

2021 No. 714

EXITING THE EUROPEAN UNION

VALUE ADDED TAX

**The Value Added Tax (Miscellaneous Amendments and Repeals)
(EU Exit) Regulations 2021**

Approved by the House of Commons

Made - - - - at 1.45 p.m. on 28th June 2021

Laid before the House of Commons at 4.00 p.m. on 28th June 2021

Coming into force - - 1st July 2021

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

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, including such provision as might be made by Act of Parliament.

Citation and commencement

1. These Regulations may be cited as the Value Added Tax (Miscellaneous Amendments and Repeals)(EU Exit) Regulations 2021 and come into force on 1st July 2021.

Interpretation

2. In these Regulations—

“Schedule 9ZB” means Schedule 9ZB to VATA (goods removed to or from Northern Ireland and supply rules)(b);

“Schedule 9ZC” means Schedule 9ZC to VATA (online sales by overseas persons and low value importations: modifications relating to the Northern Ireland Protocol)(c);

“VATA” means the Value Added Tax Act 1994(d).

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- (a) 2018 c. 22 (“TCTA”). Section 51(1)(a) permits “the appropriate Minister” to make such provision relating to value added tax as the appropriate Minister considers appropriate in consequence of, or otherwise in connection with, the withdrawal of the United Kingdom from the EU and under section 51(4)(b) “the appropriate Minister” means the Treasury. Section 51(3)(a) permits regulations under the section to make such provision as might be made by Act of Parliament.
- (b) Schedule 9ZB was inserted into the Value Added Tax Act 1994 (c. 23) (“VATA”) by paragraph 2 of Schedule 2 to the Taxation (Post-transition Period) Act 2020 (c. 26) (“TPTPA”) and amended by S.I. 2020/1544.
- (c) Schedule 9ZC was inserted into VATA by paragraph 28 of Schedule 3 to TPTPA.
- (d) 1994 c. 23; for relevant amendments see footnotes below.

Zero rating: transport

3.—(1) Group 8 of Schedule 8(a) to VATA (zero rating: transport) is amended as follows.

(2) For Item 5(b) substitute—

“5. The transport of goods—

- (a) in the course of an importation from a place outside to a place within the United Kingdom, or
- (b) in the course of an exportation from a place within to a place outside the United Kingdom.”.

(3) In Item 11(c), in paragraph (a)—

(a) in sub-paragraph (i)—

- (i) in paragraph (a), after “exported” insert “to a place outside the United Kingdom”;
- (ii) in paragraph (b), after “imported” insert “from a place outside the United Kingdom”;

(b) in sub-paragraph (ii), for “that place” substitute “the place from which the goods are to be so exported, or the place to which they have been so imported”.

Movement of own goods from Great Britain to Northern Ireland for non-business purposes

4.—(1) Schedule 9ZB is amended as follows.

(2) After paragraph 31A(d) insert—

“Movement of own goods from Great Britain to Northern Ireland for non-business purposes

31B.—(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) Subject to sub-paragraph (4), sub-paragraph (1) applies to a removal of goods if—

- (a) the removal is not (ignoring sub-paragraph (1)) made in the course or furtherance of a business,
- (b) before the removal the goods were supplied to, or 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 business and non-business VAT(e), or
 - (ii) non-business VAT, and
- (g) P meets the condition in sub-paragraph(3).

(a) Schedule 8 (zero-rating) has effect by virtue of section 30 of VATA; for relevant amendments see footnotes below.
(b) Item 5 of Group 8 of Schedule 8 to VATA was amended by paragraph 94(1) and (4)(a) of Schedule 8 to TCTA. See also paragraph 3 of Schedule 9ZB to VATA, which provides that references to importation are to be read as including removal of goods from Northern Ireland to Great Britain and vice versa.
(c) Item 11 of Group 8 of Schedule 8 to VATA was amended by S.I. 1995/653 and paragraph 94(1) and (4)(b) of Schedule 8 to TCTA.
(d) Paragraph 31A was inserted into Schedule 9ZB by S.I. 2020/1544.
(e) See section 24(5) of VATA.

- (3) That condition is that P uses the goods, after their removal, exclusively for—
 - (a) in a case falling within sub-paragraph (2)(f)(i), both business and non-business purposes, or
 - (b) in a case falling within sub-paragraph (2)(f)(ii), non-business purposes.
- (4) Sub-paragraph (1) does not apply in relation to—
 - (a) a removal of goods to which paragraph 31A of this Schedule applies, or
 - (b) an export by a charity to which section 30(5)(a) (as applied by paragraph 8 of this Schedule) applies.
- (5) A supply of goods which is treated as arising under sub-paragraph (1) is zero-rated.
- (6) VAT incurred by P on the removal of goods from Great Britain to Northern Ireland (see paragraph 3(4) of Schedule 9ZB) is not to be treated as attributable (for the purposes of section 26(b)) to the supply treated as arising under sub-paragraph (1).”

Supplies from a member State to Great Britain via Northern Ireland

5.—(1) Schedule 9ZB is amended as follows.

(2) In paragraph 4 (liability for VAT on movements between Great Britain and Northern Ireland)—

(a) after sub-paragraph (3) insert—

“(3A) Where the removal is a removal to which paragraph 6(3A) (certain supplies from a member State to Great Britain via Northern Ireland) applies, the person who supplies the goods is the person who is treated as having imported the goods.”;

(b) in sub-paragraph (11), after “(3)” insert “, (3A)”.

(3) In paragraph 6 (relief for qualifying Northern Ireland goods)(c)—

(a) in sub-paragraph 2—

(i) at the end of paragraph (a) omit “or”;

(ii) at the end of paragraph (b) omit the full-stop and insert—

“, or

(c) sub-paragraph (3A) applies to the removal.”;

(b) after sub-paragraph (3) insert—

“(3A) This sub-paragraph applies to a removal if—

(a) the removal is in the course of a supply, and

(b) the goods are qualifying Northern Ireland goods as a result of having been removed from a member State to Northern Ireland in the course of that supply.”.

(4) After paragraph 35 insert—

“PART 7

Supplies from a member State to Great Britain via Northern Ireland: registration

36.—(1) Part 3 of Schedule 9ZC (liability to be registered of persons treated as having imported goods under Part 1 of that Schedule) applies in relation to a person treated as

(a) Sub-section (5) was inserted into section 30 of VATA by section 28(1) of the Finance Act 1995 (c. 4) and amended by paragraph 29(3) of Schedule 8 to TCTA.

(b) Section 26 of VATA, which sets out what input tax is allowable under section 25, was amended by paragraph 2 of Schedule 8 to the Finance (No. 3) Act 2010 (c. 33) and paragraph 26 of Schedule 8 to TCTA.

(c) Paragraph 6 of Schedule 9ZB was amended by S.I. 2020/1544.

having imported goods under paragraph 4(3A) of this Schedule as it applies to a person treated as having imported goods under Part 1 of that Schedule.

(2) But sub-paragraph (1) does not apply in relation to a person who is treated as having imported goods under Part 1 of Schedule 9ZC.

(3) For the purposes of sub-paragraph (1), Schedule 9ZC has effect as if—

- (a) in paragraph 13 (meaning of relevant supply) the reference to Part 1 of that Schedule were to paragraph 4(3A) of this Schedule, and
- (b) references to facilitating a relevant supply were ignored.”.

6.—(1) Schedule 9ZC is amended as follows.

(2) In paragraph 1 (certain references to goods being imported not to include goods treated as imported into the United Kingdom as a result of their being removed from Northern Ireland to Great Britain), at the beginning insert “Except in relation to a removal to which paragraph 6(3A) of Schedule 9ZB (certain supplies from a member State to Great Britain via Northern Ireland) applies,”.

(3) In paragraph 4A (modification of paragraph 4 of Schedule 9ZB in relation to certain supplies facilitated by an online marketplace), after “4(3)” insert “, (3A)”.

Correction of minor errors in VATA

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

(2) In the italic heading before paragraph 47, for “supply” substitute “acquisition”.

(3) In paragraph 69—

- (a) in sub-paragraph (1)(b)(i), omit “by”;
- (b) in sub-paragraph (2), for “In paragraph 6(1) of that Schedule—” substitute “Paragraph 6(1) of that Schedule has effect as if—”.

(4) In paragraph 70, in sub-paragraph (a), for “member State” substitute “member State or”.

(5) In paragraph 71, in each place it occurs, for “supply to” substitute “supply to,”.

(6) In paragraph 81, in sub-paragraph (7), for “subsection” substitute “sub-paragraph”.

8.—(1) Schedule 9ZB is amended as follows.

(2) In paragraph 26, in sub-paragraph (1), for paragraph (a) substitute—

- “(a) in sub-paragraph (1)(a)(ii), before “agricultural levy” there were inserted “customs duty or”,”.

Repeals

9. In VATA omit section 16A(b).

10. In the Taxation (Cross-border Trade) Act 2018, in Schedule 8 omit paragraph 14(c).

James Morris
Michael Tomlinson

At 1.45 p.m. on 28th June 2021

Two of the Lords Commissioners of Her Majesty’s Treasury

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- (a) Schedule 9ZA was inserted into VATA by paragraph 2 of Schedule 2 to TPTA and amended by S.I. 2020/1544.
 - (b) Section 16A was inserted into VATA by paragraph 14 of Schedule 8 to TCTA (with effect from 16th December 2018 by virtue of S.I. 2018/1362). Section 16A was amended by paragraph 6 of Schedule 3 to TPTA. The power in section 16A was used to make S.I. 2018/1376 (partially brought into force by S.I. 2019/104 (C. 5)) and regulation 8 of S.I. 2019/513 (never brought into force), both of which were revoked by S.I. 2020/1495.
 - (c) Paragraph 14 of Schedule 8 inserted section 16A into VATA, which is repealed by regulation 9 of this instrument. For detail about section 16A see earlier footnote.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 1st July 2021, make appropriate provision relating to value added tax in consequence of, or otherwise in connection with, the withdrawal of the United Kingdom from the EU, including such provision as might be made by Act of Parliament.

These Regulations amend provisions of the Value Added Tax Act 1994 (c. 23) (“VATA”) to ensure that the Protocol on Ireland/Northern Ireland agreed between the EU and the United Kingdom as part of the Withdrawal Agreement dated 19th October 2019^(a) is correctly implemented into domestic law. They make amendments to VATA to remove the inadvertent extension of a zero rate and to ensure that movements from Northern Ireland to Great Britain are correctly treated to remove both the risk of double taxation and the risk that goods may be untaxed. They make miscellaneous textual amendments to correct minor errors in VATA. They also repeal legislation which is redundant following a change of policy between exit day and the end of the transition period (in relation to the entry of goods into the United Kingdom in a postal packet).

Regulation 3 amends Group 8 of Schedule 8 to VATA (zero rating: transport) by substituting Item 5 and inserting new words into Item 11 with the effect that the zero rate does not apply to transport-related services which are part of a wholly domestic supply.

Regulation 4 inserts a new paragraph 31B into Schedule 9ZB to VATA (“Schedule 9ZB”), with the effect that the removal by a taxable person of its own goods from Great Britain to Northern Ireland for non-business purposes is treated as a zero-rated taxable supply if certain conditions are met. This includes that before the removal the goods were supplied to, or imported by, the person who removed them and the removal takes place within 12 months of the person becoming liable to the VAT on the supply.

Regulations 5 and 6 amend Schedules 9ZB and 9ZC to VATA in connection with supplies of goods from the EU to Great Britain via Northern Ireland.

Regulation 5(3) amends paragraph 6 of Schedule 9ZB so that the relief from VAT applicable to a removal of qualifying goods from Northern Ireland to Great Britain does not apply to a removal of goods to which new paragraph 6(3A) (“paragraph 6(3A)”) inserted by regulation 5(3)(b) applies. Paragraph 6(3A) applies to a removal of goods in the course of a supply where those goods are qualifying Northern Ireland goods as a result of having been removed from a member State to Northern Ireland in the course of the same supply.

Regulation 5(2) amends paragraph 4 of Schedule 9ZB to provide that where paragraph 6(3A) applies to a removal of goods, the person who supplies them is the person who is treated as having imported them.

Regulation 5(4) inserts a new Part 7 into Schedule 9ZB, which applies, with certain modifications, the provisions of Part 3 of Schedule 9ZC to VATA (liability to be registered of persons treated as having imported goods under Part 1 of that Schedule) to persons who are treated as having imported goods pursuant to paragraph 4(3A) of Schedule 9ZB.

Regulation 6 amends paragraph 1 of Schedule 9ZC to VATA so that the references to importation in sections 5A(3), 7(5B)(b) and 7AA(1)(c) of VATA include removals to which paragraph 6(3A) applies.

Regulations 7 and 8 amend Schedules 9ZA and 9ZB to VATA to correct minor errors which do not obscure the legislative intent, but which ought to be corrected to avoid misleading readers.

(a) See the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community 2019/C 384 1/01 at <https://www.legislation.gov.uk/eut/withdrawal-agreement/contents/adopted>.

Regulation 9 omits section 16A from VATA. Section 16A was inserted into VATA by paragraph 14 of Schedule 8 to the Taxation (Cross-border Trade) Act 2018 (c. 22) (“TCTA”). Regulation 10 omits paragraph 14 from Schedule 8 to TCTA, which is spent as a result of regulation 9. The power in section 16A was exercised to make the Value Added Tax (Postal Packets and Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1376) and regulation 8 of the Value Added Tax (Miscellaneous Amendments, Revocation and Transitional Provisions) (EU Exit) Regulations 2019 (S.I. 2019/513) which amended S.I. 2018/1376. These provisions were revoked by the Value Added Tax (Miscellaneous and Transitional Provisions, Amendment and Revocation) (EU Exit) Regulations 2020 (S.I. 2020/1495) before being fully brought into force.

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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