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Brexit Briefing
No: 09 // FEBRUARY 2020

Brexit Transition Considerations

Now that the UK has exited the European Union and Prime Minister Johnson has said he will not seek to extend the transition period, businesses have more clarity about Brexit than they had this time last year. However, much remains to be resolved in the 'future relationship' negotiations that are due to get underway in March.

What we know so far is that the Northern Ireland Protocol agreed by the UK and EU in the Withdrawal Agreement will avoid a hard border on the Island of Ireland.

Northern Ireland is unique in that it will both remain part of the UK customs regime post-Brexit and continue to have free access to EU markets.

What is not yet clear, however, is what customs arrangements businesses importing and exporting from GB will face at the end of the transition period, particularly businesses that import goods from GB for onward distribution or processing in the Republic of Ireland.

While the UK government has said it will ensure that legislation is in force to allow Northern Ireland's businesses unfettered access to the whole of the UK internal market in time for 1 January 2021, the EU's Chief Negotiator has said that checks and controls for goods entering Northern Ireland from Great Britain are "indispensable".

Regardless of the outcome of the EU/UK trade negotiations that are about to get underway, we can anticipate that imports and exports between RoI and GB will require Customs declarations which means businesses will need to know the commodity codes, origin, and potential tariffs that will affect them. Now is the time to be identifying this information, sorting out EORI numbers, mapping out supply chains, understanding the cashflow impacts of tariffs regardless of whether they may qualify for a rebate as well as the potential impact of adverse exchange rate swings and the costs of dual certifications/dual packaging if goods are sold to both GB and the EU, and so on.

While we hope that a free trade agreement will be reached before the end of the transition period, it is important to be aware that if agreement is not achieved, there is still the risk of a hard Brexit at the end of the year.

Michael Barnier at QUB

The EU's Chief Negotiator Michel Barnier visited Queens University, Belfast in January where he delivered the 2020 William J. Clinton Leadership Address.

PKF-FPM Managing Director, Feargal McCormack attended the Leadership Address. In his remarks, Mr Barnier said that the Protocol on Ireland and Northern Ireland agreed by the the UK and EU is complex but operational and, that, importantly, it gives the elected representatives of Northern Ireland's legislative Assembly the right to decide whether to continue applying the system or not, four years after it starts to apply.

On the question of border checks, Mr Barnier said, "The UK has chosen to become a third country; to leave the Single Market and the Customs Union; to leave behind the EU's framework of common rules, common supervision and common Court of Justice. It has chosen to create two regulatory spaces. This makes frictionless trade impossible. It makes checks indispensable. We will need sanitary and phyto-sanitary checks on food products and live animals. The EU must be able to assess risks on any product coming into its market and, if necessary, activate physical controls. These checks must take place somewhere. And as the whole point of the Protocol is to avoid a hard border and protect the all-island economy, it was clear that they could not take place at the land border between Ireland and Northern Ireland. The only real option was to use Northern Ireland's other entry points. This is also where such checks are the easiest to implement. And controls will also take place in Dublin and other EU entry points."

Mr Barnier said that implementing the new system will be challenging and that it is now the EU and the UK's joint responsibility to make the agreement work on the ground.

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Changes affecting Directors

Irish companies with only UK-based directors must ensure that they have taken the appropriate steps to continue to trade legally at the end of the Brexit transition period.

These companies will need either to appoint an EEA resident director, put in place a Section 137 Revenue Bond in order to comply with the Companies Act, or prove they have a real and continuous link to the State. Businesses also need to be aware of restrictions regarding changing financial year ends when aligning with group companies and changing branch registrations from EEA to Non–EEA. For assistance, contact Nicola Connolly n.connolly@pkffpm.com

KEY DATES

March 2020
Trade negotiations expected to get under way.

30 June 2020
Latest date to agree to extend transition period.

1 July 2020
According to the Political Declaration (October 2019) the UK and EU will use their best endeavours to conclude and ratify their new fisheries agreement by 1 July 2020 in order for it to be in place in time to be used for determining fishing opportunities for the first year after the transition period.

31 Dec 2020
Transition period ends (unless extended). If extended, the extension would either be to 31 December 2021 or 31 December 2022.

VAT & Customs Preparations

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1. Determine where you will obtain the information needed for Customs reporting. Regardless of the outcome of the EU/UK trade negotiations that are about to get underway, imports and exports between RoI and GB will require Customs declarations. Make sure that you know the commodity codes, origin, and potential tariffs that could affect your imports and exports.

2. Check your EORI number. To move goods into or out of the EU you need an Economic Operator and Registration Identification (EORI) number. Therefore Irish and UK traders who trade with each other will need to apply for an EORI number. UK traders can apply online at www.gov.uk/eori. HMRC advises that it takes between 5 and 10 minutes. Numbers can be issued immediately or could take up to 3 working days if the HMRC needs to carry out more checks. RoI businesses can register for an EORI number on Revenue's EORI online registration service through My Account or ROS. Some RoI traders may have already been automatically registered for an EORI number by Revenue so check you don't already have an EORI before you apply.

3. Review contracts with suppliers and customers, especially incoterms which set out responsibilities regarding the carriage of goods from buyer to seller, e.g. who is responsible for export and import clearance and payment of VAT and Duties.

4. Familiarise yourself with any new controls that may apply to your business. For example, sanitary and phytosanitary (SPS) control inspections are required at the EU/Third Country borders under EU law on the protection of animal health, plant health and food safety. These controls apply to live animals and animal products, as well as plants and plant products entering the Single Market.

5. Get to grips with VAT and Excise Duties. While the VAT rules for trading on the Island of Ireland will not change, there will be changes for businesses trading goods and services between RoI and GB. Now is the time to determine how your business will be impacted by these changes and what actions you may need to take to cope with the changes that lie ahead.

6. Check whether any of your finance or accounting systems will require modification to cope with post-Brexit VAT and customs changes.

Impact on Ireland of EU-UK Free Trade Agreement

In January, the Department of Business, Enterprise and Innovation, published a new study examining the economic impact on Ireland of a potential EU-UK Free Trade Agreement.

The report, which was undertaken by Copenhagen Economics, reflects the trade provisions of the Revised Political Declaration for the Future Relationship between the EU and the UK. The Political Declaration sets out the intent of both the EU and UK to negotiate a comprehensive Free Trade Agreement to replace the current economic relationship. At this point, it represents the best indication of what a future EU-UK FTA will look like.

Previous analysis published by the Department in 2018 found that the economic impact on Ireland of a worst-case Brexit scenario—trading with the UK based on World Trade Organisation (WTO) rules - would reduce Ireland's projected annual growth rate and result in GDP being approximately 7% lower in 2030 (i.e. the economy would still grow albeit at a slower rate).

Taking the parameters of the revised Political Declaration, the new study points to a reduction in GDP of between 3.2% and 3.9% in 2030. Effectively this reduces the level of harm on the Irish economy by half.