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STATUTORY INSTRUMENTS

2021 No. 1164

VALUE ADDED TAX

The Value Added Tax (Distance Selling and Miscellaneous Amendments) Regulations 2021

		<i>at 11.15 a.m. on 25th</i>
<i>Made</i>	- - - -	<i>October 2021</i>
<i>Laid before the House of</i>		<i>at 4.00 p.m. on 25th</i>
<i>Commons</i>	- - - -	<i>October 2021</i>
<i>Coming into force</i>	- -	<i>1st December 2021</i>

The Treasury make these Regulations in exercise of the powers conferred by section 40A(7) and (9) of the Value Added Tax Act 1994⁽¹⁾, section 51(1)(a) of the Taxation (Cross-border Trade) Act 2018⁽²⁾ and section 96(1)(a) of the Finance Act 2021⁽³⁾.

In accordance with section 51(1)(a) of the Taxation (Cross-border Trade) Act 2018, the Treasury consider it appropriate to make provision in regulations 23 to 30 and 32 to 34 relating to value added tax in consequence of, or otherwise in connection with, the withdrawal of the United Kingdom from the EU.

In accordance with section 96(1)(a) of the Finance Act 2021, the Treasury consider it appropriate in relation to the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement⁽⁴⁾ to make provision in regulations 27, 31, 35 and 36 relating to value added tax for the purpose of, or in connection with, giving effect to Council Directive (EU) 2017/2455⁽⁵⁾ of 5 December 2017 amending [Directive 2006/112/EC](#)⁽⁶⁾ and [Directive 2009/132/EC](#)⁽⁷⁾ as regards certain value added tax obligations for supplies of services and distance sales of goods.

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- (1) [1994 c. 23](#). Section 40A, and Schedules 9ZA and 9ZB, were inserted by Part 1 of Schedule 2 to the Taxation (Post-Transition Period) Act 2020 ([c. 26](#)). Subsections (7) to (9) of Section 40A were inserted by the Finance Act 2021 ([c. 26](#)).
- (2) [2018 c. 22](#). Section 51(1)(a) permits the “appropriate Minister” to make provision relating to value added tax and under section 51(4)(b) “the appropriate Minister” means the Treasury.
- (3) [2021 c. 26](#).
- (4) 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>.
- (5) OJ L 348, 29.12.2017, p. 7-22. This Directive amended Council Directive (EU) [2006/112/EC](#) to make provision in relation to distance selling. Further provision amending Council Directive (EU) [2006/112/EC](#) has been made in connection with distance selling in Council Directive (EU) 2019/1995 of 21 November 2019 (OJ L 310, 2.12.2019, p. 1-5).
- (6) OJ L 347, 11.12.2006, p. 1-118, as last amended by Council Directive (EU) 2021/1159 of 13 July 2021 (OJ L 250, 15.7.2021).
- (7) OJ L 292, 10.11.2009, p. 5-30

Citation and Commencement

1. These Regulations may be cited as the Value Added Tax (Distance Selling and Miscellaneous Amendments) Regulations 2021 and come into force on 1st December 2021.

PART 1

Amendments to the Value Added Tax Act 1994

Amendments to Schedule 9ZD to the Value Added Tax Act 1994

2. Schedule 9ZD to the Value Added Tax Act 1994⁽⁸⁾ (distance selling of goods from Northern Ireland: special accounting scheme) is amended as follows.

3. In paragraph 2 (“scheme supply”) omit “(and references to a “third country” and “third territory” were read accordingly as including Great Britain)”.

4. In paragraph 4(3) (persons who may be registered) omit “otherwise”.

5.—(1) Paragraph 10 (liability to pay non-UK VAT to Commissioners) is amended as follows.

(2) In the heading omit “non-UK”.

(3) For sub-paragraph (3), substitute—

“(3) The gross amount of VAT on the supply is determined in accordance with sub-paragraphs (4) and (5), without any deduction of VAT pursuant to Article 168 of the VAT Directive⁽⁹⁾.

(4) If the supply is treated as made in the United Kingdom, the amount is the amount of VAT that would be charged on the supply on the assumption for all purposes of this Act relating to the determination of—

(a) whether or not VAT is chargeable under this Act on the supply,

(b) how much VAT is chargeable under this Act on the supply, and

(c) any other matter that the Commissioners may specify by regulations,

that P is registered under this Act.

(5) If the supply is treated as made in a member State, the amount is the amount of VAT charged on the supply in accordance with the law of that member State.”.

6.—(1) Paragraph 14 (availability of records) is amended as follows.

(2) In sub-paragraph (1)—

(a) after “must” insert “keep and”;

(b) omit “any”;

(c) omit the words from “P is keeping” to the end.

(3) In sub-paragraph (3), for the words from “kept in accordance” to the end substitute “, of transactions entered into by P covered by the scheme, containing the information referred to in Article 63c(1) of the Implementing Regulation⁽¹⁰⁾”.

⁽⁸⁾ Schedules 9ZD to 9ZF to the Value Added Tax Act 1994 were inserted by Schedule 18 to the Finance Act 2021.

⁽⁹⁾ The “VAT Directive” is defined in paragraph 38(1) of Schedule 9ZD to the Value Added Tax Act 1994 as meaning Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

⁽¹⁰⁾ The “Implementing Regulation” is defined in paragraph 38(1) of Schedule 9ZD as meaning Council Implementing Regulation (EU) No 282/2011. (OJ L 77, 23.3.2011, p. 1-22, as last amended by Commission Implementing Regulation (EU) 2020/1112 of 20 July 2020 (OJ L 244, 29.7.2020, p. 9-10)).

7. In Part 4 (persons registered under non-UK special accounting schemes), after paragraph 21 insert—

“21A. Availability of records

(1) A person (“P”) who is a participant in a non-UK special scheme must keep and make available to the Commissioners, on request, obligatory records.

(2) The records must be made available by electronic means.

(3) In sub-paragraph (1) “obligatory records” means records, of transactions entered into by P covered by the scheme, containing the information referred to in Article 63c(1) of the Implementing Regulation.”.

Amendments to Schedule 9ZE to the Value Added Tax Act 1994

8. Schedule 9ZE to the Value Added Tax Act 1994 (distance selling of goods imported to Northern Ireland: special accounting scheme) is amended as follows.

9. In paragraph 10 (liability to pay VAT to Commissioners) omit sub-paragraph (5).

10.—(1) Paragraph 14 (availability of records) is amended as follows.

(2) In the heading, at the end insert “: persons registered under the IOSS scheme”.

(3) In sub-paragraph (1)—

(a) after “must” insert “keep and”;

(b) omit “any”;

(c) omit the words from “P is keeping” to the end.

(4) In sub-paragraph (3), for the words from “kept in accordance” to the end substitute “, of transactions entered into by P covered by the scheme, containing the information referred to in Article 63c(2) of the Implementing Regulation(11).”.

11. In Part 4 (collection etc of UK VAT), after paragraph 30 insert—

“30A. Availability of records: participants in a special scheme (other than the IOSS scheme)

(1) A person (“P”) who is a participant in a special scheme (other than the IOSS scheme) must keep and make available to the Commissioners, on request, obligatory records.

(2) The records must be made available by electronic means.

(3) In sub-paragraph (1) “obligatory records” means records, of transactions entered into by P covered by the scheme, containing the information referred to in Article 63c(2) of the Implementing Regulation.”.

12. In paragraph 34(3) (registration under this Act)—

(a) for the words before paragraph (a) substitute “A supply made by a participant in a special scheme is a “relevant supply” if—”;

(b) in paragraph (a), for “supplies” substitute “supply”;

(c) in paragraph (b), for “supplies are” substitute “supply is”.

13. After paragraph 36 insert—

“36A. No VAT chargeable on supplies by special scheme participants not registered for VAT

36A. Where a person (“P”)—

(11) The “Implementing Regulation” is defined in paragraph 43(1) of Schedule 9ZE as meaning Council Implementing [Regulation \(EU\) No 282/2011](#).

- (a) has a business establishment, or some other fixed establishment, in the United Kingdom or the Isle of Man in relation to a business carried on by P,
 - (b) makes a qualifying supply of goods that is treated as made in the United Kingdom,
 - (c) is a participant in a special scheme when the supply is made, and
 - (d) is not registered, or liable to be registered, under Schedule 1,
- no VAT is chargeable on the supply under this Act.”.

14.—(1) Paragraph 37 (no import VAT chargeable on qualifying supplies of goods) is amended as follows.

- (2) The existing text becomes sub-paragraph (1).
 - (3) In the opening words of that sub-paragraph, after “Great Britain” insert “or the Isle of Man”.
 - (4) In paragraph (a) of that sub-paragraph, after “that importation” insert “or removal”.
 - (5) In paragraph (b) of that sub-paragraph, for “registered under the IOSS scheme” substitute “a participant in a special scheme”.
 - (6) After that sub-paragraph insert—
- “(2) The Commissioners may by means of a notice published by them make provision about the procedures that must be followed or the conditions that must be complied with to satisfy them that an importation or removal falls within sub-paragraph (1)(12).”.

15. In paragraph 38(2)(c) (time and place of supply of goods) for “registered under the IOSS scheme” substitute “a participant in a special scheme”.

16.—(1) Paragraph 39 (place of supply of goods: supplies facilitated by online marketplaces) is amended as follows.

- (2) Omit sub-paragraphs (1) and (2).
- (3) In sub-paragraphs (3) and (5), in each place it occurs, for “registered under the IOSS scheme” substitute “a participant in a special scheme”.

17. In paragraph 41(1) (refund of UK VAT), for “person registered under the IOSS scheme” substitute “participant in a special scheme”.

18. In paragraph 43(1) (interpretation), in the definition of “special scheme”, for paragraph (a) substitute—

- “(a) the IOSS scheme, or”.

Amendments to Schedule 9ZF to the Value Added Tax Act 1994

19. Schedule 9ZF to the Value Added Tax Act 1994 (modifications etc in connection with Schedules 9ZD and 9ZE) is amended as follows.

20. After paragraph 1 insert—

“**1A.** Section 3 (taxable persons and registration) has effect as if, after subsection (4), there were inserted—

(12) A public notice made under paragraph 37(2) of Schedule 9ZE to the Value Added Tax Act 1994 will be made available on the www.gov.uk website as described in that link. Free of charge hard copies will be available on request from the HMRC helpline on 0300 200 3700 (+44 2920 501 2621 for outside the UK requests) or by writing to— BT VAT, HM Revenue and Customs, BX9 1WR, United Kingdom.