

EXPLANATORY MEMORANDUM TO

THE VALUE ADDED TAX (MISCELLANEOUS AMENDMENTS TO THE VALUE ADDED TAX ACT 1994 AND REVOCATION) (EU EXIT) REGULATIONS 2020

2020 No. 1544

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 The United Kingdom (UK) left the European Union (EU) on 31 January 2020 and entered a transition period that will end at 11pm on 31 December 2020. At the end of the transition period, under the Protocol on Ireland/Northern Ireland (the Protocol) agreed between the EU and the UK as part of the Withdrawal Agreement, EU rules in relation to goods will continue to apply in Northern Ireland (NI). This means that existing EU rules for intra-EU movement of goods will continue to apply to movements between the EU and NI. The Taxation (Post-transition Period) Act 2020 (TPPA) (which received Royal Assent on 17 December 2020) reinstated rules contained in primary legislation removed by the Taxation (Cross-border Trade) Act 2018 (TCTA) modified as required for application in NI and introduced a charge for movements between Great Britain (GB) and NI. This instrument makes further necessary amendments to the Value Added Tax Act 1994 (VATA) required for the end of the transition period.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 This instrument is required to make amendments to existing Value Added Tax (VAT) legislation that are necessary to implement the Protocol in relation to movements of goods in and out of NI. Further legislation to implement the Protocol in relation to VAT is contained in TPPA, the Value Added Tax (Miscellaneous Amendments Northern Ireland Protocol and Savings and Transitional Provisions) (EU Exit) Regulations 2020 (SI 2020/1545) and the Value Added Tax (Northern Ireland) (EU Exit) Regulations 2020 (SI 2020/1546). This instrument will come into force on a date or dates specified in a separate instrument using the powers in section 52 TCTA.
- 3.2 There will not be 21 days between this instrument being laid and its coming into force. This instrument is dependent on TPPA as it makes further provision in relation to matters contained in that Act and it was therefore inappropriate to lay this and associated instruments until after that Act received Royal Assent. It was not possible to lay the instrument any later so as to comply with the 21-day rule as the legislation needs to be in force by the end of the transition period to ensure that rules are in place, to provide certainty for business and for the UK to meet its obligations under the

Protocol. This instrument has been laid as early as possible after Royal Assent to TPPA being given.

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 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 the Value Added Tax Act 1994 and Revocation) (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 TCTA.
- 6.2 Section 51 TCTA provides for the Treasury to make regulations in consequence of, or otherwise in connection with, the UK’s withdrawal from the EU, including such provision as might be made by Act of Parliament; under section 52, the Treasury may provide for such regulations to come into force by appointed day regulations made by the Treasury where they consider this appropriate in consequence of, or otherwise in connection with, the withdrawal of the UK from the EU.
- 6.3 These regulations make provision that are appropriate in consequence of, or otherwise in connection with, the withdrawal of the UK from the EU. TCTA extensively amended VATA to remove intra-EU VAT rules and to introduce a charge to import VAT on goods imported into the UK. The existing charge to import VAT only applies to goods imported from outside the EU (see section 1(1)(c) VATA) until the end of the transition period.
- 6.4 As a result of the Protocol, further legislation is necessary to modify and amend VATA as amended by TCTA. Accordingly, TPPA inserts three new schedules into VATA. First, Schedule 9ZA makes provision for the continued application of EU VAT rules on goods in relation to NI. Secondly, Part 1 of Schedule 9ZB modifies the charge to import VAT contained in section 1(1)(c) VATA so that charge does not apply to goods imported into NI from the EU. Part 2 of Schedule 9ZB introduces a charge on goods removed from NI to GB and vice versa and applies legislation relevant to importations from outside the UK to such removals. Thirdly, Schedule

9ZC makes provision regarding online sales by overseas persons and low value importations.

- 6.5 This instrument introduces further changes to VATA that were not included in TPPA.
- 6.6 This instrument introduces a new paragraph 18A into Schedule 9ZA, which provides for a refund of VAT incurred in member States on the construction of certain building and sets out the conditions for that.
- 6.7 This instrument adds a new sub-paragraph 6 in paragraph 81 of Schedule 9ZA, which re-enacts information provisions currently contained in sections 92(6) and (7) VATA in relation to NI as required under the Protocol.
- 6.8 It also amends paragraph 6 of Schedule 9ZB to remove a relief from VAT for movements from NI to GB where duty under section 30C TCTA is charged on that removal as a result of subsection (2) of that section (duty on goods removed for an avoidance purpose).
- 6.9 The instrument 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 attributed their input tax to exempt or partially exempt purposes.
- 6.10 It also revokes the Finance Act 2011, Schedule 23 (Data Gathering Powers) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/397). This instrument was laid in the event of no deal and is no longer required.

7. Policy background

What is being done and why?

- 7.1 TCTA provides for the operation of the customs, VAT and excise regimes on the UK's exit from the EU. As such it makes provision for amendments to VATA and provides powers to amend secondary legislation in consequence of or in connection with EU exit. A number of instruments were made in preparation for EU exit and made provision for the VAT rules that were to apply in the event of no deal with the EU being reached, including removal of EU specific rules. Although many of the changes will still be required at the end of the transition period, in light of the Protocol, further legislation is required to ensure that EU VAT rules in relation to goods continues to apply in NI. This instrument together with TPPA, the Value Added Tax (Northern Ireland) (EU Exit) Regulations 2020 and the Value Added Tax (Miscellaneous Amendments, Northern Ireland Protocol and Savings and Transitional Provisions) (EU Exit) Regulations 2020 achieve that.
- 7.2 Under the Protocol, EU rules will continue to apply to goods that are bought and sold or otherwise moved between NI and EU member States. For example, existing rules in relation to acquisitions and distance selling will continue to apply – movement of goods from the EU to NI will not be treated as imports, unlike movements from the EU to GB. EU simplifications and administrative provisions, for example the rules in relation to call off stocks, will also continue to apply. These rules were removed by TCTA but have been re-enacted in relation to NI in TPPA.
- 7.3 Under current legislation, trade in goods between NI and GB is treated as domestic supplies. Following the end of the transition period GB will be a “third country” from the perspective of the EU. This means that the Single Market and rules for VAT treatment of goods entering the EU from GB will no longer apply. Instead the goods

will become imports. In VAT terms, a business exporting goods to the EU will not charge VAT (they will be zero rated) but the goods will be liable to import VAT in the member State. The reverse applies to goods imported from the EU – the goods will be zero rated by the EU supplier and subject to import VAT when they are declared to customs in GB. Under the Protocol, goods moving between GB and NI will be treated as though they are imports/exports.

- 7.4 The majority of primary legislation required to implement these changes was introduced by TPPA. This instrument makes further necessary changes to ensure that the UK has a VAT system that operates as required in relation the UK, including GB and NI, at the end of the transition period.
- 7.5 Provisions are reintroduced, modified as necessary, to allow for VAT on purchases from member States in relation to construction of certain building to be recovered under the scheme for DIY housebuilders.
- 7.6 Provisions are reintroduced, modified as necessary to allow for the obtaining of information relevant to member States' VAT as required under the Withdrawal Agreement.
- 7.7 Where businesses move their own goods between NI and GB the goods will be relieved from VAT on entry into GB. This is in line with the government's commitment to unfettered access. The instrument also removes a relief from VAT for movements from NI to GB where customs duty has been charged on goods removed for an avoidance purpose.
- 7.8 When a business moves its own goods from GB to NI, VAT will be due on the movement into NI. The business will account for this VAT on their VAT return. If a business is fully taxable, they will be able to recover it in full. This will not be the case for businesses that are unable to recover all the VAT they incur, as a result of making exempt supplies. To avoid potential double taxation, these provisions allow full recovery of VAT incurred on the initial supply providing the movement.

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 United Kingdom and European Union as it, and other legislation made under TCTA, will ensure that the UK's VAT regime operates as required after the transition period.

9. Consolidation

- 9.1 Although the instrument makes some modifications to the meaning of certain VAT provisions, it does not make any amendments to them.

10. Consultation outcome

- 10.1 No consultation has been carried out. The rules contained within this instrument have been discussed with various affected stakeholders. HMRC has held meetings with the Joint VAT Consultative Committee and the Joint Customs Consultative Committee (that represent a large group of representative bodies). HMRC has also met with the Northern Irish Office's Business Engagement Forum, the Chartered Institute of Taxation, Chartered Accountants of Ireland, the Large Professional Services Forum and representatives from the retail, automotive and pharmaceutical sectors.

11. Guidance

- 11.1 Guidance has been published at www.gov.uk/government/publications/accounting-for-vat-on-goods-moving-between-great-britain-and-northern-ireland-from-1-january-2021.

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 will cover this instrument and will be published on the website at 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 regulatory burdens on small businesses.
- 13.3 The basis for the final decision on what action to take to assist small businesses is that no mitigating action is proposed as the rules are, of necessity, of general application.

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 Jack Fletcher at HMRC Telephone: 03000 585 852 or email: jack.fletcher@hmrc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Eileen Patching, Deputy Director for VAT Principles and Risk, 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.