

## EXPLANATORY MEMORANDUM TO

### THE VALUE ADDED TAX (AMENDMENT) (EU EXIT) REGULATIONS 2021

2021 No. 715

#### 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 Taxation (Cross-border Trade) Act 2018 (TCTA), the Taxation (Post-transition Period) Act 2020 (TPPA) and various statutory instruments made changes to Value Added Tax (VAT) legislation in respect of the United Kingdom's (UK) withdrawal from the European Union (EU). These changes were to ensure that the VAT system, including in relation to Northern Ireland (NI) under the Protocol on Ireland/Northern Ireland (the NI Protocol), operates as required from the end of the transition period. This instrument makes necessary amendments identified as a result of a review of that EU exit VAT legislation. The instrument adjusts the scope of the zero rate for handling services supplied in relation to international trains and on the supply of cars in Great Britain (GB) for export. It also transfers tertiary legislation (contained in a public notice published by the Commissioners for HMRC (the Commissioners)) into secondary legislation. The instrument updates cross references in VAT legislation to new legislation introduced by TPPA and also updates the references to boxes and legends on the VAT return.

#### 3. Matters of special interest to Parliament

##### *Matters of special interest to the Select Committee on Statutory Instruments*

- 3.1 This instrument transfers tertiary legislation (contained in a public notice published by the Commissioners) into secondary legislation. Tertiary legislation was introduced for expedience given time pressure at the end of the transition period, but the provisions are more appropriate to secondary legislation on a long term basis.
- 3.2 Regulation 27 of this instrument, which amends regulation 39 of the Value Added Tax Regulations 1995 (SI 1995/2518) (the 1995 Regulations), contains a power for the Commissioners to introduce requirements for entries on a VAT return in a public notice. The authority for the sub-delegation is section 51(3) of TCTA. Section 51(3) permits regulations made under the section to make 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)*

- 3.3 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 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 Jesse Norman MP, Financial Secretary to the Treasury, has made the following statement regarding Human Rights:

“In my view the provisions of the Value Added Tax (Amendment) (EU Exit) Regulations 2021 are compatible with the Convention rights.”

#### **6. Legislative Context**

- 6.1 This instrument is made using the powers in sections 30(4), 50A and 96(9) of the Value Added Tax Act 1994 (VATA) and section 51 of TCTA.
- 6.2 Section 51 of 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. These regulations make provision that are appropriate in consequence of, or otherwise in connection with, the withdrawal of the UK from the EU. Although the transition period has ended, this instrument makes necessary amendments identified as a result of a review of EU exit VAT legislation, to ensure that VAT legislation operates as required following the end of the transition period. However, where appropriate, other provisions in this instrument have been made using alternative powers.
- 6.3 This instrument amends Group 8 of Schedule 8 to VATA to apply the zero rate of VAT to supplies of services for the handling of railway vehicles which are on, or being prepared for, an international journey, including access fees to the rail network, and for handling or storing goods on those railway vehicles.
- 6.4 This instrument amends Article 12 of the Value Added Tax (Special Provisions) Order 1995 (SI 1995/1268) to ensure that the use of the profit margin to calculate the VAT due on the sale of goods cannot apply in relation to imported goods that are treated as supplied in the UK as a result of section 7(5B) of VATA or in relation to certain supplies of goods that are treated as made by the operator of an online marketplace under section 5A of VATA.
- 6.5 This instrument amends regulation 39 of the 1995 Regulations to allow the Commissioners to specify additional requirements in relation to the completion of a VAT return in a public notice and updates the references to boxes and legends on the return to reflect changes made following the UK’s withdrawal from the EU.
- 6.6 This instrument amends Part 16 of the 1995 Regulations to remove the zero rate for cars sold in GB that are to be removed to NI and introduces new time limits in Part 16ZA of the 1995 Regulations for the removal of zero rated cars taken from NI to GB. It also makes consequential amendments in relation to GB which are required as a result of amendments made to legislation in respect of NI.
- 6.7 This instrument amends Part 16ZA of the 1995 Regulations to transfer tertiary legislation to secondary legislation for provisions concerning the application of customs and excise provisions in respect of import VAT in relation to NI.

- 6.8 This instrument amends the Value Added Tax (Accounting Procedures for Import VAT for VAT Registered Persons and Amendment) (EU Exit) Regulations 2019 (SI 2019/60) which provide for import VAT to be accounted for on a VAT return (postponed VAT accounting). Errors in the amount of import VAT accounted for in accordance with those regulations should be corrected in the same way as for output tax under regulation 34 of the 1995 Regulations.
- 6.9 This instrument inserts a new regulation 6A into the Value Added Tax (Northern Ireland) (EU Exit) Regulations 2020 (SI 2020/1546) and makes consequential amendments to other regulations. New regulation 6A concerns goods that are supplied from GB and are moved to NI via the EU. Where the goods are declared to a special customs procedure on entering the EU it is the person releasing the goods to free circulation in NI that is responsible for the VAT due rather than the GB supplier.
- 6.10 This instrument amends the Value Added Tax (Northern Ireland) (EU Exit) Regulations 2020 to update the information that a taxable person who is required to produce an import document must include in that document. It extends the requirement to produce an import document to EU suppliers responsible for accounting for the VAT on goods valued at over £135 that are moved to GB via NI. It also puts beyond doubt that where a supplier is liable for VAT on goods moved between GB and NI as a result of paragraph 4(3) of Schedule 9ZB to VATA, there are no circumstances in which the supplier is able to recover the VAT as input tax.
- 6.11 In addition, this instrument also amends various statutory instruments relating to VAT to update cross-references and correct minor errors which do not obscure the legislative intent, but which ought to be corrected to avoid confusing readers. While this instrument contains a number of corrections, due to the number of substantive provisions, the department is of the view that it would be disproportionate to apply the free issue procedure. The department has complied with the requirement in paragraph 4.7.6 of Statutory Instrument Practice to consult the SI Registrar.

## **7. Policy background**

### *What is being done and why?*

- 7.1 This instrument makes a number of changes to EU exit VAT legislation that was commenced at the end of the transition period following the UK's withdrawal from the EU.
- 7.2 A review of this legislation identified a number of errors and omissions which need to be corrected to ensure that the VAT system continues to operate as required. This includes minor changes (including those identified by the Select Committee on Statutory Instruments), for example to correct missing/superfluous words, incorrect cross-references and formatting errors. This instrument makes those corrections.
- 7.3 TPPA introduced new Schedules 9ZA and 9ZB into VATA to implement the NI Protocol in relation to VAT. Under the NI Protocol, EU rules concerning goods continue to apply in NI. Schedule 9ZA, in particular, reinstated provisions required in relation to intra-EU supplies and movements of goods that had been removed by TCTA. Given the limited time available, to avoid the need to update existing cross-references in subordinate legislation to the new legislation, TPPA provided for existing cross-references to be read as referring to the new provisions. This instrument updates the cross-references in secondary legislation to aid understanding and readability of the legislation.

- 7.4 Some provisions concerning the application of customs and excise legislation to import VAT in relation to NI are currently contained in tertiary legislation in a public notice published by the Commissioners. It was not possible to include these provisions in secondary legislation for the end of the transition period so tertiary legislation was introduced, under a power provided for in regulation 133H of the 1995 Regulations, for expediency and to avoid a gap. However, it is appropriate that these provisions should be in secondary legislation and this instrument does that by including them within Part 16ZA of the 1995 Regulations.
- 7.5 This instrument clarifies that the second-hand margin scheme is not available for imports covered by the overseas goods provisions (introduced into VATA by TPPA) for goods sent in consignments valued at £135 or under which treat them as supplied in the UK for VAT purposes. This aligns the treatment with imports of goods generally where the margin scheme does not apply. Goods in the UK at the point of sale sold via an online marketplace will also not be eligible for the margin scheme because of the administrative complexities involved in establishing the profit margin on such transactions.
- 7.6 EU exit legislation introduced provisions to zero rate handling services related to trains in international train areas. This instrument extends the zero rate to include handling services, including access fees to the rail network, provided in respect of international trains, and the goods carried, elsewhere on the network.
- 7.7 A business which opts to account for import VAT under the rules for postponed VAT accounting declares it on the VAT return. This instrument provides that the overstatement or understatement of import VAT subject to postponed VAT accounting can be corrected in the manner prescribed for output tax outlined in [VAT Notice 700/45](#).
- 7.8 Amendments to the VAT return have been made to reflect the UK's withdrawal from the EU. This instrument makes consequential amendments to legislation that refers to legends on the VAT return. It also contains a power for the Commissioners to provide for requirements on a VAT return in a public notice. This avoids a need to update legislation if the VAT return is updated.
- 7.9 This instrument makes provision to remove the liability for VAT from the GB supplier where goods are moved from GB to NI via the EU and are declared to a special customs procedure on entering the EU. In such cases the VAT will be due from the person releasing the goods to free circulation in NI. This treatment aligns with the approach taken for goods moved directly from GB to NI.
- 7.10 Businesses selling goods from GB to NI and vice versa are required to produce an import document (which is the equivalent of a VAT invoice for other domestic transactions). This instrument adds further requirements regarding the details that should be included on the import document to ensure consistency with the rules for VAT invoicing. It also extends the requirement to produce an import document to EU suppliers sending goods to GB via NI.
- 7.11 Where goods are supplied between GB and NI the supplier is liable to the VAT due on arrival. VAT registered business customers may treat the VAT as input tax, subject to the normal rules on input tax recovery. This instrument puts beyond doubt that there are no circumstances where the supplier may recover the VAT due as input tax. This is consistent with the rules applied to sales of goods where they do not move between GB and NI.

7.12 This instrument also removes a pre-existing zero rate relief (applying to supplies of goods in the UK intended for export subject to certain conditions) which is no longer required in respect of movements from GB to NI due to offset arrangements introduced by other legislation. This includes motor vehicles which are required to be removed within a certain time limit. The application of the offset provisions is less burdensome to the sellers (who would otherwise have to ensure that the goods have been removed from GB to evidence the zero rate) and carries less revenue risk in that the VAT is chargeable and payable on the purchase. Under EU rules applied under the NI Protocol, the zero rate must still be made available for relevant goods sold in NI for movement to GB. In such cases UK legislation requires the supplier to account for the VAT due on the entry of the goods into GB. In the case of motor vehicles, this instrument reduces the eligibility criteria to one month from purchase. The aim is to provide for consistency of treatment for sales of motor vehicles to customers in the UK, irrespective of where they reside, in so far as is possible under the NI Protocol.

## **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 This instrument amends various regulations. There are no plans to consolidate these.

## **10. Consultation outcome**

10.1 No consultation has been carried out. This instrument makes necessary amendments identified as a result of a review of EU exit VAT legislation. The amendments made by this instrument are generally consistent with the policy position set out in guidance issued at the end of the transition period.

## **11. Guidance**

11.1 Guidance published at the end of the transition period, will be clarified as necessary. Guidance can be found at <https://www.gov.uk/government/publications/accounting-for-vat-on-goods-moving-between-great-britain-and-northern-ireland-from-1-january-2021> and [VAT notices in alphabetical order - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/vat-notice-in-alphabetical-order).

## **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](https://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](mailto: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.