

EXPLANATORY MEMORANDUM TO

THE VALUE ADDED TAX (PLACE OF SUPPLY OF GOODS) (AMENDMENT) ORDER 2019

2019 No. 1507

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs on behalf of HM Treasury 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 This instrument amends the Value Added Tax (Place of Supply of Goods) Order 2004 (S.I. 2004/3148) (“the 2004 Order”) to implement changes required by Council Directive (EU) 2018/1910 of 4 December 2018 (OJ No 311, 07.12.2018, p.3-7) (“the 2018 Directive”) which are intended to harmonise and simplify the taxation of trade between Member States. This instrument makes changes to the Value Added Tax (VAT) treatment of cross-border chain transactions. A chain transaction is the supply of goods between three or more parties, in which the goods are delivered directly from the first party to the final customer. European law currently provides that VAT does not have to be charged on the sale of goods to a business in another Member State. When a chain transaction takes place cross-border, only one of the series of transactions can be free of VAT. Currently businesses in the United Kingdom can choose which transaction in the chain is free of VAT. The instrument specifies that the default transaction which is free of VAT is the one which is made to the trader responsible for the actual movement of goods.
- 2.2 These rules only apply while the United Kingdom is still a member of the European Union (EU) and the terms of our future relationship with the EU are still subject to negotiation. While we continue to participate as a member of the EU, the United Kingdom is required to implement EU Directives.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 The making and laying of this instrument was unfortunately delayed due to the dissolution of Parliament and it has been made and laid as soon as possible after the return of Parliament following the General Election. Due to the dissolution, this instrument, regrettably, breaches the 21-day rule in order to ensure that the changes are brought into force with effect from 1 January 2020 as required by the 2018 Directive. This ensures that the United Kingdom complies with its Treaty obligations.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to the negative resolution procedure, there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the whole of the United Kingdom.
4.2 The territorial application of this instrument is the whole of the United Kingdom.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 The United Kingdom is required to implement the changes set out in the 2018 Directive by 1 January 2020.
6.2 This instrument inserts a new Part 4 into the 2004 Order to make the necessary provision in relation to the taxation of chain transactions to ensure that the rules are applied consistently throughout the EU.

7. Policy background

What is being done and why?

- 7.1 This change is part of an EU “quick-fix” package intended to simplify and add certainty to cross-border supplies of goods.
7.2 EU law currently provides that VAT does not have to be charged on the sale of goods to a business in another Member State. Where there is a chain of supplies resulting in a single movement of goods across an EU border, only one of the transactions in the chain can be free of VAT.
7.3 All supplies of these goods up to and including the supply which is free of VAT are treated as if they are made in the Member State in which the goods are initially located. All supplies made after the supply free of VAT are treated as being made in the Member State where the goods will be delivered to.
7.4 In order to avoid different approaches amongst Member States which may lead to double taxation or non-taxation, and in order to enhance legal certainty for operators, a common rule has been created to establish which supply within the chain should be free of VAT and, as a result, where the other transactions in the chain are to be treated as taking place.
7.5 The Principal VAT Directive (PVD) lacked clarity as to how to determine which supply should be treated as the cross-border transport supply.
7.6 This change to the PVD made by the 2018 Directive clarifies that the default supply which is free of VAT is the supply made to the business responsible for the transport of the goods. However, subject to meeting certain conditions, the business responsible for the transport of the goods can opt for the supply made by it to its customer to be the supply that is free of VAT.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to the United Kingdom's withdrawal from the EU but does relate to compliance with EU law while the United Kingdom remains a Member State.

9. Consolidation

9.1 This instrument makes amendments to the 2004 Order and there are no plans to consolidate the legislation at this time.

10. Consultation outcome

10.1 No consultation was required as the United Kingdom is obliged to implement strictly in accordance with the EU rules. Also, the changes codify what is current conventional practice in the United Kingdom.

11. Guidance

11.1 A Guidance Note will be published as soon as possible.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A Tax Information and Impact Note covering this instrument will be published on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

12.4 There will be no impact on businesses as this new treatment of chain transactions provides enough flexibility for the current United Kingdom rules to continue to apply.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses (employing up to 50 people) as the rules are by necessity of general application.

13.3 The basis for the final decision on what action to take to assist small businesses is that it is not anticipated that many small businesses within the definition engage in the type of activity (cross-border sales of goods) covered by this instrument, and the new rules allow flexibility similar to the current United Kingdom treatment.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is to use statistics collected by VAT returns and receipts.

14.2 The instrument does not include a statutory review clause because it relates to tax and therefore meets the requirements of the exemption set out in section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015.

15. Contact

- 15.1 Peter Bennet at HM Revenue & Customs Telephone: 03000 585559 or email: peter.bennet@hmrc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Eileen Patching, Deputy Director VAT Principles and Risk, Indirect Tax Directorate, at HMRC can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.