

European Scrutiny Committee

House of Commons London SW1A 0AA

Tel (020) 7219 3292 Email escom@parliament.uk Website www.parliament.uk/escom

From: Sir William Cash MP

12 October 2022

Richard Fuller MP
Economic Secretary to the Treasury
HM Treasury
1 Horse Guards Road
London SW1A 2HQ

EU rules on minimum VAT Rates: potential implications for the UK under the Northern Ireland Protocol

We have previously written to your predecessor in relation to the new EU VAT Rates Directive, concerning the potential implications for the UK if the new EU rules on minimum VAT rates had to be applied in Northern Ireland (NI) under Article 8 of the Protocol on Ireland/Northern Ireland.¹

With the new EU rules now formally adopted, and the Government's Northern Ireland Protocol Bill before Parliament, we believe this is a timely juncture to obtain further information from you on the potential implications of the new Directive for the UK. We note that clause 17 of the Bill would allow the Treasury to change, by regulations, the incidence of VAT (and excise duty) in NI in ways not permitted by EU law as it applies in Northern Ireland under the Protocol, for example to allow the recent VAT reductions on energy-saving materials to be extended fully to NI. We understand that clause 15 could be used separately to make EU VAT and excise rules under Article 8 more broadly "excluded provision" in UK law, allowing them to be overridden by other domestic legislation.

First, with the Bill still progressing through the parliamentary process, it is not yet certain if the powers foreseen by clauses 15 and 17 will be enacted and, even if so, how the Government intends to use them in practice. In the interim, EU VAT law continues to apply in domestic law in NI under Article 8 of the Protocol as given effect by section 7A of the European Union

¹ EU document 5335/18, COM(18) 20; ESC number: 39448. Adopted as [Council Directive \(EU\) 2022/542](#) on 5 April 2022.

(Withdrawal) Act 2018. Given these uncertainties, we would be grateful for your Department's assessment of how the new EU rules, if they *did* have to be applied in NI in full, could affect VAT rates there:

- Would the new flexibilities, introduced by the VAT Rates Directive for Member States (and the UK in respect of NI) to allow for more reduced or zero-rates, address the issues which clause 17 of the Bill is meant to address? If not, why not? Are there any circumstances under which the Government would accept that EU law *should* restrict the UK's ability to vary the rates or incidence of VAT and excise duty in Northern Ireland, as originally foreseen by the Protocol?
- Notwithstanding the powers envisaged under the Northern Ireland Protocol Bill, if the Directive *did* have to be applied in NI in full, could this lead to any changes, in particular increases, in VAT rates there? To what extent do the UK's existing reduced and zero-rates exceed the numerical limits the Directive will impose from 2032? Does the new EU VAT Rates Directive allow the UK to zero-rate energy bills in NI? If the assessment necessary to fully answer these questions is still ongoing, it would be helpful to know when it is expected to be completed.
- What representations did the Government make to the EU to highlight the potential implications of the Directive for VAT rates in NI under the Protocol? Were any specific UK concerns articulated and, if so, how did the EU respond?

Secondly, we are keen to get more information about the potential implications of the UK unilaterally dis-applying elements of EU VAT law as still in effect in NI under either clause 15 or 17 of the Northern Ireland Protocol Bill.

- Is it the Government's expectation that, if Ministers made regulations under clauses 15 or 17 of the Bill to dis-apply elements of EU VAT or excise law in NI, UK access to the EU's VAT Information Exchange System (VIES) and Excise Movement & Control System (EMCS) under the Protocol would not be affected?
- If, irrespective of the Government's ambitions, the EU were to switch off UK access to those systems in respect of NI in response to such regulations, what assessment has been made of the impact on tax evasion on goods brought into NI across the land border? What contingency arrangements would be introduced instead to ensure HMRC has sufficient insight into movements of goods across the border?

We look forward to receiving your reply by 1 November 2022.

I am copying this letter to Simon Hoare MP, Chair of the Northern Ireland Affairs Committee and Stephen Habberley, Clerk of that Committee; to the Rt Hon. Mel Stride MP, Chair of the Treasury Committee and to Adam Mellows-Facer, Clerk of that Committee; to Lord Kinnoull, Chair of the House of Lords European Affairs Committee, and to Nick Boorer, that Committee's Clerk; to Victor Peluola and Patrick Lynch at your Department; and to Les Saunders at the Foreign, Commonwealth and Development Office.

CHAIR