

EXPLANATORY MEMORANDUM TO

THE VALUE ADDED TAX (MISCELLANEOUS AND TRANSITIONAL PROVISIONS, AMENDMENT AND REVOCATION) (EU EXIT) REGULATIONS 2020

2020 No. 1495

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 HMRC 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 The United Kingdom (UK) left the European Union (EU) on 31 January 2020 and entered a transition period that will end at 11pm on 31 December 2020. This instrument makes miscellaneous amendments to UK legislation, including legislation laid in preparation for exiting the EU without a deal (the vast majority of which has not yet been commenced), so that the legislation operates as required at the end of the transition period. This includes amendment of transitional provisions to enable the UK to meet its obligations under the Withdrawal Agreement that was agreed between the UK and the EU and revocation of provisions that are no longer required.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 This instrument is required to deal with deficiencies in UK legislation following the end of the transition period to ensure the UK continues to have a Value Added Tax (VAT) system which operates as required. Along with the legislation it amends, it will come into force on a date or dates specified in a separate instrument using the powers in section 52 of the Taxation (Cross-border Trade) Act 2018 (TCTA).
- 3.2 This instrument sub-delegates power to HMRC to make provision by public notice to deal with certain transitional matters, namely: "the bringing into account of import VAT" where a person purports to make a transitional simplified customs declaration but is not able to do so; the form and manner for making a repayment to HMRC under the EU refund scheme where an amount needs to be repaid to HMRC after the end of the transition period; and to set out necessary modifications to ensure the special VAT accounting schemes for supplies of digital services saved in relation to supplies that have taken place before the end of the transition period (known as the Mini One Stop Shop) continue to operate smoothly. The authority for the sub-delegation is section 51 of TCTA.

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 of and paragraph 3(1)(c) of Schedule 6 to TCTA, also section 86(1) of and paragraph 1(3) of Schedule 23 to the Finance Act 2011; and section 16A of the Value Added Tax Act 1994 (VATA).
- 6.2 Section 51 TCTA provides for the Treasury to make regulations in relation to the UK's withdrawal from the EU; under section 52 the person making the subordinate legislation may provide for it to come into force by appointed day regulations made by the Treasury where the person considers this appropriate; section 56 provides for the Treasury to make regulations making consequential and transitional provision in relation to the UK's withdrawal from the EU; and paragraph 3(1)(c) of Schedule 6 provides for HMRC to make provision in connection with notification of a liability to pay import duty. Section 16A of VATA provides for the Commissioners for HMRC to impose a liability to VAT in respect of the entry of goods into the United Kingdom in postal packets. Paragraph 1(3) of Schedule 23 to the Finance Act 2011 provides for the Treasury to specify the type of data that a data-holder may be required to provide.
- 6.3 This instrument makes miscellaneous amendments to various UK legislation, including legislation laid in preparation for exiting the EU without a deal and revokes redundant UK legislation and two EU Council Decisions.
- 6.4 This instrument modifies the application of section 16(2) of VATA and the Value Added Tax (Accounting Procedures for Import VAT for VAT Registered Persons and Amendment) (EU Exit) Regulations 2019 (SI 2019/60) (not yet in force) in circumstances where regulation 29C(4) of the Customs (Import Duty) (EU Exit) Regulations 2018 (SI 2018/1248) (not yet in force) applies, meaning that affected VAT registered businesses must account for the VAT on their VAT return. It also provides the Commissioners for HMRC with a power to make provisions relating to the payment of import VAT in a public notice where the person purports to make a transitional simplified customs declaration but is not able to do so.
- 6.5 This instrument introduces saving and transitional provisions in relation to Part 20 of the Value Added Tax Regulations 1995 (SI 1995/2518) (the 1995 Regulations) which is to be omitted by regulation 71 of the Value Added Tax (Miscellaneous Amendments and Revocations) (EU Exit) Regulations 2019 (SI 2019/59) (not yet in force). These provisions affect repayments under the EU refund scheme from exit day

to the end of the transition period and provide that partial exemption adjustments relating to the period from 1 January 2020 to the end of the transition period must be made using the procedure in Part 21 of the 1995 Regulations (repayments to third country traders). The Commissioners for HMRC are permitted by public notice to determine the form and manner for making a repayment to HMRC under the EU refund scheme where an amount needs to be repaid to HMRC after the end of the transition period.

- 6.6 This instrument introduces saving provision to continue the effect of Schedule 3B and 3BA to VATA and Parts 26 and 27 of the 1995 Regulations in relation to supplies of digital services made before the end of the transition period, despite the omission of Schedules 3B and 3BA by paragraphs 86 and 87 of Schedule 8 to TCTA and Parts 26 and 27 of the 1995 Regulations by regulations 79 and 80 of the Value Added Tax (Miscellaneous Amendments and Revocations) (EU Exit) Regulations 2019 (the omissions are not yet in force). The Commissioners for HMRC are permitted by public notice to set out modifications necessary to ensure the schemes operate as intended for supplies that have taken place before the end of the transition period, despite the closure of the schemes.
- 6.7 This instrument revokes two EU Council Implementing Decisions incorporated into domestic law as a result of section 3 of the European Union (Withdrawal) Act 2018. EUDN 2018/1918 authorised the UK to apply a special measure derogating from Articles 16 and 168 of Council Directive 2006/112/EC and EUDN 2019/2230 authorised the United Kingdom to continue to apply a measure derogating from Articles 26(1)(a), 168 and 169 of Council Directive 2006/112/EC on the common system of value added tax.
- 6.8 This instrument revokes the Value Added Tax (Postal Packets and Amendment) (EU Exit) Regulations 2018 (SI 2018/1376) and the Data-gathering Powers (Relevant Data) (Amendment) (EU Exit) Regulations (SI 2019/1221).

7. Policy background

What is being done and why?

- 7.1 This instrument makes miscellaneous amendments and introduces transitional provisions to ensure the UK's VAT system can continue to operate as required at the end of the transition period.
- 7.2 Entry in Declarant's Records (EIDR) is an existing customs facilitation measure which allows businesses to delay completion of a full customs declaration to the fourth working day of the month following the date of import, by declaring the entry of the goods in their business records. As a temporary measure for goods imported from the EU to Great Britain between 1 January 2021 and 30 June 2021, businesses who make an EIDR will instead be able to delay completion of a full customs declaration by up to six months. This instrument mandates that where a VAT registered person makes a declaration using the EIDR, they must account for the import VAT on their VAT return. In the absence of this provision, the payment of import VAT could be delayed until the full customs declaration is submitted, which would have a cash flow impact on the Exchequer. It also provides the Commissioners for HMRC with a power to make provision relating to the payment of import VAT in a public notice in circumstances where a person takes advantage of EIDR but is not eligible to do so or has made an incomplete declaration. This power is necessary to

ensure that there is an effective mechanism in place for the collection of import VAT in case of any eventuality.

- 7.3 The EU VAT refund scheme allows businesses that are VAT registered businesses in the EU to reclaim the VAT paid on goods/services in another EU country without having to register for VAT in that EU country. From the end of the transition period, claims will no longer be made under this scheme by EU businesses incurring VAT in Great Britain (separate provisions will be introduced in relation to Northern Ireland). This instrument ensures those EU businesses who incurred VAT in the UK before the end of the transition period will be able to submit a claim after the end of the transition period as set out in the terms of the Withdrawal Agreement. The instrument also provides for how partial exemption annual adjustments (that are used to determine the amount of VAT recoverable by a business that makes both taxable and exempt supplies) are to be accounted for after the end of the transition period which relate to the adjustment of VAT incurred up to 31 December 2020. Where a person is required to pay an amount to the Commissioners for HMRC on or after the end of the transition period the Commissioners are permitted to prescribe in a public notice the form and manner for repaying such amounts.
- 7.4 The VAT Mini One Stop Shop (MOSS) is an EU wide scheme that allows VAT registered business to account for VAT on the supply of digital services they make, through the tax administration in their home country instead of registering in each EU country where the services are consumed. This scheme will come to end at the end of the transition period and this instrument allows those businesses who make supplies subject to the MOSS scheme to register, account for and make adjustments to supplies made up to the end of the transition period for a limited period after the end of the transition period as set out in the Withdrawal Agreement.
- 7.5 This instrument makes consequential and technical amendments to other legislation laid in preparation for the UK exiting the EU without a deal which is still relevant for the end of the transition period. The amendments also replace references to exit day with IP completion day (which is the legal term for the end of the transition period) and updates other references in relation to the Withdrawal Agreement.
- 7.6 This instrument revokes two time-limited EU Council Implementing Decisions that confer derogations from the EU VAT rules that would otherwise apply and in relation to which the UK has made domestic legislation. These decisions gave the UK permission to derogate from the Principal VAT Directive in relation to the application of road fuel scale charges (a simplification which applies a standard charge to avoid the need to apportion business/non-business use of road fuel) and to restrict recovery to 50% of the VAT incurred on lease/hire cars to reflect business use. These derogations expire at the end of the transition period. The domestic legislation which gives effect to the derogations is unaffected. The removal of the EU Council Implementing Decisions is to prevent them from becoming part of retained EU law under the European Union Withdrawal Act 2018 which might cast doubt on the treatment continuing unaffected after the end of the transition period when the EU decisions expire.
- 7.7 This instrument revokes the Value Added Tax (Postal Packets and Amendment) (EU Exit) Regulations 2018 and the Data-gathering Powers (Relevant Data) (Amendment) (EU Exit) Regulations 2019. The policy in the event of no deal will not apply at the end of the transition period, so these regulations are no longer required.

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 and European Union as it, and other legislation made under TCTA, will ensure that the UK's VAT regime operates as required after the transition period.

9. Consolidation

9.1 This instrument amends various 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 to ensure the UK meets its obligations under the Withdrawal Agreement or are otherwise in consequence of, or in connection with, the withdrawal of the UK from the EU.

11. Guidance

11.1 Existing guidance is on www.gov.uk website. 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 A Tax Information and Impact Note will cover this instrument and will be published on the website at www.gov.uk/government/collections/tax-information-and-impact-notes-tiins.

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.

13.3 The basis for the final decision on what action to take to assist small businesses is that no mitigating action is proposed as the rules are, of 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 tax, legal and business representative bodies), 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.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Eileen Patching, Deputy Director for 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.