EXPLANATORY MEMORANDUM TO

THE VALUE ADDED TAX (MISCELLANEOUS AMENDMENTS AND TRANSITIONAL PROVISIONS) (EU EXIT) REGULATIONS 2019

2019 No. 1214

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 This instrument is one of a number of instruments to be made under the Taxation (Cross-border Trade) Act 2018 (TCTA) and other legislation in preparation for the withdrawal of the United Kingdom (UK) from the European Union (EU). In the event of the UK leaving the EU without a deal, legislation will be necessary to ensure that the UK's Value Added Tax (VAT) regime operates as required.

2.2 This is the third of three miscellaneous instruments[1] each of which address a number of deficiencies in the UK's primary and secondary legislation relating to VAT that are not picked up in other instruments that are a consequence of the UK's withdrawal from the EU. It makes consequential amendments to changes made in The Value Added Tax (Miscellaneous Amendments, Revocation and Transitional Provisions) (EU Exit) Regulations 2019 (SI 2019/513) to reflect the fact EU exit did not take place on 29 March 2019 (or the later EU exit date of 12 April 2019) together with other consequential and transitional amendments some of which are needed to ensure that the UK's VAT system continues to work on EU exit. It also makes transitional provisions in respect of the VAT Mini-One-Stop-Shop (MOSS)[2] system to ensure that claims and corrections relating to UK VAT can be made after the UK leaves the EU.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 This instrument is necessary to deal with the consequences of the UK leaving the EU without a deal. It will therefore only come into force on a date or dates specified in a separate instrument using powers in section 52 of TCTA in the event that the UK leaves the EU without a deal.

3.2 This instrument sub-delegates power to HMRC to make provision by public notice to deal with certain transitional matters. The authority for this is section 51 of TCTA.

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[1] See The Value Added Tax (Miscellaneous Amendments and Revocations) (EU Exit) Regulations 2019 (SI 2019/59) and The Value Added Tax (Miscellaneous Amendments, Revocation and Transitional Provisions) (EU Exit) Regulations 2019 (SI 2019/513).

[2] VAT MOSS is an online service that allows EU and non-EU businesses to register (using the Union and non-Union schemes, respectively) in a single member state and account for the VAT on supplies of digital services to consumers across the EU through a single return.

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 Jesse Norman, 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 Transitional Provisions) (EU Exit) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument is made using the powers in sections 51, 52 and 56 of TCTA and section 31 of the Value Added Tax Act 1994 (VATA). The TCTA provisions provide that the Treasury may make regulations that they consider appropriate in consequence of, or otherwise in connection with, the withdrawal of the UK from the EU (section 51), or that they consider appropriate in consequence of TCTA including savings and transitional or transitory provision (section 56), and that a day may be appointed for such regulations to come into force (section 52).

6.2 Part 3 (sections 41 to 43) and Schedule 8 to, TCTA amend VATA to make provision in relation to VAT in connection with the withdrawal of the UK from the EU. Section 57(3) of TCTA provides that those amendments come into force on days appointed by Treasury regulations. Section 57(1) of TCTA provides, amongst other things, that sections 51 and 52 (Part 5: other provisions connected with the withdrawal from the EU) and section 56 (Part 6: final provisions), which in part provide the power to make this instrument, come into force on the day on which the Act is passed. TCTA received Royal Assent on 13 September 2018. Section 31 of VATA permits the Treasury to amend Schedule 9 to VATA (exemptions).

6.3 This instrument also makes a number of transitional amendments to facilitate the smooth transition of the UK leaving the EU including dealing with transactions that straddle the day of departure and those that occur afterwards.

6.4 In the event that the UK exits the EU without a negotiated agreement, this instrument will be commenced so that the changes take effect at the same time as the provisions in Parts 1 and 3 and Schedule 8 to, TCTA (which deal with abolition of acquisition tax, changes to import VAT and other VAT amendments connected with the UK's withdrawal from the EU). For this reason, the instrument anticipates the changes to be made to the VAT regime by TCTA (by relying on provisions of TCTA, including those contained within amendments to VATA), that have not yet been commenced. This is consistent with the purpose of the powers in Parts 5 and 6 of TCTA which are intended to ensure (among other things) that the UK has a VAT regime which works as required on EU exit.

6.5 Some of the instruments being amended by this instrument are also amended by other EU exit instruments and this instrument amends other EU exit instruments that have already been laid before Parliament. This instrument makes further changes that are necessary to ensure that the UK's VAT regime operates as required on EU exit.

6.6 The Taxation (Cross-border Trade) Act 2018 (Value Added Tax Transitional Provisions) (EU Exit) Regulations 2019 (SI 2019/105) and the Value Added Tax (Miscellaneous Amendments, Revocation and Transitional Provisions) (EU Exit) Regulations 2019 (SI 2019/513) contain transitional provisions necessary for the smooth implementation of the changes to VAT primary legislation made by TCTA. This instrument contains updates and makes further transitional provision in relation to VAT legislation.

6.7 On exit from the EU, the VAT exemption for finance at Group 5 of Schedule 9 to VATA requires consequential amendments as a result of various exit legislation affecting collective investments schemes including the Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/325) and the Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2019 (SI 2019/589).

6.8 In relation to MOSS, Schedules 3B and 3BA to VATA are omitted by section 43 of, and paragraphs 86 and 87 respectively of Schedule 8 to, TCTA. Regulation 3 of the Taxation (Cross-border Trade) Act 2018 (Value Added Tax Transitional Provisions) (EU Exit) Regulations (SI 2019/105) provides that this omission does not have effect in relation to supplies made before exit day. The above provisions of TCTA and Taxation (Cross-border Trade) Act 2018 (Value Added Tax Transitional Provisions) (EU Exit) Regulations (SI 2019/105) are to come into force on a day yet to be appointed. Transitional provision is required because the provisions in VATA relating to overpayments, changes in consideration and bad debts[3] require amendments to be made through the EU MOSS system, to which access may not be available after exit day.

7. Policy background

What is being done and why?

7.1 In order to prepare for the UK leaving the EU without a deal, the UK's primary legislation relating to VAT is being amended mainly by TCTA to ensure that the UK has a VAT system that operates as required on EU exit. The amendments made by this instrument make consequential and transitional changes to VATA and secondary legislation that are necessary to ensure the UK has a comprehensive and cohesive VAT system that is ready for EU exit.

7.2 The explanatory memoranda for the Value Added Tax (Miscellaneous Amendments and Revocations) (EU Exit) Regulations 2019 (SI 2019/59) and the Value Added Tax (Miscellaneous Amendments, Revocation and Transitional Provisions) (EU Exit) Regulations 2019 (SI 2019/513) explained that those instruments introduced a number of general changes to reflect the changes made to primary legislation in TCTA. This instrument makes further changes not made in those earlier instruments and other

[3] Contained in paragraphs 16I, 16K and 16L of Schedule 3B, and paragraphs 29, 31 and 32 of Schedule 3BA to VATA.

consequential or transitional changes made in connection with the UK's withdrawal from the EU.

7.3 Consequential changes are made to Group 5 of Schedule 9 to VATA (VAT exemption for finance) to remove references which cease to have legal effect on exit because of changes made by the Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/325) and the Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2019 (SI 2019/589). In particular, references to collective investment schemes constituted in another European Economic Area state are removed, so too is the reference to section 409(1)(f) of the Financial Services and Markets Act 2000 in the definition of "Gibraltar collective investment scheme". The scope of the exemption at Group 5 is unaffected by these consequential amendments.

7.4 In the Value Added Tax (Miscellaneous Amendments, Revocation and Transitional Provisions) (EU Exit) Regulations 2019 (SI 2019/513), consequential amendments and transitional provision were made in relation to Fulfilment Houses[4] legislation which only came fully into force on 1 April 2019[5] (regulations 12-14), and transitional provision was made in relation to the rules concerning repayments of VAT to businesses in the EU (regulation 6). In both cases the transitional provisions referred to specific dates which were based on an EU exit date of 29 March 2019 (and were unchanged with the later EU exit date of 12 April 2019). Since the Fulfilment Houses legislation is now fully in force and since EU exit has been deferred until 31 October 2019, this instrument revokes the provisions relating to VAT refunds and Fulfilment Houses in the Value Added Tax (Miscellaneous Amendments, Revocation and Transitional Provisions) (EU Exit) Regulations 2019 (SI 2019/513) and replaces them with revised legislation which now refers to more general periods of time after EU exit. The length of the transitional periods has not changed in either case.

7.5 A further transitional provision is needed in respect of the MOSS system to ensure that claims and corrections can be made to supplies that took place before exit day in the event the system is no longer accessible. This instrument provides that the form and manner of such a claim or correction is to be specified in a Notice published by HMRC. This power is necessary because the extent to which the MOSS EU information technology system will be accessible after EU exit is currently unclear. It also provides that amendments made under the transitional arrangements shall have the same consequences as amendments made in accordance with existing procedures.

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 2018 but relates to the withdrawal of the UK from the EU as it, and other legislation made under TCTA, will ensure that the UK's VAT regime operates as required after EU exit.

9. Consolidation

9.1 This instrument amends various regulations. There are no plans to consolidate these.

[4] A fulfilment house is a company that typically stores, fulfils orders and delivers goods on behalf of owners of those goods.

[5] Part 3 of the Finance (No. 2) Act 2017 (c. 32) (see SI 2018/298 for commencement) and the Fulfilment Businesses Regulations 2018 SI 2018/326.

10. Consultation outcome

10.1 No consultation has been carried out. These are consequential changes made as a result of TCTA amending VATA or otherwise made in connection with the withdrawal of the UK from the EU.

11. Guidance

11.1 In the event of the UK leaving the EU without a deal, as a result of the changes made by this instrument, businesses would generally apply the same rules to transactions between the UK and the EU as currently apply to transactions between the UK and the rest of the world. There is already guidance on this on www.gov.uk. This will be updated where necessary, including in relation to transitional provisions, and will be available prior to commencement of this instrument.

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 This instrument will be covered by an overarching HMRC impact assessment (third edition) which will be published and available on the website at https://www.gov.uk/government/collections/customs-vat-and-excise-regulations-leaving-the-eu-with-no-deal

12.4 Impacts are minimal since the consequential and transitional changes in this instrument arise as a result of the UK exiting the EU and the continuation of the existing VAT treatment as far as possible.

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 the impact of the requirements on small businesses (employing up to 50 people).

13.3 The basis for this decision is that the rules are by 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 VAT Principles and Risk, Customs & Indirect Tax Directorate, at HMRC can confirm that this Explanatory Memorandum meets the required standard.

15.3 Jesse Norman MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.