EXPLANATORY MEMORANDUM TO

THE VALUE ADDED TAX (SPECIAL ACCOUNTING SCHEMES) (SUPPLIES OF ELECTRONIC, TELECOMMUNICATIONS AND BROADCASTING SERVICES) ORDER 2018

2018 No. 1197

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 When supplies of digital services, such as mobile phone apps, e-books or music downloads, are provided to consumers in the European Union (EU) Value Added Tax (VAT) has to be accounted for in the country where the consumer is based regardless of the value of the sale. This means that businesses have to register for and pay VAT in each EU country in which they make these sales. The VAT Mini One Stop Shop (the MOSS scheme) offers these businesses an alternative way to comply with their VAT obligations by allowing them to report, and pay, the VAT due on their EU supplies of digital services in one country, reducing the need to deal with multiple tax authorities with different rules in different languages. This Order will allow businesses established outside the EU to use the Non-Union MOSS scheme even if they are registered for VAT in the EU for other reasons.

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 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 United Kingdom.

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

5. European Convention on Human Rights

5.1 The Financial Secretary to the Treasury (Mel Stride), has made the following statement regarding Human Rights:

'In my view the provisions of the Value Added Tax (Special Accounting Schemes) (Supplies of Electronic, Telecommunication and Broadcasting Services) Order 2018 are compatible with the Convention rights.'

6. Legislative Context

6.1 The Principal VAT Directive (Council Directive 2006/112/EC; "the PVD") provides that VAT on cross-border digital sales to EU consumers has to be accounted for in the country where the customer is based. This means that businesses have to register with the VAT authorities in each country where they make digital sales.

6.2 To simplify the administration of this, the VAT MOSS scheme was introduced. This allows businesses to deal with all the VAT due on their cross-border supplies of digital services in a single country, rather than registering for VAT in each member state.

6.3 Council Directive 2017/2455/EU ("the 2017 Directive") removes restrictions on businesses established outside the EU but registered for VAT for reasons other than supplies of digital services from joining the Non-Union MOSS scheme.

6.4 The Non-Union MOSS scheme allows a business established outside the EU to report, and pay, the VAT due on their supplies of digital services to EU consumers only. Businesses who are required to be registered for VAT in the UK for other reasons will still need to file a UK VAT return in relation to their other sales.

6.5 The changes in the 2017 Directive take effect in stages. This Order implements amendments made to Article 358a and Article 362(1) of the PVD, which take effect from 1 January 2019 and makes other necessary amendments to Schedule 3B Value Added Tax Act (VATA) 1994. These changes are made using the powers under Paragraph 2 Section 3A(2) VATA 1994 and are the first use of these powers.

6.6 The 2017 Directive also amends Article 219a of the PVD, with effect from 1 January 2019. This Article provides the rules for VAT invoicing. With effect from 1 January 2019 businesses using MOSS will apply the rules according to the member state in which they are registered for MOSS. No legislation is required to bring in this change as our rules already achieve the required result as supplies made to consumers do not require a VAT invoice.

6.7 The 2017 Directive also makes amendments that will change the place of supply for businesses established in the EU. Where a business makes cross-border supplies of digital services to consumers in the EU and the value of these is less than €10,000, or the equivalent in national currency at the time the Directive came into force, in the current and preceding calendar year, the place of supply will be determined by where the business belongs. These amendments are implemented by the Value Added Tax (Place of Supply of Services) (Supplies of Electronic, Telecommunication and Broadcasting Services) Order 2018.

7. Policy background

What is being done and why?

7.1 On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until the UK formally exits, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

7.2 On 5 December 2017 EU Finance Ministers agreed a number of changes to further simplify the obligations for businesses making digital sales in the EU. This Order implements one of those changes to allow more businesses not established in the EU to use the MOSS scheme.

7.3 Businesses established outside the EU and who are registered for VAT for reasons other than making digital sales to EU consumers have been prevented from using the MOSS scheme. This Order provides further support to help non-EU businesses to comply with their VAT obligations by extending the scope for participation in the MOSS scheme.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 There is no current plan to consolidate the Value Added Tax Act 1994.

10. Consultation outcome

10.1 The European Commission held a consultation between February 2015 and July 2016 on modernising VAT for cross-border e-commerce. The consultation assessed the implementation of the 2015 changes to the place of supply rules for business to consumer supplies of digital services and the MOSS scheme. A summary of the consultation is included in annex 2 of the Commissions impact assessment.

https://ec.europa.eu/taxation_customs/sites/taxation/files/swd_2016_379.pdf

10.2 The Commission's report identified a marked increase in VAT paid by non-EU businesses through the Non-Union MOSS scheme compared to the previous VAT on Electronic Services (VoES) mechanism. Improvements in compliance have been a driver for further simplifying the way non-EU businesses can pay their VAT.

10.3 A four week consultation on the draft Order was published by HMRC on 11 September 2018. There were no responses to this consultation.

11. Guidance

11.1 Existing guidance is being updated and will be published at the same time as this Order.

https://www.gov.uk/government/collections/vat-moss-vat-on-sales-of-digital-services-in-the-eu

12. Impact

12.1 The impact on business, charities or voluntary bodies is expected to be negligible.

12.2 There is no, or no significant, impact on the public sector.

12.3 There will be a one-off impact at first as businesses become familiar with the new rules. This Order is then expected to have a positive impact on those businesses who were previously excluded from the VAT MOSS scheme by providing an opportunity to simplify their VAT obligations, as the VAT due on digital sales can be included on one return in one member state.

12.4 A Tax Information and Impact Note covering this instrument was published on 11 September 2018 alongside a draft of the Value Added Tax (Special Accounting Schemes)(Supplies of Electronic, Telecommunication and Broadcasting Services) Order 2018 and is available on the website at https://www.gov.uk/government/publications/vat-changes-to-the-supply-of-digital-services-2019.

It remains an accurate summary of the impacts that apply to this instrument.

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 MOSS scheme is an optional alternative to the normal application of the VAT rules. Small businesses who wish to use the MOSS scheme will benefit from the simplifications.

14. Monitoring & review

14.1 This measure will be monitored through statistics collected by VAT MOSS returns and receipts.

14.2 The Order does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 under section 28(3)(a) a review clause is not required as the Order makes or amends provisions relating to a tax.

15. Contact

15.1 Geoffrey Richards at HM Revenue and Customs Telephone: 03000 547018 or email: geoffrey.richards@HMRC.gsi.gov.uk can be contacted with any queries regarding the instrument.

15.2 Alomgir Ali at HM Revenue and Customs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Mel Stride, Financial Secretary to the Treasury can confirm that this Explanatory Memorandum meets the required standard.