

EXPLANATORY MEMORANDUM TO
THE VALUE ADDED TAX (AMENDMENT) (NO. 2) REGULATIONS 2019
2019 No. 1509

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs 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 Part 16 (importations, exportations and removals) of the Value Added Tax Regulations 1995 (S.I. 1995/2518) (“the VAT Regulations”) to make 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.
- 2.2 This instrument brings into law the requirement for a recipient of a cross-border supply of goods to be registered for Value Added Tax (VAT) in the Member State to which the goods are sent. Currently the United Kingdom applies these rules through “conditions” having force of law; however, judgments from the Court of Justice of the European Union have highlighted the need for these conditions to be expressed in law.

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 amends Regulation 134 of, and inserts a new regulation 134A into, the VAT Regulations to make the necessary provision in relation to the evidential requirements for the zero-rating of an intra-Community supply to ensure that the rules are applied consistently throughout the European Union (EU).

7. Policy background

7.1 This change is part of an EU “quick-fix” package intended to simplify and add certainty to the VAT treatment of 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.

7.3 The application of this law is subject to formal conditions imposed by the Member State from which the goods are sold, and most Member States require the customer to be VAT registered and to disclose its VAT Registration Number to the supplier. This helps to secure the integrity of the EU VAT system and prevent fraud.

7.4 However, the Court of Justice of the European Union found that this was not a substantive condition of the Principal VAT Directive (PVD) and thus could not be insisted upon by a Member State, meaning that the system was not as robust as it could be.

7.5 As a result, Member States agreed to formalise, as a substantive condition in the PVD, the requirement for the supplier to be provided with the customer’s VAT Registration Number in order for the supply to be zero-rated. A further condition was added requiring the sale to have been recorded on the suppliers EC sales list. EC sales lists are accessible by all Member States to verify transactions are correctly brought to account.

7.6 Member States agreed that these changes are essential to the combatting of fraud.

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 VAT Regulations 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 is already a requirement under conditions which have force of law.

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 there is no practical impact.

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.