Irish Government 'No Deal' Brexit legislation

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Overview

Brian Daly, Head of Brexit, KPMG in Ireland

Uncertainty continues unfortunately to dominate as far as Brexit is concerned, and in this context we continue to recommend that clients South and North prepare, as far as possible, for a no deal Brexit on 29 March 2019.

In this context the Irish government has today released a Bill (Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Bill 2019), more commonly known as the "Omnibus Bill". It is important to be aware of what the Bill proposes.

In summary, the Bill seeks to preserve continuing access to certain priority services, benefits and reliefs that might otherwise be denied in the event of a No Deal Brexit on 29 March 2019. It is intended that the legislative measures will be enacted in advance of 29 March 2019.

One of the key tax provisions in the Bill is the introduction of Postponed VAT Accounting.

Our VAT & Customs Partner Glenn Reynolds comments that:

"This will allow goods to be imported from the UK without having to pay VAT at the time of import assuming the business operates with full VAT recovery. The same treatment will also apply to all imports from outside the EU. This is a major change in the VAT rules which will assist cash flow arrangements of all importers."

The details of what is contained in the Omnibus Bill are set out in the pages that follow and relate to the following areas:

- VAT & Customs
- Corporate Tax
- Personal Tax including Pensions
- Financial Services
- Social Welfare, Health, Employees and Migration, Education
- Energy, Transport, Grants

To view the Omnibus Bill, click here.

To view the Explanatory Memorandum, click here.

KPMG's recommended actions to plan for a No Deal Brexit:

https://home.kpmg/ie/en/home/insights/2019/01/brexit-be-prepared.html

VAT – Irish Government 'No Deal' Brexit legislation

The Bill implements postponed accounting for import VAT for all non-EU imports, as discussed below:

VAT provisions	Impact of provisions
The Bill contains measures to introduce postponed VAT accounting for imports of goods coming into Ireland from the UK (and other non EU jurisdictions). The measures will effectively preserve the current VAT position for trading with the UK and will ensure a status quo for most Irish businesses acquiring goods from the UK. Without the proposed measure, unless a trader operates a deferred VAT and Duty payment account, import VAT would be payable upfront at the point of import of goods into Ireland from the UK and would represent a VAT cash flow cost for businesses which they currently do not suffer.	**Cash flow impact** The proposed measure means that importers of goods into Ireland would not have to make an upfront cash payment of the import VAT. Instead they can record the import VAT in the VAT return for the period the import takes place under the VAT "reverse charge" accounting procedure in the same way VAT is currently accounted for on goods arriving from other EU Member States into Ireland. This will maintain the status quo for VAT purposes on trade with the UK and will be cash flow neutral for traders who operate with full VAT recovery. **Who qualifies?** In the event of a hard Brexit the measure will initially be available to all traders who are VAT registered in Ireland. In the future qualification for postponed VAT accounting may be subject to certain criteria and conditions. The measures are not limited to imports from the UK and in the event of a hard Brexit will apply to imports from all "third" countries. This should provide a VAT cash flow boost to Irish businesses that currently trade with "third" countries removing the current VAT cash flow cost associated with imports from "third" countries e.g. trade with USA, China, Switzerland, Norway etc. **Administrative impact** Business will need to consider the necessary business process and finance system changes to implement the new simplified VAT rules. Timely reporting will be of critical importance for all businesses and not only those that operate with partial or no VAT recovery. If postponed VAT accounting is applied but the VAT due is not recorded in the appropriate VAT return then import VAT will be deemed to have been due and payable at the point of import leading to a VAT underpayment as well as potential penalties. **Customs duties still payable at time of import** It is important to note the new rules would apply to VAT but not to Customs Duty that could be payable on the import of goods into Ireland from the UK.

Customs provisions	Impact of provisions
The Omnibus Bill did not contain any significant Customs measures.	The absence of customs measures is because the application of Customs rules in Ireland is mostly governed by EU Customs legislation. Existing Customs rules for trading with the non EU jurisdictions will automatically apply to the UK if it leaves the EU in a No Deal scenario without the requirement for additional legislation to be introduced. The impact of a No Deal Brexit would be the imposition of trade tariffs on goods entering Ireland from the UK as well as the non tariff costs associated with importing goods into Ireland from the UK.

Taxation – Irish Government 'No Deal' Brexit legislation

The Bill seeks to preserve a number of reliefs that would be lost as a result of the UK no longer being an EU / EEA Member State across various areas as set out below:

Corporation tax provisions	Impact of provisions
Research & Development tax credit	The credit continues to be available in respect of research & development carried out in the UK.
Relief from tax on certain start-up companies	Relief from corporation tax for certain start-up companies will continue to apply for UK incorporated companies subject to Irish tax.
Close company rules	UK companies continue to not be considered "participators" for the purposes of the loans to participator provisions in close company legislation
Charges on income for corporation tax purposes	Certain reliefs from corporation tax in the form of charges on income will continue to apply in respect of interest and other annuities, annual payments, patent royalties, rents and other payments which are paid to banks, stock exchanges or discount houses in the UK.
Corporate group tax provisions	**Impact of provisions**
Stamp duty and Capital Gains Tax reliefs on reconstructions / amalgamations	Certain stamp duty and Capital Gains Tax exemptions / reliefs will continue to apply in relation to certain company reconstructions / amalgamations involving UK companies within the charge to Irish tax.
Group loss relief provisions	Irish branches of UK companies will remain within an Irish corporation tax loss group and payments to UK resident group companies will continue to be eligible for group payment relief from withholding tax
Anti – Avoidance tax provisions	**Impact of provisions**
Anti-Avoidance provisions	A number of anti-avoidance provisions do not apply where the transaction involves genuine economic activity in another EU/EEA Member State. The UK is to continue to be treated as an EU/EEA Member State for the purposes of these provisions
Agriculture and other tax provisions	**Impact of provisions**
Seafarers' and fishers' allowances	Relief will continue to apply in relation to work undertaken on certain UK registered ships / vessels.
Capital Acquisitions Tax (CAT) Agricultural Relief	UK agricultural property will continue to be taken into account for the purposes of CAT agricultural relief.

Taxation – Irish Government 'No Deal' Brexit legislation

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Personal tax provisions	Impact of provisions
The artist's exemption	UK residents can continue to avail of the exemption from Irish tax that applies to qualifying EU/EEA residents.
Charitable donations	Relief from taxation continues to be available in respect of donations to UK charities ,and income of these charities continues to be exempt from Irish tax.
Third level student fees	Relief from taxation continues to be available in respect of fees paid to UK based institutions.
UK authorised health insurers	Relief from taxation will continue to be available in respect of medical insurance premiums paid to UK based insurers in respect of policies taken out when the person was resident in the UK
Pensions taxation	Relief from taxation continues to apply in relation to payments into qualifying UK pension funds.
Sportspersons relief	A person who is resident in the UK in the year of retirement can continue to avail of the relief from Irish tax that applies to qualifying EU/EEA residents.
Relief for certain disposals of land and property	Certain exemptions from Capital Gains Tax that apply to the disposals of property acquired in the EU / EEA between 7 December 2011 and 31 December 2014 continue to apply in respect of UK property.
Relief for government and public securities	Relief from income tax continues to apply in respect of qualifying UK government and public securities.
Relief for investment in corporate trade	Relief from income tax for investments in qualifying companies can continue to apply in respect of companies listed on the UK's Alternative Investment Market.
Mortgage interest relief	The relief can continue to apply in respect of certain UK property.
Foster care, hepatitis C, HIV	Payments from UK agencies in respect of the fostering of children and compensation payments from UK compensation schemes in respect of hepatitis C / HIV continue to be exempt from Irish tax
Employee share schemes	Shares in UK companies can continue to be eligible for certain reliefs in respect of share schemes.

Financial Services – Irish Government 'No Deal' Brexit legislation

The Bill seeks to preserve a number of reliefs that would be lost as a result of the UK no longer being an EU / EEA Member State across various areas as set out below:

Financial services tax provisions	Impact of provisions
Fund managers	Relief from Capital Gains Tax will continue to apply to investments made in the UK by a venture capital fund.
Stamp duty exemption for intermediaries	The exemption from stamp duty on the sale of Irish shares by UK stock brokers continues to apply.
Stamp duty exemption for clearing houses	The exemption from stamp duty on the transfer of Irish stocks and marketable securities continues to apply in respect of UK based clearing houses.
Demutualisation of assurance companies	The exemption from stamp duty continues to apply for the members of certain assurance companies where they are demutualised / taken over by UK companies.
Certain premiums of life assurance / insurance	UK insurers will continue to be liable to the 1% levy on life assurance premiums and the 3% levy on non-life insurance premiums. The 2% insurance compensation fund levy would not seem to be addressed, but to the extent that UK insurers become regulated by the Central Bank of Ireland they may be brought within this levy.
Pensions	UK insurers will continue to be liable to the 1% Levy on life assurance premiums and the 3% Levy on non-life insurance premiums.

Financial services other provisions	Impact of provisions
Settlement finality	In line with the European Commissions Contingency Action Plans for a No Deal Brexit, temporary equivalence will be granted in respect of UK Central Securities Depositaries and Central Counterparties to preserve continued certainty in settling a range of transactions in shares, securities and other financial instruments. Eligible institutions will have 3 months after Brexit to apply for recognition which is envisaged to last for 9 months.
Insurance Contract Continuity	In line with the European Commissions Contingency Action Plans for a No Deal Brexit, temporary equivalence granted in respect of certain insurance undertakings and intermediaries to facilitate a run off regime that will ensure Irish policy holders continue to benefit from insurance contracts underwritten by UK insurers even if they are no longer permitted to conduct new EU business. The regime will last for a period of 3 years after Brexit.

Other aspects – Irish Government 'No Deal' Brexit legislation

The Bill seeks to preserve a number of reliefs that would be lost as a result of the UK no longer being an EU / EEA Member State across various areas as set out below:

Other provisions – People and Migration	Impact of provisions
Social welfare	UK social security contributions will continue to be recognised in line with commitment to maintain the CTA. These extend to cover entitlements to a range of social welfare benefits including pensions.
Employees & Migration	Employee wage related rights will continue to be protected in the event of the insolvency of a UK employer. A range of technical provisions related to immigration are included to preserve the status quo, e.g. to facilitate continued exchanges of immigration data with the UK.
Healthcare	The Common Travel Area (CTA) will be maintained, including access to emergency, routine and planned healthcare. Individuals will continue to have full eligibility for public healthcare, access to necessary healthcare during a temporary stay, reciprocal access to healthcare not available in the other State and healthcare reimbursement arrangements as well as ability to raise charges for UK healthcare costs.
Student support	The provision of certain grants and other supports for Irish students in the UK and UK students in Ireland will continue to apply.

Other provisions	Impact of provisions
Grants	Enterprise Ireland (EI) and the Industrial Development Authority (IDA) can continue to provide grant aid and other supports including investment in businesses adversely affected by Brexit. These include additional supports for R&D activity overseas in certain areas e.g. veterinary and pharmaceuticals, where research needs cannot be met in Ireland, higher grant aid limits and accelerated payment of grant aid.
Energy	Electricity licences will be modified to ensure the Irish regulator has sufficient powers to allow Ireland to continue to comply with EU energy regulatory requirements. Measures to ensure Irish policy holders continue to benefit from insurance contracts underwritten by UK insurers even if they are no longer permitted to conduct new EU business.
Transport	A range of operators and qualifications will be recognised to preserve cross border operation of railways and bus and coach passenger services.

Our Brexit team

Don't delay. Planning for Brexit means understanding the implications and opportunities for your business today. Our team of Brexit experts are already working with businesses North and South to make sure they are Brexit ready.

Policy and Business Strategy

Brian Daly leads our Brexit Team – working with clients, government and representative bodies to develop solutions to Brexit threats and opportunities.

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Kieran Wallace is our Head of Private Enterprise with a deep knowledge of the issues confronting Irish business and with a pragmatic approach to Brexit matters.

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Darina Barrett is our Head of FS Markets – working with Financial Services clients to understand and plan for a post Brexit environment and the opportunities Ireland can deliver for FS clients.

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Johnny Hanna is our Head of Tax in Northern Ireland. Johnny works on cross-border and cross-channel tax and trade issues - working with clients on solutions to the complexity that Brexit can cause.

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Supply Chain & Transformation

Owen Lewis is a partner in our Management Consulting team with over 10 years' experience at Toyota and can assist businesses with Brexit related supply chain issues and transformation projects.

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VAT & Customs

Glenn Reynolds is a partner in KPMG's indirect tax and customs practice with extensive experience in helping businesses analyse the customs and VAT costs Brexit may trigger.

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Frankie Devlin is a resident partner in KPMG Belfast's indirect tax and customs practice with extensive experience in helping businesses analyse the customs and VAT costs Brexit may trigger.

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Our Brexit team (continued)

People and Immigration

Eoghan Quigley leads KPMG's global mobility practice in Ireland – helping business with the challenges Brexit bring to managing people around the world.

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Aoife Newton is an expert inaemployment law and immigration matters – two of the areas most impacted by Brexit.

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Financial Services Regulation

Eric Cloutier is the head of regulatory banking in KPMG in Ireland with over 17 years' experience advising regulators, stakeholders and banks across 25 countries.

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Niamh Mulholland joined KPMG from the Central Bank of Ireland where she was a policy advisor to senior management, primarily in the area of investment management.

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Financial and Business Impact

Gillian Kelly leads a team of financial modelling experts providing Scenario Analysis services to clients building Brexit scenarios into their business models.

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Andrew O'Leary leads a team that provides cash and working capital performance improvements for clients across various sectors impacted by Brexit.

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Data Protection

Aisling Brennan specialises in the area of data protection and in particular GDPR which came into force in 2018 with Brexit related implications for Irish business.

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David Collins works in our Data and Analytics team, helping our clients to address their data challenges including Data Management, GDPR compliance and Business Intelligence.

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Your usual KPMG contact can also work with you to plan for Brexit and introduce you to other members of the KPMG Brexit Team with the experience and expertise needed to support your business.

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