

EXPLANATORY MEMORANDUM TO

THE VALUE ADDED TAX (NORTHERN IRELAND) (EU EXIT) REGULATIONS 2020

2020 No. 1546

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 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. After the end of the transition period, under the Protocol on Ireland/Northern Ireland (the Protocol) agreed between the EU and the UK as part of the Withdrawal Agreement, EU rules in relation to goods will continue to apply in Northern Ireland (NI). Movements of goods between Great Britain (GB) and NI will be treated as though they are imports and exports. The government will use flexibilities available within EU law to keep accounting rules for Value Added Tax (VAT) for these movements as close as possible to the current approach. This instrument, along with the Taxation (Post-transition Period) Act 2020 (TPPA), introduces the changes necessary to achieve that.

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 introduce new VAT provisions which are necessary to implement the Protocol in respect of movements of goods between GB and NI. Further legislation to implement the Protocol in relation to VAT is contained in TPPA (which received Royal Assent on 17 December 2020) and the Value Added Tax (Miscellaneous Amendments to the Value Added Tax Act 1994 and Revocation) (EU Exit) Regulations 2020 (SI 2020/1544) and the Value Added Tax (Miscellaneous Amendments, Northern Ireland Protocol and Savings and Transitional Provisions) (EU Exit) Regulations 2020 (SI 2020/1545). This instrument will come into force on a date or dates specified in a separate instrument using the powers in section 52 Taxation (Cross-border Trade) Act 2018 (TCTA).
- 3.2 There will not be 21 days between this instrument being laid and its coming into force. This instrument is dependent on TPPA as it makes further provision in relation to matters contained in that Act and it was therefore inappropriate to lay this and associated instruments until after that Act received Royal Assent. It was not possible to lay the instrument any later so as to comply with the 21-day rule as the legislation needs to be in force by the end of the transition period to ensure that rules are in place, to provide certainty for business and for the UK to meet its obligations under the Protocol. This instrument has been laid as early as possible after Royal Assent to TPPA being given.

- 3.3 Three regulations in this instrument sub-delegate power to HMRC to specify certain matters in a public notice. The power for such sub-delegation is section 51(3) TCTA, which permits the Treasury to make regulations relating to VAT as it considers appropriate in consequence of, or otherwise in connection with, the withdrawal of the UK from the EU, including to make any such provision as might be made by Act of Parliament.

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)

- 3.4 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 and 52 TCTA.
- 6.2 Section 51 TCTA provides for the Treasury to make regulations in consequence of, or otherwise in connection with, the UK's withdrawal from the EU, including such provision as might be made by Act of Parliament; under section 52, the Treasury may provide for such regulations to come into force by appointed day regulations made by the Treasury where they consider this appropriate in consequence of, or otherwise in connection with, the withdrawal of the UK from the EU.
- 6.3 These regulations make provision that are appropriate in consequence of, or otherwise in connection with, the withdrawal of the UK from the EU. TCTA extensively amended the Value Added Tax Act 1994 (VATA) to remove intra-EU VAT rules and to introduce a charge to import VAT on goods imported into the UK. The existing charge to import VAT only applies to goods imported from outside the EU (see section 1(1)(c) VATA) until the end of the transition period.
- 6.4 As a result of the Protocol, further legislation is necessary to modify and amend VATA as amended by TCTA. Accordingly, TPPA inserts three new schedules into VATA. First, Schedule 9ZA makes provision for the continued application of EU VAT rules on goods in relation to NI. Secondly, Part 1 of Schedule 9ZB modifies the charge to import VAT contained in section 1(1)(c) VATA so that charge does not apply to goods imported into NI from the EU. Part 2 of Schedule 9ZB introduces a charge on goods removed from NI to GB and vice versa and applies legislation relevant to importations from outside the UK to such removals. Thirdly, Schedule 9ZC makes provision regarding online sales by overseas persons and low value importations.
- 6.5 Paragraph 3 of Schedule 9ZB creates the charge on removals between NI and GB and paragraph 3(1) provides that a supply involving such a removal is zero-rated for VAT

purposes. This VAT treatment mirrors that applied to exports from the UK and imports into the UK. Paragraph 4 of Schedule 9ZB identifies who is to be treated as having imported the goods into NI or GB and who is thus liable to the VAT charged by paragraph 3.

- 6.6 Paragraph 4(3) provides that where the removal is made in the course of a taxable supply made by a taxable person, the taxable person is the person who is treated as having imported the goods. Otherwise, under paragraph 4(4) any person who would be treated as liable to pay duty on the goods is liable to pay the VAT. Paragraph 4(6) permits HMRC to make regulations for any other person to be treated as importing the goods.
- 6.7 Paragraph 3 of Schedule 9ZC concerns the importation into the NI from outside the EU of goods worth £135 and under Paragraph 4A of Schedule 9ZC provides that, in the case of a removal from NI to GB, or vice versa, where the removal is in the course of a supply by a person established outside the UK and the supply is facilitated by an online marketplace, the operator of the online marketplace is the person who is treated as having imported the goods.
- 6.8 Part 2 of this instrument identifies who is treated as the importer of the goods in the circumstances described in each regulation.
- 6.9 Part 3 of the instrument provides that a taxable person (a person who is or is required to be registered for VAT – see section 3 VATA) who is treated as having imported goods for the purposes of Schedule 9ZB or paragraph 4A(2) of Schedule 9ZC must account for that VAT as if it were VAT on a supply and thus the VAT must be accounted for on a VAT return.
- 6.10 Part 3 also imposes an obligation on certain taxable persons to provide to their customer, an import document and determines what information that document must contain.
- 6.11 Part 4 of the instrument makes provision for VAT accounting by non-taxable persons. It allows a credit to be offset against the charge to VAT incurred on goods removed from GB to NI. The credit applies where the removal is not made in connection with a VAT registered business. Where the VAT due exceeds the credit, HMRC may specify in a public notice how and when that VAT should be paid.
- 6.12 Part 5 of the instrument describes the circumstances where a customer provided with an import document may deduct the VAT charged by the supplier as if it were input tax for VAT (and thus can be deducted from the VAT due to HMRC on the customer's own supplies as under sections 24 and 25 VATA). It also provides that the person who was liable to account to HMRC for the VAT on the removal and who would normally be able to deduct that VAT as input tax may not do so.
- 6.13 Part 6 of the instrument makes provision for the identification of relevant NI traders for VAT purposes. The identification concerns the additional use of the prefix “XI” alongside a person's VAT registration number and relates to the continued application of EU VAT rules in NI as provided for in Schedule 9ZA to VATA. The use of the prefix “XI” will signify to, for example, customers an entitlement to use EU simplifications and other EU treatments for those so identified.
- 6.14 Finally, Part 7 of the instrument makes provision requiring a person who is treated as having imported goods for the purposes of paragraph 3(2) of Schedule 9ZC (imports

worth £135 and under from outside the EU into NI) to account for the import VAT on the person's VAT return as if it were VAT on a supply.

7. Policy background

What is being done and why?

- 7.1 TCTA provides for the operation of the customs, VAT and excise regimes on the UK's exit from the EU. As such it makes provision for amendments to VATA and provides powers to amend secondary legislation in consequence of or in connection with EU exit. A number of instruments were made in preparation for EU exit and made provision for the VAT rules that were to apply in the event of no deal with the EU being reached, including removal of EU specific rules. Although many of the changes will still be required at the end of the transition period, in light of the Protocol, further legislation is required to ensure that EU VAT legislation in relation to goods continues to apply in NI. This instrument together with TPPA, the Value Added Tax (Miscellaneous Amendments to the Value Added Tax Act 1994 and Revocation) (EU Exit) Regulations 2020 and the Value Added Tax (Miscellaneous Amendments, Northern Ireland Protocol and Savings and Transitional Provisions) (EU Exit) Regulations 2020 achieve that.
- 7.2 Under the Protocol, EU rules will continue to apply to goods that are bought and sold or otherwise moved between NI and EU member States. For example, existing rules in relation to acquisitions and distance selling will continue to be relevant. These rules were removed by TCTA but have been reintroduced in relation to NI in TPPA. Consequential changes required to secondary legislation are contained in the Value Added Tax (Miscellaneous Amendments, Northern Ireland Protocol and Savings and Transitional Provisions) (EU Exit) Regulations 2020.
- 7.3 Under current legislation, trade in goods between NI and GB is treated as domestic supplies. Following the end of the transition period, GB will be a "third country" from the perspective of the EU. This means that the Single Market and rules on VAT treatment of goods entering the EU from GB will no longer apply. Instead the goods will become imports. In VAT terms, a business exporting goods to the EU will not charge VAT (they will be zero-rated) but the goods will be liable to import VAT in the member State. The reverse applies to goods imported from the EU – the goods will be zero-rated by the EU supplier and subject to import VAT when they are declared to customs in GB.
- 7.4 Under the Protocol, goods moving between GB and NI will be treated as though they are imports/exports. However, to minimise the impact on businesses and individuals, the government has used flexibilities within EU legislation to keep the accounting treatment for VAT as close to the current arrangements as possible. This instrument, in addition to the provisions introduced in TPPA, introduces the necessary legislation to achieve that.
- 7.5 A VAT registered GB business selling goods to NI customers will be liable for the import VAT due in NI. If the goods are sold to another VAT registered business, the supplier will be required to issue an import document to its customer. The supplier will account for the import VAT on its VAT return (in the same way that it accounts for VAT on any other domestic supply). The NI business customer will be able to recover the VAT shown on the sales invoice in the same way that it does today. By making the supplier (whether in NI or GB) responsible for accounting for the import

VAT the terminology will change (“import VAT” rather than “supply VAT”) but the process will be as similar as possible to those operating today whether the supply is business to business or business to consumer.

- 7.6 The supplier will not be liable for VAT in those circumstances where the VAT registered business customer is currently liable to account for VAT as a reverse charge, including supplies of gas, electricity heat and cooling covered by section 9A VATA and certain supplies of goods for the purposes of fraud prevention covered by an order under section 55A VATA.
- 7.7 Businesses moving their own goods from GB to NI will be liable for import VAT in NI and will account for it on their VAT return. This will be recoverable by them as input tax, subject to the normal rules for recovery. Third parties that move goods which they do not own but over which they have control will also be liable for import VAT in NI. They will be required to issue an import document to the owner of the goods, if they are in business, to enable them to claim the import VAT charged on to them as input tax, subject to normal rules.
- 7.8 For goods that are subject to customs special procedures, VAT will become due when the goods exit the special procedure and enter free circulation in either NI or GB. Businesses in NI that zero-rate supplies under the VAT retail export scheme and personal export scheme on the basis that they have been exported from NI to GB, will be liable for import VAT in GB. This is to avoid VAT free goods entering GB from NI.
- 7.9 The application of EU rules means a traveller entering NI from GB would be limited to bringing in a maximum of £390 of goods in their baggage without incurring a charge to import VAT. To prevent the potential impact of this allowance which doesn't currently apply, individuals moving from GB to NI will receive a credit for the VAT paid on the goods to offset any import VAT that would otherwise be due.
- 7.10 For movements from NI to GB, there is greater flexibility to limit the circumstances where import VAT will be due as EU rules do not apply to the arrival of goods in GB. This means, for example that, import VAT will not be due when a business moves its own goods from NI to GB in the same way that it will be due on sales of goods from NI to GB. That achieves the same overall result as currently but means that, where appropriate, the rules contained in this instrument only apply to movement of goods from GB to NI. This approach is consistent with the government's commitment to unfettered access for goods moving from NI to GB.
- 7.11 Businesses trading in goods in NI will be identified by the prefix “XI”, which will be included at the start of their VAT registration number. This instrument makes provision for notifying HMRC of trade in NI and for removal of the indicator where it is no longer relevant.
- 7.12 The instrument, where relevant, provides that the rules that apply to removals of goods into NI from GB, apply to removals into NI from the Isle of Man.
- 7.13 And finally, the instrument makes further provision in relation to treatment of goods imported into NI from overseas (in addition to legislation introduced by TPPA). It mandates that sellers or online marketplaces liable for import VAT under Schedule 9ZC VATA, must account for that VAT 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 United Kingdom from the 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 Although the instrument makes some modifications to the meaning of certain VAT provisions, it does not make any amendments to them.

10. Consultation outcome

- 10.1 No consultation has been carried out. The rules contained within this instrument have been discussed with various affected stakeholders. HMRC has held meetings with the Joint VAT Consultative Committee and the Joint Customs Consultative Committee (that represent a large group of representative bodies). HMRC has also met with the Northern Irish Office's Business Engagement Forum, the Chartered Institute of Taxation, Chartered Accountants of Ireland, the Large Professional Services Forum and representatives from the retail, automotive and pharmaceutical sectors.

11. Guidance

- 11.1 Guidance has been published at www.gov.uk/government/publications/accounting-for-vat-on-goods-moving-between-great-britain-and-northern-ireland-from-1-january-2021.

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 Jack Fletcher at HMRC Telephone: 03000 585 852 or email: jack.fletcher@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.