

EXPLANATORY MEMORANDUM TO

THE VALUE ADDED TAX (AMENDMENT) REGULATIONS 2016

2016 No. 989

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.
- 1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 Section 48 of the Value Added Tax Act 1994 (VATA) gives the Commissioners of HMRC (the Commissioners) the power to require a taxable person who is not established in the EU to appoint a UK established representative (a VAT representative) who will then be responsible to the same extent as the taxpayer for the taxpayer's VAT obligations including the payment of VAT due. Regulation 10 of the VAT Regulations 1995 makes provision for the maintenance of a register of VAT representatives. This instrument amends Regulation 10 so that the Commissioners may refuse to register and may deregister a VAT representative if they do not consider that the representative is a fit and proper person for that role.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 Section 48 of VATA gives the Commissioners power to make regulations relating to the registration of VAT representatives. It was amended by section 123(8) of the Finance Act 2016 to give the Commissioners an additional power to provide in regulations for the refusal or cancellation of a VAT representative's registration in circumstances to be specified in the regulations. This instrument uses that additional power for the first time.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Section 48 of VATA gives the Commissioners power to permit or require a person, who is not established in the UK but who makes taxable supplies here, to appoint a VAT representative who is then liable to the same extent as his principal for all the obligations which arise under the VAT legislation including the liability to pay VAT. Section 48 permits the Commissioners to make regulations to require VAT representatives to be registered against the names of their principals in any register kept for the purpose and to require representatives to notify the Commissioners when they are appointed or cease to be appointed. Section 48 of VATA was amended by

section 123(8) of the Finance Act 2016 to give the Commissioners an additional power to provide in regulations for the refusal or cancellation of a registration in circumstances to be specified in the regulations. This instrument uses the additional power for the first time to provide the Commissioners with the discretion to refuse to register and to cancel a registration if they do not consider the VAT representative is a fit and proper person to act in that capacity.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

- 7.1 This is part of a wider package of measures to tackle VAT evasion through online sales.
- 7.2 Overseas businesses who sell goods (located in the UK at the time of sale) to UK consumers, mainly via online marketplaces, are not always paying the correct VAT and duty to HMRC.
- 7.3 HMRC's traditional compliance powers are difficult to apply against businesses based overseas.
- 7.4 The measures are directed at getting overseas businesses that are or should be VAT registered in the UK paying the VAT due either directly or through an effective VAT representative.
- 7.5 The power to refuse or cancel a VAT representative's registration will enable HMRC to ensure only effective VAT representatives capable of fulfilling their VAT obligations including the payment of VAT are registered.
- 7.6 The abuse has grown significantly and now costs the UK taxpayer 1 to 1.5 billion pounds a year.

Consolidation

- 7.7 This instrument amends the 1995 Regulations and therefore the changes it makes will be consolidated with the existing secondary legislation on VAT representatives.

8. Consultation outcome

- 8.1 There has been no prior consultation on this measure.

9. Guidance

- 9.1 The changes made by this instrument will be reflected in the published guidance on VAT representatives.

10. Impact

- 10.1 These measures are discretionary and are only aimed at non-compliant overseas sellers.
- 10.2 The measure is not expected to have any impact on civil society organisations.
- 10.3 There is no impact on the public sector.
- 10.4 A Tax Information and Impact Note covering this instrument has been published and is available on the government website at:
<https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>

11. Regulating small business

- 11.1 The legislation may apply to activities that are undertaken by small businesses who are located overseas.
- 11.2 The new powers are discretionary and will only be applied to non-compliant overseas businesses. It will not disadvantage sellers who are operating legitimately.

12. Monitoring & review

- 12.1 This measure will be kept under review through communication with affected taxpayer groups.

13. Contact

- 13.1 Susanna Hanks at Her Majesty's Revenue and Customs Telephone: Direct line telephone number 03000 544495 or email: susanna.hanks@hmrc.gsi.gov.uk can answer any queries regarding the instrument.