

**EXPLANATORY MEMORANDUM TO**  
**THE VALUE ADDED TAX (POSTAL PACKETS AND AMENDMENT) (EU EXIT)**  
**REGULATIONS 2018**

**2018 No. 1376**

**1. Introduction**

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

**2. Purpose of the instrument**

2.1 This instrument makes an overseas supplier liable for the import VAT on any consignment of goods sent into the United Kingdom ("UK") in a postal packet ("parcel" – this includes letters, parcels, packets or any other article that could be sent by post even if they are sent by different means) if the value of the goods contained in the parcel is £135 or less for customs purposes. In addition, it creates a registration and accounting scheme for those suppliers to account for the import VAT and provides for others to be jointly and severally liable for that import VAT in certain circumstances. Also, the instrument removes the import VAT relief for commercial imports of goods valued at £15 or less (Low Value Consignment Relief ("LVCR")). The instrument will only come into force on a date or dates specified in a separate instrument if the UK withdraws from the European Union ("EU") without a negotiated arrangement.

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

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

3.1 None.

*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)*

3.2 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 UK.

4.2 The territorial application of this instrument is the UK.

4.3 Although these Regulations place obligations on suppliers located outside of the UK, the obligations relates to the importation of goods into the UK.

**5. European Convention on Human Rights**

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## 6. Legislative Context

- 6.1 Part 3 (sections 41 to 43) of, and Schedule 8 (“Schedule 8”) to the Taxation (Cross-border Trade) Act 2018 (“TCTA 2018”) amend the Value Added Tax Act 1994 (“VATA 1994”) to make provision in connection with the withdrawal of the UK from the EU. Section 57(3) of TCTA 2018 provides (among other things) that those amendments come into force on days appointed by Treasury regulations. Section 16A of VATA 1994 (“Section 16A”) (as introduced by paragraph 14 of Schedule 8) came into force on 16 December 2018 pursuant to the Taxation (Cross-border Trade) Act 2018 (Appointed day No. 1) (EU Exit) Regulations 2018. No other provision of Schedule 8 has yet been commenced. This instrument is the first use of the vires provided for by section 16A. Section 57 (1) of TCTA 2018 provides (amongst other things) that sections 51 and 52 of that Act (Part 5: other provisions connected with the withdrawal from EU) came into force on the day on which the Act is passed. TCTA 2018 received Royal Assent on 13 September 2018.
- 6.2 Section 1(1)(c) of VATA 1994 as amended by paragraph 2(3) of Schedule 8 charges VAT on goods imported from outside the UK (“import VAT”) (currently import VAT is chargeable only on goods from outside the EU). Section 15(4) of VATA 1994 (as amended by section 41 TCTA 2018) provides that liability for import VAT lies with each person who is liable to pay import duty or would be so liable if import duty were due. Under Part 1 of TCTA 2018 a postal operator (as the person making the customs declaration) and/or the intended recipient of the goods (as the person on whose behalf a customs declaration is made) is liable for import duty and therefore import VAT on goods imported in postal packets.
- 6.3 This instrument makes special provision for goods sent by a postal packet where the value of goods contained in the packet is valued (for custom duty purposes) at £135 or less. If the goods are supplied for a consideration then the supplier of the goods is liable to account for the import VAT. The Commissioners are required to maintain a register for the purposes of this instrument and the supplier must register and account for the import VAT unless arrangements are made which ensure that a payment is to be made by the postal operator.
- 6.4 The definition of a “postal operator” is wide – it covers any person who carries parcels from one place to another or who receives, collects, sorts or delivers parcels. A parcel must be capable of being sent by post but this does not mean that the definition of a parcel is limited to parcels which are in fact transmitted by universal service providers and therefore the definition of parcel operator includes anyone who conveys a parcel.
- 6.5 There are also provisions for joint and several liability with third parties in some circumstances. A penalty for failure to register, powers of assessment and rights of appeal to the tribunal are also provided for. Provision is also made for the Commissioners to confirm, on an enquiry made by any person, whether a supplier is registered under the regulations to enable consumers and other interested parties to check the registration status of the supplier under the registration scheme.
- 6.6 This instrument also amends the Value Added Tax (Imported Goods) Relief Order 1984 (S.I. 1984/746) (“the Relief Order”). Article 5 and Item 8 of Schedule 2 to the Relief Order together relieve goods (excluding alcoholic beverages, tobacco products, perfumes and toilets waters) where the value of the consignment does not exceed £15. This instrument omits item 8 and the associated notes 2 and 3 and so removes that

particular relief. This relief has practical application to postal packets as consignments of this value are generally dispatched by post.

## **7. Policy background**

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

- 7.1 Different customs duty and import VAT rules currently apply to goods entering the UK from the EU to those entering from the rest of the world (“RoW”).
- 7.2 There are no customs formalities for goods coming from the EU and no customs duty is payable although VAT will normally be due. A business in an EU member State sending a parcel to a UK recipient who is not VAT registered will pay VAT, either in the EU country from where the goods are sent or in the UK if the sales of goods into the UK (“distance sales”) exceeds the annual threshold (£70,000).
- 7.3 Where a supplier in an EU member State sends a parcel to a UK VAT registered business, the UK recipient will account for VAT through their VAT return.
- 7.4 Where goods enter the UK from RoW they will be liable to customs duty and import VAT unless reliefs apply. Customs duty is relieved on commercial imports of goods valued at £135 or less (except imports of alcohol, tobacco products, perfume or toilet water). LVCR relieves import VAT on commercial imports of goods valued at £15 or less. LVCR does not apply to alcohol, tobacco products, perfume or toilet water or goods sent from the Channel Islands.
- 7.5 Currently the liability to pay the import VAT and duty on parcels sent from RoW lies with the UK declarant (normally the postal operator) and/or the UK recipient. The overseas supplier may choose to pay the import VAT and duty to the postal operator or the postal operator will request reimbursement from the UK recipient on delivery.
- 7.6 In the unlikely event that the UK withdraws from the EU without a negotiated arrangement the EU rules will no longer apply and goods entering the UK from an EU member State will be treated in the same way as imports from RoW. This would increase the number of parcels requiring customs duty and import VAT to be collected from the UK recipient by the postal operator on delivery.
- 7.7 In addition, the instrument withdraws LVCR to protect the UK high street from unfair competition from overseas suppliers, particularly those on the near continent, that would be able to sell low value goods into the UK free of import VAT. This will add to the number of parcels on which import VAT will have to be collected and therefore the potential additional burdens on postal operators. Further amendments will be made to the Value Added Tax (Imported Goods) Relief Order 1984 (the order that contains LVCR) in relation to the withdrawal of the UK from the EU in another instrument.
- 7.8 This instrument mitigates against these potential additional burdens by removing the requirement for postal operators to collect import VAT from UK recipients on parcels containing goods valued at £135 or less. Instead the liability for payment of the import VAT will transfer to the overseas suppliers of the goods. For parcels over £135, the liability to pay the import VAT will continue to apply as outlined at paragraph 7.5 above.
- 7.9 Overseas suppliers may discharge their liability by either;

- registering with HMRC and accounting for any import VAT due on a periodic return; or
  - paying the import VAT due to the postal operator who will make a payment to HMRC on their behalf.
- 7.10 Overseas suppliers that register with HMRC will receive a unique registration identifier that will need to accompany the parcel as evidence that import VAT will be accounted for on a periodic return. Postal operators and UK consumers will be able to check the validity of an overseas supplier's registration using an online facility provided by HMRC.
- 7.11 The instrument provides for a penalty of £1000 for failure to register. It also allows HMRC to advise online marketplaces of non-compliance with the requirements of this instrument by overseas suppliers and to make the marketplace jointly and severally liable for future import VAT if they continue to facilitate their sales.
- 7.12 Where an overseas supplier has not complied with the obligations of the instrument and its deliveries are effected through the Universal Service Provider, the UK recipient will be jointly and severally liable for the import VAT on the goods received.
- 7.13 Where an overseas supplier chooses to discharge their liability by paying the import VAT to a postal operator, the UK postal operator responsible for delivery in the UK is jointly and severally liable for the import VAT due on the parcel.
- 7.14 If a UK recipient knows or should reasonably have known that the overseas supplier has made an incorrect declaration they are jointly and severally liable for the import VAT.
- 7.15 The instrument makes references to sections of VATA 1994 that are amended by TCTA 2018 but have yet to be commenced (for example, in regulation 2(1) referring to section 1(1)(c) of VATA 1994). In the event that the UK withdraws from the EU without a negotiated arrangement, this instrument will be commenced at the same time as those amendments to VATA 1994, with the exception of regulations regarding registration, which will be commenced in early 2019 in order to allow overseas suppliers to register in advance of the scheme coming into force.
- 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 UK from the EU because parcels being sent from the EU to the UK will now be imports and so subject to import VAT.
- 9. Consolidation**
- 9.1 This instrument amends the Value Added Tax (Imported Goods) Relief Order 1984 and there are no current plans to consolidate this Order.
- 10. Consultation outcome**
- 10.1 Whilst no formal consultation on the legislation has been carried out, HMRC have engaged with representatives to understand the impact of the measure on the import of parcels following the UK's withdrawal from the EU.

## **11. Guidance**

- 11.1 A public notice is currently being drafted and will be published on GOV.UK before commencement of the instrument.

## **12. Impact**

- 12.1 There will be no, or no significant impact on business, charities or voluntary bodies in the UK. However, overseas suppliers will now have to account for import VAT on parcels sent to the UK containing goods valued at £135 or less.
- 12.2 The impact on the public sector is that HMRC will need to create and maintain a new online import VAT registration, accounting and payments service and revise existing HMRC systems and processes to link into the new online services. HMRC will also need to field enquiries from prospective and new registrants as well as users of the service. The instrument introduces new penalty provisions and the right to appeal to a Tribunal which will impact on the Ministry of Justice.
- 12.3 This instrument will be covered by an HMRC impact assessment which will be published and available on the website at <https://www.gov.uk/government/collections/customs-vat-and-excise-regulations-leaving-the-eu-with-no-deal>.

## **13. Regulating small business**

- 13.1 The legislation does not apply to activities that are undertaken by small businesses in the UK. However, they may be the recipients of the parcels to which the instrument applies.

## **14. Monitoring & review**

- 14.1 This instrument will be kept under review through communication with key stakeholder groups.
- 14.2 The regulation does not include a statutory review clause because this instrument does not make regulatory provisions that relate to UK business activities.

## **15. Contact**

- 15.1 Shapi Masendu at HMRC Telephone 03000 593074 or email: [shapi.masendu@hmrc.gsi.gov.uk](mailto:shapi.masendu@hmrc.gsi.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Eileen Patching Deputy Director VAT Principles and Risk, Customs & Indirect Tax Directorate at HMRC can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Mel Stride MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.