

2019 No. 1214

EXITING THE EUROPEAN UNION

VALUE ADDED TAX

CUSTOMS

**The Value Added Tax (Miscellaneous Amendments and
Transitional Provisions) (EU Exit) Regulations 2019**

Made - - - - - *4th September 2019*

Laid before the House of Commons *5th September 2019*

Coming into force in accordance with regulation 1

The Treasury make the following regulations in exercise of the powers conferred by sections 51(1)(a) and (b), 52(2) and 56(1) of the Taxation (Cross-border Trade) Act 2018^(a) and section 31(2) of the Value Added Tax Act 1994^(b).

The Treasury consider it appropriate in consequence of, or otherwise in connection with, the withdrawal of the United Kingdom from the EU to make provision in relation to value added tax and customs and to make provision, including transitional provision, in consequence of the Taxation (Cross-border Trade) Act 2018.

In accordance with section 52(2) of that Act, the Treasury consider it appropriate in consequence of, or otherwise in connection with, the withdrawal of the United Kingdom from the EU for the following Regulations to come into force on such day or days as the Treasury may by regulations under that section appoint.

(a) 2018 c. 22; section 51(1)(a) and (b) permits “the appropriate Minister” to make such provision relating to value added tax and any duty of customs as the appropriate Minister considers appropriate in consequence of, or otherwise in connection with, the withdrawal of the United Kingdom from the EU and under section 51(4)(b) “the appropriate Minister” means the Treasury. Section 56(1) permits “the appropriate Minister” to make such provision as the appropriate Minister considers appropriate in consequence of the Act and under section 56(5)(b) “the appropriate Minister” means the Treasury.

(b) 1994 c. 23; the heading for section 31 is amended by paragraph 30(3) of Schedule 8 to the Taxation (Cross-border Trade) Act 2018 (c. 22) but the amendment is not yet in force.

PART 1

Preliminary

Citation and commencement

1. These Regulations may be cited as the Value Added Tax (Miscellaneous Amendments and Transitional Provisions) (EU Exit) Regulations 2019 and come into force on such day or days as the Treasury may by regulations under section 52 of the Taxation (Cross-border Trade) Act 2018 appoint.

PART 2

Amendment of primary legislation relating to value added tax

Amendment of Schedule 9 to the Value Added Tax Act 1994 (exemptions)

2.—(1) Group 5 of Schedule 9 to the Value Added Tax Act 1994(a) (finance) is amended as follows.

- (2) In item 9 omit paragraphs (i) and (j).
- (3) In Note (6) omit—
 - (a) paragraph (b) of the definition of “Gibraltar collective investment scheme” (together with the “or” before it); and
 - (b) the definition of “recognised collective investment scheme constituted in another EEA state”.
- (4) In Note (6A), for “to (j)” substitute “to (f)”.

PART 3

Amendment of secondary legislation relating to value added tax

Amendment of the Value Added Tax (Miscellaneous Amendments, Revocation and Transitional Provisions) (EU Exit) Regulations 2019

3.—(1) The Value Added Tax (Miscellaneous Amendments, Revocation and Transitional Provisions) (EU Exit) Regulations 2019(b) are amended as follows.

(2) Omit regulation 6 (transitional provisions in relation to Part 20 of the Value Added Tax Regulations 1995).

(3) Omit Part 3 (amendment of the Fulfilment Businesses Regulations 2018 and transitional provisions for legislation relating to fulfilment businesses).

(a) 1994 c. 23; Group 5 of Schedule 9 was relevantly amended by S.I. 2008/2547. It is further amended by paragraph 95 of Schedule 8 to the Taxation (Cross-border Trade) Act 2018 (c. 22) but paragraph 95 is not yet in force.

(b) S.I. 2019/513; these Regulations are not yet in force.

PART 4

Transitional provisions in relation to value added tax

Transitional provision for electronic, telecommunication and broadcasting services; non-union and union schemes

4.—(1) The Commissioners for Her Majesty's Revenue and Customs may by public notice prescribe the form or manner in which a right or an obligation referred to in paragraph (2) relating to supplies made before exit day is to be exercised or discharged.

(2) A right or obligation referred to in paragraph (1) is one arising under the following provisions of the Value Added Tax Act 1994**(a)**—

- (a) paragraphs 16I, 16K and 16L of Schedule 3B, and
- (b) paragraphs 29, 31 and 32 of Schedule 3BA.

(3) Where a right is exercised or an obligation discharged in the form or manner prescribed under paragraph (1), the same consequences follow as if the right had been exercised or the obligation discharged in the form or manner prescribed in Schedule 3B or Schedule 3BA of the Value Added Tax Act 1994.

Transitional provision for repayments to Community traders(b)****

5.—(1) The omission of Part 20 (regulations 173 to 184) of the Value Added Tax Regulations 1995**(c)** (repayments to Community traders) by regulation 71 of the Value Added Tax (Miscellaneous Amendments and Revocations) (EU Exit) Regulations 2019**(d)** shall not have effect in the circumstances specified in paragraphs (2) or (3) subject to the provisions in paragraphs (4) to (9).

(2) Where a relevant claim—

- (a) is made on or after exit day, or
- (b) is made before exit day but is still being processed by the Commissioners as at exit day.

(3) Where a claimant who has made a relevant claim that falls within paragraph (9)(a) is required to repay an amount to the Commissioners under regulation 173D(3) on or after exit day.

(4) Where paragraph (2)(a) applies, a relevant claim—

- (a) may be made in such form or manner as the Commissioners may prescribe in a public notice,
- (b) must relate to a relevant period, and
- (c) must be made by the relevant date.

(5) A relevant period is either of the following periods—

- (a) the period from 1st January to 31st December for the calendar year that precedes the calendar year that includes exit day, or
- (b) the period from 1st January to exit day in the calendar year which includes exit day.

(6) The relevant date is—

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- (a) 1994 c. 23. Schedule 3B was inserted by section 23 of, and paragraph 4 of Schedule 2 to, the Finance Act 2003 (c. 14). Paragraphs 16 to 16N were substituted by section 103 of, and Schedule 22 to, the Finance Act 2014 (c. 26). Schedule 3BA was inserted by section 103 of, and Schedule 22 to, the Finance Act 2014. Paragraphs 86 and 87 of Schedule 8 to the Taxation (Cross-border Trade) Act 2018 (c. 22) omit Schedules 3B and 3BA respectively. These paragraphs are not yet in force. Regulation 3 of S.I. 2019/105 provides that the omission of Schedules 3B and 3BA does not have effect in relation to supplies made before exit day. This regulation is not yet in force.
 - (b) Transitional provision in relation to the omission of Part 20 of the Value Added Tax Regulations 1995 was previously made by regulation 6 of S.I. 2019/513 but regulation 6 is not in force and is omitted by regulation 3(2) of these Regulations.
 - (c) S.I. 1995/2518; Part 20 was amended by S.I. 2009/3241, 2010/2940 and 2014/2430.
 - (d) S.I. 2019/59; these Regulations are not yet in force.

- (a) 30th September in the calendar year following the calendar year to which the relevant period relates in whole or in part for a relevant claim that falls within paragraph (9)(a),
- (b) 30th September in the calendar year following the calendar year specified in paragraph (a) for a relevant claim that falls within paragraph (9)(b).

(7) Where, in relation to a relevant claim that falls within paragraph (2), the Commissioners make a request under regulation 173R (requests for further information or a document), for paragraph (1)(b) of that regulation substitute “a request made to the competent authority of a member State of the EU”.

(8) Where paragraph (3) applies, the amount must be repaid to the Commissioners in such form or manner and at such time as the Commissioners may prescribe in a public notice.

- (9) A relevant claim is a claim—
- (a) for a repayment of VAT under regulation 173B, or
 - (b) for an additional repayment of VAT under regulation 173D(2),

that, in either case, as at exit day the claimant was entitled to make under Part 20 as it had effect immediately before exit day.

PART 5

Fulfilment Businesses

CHAPTER 1

Preliminary

Interpretation and effect

6.—(1) In this Part—

“the 2017 Act” means the Finance (No. 2) Act 2017(a);

“the 2018 Regulations” means the Fulfilment Businesses Regulations 2018(b);

“the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;

“imported goods fulfilment business” has the meaning given by section 48 of the 2017 Act, as it has effect on and after exit day;

“third country goods fulfilment business” has the meaning given by section 48 of the 2017 Act as it had effect immediately before exit day.

(2) The changes effected by regulation 7(3) in relation to regulation 4 of the 2018 Regulations do not have effect in relation to a person who was carrying on a third country goods fulfilment business before exit day(c).

CHAPTER 2

Amendments

Amendment of the 2018 Regulations

7.—(1) The 2018 Regulations are amended as follows.

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- (a) 2017 c. 32; see S.I. 2018/298 for commencement of Part 3 (fulfilment businesses). Part 3 and Schedule 13 were amended by section 43 of, and paragraphs 122 to 130 of Schedule 8 to, the Taxation (Cross-border Trade) Act 2018 (c. 22) on a day yet to be appointed by the Treasury.
 - (b) S.I. 2018/326; previously amended by Part 3 of S.I. 2019/513 but Part 3 is not in force and is omitted by regulation 3(3) of these Regulations.
 - (c) The effect of this is to ensure that the time limits set out in regulation 4 of the Fulfilment Businesses Regulations 2018 as it had effect before exit day remain applicable to a person who was already carrying on a third country goods fulfilment business before exit day.

(2) In regulation 2, in the definition of “customer”, for “a third country goods” substitute “an imported goods”.

(3) In regulation 4—

(a) in paragraph (1)(a), for “a third country goods” substitute “an imported goods”;

(b) for paragraph (2) substitute—

“(2) An application under paragraph (1)(a) must be made on or before the day on which a person commences carrying on an imported goods fulfilment business.”.

(4) In regulation 6(1)(c), for “third country goods” substitute “imported goods”.

(5) In regulation 8—

(a) in paragraphs (3) and (4), in each place it occurs, for “a third country goods” substitute “an imported goods”;

(b) in paragraph (5), for “third country goods” substitute “imported goods”.

(6) In regulation 9—

(a) in paragraph (1), in sub-paragraphs (c) and (d), in each place it occurs, for “a third country goods” substitute “an imported goods”;

(b) in paragraph (2)(c), for “a third country goods” substitute “an imported goods”.

(7) In regulation 10(1), in sub-paragraphs (c), (d), (e) and (g), in each place it occurs, for “third country goods” substitute “imported goods”.

(8) In regulation 11(2)(a)(iii), for “a third country goods” substitute “an imported goods”.

(9) In regulation 13, and in the heading for it, for “a third country goods” substitute “an imported goods”.

CHAPTER 3

Approval to carry on third country goods fulfilment business deemed to be approval to carry on imported goods fulfilment business

Approvals accepted before exit day

8. Where before exit day the Commissioners have accepted an application for an approval to carry on a third country goods fulfilment business, that approval is deemed on and after exit day to be an approval to carry on an imported goods fulfilment business.

Applications in process at exit day

9. Where before exit day a person has made an application for an approval to carry on a third country goods fulfilment business, or to vary any condition or restriction to which an approval is subject, that application is deemed on and after exit day to be an application for an approval to carry on an imported goods fulfilment business or to vary any condition or restriction to which an approval to carry on such a business is subject.

CHAPTER 4

Transitional provisions for persons who before exit day were not carrying on a “third country goods fulfilment business” but who, as a result of amendments made by paragraph 123 of Schedule 8 to the Taxation (Cross-border Trade) Act 2018(a) to section 48 of the 2017 Act, are carrying on “an imported goods fulfilment business” at exit day or commence doing so during the 9 month period following exit day

Interpretation of this Chapter

10. In this Chapter—

(a) 2018 c. 22.

“the first period” means the period of 6 months beginning with the day on which exit day falls;
“the second period” means the period of 3 months immediately following the expiry of the first period.

Application

11.—(1) This Chapter applies where a person meets the conditions in paragraph (2).

(2) The conditions are that the person—

- (a) was not carrying on a third country goods fulfilment business before exit day,
- (b) is carrying on an imported goods fulfilment business at exit day or commences carrying on an imported goods fulfilment business within the period of 9 months beginning with the day on which exit day falls, and
- (c) the imported goods fulfilment business referred to in sub-paragraph (b) would not have qualified as a “third country goods fulfilment business” before exit day.

Modification of regulation 4 of the 2018 Regulations (applications for approval and to vary an approval)

12.—(1) Where this Chapter applies, a person making an application for an approval under regulation 4(1)(a) of the 2018 Regulations must do so in accordance with the time limits in this regulation and regulation 4 of the 2018 Regulations is modified in accordance with paragraphs (2) and (3).

(2) Where the person is carrying on an imported goods fulfilment business at exit day or commences doing so during the first period, the application for an approval must be made before the expiry of the first period.

(3) Where the person commences carrying on an imported goods fulfilment business during the second period, the application for an approval must be made before the expiry of the second period.

Penalty assessment for failure to comply with the time limits in regulation 12 above

13. The Commissioners may assess a penalty where a person fails to comply with the requirements set out in regulation 4(2) of the 2018 Regulations as modified by regulation 12.

Suspension of Commissioners’ power to assess penalties under regulation 14(1)(b) and (c), (2) and (3) of the 2018 Regulations until on or after the expiry of the second period

14. Where this Chapter applies, the Commissioners’ power to assess a penalty under regulation 14(1)(b) and (c), (2) and (3) of the 2018 Regulations may only be exercised in respect of contraventions taking place after the expiry of the second period.

Transitional provision in relation to sections 53 to 55 of, and Schedule 13 to, the 2017 Act

15. Where this Chapter applies, the provisions of sections 53 to 55 of, and Schedule 13 to, the 2017 Act apply only in relation to contraventions taking place after the expiry of the second period.

4th September 2019

Mike Freer
David Rutley
Two of the Lord Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in consequence of, or otherwise in connection with, the withdrawal of the United Kingdom from the EU.

Regulation 1 provides that the Regulations are to come into force on such day or days as the Treasury may appoint.

Regulation 2 makes consequential amendments to Group 5 of Schedule 9 to the Value Added Tax Act 1994 (c. 23) as a consequence of amendments made by other exit legislation affecting collective investment schemes, including the Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/325) and the Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/589).

Regulation 3 omits regulation 6 and Part 3 from the Value Added Tax (Miscellaneous Amendments, Revocation and Transitional Provisions) (EU Exit) Regulations 2019 (“S.I. 2019/513”).

Regulation 4 makes transitional provision in relation to the VAT MOSS (mini one stop shop) system to allow Her Majesty’s Revenue and Customs to prescribe the form or manner for making claims and corrections in respect of supplies that took place before exit day, so that such claims and corrections can continue to be made in the event that there is no longer access to the MOSS system.

Regulation 5 makes transitional provision in relation to Part 20 of the Value Added Tax Regulations 1995 (S.I. 1995/2518) (repayments to Community traders).

Part 5 (regulations 6 to 15) makes consequential amendments to the Fulfilment Businesses Regulations 2018 (S.I. 2018/326) (“the 2018 Regulations”) in line with changes made by the Taxation (Cross-border Trade) Act 2018 (c. 22) to Part 3 of the Finance (No. 2) Act 2017 (c. 32). It also makes transitional provisions in relation to secondary and primary legislation relating to fulfilment businesses.

This instrument will be covered by an overarching HMRC impact assessment (third edition) 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>.

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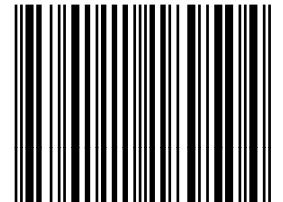
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