

EXPLANATORY MEMORANDUM TO
THE VALUE ADDED TAX (AMENDMENT) (NO.3) REGULATIONS 2014
2014 No. 2430

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 The instrument is part of a group of measures implementing the final part of the EU "VAT Package", which updates the rules on place of supply of services for VAT purposes. This final part will change the place of supply rule in relation to broadcasting, electronically supplied services and telecommunications services ("digital services") when supplied to a non-business person. The place of supply for such services will change from the place where the supplier belongs to the place where the recipient belongs. This change will take effect from 1st January 2015 by way of an amendment to Schedule 4A to the VAT Act 1994 ("the Act").

2.2. At the same time, the Finance Act 2014 makes changes to an existing special accounting scheme, known as the VAT on E-services Scheme (VOES) for those established outside the EU making supplies to non-business persons within the EU. Those changes include extending the scope of the scheme so that it applies to all digital services. This scheme is referred to as the "Non-Union Scheme".

2.3 A new special accounting scheme is also being introduced in the Finance Act 2014. This will apply to those established in the EU making supplies of digital service to non-business persons in the EU. This scheme is referred to as the "Union Scheme".

2.4 Both special accounting schemes are voluntary and are simplification measures, allowing suppliers to register for VAT in one Member State in relation to their digital supplies and to render one VAT return in relation to those supplies (at least insofar as the supplies are made in a different Member State to where they are established). Collectively the schemes are known as the Mini One Stop Shop (MOSS).

2.5 This instrument amends the VAT Regulations 1995 (S.I. 1995/2518) ("the Principal Regulations"). It contains provisions to implement these special accounting schemes, requiring certain information to be provided by electronic means when taxpayers register for the special accounting schemes; prescribing how certain adjustments to declarations under those schemes are to be made; making certain other amendments to the Principal Regulations relating to the administration of the VAT system, including to ensure that those who make supplies covered by the scheme in the UK are able to deduct VAT which they have been charged in the UK.

3. Matters of special interest to the Select Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The principal VAT Directive (Council Directive 2006/112/EC; “the PVD”) provides a framework for the common system of VAT. It prescribes rules identifying the place of supply of services. The PVD was amended by Council Directive 2008/8/EC, which introduced changes to those rules, known as the “VAT Package”. The changes have taken effect in different stages, the last being that relating to digital services to be introduced with effect from 1 January 2015. Transitional rules in relation to the change are contained in Article 2 of Council Implementing Regulation (EU) No 1042/2013.

4.2 The change to the place of supply rule is to be effected in the UK by statutory instrument, the Value Added Tax (Place of Supply of Services) (Exceptions Relating to Supplies Not Made to Relevant Business Person) Order 2014 which amends Schedule 4A to the VAT Act 1994 (“the Act”), and the amendment made to section 9 of the Act by section 104 of the Finance Act 2014.

4.3 In addition to changing the place of supply rule, Directive 2008/8/EC also contains provisions extending the existing VOES scheme and creating a new accounting scheme for EU suppliers of digital services. These are simplification measures so that suppliers of digital services to non-business persons need not (if they choose to use the schemes) register for VAT in each Member State where they have customers.

4.4 The Finance Act 2014, section 103 and Schedule 22, create the Union scheme by inserting a new Schedule 3BA into the Act and amend the existing Non-Union scheme by amending Schedule 3B to the Act.

4.5 Some implementing measures relating to the schemes are contained in directly applicable EU Regulations.

4.6 Commission Implementing Regulation (EU) No 815/2012 prescribes the functionalities of the electronic interface to be used by Member States and those using the special schemes, the details of the information to be provided between Member States and the details to be provided on the VAT return.

4.7 Council Implementing Regulation (EU) No 967/2012 amends Council Implementing Regulation (EU) No 282/2011 to prescribe detailed rules as to the operation of the special accounting schemes, including elucidating the scope of the schemes, the date from which the schemes takes effect and the dates from which those who leave the schemes or are excluded from the schemes have effect, the reporting obligations of the scheme users, further detail about exclusion from the schemes, detail as to the making of returns and payments, record-keeping requirements and amendments to returns.

4.8 Council Implementing Regulation (EU) No 1042/2013 also clarifies the meaning of telecommunications services and broadcasting services, makes provision for those who supply electronically supplied services through a digital portal (such as an app store), elucidates the rules on place of supply for non-taxable persons and creates presumptions as to the location of customers to assist suppliers in determining the place of supply.

4.9 This instrument amends the Principal Regulations by using existing powers and also powers conferred by the amendment to the Act made by the Finance Act 2014. This is the first exercise of the powers contained in Schedule 3B to the Act both before and after amendment by the Finance Act 2014. It is also the first exercise of the powers contained in the new Schedule 3BA to the Act, inserted by the Finance Act 2014.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 VAT is a tax on consumption. The aim of the VAT Package series of changes is to modernise the rules on the place of supply of cross-border services so as to ensure, as far as possible, that services are taxed where they are consumed.

7.2 The Non-Union scheme has been amended and the Union scheme has been introduced, to mitigate the effect of the change to the VAT place of supply rules for digital services supplied to private consumers from the place of the supplier to the place of the consumer.

7.3 These schemes permit a registered user to submit one VAT return to declare all the VAT due in the Member States to their 'home' authority.

7.4 Within the UK special schemes the Commissioners' approach is to ensure that those who use the schemes to declare UK VAT are subject, as far as possible, to the same rights and responsibilities as those registered in the UK and making domestic supplies of digital services.

7.5 These regulations make amendments to the Principal Regulations, especially those relating to the adjustment of declarations, the treatment of refunds of tax and the details to be provided on registration.

Consolidation

7.6 There are no plans currently on hand to consolidate the Principal Regulations.

8. Consultation outcome

8.1 Businesses' input has been provided through joint business/HMRC groups. They have been involved in negotiations concerning the design and implementation of the changes at both the EU and national level. The draft primary legislation and that relating to the change of place of supply rule were made available for comment in the autumn. This instrument was consulted on in July and August this year, no substantive comments were received on the text.

9. Guidance

9.1 Interim guidance has been produced by HM Revenue & Customs and the EU Commission. Further guidance will be published in the autumn.

10. Impact

10.1 A Tax Information and Impact Note covering the 2015 VAT place of supply change and the introduction of the Mini One Stop Shop was published on 10 December 2013 as part of the Overview of Legislation in Draft document, and is available on the GOV.UK website. This instrument does not alter that impact assessment.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people they, as any other business, will be able to register for MOSS in the Member State where they are established and submit one MOSS VAT return for all their intra EU digital supplies. In addition electronic marketplaces and App stores will from 1 January 2015 generally be responsible for the VAT on supplies to consumers made through such stores, so many small software developers will not be impacted by the change.

11.4 UK businesses making domestic supplies of digital services and charging UK VAT will be on a level playing field with overseas businesses which will now also have to charge UK VAT to UK consumers.

11.5 HMRC is discussing implementation of the measure with small businesses through a working group.

12. Monitoring & review

12.1 This measure will be kept under review through communication with affected taxpayer groups. HMRC will also monitor VAT receipts in the sectors affected and the take up of MOSS.

13. Contact

13.1 Andy Heywood at HM Revenue & Customs Tel: 03000 544534 or email: andrew.heywood@hmrc.gsi.gov.uk can answer any queries regarding the instrument.