Brexit Briefing

No: 05 // MARCH 2018

The Border

Businesses across the island of Ireland took some comfort late last year at the conclusion of Phase 1 of the EU-UK Brexit negotiations when it was stated that "the United Kingdom will maintain full alignment with those rules of the internal market and the customs union which, now or in the future, support North-South co-operation, the all-island economy and the protection of the 1998 [Good Friday] agreement".

Three potential border solutions were envisaged - some form of new relationship between the EU and UK, an alternative solution to be put forward by the U.K, or a solution maintaining existing regulatory rules and procedures which would effectively keep Northern Ireland in the customs union.

So far, there has been no discernible progress on the first two options. In February, Prime Minister Theresa May, said the UK will leave both the single market and the customs union while the EU's Chief Negotiator Michel Barnier said that the UK's decision to leave the single market and customs union makes border checks unavoidable. Mr Barnier indicated that the EU plans to include the third option in the text of the withdrawal agreement. This appears unlikely to be politically acceptable to the DUP in Northern Ireland where any move to treat Northern Ireland differently to the rest of the UK is likely to prove problematic.

Meanwhile, Taoiseach Leo Varadkar is seeking to have the commitments made in December written into the legally binding withdrawal agreement.

As the clock continues to tick down, the absence of certainty is frustrating. PKF-FPM continues to encourage businesses North and South to take every opportunity to make their views known.

Brussels Effect

Regardless of the outcome of the EU-UK negotiations, the reality for businesses wishing to sell into the European market is that they will have to comply with EU rules. This so-called 'Brussels effect' suggests that, based on their need for global compliance, companies operating in the UK will opt to comply with EU regulations even if they don't have to.

Post-Brexit VAT

VAT is an important consideration when preparing for Brexit. Once the UK leaves the EU, goods sold by a UK supplier to a Republic of Ireland customer will be treated as goods from outside the EU which means that VAT will be payable by the customer at the point of entry. Goods will be held by Customs until the VAT is paid. Similarly, a supplier in the Republic of Ireland selling to a UK business will be exporting and may have to complete export documentation

Post-Brexit, the current method of zero-rating sales and the customer accounting for the VAT in Ireland and vice-versa will end. This will create a cash flow disadvantage for the customer and will be an administrative burden on the supplier as export documentation will be required.

Northern Ireland traders carrying out services in Ireland, such as construction, where the trader does a self supply of goods from their UK business to their Republic of Ireland site will encounter similar cashflow and administrative disadvantages. Arrivals or dispatches of goods crossing the border will also no longer be EU acquisitions.

These changes may create opportunities for customs warehousing businesses along the border.

Tariffs

In June 2017, IntertradeIreland published a useful report examining the potential impact of World Trade Organisation tariffs on cross-border trade. This report examined current cross-border trading patterns and considered the potential impacts on overall trade of the application of current EU WTO tariffs. The impact of non-tariffs and changes to the euro-sterling exchange rate were also examined. The report contains useful tables which you may find helpful when projecting the likely Brexit impact on your business. It can be downloaded from intertradeireland.com.

InterTradeIreland is providing support in the form of a £2k voucher (inclusive of VAT) for manufacturing and internationally tradable service businesses to meet the costs of obtaining Brexit-related advice. The cost of the advice is invoiced directly to InterTradeIreland so there is zero cashflow impact on applicant businesses. Further information is available from Aveen McShane, Senior Manager in PKF-FPM's Brexit Centre of Excellence.

Dublin Port

The Irish Times recently reported that Dublin Port is to apply for planning permission to construct new infrastructure in anticipation of a hard Brexit.

Chief executive Eamonn O'Reilly said he could not wait for political solutions, and was planning for the UK's exit from both the European single market and the customs union.

"Our view always was that the British government has clearly said they are leaving the customs union and the single European market," Mr O'Reilly told The Irish Times. "We've taken that as our starting point here in Dublin Port. We have to be ready for March 2019."

Brexit Briefing

No: 05 // MARCH 2018

Agri-Food Sector

A position paper on Northern Ireland and Ireland published by the UK government in August 2017 stated that, “An agreement on regulatory equivalence for agri-food, including regulatory cooperation and dispute resolution mechanisms, would allow the UK and the EU to manage the process of ensuring ongoing equivalence in regulatory outcomes following the UK’s withdrawal from the EU. Providing the UK and the EU could reach a sufficiently deep agreement, this approach could ensure that there would be no requirement for any SPS or related checks for agri-food products at the border between Northern Ireland and Ireland.”

In Ireland, impacts in the agri-food sector are likely to be driven by a combination of tariffs, customs costs and the risk of regulatory divergence. Processed foods, beef, sheep and other cattle meat and dairy are likely to be worst affected but other sectors, such as grains, fruit and vegetables, forestry and fishing may also experience a negative impact, albeit to a lesser extent.

Negative Impact

Two recent reports highlight the potential negative impact that Brexit will have across the island of Ireland. In January, a leaked report, prepared by the UK’s Department for Exiting the European Union examined three Brexit scenarios and found that in each case the impact would be negative, with Northern Ireland among the regions projected to experience the greatest decline in economic performance. A 'no deal' Brexit could see NI GDP take a 12% hit, according to leaked report.

A recent report prepared by Copenhagen Economics for the Irish government examined the potential impact of four different scenarios and found that in each case Brexit will have a negative impact on Ireland with the worst affected sectors being agri-food, pharma-chemicals, electric machinery, wholesale and retail, and air transport. To minimise the overall economic loss to Irish GDP, this report says the best possible trade negotiation outcome for Ireland would be an agreement that has an acceptable balance of rights and obligations for all parties including no tariffs, large quotas for agricultural products, low border costs, landbridge transit, low barriers for service trade and low regulatory divergence.

European Commission Brexit Preparedness Notices

The European Commission has a dedicated website where it publishes notices aimed at preparing citizens and stakeholders for Brexit. These notices set out the consequences in a range of policy areas covering areas such as customs, taxation, import/export licences, company law, food law and so on. https://ec.europa.eu/info/brexit/brexit-preparedness_en

Distance Selling Rules

EU rules stipulate a threshold under which member state businesses can sell goods online or via mail order to non VAT registered private individuals in other member states without needing to register for VAT in that country.

Depending on the outcome of the EU-UK negotiations (which will not be known for some time), post-Brexit the UK may no longer qualify for distance selling rules.

Similarly, under MOSS (mini one stop shop), EU member state traders who sell digital services to non business customers in other EU member states do not have to register for VAT in the other country. However, when the UK is no longer an EU member state, UK traders will no longer be able to use MOSS and will need to register for VAT in the other countries.

There may of course be customs duties implications also.

Transition Period

The thinking behind a Brexit transition period is to provide a time-limited period of around two years before the eventual permanent arrangements for UK-EU relations come into force.

As yet, there is no clarity what these permanent arrangements will be. Consequently, businesses must prepare for the worst (a no-deal Brexit scenario) while hoping that a better deal will ultimately be arrived at. Substantive talks on the transition deal will only start once the European Commission has put the terms of the divorce agreed last December into a legal text.

The EU is currently drafting this legal text. EU Brexit negotiator Michel Barnier recently warned that a transition period immediately after Brexit in 2019 is "not a given".

Customs Union

In February, Prime Minister Theresa May ruled out Britain remaining in the single market and the customs union while the EU’s chief negotiator Michel Barnier warned that if the UK leaves, border checks on the island of Ireland will be unavoidable.

UK business representative groups, notably the CBI, continue to argue that staying in is the best option for business and would go a long way towards solving the border problem in Ireland.

“There may come a day when the opportunity to fully set independent trade policies outweighs the value of a customs union with the EU. A day when investing time in fast-growing economies elsewhere eclipses the value of frictionless trade in Europe. But that day hasn’t yet arrived,” CBI’s Director-General Carolyn Fairbairn said in January.