

## EXPLANATORY MEMORANDUM TO

### THE VALUE ADDED TAX (PLACE OF SUPPLY OF SERVICES) (TELECOMMUNICATION SERVICES) ORDER 2017

2017 No. 778

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.

#### 2. Purpose of the instrument

- 2.1 This instrument amends the VAT use and enjoyment place of supply provisions for telecommunication services so that they no longer apply to such services when they are provided to a person who is not a relevant business person. This will bring within the scope of UK VAT telecommunication services used by UK consumers when they are outside the EU.

#### 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 it 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)(b) provides that a supply of services to someone who is not a relevant business person (for example a private consumer) is to be treated as made in the country where the supplier of the services belongs. However, section 7(5) provides that subsection (2) has effect subject to Schedule 4A to VATA ('Schedule 4A') which provides for exceptions to the general place of supply rules for specified supplies of services.
- 4.2 Schedule 4A is divided into 3 Parts. Part 1 provides for general exceptions; Part 2 provides for exceptions relating to supplies made to a relevant business person and Part 3 provides for exceptions relating to supplies that are not made to a relevant business person.
- 4.3 Section 7A(4) of VATA sets out the definition of a relevant business person.
- 4.4 Subparagraph (1) of paragraph 15 of Schedule 4A (in Part 3) sets out the specific rule for the place of supply of electronically supplied, telecommunication and broadcasting services when made to a person who is not a relevant business person, which is where the recipient of the supply belongs.

- 4.5 Paragraph 8 of Schedule 4A (in Part1) specifies the special use and enjoyment provision for telecommunication services (defined in subparagraph (2)) and broadcasting services including both those supplied to a person who is a relevant business person and those supplied to a person who is not. In the case of supplies of telecommunication services made to a person who is not a relevant business person, paragraph 8 moves the place of supply from where the services would otherwise be treated as supplied under paragraph 15, to where they are effectively used and enjoyed in the circumstances specified.
- 4.6 This instrument removes the use and enjoyment provision for telecommunication services provided to a person who is not a relevant person in paragraph 8 in Part 1 of Schedule 4A so that such services are taxed where that person belongs under paragraph 15(1) in Part 3 of Schedule 4A.
- 4.7 However, where such services are supplied to a person who is a relevant business person, the instrument preserves the current use and enjoyment provision by inserting an identical provision into paragraph 9 of Part 2 of Schedule 4A (new paragraph 9E). In doing so it moves the definition of telecommunication services to that new paragraph.
- 4.8 The instrument also makes consequential amendments to other VAT legislation that cross refers to the definition of telecommunication services in Schedule 4A.

## **5. Extent and Territorial Application**

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

## **6. European Convention on Human Rights**

- 6.1 The Financial Secretary to the Treasury, The Rt Hon Mel Stride MP has made the following statement regarding Human Rights:
- “In my view the provisions of the Value Added Tax (Place of Supply of Services) (Telecommunication Services) Order 2017 are compatible with the Convention rights.”

## **7. Policy background**

### *What is being done and why*

- 7.1 This measure makes telecommunication services supplied to a non-business consumer taxable where that consumer belongs in accordance with the specific place of supply rule for such services. It brings the UK into line with international guidelines on the place of supply of services, and the practice of the majority of EU Member States.
- 7.2 Currently, telecommunication services supplied to UK consumers that are effectively used in the EU are subject to UK VAT. But those effectively used outside the EU are not. Some UK providers currently make adjustments to the VAT they pay to HMRC on monthly fees to allow for non EU use, but do not pass this saving on directly to consumers.
- 7.3 Some also assert that uncertainty over the place where consumers will use their mobile phones is created by the use and enjoyment provisions, which prevent taxation until use of the phone occurs. They further rely on this uncertainty to argue that, as it

is often the case that part of the services paid for (the full monthly allowance of calls, text and data) is not used, a proportion of the payment should not be taxed, even if no use outside the EU actually occurs. This presents a significant potential threat to the UK exchequer.

- 7.4 This measure removes any alleged uncertainty as to the place of supply. Therefore telecommunication services to non-business consumers will always be taxable where the consumer belongs with effect from 1 November 2017. This ensures that VAT is due on the full consideration paid by UK consumers in relation to pay monthly contracts and will protect future revenue from similar challenges.
- 7.5 On 23 June, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

#### *Consolidation*

- 7.6 This instrument amends paragraphs in Schedule 4A and therefore the changes made will be consolidated within the existing primary legislation in relation to 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 20/04/2017. Two written responses were received, these did not result in any change to the Order. HMRC identified one additional consequential amendment which has been included in the Order.

### **9. Guidance**

- 9.1 The changes made by this instrument will be reflected in published guidance on the place of supply of services.

### **10. Impact**

- 10.1 The impact on expenditure by business, charities or voluntary bodies is expected to be negligible as it only affects services consumed by non-business persons outside the EU. Those UK businesses supplying telecommunication services to non-business persons travelling outside the EU will be affected to the extent that such services will be within the scope of UK VAT.
- 10.2 The impact on the public sector is will be negligible as this provision relates to supplies consumed outside the EU.
- 10.3 A Tax Information and Impact Note covering this instrument will be published on the 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 business as this measure is believed to reduce the regulatory burden in a small way.

## **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 telecommunications sector will be subject to monitoring and review by HMRC.

## **13. Contact**

13.1 Colin Scott-Morton at HM Revenue and Customs telephone: 03000 585968 or email: [colin.scott-morton@hmrc.gsi.gov.uk](mailto:colin.scott-morton@hmrc.gsi.gov.uk) or Kerry Smith telephone: 03000 566007 or email: [kerry.smith1@hmrc.gsi.gov.uk](mailto:kerry.smith1@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.