceedings can be found in our blog.

Additionally, CIOT representatives specialising in customs, VAT and legal matters met with members of HM Treasury's customs policy team and HMRC's Exiting the EU and legislation teams in January to discuss the Bill and the concerns we have.

Additional points

In our submission we also:

- Strongly endorse the need for a transitional period as close as possible to the status quo as the only realistic way for businesses, their advisers and government departments to cope with the volume and complexity of changes because of Brexit;
- Note the combined impact and timing of the changes for the indirect tax sector with MTD and Brexit both planned for March/April 2019. Businesses will be faced with too many changes simultaneously and the government should consider relaxing the MTD timetable to reduce the impact on businesses at this critical time;
- Argue for a 'light' regulatory touch to assist the many SMEs who have never prepared documents for a customs exit or entry clearance;
- Urge the government to follow through on the Autumn Budget 2017 promise that it will recognise the importance of postponed accounting arrangements for import VAT;
- Emphasise the need for HMRC to get the substantial extra resources they need to cope with Brexit. Post Brexit the volume of declarations required annually is

expected to rise from 50 million to 300 million declarations. A successful and timely delivery of HMRC’s new Customs Declaration Service (CDS) is critical for a workable transition from the Union Customs Code.

However, the key point, in our view, is that the surrounding political uncertainty means there is a lack of meaningful legal and technical detail; leaving businesses, advisers and government unable to plan adequately or with confidence for the changes that might be necessary in 13 months’ time, on expiry of the Article 50 deadline.

What next?

We will continue to liaise with HMT and HMRC to explore the impact of evolving policy and secondary legislation. We hope to know more detail about transitional arrangements at the end of March although this is dependent upon the Brexit negotiations. Member’s views are always welcome.