

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

19 November 2020

Rt Hon. Jesse Norman MP
Financial Secretary to the Treasury
HM Treasury
1 Horse Guards Road
London SW1A 2HQ

Northern Ireland Protocol: reduction of EU VAT rates on COVID-related medical goods

Thank you for your Explanatory Memorandum of 10 November on the recent efforts by the European Commission to allow EU countries to reduce or zero-rate VAT for certain goods needed to address the coronavirus pandemic.¹ The UK will of course generally cease to be bound by EU VAT law at issue at the end of the post-Brexit transitional period on 31 December 2020. However, as you are aware, EU rules in that field will retain particular relevance for Northern Ireland, because the Protocol on Ireland/Northern Ireland foresees that EU VAT law “concerning goods” will continue to apply there until at least 2026.

In this context, we appreciate your confirmation that the recent Commission proposal for an amendment to the VAT Directive, allowing for an optional zero-rating for COVID testing kits and vaccines, would “be available” to the UK in respect of Northern Ireland but that such a reduction is not currently Government policy.

Given that VAT rules for goods in Northern Ireland will be restricted by EU law from 1 January 2021 under the Protocol while those for Great Britain will

¹ European Commission document COM(2020) 688, “Proposal for a COUNCIL DIRECTIVE amending Council Directive 2006/112/EC as regards temporary measures in relation to value added tax for COVID-19 vaccines and in vitro diagnostic medical devices in response to the COVID-19 pandemic” and Commission Decision (EU) 2020/1573 of 28 October 2020 amending Decision (EU) 2020/491 on relief from import duties and VAT exemption on importation granted for goods needed to combat the effects of the COVID-19 outbreak during 2020.

not, it is in the UK's interest that EU legislation on VAT rates as they apply in Northern Ireland are as flexible as possible, to allow the Government to keep rates aligned across the UK to the maximum extent. With this in mind, we would have considered it in the UK's interest for the Commission proposal for an optional zero-rate to cover a wider range of goods than just testing kits and vaccines, such as personal protective equipment and other medical goods, which are exempt from import VAT and customs duties across the EU and the UK under an emergency legal act adopted by the Commission in April this year.

With respect to this latter measure, there is further uncertainty about its implications for Northern Ireland under the Protocol. The Commission has stated that the "provisions of [EU] legislation regarding relief from import duties and exemption of VAT on importation of goods [...] are to apply to and in [...] Northern Ireland from the end of transition period". It is unclear to what extent the Government agrees with that interpretation. When the import tax waiver was extended into April 2021, the Commission also noted that the Government "did not request for relief from import duties and exemption from VAT on imported goods to Northern Ireland" beyond 31 December.

Your Department has offered the cryptic explanation for this decision that "as Northern Ireland is a part of the UK's customs territory, it is subject to UK trade policy". This suggests that, in the Government's view, it will be for the UK to determine unilaterally what import VAT and customs duties will apply to COVID-related goods covered by the Commission's waiver entering Northern Ireland from Great Britain (or other non-EU countries) from 1 January. If our interpretation is correct, it is difficult to reconcile it with the provisions of the Protocol which state that the EU Customs Code and its VAT law 'concerning goods' will apply "to and in" Northern Ireland from that date, with the application of the EU external tariff only to those goods which the UK-EU Joint Committee has decided to be "at risk" of ending up in the EU's Customs Union. Moreover, the Protocol implies that import VAT would be applicable even to goods not considered "at risk".

As such, the implications of the Government's choice not to seek an extension of the import tax waiver for Northern Ireland from the European Commission are unclear. From the information available to us, it appears that, from 1 January 2021, the Government could be legally obliged under the Protocol to collect import taxes, i.e. import VAT and EU customs duties, on PPE and medical equipment brought into Northern Ireland from Great Britain, and from other non-EU countries. We are aware of course of the on-going discussions in the UK-EU Joint Committee on the collection of such taxes on intra-UK trade under the Protocol, and that the forthcoming Finance Bill may

contain clauses to give Ministers to override the provisions of the Protocol unilaterally under UK domestic law.

We are also concerned at your apparent lack of consultation with the Northern Ireland Executive on these Commission initiatives, and decision not to engage with the European Commission on them. While there may not currently be any plans to reduce the VAT rates on coronavirus vaccines or testing kits, the Government's ability to introduce such reductions on a UK-wide basis will depend on the available legal options under EU VAT law as it will continue to apply in Northern Ireland under the Protocol. More generally, we would expect the Government, as the Contracting Party to the Withdrawal Agreement, to engage with the Commission proactively whenever draft EU legislation is put forward which would or could apply in Northern Ireland under the Protocol.

In light of the above, we ask you to write to us to clarify:

- If the Government agrees with the European Commission's assertion that "the provisions of [EU] legislation regarding relief from import duties and exemption of VAT on importation of goods, in accordance with Article 5(3) and (4) and Article 8 of the Protocol on Ireland/Northern Ireland [...] are to apply to and in the United Kingdom in respect of Northern Ireland from the end of transition period"; and
- By extension, to state explicitly whether – in the absence of an extended Commission waiver for such import taxes covering Northern Ireland beyond 31 December – COVID-related goods at present covered by such a waiver would as a matter of international law under the Protocol attract the applicable EU customs duty and import VAT as required by EU law (and in the absence of any UK-EU Joint Committee Decision to the contrary), including where such goods are moved to Northern Ireland from the rest of the UK.

We look forward to receiving your reply before the end of 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 Les Saunders in the Cabinet Office; and to Patrick Lynch and Victor Peluola at your Department.

CHAIR