An Roinn Airgeadais
Department of Finance

Brexit Readiness – Taxation and Customs Issues
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Contents

1 Introduction

The decision of the United Kingdom (UK) to leave the European Union (EU) presents uniquely significant and unprecedented political, economic, social and diplomatic challenges for Ireland, given the extent of the inter-connectedness of the economies and people. Ireland's priorities have remained consistent throughout the process. Ireland's unique issues and concerns have been fully understood by the EU27 and have been to the fore of the EU's negotiating approach.

The UK formally left the EU on 31 January 2020, in accordance with the Withdrawal Agreement concluded between the EU and the UK. The Withdrawal Agreement also included a dedicated Protocol on Ireland/Northern Ireland. The Protocol on Ireland/Northern Ireland upholds measures to protect the Good Friday Agreement and the gains of the Peace Process, to avoid a hard border on the island of Ireland and to protect the integrity of the Single Market and Ireland's place in it. It also recognises the Common Travel Area, maintains continued North South cooperation and the Single Electricity Market and reaffirms the EU and UK commitment to the PEACE PLUS programme. It also includes commitments to ensure no diminution of rights, safeguards and equality of opportunity, as set out in the Good Friday Agreement.

In addition, the EU and the UK signed a Political Declaration setting out the Framework for their Future Relationship. The Withdrawal Agreement provides for a transition period which runs until 31 December 2020. During transition, the status quo is effectively maintained but without UK participation in EU institutions and governance structures. The deadline for extension of the transition period has now passed without a request for extension being made.

Ireland has consistently supported the closest possible relationship between the EU and the UK in the strategic interests of Ireland, North and South, and Irish-British relations, as well as in terms of our economic and trading interests. Our key priorities include securing a quota-free and tariff-free Free Trade Agreement (FTA), with linked provisions on fisheries, strong level playing field provisions for open and fair competition, agreed transport arrangements, and police and judicial cooperation.

Due to the close, highly integrated and concentrated nature of Ireland's trading relationship with the UK, it is recognised that amongst all EU Member States, Ireland would be among the most adversely affected by Brexit. With less than four months to the end of transition period on 31 December 2020, there is focus across Government on three interlocking strands of work: (i) negotiations on the future EU-UK relationship; (ii) full implementation of the Withdrawal Agreement including the Protocol on Ireland/Northern Ireland; and (iii) Brexit Readiness and contingency planning.

While there is uncertainty over the outcome of the Future Relationship negotiations, the ratification of the Withdrawal Agreement in January 2020 ensures that the provisions of that Agreement, including the Protocol on Ireland and Northern Ireland, will apply at the end of the transition period regardless of the outcome of the negotiations on the future relationship.

2 Background

2.1 Context

This paper is the fourth edition to a suite of Brexit related papers prepared for the Tax Strategy Group since the UK's Referendum on its European Union membership in 2016. Three previous publications for the Tax Strategy Group include the '*Brexit Taxation Issues Paper*' in July 2017, the '*Brexit – Taxation and Customs Impacts*' Paper in July 2018 and the 2019 "*Brexit Preparedness – Taxation and Customs*" paper. This paper builds on the impacts identified in previous publications and focuses on the preparedness work undertaken to mitigate the known effects of Brexit.

Since the latest publication in 2019, Brexit preparations have intensified and moved to a detailed planning and implementation stage which has involved significant, legal and operational preparations on behalf of the Irish Government. This work included substantial engagement with EU partners and interdepartmentally at a domestic level. The overall approach has been coordinated within Government planning and action structures led by the Department of An Taoiseach and the Department of Foreign Affairs.

2.2 EU-UK Developments

The UK left the EU on 31 January 2020 on the basis of the Withdrawal Agreement, which was endorsed by the European Council on 17 October 2019. This Agreement includes a transition period, which will be in place until 31 December 2020. During this period, EU rules and regulations continue to apply and the UK will be treated as though it is part of the Single Market and Customs Union. The UK has formally confirmed that it does not wish to extend the transition period, and the 30 June deadline for agreement on extension has now passed.

In February 2020, the EU and the UK published their respective negotiating mandates for the Future Partnership. Following consultations with Member States, the European Commission published a draft legal text of an agreement, based on the negotiating mandate and the Political Declaration signed by the parties in October 2019. The Political Declaration set out the parameters for 'an ambitious, broad, deep and flexible partnership'. However, in negotiations the UK has adopted a less ambitious approach.

Seven rounds of negotiations on the future partnership between the EU and UK took place between March and the end of August 2020. On 31 July, a new Addendum to the Terms of

Reference on the UK-EU Future Relationship Negotiations set out details of the agreed calendar for the negotiations in August, September and October. The purpose of this is to intensify the talks and to create the most conducive conditions for concluding and ratifying a deal before the end of 2020. The next formal negotiating rounds are scheduled to take place in London from 7-11 September, and in Brussels from 28 September-2 October. In addition, as necessary, there will be meetings of the Chief Negotiators and their teams between the formal negotiating rounds.

Progress to date has been disappointing and the gap between the EU and UK positions remains wide, including on key issues such as the Level Playing Field and fisheries. In the period ahead, Ireland will continue to engage constructively to advocate our values and interests as an EU Member State. To date, there have been two meetings of the EU-UK Joint Committee on the implementation of the Withdrawal Agreement and two meetings of the Specialised Committee on the Protocol on Ireland/Northern Ireland. Ireland has attended all of these meetings as part of the EU delegation.

3. Budget 2021

3.1 Overview

The Department of Finance began preparing for Brexit prior to the referendum in 2016, with work intensifying following the result and the invocation of Article 50 in 2017. The decision of the UK to leave the European Union gives rise to unprecedented challenges for Ireland across all economic sectors. The Government have taken steps to maximise the resilience of the economy so that it may effectively manage the negative economic developments. National budgets have been framed to prepare for the challenge of Brexit.

Budgets 2017, 2018 and 2019 included a number of measures to support those sectors most adversely affected. Building on Budget 2019, the measures announced in Budget 2020 demonstrated the Government's continued commitment to preparing the economy for the significant challenges posed by Brexit.

Budget 2020 maintained the overall approach of prudent financial management to strengthen the resilience of Ireland's economy against the backdrop of heightened uncertainty. The Budget was framed against a background of economic and fiscal policies implemented over recent years having placed Ireland in a stronger position to ensure that the economy will continue to remain competitive in the face of future economic headwinds. Ireland had laid the foundations for a solid and sustained economic recovery. At the time, indicators such as consumer spending and labour market developments were consistent with an economy that was maintaining momentum.

In Budget 2020, the Minister for Finance announced an overall package of €1.2 billion, excluding EU funding, to respond to Brexit. The package was to be in two parts. In the first part of the package, approximately €200 million in Brexit expenditure which was made available for 2020. It was to be allocated across a number of Departments and Agencies to increase the level of staffing, upgrade infrastructure at ports and airports and to invest in Information Technology (IT) and facilities management. The second part was based on preparation for a no-deal Brexit which was not to be used if it was not needed. The signing of the Withdrawal Agreement in October 2019 took a no-deal Brexit off the table in respect of 2020.

3.2 Budget 2021

The economic and fiscal situation has changed dramatically in the last several months as the unprecedented Covid-19 pandemic has had a severe impact on the Irish economy and the public finances. After returning the fiscal position to surplus in 2018 a significant deficit is now in prospect for this year as revenues decline and public expenditure surges. This is as a result of the Government taking the necessary measures to expand healthcare capacity and support households and businesses through this period. At the start of the year, the labour market had recovered strongly from its crisis low point and was approaching full employment. Seven months on, the unemployment rate as of July was 16.7 per cent.

The second phase of the Government's fiscal response to the pandemic, the recent July Jobs Stimulus Plan, was aimed at fostering economic activity, supporting businesses and getting people back to work as quickly as possible. Together with previously announced measures, the stimulus package represents an unprecedented level of Government support to the economy.

Ireland's experience is in line with that in other member states. The key objective for policymakers is to minimise the economic impact of the current crisis while also ensuring that, gradually, the public finances are returned to a sustainable footing and that Ireland does not become a fiscal outlier among comparable countries. Budget 2021 will be framed on the basis of delivering the support necessary to ensure a robust and broad-based recovery, while laying out a longer-term trajectory towards a more sustainable fiscal position. Such an approach will provide the fiscal framework within which further challenges to the economy can be addressed, not least the prospect of the Brexit transition period concluding without an agreement in place.

4. Overview of Government Preparations

Significant progress was made during 2019 on preparations for a no deal Brexit. This work is being refined during the transition period and remains valuable for the current phase. Given the limited progress in negotiations to date, the Government decided on 29 May to intensify its Brexit readiness work based on two scenarios: a limited FTA in goods (including a fisheries agreement), and a hard Brexit (i.e. no EU-UK trade agreement). While Ireland still supports the closest possible EU-UK relationship, prudence dictates that we plan for such contingencies.

Regardless of the outcome of the negotiations, from 1 January 2021, the UK will no longer be a part of the rules of the EU Single Market and Customs Union.[1] This will bring substantial challenges for supply chains and trade flows. Checks and controls will be required, in both directions, on EU-UK trade. In addition, businesses will have to engage with a new range of regulatory issues such as customs formalities and SPS checks for agri-food products. Failing to agree an FTA would see the introduction of tariffs on EU-UK trade. An FTA in goods only would not address a range of areas important to Ireland such as trade in service including transport, energy and police and judicial cooperation.

The Government will approach its readiness work in three distinct but overlapping streams:

- Work which the Government can lead directly such as infrastructure and systems at the ports and airports, including new legislation; and engaging with the European Commission.
- Communicating with and supporting sectors and businesses most directly impacted by the UK's departure; and
- Helping to prepare for wider societal and citizen focused impacts.

Addressing the needs of sectors and businesses impacted by the UK's departure.

While Brexit preparations will necessarily be in the context of a wider business recovery agenda to address the impacts of COVID-19, it will also need to address the distinct economic and societal and citizen-focused issues.

The Government's work to assist businesses and citizens prepare for the end of transition will continue to be underpinned by outreach to stakeholders and a strong communications programme. On 8 September the Government published the latest update of its Brexit Readiness Action Plan. In the context of the limited progress so far in the EU-UK negotiations

[1] The Protocol on Ireland/Northern Ireland provides that Northern Ireland will remain aligned to a limited set of EU rules, notably related to goods, and the Union's Customs Code will apply to all goods entering Northern Ireland.

on a future partnership and the end of the transition period in less than four months' time, the update outlines concrete actions that the Government, business and citizens must take to address the changes and mitigate the risks that will arise regardless of the outcome of the ongoing negotiations. The Action plan is supported by a comprehensive communications and stakeholder outreach programme.

Proposed Brexit Omnibus Bill 2020

The Government agreed on 29 May 2020 to approve the preparation of a scheme of a new Brexit Omnibus Bill. This work has been coordinated by the Department of Foreign Affairs, and the Department of the Taoiseach. The draft scheme of a 2020 Omnibus Bill was approved by Government on 4 August. It sets out the heads of these provisions across 19 Parts on behalf of 10 Ministers.

The overarching aim of the Bill is to address the wide range of complex issues that arise post transition and it will seek to protect citizens and consumers, facilitate the sound functioning of key sectors, and ensure our businesses are not disadvantaged. It will also support aspects of the Common Travel Area and North/South cooperation.

A key difference between the 2019 Act and 2020 Brexit Bill is that the 2019 Act sought to provide contingency measures to address issues arising in a no deal cliff-edge scenario while the 2020 version will deal with permanent change that will take place at the end of the transition period. The 2020 Bill also contains provision to repeal those Parts of the 2019 Act that were not commenced.

Four parts of the Bill will be under the responsibility of the Minister for Finance. These are: Part 8 (Taxation); Part 9 (Financial Services: Settlement Finality); Part 10 (Financial Services: Amendment to the European Union (Insurance and Reinsurance) Regulations 2015, and the European Union (Insurance Distribution) Regulations 2018); and Part 12 (Amendment to the Customs Act 2015).

The General Scheme of the 2020 Omnibus Bill was published on 8 September as part of the Government's Readiness Action Plan. It is available to review at www.dfa.ie/brexit.

5. Overview of EU Readiness

The European Commission and the EU27 have been formally preparing for the withdrawal of the UK since the UK notified the EU of its intention to withdraw.

Following the UK’s departure under the Withdrawal Agreement, the European Commission is currently updating 102 readiness notices, which provide advice for businesses and citizens on a wide range of issues. Where applicable, the updated notices also provide guidance on the operation of the Protocol on Ireland/Northern Ireland. These readiness notices replace the Brexit preparedness notices published by the European Commission and EU Regulatory and Supervisory Agencies in advance of 31 October 2019.

The possibility of further EU-level contingency may be considered later in 2020, taking account of progress in the future relationship negotiations.

Irish officials continue to hold bilateral discussions with the EU institutions on particular issues that are of significance for Ireland, including those that relate to the areas of taxation and customs and official checks and controls, and intensive discussions with the European Commission and other affected Member States to ensure effective and efficient use of the UK landbridge.

6. Overview of Department of Finance Preparations

The Department has been preparing for Brexit since before the Referendum, and has published a number of reports on the economic impacts of Brexit.

The key objectives of the Minister for Finance in relation to Brexit planning are:

- To protect the economic and financial interests of the State as far as possible;
- To support the preparatory work of the Revenue Commissioners.

The four work streams within the Department associated with these two objectives are:

- Developing appropriate economic/budgetary strategy;
- Safeguarding financial stability through engagement with Central Bank and NTMA;
- Assuring continued funding of the State by the NTMA;
- Supporting the work of the Revenue Commissioners in the areas of customs and taxation.

In the context of tax and customs, significant work has been undertaken collectively by the Revenue Commissioners and Department of Finance officials in preparation for Brexit. As the preparations continue for all Brexit scenarios, Tax Division in the Department of Finance maintains regular interaction with the Revenue Commissioners at management and official level.

Work has continued on the identifiable tax and customs impacts of the UK's departure. This work formed two categories, (i) policy development and implementation in the form of legislation and (ii) operational preparations by Revenue in terms of IT structures, staffing and infrastructure. Both the Department and the Revenue Commissioners continue to participate fully in the Government work streams lead by the Department of An Taoiseach and the Department of Foreign Affairs and Trade.

<u>Legislative context</u>

The Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2019 (Brexit Omnibus Act) was signed into law on 17 March 2019. This Act, bar three parts which have already been commenced, could only be used in the event that a Withdrawal Agreement was not concluded between the EU and the UK. New legislation is, therefore, required for the end of the transition period and, as outlined in Section 4, a new Brexit Omnibus Bill is currently being prepared on the same cross-Governmental approach as in 2019.

The 2019 Brexit Omnibus Act complemented legal measures at EU level and focused on measures protecting Irish citizens in supporting the economy, enterprise and jobs, particularly in key economic sectors. The Government worked very closely with all Opposition parties in the Oireachtas and all members of the Dáil and Seanad to facilitate the passage of the legislation.

In respect of the new Brexit Omnibus Bill, while many of the provisions are still required and so will replicate those of the 2019 Act, some new legislative provisions will also be required. The legislative provisions are set out below:

6.1 Direct Taxation – Legislative Provisions

The Tax Division of the Department of Finance intends to provide for the modification of Income Tax, Capital Tax, Corporation Tax and Stamp Duty legislation in order to ensure continuity for business and citizens in relation to their current access to certain taxation measures including, reliefs and allowances, in the immediate aftermath of the transition period.[2]

Specifically, it involves the amendment of various sections of the Taxes Consolidation Act 1997, the Stamp Duties Consolidation Act 1999 and the Capital Acquisitions Tax Consolidation Act 2004, to ensure that a range of income tax, stamp duty, capital acquisitions tax, capital gains tax and corporation tax measures continue to apply even in the event the UK is no longer an EU Member State.

6.1.1 INCOME TAX

The Income Tax related amendments to legislation ensure that income tax relief, which is currently available to Irish taxpayers in respect of UK-based activities and UK-sourced income as well as certain UK residents in respect of their Irish taxable income, will continue to be available when EU rules no longer apply to and in the UK. This is achieved by specifically including the UK, alongside EU and EEA Member States, in legislation in order to maintain the status quo in the immediate future.

6.1.2 CORPORATION TAX

The Corporation Tax amendments seek to maintain the status quo for the tax treatment of certain transactions or corporate group structures once the UK are no longer treated as members of the European Union and the European Economic Area.

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[2] The vast majority of the legislation was initially included in the Brexit Omnibus 2019 Act, however, most will now be included in the new Brexit Bill.

The purpose of the amendments is to minimize disruption, at the conclusion of the transition period, to businesses operating between Ireland and the United Kingdom.

6.1.3 CAPITAL TAXES (INCLUDING SAVING TAXES)

The Capital and Savings Tax measures aim to ensure the continuity of treatment across specific provisions following the exit of the UK from the EU at the end of 2020.

6.1.4 STAMP DUTY

The measures relating to Stamp Duty are designed to mitigate the impact of Brexit in so far as possible, through providing for continued reliefs in certain circumstances, and ensuring that liability for certain stamp duty levies continues for UK related activities post-transition, in order to minimise the disruption to trading for Irish shares and to maintain the existing levels of Exchequer income from the stamp duties concerned.

While not included in the 2019 Brexit Omnibus Act, a Brexit related amendment on the collection of Stamp Duty will be included in the 2020 Finance Bill. Ireland is the only EU Member State that does not currently have its own CSD (Central Securities Depository) and we currently use CREST (Securities depository) in London to settle securities traded on the Irish Stock Exchange. An equivalence agreement is in place to March 2021 between the UK and EU, but once this expires it will no longer be possible to collect much of the 1% stamp duty levied on the acquisition of the stocks and marketable securities of Irish incorporated companies.

A proposal for a new stamp duty collection process has been agreed between Revenue, the Department of Finance and Euroclear Bank which will ensure that the necessary systems, procedures and legislative changes will be in place to allow for the switchover to take place before equivalence ends. This will maintain and protect the collection of the stamp duty after the equivalence agreement ends in March 2021.

6.1.5 CAPITAL ACQUISITIONS TAXES

The measures for Capital Acquisitions Tax provide for continuity in existing treatment under agricultural relief which allows for a reduction in the inheritance tax or gift tax to be paid in respect of agricultural property in a Member State of the EU. In addition to ensuring the relief continues to apply to agricultural property in the United Kingdom, the measures also ensure that such property is taken into account in calculating the value of agricultural property owned by a farmer for the purposes of establishing entitlement to the relief.

6.2 Indirect Tax – Legislative Provisions

There are also a number of indirect taxation measures in the areas of VAT and Excise.

6.2.1 VAT – POSTPONED ACCOUNTING

At the end of the transition period, the UK will no longer be part of the EU's VAT or Excise regimes and will be treated as a 'third country'. However, while Northern Ireland will remain part of the UK's VAT area, EU VAT rules concerning goods (but not services which are not covered by the Protocol) will continue to apply in Northern Ireland, in accordance with the Protocol on Ireland/Northern Ireland. Any further reference to the United Kingdom in this section can therefore be taken as excluding Northern Ireland.

Due to the United Kingdom's status as a 'third country', VAT, Excise and Customs Duties on goods will become chargeable at the point of importation into Ireland. This will have a significant impact on cash flow for business.

Most traders who import goods from countries outside of the European Union pay VAT at the point at which customs duties arise, which is typically at the point of entry of the goods into the State. The majority of those traders importing goods use a deferred payment account authorisation to pay VAT. This authorisation allows payment of VAT to be deferred until the 15th day of the month following the importation of goods. Traders must be authorised by Revenue and put a comprehensive guarantee in place to utilise this facility.

The volume of third country trade will significantly increase post transition, and businesses who do not have deferred payment accounts or experience of importing goods from outside of the EU will require support.

The Minister has therefore approved the introduction of postponed accounting for VAT purposes in order to mitigate against cash flow issues which would arise.

Under the system of postponed accounting, VAT registered importers will not pay import VAT at the point of entry, instead, they will account for import VAT through their bi-monthly VAT return. In other words, the VAT will be reclaimed at the same time as it is declared in the VAT return.

In the 2019 Brexit Omnibus Act, postponed accounting was introduced for all VAT registered traders to alleviate the immediate cash flow issues arising from the withdrawal of the UK from the EU, in the event that no agreement was in place. Continued use of the postponed accounting system will be dependent on fulfilling criteria set out by Revenue.

6.2.2 SECTION 56 AUTHORISATIONS

The 2019 Brexit Omnibus Act was also set to amend section 56 of the VAT Consolidation Act 2010 and this will be included in the new legislation. Section 56 entitles taxable persons to receive qualifying goods and services at the zero rate of VAT where they have fulfilled certain criteria and have received authorisation from Revenue.

The amendment adds a number of additional criteria which a taxable person must fulfil before receiving authorisation. The amendment also gives Revenue the power to cancel an authorisation where there are reasonable grounds to do so.

6.3 VAT Retail Export Scheme and Duty Free

Measures were also provided for in the 2019 Brexit Omnibus Act which deal with Duty Free sales and the application of the VAT Retail Export Scheme, in a 'no deal 'scenario. Both issues were identified as significant issues in TSG 2019 Paper, Brexit Preparedness - Taxation and Customs. Details of these measures are set out at paragraphs 6.3.1 and 6.3.2 below. It is intended to introduce these measures into the proposed new Brexit Bill. The commencement of these measures will have regard to the ongoing development of UK policy in these areas. In addition, the Department will continue to review the potential impacts of Brexit on tax policy in the context of its normal Finance Bill preparations.

Under EU law, the default legal position at the end of the transition period will be that the UK (excluding NI) will be treated as a 'third country 'for VAT, Excise and customs purposes. As a consequence, a Duty Free regime for the sale of excise goods (in the case of excise and VAT) and other goods (in the case of VAT) will apply to passenger traffic between the UK (excluding NI) and EU Member States, including Ireland. As already noted, as a result of the EU Withdrawal Agreement and Protocol on Ireland/Northern Ireland, this will not apply to Northern Ireland as the protocol provides that EU VAT and Excise Directives will continue to apply to Northern Ireland. This means that the Duty Free and Retail Export Schemes cannot apply in respect of passenger travel between Northern Ireland and EU member states, including Ireland.

However, as mentioned above, post transition, the UK will become a "third country" and the default legal position will be that there will be Duty Free sales and a VAT Retail Export Scheme, between the UK (excluding Northern Ireland) and EU Member States. Action was taken in 2019 to provide for legal methods of restricting the scope of any duty free regime, in the event that the UK wished to adopt reciprocal measures in this area.

The policy was driven by the potential for significant negative economic impacts on the Irish exchequer and on the Irish retail sector as a result of the expansion of the schemes to UK passenger traffic, the protection of health and welfare policies and the risk of abuse of the VAT Retail Export Scheme.

However, the introduction of the measures outlined at 6.3.1 and 6.3.2 after the transition period will be dependent on the UK's policies regarding its application of the VAT Retail Export and Duty Free schemes.

6.3.1 VAT RETAIL EXPORT SCHEME

The Retail Export Scheme (RES) enables travellers who are resident outside the EU to benefit from VAT relief on goods that are purchased in the EU and subsequently exported when the traveller leaves the EU.

The UK's status as a 'third country 'will render UK (but excluding Northern Ireland) residents as eligible for VAT refunds on purchases of qualifying goods under the scheme, post transition.

Due to the number of passenger movements between the UK and Ireland, the volume of refund applications is likely to significantly increase which simultaneously heightens the risk of abuse of the RES. VAT fraud is a serious matter and it is the Minister for Finance's view that any scope for fraudulent abuse of the scheme should be minimised.

The UK conducted a public consultation in the first half of the year on the potential approach to duty free and tax free goods but it has not yet stated its position on operating a VAT RES for passengers travelling from Ireland (EU) and purchasing goods there, post transition.[3] Should the UK apply a full RES post transition, Ireland will reciprocate and a non-restricted VAT RES will therefore operate between Ireland and the UK.

In the event that the UK either restricts the VAT RES or does not apply same to Irish passenger traffic, Ireland will apply similar measures to those provided for in the 2019 Brexit Omnibus Act to minimise the potential for abuse of the scheme and to reduce the possibility of diversion in retail consumption from Ireland to the UK, post transition.

The measures included in the 2019 Brexit Omnibus Act did not eliminate the use of the VAT Retail Export Scheme for UK residents, post Brexit, instead they provide a legal basis to control and minimise the scope for abuse of the scheme. In this regard, legislation will be amended to provide that the value of qualifying goods must exceed €175 in order to be eligible for a refund under the scheme. This change is fully compatible with EU law (which assigns €175 as a maximum value in this scenario) and is in line with the EU VAT Directive. Once the proposed legislation is enacted, the monetary limit will apply in respect of all third country travellers who apply for a refund under the scheme legislation.

In addition, a new requirement of proof of importation of the goods into the UK and the associated proof of payment, where applicable, of relevant UK VAT and duties, for the goods purchased under the scheme will be necessary in order to qualify for a refund under the scheme.

[3] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/871757/Passengers_ConDoc_V7__SpAds_FST_DD_Cleared_w_Logo_.pdf

Furthermore, the categories of users of the Retail Export Scheme will be amended to exclude persons *intending to travel,* i.e. residents of the EU who intend to take up residence outside of the EU "in the near future and for a period of at least 12 consecutive months". Ireland had extended the categories of users of the Retail Export Scheme to include intending emigrants, however if the Scheme remains available to such persons after the end of the transition period, the risk of abuse increases exponentially.

Retailers have no specific reporting obligations relating to the zero rating of goods for intending emigrants and there is no means of ensuring that the traveller did actually travel at all. As long as they are satisfied of the bona fides of the traveller at the time of supply, the trader may apply the zero rate of VAT. By amending the definition of 'traveller' in section 58 of the VATCA to exclude intending emigrants, this risk and associated VAT loss to the exchequer is eliminated.

6.3.2 DUTY FREE

Post transition, the UK (excluding Northern Ireland) will be considered a 'third country 'for the purposes of Excise duty and VAT.

In the absence of any action on behalf of the UK and Ireland, Duty Free sales would emerge between the UK and Ireland due to the UK's status as a 'third country 'post transition.

The wider availability of low priced tobacco and alcohol products in the State would obviously have a negative impact on the Government's public health policy and is also likely to promote further fiscally motivated travel. This has the potential to significantly affect the Government's Exchequer figures. As matters stand, a duty free regime for UK / Ireland travel will create significant tax administration difficulties and compliance costs, will reduce indirect tax revenues and will have a negative and distorting impact on the retail sector in Ireland given the frequency of air / sea passenger movements involved. This will apply not just in relation to excise products, but also in relation to retail trade in other high value items e.g. jewelry, cosmetics, IT devices.

A legislative measure was included in section 63 of the 2019 Brexit Omnibus Act which provided for an option to restrict duty free sales, in relation to excise duty, in the case of passenger travel between Ireland and the UK. The measure provided that excise duty would apply to alcohol and tobacco products sold in tax free shops in Ireland to passengers travelling to the UK, post Brexit. The policy intention was to commence the measure in the event that the UK decided to restrict the scope of duty free sales on excise products (alcohol and tobacco products) on a reciprocal basis.

It was not possible to devise a similar measure in relation to VAT on goods sold in duty free shops, due to the provisions of the VAT Directive[4].

In the event that the UK is in a position to restrict duty-free sales in relation to excise goods from the end of the transition period, Ireland will seek to apply similar measures on a reciprocal basis, in the manner provided for in the 2019 Brexit Omnibus Act. These measures will be outlined in the new Brexit Bill. It is also intended to include similar restrictions in the Bill in relation to the sale of excise goods during passenger journeys to the UK. The Bill will also provide for an amendment to allow for tax free shops to be established at a port, as well as at an airport, where appropriate conditions are in place for the security of excise products and where approval has been granted by Revenue.

As with the Retail Export Scheme, the UK has not yet stated its final position on Duty Free sales, post the end of the transition period. Nonetheless, if the UK applies a Duty Free scheme post Brexit, Ireland will put in place a similar regime and Duty Free sales will therefore be possible for travelers moving between Ireland and the UK, excluding Northern Ireland.

However, if the UK decides decide to restrict Duty Free sales in relation to excise duty, Ireland will seek to implement similar measures, on a reciprocal basis.

Secondary Legislation

Secondary legislation has been drafted and approved by the Office of Parliamentary Counsel to support the implementation of VAT and Excise measures listed above, all of which were subject to commencement by way of signature by the Minster for Finance or Revenue Commissioners and some of which will also be dependent on the UK's policy actions. This secondary legislation will now be updated in reference to the new Bill.

6.4 Customs Legislation

Customs law is governed by EU Regulation 952/2013 the Union Customs Code which has direct effect in all EU Member States. The 2015 Customs Act is a piece of national legislation which makes provision for customs controls, enforcement powers and sanctions for breaches of the various customs provisions. Amendments to the 2015 Customs Act are to be provided for in the 2020 Brexit Bill. These changes are necessary because of the increased volume of goods arriving from a third country and corresponding volume of import controls at Irish ports when the transition period ends.

[4] Council Directive 2006 112/EC

Once the transition period ends, there will be a substantial increase in third country Roll-On Roll-Off traffic (i.e. goods arriving by trailer, either accompanied or unaccompanied, carried on a ferry) at Irish ports as a result of Brexit.

Accordingly, a new Section 12A of the Customs Act, 2015 is to be enacted. This section provides for a Revenue offence where a truck driver entering the State exits a customs port without obeying an instruction given to him/her by Revenue.

Revenue envisage that as a result of Brexit there will be an increase in approvals by Revenue for traders to present goods at their approved premises and accordingly, customs formalities will be carried out at those premises instead of at ports and airports.

Accordingly, Section 25 of the Customs Act, 2015 is to be amended to provide additional powers for an officer of customs to enter upon and inspect a place approved under the Union Customs Code.

7. Revenue Commissioners Preparations

7.1 Overview

Customs is an area of sole EU competence. The Union Customs Code (EU Regulation 952/2013) sets out the legal basis for third country customs formalities. National legislation supplements EU law by underpinning the powers of customs in policing and administering the EU rules.

The departure of the UK, Ireland’s closest geographic neighbour, from the EU and consequently the Customs Union and Single Market poses hugely significant, multifaceted challenges for the administration of customs, post transition.

As a result of the Union Customs Code there is a legal structure for the management and control of customs interactions with third country trade. The Department of Finance and the Revenue Commissioners are proposing Brexit related legislative measures, by way of amendment to the Customs Act, 2015 which are detailed at paragraph 6.4.

The Ireland/Northern Ireland Protocol ensures that there will be no hard border on the island of Ireland and customs formalities will not apply to trade between Ireland and Northern Ireland.

Considering the UK’s departure from the Single Market and Customs Union there will be change in terms of customs administration as Ireland is planning for trade with a third country from the 1st January 2021, when the transition period ends and Revenue’s preparations have reflected this.

7.2 ICT Developments

Capacity of the Customs IT systems has been significantly increased in order to deal with the expected growth in the number of transactions post-transition. Revenue has estimated that there will be an increase in customs declarations from current levels of approximately 1.6m per annum (representing import and export trade with non-EU countries) to over 20 million per annum post-transition.

In Budget 2017, there was provision for a €2 million investment in scaling up the Revenue customs IT framework. Revenue upgraded the relevant IT systems and undertook extensive performance testing across multiple scenarios. The necessary assurance of the integrity of the systems has been verified and all performance testing criteria have been passed. Revenue is also implementing a new Automated Import System for November which will enhance the capability of the systems to deal with the increased volume of declarations. Further new functionality will help to smooth the movement of goods through Ireland’s ports and airports.

In the context of ongoing discussions in relation to a Free Trade Agreement between the EU and UK, Revenue will keep under constant review any implications in terms of the detail of the discussions for the operation of the relevant IT systems. Revenue is confident that its systems are robust and have the capacity to cater for the volumes of trade that will be subject to customs formalities at the end of the transition period.

Revenue's IT systems operate to the highest standards and are certified to ISO27001 (Security), ISO22301 (Business Continuity) and ISO29119 (Software Testing) levels.

7.3 Staffing and Recruitment

In the context of Brexit, Revenue determined that it required 600 additional staff. The Government approved Brexit related recruitment in September 2018, and an open recruitment campaign for trade facilitation roles was undertaken by the Public Appointments Service which attracted more than 3,000 applications.

In the period September 2018 to October 2019, Revenue assigned over 580 staff to Brexit related roles. This comprised a combination of new entrants and existing Revenue staff deployed and/or promoted to Brexit-related roles, from other Revenue functions. Most of the staff were assigned to import and export trade facilitation activities and other customs roles. Staff were also assigned to ICT, legislative and corporate support areas including recruitment and training.

Revenue had planned to have a total of 600 staff in Brexit-related roles by the end of 2020. That assessment is under active examination in light of the experience gained over the last 18 months, the need for a strong focus on measures to combat illegitimate trade, a risk that will be enhanced from 1 January 2021 and in the context of the existence of a Free Trade Agreement between the EU and UK, and the operation of Duty Free and the VAT Retail Export Scheme as previously alluded to in this paper.

New recruits are working in Customs based roles where they are being mentored by experienced Customs staff to enhance their competency. They are also receiving additional training on Revenue enforcement procedures and Revenue systems.

Revenue as an integrated tax and customs administration, advise that it is in a position to deploy resources based on the evolving business needs and to quickly confront any risks as they emerge.

7.4 Trader Communications and Outreach

In the coming weeks the Government will embark on a new communication campaign to advise businesses that change is to be expected in all Brexit scenarios, and businesses should therefore give urgent priority to examining their supply chains and engaging with the supports available to them through various channels, to ensure that they are ready to trade with UK from 1 January 2021.

There are a range of actions that Revenue has encouraged and continues to encourage relevant businesses to consider, to ensure that businesses can trade with the UK after the transition period. This includes:

- Register for customs by getting an EORI number, if not already registered;
- Undertake supply chain and cash flow assessments so as to fully understand and identify the impact of Brexit;
- Ensure they are aware that Revenue are introducing a new import system in November 2020, and they must have the capability to lodge customs declarations into this new system, by either getting customs software or engaging a customs agent;
- Understand the impact of and make arrangements for paying import duties;
- Know the origin and commodity code(s) of the goods traded;
- Ensure compliance with product certification requirements;
- Understand the obligations involved if trading in animal or plant products, and;
- Consider what customs related simplifications or authorisations might be relevant and that would further ease the smooth and efficient flow of trade and goods at import or export.

Revenue will intensify the comprehensive trader engagement programme which commenced in November 2018 and continued throughout 2019. The 2020 programme is designed to support, assist and educate business on the impact of Brexit and how to mitigate the risks.

Under the theme of “Act now - Get and Be Brexit ready”, 60,000 letters issued to businesses in July 2020. These businesses had traded with the UK since 2019 and have not yet registered for customs by getting an EORI number.

The key message in the letter was that from 1 January 2021 customs formalities will apply to the movement of goods from, to and through the UK, excluding Northern Ireland.

The letter also focused on the registration process and the other steps, including the full supply chain analysis that businesses need to take in order to be ready for the new trading environment from next January. Businesses were also advised to prepare for and ensure connectivity to the new Automated Import System (AIS) available from November 2020.

Other aspects of the trader engagement programme in 2020 will be:

- A renewed focus on businesses and sectors that traded with the UK since 2019 and to provide them with advice on further steps they need to take to be ready for 1 January 2021. Letters will issue in early September to these businesses with follow up phone calls by Revenue, to businesses with high trade patterns, to discuss their next steps.
- Continue to provide quality information on www.revenue.ie/brexit, especially in relation to new developments linked to ongoing negotiations between the EU and the UK.
- Revenue will ensure that information on parallel system developments within Revenue with a Brexit impact is aligned and communicated as a consolidated message to business.
- Live streamed information sessions will be held on the 5th and 6th October 2020. These sessions will cover a number of import customs topics to inform business of the new trading environment from 1 Jan 2021. The sessions will be recorded and available for viewing on www.revenue.ie/brexit.
- Continue to collaborate with other Government Departments, Government Agencies and trade representative bodies to ensure all relevant businesses are ready for the new arrangements from 1 January next.

Further information on changes arising for traders and actions that should be taken are set out in the September update of the Brexit Readiness Action Plan.

7.5 Infrastructure

As a consequence of Brexit, substantial additional physical infrastructure is required on 1 January 2021 for customs, SPS and food safety checks and controls at Dublin Port, Rosslare Europort and Dublin Airport to ensure Ireland can effectively manage new requirements for checks and controls in both directions on trade with the UK. Work to develop this infrastructure has been underway since 2018.

Infrastructure required at Dublin Airport is now complete.

At Dublin Port, the infrastructure being put in place comprises three elements: (i) the infrastructure already put in place in preparation for the possibility of a no-deal Brexit; (ii) additional infrastructure currently under construction that will come on stream by the end of the year; and (iii) the infrastructure that requires an Environmental Impact Assessment Report and is subject to An Bord Pleanála approval, this process is currently underway.

In Rosslare, the infrastructure comprises three elements: (i) the infrastructure already put in place in preparation for the possibility of a no-deal Brexit; (ii) additional infrastructure currently under construction that will come on stream by the end of the year; and (iii) in the medium to long term, permanent facilities will need to be developed within the Port complex itself, taking account of planned developments in the Port.

7.6 Traffic Flows

Revenue participates in a Traffic Management Group that is chaired by the Department of Transport to consider and mitigate the potential knock on effects of delays at Dublin Port on wider city traffic management.

7.7 Land Bridge

Maintaining the UK landbridge as an effective route to market has been a key priority of the Government's Brexit planning. Post-transition, operators will still be able to move goods via the landbridge but the way they use the landbridge will change. Revenue has participated in a number of work streams domestically and at EU level on the practical implications for Irish traders using the UK land bridge. Irish goods moving to another EU Member State via the UK after the transition period should be moved under the customs transit procedure so that the goods will continue to be treated as Union goods thereby removing the need for checks or controls on re-entry to the EU. Using the transit procedure also ensure that customs duties, tariffs or other quantitative restrictions will not apply to such movements.

The UK will accede to the Common Transit Convention after the transition period, which is a positive development that will facilitate the smooth operation of the transit procedure.

It should be noted that there are administrative and financial requirements associated with using the transit procedure. In particular, transit declarations, underpinned by a financial guarantee, are required. The guarantee must be in the form of a Comprehensive Guarantee provided by a financial institution established in the EU. Operators should be aware that as new systems and processes are brought on line in ports across the EU and UK, the risk of queues and delays, some of which may be very substantial in busy ports, is high.

8 Conclusion

The Irish Government, together with our EU partners, remains committed to securing a favourable outcome to the future EU-UK relationship negotiations. Work is also moving forward on implementation of the Withdrawal Agreement. Ireland is actively engaging through the EU-UK Joint and Specialised Committees to support full implementation of the Protocol on Ireland/Northern Ireland, which ensures there will be no hard border on the island of Ireland, protects the gains of the peace process, and protects the integrity of the Single Market and Ireland's place in it.

No set of arrangements negotiated as part of the future EU-UK relationship will be able to replicate the access and benefits of the UK being a member of the EU and being within the Single Market and Customs Union. Therefore, when the transition period ends on 31 December 2020, government, businesses and citizens will face a range of changes, many of which are already clear. The outcome of the future relationship negotiations, which includes the risk of no future relationship agreement, will determine the full level of change and therefore impact on the Irish economy.

The necessary readiness and contingency planning work is continuing to ensure that Ireland is prepared for the end of transition. This work will also be happening concurrently with efforts to address the severe impact of COVID-19. Brexit preparation will therefore necessarily be part of a wider business recovery agenda but will also need to address the distinct economic and societal impacts of Brexit. The challenges which Brexit brings for Ireland will be faced with the mutual solidarity and assistance of our EU partners and with the strength that EU membership brings. The Department of Finance will continue to fully engage with this vital work.

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