

EXPLANATORY MEMORANDUM TO
THE VALUE ADDED TAX (DISTANCE SELLING AND MISCELLANEOUS
AMENDMENTS) REGULATIONS 2021

2021 No. 1164

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 This instrument amends the Value Added Tax Act 1994 (VATA), as amended by the Finance Act 2021 (FA21), which implemented two Value Added Tax (VAT) simplified accounting schemes (One Stop Shop (OSS) and Import One Stop Shop (IOSS)). These schemes are part of the European Union (EU) e-commerce package that the United Kingdom (UK) implemented from 1 July 2021 as part of the Northern Ireland Protocol (NI Protocol). These changes correct a number of minor and consequential errors.
- 2.2 This instrument also amends secondary legislation laid or amended in connection with the UK's exit from the EU. These changes make a number of minor amendments identified through the review of EU exit VAT legislation.
- 2.3 The amendments contained in this instrument improve clarity and remove uncertainty and help ensure that the VAT legislation continues to operate as required. They do not create any new regulatory divergence between Northern Ireland (NI) and Great Britain (GB).

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 Regulation 14(6) of this instrument, which amends paragraph 37 of Schedule 9ZE to VATA, contains a power for the Commissioners for HMRC to specify in a public notice, the procedures to be followed by businesses notifying the UK of their IOSS number to ensure their importation is exempt from import VAT. Section 40A(7) and (9) of VATA permits regulations made under this section to make provision by reference to things specified in a notice.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 The Rt Hon Lucy Frazer QC MP, Financial Secretary to the Treasury, has made the following statement regarding Human Rights:

“In my view the provisions of The Value Added Tax (Distance Selling and Miscellaneous Amendments) Regulations 2021 are compatible with the Convention rights.”

6. Legislative Context

6.1 This instrument is made using powers in section 40A(7) and (9) of VATA. It also uses powers in section 51 of the Taxation (Cross-border Trade) Act 2018 (TCTA) and section 96(1) of FA21.

6.2 The regulation making power for making such provision as the Treasury consider appropriate in relation to the NI Protocol as regards VAT and distance selling in section 96(1) of FA 2021 is used in this instrument and in another instrument laid alongside it, the Value Added Tax (Distance Selling and Miscellaneous Amendments No. 2) Regulations 2021 (SI 2021/1165). These are the first uses of this power.

6.3 This instrument amends paragraphs 2 and 4(3) of Schedule 9ZD to VATA to remove superfluous references which might otherwise cause confusion. It amends paragraph 10(3) of Schedule 9ZD to VATA to clarify how the gross amount of VAT due is to be calculated under the OSS scheme. It amends paragraph 14 and provides for new paragraph 21A of Schedule 9ZD to VATA to clarify that the records that must be kept for the OSS scheme, whether by a person registered for the scheme in the UK or the EU, are (as with the IOSS scheme – see 6.4 below) a UK requirement and provides for how they are to be made available to the Commissioners for HMRC.

6.4 This instrument amends paragraph 10 and provides for new paragraph 36A of Schedule 9ZE to VATA to clarify that VAT is not chargeable on a supply of goods made in the UK if the person making that supply is not, nor liable to be, registered for VAT under Schedule 1 to VATA. This applies even if the person making the supply is registered for the IOSS scheme and the goods qualify as IOSS scheme supplies or if the person is based in the Isle of Man (IOM).

6.5 This instrument amends paragraphs 14(1), 37(1)(b), 38(2)(c), 39(3), 39(5), 41(1) and 43(1) of Schedule 9ZE to VATA and paragraph 7 of Schedule 9ZF to VATA to clarify that references to the IOSS scheme apply to any qualifying participant of the IOSS scheme and not just those who will be registered for IOSS in the UK. This instrument further amends paragraph 14 and provides for new paragraph 30A of Schedule 9ZE to VATA to clarify that the records that must be kept for the IOSS scheme, whether by a person registered for the scheme in the UK or the EU, are (as with the OSS scheme – see 6.2 above) a UK requirement and provides for how they are to be made available to the Commissioners.

6.6 This instrument amends paragraphs 34(3), 37 and 39 of Schedule 9ZE to VATA to correct minor errors. It also amends paragraph 37 of Schedule 9ZE to VATA to clarify that references to GB include the IOM. It also provides for the Commissioners to make provision in a notice for the procedures to be followed to ensure their importation qualifies as an IOSS supply into the UK that is exempt from import VAT.

6.7 This instrument provides for a new paragraph 1A and omits paragraph 2 of Schedule 9ZF to VATA. New paragraph 1A amends section 3 to VATA to provide that being

registered for either the OSS or IOSS schemes does not mean also registered for VAT. The omission of paragraph 2 of Schedule 9ZF to VATA removes the changes made to section 4 to VATA which are now unnecessary because of the change to section 3 of VATA.

- 6.8 This instrument provides for a number of minor and consequential amendments to secondary legislation in relation to VAT. It amends the Value Added Tax Regulations 1995 (SI 1995/2518) to omit regulation 133AD(c) as this no longer applies and to correct drafting errors in regulations 133B(3) and 145J(3). It also provides for a number of amendments to the Value Added Tax (Imported Goods) Relief Order 1984 (SI 1984/746), the Value Added Tax (Treatment of Transactions) Order 1995 (SI 1995/958) and the Value Added Tax (Special Provisions) Order 1995 (SI 1995/1268) to correct minor errors.
- 6.9 This instrument provides for a number of changes to Value Added Tax (Northern Ireland) (EU Exit) Regulations 2020 (SI 2020/1546). It makes provision clarifying who accounts for import VAT in the event that goods are removed from GB to NI, or vice versa, and declared to a special customs procedure. This instrument provides that references to GB equally apply to IOM for credit for VAT paid against import VAT on movement of those goods into NI. It also makes provision that supplies made under the OSS scheme are relevant transactions for the purpose of being identified for VAT in NI.
- 6.10 This instrument withdraws all transitory provisions in the Finance Act 2021, Section 95 and Schedule 18 (Distance Selling: Northern Ireland) (Appointed Day No. 1 and Transitory Provision) Regulations 2021 (SI 2021/770) and provides a savings provision in respect of those provisions.
- 6.11 These regulations are being issued free of charge to anyone who purchased the Value Added Tax (Miscellaneous Amendments, Northern Ireland Protocol and Savings and Transitional Provisions) (EU Exit) Regulations 2020 (SI 2020/1545). These regulations correct minor errors inserted by that instrument into various statutory instruments relating to VAT, which do not obscure the legislative intent, but which ought to be corrected to avoid confusing readers. HMRC has complied with the requirement to consult with the SI Registrar on this matter.

7. Policy background

What is being done and why?

- 7.1 FA21 introduced legislation to implement the e-commerce package in relation to VAT. This included the introduction of three new schedules into VATA. Schedule 9ZD contains the rules for the OSS scheme and Schedule 9ZE contains the rules for the IOSS scheme. Schedule 9ZF contains changes to legislation consequential on the introduction of Schedules 9ZD and 9ZE.
- 7.2 The optional OSS scheme is a simplified reporting scheme that allows businesses, where their annual total supplies of goods to final consumers based in EU member states or NI exceeds £8,818, to register in just one EU member state or NI and account for VAT on all their sales of goods on a single quarterly VAT return. The alternative is for businesses to register for VAT in each EU member state they make supplies in.
- 7.3 The optional IOSS scheme allows businesses that import low value goods in consignments worth up to £135 into the EU or NI to register and account for the VAT

in one-EU member state or NI on a single return without any import VAT being charged at the point of importation. The alternative is for businesses to account for import VAT in each country they import goods into.

- 7.4 A review of the e-commerce legislation has identified a number of minor and consequential issues that require legislative changes. This instrument, together with the Value Added Tax (Distance Selling and Miscellaneous Amendments No. 2) Regulations 2021 (a made affirmative procedure instrument being laid at the same time as this one), makes those changes.
- 7.5 A number of drafting errors and omissions in respect of the e-commerce changes was identified shortly after FA21 received Royal Assent. For example, in a number of places, it was not clear whether references to the IOSS scheme applies to any qualifying participant of the IOSS scheme in EU member states and not just those who will be registered for IOSS in the UK.
- 7.6 In addition, businesses registered for IOSS in EU member states who are importing goods under the scheme into NI are required to provide their IOSS number to the UK in advance of the import. A power was therefore needed to enable the Commissioners to specify in a notice, how businesses make that declaration. In order that the e-commerce rules worked effectively from 1 July 2021, these minor errors and omissions were corrected in the Finance Act 2021, Section 95 and Schedule 18 (Distance Selling: Northern Ireland) (Appointed Day No. 1 and Transitory Provision) Regulations 2021. As these changes were made using transitory provisions, they are time limited. This instrument makes permanent corrections. It also withdraws the transitory provisions and saves the effect of the changes made by the power for businesses to notify their IOSS number.
- 7.7 The instrument makes clear that there is an obligation within UK legislation for an OSS business moving goods into NI to keep relevant records and make them available. A similar provision is made for those IOSS businesses importing goods into NI is also made in this instrument.
- 7.8 It also clarifies that the provisions of OSS and IOSS supplies apply in the same way to IOM as they do to GB.
- 7.9 It provides that a person registered for the IOSS scheme who is established in GB or IOM and who imports goods into NI eligible for the IOSS scheme but who is not otherwise VAT registered is not required to account for VAT on those goods. Further changes are made to VATA to make it clear that a person registered for OSS or IOSS does not have to register for VAT unless they are liable to do so.
- 7.10 Finally, in relation to e-commerce, a review of the legislation has identified superfluous references or use of inconsistent language which this instrument addresses. The reference to GB as being included within references to “third country” or “third territory” within the definition given to “intra-Community distance sale of goods” in EU legislation has been removed as there are no references to “third country or third territory” within that definition so to include it may be confusing to readers. A person ‘registered for’ a special scheme is changed to ‘a participant in’ a special scheme to ensure terms are used consistently throughout the legislation.
- 7.11 A review of EU exit VAT legislation has identified a number of minor amendments that are being addressed in this instrument.

- 7.12 Changes have been made to clarify who is liable for the import VAT where goods moved between GB and NI are declared to a customs special procedure, for example, where the conditions are breached. Further changes are also made to the Value Added Tax (Northern Ireland) (EU Exit) Regulations 2020 to ensure the offset of output tax paid on goods in GB against import VAT paid on the same goods in the event they are moved into NI equally apply to goods where output tax was paid in IOM before moving into NI.
- 7.13 For a person who holds goods in NI to trade with EU, they must be ‘a person who is identified for the purposes of VAT in NI’. Changes made in Value Added Tax (Distance Selling and Miscellaneous Amendments No. 2) Regulations 2021 ensure that all those registered for the OSS scheme can be a ‘person who is identified for the purposes of VAT in NI’. An amendment is also made in the current instrument to include a supply made under the OSS scheme within the meaning of a relevant transaction, so as to allow a person registered for OSS to be identified for VAT in NI.
- 7.14 Finally, a number of minor drafting changes have been made to the Value Added Tax Regulations 1995, the Value Added Tax (Imported Goods) Relief Order 1984, the Value Added Tax (Treatment of Transactions) Order 1995 and the Value Added Tax (Special Provisions) Order 1995.

8. European Union Withdrawal and Future Relationship

- 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 the legislation it amends will ensure that the UK’s e-commerce and wider VAT regime operates as required by the NI Protocol.
- 8.2 More broadly, it should be noted that the government is seeking to find a new balance in operating the NI Protocol in order to place it on a more sustainable footing. The government’s July 2021 Command Paper (Northern Ireland Protocol: the way forward), set out these re-balancing proposals, which include arrangements covering trade in goods and the institutional framework. This instrument will be reviewed depending on the outcome of those deliberations.

9. Consolidation

- 9.1 This instrument makes minor changes to the Value Added Tax Act 1994. There are no plans to consolidate that Act.

10. Consultation outcome

- 10.1 This is a reserved matter. No consultation has been carried out. The instrument does not affect the scope of the measure being amended.

11. Guidance

- 11.1 Guidance on the OSS and IOSS schemes can be found at www.gov.uk/government/publications/eu-e-commerce-package/eu-vat-e-commerce-package.
- 11.2 Guidance on EU exit can be found 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 covering this instrument will be published on the website at [Tax information and impact notes - GOV.UK \(www.gov.uk\)](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/531212/Tax-information-and-impact-notes-2017-18.pdf).

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 That 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 Lucy Frazer QC MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.