
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 1st April 2019, amend Part 5 (accounting, payment and records) of the Value Added Tax Regulations 1995 (S.I. 1995/2518: “the Principal Regulations”). They have effect from 1st April 2019 for those taxpayers who have a prescribed accounting period beginning on that date and otherwise from the first day of a taxpayer’s first prescribed accounting period beginning after that date.

A VAT registered taxpayer is obliged to keep and maintain accounts, preserve records and render returns. All VAT registered taxpayers are required to render returns using an electronic return system unless they fall within specified exemptions. The effect of these Regulations is to impose an obligation, on registered taxpayers, to keep maintain and preserve an electronic account containing specified information using a defined form of software (“functional compatible software”). If taxpayers are subject to that obligation, they must also render electronic returns using functional compatible software. These obligations are subject to exemptions.

Regulation 3 inserts a definition for “functional compatible software” and for the concept of “API platform” on which it depends.

Regulation 4 amends regulation 25A of the Principal Regulations to provide that a person who is subject to the requirement to maintain an electronic account pursuant to regulation 32A of those regulations must also furnish returns using a compatible software return system. The provisions relating to the use of an electronic return system are amended, where appropriate, to apply also to the use of a compatible software return system.

Regulation 5 inserts a new sub-paragraph (l) into regulation 31(1) of the Principal Regulations to add the electronic account to the list of records which a taxable person is required to keep.

Regulation 6 inserts a new regulation 31AA into the Principal Regulations which provides how the electronic account provided for in regulation 32A must be preserved and also how other records are to be preserved.

Regulation 7 inserts new regulations 32A to 32C into the Principal Regulations.

New regulation 32A of the Principal Regulations (“regulation 32A”) requires a taxable person to keep and maintain specified information in an electronic form (“the electronic account”) and provides a power to the Commissioners to vary the specified information to make provision about (i) supplies of investment gold, (ii) supplies made under the flat rate scheme, (iii) supplies made using retail schemes and (iv) cases where keeping and maintaining the required information is likely to be impossible, impractical or unduly onerous. It requires the electronic account to be kept and maintained using functional compatible software which must take a form approved by the Commissioners in a specific or general direction. It specifies when information relating to supplies must be entered in the account, when changes should be made and when errors or omissions should be corrected.

New regulation 32B of the Principal Regulations (“regulation 32B”) provides for exemption from the requirement to maintain an electronic account pursuant to regulation 32A on the grounds of the taxpayer’s religious beliefs, practical inability to use a functional compatible software system or subsection to an insolvency procedure. It provides for a further exemption where the value of a taxpayer’s taxable supplies, for the year ending immediately prior to the month for which the test for exemption is applied (“the test month”), is under the threshold for compulsory VAT registration applicable on the first day of the test month. If a taxpayer ceases to be exempt then that taxpayer will

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be subject to the obligations of regulation 32A from the beginning of the next prescribed accounting period occurring on or after the day on which the exemption ceased to apply. Where a business is transferred as a going concern, the taxable supplies of that business both before and after transfer must be taken into account for the purpose of determining the value of its taxable supplies. Regulation 32B also provides that a taxable person may elect to waive the exemption.

New regulation 32C of the Principal Regulations makes provision for when and how an election to waive the exemption provided for in regulation 32B may be made and withdrawn and also provides when the election or withdrawal of an election is to take effect.

Regulation 8 amends regulation 40(2A) so that a person who makes a return using a compatible software return system is also required to make any payment pursuant to that return using electronic means.

Because these Regulations are made under, inter alia, paragraph 6(5) of Schedule 11 to the Value Added Tax Act 1994 (c.23) (“Schedule 11”), by virtue of subsection (6) of section 62 of the Finance (No.2) Act (c.32) subsections (3)(a) and (4) of that section come into force. The effect is that paragraph 6(4) of Schedule 11 (the discharge of the duty to keep records) is omitted and a new subparagraph (7) is substituted in paragraph 6A of Schedule 11 (power to direct the keeping of records) which provides that regulations made under paragraph 6(5) of Schedule 11 requiring records to be kept or preserved in electronic form shall apply for the purposes of paragraph 6A of Schedule 11 as they apply for the purposes of paragraph 6 of that Schedule.

A Tax Information and Impact Note covering this instrument was published on 8th March 2017 on the website at <https://www.gov.uk/government/publications/making-tax-digital-for-business>. Subsequently, a technical note containing a revised statement of impacts was published on 1st December 2017 at <https://www.gov.uk/government/publications/making-tax-digital-changing-the-scope-and-pace-technical-note/making-tax-digital-for-business>.