Law Society of Scotland

Taxation (Cross-border Trade) Bill

Law Society of Scotland briefing for second reading

January 2018

Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

The Society welcomes the opportunity to consider and respond to the Taxation (Cross-border) Trade Bill[1] and has the following comments to put forward for consideration. We also note the link between this Bill and the Trade Bill,[2] which we are also considering.[3]

General Remarks

The UK is set to withdraw from the customs union when it withdraws from the EU and will therefore need to reinstate rules governing an independent customs regime. We therefore recognise the necessity for this Bill, which introduce this new system and allow stakeholders to begin to familiarise themselves with relevant changes.

The Taxation (Cross-border Trade) Bill relates to UK trade generally. However, we note that the framework provided for would tie in with the "highly streamlined customs arrangement" put forward in the "partnership paper" on *Future customs arrangements for the UK and EU*[4] *and the* White Paper on a *Customs Bill:*

[1] https://services.parliament.uk/bills/2017-19/taxationcrossbordertrade.html

[2] https://services.parliament.uk/bills/2017-19/trade.html

[3] https://www.lawscot.org.uk/research-and-policy/influencing-the-law-and-policy/our-input-to-parliamentary-bills/bills-201718/trade-bill-2017-19/

[4] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/637748/Future_customs_arrangements_-_a_future_partnership_paper.pdf

legislating for the UK's future customs, VAT and excise regimes.[5] We have commented on these EU-specific documents elsewhere.[6]

Comments on the draft bill

Scope of delegated powers and duty to consult

One of the recurring themes in our comments below is the scope of delegated powers, echoing concerns regarding the use of Henry VIII powers discussed in the context of the European Union (Withdrawal) Bill. [7] The links to the importance of ensuring that the Treasury or Secretary of State, as the case may be, is obliged to consult stakeholders in the process of setting regulations to establish the new customs regime.

Clause 8 – The customs tariff

We consider that the Treasury should be obliged to consult appropriate stakeholders in the process of formulation regulations to establish and maintain the customs tariff.

Furthermore the power under clause 8(1)(a) to classify goods "according to their nature, origin **or any other factor**" is a very broad one. At the very least, this should be limited to "any other relevant factor" but it would be preferable to limit the scope of this provision by giving an indication of the types of factor which might be appropriate in this context.

We also consider that clause 8(3)(b) say "**the number**, weight or volume of the goods or any other measure of their quantity or size".

We support the duty placed on the Treasury at clause 8(5) to have regard to the list of interests set out in (5)(a)-(d). However, there are other interests which should be considered, most particularly those of manufacturers and the public interest generally.

Clause 9 – Preferential rates: arrangements with countries or territories outside UK

Under clause 9(1), the Treasury should be required to make regulations, following consultation. Once the UK has agreed to be bound by an international Treaty, there ought to be an obligation on the Treasury to ensure that this can be put this into effect. Accordingly the clause should be amended to state that "the

[5] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/650455/customs_bill_white_paper_print.pdf

[6] https://www.lawscot.org.uk/media/359385/lss-response-to-hmt_customs-bill_january-2018-ms-footnote.pdf

[7] See our response to the Government's White Paper in May 2017 - https://www.lawscot.org.uk/media/9969/grb-white-paper-response.pdf at p4

Treasury **must** make regulations **following consultation with relevant stakeholders** to give effect to the provision…".

Clause 10 Preferential rates given unilaterally

In our response[8] to the consultation on the Future of UK Trade Policy, we supported the continuation of unilateral trade preferences for developing countries to facilitate the reduction of poverty in other parts of the world through trade.

However, the Secretary of State should consult on the regulations to establish the trade preference scheme.

Under clause 10(3)(b) it should also be possible for the regulations to provide for restoration or reinstatement of the nil rate band and the clause should therefore be amended to provide for this.

Clause 12 – Tariff suspension

The Treasury should be obliged to consult if regulations are to be made to suspend tariffs on specified goods. Furthermore, it would seem sensible to limit those who can make requests under clause 12(2)(a) to persons with a relevant interest.

Clause 14 – Increases in imports or changes in price of agricultural goods

The Treasury should be obliged to consult if it is introducing such regulations.

Clause 15 – International disputes etc

Clause 15(1)(b) makes reference to international law but it is not clear what it meant by this. It would be helpful were the Minister to explain precisely the circumstances in which the Government would need to deal with a dispute by varying the import duty.

Clause 21 – Customs agents

Clause 21 makes provision for appointment of Customs agents and in addition empowers the HMRC Commissioners to make further provision regarding Customs agents through regulations, for the purposes of import duty. We would welcome further information as to the criteria for appointment referred to in clause 21(8)(b). We consider that regulation of Customs agents to ensure they meet certain standards could provide useful protection to principals, particularly where the principal is an SME or consumer.

Clause 22 – Authorised Economic Operators

[8] https://www.lawscot.org.uk/media/359078/lss-response-to-dit_preparing-for-future-uk-trade-policy_november-2017.pdf

As set out in the Customs Bill White Paper, we support the Government's intention to negotiate mutual recognition of Authorised Economic Operators with the EU. We would also support ensuring continuation of mutual recognition of AEU programmes which the EU has agreed with other countries: Norway, Switzerland, Japan, Andorra, the US and China.[9]

Clause – 25 Disclosure of information

Clause 25(1) empowers "HMRC (or anyone acting on their behalf)" to disclose information relating to import duty for customs duty purposes. However, it is not clear who might be acting on their behalf, nor to whom the information might be disclosed.

In addition clause 25(7) makes reference to the Data Protection Act 1998. However, this legislation will be overtaken when the General Data Protection Regulation comes into effect on 25 May 2018 and the Taxation (Cross-border Trade) Bill will only take effect upon withdrawal. The Bill should therefore be amended accordingly to refer to the Data Protection Bill,[10] which subject to Parliamentary approval will become the Data Protection Act 2018and through which the GDPR is being incorporated into domestic UK law.

Clause 28 – Requirement to have regard to international obligations

Clause 28 imposes a requirement to have regard to international obligations. While we support the obligation, it is not clear what "other" public bodies are envisaged under 28(1)(e).

Clause 39 – Charge to export duty

As with our comment on clause 8, 39(3)(b) should be amended to say "**the number**, weight or volume of the goods or any other measure of their quantity or size".

At clause 39(4) we support the duty on the Treasury to have regard to the list of interests. However, as noted in relation to clause 8, there are other interests which should be considered, most particularly those of manufacturers and the public interest generally.

Clause 42 – EU law relating to VAT

Clause 42 on EU law relating to VAT appears to be an explanation of provisions of the European Union (Withdrawal Bill). To the extent that the intention is to deal with the effect of withdrawal on EU law relating to VAT, this should form part of the EU (Withdrawal) Bill. Subsections (3) to (5) are mere explanations: they should be deleted. The same applies in the case of clause 47.

[9] https://ec.europa.eu/taxation_customs/general-information-customs/customs-security/authorised-economic-operator-aeo/authorised-economic-operator-aeo_en#what_is

[10] See https://services.parliament.uk/bills/2017-19/dataprotection.html

Clause 51 – Power to make provision in relation to VAT or duties of customs or excise

We believe that the regulation-making power should be exercised "...as the appropriate Minister considers **necessary**". The current provision which permits the Minister to make regulations as the Minister considers "appropriate" is vague and subjective. A necessity test is clearer and more objective.

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