

## EXPLANATORY MEMORANDUM TO

### THE VALUE ADDED TAX (MISCELLANEOUS AMENDMENTS TO ACTS OF PARLIAMENT) (EU EXIT) REGULATIONS 2020

2020 No. 1312

#### 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 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 under the Taxation (Cross-border Trade) Act 2018 (TCTA) following the United Kingdom's (UK) departure from the European Union (EU) on 31 January 2020. This instrument will become effective when the transition period provided for in the EU Withdrawal Agreement ends on 31 December 2020.
- 2.2 This miscellaneous instrument deals with a number of deficiencies in the Value Added Tax Act 1994 (VATA) which need to be addressed before the end of the transition period. It amends VATA to preserve an existing relief for handling (such as landing fees, airport navigation services etc.) of qualifying aircraft (typically aircraft used by an airline that chiefly flies on international routes) and provides for a similar relief for handling of international trains. It also removes the Value Added Tax (VAT) exemption from supplies of pension fund management services provided to funds established in the EU.
- 2.3 This instrument also revokes planned changes to the scope of the VAT zero-rate as set out in the TCTA to certain designated travel services (accommodation, passenger transport etc.) which will now not be commenced and so are no longer required.

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

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

- 3.1 This instrument is in consequence of the UK's exit from the EU. It will come into force on a date or dates specified in a separate instrument using powers in section 52 of TCTA.
- 3.2 This instrument relies on powers under section 51(1)(a) of TCTA to provide for a power to prescribe areas of the UK where the VAT zero-rate will apply to international trains.

##### *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)*

- 3.3 The territorial application of this instrument includes Scotland and Northern Ireland.

3.4 The powers under which this instrument is made (sections 51 and 52 of TCTA) cover the entire United Kingdom. The territorial application of this instrument is not limited either by the Act or by the instrument. The powers in TCTA enable the Treasury to make amendments to VATA which has application to the whole of the United Kingdom.

#### **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 The Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, has made the following statement regarding Human Rights:

“In my view the provisions of the Value Added Tax (Miscellaneous Amendments to Acts of Parliament) (EU Exit) Regulations 2020 are compatible with the Convention rights.”

#### **6. Legislative Context**

6.1 This instrument is made using the powers in sections 51 and 52 of TCTA. These 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 that a day may be appointed for such regulations to come into force (section 52).

6.2 Sections 41 to 43 and Schedule 8 to, TCTA amend VATA to make provision in relation to VAT in connection with the withdrawal of the UK from the EU. Section 57(3) of TCTA provides that those amendments come into force on days appointed by Treasury 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 the Act is passed. TCTA received Royal Assent on 13 September 2018.

6.3 This instrument makes three amendments to VATA and one amendment to TCTA. Although the amendments to VAT legislation made by this instrument could have been made under various 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, the enabling power provided in TCTA is the most appropriate for the enactment of the amendments made by this instrument.

6.4 At the end of the transition period, this instrument will be commenced so that the changes take effect at the same time as the provisions in Parts 1 and 3 of, and Schedule 8 to, TCTA (which deal with necessary changes to acquisition tax, import VAT and other VAT amendments connected with the UK's withdrawal from the EU). For this reason, the instrument anticipates the changes to be made to the VAT regime by TCTA (by relying on provisions of TCTA, including those contained within amendments to VATA) that have not yet been commenced. This is consistent with the purpose of the powers in Parts 5 and 6 of TCTA that are intended to ensure (among other things) that the UK has a VAT regime that works as required at the end of the transition period.

- 6.5 This instrument amends both VATA and TCTA and, in accordance with section 51(5) of TCTA, this instrument is subject to the affirmative procedure. This means that the instrument will cease to have effect unless approved by the House of Commons within the time specified in section 52(3) of TCTA. Section 52(3) therefore applies to this instrument and modifies the Parliamentary approval procedure with the following effect: the 28-day period specified in section 51(5) is to be read as a reference to a period of 60 days and the period does not commence until any provision of the legislation in this instrument comes into force.

## 7. Policy background

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

- 7.1 TCTA made amendments to the UK's primary legislation relating to VAT (primarily in VATA) to ensure that the UK has a VAT system that operates as required at the end of transition period. The amendments made by this instrument make further consequential changes to VATA that are necessary to ensure the UK has a comprehensive and cohesive VAT system that is ready at the end of transition period.
- 7.2 This instrument makes three amendments to VATA and one amendment to TCTA. Regulation 6 ensures that supplies of the handling of qualifying aircraft and the handling and storage of goods carried by them continue to be VAT zero-rated at non-customs and excise airports (a customs and excise airport is one designated for the landing and departure of aircraft for the purposes of the customs and excise Acts). Currently UK legislation only provides for this relief in respect of handling at customs and excise airports and up to now, affected businesses have had to rely on European legislation to provide for this zero-rate. This instrument provides for this relief in UK legislation at non-customs and excise airports.
- 7.3 Regulation 5 implements a new relief for the handling of international trains (e.g. trains that pass through the channel tunnel) and the handling and storage of goods carried in them. This new relief acts in a similar way to that which already applies to qualifying aircraft and ships. This part of the instrument also includes a power for the Commissioners for Revenue and Customs to specify in a Notice places where the handling of an international train and the handling and storage of goods carried within it takes place to benefit from the zero-rate. This is necessary as, unlike a port or airport for ships and aircraft, where there are clearly defined areas for these activities to take place, for international trains, such services could be provided at various sites inland providing there are connecting rail lines. This power permits the Commissioners to specify those areas to ensure the relief applies appropriately to these services.
- 7.4 Regulation 10 removes the VAT exemption from supplies of pension fund management services for pension funds established in an EU member State. Following a decision of the European Court of Justice in 2014 and subsequent consultation with affected businesses in the finance sector, changes were made in the Value Added Tax (Finance) Order 2020 to apply the VAT exemption to pension fund management services with effect from 1 April 2020 (previously UK business had been able to apply the VAT exemption by relying on European legislation). Until the end of the transition period, it is necessary to treat UK and EU established pension funds in the same way. This amendment makes the change that was anticipated in April 2020 to remove the VAT exemption in relation to the management of EU

established pension funds. Going forward the VAT exemption will only apply to pension fund management services for pension funds established in the UK.

- 7.5 Finally, this instrument (in regulation 2) omits paragraph 94(4)(c) of Schedule 8 to TCTA. This paragraph made changes to the scope of the VAT zero-rate of certain designated travel services (accommodation, passenger transport etc). This provision in TCTA has not been commenced and is now no longer required. Instead a different approach was taken to these travel services in the Value Added Tax (Tour Operators) (Amendment) (EU Exit) Regulations 2019 - which has already been subject to a Parliamentary debate in Committee.

## **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 as it, and other legislation made under TCTA, will ensure that the UK's VAT regime operates as required after EU exit.

## **9. Consolidation**

- 9.1 This instrument amends both VATA and TCTA. There are no plans to consolidate these.

## **10. Consultation outcome**

- 10.1 No formal consultation on the legislation has been carried out with the exception of the changes to VAT exemption of pension fund management services which resulted in the changes made on 1 April 2020. The other changes arise as a result of the UK withdrawing from the EU and the end of the transition period.

## **11. Guidance**

- 11.1 Existing guidance on [www.gov.uk](http://www.gov.uk) will be updated where necessary and will be available prior to the 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.
- 12.3 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> .

## **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 the impact of the requirements on businesses (employing up to 50 people).
- 13.3 The basis for the final decision on what action to take to assist small businesses is that no mitigating action is proposed. There will be one-off costs related to familiarisation with the new process and amending the systems of the affected businesses to reflect

the zero-rate. There will be no continuous costs associated with this change for suppliers.

#### **14. Monitoring & review**

- 14.1 This instrument will be kept under review through communications with key stakeholder groups, including the Joint VAT Consultative Committee (made up of a wide range of tax, legal and business representative bodies), to ensure that it meets the policy objectives set out in section 7 above.
- 14.2 The 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 John Egerton at HMRC Telephone: 03000 585703 or email: [john.egerton@hmrc.gov.uk](mailto:john.egerton@hmrc.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Eileen Patching, Deputy Director VAT Principles and Risk, Customs and Indirect Tax Directorate, at HMRC can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.