

2020 No. 1544

EXITING THE EUROPEAN UNION

VALUE ADDED TAX

**The Value Added Tax (Miscellaneous Amendments to the Value
Added Tax Act 1994 and Revocation) (EU Exit) Regulations
2020**

Approved by the House of Commons

Made - - - - 18th December 2020

Laid before House of Commons 21st December 2020

Coming into force in accordance with regulation 1

The Treasury make these Regulations in exercise of the powers conferred by sections 51(1)(a), 51(3)(a) and 52(2) of the Taxation (Cross-border Trade) Act 2018(a).

In accordance with section 51(1) 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, to make the following provision in relation to value added tax. 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 these Regulations to come into force on such day or days as the Treasury may by regulations under section 52 of that Act appoint.

Citation and commencement

1. These Regulations may be cited as the Value Added Tax (Miscellaneous Amendments to the Value Added Tax Act 1994 and Revocation) (EU Exit) Regulations 2020 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.

Amendment of the Value Added Tax Act 1994

2. The Value Added Tax Act 1994(b) is amended by regulations 3 to 7 as follows.

(a) 2018 c. 22. Section 51(1)(a) of that Act permits “the appropriate Minister” to make provision relating to value added tax. For the purposes of these Regulations, “the appropriate Minister” is the Treasury (see section 51(4)(b) of that Act).
(b) 1994 c. 23.

Refund of NI acquisition VAT to persons constructing certain buildings

3.—(1) Schedule 9ZA(a) (VAT on acquisitions in Northern Ireland from member States) is amended as follows.

(2) After paragraph 18 insert—

“Refund of NI acquisition VAT to persons constructing certain buildings

18A.—(1) Where—

- (a) a person carries out works to which this paragraph applies, and
- (b) the carrying out of the work by the person is lawful and otherwise than in the course or furtherance of any business, and
- (c) NI acquisition VAT is chargeable on the acquisition from a member State of any goods used by the person for the purposes of the works,

the Commissioners must, on a claim made in that behalf, refund to that person the amount of NI acquisition VAT so chargeable.

(2) Where—

- (a) a person carries out works to which this paragraph applies,
- (b) the carrying out of the work by the person is lawful and otherwise than in the course or furtherance of any business, and
- (c) VAT is chargeable in accordance with the law of a member State (see paragraph 80) on the supply of any goods used by the person for the purposes of the works,

the Commissioners must, on a claim made in that behalf, pay to that person an amount equal to that VAT so chargeable.

(3) The works to which this paragraph applies are—

- (a) the construction of a building in Northern Ireland designed as a dwelling or a number of dwellings;
- (b) the construction of a building in Northern Ireland for use solely for a relevant residential purpose or relevant charitable purpose;
- (c) a residential conversion of a building, or a part of a building, in Northern Ireland.

(4) Subsections (1B) and (1D) of section 35 (refund of VAT to persons constructing certain buildings)(b) apply for the purposes of this paragraph as they apply for the purposes of that section.

(5) Subsection (2) of that section applies to a refund under subparagraph (1) or (2) as it applies to a refund of VAT under that section.

(6) Subsections (4) and (4A) of that section apply for the purpose of construing this paragraph.

(7) Subsection (5) of that section has effect as if in paragraphs (a) and (b), after “this section” there were inserted “or paragraph 18A of Schedule 9ZA”.

(8) The provisions made by or under this Act or any other enactment (whenever passed or made) that apply to a refund under section 35 apply to a refund under subparagraph (2) as if references in those provisions (however framed)—

- (a) to VAT chargeable on the supply of goods were to VAT chargeable under the law of a member State;

(a) Schedule 9ZA was inserted by paragraph 2 of Schedule 2 to the Taxation (Post-transition Period) Act 2020 (c. 26).
(b) Section 35 of the Value Added Tax Act 1994 was amended by section 32 of the Finance Act 1995 (c. 4), section 30 of the Finance Act 1996 (c. 8), S.I. 2001/2305, paragraph 4 of Schedule 29 to the Finance Act 2012 (c. 14) and paragraph 37 of Schedule 8 to the Taxation (Cross-border Trade) Act 2018. The amendments made by the last-named Act are not yet in force. Sub-section 4A was added by S.I. 2001/2305.

- (b) to refunding VAT to a person were to paying a person in accordance with that sub-paragraph.”.
- (3) In paragraph 28—
 - (a) in sub-paragraph (1)(a), after “paragraph”, in the second place it occurs, insert “18A or”;
 - (b) in sub-paragraph (2), after “paragraph”, in the second place it occurs, insert “18A or”.
- (4) In paragraph 34(1)(d), after “paragraph” insert “18A or”.
- (5) In paragraph 36(3), after “paragraph” insert “18A or”.

Taxation under the laws of member States

- 4. In paragraph 81 of Schedule 9ZA, after subsection (5) insert—
 - “(6) Without prejudice to the generality of any of the powers of the Commissioners under the relevant information provisions, those powers are, for the purpose of facilitating compliance with any obligation of the United Kingdom under the EU withdrawal agreement, exercisable with respect to matters that are relevant to a charge to VAT under the law of a member State, as they are exercisable with respect to matters that are relevant for any of the purposes of this Act.
 - (7) The reference in subsection (6) to the relevant information provisions is a reference to the provisions of section 73(7) and Schedule 11 (see also paragraph 73 which contains provision treated as if contained within that Schedule) relating to—
 - (a) the keeping of accounts;
 - (b) the making of returns and the submission of other documents to the Commissioners;
 - (c) the production, use and contents of invoices;
 - (d) the keeping and preservation of records;
 - (e) the furnishing of information and the production of documents.”.

Amendment of Schedule 9ZB

- 5. In Schedule 9ZB(a) (goods removed to or from Northern Ireland and supply rules), in paragraph 6 (relief for qualifying Northern Ireland goods)—
 - (a) in sub-paragraph (2), the words from “the last supply” to the end become paragraph (a);
 - (b) in that paragraph, for “that removal” substitute “that removal, or”;
 - (c) after that paragraph insert—
 - “(b) duty under section 30C of TCTA 2018(b) is charged on that removal as a result of subsection (2) of that section (duty on goods removed for an avoidance purpose).”;
 - (d) in sub-paragraph (3), for “(2)” substitute “(2)(a)”.
- 6. In that Schedule, after paragraph 31 insert—

“Partially exempt supplies

- 31A.**—(1) A removal of goods from Great Britain to Northern Ireland to which this sub-paragraph applies is to be treated as a taxable supply of goods made in the course or furtherance of a business carried on by the person who removes the goods.
- (2) Sub-paragraph (1) applies to a removal of goods if—

(a) Schedule 9ZB was inserted by paragraph 2 of Schedule 2 to the Taxation (Post-transition Period) Act 2020 (c. 26).
 (b) Section 30C of the Taxation (Cross-border Trade) Act 2018 was inserted by section 2 of the Taxation (Post-transition Period) Act 2020 (c. 26).

- (a) the removal is not (ignoring sub-paragraph (1)) made in the course of a taxable supply,
- (b) before the removal the goods were supplied to, or were imported by, the person who removed them (“P”),
- (c) P is, at the time of that supply or importation and at the time of the removal, a taxable person,
- (d) P has incurred VAT on that supply or importation,
- (e) the removal takes place within 12 months of P becoming liable to that VAT,
- (f) some, or all, of the VAT incurred on the supply or importation has not been credited as input tax in relation to P because it has, before the removal, been attributed to—
 - (i) both taxable and exempt supplies, or
 - (ii) exempt supplies, and
- (g) either—
 - (i) P has not used the goods before their removal, or
 - (ii) P meets the condition in sub-paragraph (3).

(3) That condition is that P uses the goods, after their removal, exclusively for the purpose of making—

- (a) in a case falling within sub-paragraph (2)(f)(i), both taxable and exempt supplies, or
- (b) in a case falling within sub-paragraph (2)(f)(ii), exempt supplies.

(4) A supply of goods which is treated as arising under sub-paragraph (1) is zero-rated.

(5) VAT incurred by P on the removal of the goods from Great Britain to Northern Ireland (see paragraph 3(4)) is not to be treated as attributable (for the purposes of section 26) to the supply treated as arising under sub-paragraph (1).”.

7. In paragraph 12 of that Schedule, in sub-paragraph (2), after “3(1)” insert “or 31A(3)”.

Revocation of the Finance Act 2011, Schedule 23 (Data-gathering Powers) (Amendment) (EU Exit) Regulations 2019

8. The Finance Act 2011, Schedule 23 (Data-gathering Powers) (Amendment) (EU Exit) Regulations 2019(a) are revoked.

*Maggie Throup
David Duguid*

18th December 2020

Two of the Lords Commissioners for Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provisions that are appropriate in consequence of, or otherwise in connection with, the withdrawal of the United Kingdom from the EU. Specifically, they relate to the Protocol on Ireland/Northern Ireland agreed between the EU and the United Kingdom as part of the Withdrawal Agreement (“the Protocol”). They will come into force on a day or days to be appointed by the Treasury in further regulations.

(a) S.I. 2019/397.

Regulation 3 adds a new paragraph 18A into Schedule 9ZA to the Value Added Tax Act 1994 (c. 23: “VATA”) which provides for a refund of VAT incurred in member States on the construction of certain buildings, as set out in new paragraph 18A(3)(a) to (c), and sets out the necessary conditions to be satisfied.

Regulation 4 adds a new subparagraph 6 in paragraph 81 of Schedule 9ZA VATA which re-enacts information provisions currently contained in section 92(6) and (7) VATA in relation to Northern Ireland as required under the Protocol.

Regulation 5 amends paragraph 6 of Schedule 9ZB VATA to remove a relief from VAT for movements from Northern Ireland to Great Britain where duty under section 30C of the Taxation (Cross-border Trade) Act 2018 (c. 22) is charged on that removal as a result of subsection (2) of that section (duty on goods removed for an avoidance purpose).

Regulation 6 adds new paragraph 31A to Schedule 9ZB VATA. Paragraph 31A provides for a movement of goods by a partially exempt business to be treated as a taxable supply if the removal is within 12 months of when the business would be required to adjust their input tax under the rules requiring a partially exempt business to make an annual adjustment. Regulation 7 makes consequential amendments.

Regulation 8 revokes the Finance Act 2011, Schedule 23 (Data-gathering Powers) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/397: “the Data-gathering Powers Regulations”). The Data-gathering Powers Regulations are no longer needed and would have added postal operators as a relevant data-holder for the purposes of Schedule 23 to the Finance Act 2011 and provided that the power to require a postal operator to provide relevant data is only exercisable by HMRC in relation to the discharge of HMRC’s tax functions relating to value added tax.

The withdrawal agreement, which includes the Protocol, is available at <https://www.legislation.gov.uk/eu/withdrawal-agreement/contents/adopted>.

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>.

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