EXPLANATORY MEMORANDUM TO

THE VALUE ADDED TAX (TOUR OPERATORS) (AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 No. 73

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 The purpose of this instrument is to make provision for VAT on supplies of travel services made by tour operators when the UK leaves the EU. It amends existing legislation, which is based on an EU scheme (referred to as the Tour Operators Margin Scheme (TOMS)), to ensure that tour operators will continue to account for VAT under a modified version of the scheme when the UK leaves the EU.

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 (Sections 51 and 52 of TCTA) cover the entire United Kingdom. The territorial application of this instrument is not limited either by the Act or by the instrument. The powers in TCTA enable the Treasury to make amendments to the Value Added Tax Act 1994 ("VATA") and the Value Added Tax (Tour Operators) Order 1987 (SI 1987/1806) ("TOMS Order") both of which have application to the whole of the United Kingdom.

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 (Tour Operators) (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 Currently, TOMS is a mandatory EU wide simplified VAT accounting scheme for tour operators that buy in and sell on travel services such as passenger transport and hotel accommodation. The legislation under which the scheme is enacted is set out in TOMS Order. Further provision is also contained in Schedule 8 (zero-rating) VATA. TOMS provides a number of benefits for businesses. VAT is accounted for by reference to the margin (sales price less cost) rather than the gross value of sales. It treats the place of supply (the place where VAT is due) for VAT purposes as the UK irrespective of where the travel service is enjoyed. Therefore UK tour operators only have to register for VAT in the UK rather than in each member State where their travel services are enjoyed. The scheme also treats two or more travel services supplied together as a single supply of services. This avoids businesses having to determine if there are multiple supplies which individually may have a different VAT treatment.

6.2 Section 53 of VATA makes provision to enable the Treasury to make the secondary legislation in the TOMS Order and supplies of travel services enjoyed outside the EU (including the UK) are currently zero-rated by Item 12 of Group 8 to Schedule 8 VATA.

6.3 This instrument introduces a UK version of TOMS which applies in a similar way to EU TOMS except the scope of the zero rate has been extended so the margin on all travel services enjoyed outside the UK will be zero-rated. This puts travel services enjoyed in EU member States in the same position as travel services enjoyed in the rest of the world. Consequential amendments to the subordinate legislation are also made for the purpose of removing references to the EU.

6.4 This instrument is made using powers in section 51 and 52 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), and to appoint a day for the regulations to come into force (section 52).

6.5 Part 3 (sections 41 to 43) and Schedule 8 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. Sections 51 and 56 of TCTA provide the power for the Treasury to make further provision subject to negative procedure (unless amending primary legislation) in relation to VAT as a consequence of, or otherwise in connection with, the withdrawal of the UK from the EU and in consequence of TCTA itself. 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 sections 51 and 52 (Part 5: other provisions connected with the withdrawal from the EU) 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.

6.6 Although the amendments to VAT legislation made by this instrument could have been made under various powers conferred on the Treasury by separate provisions in VATA, since the sole aim of the instrument is to enact legislation for the purposes set out in section 51 of TCTA, we consider that the enabling power provided in TCTA is the most appropriate for the enactment of the amendments made by this instrument.

6.7 Regulations 5 and 6 of this instrument amend VATA and, in accordance with section 51(5) of TCTA, this instrument is subject to the affirmative procedure. This means that the instrument will cease to have effect unless approved by the House of Commons within the time specified in section 52(3) of TCTA. Section 52(3) therefore applies to this instrument and modifies the Parliamentary approval procedure with the following effect: the 28 day period specified in section 51(5) 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. The changes in this instrument seek to replicate existing VAT treatment for the supply of travel services as far as possible.

7.2 When the UK leaves the EU, UK based businesses will no longer have access to EU TOMS. This instrument implements a UK TOMS which is consistent with the government's approach to continue to keep systems and processes as close as possible to what they are now.

7.3 Currently, the margin on travel services enjoyed in the EU (including the UK) is standard-rated and the margin on travel services enjoyed in the rest of the world is zero-rated.

7.4 When the UK exits the EU, the margin on all travel services enjoyed outside the UK will be zero-rated. This means that travel services enjoyed in the EU will be treated in the same way as travel services enjoyed in the rest of the world.

7.5 This instrument amends UK legislation in relation to the VAT treatment of travel services. UK tour operators will continue to apply the scheme for supplies of travel services to be enjoyed in the UK.

7.6 Supplies of travel services made in the UK are unaffected. The margin on these supplies will continue to be standard-rated.

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 made under TCTA, will ensure that the UK's VAT regime operates as required after EU exit.

9. Consolidation

9.1 This instrument amends The Value Added Tax (Tour Operators) Order 1987 (SI 1987/1806) and there are no plans for consolidation.

10. Consultation outcome

10.1 Whilst no formal consultation on the legislation has been carried out, HMRC have engaged informally with representatives to the travel sector to understand the impact on UK tour operators following the UK's withdrawal from the EU.

11. Guidance

11.1 In the event of a "No Deal" outcome, 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 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 This instrument will be covered by an overarching HMRC impact assessment on VAT and services 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.

12.4 Only those businesses who supply travel services enjoyed in an EU member State will be affected by any change. The margin on those supplies will now be subject to UK VAT at the zero-rate.

12.5 It is possible that some member States will require UK based tour operators to register for VAT for supplies of travel services made in their country, although practices vary. However, as the VAT on the margin in the UK will be zero-rated there is no risk of them being taxed more than once on the same supply.

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 made by this instrument are intended to ensure that, so far as possible, after the UK leaves the EU, businesses will continue to benefit from the accounting simplification provisions that are currently enjoyed under TOMS.

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 John Egerton at HMRC Telephone: 03000 585703 or email: 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.