

EXPLANATORY MEMORANDUM TO
THE VALUE ADDED TAX (INPUT TAX) (SPECIFIED SUPPLIES) (EU EXIT)
REGULATIONS 2019

2019 No. 175

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs ("HMRC") on behalf of Her Majesty's Treasury ("the Treasury") and is laid before the House of Commons by Command of Her Majesty.
- 1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument is one of a number of instruments to be made in preparation for the United Kingdom's ("UK") exit from the European Union ("EU"). In the event of the UK leaving the EU without a deal, legislation will be necessary to ensure the UK's Value Added Tax ("VAT") regime operates as required.
- 2.2 The VAT system requires VAT to be charged by businesses on most goods and services supplied in the UK. Where VAT is charged, businesses may reclaim any VAT they pay on the costs of making those 'taxable' supplies. VAT is not generally charged on supplies of financial services but, in turn, businesses cannot reclaim any VAT they pay on the costs of making those 'VAT exempt' supplies. This instrument amends article 3 of the Value Added Tax (Input Tax) (Specified Supplies) Order 1999 ("SSO") to ensure that, after the UK exits the European Union ("EU"), businesses will still, as now, be unable to reclaim VAT paid on the costs of making supplies of certain VAT exempt financial services when those services are supplied to a UK customer.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 This instrument is necessary to deal with the consequences of the UK leaving the EU without a deal. It will therefore only come into force on a date or dates specified in a separate instrument in the event that the UK withdraws from the EU without a negotiated arrangement.

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 whole of the United Kingdom.
- 4.2 The territorial application of this instrument is the whole of the United Kingdom.

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 Article 3 of the SSO currently allows businesses involved in the export of certain financial services, for example supplies of credit or insurance, or businesses that supply those financial services in connection with the export of goods from the EU, to reclaim the VAT on the costs incurred in making the supplies of those services.
- 6.2 This instrument amends article 3 of the SSO to ensure that, as currently, only the VAT on the costs incurred in supplying financial services to a place outside both the UK and the EU, or in connection with exporting goods from both the UK and the EU, may be reclaimed after the UK withdraws from the EU.
- 6.3 This instrument is made using powers in section 51 and 52 of the Taxation (Cross-border Trade) Act 2018 (“TCTA”) which provide that the Treasury may make regulations that they consider appropriate in consequence of, or otherwise in connection with, the withdrawal of the UK from the EU (section 51), and to appoint a day for the regulations to come into force (section 52).
- 6.4 Part 3 (sections 41 to 43) and Schedule 8 TCTA amend the Value Added Tax Act 1994 (“VATA”) to make provision in relation to VAT in connection with the withdrawal of the UK from the EU. Section 57(3) TCTA provides that those amendments come into force on days appointed by Treasury regulations. Sections 51 and 56 of TCTA provide the power for the Treasury to make further provision subject to negative procedure (unless amending primary legislation) in relation to VAT as a consequence of, or otherwise in connection with, the withdrawal of the UK from the EU and in consequence of TCTA itself. Section 52 of TCTA allows the Treasury to bring provisions of “relevant subordinate legislation” into force in accordance with appointed day regulations. Section 57(1) of TCTA provides, amongst other things, that sections 51 and 52 (Part 5: other provisions connected with the withdrawal from the EU) which provide the power to make this instrument come into force on the day on which the Act is passed. TCTA received Royal Assent on 13 September 2018.
- 6.5 Although the amendments to VAT legislation made by this instrument could have been made under powers conferred on the Treasury by separate provisions in VATA, since the sole aim of the instrument is to enact legislation for the purposes set out in section 51 of TCTA, we consider that the enabling power provided in TCTA is the most appropriate for the enactment of the amendments made by this instrument.

7. Policy background

What is being done and why?

- 7.1 In order to prepare for the event that the UK withdraws from the EU without a negotiated arrangement, the UK’s primary legislation is amended to ensure that the UK has a VAT system that operates as required on EU exit. The amendments made by this instrument make changes to secondary legislation to ensure that we have a comprehensive and cohesive UK VAT system that is ready for EU exit.
- 7.2 Providers of financial services generally cannot reclaim the VAT they incur on their costs because their services are VAT exempt.

7.3 This amendment is necessary as a consequence of the withdrawal of the UK from the EU as the current wording of the legislation, if unchanged, would allow VAT to be recovered in relation to exempt supplies of financial services made by UK suppliers to UK customers. The amendment maintains the status quo.

7.4 This instrument amends UK legislation to ensure that the term ‘specified supplies’ (those supplies of financial services in respect of which VAT on the costs incurred may be reclaimed) continues to apply only to supplies made to persons located outside both the UK and the EU, or to those that are supplied in connection with exports of goods to persons located outside both the UK and the EU, after the UK withdraws from the EU.

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, without the amendment, there would be an unintended change to the VAT treatment on EU exit.

9. Consolidation

9.1 This instrument amends Statutory instrument SI 1999/3121, the Value Added Tax (Input Tax) (Specified Supplies) Order 1999. There are no plans to consolidate this legislation.

10. Consultation outcome

10.1 No consultation has been carried out. The changes maintain the current tax treatment on the withdrawal of the UK from the EU.

11. Guidance

11.1 In the event of a “No Deal” outcome, as a result of the changes made by this instrument, businesses will continue to apply the same rules to relevant transactions within the UK as currently apply. There is already guidance on this on www.gov.uk. This will be updated where necessary and any updates will be available prior to commencement of this instrument.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector. Any impact will relate to enquiries regarding the amendment to legislation.

12.3 This instrument will be covered by an HMRC overarching impact assessment on VAT and services 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 applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses employing less than 50 people as the rules are by necessity of general application.

14. Monitoring & review

- 14.1 This legislation will be kept under review through communications with key stakeholder groups, including the Joint VAT Consultative Committee (made up of a wide range of representatives), to ensure that it meets the policy objectives set out in section 7 above.
- 14.2 This instrument does not include a statutory review clause because it relates to tax and therefore meets the requirements of the exemption set out in section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015

15. Contact

- 15.1 Karen Ogilvie at HMRC Telephone: 03000 585719 or email: karen.ogilvie@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.