

EXPLANATORY MEMORANDUM TO
THE VALUE ADDED TAX (ACCOUNTING PROCEDURES FOR IMPORT VAT
FOR VAT REGISTERED PERSONS AND AMENDMENT) (EU EXIT)
REGULATIONS 2019

2019 No. 60

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 ("the 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 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 This instrument allows UK VAT registered businesses to change the way they account for VAT due on imported goods ("import VAT"). It enables such businesses that import goods to declare and recover (subject to normal rules) import VAT on their periodic VAT returns. Currently, the requirement is to pay import VAT on or soon after the goods arrive at the UK border and recover it on a subsequent return.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 The instrument deals with the consequences of the removal of the EU rules for accounting for VAT on the intra-EU trade of goods and on the extension of import VAT to such trade (see paragraph 7.2) by removing the cash-flow disadvantage that would occur if current import VAT payment rules were applied to intra-EU trade. It will therefore only come into force in the unlikely event that the UK withdraws from the EU without a negotiated arrangement on a date or dates specified in a separate instrument.

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 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 powers in sections 51, 52 and 56 of TCTA which 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 (section 56), and to bring such regulations into force on an appointed day (section 52).
- 6.2 Part 3 (sections 41 to 43) of, and Schedule 8 (“Schedule 8”) to, TCTA amend the Value Added Tax Act 1994 (“VATA”) to make provision in connection with the withdrawal of the UK from the EU. Section 57(3) of TCTA provides that those amendments come into force on days appointed by Treasury regulations. Section 57(1) of TCTA provides (amongst other things) that sections 51 and 52 (Part 5: other provisions connected with the withdrawal from 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 Section 1(1)(c) of VATA (as amended by section 41(2) of, and paragraph 2 of Schedule 8 TCTA) will, on the UK’s exit from the EU, charge import VAT on the importation of goods into the UK. Currently, import VAT is chargeable only on goods from outside the EU (VAT is due on goods received from another EU member State by a VAT registered business but is accounted for differently – see paragraph 7.2). Section 1(4) VATA (as amended by paragraph 2(3) of Schedule 8) provides that import VAT shall be charged and payable as if it were customs duty due on imported goods (import duty). In essence, under current provisions import VAT has to be paid at the same time as import duty either at the time of importation or, subject to approval, deferred, to a later date, generally the fifteenth day of the following month after the importation.
- 6.4 This instrument provides that a VAT registered business will be able to receive imports without prior payment of import VAT, provided its VAT registration number is shown on the declaration made when the goods are declared for free circulation in accordance with TCTA (and, where goods were previously declared for a special customs procedure under TCTA, provided that conditions relating to that procedure are complied with). In this situation, the business is required to account for the import VAT due on its normal VAT return (and will be able to recover it in the same return as input tax, subject to the normal rules). This is commonly referred to as “postponed accounting”. There is provision for estimation of the import VAT due where HMRC is satisfied that the business is unable to establish the exact amount.
- 6.5 VAT registered businesses may choose to continue to pay the import VAT upfront but, if they have not done so by the due date of their periodic VAT return, they must account for it on that return.
- 6.6 The postponed accounting option is available on all imports of goods apart from those covered by the Value Added Tax (Postal Packets and Amendment) (EU Exit) Regulations 2018. Those Regulations apply to goods sent by a postal packet where the value of goods contained in the packet is valued (for customs purposes) at £135 or less. In that case, the overseas supplier of the goods is liable to account for the import

VAT, which can then be recovered by the UK VAT registered business as input tax subject to the normal rules.

- 6.7 There is a provision to direct that a registered business may not use postponed accounting should HMRC decide it necessary to do so for the protection of the revenue. Powers to be exercised where “necessary for the protection of the revenue” appear elsewhere within VAT legislation. For example paragraph 4(2) of Schedule 11 to VATA provides that HMRC may require, as a condition of registration for VAT, a person to give security in an amount determined by HMRC if they think it necessary for protection of the revenue. The expression “necessary for the protection of the revenue” is not defined in this instrument or elsewhere within VAT legislation, but it is a term commonly understood and has been frequently considered by the tribunals and higher courts in the course of appeals.
- 6.8 There is also a provision for payment of interest in cases of errors made by HMRC. There are specific rights of appeal in these two areas and the normal VAT appeal rules apply to other matters.
- 6.9 This instrument also makes a number of amendments to the Value Added Tax Regulations 1995 (SI 1995/2518) (“VAT Regulations”). Regulation 122 of the VAT Regulations currently allows postponed accounting for certain postal importations. Postal importations, apart from those of a value of £135 or less, will now be eligible for postponed accounting under this instrument. Regulation 122 is therefore no longer required and is omitted together with the definitions of “datapost packet”, “post office”, “postal packet” and “universal service provider”. Regulations 32 (The VAT Account), 39 (Calculation of returns) and 40 (VAT to be accounted for on returns and payment of VAT) of the VAT Regulations are also amended to remove references to acquisitions and to insert references to import VAT.
- 6.10 In the event that the UK exits the EU without a negotiated arrangement 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) come into force. For this reason, the instrument anticipates the changes to be made to the VAT regime by TCTA by relying on definitions and other provisions contained within amendments to VATA that have not yet been commenced. This is consistent with the purposes of the powers in Parts 5 and 6 of TCTA which are intended to ensure (amongst other things) that the UK has a VAT regime which works as required on EU exit.

7. Policy background

What is being done and why?

- 7.1 Different VAT rules currently apply to goods entering the UK from the EU to those entering from the rest of the world (“RoW”).
- 7.2 Under EU Single Market rules business to business supplies of incoming goods from an EU country are treated as acquisitions. Any VAT due is accounted for by the purchaser on their VAT return and (where applicable), simultaneously reclaimed.
- 7.3 Goods from non-EU countries are treated as imports, with any VAT due either being paid on import or, where a business has an agreement with HMRC to defer payment, by the 15th of the following month.

- 7.4 In the event that the UK withdraws from the EU without a negotiated arrangement the EU rules will no longer apply and goods entering the UK from an EU member State will be treated in the same way as imports from RoW by virtue of amendments made by TCTA to VATA. If current import VAT accounting rules are retained this would create a significant cash-flow impact for VAT registered businesses that bring goods into the UK from the EU.
- 7.5 Postponed accounting has the same effect as the current acquisition treatment. Instead of paying import VAT on, or soon after, importation businesses will be able to simultaneously account for and recover it on their VAT returns. Postponed accounting will be allowed for all imports by VAT registered businesses i.e. those from EU member States and those from RoW, apart from postal imports with a value of £135 or less.
- 7.6 This will prevent a cash flow impact on UK VAT registered businesses importing goods from the EU by effectively retaining the current VAT accounting treatment applied to intra-EU trade. It will also provide a cash flow benefit to those importing goods from RoW by no longer requiring them to account for import VAT in advance of reclaiming it on their VAT return.

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 UK from the EU because goods sent from the EU to the UK will now be imports and subject to import VAT.

9. Consolidation

- 9.1 This instrument amends the VAT Regulations. There are no plans to consolidate those Regulations.

10. Consultation outcome

- 10.1 While no formal consultation has been carried out, the government has listened to the concerns of a wide range of business representatives about the impact of the extension of the current rules for accounting for import VAT to goods imported from EU member States. The introduction of postponed accounting is in response to those concerns.

11. Guidance

- 11.1 Existing guidance on www.gov.uk will be updated where necessary and will be available prior to commencement of this instrument.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is that VAT registered businesses that adopt postponed accounting will have to take time to understand the new rules and adapt their accounting systems as required.
- 12.2 The impact on the public sector is that HMRC will need to change its systems to allow for both the operation of postponed accounting and the continuation of current import VAT accounting rules for those businesses that are not eligible for postponed accounting or do not wish to use it. HMRC will also need to field enquiries from

businesses on the operation of postponed accounting and adapt operational activities to ensure compliance with the rules. The instrument introduces a new appeal provision which may impact on the Ministry of Justice.

- 12.3 This instrument will be covered by an overarching HMRC impact assessment (second 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 regulatory burdens on small businesses (employing less than 50 people). However the decision on whether to apply postponed accounting is for individual businesses to take.

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 585 852 email: jack.fletcher@hmrc.gsi.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.