
STATUTORY INSTRUMENTS

2018 No. 1376

**EXITING THE EUROPEAN UNION
VALUE ADDED TAX**

**The Value Added Tax (Postal Packets and
Amendment) (EU Exit) Regulations 2018**

Made - - - - 17th December 2018

Laid before the House of

Commons - - - - 18th December 2018

Coming into force in accordance with regulation 1(2)

The Commissioners for Her Majesty's Revenue and Customs, in exercise of the powers conferred by section 16A of the Value Added Tax Act 1994⁽¹⁾ and section 52(2) of, and paragraph 3(1)(c) of Schedule 6 to the Taxation (Cross-border Trade) Act 2018⁽²⁾ and the Treasury, who consider it appropriate in consequence of, or otherwise in connection with, the withdrawal of the United Kingdom from the EU, in exercise of the powers conferred by sections 51(1)(a) and 52(2) of the Taxation (Cross-border Trade) Act 2018, make the following Regulations.

In accordance with section 52(2) of the Taxation (Cross-border Trade) Act 2018, the Commissioners and the Treasury consider it appropriate in consequence of, or otherwise in connection with, the withdrawal of the United Kingdom from the EU, for the following Regulations to come into force on such day or days as the Treasury may by regulations under section 52 of that Act appoint.

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- (1) 1994 c. 23 ("the Act"); Section 96(1) of the Act defines "the Commissioners" as meaning "the Commissioners of Customs and Excise" and "regulations" as meaning regulations made by the Commissioners under the Act. The functions of the Commissioners of Customs and Excise were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(1) of the Commissioners for Revenue and Customs Act 2005 (c.11), section 50(1) of which provides that a reference to the Commissioners of Customs and Excise shall be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs. Section 16A was inserted by Schedule 8, paragraph 14 of the Taxation (Cross-border Trade) Act 2018 (c. 22) and commenced by S.I. 2018/1362.
- (2) 2018 c. 22.

PART 1

PRELIMINARY

Citation and commencement

1.—(1) These Regulations may be cited as the Value Added Tax (Postal Packets and Amendment) (EU Exit) Regulations 2018.

(2) These Regulations come into force on such day or days as the Treasury may by regulations under section 52(2) of the Taxation (Cross-border Trade) Act 2018 appoint.

Definitions

2.—(1) In these Regulations—

“VATA 1994” means the Value Added Tax Act 1994;

“TCTA 2018” means the Taxation (Cross-border Trade) Act 2018;

“import VAT” means value added tax chargeable by virtue of section 1(1)(c) of VATA 1994⁽³⁾ (importation of goods into the United Kingdom);

“marketplace operator”, in relation to an online marketplace, means the person who controls access to, and the contents of, the online marketplace;

“online marketplace” means a website, or any other means by which information is made available over the internet, through which persons other than the marketplace operator are able to offer goods for sale (whether or not the marketplace operator also does so);

“postal operator” means a person who provides—

- (a) the service of conveying postal packets from one place to another by post; or
- (b) any of the incidental services of receiving, collecting, sorting and delivering postal packets;

“postal packet” means a letter, parcel, packet or other article transmissible by post.

(2) In these Regulations a person is “UK-established” if the person has a business establishment or some other fixed establishment, in the United Kingdom in relation to a business carried on by the person.

Qualifying importations and excepted importations

3.—(1) In these Regulations a “qualifying importation” is made where—

- (a) a person (“the supplier”) agrees to supply goods for a consideration to a person (“the recipient”) in the course or furtherance of a business carried on by the supplier;
- (b) the supplier is not UK-established;
- (c) the goods are dispatched from a place outside the United Kingdom to the United Kingdom in a postal packet;
- (d) the value of the contents of the postal packet is £135 or less as determined by or under section 16 of TCTA 2018;
- (e) the postal packet does not contain goods of a class or description subject to any duty of excise; and

(3) 1994 c. 23; section 1(1)(c) was substituted by section 41(2) of the Taxation (Cross-border Trade) Act 2018 (c. 22) and has yet to be commenced.

(f) the postal packet is not declared for a special Customs procedure as defined in section 3(4) of TCTA 2018,
and “qualifying importation”, “supplier”, and “recipient” are to be interpreted in accordance with this paragraph.

(2) In these Regulations, a qualifying importation is an “excepted importation” if, in relation to that importation either—

- (a) the supplier ensures that a UK-established postal operator has a legally binding obligation (including an obligation that arises under a contract with the supplier or with another) to pay any import VAT that is chargeable on that qualifying importation to the Commissioners; or
- (b) a non UK-established postal operator has an obligation under an agreement with the Commissioners to pay any import VAT that is chargeable on that qualifying importation to the Commissioners.

Requirement, direction, demand, notice or permission

4.—(1) Any requirement, direction, demand, notice or permission by the Commissioners, under or for the purposes of these Regulations, may be made or given by a notice in writing, or otherwise.

(2) If any such communication in writing is to be served on, given to or made of any person for the purposes of these Regulations it may be served on, given to or made by means of electronic communications to the last known address for electronic communications of that person.

PART 2

LIABILITY FOR IMPORT VAT

Disapplication of VATA 1994 and TCTA 2018

5.—(1) Section 15(4) of VATA 1994(4) does not apply for the purposes of determining the person who is liable to pay import VAT for qualifying importations.

(2) Paragraphs 1 and 2 of Schedule 6 to TCTA 2018 do not apply to qualifying importations that are not excepted importations.

Liability for qualifying importations

6.—(1) Subject to paragraphs (2), (3) and (4), the supplier of goods which are the subject of a qualifying importation is liable to pay import VAT on that qualifying importation in accordance with these Regulations.

(2) Where an incorrect customs declaration is made in relation to a qualifying importation and the recipient knew, or ought reasonably to have known, that it was incorrect then the recipient (whether or not the relevant goods have been delivered) is jointly and severally liable for any import VAT payable by the supplier that is due on the qualifying importation.

(3) If a supplier makes a qualifying importation that is not an excepted importation and—

- (a) the postal packet is not accompanied by the supplier’s unique registration identifier (see regulation 7(3) (the register)); and

(4) 1994 c. 23; section 15 was substituted by section 41(3) of the Taxation (Cross-border Trade) Act 2018 (c. 22) and has yet to be commenced.

- (b) a postal operator who is designated as a universal service provider under section 35 of the Postal Services Act 2011(5) receives the postal packet in carrying out its function of providing a universal postal service under section 30 of that Act,

then, the recipient is jointly and severally liable for any import VAT payable by the supplier on the qualifying importation.

(4) For a qualifying importation that is an excepted importation under regulation 3(2)(a), the postal operator referred to in regulation 3(2)(a) is jointly and severally liable for the import VAT payable by the supplier on the excepted importation.

PART 3

REGISTRATION

The register

7.—(1) The Commissioners must keep a single register for the purposes of these Regulations.

(2) The register must contain such information as the Commissioners consider is required for the purposes of these Regulations.

(3) The Commissioners must allocate a unique registration identifier to a supplier who is registered in the register.

(4) The unique registration identifier may take any form specified by the Commissioners in a specific or general direction (including a form which is specifically designed for electronic communications).

(5) References to “register”, “registered”, “registration” and “unique registration identifier” in these Regulations are to be interpreted in accordance with this regulation.

Requirement to register

8.—(1) A supplier must be registered under these Regulations with effect from the date on which the first qualifying importation is dispatched by the supplier.

(2) “The first qualifying importation” in relation to any supplier is the first qualifying importation that is not an excepted importation that the supplier makes on or after the date on which this regulation comes into force in accordance with section 52(2) of TCTA 2018.

Notification of requirement to register

9.—(1) A supplier who is not registered under these Regulations and is required to be registered by virtue of regulation 8(1) must notify the Commissioners of that requirement on the date on which the first qualifying importation is dispatched by the supplier.

(2) Subject to regulation 11, where the Commissioners are satisfied that a supplier is required to be registered (whether or not the supplier has notified the Commissioners in accordance with paragraph (1)), the Commissioners must—

- (a) register the supplier with effect from the date on which the requirement to register arises; and
- (b) notify the supplier of the unique registration identifier that has been allocated to the supplier.

Application to be registered

10.—(1) Subject to regulation 11, the Commissioners must register a supplier who is not registered under these Regulations and is not required to be registered under regulation 8(1) where—

- (a) they are satisfied that the supplier intends to make a qualifying importation that is not an excepted importation; and
- (b) the supplier applies to the Commissioners for registration under this regulation.

(2) Where a supplier is entitled to be registered under paragraph (1), the Commissioners must—

- (a) register the supplier with effect from the date of the application or such earlier date as may be agreed between the Commissioners and the supplier; and
- (b) notify the supplier of the unique registration identifier that has been allocated to the supplier.

Refusal to register supplier

11. The Commissioners may refuse to register a supplier under regulation 9 or 10 if they consider it necessary to do so for the protection of the revenue.

Notification or application for registration generally

12.—(1) A notification of a requirement to be registered (pursuant to regulation 9) and an application to be registered (pursuant to regulation 10) must—

- (a) be made using electronic communications in such form and manner as specified by the Commissioners in a specific or general direction; and
- (b) provide such information and declarations as specified by the Commissioners in a specific or general direction.

(2) A supplier who is registered under these Regulations must notify the Commissioners of any changes to the information required under paragraph (1)(b) within 30 days of the change occurring.

(3) A notification under paragraph (2) must be given using electronic communications in such form and manner as specified by the Commissioners in a specific or general direction.

(4) The Commissioners may correct the register as they see fit.

Cancellation of registration

13.—(1) On the application of a supplier, where the Commissioners are satisfied that the supplier has ceased to make and does not intend to make qualifying importations that are not excepted importations, the Commissioners must cancel the registration of the supplier with effect from either

- (a) the date on which the application was made; or
- (b) such later date as may be agreed between the Commissioners and the supplier.

(2) An application under paragraph (1) must be made using electronic communications in such form and manner as specified by the Commissioners in a specific or general direction.

(3) The Commissioners may cancel a supplier's registration at any time if—

- (a) they are satisfied the supplier has ceased to make and does not intend to make qualifying importations that are not excepted importations; or
- (b) they consider it necessary to do so for the protection of the revenue.

PART 4

PENALTY

Penalty for failure to register

14. Any supplier who fails to register pursuant to regulation 8 is liable to a penalty of £1,000.

Reasonable excuse

15.—(1) Liability to a penalty under regulation 14 does not arise if the supplier satisfies the Commissioners or (on an appeal notified to the tribunal) the tribunal that there is a reasonable excuse for the failure.

(2) For the purposes of this regulation—

- (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside the supplier's control;
- (b) if the supplier relies on another person to do anything, that is not a reasonable excuse unless the supplier took reasonable care to avoid the failure;
- (c) if the supplier had a reasonable excuse for the failure but the excuse has ceased, the supplier is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

Assessment of penalties

16.—(1) If a supplier becomes liable to a penalty under regulation 14, the Commissioners may assess the penalty.

(2) An assessment of a penalty under regulation 14 must be made within the period of 12 months beginning with the date on which the Commissioners ascertained that the supplier became liable to the penalty and must be notified to the supplier.

Enforcement of penalties

17.—(1) A penalty under this Part must be paid before the end of the period of 30 days beginning with the date on which notification under regulation 16 is given in respect of the penalty.

(2) A penalty assessed and notified to a supplier under this Part is recoverable as if it were VAT due from the supplier (unless, or except to the extent that, the assessment is withdrawn or reduced).

PART 5

UNIQUE REGISTRATION IDENTIFIER

Requirement to display unique registration identifier

18. If a supplier makes a qualifying importation that is not an excepted importation, the supplier must ensure that the supplier's unique registration identifier accompanies the postal packet.

PART 6

RETURNS AND PAYMENTS

Obligation to submit postal packet returns

19.—(1) A supplier who is or is required to be registered under these Regulations must make a return (referred to as a “postal packet return”) to the Commissioners for each accounting period no later than the first calendar day after the last day of the month next following the end of the period to which the postal packet return relates.

(2) The postal packet return must—

- (a) show the total amount of import VAT due for qualifying importations that are not excepted importations for which the supplier is liable in that accounting period;
- (b) be dated and made using electronic means in a form and manner specified by the Commissioners in a specific or general direction;
- (c) include the matters specified by the Commissioners in a specific or general direction; and
- (d) include a declaration by the supplier that the matters stated in the postal packet return are true and accurate.

(3) Subject to paragraph (4), an “accounting period” is a period of three months ending on the dates notified to a supplier by the Commissioners on registration or otherwise.

(4) The Commissioners may—

- (a) allow or direct a supplier to make postal packet returns in respect of accounting periods that are longer or shorter than three months; or
- (b) vary the length of any accounting period or the date on which any accounting period begins or ends.

(5) The Commissioners will only treat a postal packet return as having been made if it is made in the form and manner specified pursuant to paragraph (2)(b).

(6) A direction under paragraph (2)(b) must ensure (by any reasonable means) that the receipt of a postal packet return may be electronically validated (“the electronic validation process”).

(7) Unless the supplier proves to the contrary—

- (a) the time of making a postal packet return is presumed to be the time recorded by the electronic validation process;
- (b) a postal packet return is presumed to have been made only if the making of the postal packet return has been successfully recorded by the electronic validation process; and
- (c) the person delivering the return to the Commissioners is presumed to be the person identified as such by any relevant feature of the electronic validation system.

Payments

20.—(1) A supplier who is required to make a postal packet return for an accounting period must pay to the Commissioners the total amount of import VAT for qualifying importations that are not excepted importations which the supplier is liable for in that accounting period.

(2) The supplier must make the payment required by paragraph (1) not later than the last day on which the supplier is required to make the postal packet return in accordance with regulation 19(1).

(3) A payment under this regulation must be made in such manner and using such means (including electronic means) as specified by the Commissioners in a specific or general direction.

Correction of errors

21.—(1) This regulation applies where a supplier has made a postal packet return to the Commissioners which overstates or understates the supplier's liability to import VAT due to an error.

(2) The supplier must account for the amount of import VAT which has been overstated or understated in the manner provided for by the Commissioners in regulation 19(2)(b) in the next postal packet return that the supplier makes after discovering the error.

(3) Where the supplier discovers the error at a time when the supplier has no obligation to make a postal packet return, the supplier—

- (a) may make an application for a refund of the import VAT that has been overstated;
- (b) must account for the import VAT that has been understated.

(4) An application under paragraph (3)(a) and an account under paragraph (3)(b) must be made in the form and manner as specified by the Commissioners in a specific or general direction.

(5) A supplier—

- (a) is not required to correct an overstatement of import VAT pursuant to paragraph (1); and
- (b) may not make an application for a refund pursuant to paragraph (3)(a),

more than four years after the end of the accounting period in which the error was made.

Record keeping

22.—(1) A supplier must keep such records in connection with qualifying importations as are specified by the Commissioners in a specific or general direction.

(2) The records specified in a direction made under paragraph (1) must be kept for a period of six years from the date of the last qualifying importation to which they relate.

(3) The supplier must provide copies of those records or any parts of those records to the Commissioners on request.

(4) The copies requested under paragraph (3) must be—

- (a) provided using electronic communications; and
- (b) provided within 30 days beginning with the date on which the request is made.

Assessments

23.—(1) Sections 73, 74, 76 and 77 of VATA 1994(6) apply for the purposes of these Regulations but subject to the following modifications.

(2) Section 73 of VATA 1994 (failure to make returns etc) is to be read as if—

- (a) the reference in subsection (1) to returns required under VATA 1994 included postal packet returns; and

(6) Section 73 was amended by paragraphs 10 and 11 of Schedule 3 to the Finance Act 1996 (c. 8), section 136(4) of the Finance Act 2000 (c. 17), section 120(1) of the Finance Act 2008 (c. 9), paragraph 8 of Schedule 28 to the Finance Act 2012 (c. 14) and paragraph 12(2) of Schedule 1 to S.I. 2016/1034. Section 74 was amended by section 197(6) and Part 8 of Schedule 41 to the Finance Act 1996 (c. 8), section 136(5) of the Finance Act 2000 (c. 17), paragraph 5 of the Schedule to S.I. 2010/530 and paragraph 9 of Schedule 28 to the Finance Act 2012 (c. 14). Section 76 was amended by section 35(7) and paragraph 11 of Schedule 3 to the Finance Act 1996 (c. 8), section 45(6) of the Finance Act 1997 (c. 16), section 93(5), (6) and (7) and Part 5(4) of Schedule 27 to the Finance Act 2007 (c. 11), paragraph 13 of Schedule 22 to the Finance Act 2014 (c. 26), paragraph 12(4) of Schedule 1 to S.I. 2016/1034 and section 68(4) of the Finance (No. 2) Act 2017 (c. 32). Section 77 was amended by section 18 of the Finance Act 1999 (c. 16), paragraph 34 of Schedule 39 to the Finance Act 2008 (c. 9), paragraph 10 of Schedule 28 to the Finance Act 2012 (c. 14), paragraph 15 of Schedule 22 to the Finance Act 2014 (c. 26) and paragraph 51 of Schedule 17 to the Finance (No. 2) Act 2017 (c. 32). These sections were amended by paragraphs 64, 65, 67 and 69 of Schedule 8 to the Taxation (Cross-border Trade) Act 2018 (c. 22) and these amendments have yet to be commenced.

- (b) references to a prescribed accounting period included an accounting period in relation to which a postal packet return must be made under these Regulations.
- (3) References to a prescribed accounting period in the following provisions of VATA 1994 are to be read in accordance with the modifications made by paragraph (2)—
 - (a) section 74 (interest on VAT recovered or recoverable by assessment);
 - (b) section 76 (assessment of amounts due by way of penalty, interest or surcharge);
 - (c) section 77 (assessment: time limits and supplementary assessments).
- (4) Section 76(4) of VATA 1994 is to be read as if the words “or importation” were inserted after “or the supply”.
- (5) Section 77(1)(a) and (4) of VATA 1994 are both to be read as if they contained no reference to importation.

PART 7

JOINT AND SEVERAL LIABILITY

Joint and several liability of marketplace operators of online marketplaces

- 24.**—(1) This regulation applies where a supplier —
- (a) makes qualifying importations that are not excepted importations in relation to goods supplied for a consideration through an online marketplace; and
 - (b) fails to comply with any requirement imposed on the supplier by or under these Regulations (whether or not the requirement relates to those importations).
- (2) The Commissioners may give the person who is the operator of the online marketplace (“the marketplace operator”) a notice—
- (a) stating that, unless the marketplace operator secures the result mentioned in paragraph (3), paragraph (5) will apply; and
 - (b) explaining the effect of paragraph (5).
- (3) The result referred to in paragraph (2)(a) is that the supplier does not offer goods for sale through the online marketplace at any time between—
- (a) the end of such period as may be specified in the notice; and
 - (b) the notice ceasing to have effect.
- (4) If the marketplace operator does not secure the result mentioned in paragraph (3), paragraph (5) applies.
- (5) The marketplace operator is jointly and severally liable to the Commissioners for the amount of import VAT payable by the supplier in respect of qualifying importations that are not excepted importations made by the supplier through the online marketplace in the period for which the notice has effect.
- (6) A notice under paragraph (2) (“the liability notice”) has effect for the period beginning with the day after the day on which it is given, and ending—
- (a) with the day specified in the notice given by the Commissioners under paragraph (7); or
 - (b) in accordance with paragraph (8).
- (7) The Commissioners may at any time give the marketplace operator a notice stating that the period for which the liability notice has effect ends with the day specified in the notice.

(8) If the person to whom the liability notice is given ceases to be the marketplace operator of the online marketplace, the liability notice ceases to have effect at the end of—

- (a) the day on which the person ceases to be the marketplace operator; or
- (b) (if later) the day on which the person notifies the Commissioners that the person is no longer the marketplace operator.

Assessments under regulation 24

25.—(1) The Commissioners may assess the amount of import VAT due from the marketplace operator of an online marketplace by virtue of regulation 24 to the best of their judgment and notify it to the marketplace operator.

(2) Subject to paragraphs (3) to (6), an assessment may be made for such period or periods as the Commissioners consider appropriate.

(3) An assessment for any period may not be made after the end of—

- (a) two years after the end of that period; or
- (b) (if later) one year after evidence of facts, sufficient in the opinion of the Commissioners to justify the making of an assessment for that period, comes to their knowledge.

(4) Paragraph (5) applies if, after the Commissioners have made an assessment for a period, evidence of facts sufficient in the opinion of the Commissioners to justify the making of a further assessment for that period comes to their knowledge.

(5) The Commissioners may, no later than one year after that evidence comes to their knowledge, make a further assessment for that period (subject to paragraph (6)).

(6) An assessment or further assessment for a period may not be made more than four years after the end of the period.

(7) An amount which has been assessed and notified to a person under this regulation is deemed to be an amount of import VAT due from the person and may be recovered accordingly (unless, or except to the extent that, the assessment is subsequently withdrawn or reduced).

Interest

26.—(1) If an amount assessed under regulation 25 is not paid before the end of the period of 30 days beginning with the day on which notice of the assessment is given, the amount assessed carries interest from the day on which the notice of assessment is given until payment.

(2) Interest under this regulation is payable at the rate applicable under section 197 of the Finance Act 1996(7).

(3) Where the marketplace operator of an online marketplace is liable for interest under this regulation the Commissioners may assess the amount due and notify it to the marketplace operator.

(4) A notice of assessment under this regulation must specify a date (not later than the date of the notice) to which the interest is calculated.

(5) A further assessment or assessments may be made under this regulation in respect of any interest accrued after that date.

(6) An amount of interest assessed and notified to the marketplace operator of an online marketplace under this regulation is recoverable as if it were VAT due from the marketplace operator (unless, or except to the extent that, the assessment is withdrawn or reduced).

(7) 1996 c. 8. There are amendments to section 197 but none are relevant to these Regulations.

PART 8

DISCLOSURE OF REGISTRATION DETAILS

Disclosure of specified information

27. The Commissioners may disclose the information in regulation 28 to a person in response to an enquiry made to them by that person which specifies a unique registration identifier.

Specified information

28. The information is—

- (a) whether or not the specified unique registration identifier is allocated to a supplier registered in the register; and
- (b) the name and address of the supplier to whom the unique registration identifier is allocated.

PART 9

APPEALS

Right of appeal

29.—(1) An appeal lies to a tribunal with respect to any of the following—

- (a) the registration of a supplier under regulation 10, the refusal to register a supplier under regulation 11 or the cancellation of registration of a supplier under regulation 13;
- (b) any liability to a penalty under regulation 14 or any assessment of a penalty under regulation 16;
- (c) a refusal to make a repayment under regulation 21(3); and
- (d) an assessment under regulations 23, 25 or 26.

(2) Part 5 of VATA 1994 (Reviews and Appeals), and any orders or regulations made under that Part, apply for the purposes of these Regulations subject to the following modifications—

- (a) an appeal under paragraph (1) is to be treated as an appeal which lies to the tribunal under section 83(1) of VATA 1994(8) (but not under any particular paragraph of that subsection); and
- (b) section 84 of VATA 1994(9) is to apply as if subsections (3) and (5) include a reference to appeals against decisions relating to matters mentioned in paragraphs (1)(b) and (d).

(8) Section 83 was amended by section 31(3) and paragraph 12 of Schedule 3 to the Finance Act 1996 (c. 8), sections 45(2), 46(3) and 47(7) of the Finance Act 1997 (c. 16), S.I. 1997/2542, paragraph 3 of Schedule 2 to the Finance Act 1999 (c. 16), section 137(5) of the Finance Act 2000 (c. 17), sections 23(2) and 24(4)(b) of the Finance Act 2002 (c. 23), sections 17(6) and 18(2) of the Finance Act 2003 (c. 14), section 22(3) and paragraph 4 of Schedule 2 to the Finance Act 2004 (c. 12), section 4(5) of the Finance (No. 2) Act 2005 (c. 22), section 21(4) of the Finance Act 2006 (c. 25), section 93(8) of the Finance Act 2007 (c. 11), article 3(2) of S.I. 2008/1146, paragraph 219 of Schedule 1 to S.I. 2009/56, section 77(4) of the Finance Act 2009 (c. 10), section 200(3) of the Finance Act 2012 (c. 14), section 124(3) of the Finance Act 2016 (c. 24), sections 62(5) and section 68(5) of the Finance (No. 2) Act 2017 (c. 32) and paragraph 72 of Schedule 8 to the Taxation (Cross-border Trade) Act 2018 (c. 22) which has yet to be commenced.

(9) Section 84 was amended by section 31(4) of the Finance Act 1996 (c. 8), section 31(3) of the Finance Act 1997 (c. 16), paragraph 4 of Schedule 2 to the Finance Act 1999 (c. 16), section 23(3) of the Finance Act 2002 (c. 23), section 17(7) of the Finance Act 2003 (c. 14), paragraph 5 of Schedule 2 to the Finance Act 2004 (c. 12), section 21(5) of the Finance Act 2006 (c. 25), section 93(9) of the Finance Act 2007 (c. 11), article 3(3) of S.I. 2008/1146, paragraph 221 of Schedule 1 to S.I. 2009/56, paragraph 17 of Schedule 22 of the Finance Act 2014 (c. 26), section 124(4) of the Finance Act 2016 (c. 24) and paragraph 73 of Schedule 8 to the Taxation (Cross-border Trade) Act 2018 (c. 22) which has yet to be commenced.

(3) Where an appeal under paragraph (1)(a) concerns a decision which has been made on the grounds that the Commissioners—

(a) are not satisfied that the supplier intends to make a qualifying importation that is not an excepted importation (see regulation 10(1)(a)); or

(b) consider it necessary for the protection of the revenue (see regulations 11 and 13(3)(b)), the tribunal must not allow the appeal unless it considers that the Commissioners could not reasonably have been satisfied there were grounds for making the decision that is the subject of the appeal.

PART 10

AMENDMENTS

Amendment of the Value Added Tax (Imported Goods) Relief Order 1984

30. The Value Added Tax (Imported Goods) Relief Order 1984(10) is amended as follows.

31. In Group 8 of Schedule 2, omit Item 8 and Notes (2) and (3).

17th December 2018

Jim Harra
Melissa Tatton
Two of the Commissioners for Her Majesty's
Revenue and Customs
Paul Maynard
Mike Freer
Two of the Lords Commissioners of Her
Majesty's Treasury

17th December 2018

(10) S.I. 1984/746 as amended by section 77 of the Finance Act 2011 (c. 11) and article 2 of S.I. 2014/2364, there are other amending instruments but none is relevant.

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Value Added Tax (Postal Packets and Amendment) (EU Exit) Regulations 2018 (“the Regulations”) make provision in relation to the liability to import VAT on the importation of goods from places outside the United Kingdom in postal packets whose contents are valued at £135 or less.

Regulation 1 provides for commencement and regulation 2 lists definitions of terms used in the Regulations.

Regulation 3 defines, in relation to importations of postal packets to which the Regulations apply, qualifying importations and excepted importations.

Regulation 4 provides that any requirement, direction, demand, notice or permission by the Commissioners under these Regulations may be made or given by a notice in writing, or otherwise, including by electronic communications to the last known address for electronic communications of a person.

Regulation 5 disapplies section 15(4) of the Value Added Tax Act 1994 (c.23) (“VATA 1994”) in relation to the determination of the person liable to import VAT in the case of qualifying importations. It also disapplies paragraphs 1 and 2 of Schedule 6 to the Taxation (Cross-border Trade) Act 2018 (c.22) which provides rules relating to the liability to pay import duty in the case of qualifying importations that are not excepted importations.

Regulation 6 makes the supplier of the goods which are the subject of a qualifying importation (“the supplier”) liable to pay VAT on the importation. It also provides for joint and several liability for import VAT in certain circumstances. The recipient of the goods will be jointly and severally liable with the supplier where an incorrect customs declaration is made which the recipient knew or should have known was incorrect and where a postal packet which is not accompanied by the supplier’s unique registration identifier is to be delivered by a postal operator acting in its capacity as a universal service provider. A UK-established postal operator will be jointly and severally liable with the supplier if the supplier has ensured that the postal operator has a legally binding obligation to pay the import VAT to the Commissioners.

Regulation 7 requires the Commissioners of Her Majesty’s Revenue and Customs (“the Commissioners”) to create and maintain a register of suppliers for the Regulations, and to allocate a unique registration identifier to suppliers who are registered.

Regulation 8 requires a supplier who makes qualifying importations that are not excepted importations to register pursuant to the Regulations with effect from the date of the supplier’s first qualifying importation that is not an excepted importation which occurs after the regulation comes into force in accordance with the commencement provisions in regulation 1(2).

Regulation 9 sets out the notification requirements for a supplier who is required to register and the requirement for the Commissioners to register the supplier who is entitled to be registered and to notify them of their unique registration identifier.

Regulation 10 allows a supplier who is not required to register to do so voluntarily if the supplier intends to make qualifying importations that are not excepted importations.

Regulation 11 allows the Commissioners to refuse to register a supplier if they consider it necessary for the protection of the revenue.

Regulation 12 sets out general requirements for the notification of a requirement to register and the voluntary registration procedure.

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Regulation 13 allows the Commissioners to cancel the registration of a supplier if the Commissioners are satisfied the supplier has ceased to make and does not intend to make qualifying importations that are not excepted importations. The Commissioners may also cancel the registration of a supplier if they consider it necessary to do so for the protection of the revenue.

Regulation 14 provides for a penalty where a supplier who is liable to be registered fails to register under the Regulations.

Regulation 15 provides that a supplier will not be liable to a penalty if the supplier satisfies the Commissioners, or on appeal the tribunal, that there is a reasonable excuse for the failure to register.

Regulations 16 and 17 make provision for the assessment and enforcement of penalties.

Regulation 18 requires a supplier who makes a qualifying importation that is not an excepted importation to ensure that the supplier's unique registration identifier accompanies the postal packet.

Regulation 19 requires a supplier registered under the Regulations to submit returns called 'postal packet returns' by electronic means to show the amount of import VAT due on qualifying importations by reference to accounting periods of three months, or such other period as the Commissioners may allow or direct. The Commissioners may direct the form and manner in which the returns are to be made and must provide for the means by which the receipt of the return is to be electronically validated. There is a rebuttable presumption that the return is made at the time recorded by the electronic validation process.

Regulation 20 requires a supplier to pay any import VAT due as shown on its postal packet return no later than the date on which the supplier is required to submit that return.

Regulation 21 makes provision for the correction of errors in returns and accounting and specifies the relevant time limits.

Regulation 22 requires a supplier to keep records in connection with qualifying importations made by the supplier for a period of six years and to provide copies of them to the Commissioners if requested.

Regulation 23 applies sections 73, 74, 76 and 77 of VATA 1994 for the purposes of the Regulations with specified modifications.

Regulation 24 allows the Commissioners to send a notice to the operator of an online marketplace where a supplier who makes qualifying importations that are not excepted importations in relation to goods supplied for a consideration through that online marketplace has not complied with any requirement of these Regulations. The notice provides that unless the operator of the online marketplace removes the supplier from the online marketplace within the time specified in the notice, the operator will be jointly and severally liable for any import VAT payable by the supplier on qualifying importations that are not excepted importations made by the supplier through the online marketplace.

Regulation 25 allows the Commissioners to assess the amount of import VAT due from the operator of the online marketplace under regulation 24 to the best of their judgment.

Regulation 26 provides for interest to be charged if an amount assessed under regulation 25 is not paid within 30 days beginning with the day on which the notice of assessment is given.

Regulations 27 and 28 provide that a person may submit an enquiry to the Commissioners regarding a unique registration identifier. The Commissioners may then disclose whether the identifier belongs to a supplier registered in the register kept under these Regulations and, if so, the name and address of that supplier.

Regulation 29 provides that a right of appeal lies to a tribunal with respect to the registration or the cancellation of the registration of a supplier, the refusal to register a supplier, any liability for or assessment of a penalty, the Commissioner's refusal to make a repayment and any assessment. The regulation applies Part 5 of VATA 1994 (review and appeals procedure) for the purposes of these Regulations with specified modifications.

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Regulations 30 and 31 amend the Value Added Tax (Imported Goods) Relief Order 1984 by removing the low value consignment relief which exempted packages valued at £15 or less from import VAT.

This instrument will be covered by a HMRC impact assessment which will be published and available on the website at <https://www.gov.uk/collections/customs-vat-and-excise-regulations-leaving-the-eu-with-no-deal>.