

FACTSHEET: UK's withdrawal from the European Union by the CIOT, ICAEW & ICAS

The Taxation (Cross-border Trade) Act 2018

The Taxation (Cross-border Trade) Act 2018 received Royal Assent on 13th September 2018. It gives rise to an unusually complex mix of legal and technical issues in relation to customs and excise duties and VAT, especially considering the wide range of potential outcomes that the legislation seeks to regulate.

What is the purpose of the Act?

This framework legislation seeks to provide enabling powers to impose and regulate a UK customs duty regime on the import and export of goods once the UK has left the European Union. The Act seeks to “allow sufficient flexibility to give effect to a range of potential outcomes from negotiations with the UK’s European partners, including an implementation period, and implementation of a new Customs regime in the event there is no negotiated settlement.”¹

The Act seeks to replace the current EU Union Customs Code and amend current UK VAT and excise duty laws in connection with the withdrawal of the UK from the EU.

Where do I find a copy of the Act and Explanatory Notes?

The Taxation (Cross-border Trade) Act 2018² has been published. Explanatory notes to the Act are not available, although the explanatory notes published to accompany the Bill’s passage through the House of Commons³ remain available and, following some notable amendments, through the House of Lords⁴, where it passed unamended.

When was it enacted and when will it come into force?

The commencement provisions are complicated. There are different dates for different sections of the Act. In general, enabling powers to make the framework and future rules (via Regulations / Statutory Instruments) came into force on 13th September 2018. Other powers in connection with establishing an independent trade policy eg import duty rates, eligible developing countries and International trade disputes will come into force on a day appointed by the Secretary of State. All other provisions, including those to be made by regulations or public notices, will come into force when appointed by the Treasury.

Summary of the main provisions

Part 1 introduces a new import duty on the importation of chargeable goods into the UK. That part creates the framework for charging provisions and how the regime will work, but a lot of the detail will appear in further regulations. If the goods are not declared they are liable to forfeiture. Further details covering various matters such as the customs tariff, preferential rates, provisions concerning quotas, tariff suspension, certain matters concerning valuation, reliefs from import duty etc., will follow in regulations.

Part 2 states that the Treasury may introduce regulations for the charging of export duty on the export of goods from the UK.

¹ <https://publications.parliament.uk/pa/bills/lbill/2017-2019/0125/18125en02.htm>

² <http://www.legislation.gov.uk/ukpga/2018/22/contents/enacted/data.htm>

³ <https://publications.parliament.uk/pa/bills/lbill/2017-2019/0125/18125en.pdf>

⁴ <https://publications.parliament.uk/pa/bills/lbill/2017-2019/0125/18125en02.htm>

Part 3 addresses VAT. Acquisition VAT is abolished and all goods imported into the UK (whether from the EU or elsewhere) will be subject to import VAT. This is a significant shift for business in terms of cashflow, systems, processes, supply chain efficiency etc. In guidance⁵ issued on 23 August 2018 on 'VAT for businesses if there's no Brexit deal', the Government has made a welcome announcement that it will introduce postponed accounting for import VAT (via the VAT return) but only, as yet, in a 'no-deal' scenario.

Part 4 lays down general provisions for the imposition of excise duty.

There are nine schedules which contain more detailed information on customs declarations, special customs procedures, such as transit procedures, inward processing procedure, etc., HMRC powers, provisions relating to developing countries, anti-dumping customs procedures and amendments to existing VAT, excise and custom laws to reflect the UK's third country status.

Wide reaching powers

This Act delegates wide-reaching powers to Ministers using secondary legislation in the form of regulations to be introduced by Statutory Instruments. The Act also contains so called 'Henry VIII clauses' where power is given to Ministers to use secondary legislation to amend existing primary legislation.

The government has produced a note⁶ setting out the justification for why these delegated powers are needed. However, these powers enable substantive policy changes to be made without due consultation or scrutiny.

What does it mean for businesses?

The Act effectively sets a standalone UK framework for a customs duty regime to be applied in accordance with the World Trade Organisation (WTO) rules, but with flexibility to allow for a range of outcomes which could include the UK reaching a deal with the remaining EU member states on customs, as well as potentially allowing the UK to reach other free trade agreements.

Thus, the UK is preparing the ground for a customs regime that can apply assuming that there is 'no deal' with the EU and the UK's trading arrangements will operate under WTO rules. As such, it could be seen as the 'baseline' position – any trade agreements reached with the EU or third countries will be an improvement on the baseline position. With the precise outcomes remaining highly uncertain, businesses need to plan on the basis that this regime will be the one that applies in April 2019.

The Government has recently published a number of 'no-deal' notices⁷ which advise businesses to make preparations. For further details see 'what if there is no Brexit deal?'⁸

What is likely to happen next?

This is a long framework Act which is detailed and also gives an indication of the volume of further detail that is yet to follow via secondary legislation and guidance. It is entirely possible that new legislation may be introduced to amend / repeal some or all of the Act.

We continue to engage with HM Treasury and HMRC to highlight issues, concerns and suggest ways to mitigate and navigate these. We will continue to provide members with information as developments occur. More information can be found on our websites:

www.tax.org.uk

www.icaew.com

www.icas.com

⁵ <https://www.gov.uk/government/publications/vat-for-businesses-if-theres-no-brexite-deal>

⁶ <https://publications.parliament.uk/pa/bills/cbill/2017-2019/0128/171121DelegatedPowers.pdf>

⁷ <https://www.gov.uk/government/publications/vat-for-businesses-if-theres-no-brexite-deal> and <https://www.gov.uk/government/publications/trading-with-the-eu-if-theres-no-brexite-deal>

⁸ <https://www.taxadvisermagazine.com/article/what-if-there-is-no-brexite-deal>

No responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication can be accepted by the authors or publishers. This material may also be subject to copyright. More information about these matters, and about the authors, can be found on the websites referred to above.