

## **EXPLANATORY MEMORANDUM TO**

### **THE VALUE ADDED TAX (PLACE OF SUPPLY OF SERVICES) (SUPPLIES OF ELECTRONIC, TELECOMMUNICATION AND BROADCASTING SERVICES) (AMENDMENT AND REVOCATION) (EU EXIT) ORDER 2019**

**2019 No. 404**

#### **1. Introduction**

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) on behalf of Her Majesty's 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 is one of a number of instruments to be made in relation to value added tax in preparation for the United Kingdom's (UK) exit from the European Union (EU). In the event of the UK leaving the EU without a deal, legislation will be necessary to ensure the UK's Value Added Tax (VAT) regime operates as required.
- 2.2 The purpose of this instrument is to make provision to repeal the changes which came into effect on 1 January 2019 in relation to the place of supply of digital services, for example phone apps, e-books or music downloads. These rules determine where VAT is due. VAT on these services supplied in the EU can be accounted for under a simplified procedure called the VAT Mini One Stop Shop (VAT MOSS). In the event of no-deal VAT MOSS will no longer apply as it is an EU scheme. The Taxation (Cross-border Trade) Act 2018 (TCTA) contains provisions to repeal the relevant primary legislation and there will be no reason to retain the changes brought into effect in January once the whole MOSS scheme ceases to operate.

#### **3. Matters of special interest to Parliament**

##### *Matters of special interest to the Select Committee on Statutory Instruments*

- 3.1 This instrument, which is subject to the affirmative procedure, is necessary to deal with the consequences of the UK leaving the EU without a deal. It will therefore only come into force on a date or dates specified in a separate instrument in the event that the UK withdraws from the EU without a negotiated arrangement.

##### *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 The territorial application of this instrument includes Scotland and Northern Ireland.
- 3.3 The powers under which this instrument is made cover the entire United Kingdom. The territorial application of this instrument is not limited either by the Act or by the instrument.

#### **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 Mel Stride, Financial Secretary to the Treasury has made the following statement regarding Human Rights:

“In my view the provisions of the Value Added Tax (Place of Supply of Services) (Supplies of Electronic, Telecommunication and Broadcasting Services) (Amendment and Revocation) (EU Exit) Order 2019 are compatible with the Convention rights.”

## **6. Legislative Context**

6.1 This instrument revokes changes made to Schedule 4A of the Value Added Tax Act 1994 (VATA) with effect from 1 January 2019 that were introduced by Value Added Tax (Place of Supply of Services) (Supplies of Electronic, Telecommunication and Broadcasting Services) Order 2018 (S.I. 2018/1194). Following EU exit, these provisions will no longer be required. It is made under powers in section 7A(6)(b) of the VATA (which provides that the Treasury may make amendment to Schedule 4A VATA) and section 52 of TCTA (which provides that the Treasury may make regulations that they consider appropriate in consequence of, or otherwise in connection with, the withdrawal of the UK from the EU).

6.2 Section 52 of TCTA allows the Treasury to bring provisions of “relevant subordinate legislation” into force in accordance with appointed day regulations. Section 57(1) of TCTA provides, amongst other things, that section 52 (Part 5: other provisions connected with the withdrawal from the EU) came into force on the day on which the Act was passed. TCTA received Royal Assent on 13 September 2018.

6.3 Article 3 of this instrument amends VATA and, in accordance with section 97(3) and (4)(a) VATA, this instrument is subject to the affirmative procedure. Section 97(3) provides that an instrument made under section 7A(6) is subject to approval by resolution of the House of Commons within 28 days of being made. However, section 52(3) TCTA applies to this instrument because it contains a provision that it comes into force in accordance with appointed day regulations. Section 52(3) modifies the Parliamentary approval procedure with the following effect: the 28 day period specified in section 97(3) VATA is to be read as a reference to a period of 60 days and the period does not commence until any provision of the legislation in this instrument comes into force. No arrangements for an approval debate in the House of Commons may be made until it is known when the provisions in this instrument are to come into force.

## **7. Policy background**

### *What is being done and why?*

7.1 In the event that the UK withdraws from the EU without a negotiated arrangement, it is necessary to ensure the UK’s VAT regime operates as required.

7.2 On 1 January 2015, the VAT place of supply rules changed so that supplies of electronic, telecommunication and broadcasting services (digital services) made to consumers are made in the place where the consumer is. This would mean that a supplier in the UK making supplies of digital services to a consumer in other EU member States would have to register for VAT in each EU member State where they have customers. At that point in 2015, there was no VAT threshold for this kind of

supply which meant that this change applied to all businesses that supplied these services – so even a very small UK business making such supplies in other EU member States would need to register for VAT in the member States where it had customers. At the same time, however, the VAT MOSS was introduced to simplify VAT accounting across the EU. This allows UK businesses to register and account for VAT in the UK on these supplies made in other EU member States (Union scheme – Schedule 3BA of VATA) and for non-EU established businesses to register and account for VAT in the UK on their supplies made across the EU (Non-Union scheme – Schedule 3B of VATA).

- 7.3 Recent changes to the VAT MOSS were agreed by all EU member States which the UK was obliged to implement on 1st January 2019. The changes introduced a VAT threshold of €10,000 (approximately £8,818). Below this threshold, the services are treated as being made in the UK (this resulted in some UK businesses no longer being required to register for VAT in other member States). The changes also allowed non-EU established business that are already registered for VAT for other purposes to join the VAT MOSS Non-Union scheme.
- 7.4 When the UK leaves the EU, VAT MOSS will no longer apply and there is no other reason to retain the change to the place of supply rule. The TCTA already has provision to repeal the VAT MOSS primary legislation but this instrument is necessary to reverse the 1 January 2019 changes which relate to the place of supply of services provided for in Part 3 of Schedule 4A of the VATA
- 7.5 Post Exit Day, the place of supply of services rules for the supply of digital services will be where the customer belongs. If the place of supply is the UK, then standard rated VAT will be due in the UK; if the place of supply is in another country, then no VAT is due but there may be a requirement to account for local VAT or equivalent in that country.
- 7.6 When the UK leaves the EU, UK businesses that supply digital services to customers in one or more EU member States may need to register in an EU member State for their version of VAT MOSS (Non-Union scheme). Otherwise they will need to register in each EU member State where they have customers.
- 7.7 Historically, abuse of the place of supply rules have been used by businesses seeking to avoid VAT. It therefore makes sense to remove these provisions to eliminate any potential risk

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

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because it and other legislation will ensure that the UK's VAT regime operates as required after EU exit.

## **9. Consolidation**

- 9.1 This instrument amends Schedule 4A VATA and there are no plans for consolidation.

## **10. Consultation outcome**

- 10.1 No consultation has been carried out as these are consequential changes made as a result of the TCTA or are otherwise in connection with the withdrawal of the UK from the EU.

## **11. Guidance**

- 11.1 There is already guidance on this on <https://www.gov.uk/topic/business-tax/vat>. This will be updated where necessary and will be available prior to commencement of this instrument.

## **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 An Impact Assessment has not been prepared for this instrument because it reverses legislation that will be otiose when the UK leaves the EU and VAT MOSS legislation is withdrawn.

## **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 less than 50 people) as the amendments are a necessity of general application.

## **14. Monitoring & review**

- 14.1 This legislation applies to activities undertaken by small business.
- 14.2 This instrument will be kept under review through communications with key stakeholder groups, including the Joint VAT Consultative Committee (made up of a wide range of representatives), to ensure that it meets the policy objectives set out in section 7 above.
- 14.3 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 John Egerton at HMRC Telephone: 03000 585703 or email: [john.egerton@hmrc.gsi.gov.uk](mailto:john.egerton@hmrc.gsi.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Eileen Patching, Deputy Director VAT Principles and Risk, Customs and Indirect Tax Directorate, at HMRC can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Mel Stride MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.