1 Introduction

1.1 This is a response by the Chartered Institute of Taxation (CIOT) to the Economy, Jobs and Fair Work Committee of the Scottish Parliament’s call for evidence: Economic Impact of Leaving the European Union (EU). We welcome the opportunity to offer our comments on Scotland’s exporters, non-UK companies investing in Scotland and labour market issues.

1.2 We refer you to our response to the call for evidence published by the Culture, Tourism, Europe and External Relations Committee concerning the EU referendum and its implications for Scotland,¹ in which we considered possible tax implications, including the role of EU law and implications for taxpayers.

1.3 The possible tax effects of leaving the EU are detailed and complex. In the time available and the length of submission requested, it is possible only to highlight key issues. We take as a baseline the position that would arise if no agreement is reached under article 50(2) of the Treaty on European Union (TEU), and the European Treaties cease to apply to the UK.

1.4 The CIOT is an educational charity concerned with promoting the education and study of the administration and practice of taxation. Our comments relate to the tax treatment directly applying as a result of leaving the EU and we do not comment on wider economic impacts such as how ultimately any costs will be borne by customers, employees, suppliers and so on and what any knock-on economic effects would be. For more details see the statement at section 5 below.

2 Possible impacts and opportunities for Scotland’s exporters and non-UK companies investing in Scotland

Scene-setting

2.1 Although VAT is a tax underpinned by EU directives, it is implemented by UK legislation,² so it will remain in place, unless the UK takes active steps to abolish it. Going forward, the UK will be able to make changes to VAT, either to retain alignment with the EU, or to diverge. Leaving the EU may open up more policy options to the UK, for example, extending (or indeed reducing) the scope of zero rating, lower rates and exemptions. There would be scope for devolving power to make such decisions.

2.2 The UK is currently part of a customs union with all other EU member states, to which the VAT system of import and export procedures is tied. Within this union goods can move to and from EU member states without the imposition of customs duties or import VAT. New UK legislation will be needed if it is intended to impose duties on imports from EU member states, which may be considered if for example the EU imposes duties on UK exports to it.

2.3 Excise duties on alcohol, tobacco and petroleum products are subject to EU directives that permit products subject to excise duty to move between member states in bond. EU directives also impose a structure and rate bands for those excise duties. Although the EU directives will no longer apply, the UK implementing legislation will remain in place unless and until amended or repealed.

2.4 For businesses, there will be several practical implications in respect of VAT and customs duties. In essence, all cross-border transactions (both cross-border goods and services transactions) will be treated the same, irrespective of whether the transaction is with an EU or a non-EU entity.

2.5 EU VAT schemes, for example, the tour operators’ margin scheme (TOMS), the distance selling rules, the rules on use and enjoyment and the rules for specified supplies in the financial services sector may no longer apply to the UK. This may affect the applicability or the recoverability of VAT for both parties.

**Scotland’s exporters**

2.6 Once the UK leaves the EU, it would also leave the EU customs union. As a result, goods going from the UK into the EU would be classed as exports (rather than dispatches) and be subject to EU customs duties and import VAT.

2.7 UK-based businesses who trade in the EU will, subject to amendment of the legislation, no longer have to complete intrastat returns to record the movement of goods within the EU, or EC sales lists to record supplies of goods and services by UK-based businesses to EU business customers. However, increased compliance costs / burdens will result from import and export declarations and procedures, and VAT border procedures in both the UK and the EU state (see 2.8 below). On the baseline assumption (see para 1.3 above), it would seem that UK exports to the EU will be subject to the same customs procedures in the state of import as currently apply to third countries.

2.8 Goods sold by a UK business to a non-business customer in another EU country are currently subject to the distance selling rules. Under these rules, UK VAT is charged on sales of goods to those customers unless the threshold for distance sales in the other country is reached in which case the seller will have to register for VAT in those countries where their turnovers exceed the local threshold and account for VAT to that country. While this

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3 Note that issues covered in this section would also potentially affect non-UK companies investing in Scotland.
involves a separate VAT registration, the advantage of the rule is that the customer does not have to account for VAT on the goods.

2.9 The UK will no longer be able to offer the mini one-stop shop (MOSS),\textsuperscript{4} which currently applies to UK businesses selling digital services to non-business customers in the EU unless they are already registered for VAT there. Instead, UK businesses will have to either register for MOSS in an EU state or register and account for VAT in every EU state to which they sell digital services. UK businesses involved in the supply of goods between three different businesses in three different EU member states will no longer benefit from the simplification provided by the triangulation rules.\textsuperscript{5}

**Non-UK companies investing in Scotland\textsuperscript{6}**

2.10 Investors seeking to establish a business operation in Scotland may be concerned with importation rules, governing the import of components for example. As a result of the UK leaving the EU customs union, goods from the EU into the UK would be classed as imports (rather than acquisitions) and potentially be subject to UK customs duties (see paragraph 2.2) and import VAT. On the baseline assumption (see para 1.3 above), it would seem that customs posts will need to be established at all ports of entry from the EU to deal with goods coming from the EU.

### 3 Possible impact on labour market issues, including migration and worker rights

3.1 Currently cross-border workers within the EU and their employers benefit from the Regulation on the coordination of social security systems,\textsuperscript{7} which prevents double contributions being paid, by requiring only one member state’s contributory regime to apply. It also contains mechanisms for regulating benefits in such cases. This will no longer apply to UK nationals working in the EU and EU nationals working in the UK. The UK only has a limited number of bilateral social security treaties which are uneven in their scope and effect, so withdrawal from the EU will increase the exposure to double contributions of UK workers who spend time working in the EU and/or to a less favourable effective benefit record being built up in the case of mobile workers. The lack of a single unified regime will likely increase compliance costs for UK employers.

3.2 UK nationals will lose their EU citizenship established by Article 21 of the

\textsuperscript{4} Since 1 January 2015 the place of supply of telecommunications, broadcasting and electronically supplied services has been the country where the consumer is resident. This means suppliers face registering for VAT in each member state in which they make such supplies. The alternative is to register for MOSS under which one registration in one EU country covers all EU member states and therefore relieves some of the administrative burden.

\textsuperscript{5} HMRC VAT Notice 725. Triangulation may be applicable when there is a chain of intra-EC supplies of goods involving three parties in three different member states. But, instead of the goods physically passing from one to the other, they are delivered directly from the first to the last party in the chain. Provided certain conditions are met, this simplification measure can apply, reducing the number of VAT registrations required.

\textsuperscript{6} Note that issues covered in this section would also potentially affect domestic Scottish businesses.

Treaty on the Functioning of the EU (TFEU). This will make UK nationals and residents more exposed in the remaining EU member states to the risks of discriminatory taxation faced by other third country citizens and nationals. The UK and Scottish parliaments will similarly be free to impose discriminatory taxes on EU residents and nationals, subject to limitations negotiated into double tax treaties and any other relevant agreements. For example, more restrictions could be placed on the availability of UK personal allowances.8

4 The Chartered Institute of Taxation

4.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT’s work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

4.2 The CIOT draws on our members’ experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT’s comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

4.3 The CIOT’s 18,000 members have the practising title of ‘Chartered Tax Adviser’ and the designatory letters ‘CTA’, to represent the leading tax qualification.

4.4 The CIOT objectives for the tax system include:
   • A legislative process which translates policy intentions into statute accurately and effectively, without unintended consequences;
   • Greater simplicity and clarity, so people can understand how much tax they should be paying and why;
   • Greater certainty, so businesses and individuals can plan ahead with confidence;
   • A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented);
   • Responsive and competent tax administration, with a minimum of bureaucracy.

4.5 Tax Adviser is the journal of the CIOT and the Association of Taxation Technicians (ATT). There are articles considering the impact of Brexit on the

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8 Section 56, Income Tax Act 2007. UK personal allowances for EU residents are more generous than necessary, cf. Arnoud Gerritse v Finanzamt Neukoeln-Nord C-234/01.
tax system in the August, October and November 2016 issues. Those articles reflect the views of their authors only.

The Chartered Institute of Taxation

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9 Articles can be viewed at: http://www.taxadvisermagazine.com/