

EXPLANATORY MEMORANDUM ON A UK/EU WITHDRAWAL AGREEMENT OR TRADE AND COOPERATION AGREEMENT GOVERNANCE DOCUMENT

Council Number 2023/0309(NLE)

COM(2023) 504 Final. (UK 166/FISC 177)

Submitted by HM Revenue & Customs 3 October 2023

Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union within the Trade Specialised Committee on Administrative Cooperation in VAT and Recovery of Taxes and Duties established by the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part.

SUBJECT MATTER

1. Article 8(1)(k) of the Trade Co-operation Agreement (TCA) between the UK and the EU establishes the Trade Specialised Committee (TSC) on Administrative Cooperation in VAT and Recovery of Taxes and Duties to address matters covered by the Protocol on administrative cooperation and combating fraud in the field of Value Added Tax and on mutual assistance for the recovery of claims relating to taxes and duties.
2. The TSC has the power to monitor and review the implementation and ensure the proper functioning of the Protocol on VAT administrative cooperation and mutual assistance for the recovery of VAT and duty claims.
3. Under Article PVAT.39(1) of this Protocol, the TSC is required to hold regular consultations and review the operation and effectiveness of the VAT Protocol at least every 5 years. In addition to this, the TSC can under PVAT.39(2) adopt decisions or recommendations to implement all aspects of the VAT Protocol.
4. The EU implementing decisions will be adopted by the UK/EU TSC and are binding on both parties. The four decisions covered by this implementing regulation are:
 - I. Establishing the electronic forms to be used by the EU Member States and UK competent authorities when communicating administrative cooperation and tax recovery requests for information.

- II. Establishing the implementing rules for recovery assistance, including precautionary measures.
- III. Concluding a Service Level Agreement that will establish the technical quality and quantity of the service between the UK and its Member States.
- IV. Agreed UK financial contribution for the one-off adaptation of the electronic forms for VAT administrative co-operation and tax recovery and annual contribution related to the development, maintenance and upgrade of the IT solutions used.

SCRUTINY HISTORY

None.

MINISTERIAL RESPONSIBILITY

The Chancellor of the Exchequer has responsibility for United Kingdom policy on European Union monetary and economic issues, and on tax policy within the United Kingdom. The Foreign, Commonwealth and Development Office is responsible for overall United Kingdom policy towards the European Union.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

The taxation proposal contained in the Communication are a reserved matter under the UK's devolution settlements. The devolved administrations have therefore not been consulted in the preparation of this EM.

LEGAL AND PROCEDURAL ISSUES

- i. Legal Base
Article 218(9) of the TFEU provides for decisions establishing the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.
- ii. Voting Procedure
 - a. Unanimity
- iii. Timetable for adoption and implementation
 - a. The UK/EU Trade Specialised Committee will adopt the constituted acts at the TSC meeting to give legal effect.

- b. The acts will be binding under international law in accordance with Article 10 of the TCA.

POLICY IMPLICATIONS

The 'Protocol on Administrative Cooperation and Combating Fraud in the Field of Value Added Tax and on Mutual Assistance for the Recovery of Claims Relating to Taxes and Duties' (the Protocol) is contained in the UKEUTCA.

The Protocol enables EU Member States (MS) and the UK to continue to assist each other by exchanging information on VAT compliance and by recovering taxes on behalf of one another.

The Protocol includes interim arrangements for administrative cooperation in VAT and debt recovery but tasks the TSC on Administrative Cooperation in VAT and Recovery of Taxes and Duties (the VAT and Debt SC) with determining the final arrangements, including agreeing a financial contribution for the UK's access to EU systems. HMRC together with the EU Commission, jointly co-chair the VAT and Debt TSC, which sits under the Trade Partnership Committee and Partnership Council in TCA governance structures.

The implementing decisions are technical in nature, for example, the types of information to be exchanged between the UK and the EU, the forms that should be used for making information and recovery requests, and IT service agreements.

The implementing decisions also cover the UK's financial contribution to EU systems required to make exchanges in a secure digital way, fairly apportioned between participating countries (the Member States, Norway and the UK).

CONSULTATION

N/A

FINANCIAL IMPLICATIONS

The UK's financial contribution would be:

- a one-off payment of EUR 36,250 for adapting the systems to allow for UK access as a third country.
- Payment of EUR 12,600 as the UK's share to the general budget related to the development, maintenance, and upgrade of the relevant IT systems – the Common Communications Network (CCN) and e-forms to 31 December 2025. This reduced amount reflects the UK's payment for access under the Withdrawal Agreement. From 1 January 2026 the UK's annual contribution will be EUR 42,000.

These amounts would be payable within 60 days from the date the decision is adopted by the TSC.

MINISTERIAL NAME AND SIGNATURE

A handwritten signature in blue ink that reads "Victoria Atkins". The signature is written in a cursive style with a large initial 'V' and a long, sweeping tail on the 'y'.

Victoria Atkins

Financial Secretary to the Treasury