

European Scrutiny Committee

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From: Sir William Cash MP

4 November 2020

Rt Hon. Jesse Norman MP
Financial Secretary to the Treasury
HM Treasury
1 Horse Guards Road
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Northern Ireland Protocol: EU VAT identifier for businesses

Thank you for your Explanatory Memorandum on the European Commission's draft Directive to introduce a Northern Ireland-specific geographic indicator to prefix VAT registrations for, in your words, "UK registered businesses trading goods in, or with Northern Ireland that fall within scope of the Northern Ireland Protocol".¹ This would be used to identify those UK businesses with operations within scope of Article 8 of that Protocol, which requires the continued application of EU VAT law "concerning goods" in and to Northern Ireland from 1 January 2021 onwards.

We note from your subsequent letter to the House of Lords of 5 October 2020 that the Government is seeking to avoid this way of identifying relevant businesses and their activities for VAT purposes under the Protocol, but unlike the EU has not made public its proposals to "ensure that data shared via the EU VAT IT systems should be limited to transactions that are within scope of the Protocol". It also appears from the legal text of the Directive that it would not, in itself, require the UK to implement the system described by the Commission in its explanatory notes accompanying the draft legislation.

Your letter to the House of Lords however also referred to your reluctance to "provide further detail at this time, in order not to prejudice [the] discussions" with the European Commission on "exactly how that would operate in practice, and how that data segregation can be implemented with minimal burdens to businesses". While this may well be true to some extent, it appears incongruous for the Government not to set out publicly its alternative

¹ European Commission document COM(2020) 360.

proposition given that the Commission has felt able to publish a formal legislative proposal for the identifier and accompanying explanatory notes. We note furthermore that your Department's guidance of 26 October 2020 on "Accounting for VAT on goods moving between Great Britain and Northern Ireland" states that "there will be no requirement for a new VAT registration for sales of goods in Northern Ireland", but it is unclear if this also applies in relation to supplies or acquisitions of goods involving a company in Northern Ireland and another in the EU.²

You will also be aware that in April 2020 the Commission issued a notice on the application of EU VAT rules in Northern Ireland under the Protocol, which – however basic – remains the most information available publicly about the purported implementation of Article 8.³ We are not aware of the Government having publicly accepted the views set out in that notice or issued practical guidance of its own in this context, although we have raised with you on several occasions our concerns about an apparent disparity in the Government and EU's respective interpretations of the UK's legal obligations under the Article.⁴ Indeed, the Government has recently hinted that the EU's interpretation of the requirements relating to import VAT formalities on GB-NI trade could constitute a "material breach of its duties of good faith".⁵ As such, a complete lack of clarity about the practical implementation of Article 8 persists ahead of its entry into force on 1 January.

In light of the specific Commission proposal for a VAT identifier for Northern Ireland, and the difficulties we have encountered previously in soliciting information from you on the wider implications of Article 8, we focus here on that issue. In particular, we are therefore asking you to:

- clarify why the Government would prefer to avoid the geographic VAT identifier as proposed by the European Commission;
- confirm whether the Directive as proposed would legally oblige the Government to apply a specific geographic prefix for relevant businesses in Northern Ireland as suggested by the Commission or, if not, what its practical legal effect would be;
- explain if the HMRC guidance of 26 October 2020, which states that "there will be no requirement for a new VAT registration for sales of

² HM Revenue & Customs Policy Paper, "Accounting for VAT on goods moving between Great Britain and Northern Ireland from 1 January 2021" (26 October 2020).

³ European Commission, "[Notice to Stakeholders: Withdrawal of the United Kingdom and EU rules in the field of Value Added Tax \(VAT\) for goods](#)" (16 April 2020).

⁴ See in particular the Letter from Sir William Cash to the Financial Secretary to the Treasury dated 14 May 2020.

⁵ Policy paper, "[Government statement on notwithstanding clauses](#)" (17 September 2020).

goods in Northern Ireland”, also precludes the VAT identification arrangement foreseen by the Commission proposal; and

- clarify the Government’s alternative proposition to ensure that “data shared via the EU VAT IT systems should be limited to transactions that are within scope of the Protocol”, or explain why, unlike the EU, it feels unable to make its proposal public.

It goes without saying, given our previous correspondence on Article 8 of the Protocol, that we would also welcome any further information you are able to provide on the Government’s discussions with the Commission more broadly about the implementation this aspect of the Withdrawal Agreement, in particular with respect to the concerns we outlined in our letter to you dated 14 May 2020. In particular, it would be helpful to know if the Government expects there to be a Decision of the UK-EU Joint Committee which makes specific provision relating to the implementation of Article 8 and the continued application of EU VAT and excise legislation in and to Northern Ireland.

We look forward to receiving your reply by 14 November.

I am copying this letter to Lord Kinnoull, Chair of the House of Lords EU Select Committee, and to Chris Johnson, that Committee’s Clerk; to Victor Peluola and Patrick Lynch at your Department; and to Les Saunders in the Cabinet Office.

CHAIR