Taxation (Cross-border Trade) Bill: legislating for the UK's future customs, VAT and excise regimes
Response by the Chartered Institute of Taxation

1 Introduction

1.1 We refer to the Taxation (Cross-border Trade) Bill published on 22 November 2017 and highlight our comments made previously in relation to the Customs Bill White Paper.

1.2 This Bill gives rise to an unusually complex mix of legal and technical issues within equally complex political constraints. It is not our remit to enter into political debate, but a lack of certainty around the Customs regime the Government are seeking to create makes tax technical analysis somewhat challenging. We have sought to consider the issues arising from the Bill on their technical merits, but have noted the actual or potential political constraints where appropriate.

1.3 The key point, in our view, is that the 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 15 months' time, on expiry of the Article 50 deadline.

1.4 We have concerns about this law-making process (whilst appreciating the unusual context in which this Bill is made) particularly around appropriate scrutiny and safeguards. We believe the tax system should include a legislative process which translates policy intentions into statute accurately and effectively, without unintended consequences. Legislation should receive appropriate scrutiny and provide certainty, so businesses and individuals can plan ahead with confidence.

2 Executive summary

2.1 The Bill is unclear in its scope and effect in many areas.

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2.2 The Bill's stated purpose is to provide legislation for a standalone Customs regime without presupposing any particular outcome from the negotiations with the EU[1]. This is highly unusual.

2.3 Inevitably, this creates tension as the uncertain policy direction means greater uncertainty for all stakeholders. There is limited tangible detail in this Bill, which means that understanding and assessing the related impact, fairness, complexity etc of the Bill is hindered at this stage.

2.4 The Bill gives unprecedented powers to ministers to create new tax legislation and change existing primary legislation via Statutory Instruments for Customs, Excise and VAT. Because of this, it is difficult for there to be much meaningful discussion of the implications of each and every clause of the Bill, given the significant uncertainty surrounding the overarching policy.

2.5 We acknowledge the predicament of needing to begin the legislative process before knowing the outcome of negotiations. However, we have strong concerns about the vast amount of legislation that will be introduced this way and the lack of parliamentary scrutiny surrounding it. This is at odds with HM Treasury's Tax Policy Making Process reaffirmed in December 2017.[2]

2.6 Such a process may result in widespread unintended consequences, with potentially significant changes made within a short time frame that may have a lasting impact on taxpayers and HMRC / HMT.

2.7 In our view, given both the time constraints and the need for business certainty, it would have been preferable for the Government to have adopted an approach of incorporating the existing EU regime (the Union Customs Code) into UK law with specific, clearly identified changes being made where necessary, rather than attempting to create a Customs regime from scratch.

2.8 We strongly endorse the need for a transitional period that is the same as the existing position to allow time for all involved to adopt necessary changes as we move towards the final agreement made between the UK Government and the EU. We welcome the Government's intention that businesses in the UK and the EU will only have to adjust to a new customs relationship once.

2.9 In the absence of meaningful detail, businesses are caught between either planning for the contingency 'no-deal' scenario of the UK leaving the EU without an agreed customs arrangement, or holding off and risking being caught unprepared if there is a sudden and severe change to the way cross border trade operates.

2.10 For certain sectors, the time for making decisions about future supply chains is imminent and we are aware of planned supply chains alterations to exclude the UK because of uncertainty. Members tell us that Quarter 1 2018 will be crucial for key decisions to be made in order to plan for change.

2.11 We continue to have concerns about the combined impact and timing of changes for the Indirect Tax sector with Making Tax Digital (MTD) and Brexit planned for March / April 2019. We remain concerned that businesses (and indeed HMRC) will be faced

[1] Para 4.1 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/650459/customs_bill_white_paper_web.pdf

[2] https://www.gov.uk/government/publications/the-new-budget-timetable-and-the-tax-policy-making-process/the-new-budget-timetable-and-the-tax-policy-making-process

with too many changes taking place simultaneously, and the Government should consider relaxing the MTD timetable to reduce the impact on businesses at this critical time.

3 The Government's approach to creating a post-Brexit Customs regime

3.1 In this Bill, unprecedented, wide-reaching powers are being given to ministers to create a Customs regime from scratch. In addition, the Bill creates vast powers to amend existing UK VAT and Excise legislation at the discretion of ministers.

3.2 We appreciate the unusual circumstances that this Bill seeks to address but remain very concerned about the high volume of secondary legislation that will be laid down and passed with limited parliamentary scrutiny.

3.3 The Government's stated aim with the Brexit legislative process is to take a snapshot of the body of EU law and ensure that, wherever possible, the same rules and laws will apply the day after exit as they did before. Changes to that law can then take place in a more considered way going forward. We endorse this approach, which is given effect via the European Union (Withdrawal) Bill. It is this implementation of an initial 'no change' scenario that is the Government's central justification for the expedited process for creating a large body of new UK law with minimal parliamentary scrutiny.

3.4 That said, the Government are right to say that there are some areas where importing existing EU law will not be sufficient and we acknowledge that, given the Government's policy of leaving the EU's Customs Union, new UK legislation is needed to create a separate UK Customs regime.

3.5 However, we believe the Government's approach, of providing ministers with exceptional (yet apparently permanent) powers to create a Customs regime from scratch, with minimal parliamentary involvement or scrutiny, in a very short space of time, is unnecessary.

3.6 The explanatory notes to the Bill (paragraph 10)[3] state that the new standalone regime will be 'largely based on EU law' and that it is intended that the customs regime 'will continue to operate in much the same way as it does today'.

3.7 While this offers a degree of reassurance it would have been considerably more helpful for business and provided greater certainty if this had been reflected in legislation. That is, if the existing EU regime (the Union Customs Code (UCC)) had been adopted into UK law with specific, clearly identified changes being made where necessary; more in line with the approach taken by the EU Withdrawal Bill. That would have provided assurance that the existing regime would continue to operate largely as it does today, with changes being clearly signposted.

3.8 The approach adopted in this Bill of recasting the regime from scratch leaves uncertainty for business that the regime will operate largely as it does today and does not help to establish where it may differ. It also inevitably means that a far greater quantity of secondary legislation will be required than if the Government had adopted the UCC plus amendments.

[3] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/660988/Explanatory_Notes.PDF

3.9 Further detailed guidance is needed to provide assurance of the Government's intention that the regime will largely operate as it does today and to clearly indicate where the new regime departs from the existing customs regime.

3.10 At the very least, the subordinate legislation should contain full Explanatory Notes of the legislative objectives. In addition, HMRC should issue detailed Notices of what HMRC say the subordinate legislation achieves. In particular, both Explanatory Notes and Notices should say exactly where the legislation departs from the UCC. Such derivation and departure information is most important. In fact, such information should be provided in detail when the draft legislation is disclosed.

3.11 We are strongly concerned that the vast quantity of secondary legislation needed to build a Customs regime from scratch (the Government's 174 page Delegated Powers Note gives an indication of how much there will be) means that that there will insufficient time to scrutinise, analyse and prepare for the level of change that this Bill may introduce in less than 15 months' time. As a result, there may be wide-reaching and long-term unintended consequences for business, advisers and HMRC.

3.12 It is worth emphasising that the powers created by this Bill are permanent. In decades to come, when Brexit is a distant memory, ministers will retain the powers to rewrite virtually every aspect of the UK's Customs regime without any need for recourse to primary legislation. While recognising (see section 6, below) the need for the detail of Customs law and rates to be set by secondary legislation we question whether this is an acceptable long-term balance of powers between parliament and the executive.

4 The Bill – examples of uncertainty

4.1 Below are some illustrative examples of where we have found the Bill to be vague and unclear. We have not provided a clause-by-clause analysis because there is insufficient detail and certainty to make such an assessment meaningful.

4.2 Clause 16 - Value of chargeable goods

We are told the amount on which import duty is to be paid is the 'transaction value' which means the total amount of consideration [not defined] paid (or payable in connection with the import) subject to 'the inclusion or exclusion of matters specified in the regulations made by the Treasury'.

In other words, 'transaction value' means the undefined consideration; unless it does not and the Regulations may (or may not) say what value specific goods or circumstances should be.

Use of this type of ambiguous clause is widespread and is illustrative of the lack of clarity found throughout the Bill. The clause is creating powers for the Treasury to legislate for the detail at a later stage via secondary legislation.

4.3 Clause 41 - Abolition of acquisition VAT and extension of import VAT

Initially this clause seems to give more certainty and, most definitely, has a large impact on a wide range of businesses. This clause significantly changes the way in which goods coming into the UK from EU countries are dealt with and taxed.

Currently, EU imports (known as 'acquisitions') are generally cashflow neutral and are reported by businesses via the self-assessed VAT return as nothing more than an accounting transaction. This is known as 'postponed accounting'. This clause will abolish such treatment. Instead, it states that all goods brought into the UK will be subject to import VAT.

This is a significant shift for business in terms of cashflow, systems, processes, supply chain efficiency etc. Cross-border movements of goods will require import VAT to be paid and import declarations will need to be made. Typically, import VAT can then be reclaimed, so businesses will need to obtain the relevant evidence in order to secure a refund – unless simplifications are in place. The reality of this is cost and time – both financially and administratively.

It is a challenge for business to prepare for the impact of Clause 41. However, this is compounded by what is stated in the explanatory notes to the Bill[4] for this particular clause:

'The changes … are conditional upon the outcome of exit negotiations with the EU…the government may choose not to make an appointed day order commencing these changes. The government would subsequently legislate to give effect to the negotiated outcome through use of a power provided by this Bill and existing powers.'

Such a level of uncertainty means that all stakeholders (including HMRC) cannot make plans with any level of confidence to prepare for what may be large scale change.

We welcome the Autumn Budget 2017 announcement that the Government recognise the importance of postponed accounting arrangements and 'will take this into account when considering potential changes following EU exit'. It is important that they follow through on this.[5]

4.4 Clause 42 – EU law relating to VAT

This clause effectively seeks to repeal large parts of the EU (Withdrawal) Bill in so far as it relates to VAT. It is not made clear why this is considered desirable.

Clause 42(1) states that despite the EU (Withdrawal) Bill any VAT Regulation is to cease to have effect. This includes the Implementing VAT Regulation, although this may remain 'relevant' under clause 42(5). It is not clear why the Bill needs to take this approach, which is likely to result in legal uncertainty; particularly when it comes to the Implementing VAT Regulation since clause 42(5) fails to state how the Regulation remains 'relevant'. We consider it would be better if the Implementing VAT Regulation continued to have effect under s 3 and s 4 of the EU (Withdrawal) Bill subject to any specific changes made.

Clause 42(2) gives the Treasury the right to amend any rights conferred by EU law by regulations. This regulation does not require any form of Parliamentary approval before it takes effect. In doing so it undermines the tax carve outs in clauses 7(6) and 9(3) out of the Withdrawal Bill. Particularly given those clauses, the absence of any Parliamentary scrutiny appears surprising. Unlike clause 7 and 9 of the EU (Withdrawal) Bill, as amended, the clause is also not time limited.

[4] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/660988/Explanatory_Notes.PDF

[5] https://www.tax.org.uk/media-centre/press-releases/press-release-institute-highlights-possible-relief-brexit-burden

Clause 42(4) would appear to be intending to enact the abuse principle; in particular for VAT with reference to the *Halifax* case. However, it fails to do this in a clear manner. It does so by assuming that clause 6 of the EU (Withdrawal) Bill gives effect to the principle so that it remains 'relevant'. However, clause 6 is just an interpretation section. Paragraph 3 of Schedule 1 also states that 'There is no right of action in domestic law on or after exit day based on a failure to comply with any of the general principles of EU law' which presumably includes the principle of abuse. In so far as the clause is seeking to give greater effect to the principle of abuse of law than other principles of EU law (which protect the citizen against misuses of power by the state), the Bill provides no justification for this difference.

If effect is to be given to the principle of abuse, surely the clause should also give effect to all the other principles of EU law when it comes to VAT. In particular principles that specifically relate to VAT, such as the principle of neutrality. As the CIOT observed in its comments on the EU (Withdrawal) Bill[6] ,the failure to do this is going to give rise to considerable uncertainty because of the way that the Court of Justice invokes these principles, so difficulties are going to arise in knowing which decisions of the Court can still be relied upon.

4.5 Schedule 2 - Special Customs Procedures

Part 4 on Inward Processing Procedure does not mention anything about the type(s) of relief that are available (suspension or drawback) but has an entirely new concept of 'standard form' and 'supplementary form'.

Our members wish to understand this further but there is no detail.

It would appear to introduce a new concept of goods under Inward Processing Relief going overseas for processing and reimport – presumably this is into the EU? It also, at (9), refers to the use of an average production methodology – which is a system the UK used to have and which our members would welcome again. Is the intention of this to facilitate (just) EU trade?

5 Parliamentary Scrutiny

5.1 Ordinarily, we would expect any decision regarding a significant change of policy in relation to tax to be made after consultation in accordance with the Tax Policy Framework, as endorsed by HM Treasury recently in its December 2017 paper 'The new Budget timetable and the tax policy making process'[7].

5.2 We acknowledge that the UK's exit from the EU is a unique situation and requires a flexible approach given the sheer volume of law affected, tight deadlines and political uncertainty.

5.3 However, there is a balance to be struck between the urgency and flexibility required to ensure legal continuity and providing legal certainty as a fundamental feature of the rule of law. There is also the matter of meaningful parliamentary scrutiny. Other measures or limitations may be needed in the Bill to strike a more appropriate balance.

[6] https://www.tax.org.uk/policy-technical/submissions/european-withdrawal-bill-ciot-comments
[7] https://www.gov.uk/government/publications/the-new-budget-timetable-and-the-tax-policy-making-process/the-new-budget-timetable-and-the-tax-policy-making-process

5.4 Those seeking powers must undertake to exercise those powers responsibly taking into account the challenges faced by those affected.

5.5 This Bill delegates wide-reaching powers to Ministers using secondary legislation in the form of regulations and Statutory Instruments (SIs). The Bill also contains so-called 'Henry VIII clauses' where power is given to Ministers to use secondary legislation to amend existing primary legislation.

5.6 The use of secondary legislation is common within Indirect Tax law. In particular, VAT law is regularly created and amended using SIs. SIs have an important a role to play and can provide flexibility of content and timing.

5.7 However, we are concerned about the way in which these powers enable substantive policy changes to be made without due consultation or scrutiny. The powers in this Bill relate to taxation and therefore all of the parliamentary procedures set out are for the House of Commons only.[8]

5.8 For example, Clause 51 (power to make provision to VAT or duties of customs or excise) says that the '*Appropriate Minister' can by way of Statutory Instrument make* ***provision relating to VAT, Customs duty or Excise duty as the Minister considers appropriate****…in connection with, the withdrawal of the UK from the EU*' including 'provision amending or repealing this Act'.

Another example is Clause 54 (Consequential and transitional provision) where '*the Appropriate Minister may by regulations made by statutory instrument make such provision as the appropriate Minister considers appropriate in consequence of this Act'.*

5.9 Both Clauses give the Secretary of State or the Treasury unprecedented power to create tax legislation with very limited opportunity for scrutiny. The powers being created by this Bill and delegated to Ministers are unprecedented and of deep concern to us.

5.10 The majority of SIs in this Bill would go through the negative resolution procedure, where the provision usually becomes law without a debate or a vote, though it may be 'prayed against', debated and potentially annulled by resolution of the House of Commons. (This, however, is rare. The last occasion that the House of Commons annulled an SI was in 1979.[9])

5.11 Parliament can accept or reject an SI but cannot amend it. There is, however, a procedure called a 'Super-Affirmative Resolution' which has two stages, the first of which is essentially a period of consultation during which relevant parliamentary committees and others have an opportunity to make representations to the Government. There is then an opportunity for ministers to lay a revised SI. This is worth looking at for the most substantial regulations created by the Bill.

5.12 We acknowledge that, as tax law, it will only be the House of Commons that scrutinises this legislation. However, we refer to a report from the House of Lords Select Committee on the constitution dated September 2017[10] in relation to the European Union (Withdrawal) Bill where similar issues around delegated legislation

[8] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/661022/Delegated_Powers_note.pdf
[9] http://www.parliament.uk/documents/commons-information-office/l07.pdf
[10] https://publications.parliament.uk/pa/ld201719/ldselect/ldconst/19/19.pdf

are considered. This report provides relevant suggestions on how to strengthen the Statutory Instrument process.

5.13 At paragraph 39, the report reiterates its recommendation to the Government that it is 'important to distinguish between powers required to make the necessary amendments to the existing body of EU law as a consequence of the UK's exit from the EU, and substantive, more discretionary changes that the Government may seek to make to implement new policies in areas that previously lay within the EU's competence.'.

5.14 The aim of the EU (Withdrawal) Bill is to have a functioning statute book on exit day but its purpose is not to make policy changes at the same item. Because of the legal background to the current Customs regime, it is not possible for it to be included in the EU (Withdrawal) Bill and, therefore requires its own legislation.

5.15 However, the Taxation (Cross-border Trade) Bill does not make any commitment to limit itself to 'just' creating a functioning statute book; with future policy decisions made in future UK legislation. This Bill has wider freedoms to create whatever new policy is agreed upon by Ministers. It also then gives those Ministers the power to legislate for that policy with very little parliamentary scrutiny in a way that is at odds with how we develop other aspects of our tax system.

5.16 We find this extension of powers (beyond the aim of the EU Withdrawal Bill) troubling. Especially so when scrutiny is limited to only the House of Commons.

5.17 A recommendation by the House of Lords Select Committee (para 40), is that a general restriction on the use of delegated powers could be achieved using a general provision placed on the face of the Bill to the effect that the delegated powers granted by the Bill should be used only so far as necessary to adapt the body of EU law to fit the UK's domestic legal framework; and so far as necessary to implement the result of the UK's negotiations with the EU. It may be that some form of similar limitation is needed in the case of this Bill?

5.18 Another recommendation of note is to be found in the House of Lords Select Committee, Delegated Powers and Regulatory Reform Committee, 3rd Report of Session 2017–19 at paragraph 107[11] where a 'sifting' mechanism is proposed to rapidly judge each SI on its merits and strike a balance between the scrutiny requirements of Parliament and the business needs of Government. For example, Ministers could be required to provide written justification as to why a negative resolution is used. This mechanism could be explored further in relation to the powers within this Bill and build upon the work already undertaken in the Delegated Powers note published alongside the Bill[12].

6 An effective Appeals process

6.1 We are concerned that taxpayers' rights in relation to an effective appeals process are retained. This Bill could be a backwards step in relation to an effective appeals process, because it affords such wide discretion to HMRC. We wish to see the adoption of clear unambiguous legal requirements for customs matters, which minimise commissioners' discretion.

[11] https://publications.parliament.uk/pa/ld201719/ldselect/lddelreg/22/22.pdf

[12] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/661022/Delegated_Powers_note.pdf

6.2 Adoption of the Community Customs Code in 1993, required the UK to create an effective appeals process. This was because the Customs & Excise Management Act 1979 was written in language that permitted the Commissioners of Customs & Excise to make any determination that they considered reasonable. Accordingly, the only effective ground of appeal was that no reasonable Commissioner could have made such a determination. The effect of the CCC was to give taxpayers a fairer appeals process.

6.3 It remains a requirement of WTO membership that an effective appeals system be in place.

6.4 It would assist business for the Explanatory notes to confirm that taxpayers would have the self-same rights of appeal they have under the Finance Act 1994 in relation to the existing customs regime. We note that Para 417 of the explanatory notes refers to the regime for appeals in the Finance Act 1994 and paras 142 to 145 of Schedule 7 make amendments to FA 1994. Whether those provisions will provide an effective dispute resolution regime needs a more detailed review.

6.5 In addition, there are a number of matters where HMRC are given discretion, in relation to which the rights of appeal are unclear. We consider that the rights of appeal in relation to the exercise of discretion should be expanded to the extent that they do not exist under the Finance Act 1994.

7 Business needs certainty now in order to plan for exit day

7.1 This is a long framework Bill which gives an indication of the volume of detail that is yet to follow via secondary legislation and guidance. Whilst the Bill contains some detail, the lack of certainty about the wider EU negotiations means that there can be little confidence in what has been presented. We understand that until the negotiations progress and a deal has been agreed by both the UK and the EU, the detail will be lacking.

7.2 However, with 15 months to go until Exit Day in March 2019, this leaves businesses and their advisers (and HMRC) with an obvious problem. How can stakeholders be ready in time for exit day when the details of what will be required are yet to be determined? Businesses have to ‘wait and see’, risking being severely underprepared for a sudden and severe change to the way cross border trade operates, or prepare for the ‘no deal’ scenario which presents some tough choices, eg. supply chain routes.

7.3 What our members tell us that they need to know is: How is our Customs code going to differ from the UCC? This would be the helpful approach for Customs practitioners and their clients rather than attempting to create something totally new.

7.4 Members report examples of businesses already altering supply chains as it is the only way at present to plan with any certainty. For example, stock currently sold from the UK to European customers will now be warehoused within the EU to service that market (never reaching the UK) in order to avoid the potential barriers to trade that cannot be predicted. Certain manufacturers are reviewing supply chains to find the pinch points where parts cross into and out of the UK as part of an integrated supply chain and are seeking to eliminate / reduce this.

8 Making Tax Digital

8.1 The UK is leaving the EU at almost exactly the same time that the Government is introducing the requirements of Making Tax Digital (MTD) for VAT. Broadly speaking, MTD for VAT will require all compulsorily VAT registered businesses to keep their records in software or spreadsheets which meet specific requirements set by HMRC ('functional compatible software') and to submit their VAT return directly from that software.

8.2 As an illustration of the extent of the change of behaviour required, only around 12% of businesses currently file their VAT returns directly from software, meaning that the vast majority of businesses in scope will need to make changes to their systems and processes in order to be compliant. Further, many businesses will be required to change or update their accounting systems to ensure that they meet the definition of 'functional compatible software', or even start using software for the same time.

8.3 It is clear from our comments in this submission that leaving the EU will present significant challenges for businesses; understanding the actual tax treatment of transactions post-Brexit, and dealing with new process requirements. We remain concerned that requiring businesses to also change their record-keeping and VAT return procedures at the same time is simply too burdensome, particularly considering the fact that tried and tested MTD-for-VAT compliant software is unlikely to be widely available until summer 2018 (at the earliest), so (like Brexit) it is currently difficult to make firm preparations now.

9 Future vision – what should be the focus of the Government's approach?

9.1 Transitional period

We fully endorse the need for a transitional period and consider this to be the only realistic way for business, advisers and government departments to cope with the volume and complexity of changes that leaving the EU is likely to demand. In particular, we strongly support the government's keenness to explore with the EU a model that would ensure businesses in the UK and the EU only have to adjust to a new customs relationship once; as much as this is possible.

9.2 Highly streamlined Customs arrangement

Paras 5.8-5.14 of the Customs Bill White Paper set out HMT's preferred option for a post-Brexit Customs arrangement. We support the adoption of these simplification procedures, including the continued use of presentation waivers, use of the Common Transit Convention, mutual recognition of Authorised Economic Operators (AEOs), self-assessment and technology-based solutions.

9.3 Realism

HMT and HMRC need to focus on what is realistically possible. For example, the EU plans for law reform until 2025 have already been set out and are unlikely to be amended without further budgetary provision and agreement, which is unlikely to be forthcoming on the EU side. The EU27 has its own timetable for customs changes that have been agreed as part of the UCC implementation and those plans do not include any 'exit' scenarios. Changes to the UCC timetable would require Commission sponsoring involvement, which is unlikely. The best we can reasonably hope for is that the EU keeps to its deadlines for implementation of the UCC.

9.4 Resiling from certain UCC requirements?

Whilst we expect (and wish) the Taxation (Cross Border Trade) Bill to largely replicate the UCC, we are aware that there were aspects of it that the UK only reluctantly accepted. Some members would like to see a commitment from the Government to a future review of the Bill with a view to resiling from those particular areas eg additional customs guarantee requirements (which HMRC strongly opposed at the time) as these add a significant burden to smaller businesses.

9.5 Self-assessment

We are of the view that self-assessment is key to facilitating as frictionless as possible import / export procedures, perhaps linked with AEO(C) status.

In relation to import VAT, we strongly support the use of postponed accounting (the reverse charge) (see 4.3 above). We understand this already to be available in some other European countries.

We suggest that the Intrastat form could be converted into some form of self-assessment clearance return; utilising a process that is already embedded within VAT self-assessment.

In the longer term, fiscal controls and any settlement of duty will need to be automated and/or handled away from the frontier for most shipments.

It seems likely that there will need to be some form of customs clearance mechanism away from the borders (as there is insufficient infrastructure at the borders to deal with the significant increase in customs declarations). One aspect yet to be discussed is the burden this will create for business, especially in relation to sanctions for errors.

There are bound to be sanctions for non-compliance, but a balance will have to be struck so that business does not take a disproportionate burden of risk. A light touch will be needed as new regimes are introduced.

9.6 AEOs

In the longer term – we would support a future scheme being simplified, made more meaningful and crystallising some real benefits such as simplified procedures, presentation waivers and guarantee waivers. The application process could also be made simpler. We welcome the inclusion at Clause 22(3) of the possibility of different classes of AEO being allowed. We have previously commented on AEOs in our response to the Customs White Paper.[13]

Mutual recognition of AEOs seems to be an admirable aim. Mutual recognition of AEO(S) (security) is understood internationally. Mutual recognition of AEO(C) (an EU concept) and AEO(C) lite (a talking point concept relating to disparity of scrutiny of applications by EU customs authorities and disproportionate controls from Customs Freight Simplified Procedures) needs to be explored further.
AEO status should be available to a wide range of businesses, especially in the SME sector. It may be that SMEs struggle to obtain AEO status and would, therefore, be

[13] https://www.tax.org.uk/policy-technical/submissions/customs-bill-legislating-uks-future-customs-vat-and-excise-regimes-%E2%80%93

adversely affected by onerous customs procedures. We suggest that it may be necessary to have an AEO lite status for SMEs, at least initially.

9.7 **Tariffs – methodology of calculation**

Whilst appreciating that Tariff rates will be negotiated as part of the trade negotiations, we urge HMT to consider a more straightforward methodology for calculating duty on certain ranges of products should the UK not reach duty-free agreement with the EU.

9.8 **Northern Ireland border**

HMT's suggestion of a cross-border trade exemption for Northern Ireland (Customs White Paper, para 5.23) seems a pragmatic response and we would support this. Some members would like to see this exemption extended further – to all borders or all EU27.

9.9 **International Customs law**

As a point of principle, international customs law should be followed as closely as possible. For example, some members were not in favour of the EU's departure from the language of the WTO Customs Valuation Agreement in the CCC (and UCC) and consider the UK now has an opportunity of aligning with the language of the WTO Customs Valuation Agreement.

9.10 **Alignment of Customs & Excise legislation**

HMRC have indicated via the Joint Alcohol and Tobacco Consultation Group that post-Brexit they are looking to position Excise law to align with Customs law.

We take this to mean there will be some sort of standard approach as to how decisions on approvals will be made by HMRC under domestic legislation.

There is established UK jurisprudence developed for Excise with regard to how the Commissioners should exercise their powers of discretion (and much Excise law requires the Commissioners to exercise such discretion). Therefore, current Excise legal authorities (and the practical experience of that) could provide guidance on the development of combined post-Brexit legislation and policy.

9.11 **SMEs**

Many SMEs may have never prepared documents for a Customs exit or entry clearance. They may need a 'light' regulatory touch to ease them into Brexit and any transitional plan. There are often quite different needs faced by the SME sector; there will be a lack of experience, staff or resources to suddenly deal with significant changes, procedures or paperwork.

SMEs try to reduce costs by doing things internally as affordability of professional advice can be prohibitive; mistakes will be made on administration, payment deadlines, wrong codes/forms. We need a light touch by HMRC for initial period.

We remain concerned about the ability of SMEs to be able to obtain authorised economic operator status. There does not appear to be any attempt at this stage to provide comfort for SMEs on that.

9.12 **Resourcing and capacity**

HMRC will need substantial extra resources to cope with Brexit. Post-Brexit the volume of declarations required annually is expected to rise from 50 million 300 million declarations.

The successful and timely delivery of the new CDS system is critical for a workable transition from the UCC.

Customs practitioners have told us that warehousing space is currently limited in the UK. They believe that there would not be enough capacity in the UK if a 'hard Brexit' is pursued.

Similarly we have heard from practitioners that there are not enough freight forwarders in the UK currently to take on all declarations for EU trade if hard Brexit. It is important that additional capacity is in place well ahead of Brexit.

Our members have warned that we may see a peak strain in logistics in the c.6 weeks before the Brexit deadline, as importers rush to bring in imports while we remain in the Customs Union.

9.13 **Proof of origin**

This is a complex area and will need careful attention from Government during trade negotiations to minimise the difficulties faced by UK importers and exporters.

At present once something is in the EU (including the UK) it is in free circulation and the next business in the supply chain doesn't have to bother about origin or import procedures unless they are going to re-export the goods when they will already have the origin information from the manufacture or original import into the EU.

Leaving aside the obvious difficulties of consignments incorporating parts sourced from multiple countries when certifying the origin could be problematic anyway, once the UK leaves the EU it is highly possible that the UK and EU could differ on the preferential duty rates they give to products from certain countries and would need to document the origin for that purpose. The issue could apply any time when there is arbitrage in the duty rates or preference treatments between the UK and EU.

Consider an export situation where a UK business is exporting goods to a customer in country X that allows preferential duty rates for goods of EU origin but not to the same extent for the UK. Now, the foreign customer would demand that the EU origin of any included parts is certified so that he can at least pay some at the lower duty rate. The UK business would need to ensure he gets that EU origin certified to pass the certification to his foreign customer.

9.14 **Rules of origin**

Preferential trading agreements (PTAs) generally specify a minimum percentage of own origin product for a product to qualify. At present the calculation of own origin is EU-wide. Post-Brexit, unless an appropriate arrangement is reached with the EU it will only be UK-produced components that will be deemed own origin.

An example of a sector with a particular problem is car manufacturing. It is normal in the sector for a country to have 60% of own origin product in the export content. In

the UK, this is usually around 10% (maximum is 43%). Is it going to be impossible to reach global benchmarks?

9.15 **Supply chains**

Brexit could affect supply chains in a number of different ways. One, as highlighted elsewhere, concerns the impact of place of origin rules and will there be a gradual move of supply chains into or out of the UK in order to benefit from UK or EU preference agreements. There is also a question of whether qualifying as EU origin will be more important for UK manufacturers than qualifying as UK origin depending on where their key markets are.

The second potential impact will be how friction will affect supply chains and increase costs, as manufacturers typically operate 'just in time' logistics. Increased friction potentially means more parts or finished goods in transit and thus more working capital tied up in production or delays in getting finished product to market. One large manufacturer has estimated that they will need to buy or lease 125 trucks/trailers for every 24 hours of delay in order to keep production flowing. Maintaining more parts or stock in the UK also suggests more warehousing and suitable land in Dover and Southampton have reportedly dramatically increased in price in past months. It is important that effective plans to prevent significant delays arising are in place to minimise friction on UK manufacturers.

10 Acknowledgement of submission

10.1 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.

11 The Chartered Institute of Taxation

11.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. 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. 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.

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. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT's 18,000 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

The Chartered Institute of Taxation
11 January 2018