

EXPLANATORY MEMORANDUM TO

THE VALUE ADDED TAX (MISCELLANEOUS AMENDMENTS, REVOCATION AND TRANSITIONAL PROVISIONS) (EU EXIT) REGULATIONS 2019

2019 No. 513

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) on behalf of both the Commissioners for Revenue and Customs and 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 under the Taxation (Cross-border Trade) Act 2018 (TCTA) in preparation for the withdrawal of the United Kingdom (UK) from the European Union (EU). In the event of the UK leaving the EU without a deal, legislation will be necessary to ensure that the UK's Value Added Tax (VAT) regime operates as required.
- 2.2 This is the second of two miscellaneous instruments¹ each of which address a number of deficiencies in the UK's secondary legislation relating to VAT that are a consequence of the UK's withdrawal from the EU and not covered by other instruments. It makes consequential amendments to the Value Added Tax Regulations 1995 (SI 1995/2518) (the 1995 Regulations) and to other VAT secondary legislation to reflect amendments made to the Value Added Tax Act 1994 (VATA) by TCTA. It also makes other amendments that are needed to ensure that the UK's VAT system works as required, including transitional provisions necessary for the smooth implementation of the changes to VAT primary legislation made by TCTA. The amendments also make changes which are required as a consequence of provisions in other EU exit instruments to ensure that import VAT can still be collected.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 This instrument is necessary to deal with the consequences of the UK leaving the EU without a deal. With the exception of one provision (see paragraph 7.4), it will therefore only come into force on a date or dates specified in a separate instrument using powers in section 52 of TCTA in the event that the UK withdraws from the EU without a deal.
- 3.2 This instrument relies on powers under section 51(1)(a) of TCTA to provide for a power to make further transitional provisions in Notices published by HMRC in connection with the UK's withdrawal from the EU in situations not covered by this

¹See The Value Added Tax (Miscellaneous Amendments and Revocations) (EU Exit) Regulations 2019-(SI 2019/59)

instrument. This is necessary as it has not been possible to finalise some specific provisions that will be required or where the transitional provision affects a small number of business or transactions (see paragraph 6.10 for example). It also relies on section 51(1)(a) to confer on HMRC a power to make provision by public notice in relation to the administration of import VAT following changes being made to import duty legislation.

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)

- 3.3 As the instrument is subject to 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 This instrument is made using the powers in sections 51, 52 and 56 TCTA. These provide 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 (section 51), or that they consider appropriate in consequence of TCTA including savings and transitional or transitory provision (section 56), and that a day may be appointed for such regulations to come into force (section 52).
- 6.2 Part 3 (sections 41 to 43) and Schedule 8 of TCTA amend VATA to make provision in relation to VAT in connection with the withdrawal of the UK from the EU. Section 57(3) TCTA provides that those amendments come into force on days appointed by Treasury regulations. Section 57(1) TCTA provides, amongst other things, that sections 51 and 52 (Part 5: other provisions connected with the withdrawal from the EU) and section 56 (Part 6: final provisions) which provide the power to make this instrument come into force on the day on which the Act is passed. TCTA received Royal Assent on 13 September 2018.
- 6.3 This instrument is also made using powers contained in section 16A VATA. That section was introduced into VATA by paragraph 14 of Schedule 8 to TCTA. Paragraph 14 came into force on 16 December 2018 (the date appointed by The Taxation (Cross-border Trade) Act 2018 (Appointed Day No.1) (EU Exit) Regulations 2018 (SI 2018/1362). Section 16A provides specific powers to make regulations about the liability to import VAT on goods imported into the UK in postal packets.
- 6.4 This instrument makes changes to four statutory instruments, including the 1995 Regulations, and revokes one instrument that relates to intra-community arrangements that will no longer be relevant after the UK leaves the EU. A number of the

amendments to VAT legislation made by this instrument could have been made under various powers conferred on the Treasury or HMRC by separate provisions in VATA. However, most of the amendments made by this instrument are entirely consequential on amendments made to VATA and new terminology introduced by or under TCTA. Those amendments which are not directly in consequence of TCTA itself are in consequence of, or otherwise in connection with, the withdrawal of the UK from the EU and are thus the type of amendments contemplated by the powers in sections 51 and 52 TCTA. We therefore consider that the enabling powers in TCTA are the most appropriate and straightforward for the enactment of the amendments made by this instrument with the exception of the amendments to the Value Added Tax (Postal Packets and Amendment) (EU Exit) Regulations 2018 where specific vires have been provided by TCTA amendments to VATA.

- 6.5 This instrument also makes a number of transitional amendments to facilitate the smooth transition of the UK leaving the EU including dealing with transactions that straddle the day of departure and those that occur afterwards.
- 6.6 In the event that the UK exits the EU without a negotiated agreement, this instrument will be commenced so that the changes take effect at the same time as the provisions in Part 1 TCTA (import VAT) and Part 3 TCTA (the abolition of acquisition tax and the extension of import VAT) are commenced. For this reason, the instrument anticipates the changes to be made to the VAT regime by TCTA (by relying on provisions of TCTA, including those contained within amendments to VATA), that have not yet been commenced. This is consistent with the purpose of the powers in Parts 5 and 6 of TCTA which are intended to ensure (among other things) that the UK has a VAT regime which works as required on EU exit.
- 6.7 Some of the instruments being amended by this instrument are also amended by other EU exit instruments. This instrument makes further changes that are necessary to ensure that the UK's VAT regime operates as required on EU exit.
- 6.8 The Taxation (Cross-border Trade) Act 2018 (Value Added Tax Transitional Provisions) (EU Exit) Regulations 2019 (SI 2019/105) contain transitional provisions necessary for the smooth implementation of the changes to VAT primary legislation made by TCTA. This instrument contains the remaining general transitional provisions required in relation to VAT secondary legislation. It also contains some specific transitional provisions where application of general transitional provisions would not achieve the right result.
- 6.9 This instrument includes a power to make further transitional provisions in Notices published by HMRC in connection with the UK's withdrawal from the EU in situations not covered by this instrument. This is necessary as it has not been possible to finalise some specific provisions that will be required.
- 6.10 The instrument confers a power to make provision by public notice in relation to the administration of import VAT following changes being made to import duty legislation.

7. Policy background

What is being done and why?

- 7.1 In order to prepare for the UK leaving the EU without a deal, the UK's primary legislation relating to VAT is amended by TCTA to ensure that the UK has a VAT system that operates as required on EU exit. The Value Added Tax (Miscellaneous Amendments and Revocations) (EU Exit) Regulations 2019 (SI 2019/59) introduced a number of consequential changes in secondary legislation to reflect the changes made to primary legislation in TCTA. This instrument makes further changes that could not be made in that earlier instrument, including cross-references to UK customs legislation. It also introduces transitional provisions. These changes are necessary to ensure the UK has a comprehensive and cohesive UK VAT system that is ready for EU exit.
- 7.2 Consequential changes are made to The Value Added Tax (Relief for European Research Infrastructure Consortia) Order 2012 (SI 2012/2907) to remove references to the EU and acquisitions. The position in relation to the VAT treatment of European Research Infrastructure Consortia (ERIC) has been reviewed since TCTA was enacted. The original intention was to withdraw Group 18 of Schedule 8 of VATA (the zero-rate for supplies made to ERIC) by Paragraph 94(9) of Schedule 8 to TCTA (Paragraph 94(9)) and to repeal The Value Added Tax (Relief for European Research Infrastructure Consortia) Order 2012 (SI 2012/2907) by Article 89 of The Value Added Tax (Miscellaneous Amendments and Revocations) (EU Exit) Regulations 2019 (SI 2019/59) (Article 89) and replace both with a specific transitional relief for ERIC. However, it has now been decided that rather than introduce a specific transitional relief for ERIC, existing legislation will be retained subject to the consequential changes set out in this instrument. Paragraph 94(9) and Article 89 will not now be commenced.
- 7.3 VAT is not generally charged on supplies of financial services but, in turn, businesses cannot reclaim any VAT they pay on the costs of making those 'VAT exempt' supplies. Businesses supplying customers outside the EU with certain exempt financial services, or services in connection with an export of goods to a place outside the EU, may reclaim any VAT they pay on the costs of making those supplies, even though those services would be exempt. These types of supplies are known as 'specified supplies' and are specified in the Value Added Tax (Input Tax) (Specified Supplies) Order 1999 (SI 1999/3121).
- 7.4 Businesses that make both taxable and exempt supplies have to calculate the proportion of the VAT that they can reclaim. They calculate this using a partial exemption method. Bespoke methods of calculation are known as Partial Exemption Special Methods (PESM). This instrument ensures that, after the UK leaves the EU, a PESHM agreed before the UK exits the EU will be interpreted in accordance with the terms of this instrument. This means that even though the UK will be outside the EU, VAT incurred in the UK will continue to be treated as relating to exempt supplies. This provision is necessary even if the UK leaves the EU with a negotiated agreement. This will avoid increased administrative burdens on both business and HMRC as, otherwise, businesses would need to apply for a new method which would require approval from HMRC.

- 7.5 In addition to consequential changes, this instrument makes transitional provisions which are not covered by The Taxation (Cross-border Trade) Act 2018 (Value Added Tax Transitional Provisions) (EU Exit) Regulations 2019 (SI 2019/105). Transitional provisions are required to avoid double or non-taxation and provide certainty for business.
- 7.6 The transitional provisions included in this instrument for secondary legislation mirror those introduced for primary legislation. As these general transitional provisions will not work in all circumstances, specifically where existing processes rely on the use of EU IT systems, it also makes specific provision.
- 7.7 One specific transitional provision is in relation to the EU VAT refund system for VAT registered businesses to ensure that claims can be dealt with after the UK exits the EU.
- 7.8 Another is in respect of fulfilment houses. Fulfilment houses that import goods into the UK from outside the EU have, since April 2018, had to seek prior approval from HMRC for their business or run the risk of criminal prosecution. Approval for these businesses has been staged with all businesses required to be approved by 1 April 2019. With the UK's Exit from the EU, these rules (including the requirement to seek prior approval from HMRC) will also apply to UK fulfilment houses who import goods into the UK from the EU. Given the sanctions for failing to seek approval and the sudden change of circumstance, this instrument provides a nine month transitional period for such affected businesses to give them time to obtain the necessary approval to continue their businesses.
- 7.9 As it has not been possible to finalise some specific transitional provisions that will be required at this stage, this instrument provides the ability to introduce further transitional provisions in Notices published by HMRC. This would cover, for example, how to make corrections and adjustments for tax declared under the Mini One-Stop Shop (MOSS) system for digital sales and for determining the tax point for supplies of relevant made under the Tour Operators Margin Scheme.
- 7.10 This instrument also makes amendments to the Value Added Tax (Postal Packets and Amendment) (EU Exit) Regulations 2018 (the Postal Packet Regulations) to extend the joint and several liability for import VAT on goods under £135 imported in postal packets. In circumstances where an overseas business's unique registration identifier does not accompany a postal packet as required, and it is delivered by the Universal Service Provider, the Postal Packet Regulations provide that the recipient will be jointly and severally liable with the overseas business for any import VAT due. The amendments made by this instrument extend the recipient's liability, for a period of two years, for such postal packets where a UK-established postal operator that is not a Universal Service Provider delivers the parcel. Postal operators can collect import VAT from the recipient on delivery in cases of non-compliance. This two year period allows postal operators the time to make necessary adjustments to their systems.
- 7.11 The Taxation (Cross-border Trade) (Miscellaneous Provisions) (EU Exit) Regulations 2019 S.I. 2019/486 provides for businesses authorised to use Transitional Simplified procedures that make a simplified declaration within a specified period, to make a supplementary declaration after the end of that period. It provides for details of the period to be specified in a Notice.

7.12 It is necessary to ensure that import VAT can still be collected as required to avoid risk to the revenue and that provisions are in place to enable this. This instrument introduces a power to make provisions that are considered appropriate in relation to the administration of VAT in these circumstances in a public notice. It is anticipated that any provisions introduced under the power would include a mechanism for businesses that are not VAT registered to account for import VAT. We also envisage that VAT registered business would be required to account for import VAT under postponed accounting (under postponed accounting VAT on imports is paid and claimed on the periodic VAT return) during this period – while it is anticipated that the vast majority of businesses will choose to adopt postponed accounting it is not mandatory as a general rule.

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 2018 but relates to the withdrawal of the UK from the EU as it, and other legislation made under TCTA, will ensure that the UK's VAT regime operates as required after EU exit.

9. Consolidation

9.1 This instrument amends various Orders and Regulations and revokes others. There are no plans to consolidate these.

10. Consultation outcome

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

11. Guidance

11.1 In the event of the UK leaving the EU without a deal, as a result of the changes made by this instrument, businesses would generally apply the same rules to transactions between the UK and the EU as currently apply to transactions between the UK and the rest of the world. There is already guidance on this on www.gov.uk. This will be updated where necessary (including providing guidance on transitional arrangements) and will be available prior to commencement of this instrument.

12. Impact

12.1 For the majority of changes there is no, or no significant, impact on business, charities or voluntary bodies as a result of the consequential changes to VAT secondary legislation made by this instrument. Any impacts will be as a result of the changes to primary legislation made by TCTA. Impacts in relation to transitional provisions are subsumed in the provisions for the substantive changes.

12.2 There is no, or no significant, impact on the public sector. Any impact will relate to enquiries regarding the changes.

12.3 Any impacts arising under paragraph 7.12 will arise as a result of provisions introduced via a Notice. Impacts will be quantified at that point.

- 12.4 This instrument will be covered by an overarching HMRC impact assessment (third edition) which will be published and available on the website at <https://www.gov.uk/government/collections/customs-vat-and-excise-regulations-leaving-the-eu-with-no-deal>

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 the impact of the requirements on small businesses (employing up to 50 people) as the rules are by necessity of general application.

14. Monitoring & review

- 14.1 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.
- 14.2 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 Jack Fletcher at HMRC Telephone: 03000 585852 or email: jack.fletcher@hmrc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Eileen Patching, Deputy Director VAT Principles and Risk, Customs & 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.