

EXPLANATORY MEMORANDUM TO

THE VALUE ADDED TAX (PLACE OF SUPPLY OF SERVICES: EXCEPTIONS RELATING TO SUPPLIES MADE TO RELEVANT BUSINESS PERSON) ORDER 2016

2016 No. 726

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs ('HMRC') on behalf of HM Treasury and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument introduces an exception to the general VAT rule regarding place of supply of services which treats business to business supplies as made where the recipient belongs. The exception applies to repairs to moveable goods (such as cars and mobile phones but not buildings or their fixtures and fittings) which are performed as a result of an insurance claim. The exception applies where the supply is made to a business which is not the insured person, for example by a repairer to an insurance provider, and under the general rule, either the supply is made in the UK but is effectively used and enjoyed outside the VAT territory of the EU, or made outside the VAT territory of the EU but is effectively used and enjoyed in the UK. In either of those cases the exception treats the supply as taking place in the territory where it is effectively used and enjoyed.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland and is not a financial instrument that relates exclusively to England, Wales and Northern Ireland.

4. Legislative Context

- 4.1 Section 7A of the Value Added Tax Act 1994 ('VATA') provides the general rules for determining the place of supply of services for the purposes of value added tax. Section 7A(2)(a) provides that the supply of services to a relevant business person is to be treated as made in the country where the recipient of the service belongs.
- 4.2 Relevant business person is defined for this purpose in section 7(4) as being a taxable person within the meaning of Article 9 of Council Directive 2006/112/EC, a person who is registered for VAT in the UK, in another Member State of the EU or under an act of Tynwald for the purposes of any tax which corresponds to VAT.

- 4.3 Section 7(5) provides that subsection (2) has effect subject to Schedule 4A to VATA ('Schedule 4A'). Part 2 of Schedule 4A ('Part 2') provides for exceptions to the general rule for supplies to relevant business persons.
- 4.4 This instrument introduces a new paragraph, 9D, into Part 2 which provides that supplies of services of repair to tangible moveable property pursuant to a claim made under a contract of insurance will, in certain circumstances, be treated as made where they are effectively used and enjoyed.
- 4.5 The exception applies where the supply is to a relevant business person who is not the insured and the general rule under section 7A(2)(a) of VATA would otherwise result in either the place of supply of services used and enjoyed in the UK being treated as made outside the territories of the member states or the place of supply of services used and enjoyed outside the territories of the member states being treated as made in the UK.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

- 6.1 The Financial Secretary David Gauke has made the following statement regarding Human Rights:

“In my view the provisions of the Value Added Tax (Place of Supply of Services: Exceptions Relating to Supplies made to Relevant Business Person) Order 2016 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 This provision is targeted at repair services provided to those insurers that have set up outside the VAT territory of the EU but write insurance in the UK and meet their obligations under their insurance contracts by ensuring the repair of the insured goods rather than replacing them or providing a cash settlement.
- 7.2 It will require the service provider to charge VAT at the standard rate on the repairs they perform where the provider of the insurance cover for the goods is located outside the VAT territory of the EU.
- 7.3 Currently such transactions when performed for a UK insurer by a repair service provider are subject to VAT at the standard rate. As the supply of insurance is exempt from VAT, the insurer cannot recover the VAT charged as input tax.
- 7.4 When indemnity repair services are supplied to an insurer located outside the VAT territory of the EU, they fall under the general VAT place of supply rule for business to business transactions, which means that they are treated as supplied in the country where the recipient of the service is established. The result of this is that repair services are outside the scope of VAT.
- 7.5 This creates an opportunity for providers of insurance to set up or locate off-shore to avoid the VAT charge, which would otherwise be irrecoverable as input tax. Some providers of insurance have already taken advantage of the general rule on place of

supply of services in respect of car and mobile phone repair services and this has caused concern amongst UK based insurers, who feel they will become uncompetitive.

- 7.6 This provision changes the place of supply for indemnity repair services which are not supplied to the insured, but which are provided, for example, by a repairer to an insurance provider. Where, under the normal rules, the services would be treated as taking place outside the VAT territory of the EU the changes mean that where they are used and enjoyed in the UK, they will be treated as taking place in the UK. Conversely where the services would be treated as taking place in the UK but are used and enjoyed outside the EU VAT territory they will be treated as taking place outside the EU.
- 7.7 This ensures there is no competitive advantage gained by an offshore insurer over their UK counterparts or vice versa.

Consolidation

- 7.8 This instrument introduces a new paragraph into Part 2 VATA and therefore the changes made will be consolidated within the existing primary legislation of the place of supply of services.

8. Consultation outcome

- 8.1 In accordance with HMRC's Tax Consultation Framework, the Order was published in draft for a four week technical consultation period on 27/01/2016. Four written responses were received which resulted in minor changes to clarify the Order.

9. Guidance

- 9.1 The changes made by this instrument will be reflected in public notice 741A Place of supply of services when the Order comes into force.

10. Impact

- 10.1 This instrument will affect a small number of offshore insurers and those that supply them with repair services. The repairer will now be expected to charge VAT on repairs to goods located in the UK supplied to insurers (or other businesses involved with the insurance claim) located outside the VAT territory of the EU. The insurer will not be entitled to recover the VAT. The impact on the UK providers of the repair services is expected to be negligible as they will already be applying VAT to UK sales.
- 10.2 The impact on charities and voluntary bodies is negligible.
- 10.3 The impact on the public sector is negligible as this provision relates to supplies made to offshore businesses.
- 10.4 A Tax Information and Impact Note is submitted with this memorandum and will be published on the government website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 No specific action is proposed to minimise regulatory burdens on small businesses.

11.3 The basis for the final decision on what action to take to assist small businesses was that, although the provision does not discriminate between businesses, the measure is believed to have minimal impact upon them.

12. Monitoring & review

12.1 This Instrument is excluded from the review provisions of the Small Business, Enterprise and Employment Act 2015 by virtue of section 28(3) of that Act. But its effect on the behaviour of, and VAT receipts from, the insurance sector will be subject to monitoring and review by HMRC.

13. Contact

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