



HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ

The Rt Hon Harriet Harman QC MP
Chair of the JCHR
House of Commons
London
SW1A 0AA

8 December 2020

Dear Harriet

ECHR MEMORANDUM ON TAXATION (POST-TRANSITION PERIOD) BILL

I am pleased to attach the ECHR memorandum for the Taxation (Post-Transition Period) Bill.

The memorandum is intended to inform the Committee on any human rights issues that bill may raise in respect of the European Convention on Human Rights.

As ever,

A handwritten signature in black ink, appearing to read "Jesse".

RT HON JESSE NORMAN MP

TAXATION (POST-TRANSITION PERIOD) BILL

ECHR MEMORANDUM FOR THE BILL

Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement before Second Reading about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act). Rishi Sunak, Chancellor of the Exchequer, has made the following statement:

“In my view the provisions of the Taxation (Post-Transition Period) Bill are compatible with the Convention rights.”

The Bill

1. The Bill includes clauses that relate to implementation of the Ireland and Northern Ireland Protocol (NIP) to the Withdrawal agreement. The Bill increases the Aviation Gas rate as required by Article 13(1) of Council Directive 2003/96/EC (The European Union’s Energy Tax Directive). The Bill introduces a new model for the VAT treatment of goods arriving in GB, abolishes tax reliefs on low value consignments, and ensures that the UK treats goods from EU and non-EU countries in the same way. The Bill amends Insurance Premium Tax (IPT) liability notices that prevent tax evasion by insurers based in EU countries. Finally, the Bill introduces a specific statutory mechanism to enable HM Revenue & Customs (HMRC) to recover unlawful state aid together with compound interest provided by the UK in the period 1 January 2013 to 31 December 2018 to certain UK companies in multi-national groups in the form of an exemption from the Controlled Foreign Companies tax charge.

EUROPEAN CONVENTION ON HUMAN

RIGHTS Provisions concerning the NIP

2. In broad terms, the NIP provides that no new controls are to apply, and no new taxes or duties are to be payable, where goods move between Northern Ireland (NI) and member states of the EU. It also makes provision to protect the integrity of the UK’s internal market. More specifically, the NIP provides that certain key EU legislation is to apply in the UK in respect of NI after the end of the transition period. That legislation includes the Union Customs Code, the Principal VAT Directive and the main excise directives, and the NIP to some extent qualifies the way they apply.
3. To implement the NIP, and give full effect to the EU law which is to have the force of law in respect of NI, the Bill makes provision for NI which differs from the arrangements for the rest of the UK. It does this generally by amending and inserting new provisions into the Taxation (Cross-border Trade) Act 2018 (TCTA) and other enactments.

UCC

4. The Bill creates a charge to duty on goods entering NI from countries other than EU member states, with the amount determined by the EU tariff. Where HMT consider that such goods are not at risk of entering the EU, they are empowered to make different provision by regulations as to whether the goods are subject to the charge

and as to the rate. The creation of the charge engages A1P1 but is well within the scope of the state's right to tax in accordance with that article.

5. In relation to goods moving into NI from GB, the Bill enables them to be charged where they are "at risk" of entering the EU (where duty is payable, the amount is determined under the EU tariff). A power enables HMT to define, in regulations, which goods are to be regarded as "at risk" for these purposes, and the charge applies only where goods are so defined (the power will be in new s.40A(2) of TCTA). As the Bill itself imposes no charge, in relation to these movements, in the absence of further provision by regulations, A1P1 is not engaged.
6. HMT will also be empowered (by new s.40B of TCTA) to make further provision in relation to goods not at risk of moving into the EU, which can include the imposition of a charge to duty. Again, as these provisions do not directly impose a charge, they do not engage A1P1.
7. The Bill imposes further charges to duty on the movement of goods from NI to GB where those goods are not NI qualifying goods, and also where goods moving from the EU to GB are routed through NI for the purposes of avoiding import duty (the UK tariff applies). In both cases, the charges engage A1P1 but are well within the scope of the state's right to tax in accordance with that article.

VAT

8. The Bill makes a number of provisions (e.g. in relation to acquisition VAT) whose effect is largely to maintain the status quo between NI and EU member status in relation to the application of VAT to goods. There is similar provision on import VAT on rest of world goods entering NI. These provisions are technical changes but produce continuity in substantive terms. To the extent that Convention rights are engaged, it remains the case that any interference is justified.
9. The Bill modifies the existing VAT regime, creating a new charge to import VAT where goods are moved into NI from GB or IoM, or from NI into GB. The creation of the charges engages A1P1 but is well within the scope of the state's right to tax in accordance with that article.
10. The Bill determines the person who is liable for import VAT on parcels moved from GB by an overseas seller or from states outside the EU into NI. In most cases the overseas seller or the online marketplaces, where one facilitates the movement, will be liable. This is therefore charging and engages A1P1, but is well within the scope of the state's right to tax in accordance with that article.
11. The Bill include requirements to register for VAT, which engage article 8 as registration requires traders to supply information about themselves. Any interference that arises is in accordance with law, proportionate and justified.

Excise

12. The Bill modifies the existing excise regimes, creating new charges to duty where excise goods are moved into NI from GB. The creation of the charges engages A1P1 but is well within the scope of the state's right to tax in accordance with that article.

Article 14

13. The effect of charging provisions in the Bill varies in relation to different movements and geographical contexts. It is possible that an individual might argue that article 14 is engaged in conjunction with A1P1 because of resulting differences in treatment between distinct groups. Any such differences are justified as it is acceptable for states to impose or permit different tax regimes among their internal jurisdictions.

Enforcement

14. The Bill applies existing enforcement provisions to new charges. To the extent that Convention rights are engaged, it remains the case that any interference is justified.

Other provisions

15. The Bill increases the rate of excise duty chargeable on aviation gasoline and amends Insurance Premium Tax (IPT) liability notices that prevent tax evasion by insurers based in EU countries. The Bill introduces a new model for the VAT treatment of goods arriving in GB, abolishes tax reliefs on low value consignments, and ensures that the UK treats goods from EU and non-EU countries in the same way.
16. The creation or modification of these charges to tax engage A1P1 but are well within the scope of the state's right to tax in accordance with that article.
17. The Bill introduces a specific statutory power to enable HMRC to give effect to the European Commission Decision (EU) 2019/1352 of 2 April 2019 ordering the UK to recover unlawful state aid (together with interest) provided to certain UK taxpayer companies with interests in controlled foreign companies (CFC) in the form of an exemption from the CFC charge which would otherwise have been payable by them under the CFC rules in Part 9A Taxation (International and Other Provisions) Act 2010. Whilst the recovery of unlawful state aid interferes with a taxpayer's A1P1 rights, any interference is justified as this power is directed at the legitimate aims of facilitating the recovery of unlawful state aid and complying with the UK's EU law obligations. The UK is acting in accordance with the terms of EU law in recovering the unlawfully granted state aid. This is a proportionate response which contains a right for an affected taxpayer to challenge a decision by HMRC that it was in receipt of unlawful state aid and the amount of such unlawful state aid.