
STATUTORY INSTRUMENTS

2021 No. 715

**The Value Added Tax (Amendment)
(EU Exit) Regulations 2021**

Amendment of the Value Added Tax Regulations 1995

43. After regulation 133A, insert—

“Enactments excepted

133AB. There shall be excepted from the enactments which are to apply to importations as mentioned in section 16(1)(1) of the Act—

- (a) the Alcoholic Liquor Duties Act 1979(2)—
 - (i) section 5A (exemption from duty on spirits in flavourings);
 - (ii) section 7 (exemption from duty on spirits in articles used for medical purposes);
 - (iii) section 8 (remission of duty on spirits used for medical or scientific purposes);
 - (iv) section 10 (remission of duty on spirits for use in art or manufacture);
 - (v) section 42 (drawback on exportation of beer);
- (b) the Hydrocarbon Oil Duties Act 1979(3)—
 - (i) section 9 (relief for certain industrial uses);
 - (ii) section 15 (drawback of duty on exportation etc of certain goods);
 - (iii) section 17 (repayment of duty on heavy oil used by horticultural producers);
 - (iv) section 19 (repayment of duty on fuel used in fishing boats etc);
 - (v) section 20 (relief from duty on oil contaminated or accidentally mixed in warehouse);
 - (vi) section 20AA (power to allow reliefs);
- (c) the Customs and Excise Management Act 1979(4)—
 - (i) section 43(5) (provisions as to duty on re-imported goods);
 - (ii) subsections (1) and (2) of section 125 (valuation of goods for the purpose of ad valorem duties) so far as they apply by virtue of paragraph 158 of Schedule 7 to the Taxation (Cross-border Trade) Act 2018;

(1) Regulation 133AB excepts the application of various enactments which apply by virtue of section 16 of the Value Added Tax Act 1994. Section 16(1) was substituted by paragraph 13 of Schedule 8 to the Taxation (Cross-border Trade) Act 2018. Section 16(1) applies to the entry of goods into Northern Ireland following their removal from Great Britain by virtue of paragraph 3(5) of Schedule 9ZB to the Value Added Tax Act 1994.

(2) 1979 c. 4. Section 5A was inserted by S.I. 2009/730. There are no other relevant amendments.

(3) 1979 c. 5. Section 20AA was inserted by section 2(1) of the Finance Act 1989 (c. 26). There are no other relevant amendments.

(4) 1979 c. 2. Paragraphs 3 to 117 of Schedule 7 to the Taxation (Cross-border Trade) Act 2018 (c. 16) amend this Act but paragraph 158(1) to (3) of that Schedule makes savings and modifications in relation to Northern Ireland.

- (iii) section 126 (charge of excise duty on manufactured or composite imported articles);
- (d) the Customs and Excise Duties (General Reliefs) Act 1979⁽⁵⁾, other than section 8 (relief from customs or excise duty on trade samples, labels, etc.) and section 9(b) (relief from customs or excise duty on prizes, etc.);
- (e) the Isle of Man Act 1979⁽⁶⁾, sections 8 and 9 (removal of goods from Isle of Man to United Kingdom and vice versa);
- (f) the Tobacco Products Duty Act 1979⁽⁷⁾, section 2(2) (remission or repayment of duty on tobacco products);
- (g) the Finance Act 1995, section 5 (denatured alcohol);
- (h) the Finance Act 1999⁽⁸⁾, sections 126 and 127 (interest on unpaid customs debts and on certain repayments relating to customs duty).

Regulations excepted

133AC. The provision made by or under the following subordinate legislation shall be excepted from applying to importations as mentioned in section 16(1) of the Act—

- (a) regulations 16(4) and (5) and 19(1)(b) of the Excise Warehousing (Etc.) Regulations 1988 (certain removals from warehouse)⁽⁹⁾;
- (b) any regulations made under section 197(2)(f) of the Finance Act 1996 (rate of interest on overdue customs duty and on repayments of amounts paid by way of customs duty)⁽¹⁰⁾.

Union customs legislation excepted

133AD. There shall be excepted from the enactments which are to apply in respect of importations as mentioned in section 16(1) of the Act—

- (a) Council Regulation (EC) 1186/2009⁽¹¹⁾ on conditional reliefs from duty on the final importation of goods and any implementing Regulations made thereunder so far as they apply by virtue of section 7A of the European Union (Withdrawal) Act 2018;
- (b) the following Articles of the Union Customs Code and any implementing Regulations made thereunder, so far as they apply by virtue of section 7A of the European Union (Withdrawal) Act 2018—
 - (i) Article 112 (other payment facilities);
 - (ii) Article 114(3) and (4) (interest on arrears of duty);
 - (iii) Article 116(6) (interest on certain repayments by the authorities);
 - (iv) Articles 250 to 253 so far as they relate to partial relief on temporary admission into Northern Ireland;
 - (v) Articles 259 to 262 (outward processing);

⁽⁵⁾ 1979 c. 3. Paragraphs 118 to 138 of Schedule 7 to the Taxation (Cross-border Trade) Act 2018 amend this Act but paragraph 158(4) of that Schedule makes savings and modifications in relation to Northern Ireland.

⁽⁶⁾ 1979 c. 58, amended by paragraphs 139 to 141 of Schedule 7 to the Taxation (Cross-border Trade) Act 2018.

⁽⁷⁾ 1979 c. 7. There are no relevant amendments.

⁽⁸⁾ 1999 c. 16. There are no relevant amendments.

⁽⁹⁾ S.I. 1988/809.

⁽¹⁰⁾ 1996 c. 8. Section 197(2)(f) was inserted by section 130(3) of the Finance Act 1999 (c. 16).

⁽¹¹⁾ OJ L 324, 10.12.2009, p. 23.

- (c) [Council Regulation \(EEC\) No 2658/87](#) on the tariff and statistical nomenclature and on the Common Customs Tariff⁽¹²⁾ and implementing Regulations made thereunder (end use relief), so far as they apply by virtue of section 7A of the European Union (Withdrawal) Act 2018, save and in so far as the said Regulations apply to goods admitted into territorial waters—
- (i) in order to be incorporated into drilling or production platforms, for purposes of the construction, repair, maintenance, alteration or fitting-out of such platforms, or to link such drilling or production platforms to the mainland of Northern Ireland, or
 - (ii) for the fuelling and provisioning of drilling or production platforms.

Adaptations

133AE.—(1) The provision made by the following enactments shall apply to importations as provided for in section 16(1) of the Act subject to the following adaptations—

- (a) section 125(3) of the Customs and Excise Management Act 1979 (valuation of goods), so far as it applies by virtue of section 7A of the European Union (Withdrawal) Act 2018 shall have effect as if the reference to the preceding subsections of that section included a reference to section 21 of the Act;
- (b) section 129 of the Finance Act 1999 (recovery of certain amounts by the Commissioners) shall be regarded as providing for the recovery of any relevant NI import duty.

(2) In this regulation “relevant NI import duty” has the same meaning as in paragraph 1(8) of Schedule 9ZB to the Act.

133AF.—(1) The application of Title III, Chapter 2 (guarantee for a potential or existing customs debt) of the Union Customs Code in relation to any VAT chargeable on the importation of goods into Northern Ireland from places outside the member States (but not including Great Britain) is subject to the following prescribed adaptations.

(2) In Article 89(9) (general provisions), regard “guarantee” as being “appropriate guarantee (which may be nil if there is no risk to the payment)”.

(3) In Article 110 (deferment of payment), regard there being a second subparagraph as follows—

“Provided that the amount in question may exceed that of the guarantee in the case where a nil guarantee or no guarantee is required.”.

133AG. The application of the Customs Duties (Deferred Payment) Regulations 1976⁽¹³⁾ in relation to any VAT chargeable on the importation of goods into Northern Ireland from places outside the member States (but not including Great Britain) is subject to the following prescribed adaptation, namely before “and” at the end of regulation 8(a) (deemed payment for certain purposes at time deferment granted) regard there as being—

“(aa) Article 195 of the Union Customs Code (release dependent upon payment of the amount of import or export duty corresponding to the customs debt or provision of a guarantee);”.

(12) OJ L 256, 7.9.1987, p. 1.

(13) S.I. 1976/1223, amended by S.I. 1978/1725.

133AH.—(1) The application of the Union Customs Code in relation to any VAT chargeable on the importation of goods into Northern Ireland from places outside the member States (but not including Great Britain) is subject to the following adaptations.

(2) But the adaptation in paragraph (3) only applies to the extent that the Commissioners grant deferment of payment of the relevant VAT with nil security.

(3) Regard Article 89 (general provisions) as not being subject to Article 90 (compulsory guarantee).

(4) In the second sub-paragraph of Article 105(1) (single entry in the accounts), after “guaranteed” regard there as being “if required”.

(5) In Article 110 (deferment of payment), after “upon provision of a guarantee” regard there as being “(but the customs authorities may waive this requirement if there is no risk to the payment)”.

133AI.—(1) The application of the Union Customs Code, the Commission Implementing Regulation and the Commission Delegated Regulation in relation to any VAT chargeable on the importation of goods into Northern Ireland from places outside the member States (but not including Great Britain) is subject to the following prescribed adaptations.

(2) But the adaptations in paragraphs (3) and (4) only apply to the extent that the Commissioners grant deferment of payment of the relevant VAT with nil security.

(3) Regard the following as providing that the provision of security is at the discretion of the customs authorities—

- (a) Articles 45 (suspension of implementation), 97 (additional or replacement guarantee) and 195 (release dependent upon payment of the amount of import or export duty corresponding to the customs debt or provision of a guarantee) of the Union Customs Code;
- (b) Article 244 (provision of a guarantee) of the Commission Implementing Regulation;
- (c) Articles 89 (suspension of the time-limit for payment in case of application for remission) and 91(2) (suspension of the time limit for payment in the case of customs debts incurred through non-compliance to be conditional in specific situations) of the Commission Delegated Regulation.

(4) Regard Articles 45, 97 and 195 of the Union Customs Code, Article 244 of the Commission Implementing Regulation and Articles 89 and 91(2) of the Commission Delegated Regulation as not being subject to Article 90 of the Union Customs Code.

Adaptations and exceptions for the application of returned goods relief in Northern Ireland

133AJ.—(1) The application of the Union Customs Code, the Commission Implementing Regulation and the Commission Delegated Regulation in relation to any VAT chargeable on the importation of goods into the United Kingdom as a result of their entry into Northern Ireland is subject to the following modifications and exceptions.

(2) Regard Articles 203 to 207 (returned goods) of the Union Customs Code, Articles 253 to 256 of the Commission Implementing Regulation and Articles 158 to 160 of the Commission Delegated Regulation as requiring that the goods are re-imported into Northern Ireland by the same person who originally exported or re-exported the goods from the VAT territory.

(3) Regard the amount of relief mentioned in Article 203(5) of the Union Customs Code as reduced by the amount of any unpaid VAT.

(4) Regard the amount of import duty mentioned in Article 205 of the Union Customs Code as reduced by the amount of any paid VAT.

(5) For the purposes of paragraphs (3) and (4)—

(a) “VAT” includes value added tax charged in accordance with the law of a member State as follows:

(i) references to the law of that member State shall be construed as confined to so much of the law of that member State as for the time being has effect for the purposes of any EU instrument relating to VAT;

(ii) references to a person being taxable in a member State shall be construed by reference to the law of the United Kingdom as to whether a person is a taxable person;

(iii) references to goods being acquired by a person in a member State shall be construed by reference to the law of the United Kingdom for treating goods as acquired in the United Kingdom from a member State;

(b) “unpaid” refers to any part of the VAT charged and due on—

(i) a supply or acquisition of the goods in a member State before the reimportation, or

(ii) an importation of the goods into the United Kingdom from outside the member States before the reimportation,

but repaid, remitted or otherwise not paid;

(c) “paid” refers to any part of the VAT charged, due and paid on—

(i) a supply or acquisition of the goods in a member State before the reimportation, or

(ii) an importation of the goods into the United Kingdom from outside the member States before the reimportation,

and without any actual, or prospect of, repayment or remission;

(d) a sum for which there is or was under the law of a member State an entitlement or right to a deduction or refund under articles 167 to 172 of Council [Directive 2006/112/EC](#) of 28 November 2006⁽¹⁴⁾ is neither “unpaid” nor “paid”.

(6) In the circumstances described in paragraph (7) or (8), Articles 203 to 207 of the Union Customs Code, Articles 253 to 256 of the Commission Implementing Regulation and Articles 158 to 160 of the Commission Delegated Regulation are excepted from the Union customs legislation which is to apply as mentioned in section 16(1) of the Act (application of customs enactments).

(7) The circumstances are that—

(a) the re-importer contemplated by those articles makes a supply of or concerning the goods whilst under the inward processing procedure or in the course of or after the relevant exportation, re-exportation or reimportation,

(b) the place of that supply for the purposes of VAT is determined by or under [section 7](#) of the Act (place of supply) as being outside the United Kingdom, and

(14) OJ L 347, 11.12.2006, p. 1.

- (c) the goods nevertheless are or may be stored or physically used in Northern Ireland by or under the direction of that re-importer or the person to whom that supply is made (“recipient”),
and for these purposes “re-importer” and “recipient” include someone connected with either person or both persons as determined in accordance with sections 1122 and 1123 of the Corporation Tax Act 2010⁽¹⁵⁾.
- (8) The circumstances are that the goods in question were supplied at any time to any person pursuant to regulations 133C to 133E (supplies to persons departing from the relevant States).
- (9) For the purposes of the legislation referred to in paragraph (2)—
- (a) regard the description of the customs territory of the Community in Article 4 of the Union Customs Code as being substituted with a description of the VAT territory;
- (b) regard the following references as including a reference to the completion of the formalities referred to in Articles 274 and 275 of Council [Directive 2006/112/EC](#) of 28 November 2006 (formalities relating to entry of goods into VAT territory from territory considered a third territory)—
- (i) “released for free circulation” in both the definition of “Union goods” in Article 5(23) and in Article 203 of the Union Customs Code;
- (ii) “declared for release for free circulation” in or for the purposes of Article 159(1)(c) of the Commission Delegated Regulation and Articles 253 and 254 of the Commission Implementing Regulation;
- (c) regard the following references as including a reference to the completion of the formalities referred to in Articles 278 and 279 of Council [Directive 2006/112/EC](#) of 28 November 2006 (formalities relating to dispatch or transport of goods from member State to territory considered a third territory)—
- (i) “export” in Article 204 of the Union Customs Code;
- (ii) “customs formalities relating to their export” in Article 159(1)(c) of the Commission Delegated Regulation;
- (iii) “re-export declaration” in Article 253 of the Commission Implementing Regulation;
- (iv) “completion of formalities” in Article 254 of the Commission Implementing Regulation;
- (v) “export formalities” in Article 255(2) and (3) of the Commission Implementing Regulation;
- (d) regard—
- (i) the definition of “import duty” in Article 5(20) of the Union Customs Code as reading “VAT charged on the importation of goods”;
- (ii) the references to “import duty” and “duty” in Articles 203(1), (3), (5) and (6) and 205 of the Union Customs Code as references to VAT charged on the importation of goods;
- (e) where the context requires, regard references to “Union goods” as referring to goods located in Northern Ireland that are subject to Union customs legislation by virtue of the Northern Ireland Protocol.
- (10) In this regulation—

⁽¹⁵⁾ 2010 c. 4. There are no relevant amendments.

- (a) “the VAT territory” is the territorial application set out in Article 4 of the Union Customs Code and the territory of Northern Ireland;
- (b) “the Northern Ireland Protocol” means the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community⁽¹⁶⁾.

Temporary importations into Northern Ireland

133AK.—(1) Subject to such conditions as the Commissioners may impose, the VAT chargeable on the importation of goods shall not be payable where—

- (a) a taxable person makes a supply of goods which is to be zero-rated in accordance with the relevant provisions of the Act,
- (b) the goods so imported are the subject of that supply, and
- (c) the Commissioners are satisfied that the importer—
 - (i) intends to remove the goods to a member State, and
 - (ii) is importing the goods in the course of a supply by the importer of those goods in accordance with the relevant provisions of the Act and any regulations made thereunder.

(2) As a condition of granting the relief afforded by paragraph (1), the Commissioners may require the deposit of security the amount of which shall not exceed the amount of VAT chargeable on the importation.

(3) The relief afforded by paragraph (1) above shall continue to apply provided that the importer—

- (a) removes the goods to a member State within one month of the date of importation or within such longer period as the Commissioners may allow, and
- (b) supplies the goods in accordance with the relevant provisions of the Act and any regulations made thereunder.

(4) In this regulation, the “relevant provisions of the Act” are the provisions in subparagraphs (a)(i) and (ii) and (b) of section 30(8) of the Act to be read as if the changes made by paragraph 29(5) of Schedule 8 to the Taxation (Cross-border Trade) Act 2018 had not been made⁽¹⁷⁾ and “Northern Ireland” is substituted for “United Kingdom”.

Northern Ireland: re-importation of goods exported for treatment or process

133AL.—(1) Subject to such conditions as the Commissioners may impose, VAT chargeable on the NI importation of goods which have been temporarily exported and are re-imported after having undergone repair, process or adaptation abroad, or after having been made up or reworked abroad, shall be payable as if such treatment or process had been carried out in Northern Ireland, if the Commissioners are satisfied that—

- (a) at the time of exportation, the goods were intended to be re-imported after completion of the treatment or process abroad, and
- (b) the ownership in the goods was not transferred to any other person at exportation or during the time they were abroad.

(2) In this regulation—

- (a) “abroad” means outside Northern Ireland and the European Union;

⁽¹⁶⁾ 2019/C 384 I/01; a copy is available at <https://www.legislation.gov.uk/eu/withdrawal-agreement/contents/adopted>.

⁽¹⁷⁾ Paragraph 29(5) of Schedule 8 to the Taxation (Cross-border Trade) Act 2018 substituted a new section 30(8)(a) of the Value Added Tax Act 1994.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (b) “exportation”, in relation to the goods mentioned in paragraph (1), means the exportation of goods from the United Kingdom as a result of their removal from Northern Ireland to a place outside the European Union and “exported” is to be interpreted accordingly;
- (c) “VAT chargeable on the NI importation of goods” means VAT chargeable in accordance with paragraph 1(3) of Schedule 9ZB to the Act (VAT on the importation of non-Union goods into the United Kingdom as a result of their entry into Northern Ireland).

Export of freight containers from Northern Ireland

133AM. Where the Commissioners are satisfied that a container is to be exported, its supply, subject to such conditions as they may impose, shall be zero-rated.”.