

EXPLANATORY MEMORANDUM TO
THE VALUE ADDED TAX (MISCELLANEOUS AMENDMENTS AND REPEALS)
(EU EXIT) REGULATIONS 2021

2021 No. 714

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 The Taxation (Cross-border Trade) Act 2018 (TCTA), the Taxation (Post-transition Period) Act 2020 (TPPA) and various statutory instruments made changes to Value Added Tax (VAT) legislation in respect of the United Kingdom's (UK) withdrawal from the European Union (EU). These changes were to ensure that the VAT system, including in relation to the Protocol on Ireland/Northern Ireland (the NI Protocol), operates as required from the end of the transition period. This instrument, together with the Value Added Tax (Amendment) (EU Exit) Regulations 2021 (SI 2021/715), makes amendments to VAT legislation to address errors and omissions identified as a result of a review of the EU exit legislation.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 None.

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)

- 3.2 The territorial application of this instrument includes Scotland and Northern Ireland.
- 3.3 The powers under which this instrument is made (sections 51(1)(a) and 51(3)(a) of TCTA) cover the entire United Kingdom. The territorial application of this instrument is not limited either by the Act or by the instrument.

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 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 and Repeals) (EU Exit) Regulations 2021 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument is made using powers in section 51 of TCTA.
- 6.2 Section 51 of 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
- 6.3 These regulations make provision that is appropriate in consequence of, or otherwise in connection with, the withdrawal of the UK from the EU.
- 6.4 This instrument amends items 5 and 11 of Group 8 of Schedule 8 to the Value Added Tax Act 1994 (VATA) to correct an inadvertent extension of the zero rate for transport services related to the import and export of goods. Paragraph 3 of Schedule 9ZB to VATA provides that legislation relevant to VAT on imports should be read as applying to movements between Great Britain (GB) and Northern Ireland (NI). The amendment ensures that the zero rate only applies, as intended, to goods entering or leaving the UK and not to goods moving between GB and NI.
- 6.5 This instrument inserts a new paragraph 31B into Schedule 9ZB to prevent the double taxation of goods moved by VAT registered businesses from GB to NI for non-business purposes.
- 6.6 This instrument amends Schedules 9ZB and 9ZC to VATA as they apply to the supply of goods from an EU member state to GB that are transported via NI. It amends paragraph 6 of Schedule 9ZB, which provides for a relief on the removal of qualifying Northern Ireland goods from NI to GB. It disapplies the relief where goods are removed in the course of a supply and have been removed from a member state to NI in the course of that supply. It amends paragraph 4, which makes provision to determine who is liable to pay VAT on goods moving between NI and GB. It makes the supplier of goods whose removal is subject to the disapplication of the relief liable to account for the VAT due on the entry of the goods into GB. It also inserts a new paragraph 36 into Schedule 9ZB. Paragraph 36 applies Part 3 of Schedule 9ZC (liability to be registered of persons treated as having imported goods under Part 1 of that Schedule), with relevant modifications, to a person who is liable to account for VAT as a result of the amendment to paragraph 4. The effect of that application is that the person must (if not already registered) register to account for that VAT.
- 6.7 Part 1 of Schedule 9ZC makes particular provision for the treatment of supplies of low value imported goods (goods sent in consignments valued at £135 and under) sold by businesses to customers in GB. That provision relieves the import VAT due on the removal of the goods to the UK and instead provides that the place of supply of those goods is the UK. It also makes the business (or an online marketplace if it facilitated the sale) responsible for accounting for VAT on that supply. This instrument amends Part 1 of Schedule 9ZC so that references to goods being imported in the relevant provisions will include low value goods sold from the EU to GB that are transported through NI.
- 6.8 This instrument also makes a number of minor amendments to Schedules 9ZA and 9ZB to VATA. These regulations do not fall within the free issue procedure as they correct minor errors in Schedules 9ZA and 9ZB, as inserted by paragraph 2 of Schedule 2 to TPPA.
- 6.9 The instrument repeals section 16A of VATA and paragraph 14 of Schedule 8 to TCTA. Section 16A provided the power to make regulations to impose a liability to

import VAT on an overseas business sending goods to the UK in postal packets. Paragraph 14 of Schedule 8 inserted section 16A into VATA and is spent due to the repeal of section 16A.

7. Policy background

What is being done and why?

- 7.1 This instrument makes a number of changes to EU exit VAT legislation that was commenced at the end of the transition period following the UK's exit from the EU.
- 7.2 A review of EU exit VAT legislation identified a number of errors and omissions which need to be corrected to ensure that the VAT system continues to operate as required. This includes minor changes, for example missing/superfluous words, correcting incorrect cross-references or formatting errors. This instrument makes those corrections in relation to primary legislation.
- 7.3 The EU exit legislation contained a provision to the effect that the meaning of the term "import" included movements of goods between NI and GB. This had the effect of inadvertently extending the zero rate for services (which are not covered by the NI Protocol) of transport, handling and storage of imported and exported goods to movements of goods between NI and GB. This instrument removes the extension of the zero rate and therefore VAT will apply to these services as it did prior to the end of the transition period in line with the policy intention. This ensures that the same VAT treatment will apply for transport services in relation to goods moving between London and Edinburgh or Cardiff and Glasgow as will apply to goods moving between GB and NI.
- 7.4 VAT charged on goods cannot normally be recovered by a VAT registered business if the goods are used for a non-business purpose. This instrument deems that a movement of own goods from GB to NI, that are wholly or partly for non-business purposes, is treated as a zero rated supply. This is subject to the condition that the removal is within 12 months of when the business incurred VAT on the goods. This approach means that VAT on the original purchase can be recovered, preventing double taxation by the business incurring two irrecoverable VAT charges (one on the original purchase and one on the movement into NI).
- 7.5 The instrument makes amendments to ensure the correct taxation of goods supplied from the EU to GB that are transported via NI. For goods sent in consignments with a value of £135 or under it provides that the scheme that applies to overseas goods that directly enter GB also applies to such indirect movements. This means that either the supplier or (if the sale is facilitated by an online marketplace) the operator of the online marketplace will be liable to account for VAT on the sale. If the goods are of a value greater than £135 the supplier will be liable to account for the VAT due on the movement of the goods into GB from NI. If not already registered for VAT in the UK, the supplier is required to register and account for VAT on those goods on a VAT return.
- 7.6 The instrument also repeals section 16A of VATA and paragraph 14 of Schedule 8 to TCTA, which inserted it, as they are no longer required. Section 16A provided the power to make regulations to impose a liability to import VAT on an overseas business sending goods to the UK in postal packets. This policy has been superseded by the GB scheme described in paragraph 7.5 above and the NI scheme provided by Schedule 9ZC.

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 from the 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 makes changes to VATA and TCTA. There are no plans to consolidate either of those acts.

10. Consultation outcome

- 10.1 No consultation has been carried out. This instrument makes necessary amendments identified as a result of a review of EU exit VAT legislation, to ensure that VAT legislation operates as required following the end of the transition period. The amendments generally reflect policy set out in guidance published at the end of the transition period.

11. Guidance

- 11.1 This instrument amends errors and omissions identified as a result of a review of EU exit VAT legislation. Guidance published at the end of the transition period, will be clarified as necessary. Guidance can be found at <https://www.gov.uk/government/publications/accounting-for-vat-on-goods-moving-between-great-britain-and-northern-ireland-from-1-january-2021> and [VAT notices in alphabetical order - GOV.UK \(www.gov.uk\)](#).

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.