

EXPLANATORY MEMORANDUM TO
THE VALUE ADDED TAX (DISTANCE SELLING AND MISCELLANEOUS
AMENDMENTS NO. 2) REGULATIONS 2021

2021 No. 1165

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.

2. Purpose of the instrument

2.1 This instrument amends the Value Added Tax Act 1994 (VATA), as amended by the Finance Act 2021 (FA21), which implemented two Value Added Tax (VAT) simplified accounting schemes (One Stop Shop (OSS) and Import One Stop Shop (IOSS)). These schemes are part of the European Union (EU) e-commerce package that the United Kingdom (UK) implemented from 1 July 2021 as part of the Northern Ireland Protocol (NI Protocol).

2.2 These changes correct a number of minor and consequential errors which together improve clarity and remove uncertainty. Together, these changes ensure that the UK's VAT system, including in relation to the NI Protocol, operates as required. They do not create any new regulatory divergence between Northern Ireland (NI) and Great Britain (GB).

2.3 This instrument also corrects a minor drafting error in paragraph 18A of Schedule 9ZA to VATA.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

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

5. European Convention on Human Rights

5.1 The Rt Hon Lucy Frazer QC MP, Financial Secretary to the Treasury, has made the following statement regarding Human Rights:

“In my view the provisions of The Value Added Tax (Distance Selling and Miscellaneous Amendments No. 2) Regulations 2021 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument is made using powers in section 96(1) and (3) of FA21 except in relation to the correction of an error in paragraph 18A of Schedule 9ZA to VATA which relies on section 51 of the Taxation (Cross-border Trade) Act 2018 (TCTA).
- 6.2 Section 96 of FA21 provides for the Treasury to make regulations it considers appropriate for the purposes of, or in connection with, giving effect to Council Directive (EU) 2017/2455 of 5 December 2017 amending Council Directive 2006/112/EC and Council Directive 2009/132/EC as regards certain VAT obligations for supplies of services and distance sales of goods, or otherwise for the purposes of dealing with matters arising out of, or related to, that Directive. Regulations made under section 96 may make provision that might otherwise be made by an Act of Parliament.
- 6.3 The regulation making power in section 96(1) of FA 2021 is used in this instrument and in another instrument laid alongside it, the Value Added Tax (Distance Selling and Miscellaneous Amendments) Regulations 2021(SI 2021/1164). These are the first uses of this power.
- 6.4 Section 51 of TCTA provides for the Treasury to make regulations relating to VAT that it considers appropriate in consequence of, or otherwise in connection with, the UK's withdrawal from the EU, which includes provision as might be made by Act of Parliament.
- 6.5 This instrument amends paragraph 7 of Schedule 9ZA to VATA to permit a person to be identified for the purposes of VAT in NI if they are registered for the OSS scheme in the UK or participate in the scheme in an EU member state. Paragraph 7(3) sets out conditions that must be met before such an identifier can be issued and ensures that those registered for the OSS scheme are entitled to an identifier.
- 6.6 This instrument amends paragraph 18A(2)(c) of Schedule 9ZA to VATA. The interpretive provisions that define taxation under the laws of member states are in paragraph 81 of Schedule 9ZA to VATA and not paragraph 80 as the law currently states.
- 6.7 This instrument amends para 48(8)(b) of Schedule 9ZA to VATA to remove superfluous references to “third country” and “third territory” in respect of GB which might otherwise cause confusion.
- 6.8 This instrument amends paragraph 29 of Schedule 9ZB to VATA which establishes rules for the place of supply of the distance selling of goods (which are supplies made under the OSS scheme) to provide consistency with the terminology used in Schedule 9ZD to VATA.
- 6.9 This instrument amends paragraph 1B of Schedule 9ZC to VATA so that the references to the IOSS scheme in the inserted section 5B of VATA are consistent with terminology used in Schedule 9ZE to VATA. It also clarifies that references to the IOSS scheme apply to any qualifying participant of the IOSS scheme and not just those who will be registered for IOSS in the UK and makes clear that certain references to GB equally apply in relation to the Isle of Man (IOM).
- 6.10 These regulations are being issued free of charge to anyone who purchased the Value Added Tax (Miscellaneous Amendments to the Value Added Tax Act 1994 and Revocation) (EU Exit) Regulations 2020 (SI 2020/1544). That instrument inserted regulation 18A into Schedule 9ZA to VATA containing a minor error, which these

regulations now correct. HMRC has complied with the requirement to consult with the SI Registrar on this matter.

7. Policy background

What is being done and why?

- 7.1 FA21 introduced legislation to implement the e-commerce package in relation to VAT. This included the introduction of three new schedules into VATA. Schedule 9ZD contains the rules for the OSS scheme and Schedule 9ZE contains the rules for the IOSS scheme. Schedule 9ZF contains changes to legislation consequential on the introduction of Schedules 9ZD and 9ZE.
- 7.2 The optional OSS scheme is a simplified reporting scheme that allows businesses, where their annual total supplies of goods to final consumers based in EU member states or NI exceeds £8,818, to register in just one EU member state or NI and account for VAT on all their sales of goods on a single quarterly VAT return. The alternative is for businesses to register for VAT in each EU member state they make supplies in.
- 7.3 The optional IOSS scheme allows businesses that import low value goods in consignments worth up to £135 into the EU or NI to register and account for the VAT in one- EU member state or NI on a single return without any import VAT being charged at the point of importation. The alternative is for businesses to account for import VAT in each country they import goods into.
- 7.4 A review of the e-commerce legislation has identified a number of minor and consequential issues that require legislative changes. This instrument, together with the Value Added Tax (Distance Selling and Miscellaneous Amendments Regulations 2021 (a negative procedure instrument being laid at the same time as this one), makes those changes.
- 7.5 For a person who holds goods in NI to trade with EU, they must be ‘a person who is identified for the purposes of VAT in NI’. Those that register for the OSS scheme need to be so identified. A person who is registered for the OSS scheme and also registered for VAT already meets this definition. However, a person registered for OSS does not have to register for VAT. While few are expected not to register for VAT, this instrument ensures that, all those registered for OSS, whether VAT registered or not, can be a ‘person who is identified for the purposes of VAT in NI’.
- 7.6 Paragraph 18A of Schedule 9ZA to VATA provides for VAT incurred in an EU member state to be refunded under the DIY House Builder Scheme for eligible buildings constructed or converted in NI. The interpretive provisions that define taxation under the laws of member states are in paragraph 81 of Schedule 9ZA to VATA and not paragraph 80 as the law currently states. This cross-reference is corrected.
- 7.7 Paragraph 48 of Schedule 9ZA to VATA cross refers to the definition of ‘intra-Community distance sales of goods’ in EU legislation. The reference to GB being included within references to “third country” or “third territory” within that definition is superfluous and has been removed as there are no references to “third country or third territory” within that definition so to include it may be confusing to readers.
- 7.8 Paragraph 29 of Schedule 9ZB to VATA determines the place of supply of goods. This instrument makes a consequential change to that provision to describe a person who is registered for the OSS scheme in an EU member state as ‘a participant in’ a

non-UK scheme. This brings it into line with the same terminology used in Schedule 9ZD to VATA.

- 7.9 A number of drafting errors and omissions in respect of the e-commerce changes were identified shortly after FA21 received Royal Assent. To address these issues, changes were made in the Finance Act 2021, Section 95 and Schedule 18 (Distance Selling: Northern Ireland) (Appointed Day No. 1 and Transitory Provision) Regulations 2021(SI 2021/770). However, this instrument could only make transitory changes and so any changes were time limited. This instrument addresses one of these transitory changes where it was not clear whether references to the IOSS scheme applies to any qualifying participant of the IOSS scheme in EU member states and not just those who will be registered for IOSS in the UK by amending paragraph 1B of Schedule 9ZC to VATA. The remaining transitory changes are made permanent in the Value Added Tax (Distance Selling and Miscellaneous Amendments) Regulations 2021 which is being laid at the same time as this instrument.
- 7.10 This instrument also amends paragraph 1B of Schedule 9ZC to VATA. It clarifies that that certain references to GB in the IOSS scheme legislation also apply to IOM.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because the legislation it amends will ensure that the UK's e-commerce VAT regime operates as required by the NI Protocol.
- 8.2 More broadly, it should be noted that the government is seeking to find a new balance in operating the NI Protocol in order to place it on a more sustainable footing. The government's July 2021 Command Paper (Northern Ireland Protocol: the way forward), set out these re-balancing proposals, which include arrangements covering trade in goods and the institutional framework. This instrument will be reviewed depending on the outcome of those deliberations.

9. Consolidation

- 9.1 This instrument makes minor changes to the Value Added Tax Act 1994. There are no plans to consolidate that Act.

10. Consultation outcome

- 10.1 This is a reserved matter. No consultation has been carried out. The instrument does not affect the scope of the measures being amended.

11. Guidance

- 11.1 Guidance on the OSS and IOSS schemes can be found at www.gov.uk/government/publications/eu-e-commerce-package/eu-vat-e-commerce-package.
- 11.2 Guidance on EU exit can be found 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 covering this instrument will be published on the website at [Tax information and impact notes - GOV.UK \(www.gov.uk\)](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/444444/Tax_information_and_impact_notes_-_GOV.UK_(www.gov.uk).pdf).

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 John Egerton at HMRC Telephone: 03000 585703 or email: john.egerton@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 Lucy Frazer QC MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.