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STATUTORY INSTRUMENTS

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**2021 No. 1375**

**The Customs and Value Added Tax (Managed Transition Procedure) (EU Exit) Regulations 2021**

**PART 3**

**Accounting for import VAT by VAT registered persons making customs declarations by conduct**

**Interpretation**

**3. In this Part—**

- “Commissioners” means HMRC Commissioners<sup>(1)</sup>;
- “eligible person” has the meaning given by regulation 3(2) of the Customs (Managed Transition Procedure) (EU Exit) Regulations 2019<sup>(2)</sup>;
- “import VAT” means value added tax chargeable by virtue of section 1(1)(c)<sup>(3)</sup> of VATA 1994;
- “prescribed accounting period” has the meaning given by section 25(1)<sup>(4)</sup> of VATA 1994;
- “registered for VAT” refers to registration under Schedule 1<sup>(5)</sup> or 3A<sup>(6)</sup> to VATA 1994;
- “relevant importation” has the meaning given in regulation 6;
- “VATA 1994” means the Value Added Tax Act 1994.

**Application**

**4. This Part applies in any case where—**

- (a) Part 2 of the Customs (Managed Transition Procedure) (EU Exit) Regulations 2019 applies,
- (b) the eligible person is registered, or required to be registered, for VAT, and

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- (1) “HMRC Commissioners” is defined in section 37(1) of the Taxation (Cross-border Trade) Act 2018 (c. 22) (“TCTA 2018”) to mean the Commissioners for Her Majesty’s Revenue and Customs.
  - (2) Under regulation 3(2) of the Customs (Managed Transition Procedure) (EU Exit) Regulations 2019 a person is an “eligible person” if (a) the person is of a description specified in a public notice given by HMRC Commissioners and (b) is not subject to a notice given by an HMRC officer under regulation 3(3) in relation to the importation that the person ought not to be regarded as a fit and proper person. Any public notices made under the Customs (Managed Transition Procedure) (EU Exit) Regulations 2019 will be published at: <https://www.gov.uk/government/collections/customs-vat-and-excise-uk-transition-legislation-from-1-january-2021>. A person unable to access the notices electronically may access them in hard copy by post free of charge on application to 0300 322 9434.
  - (3) 1994 c. 23. Section 1(1)(c) of VATA 1994 was substituted by section 41(2)(b) of TCTA 2018.
  - (4) Section 25(1) of VATA 1994 was amended by paragraph 25 of Schedule 8 to TCTA 2018.
  - (5) Schedule 1 to VATA 1994 was amended by paragraph 13 of Schedule 3 to the Finance Act 1996 (c. 8); sections 31, 32 and 113 of, and paragraph 1 of Schedule 18 to the Finance Act 1997 (c. 16); section 136(6) of the Finance Act 2000 (c. 17); paragraphs 1 and 3 of Schedule 2 to the Finance Act 2003 (c. 14); section 100(8) of the Finance Act 2007 (c. 11); paragraphs 2 and 11 to 13 of Schedule 28 to, and paragraphs 1 and 8 of Schedule 29 to, the Finance Act 2012 (c. 14); S.I. 2017/290 and paragraphs 1 and 81 of Schedule 8 to TCTA 2018.
  - (6) Schedule 3A to VATA 1994 was inserted by Schedule 36 to the Finance Act 2000 (c. 17); and amended by paragraphs 1 and 11 of Schedule 29 to the Finance Act 2012 (c. 14) and paragraphs 1 and 85 of Schedule 8 to TCTA 2018.

- (c) the eligible person, or an individual on behalf of the eligible person, declares the goods by conduct for the free-circulation procedure in accordance with regulation 4 of those Regulations.

### **Obligation to account for and pay import VAT in accordance with this Part**

5.—(1) An eligible person (P) must account for and pay import VAT on goods which comprise a relevant importation in accordance with the provision made by this Part.

(2) The effect of section 16(2) of VATA 1994 (application of customs enactments)(7) is modified to the extent that this Part makes different provision for accounting for import VAT, including the timing of such accounting, on a relevant importation.

### **Relevant importation**

6. A “relevant importation” is an importation of goods into the United Kingdom where the goods are—

- (a) chargeable with import VAT for which P is liable,
- (b) used or to be used by P for the purposes of a business P carries on, and
- (c) required to be declared for the free-circulation procedure(8) under Part 1 (import duty) of the Taxation (Cross-border Trade) Act 2018.

### **Obligation to account for import VAT on VAT return**

7. P must account for and pay the import VAT on goods which comprise a relevant importation on the return that P is required to make for the prescribed accounting period in which the liability for the import VAT is incurred.

### **Application with modifications of the Value Added Tax (Accounting Procedures for Import VAT for VAT Registered Persons and Amendment) (EU Exit) Regulations 2019**

8. The following provisions of the Value Added Tax (Accounting Procedures for Import VAT for VAT Registered Persons and Amendment) (EU Exit) Regulations 2019(9) apply for the purposes of this Part with, where applicable, the stated modification—

- (a) regulation 8 (interest in cases of official error) applies as if the reference to the importation of relevant goods were a reference to a relevant importation;
- (b) regulation 10(1)(a) and (2) (appeals).

### **Modification of the Value Added Tax Regulations 1995 where this Part applies**

9. Where this Part applies the following provisions of the Value Added Tax Regulations 1995(10) apply with the stated modifications—

- (a) regulation 28 (estimation of output tax) is to be read as if—
  - (i) the reference to “output tax” includes import VAT chargeable on goods comprising a relevant importation; and

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(7) Section 16 of VATA 1994 was substituted by paragraph 13 of Schedule 8 to TCTA 2018 and previously modified by S.I. 2020/1495.

(8) “The free-circulation procedure” is defined in section 3 of TCTA 2018.

(9) S.I. 2019/60; amended by S.I. 2020/1495, S.I. 2020/1545 and S.I. 2021/715.

(10) S.I. 1995/2518, relevantly amended and modified by S.I. 1997/1086; S.I. 2003/1114; S.I. 2007/1418; S.I. 2009/586; S.I. 2019/59; S.I. 2019/60; S.I. 2020/1495.

- (ii) the words from “in the next prescribed accounting period” to the end were “in the prescribed accounting period in which the Commissioners make available to the person details of the amount of import duty due from the person on goods comprising a relevant importation (and “import duty” in this regulation means import duty charged under section 1 of the Taxation (Cross-border Trade) Act 2018).”;
- (b) regulation 29(3) (claims for input tax) is to be read as if the words from “in the next prescribed accounting period” to the end were “in the prescribed accounting period in which the Commissioners make available to the person details of the amount of import duty due from the person in that prescribed accounting period on goods comprising a relevant importation (and “import duty” in this regulation means import duty charged under section 1 of the Taxation (Cross-border Trade) Act 2018).”;
- (c) regulation 32(3)(baa) (the VAT account) and regulation 40(1)(ba) (VAT to be accounted for on returns and payment of VAT) are to be read as if after “2019,” were added “or Part 3 of the Customs and Value Added Tax (Managed Transition Procedure) (EU Exit) Regulations 2021,”.