

EXPLANATORY MEMORANDUM TO

THE VALUE ADDED TAX (MISCELLANEOUS AMENDMENTS, NORTHERN IRELAND PROTOCOL AND SAVINGS AND TRANSITIONAL PROVISIONS) (EU EXIT) REGULATIONS 2020

2020 No. 1545

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 agreed between the EU and the United Kingdom as part of the Withdrawal Agreement (the Protocol), 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 necessary further amendments to secondary legislation. It also introduces transitional provisions 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 to the Value Added Tax Act 1994 and Revocation) (EU Exit) Regulations 2020 (SI 2020/1544) and the Value Added Tax (Northern Ireland) (EU Exit) Regulations 2020 (SI 2020/1546). This instrument will come into force on a date 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, 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 the 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 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 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 the Value Added Tax Act 1994 (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 Consequential changes are required to secondary legislation as a result of the Protocol to ensure that the VAT system works as a whole.
6.6 This instrument amends secondary legislation relating to VAT, including the Value Added Tax Regulations 1995 (SI 1995/2518) (the principal regulations). Amendments made are required as a result of the Protocol. The amendments re-enact, where

appropriate, certain provisions of VAT law in connection with the movement of goods between the EU and NI that were omitted by earlier EU exit legislation, principally the Value Added Tax (Miscellaneous Amendments and Revocations) (EU Exit) Regulations 2019 (SI 2019/59) (the amendment and revocations regulations). They also make provision in relation to the VAT treatment of goods imported into NI from outside the EU or removed to NI from the rest of the UK, and vice versa.

- 6.7 This instrument introduces Part XVIA into the principal regulations. This includes provision of a power allowing the Commissioners to make additional provision in relation to importation, exportation and removals in respect of Northern Ireland in a notice.
- 6.8 In addition to amendments to the principal regulations, the instrument makes amendments of a similar description to apply intra-EU movement of goods rules to goods in NI, and to ensure that the VAT charge between NI and GB works as required by the Protocol.
- 6.9 Part 3 contains amendments to earlier EU exit legislation relating to VAT, principally the amendment and revocation regulations as described above. Some provisions are simply omitted with no further amendment necessary whilst other omissions are consequential on amendments made by these Regulations.
- 6.10 This instrument also includes amendments to the Value Added Tax (Input Tax) (Specified Supplies) Order 1999 (SI 1999/ 3121) to include amendments currently included in the Value Added Tax (Input Tax) (Specified Supplies) (EU Exit) (No. 2) Regulations 2019 (SI 2019/408). The latter instrument will be revoked.
- 6.11 Part 4 of this instrument contains savings and transitional provisions in relation to the amendments made.

7. Policy background

What is being done and why?

- 7.1 The 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. Some instruments were also laid removing rules specific to EU membership, and these changes will still be required at the end of the transition period in respect of GB. However, the Protocol means further legislation is required to ensure that EU VAT rules in relation to goods continue to apply in NI. This instrument together with the TPPA, the Value Added Tax (Miscellaneous Amendments to the Value Added Tax Act 1994 and Revocation) (EU Exit) Regulations 2020 and the Value Added Tax (Northern Ireland) (EU Exit) Regulations 2020 achieve that.
- 7.2 Following the end of the transition period GB, will be a "third country" from the perspective of the EU which means that the Single Market rules, and VAT treatment, of goods entering the EU from GB will no longer apply.
- 7.3 However, 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 rather than the rules for imports and exports. In addition, EU simplifications and administrative provisions, for example the rules in relation to call off stocks, will also

continue to apply. Such rules were removed by TCTA but have been re-enacted in relation to NI in TPPA.

- 7.4 Following the end of the transition period, goods entering the EU from GB will become imports. A GB 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. Similarly, under the Protocol, goods moving between GB and NI will be treated as though they are imports/exports.
- 7.5 Various amendments are required to a significant number of regulations and orders to achieve this. This instrument makes those changes. These include making consequential changes to earlier EU exit legislation relating to VAT, so that VAT operates as required at the end of the transition period in the UK and where appropriate in GB and NI.
- 7.6 The majority of provisions contained in this instrument reflect changes required in connection with the Protocol. But there are some provisions that aren't so connected. These include changes to the rules for approved partial exemption methods (which determine how much VAT a business making exempt supplies can deduct on its direct and indirect costs) necessary as a result of changes to the Value Added Tax (Input Tax) (Specified Supplies) Order 1999 (SI 1999/ 3121). It also includes certain amendments to Part XVI of the principal regulations in respect of GB that were not included in earlier EU exit legislation that covers rules in relation to imports, exports and removals. It also includes a power to introduce additional provision in relation to importations, exportations and removals in respect of NI in a public notice. This will apply rules that currently apply in Part XVI of the principal regulations between the UK and the EU, and between NI and the EU, but applying the Union Customs Code provisions as required under the Protocol rather than TCTA.
- 7.7 This instrument also includes some transitional provisions required for the end of the transition period to comply with the Withdrawal Agreement and to avoid any double or non- taxation.
- 7.8 Under the Protocol, EU customs legislation will continue to be applicable so cross-references in relation to imports into NI are to EU customs legislation (primarily the Union Customs Code) rather than to TCTA.

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 This instrument amends various regulations and revokes others. There are no plans to consolidate these.

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 585852 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.