

## New Clause 17 and Schedule 1: VAT and distance selling: Northern Ireland

### Summary

1. This clause and Schedule introduce amendments to value added tax legislation to implement two special accounting schemes known as the One Stop Shop and the Import One Stop Shop. These changes are required by the Northern Ireland Protocol. The Schedule also provides that the Treasury may by regulations, make further changes in consequence of this section or Schedule, including amending or revoking the provision of any Act, and the making of transitional, transitory, saving, supplementary or incidental provision.

### Details of the clause

2. Subsection 1 introduces a Schedule that makes provision, as a result of the Northern Ireland Protocol, for the treatment of value added tax ("VAT") and distance selling. This Schedule is in four parts:
  - a. Part 1 makes provision to amend the criteria for registration under Part 9 of Schedule 9ZA of the Value Added Tax Act 1994 ("VATA") and amending the application of the place of supply rules in Part 5 of Schedule 9ZB to VATA.
  - b. Part 2 makes provision for implementing the European Union ("EU") special accounting schemes known as the One Stop Shop ("OSS") and the Import One Stop Shop ("IOSS").
  - c. Part 3 makes provision amending Part 2 of Schedule 9ZC to VATA which dealt with modifications of the Value Added Tax (Imported Goods) Order 1984 as this has been replaced by the IOSS scheme.
  - d. Part 4 makes provision for supplies of goods facilitated by online marketplaces from persons established outside the United Kingdom.
3. Subsection 2 provides that the Treasury may by regulations, make such provision as they consider appropriate in consequence of this section or Schedule, including a provision that amends or revokes any provision of any Act whenever made or passed (including this Act and any Act amended by it).
4. Subsection 3 provides that the Treasury may by regulations make provision, by statutory instrument, for transitional, transitory, saving, supplementary or incidental provision as they consider appropriate in connection with these changes coming into effect.
5. Subsection 4 provides that regulations made under subsections 2 and 3 may confer on a person specified in the regulations, a discretion to do anything under,

or for the purposes of, the regulations. It also allows for regulations to make provision by reference to things specified in a notice published in accordance with the regulations and to make different provision for different purposes or areas.

6. Subsection 5 provides that a statutory instrument containing regulations made under subsection 2 is subject to annulment in pursuance of a resolution of the House of Commons.
7. Subsection 6 provides that subsections 2 to 5, 6, 7 and 8 come into force on the day the Act is passed, together with subsection 1 and Schedule 1 so far as they make provision for anything to be done by regulations, directions or public notice.
8. Subsection 7 provides that for all remaining purposes subsection 1 and Schedule 1 shall come into force on a day the Treasury may, by regulations, appoint by statutory instrument.
9. Subsection 8 provides that regulations under subsection 7 may appoint different days for different purposes.

## Details of Schedule 1

10. Part 1 of the Schedule: Paragraph 1 sets out that Part 9 (value added tax on acquisitions in Northern Ireland from Member States: registration in respect of distance sales) of Schedule 9ZA to VATA is to be amended by subsequent paragraphs.
11. Paragraph 2 amends paragraph 48 (liability to be registered) of Schedule 9ZA to VATA. This requires a person who has a single place of establishment in Northern Ireland or a member State and who makes supplies of services or goods to customers in an EU member State or Northern Ireland (but not in the same place as the supplier) which exceed £8,818 in value in the period 1 July 2021 to 31 December 2021 or from 1 January to 31 December of any subsequent year, to register for distance selling.
12. Paragraph 3 amends paragraph 49 (ceasing to be liable to be registered) of Schedule 9ZA to VATA to determine when a person registered for distance selling ceases to be so liable.
13. Paragraph 4 makes consequential changes to paragraph 29 (distance selling between EU and Northern Ireland: place of supply) of Schedule 9ZB to VATA to determine that the place of supply of goods sold under the distance selling rules is the United Kingdom (“UK”).
14. Part 2 of the Schedule: Paragraph 5 amends section 40A to VATA (Northern Ireland Protocol) to insert three new Schedules into VATA. The first is Schedule 9ZD which establishes a special accounting scheme (the One-Stop Shop or “OSS scheme”) for use by persons making intra-Community distance sale of goods from Northern Ireland to member States including making provision about corresponding schemes in member States. The second is Schedule 9ZE which

establishes a special accounting scheme (the Import One-Stop Shop or “IOSS scheme”) for use by persons supplying imported goods to Northern Ireland or into the European Union including making provision about corresponding schemes in member States. The third is Schedule 9ZF which makes provision modifying other provisions and enactments in connection with the provision made in Schedules 9ZD and 9ZE. Finally, this Paragraph provides that the Treasury may amend Schedules 9ZD, 9ZE and Parts 1 and 2 of 9ZF (which modify VATA and other Acts of Parliament) by regulations including making incidental, supplemental, consequential and transitional provision in connection with any amendment of Schedule 9ZD or 9ZE as the Treasury think fit. The Commissioners of Her Majesty’s Revenue and Customs (“Commissioners”) may by regulations, amend Part 3 of Schedule 9ZF and make such further provision as they consider appropriate about the administration, collection or enforcement of VAT due under Schedules 9ZD and 9ZE.

15. Paragraph 6 inserts new Schedules 9ZD, 9ZE and 9ZF into VATA.

**Schedule 9ZD: Distance selling of goods from Northern Ireland: Special Accounting Scheme**

16. Part 1 (paragraphs 1-2) of Schedule 9ZD sets out the structure of new Schedule 9ZD and paragraph 2 defines a scheme supply.
17. Part 2 (paragraphs 3-9) of Schedule 9ZD (along with Part 3) establishes a special accounting scheme (the OSS scheme) which may be used by persons making intra-Community distance sales of goods from Northern Ireland to member States. Part 2 deals with registration including the conditions for registering. The main conditions are that a person makes or intends to make scheme supplies from Northern Ireland to a member State or is established in, or has a fixed establishment in, Northern Ireland. It determines that they may register for the OSS scheme, how to register and the effective date of this registration. It also determines how registration for the OSS scheme may subsequently be cancelled. A person may not register for the OSS scheme if they are already registered in a member State for an equivalent distance selling scheme (“a non-UK scheme”). A person must register under the OSS scheme if they intend to account for VAT on scheme supplies even if they are otherwise registered under VATA. Finally, the Commissioners may by regulations, determine what information is included in a request for registration, how that request is made and how certain changes are notified. The Commissioners may also make further provision about registration under this Schedule by means of a notice published by them.
18. Part 3 (paragraphs 10-15) of Schedule 9ZD determines how a person, who makes supplies under the OSS scheme, calculates the VAT due to be paid, when that amount should be declared on a return and how that return should be submitted together with payment of the return and in what currency. This also determines what and how records must be kept and made available to the Commissioners. Finally, the Commissioners may direct how an OSS return is submitted and paid

or may by regulations require. The Commissioners may also direct how an OSS return is submitted by means of a notice published by them.

19. Part 4 (paragraphs 16-21) of Schedule 9ZD determines that if a person is already registered for a non-UK scheme, they are exempt from having to register for the OSS scheme. If a person is registered for the OSS scheme, they may deregister if the person intends to apply for registration for a non-UK scheme. It also determines that if a person is registered for VAT in the UK and for a non-UK scheme they are not required to comply with an obligation placed on them as a result of being registered for VAT in the UK in relation to any distance sales, and any distance sales falling within the non-UK scheme are not to be included on their UK VAT return but declared in the member State where they are registered for that scheme. The Commissioners may by regulations specify cases where this rule does not apply. Additionally, the Commissioners may by regulations, make provision for refund of VAT on certain supplies for those involved in the special accounting schemes. Rules covering the valuation of supplies to connected persons apply to supplies made by persons registered for a non-UK scheme.
20. Part 5 (paragraphs 22-36) of Schedule 9ZD determines that where a person who is registered for a non-UK scheme makes scheme supplies treated as made in the United Kingdom, they can be assessed for failing to submit an appropriate return or submitting an incorrect return, for interest, default surcharges and penalties in accordance with existing provisions in VATA but subject to modifications and exceptions in this Part. It also determines the treatment of overpayments, changes in consideration, interest in cases of official error, bad debts, penalties for errors and set-offs. Finally, the Commissioners may by regulations, determine the latest time, form and manner that a claim for an increase or decrease in consideration and/or any payment is made.
21. Part 6 (paragraph 37) of Schedule 9ZD determines the circumstances in which an appeal can be made to the tribunal. For example, it provides for an appeal for refusal to register for OSS scheme, cancellation of OSS scheme registration, refusal to repay an overpayment claim or reduction in consideration claim and the liability to a default surcharge.
22. Part 7 (paragraph 38) of Schedule 9ZD provides definitions of terms used in the legislation.

#### **Schedule 9ZE: Distance selling of goods imported to Northern Ireland: Special Accounting Scheme**

23. Part 1 (paragraphs 1-2) of Schedule 9ZE sets out the structure of the Schedule and determines that qualifying supplies of goods for the scheme are those that are distance sales of goods imported from third countries (or third territories), have a value not greater than £135 and the goods are not subject to a duty of excise.
24. Part 2 (paragraphs 3-9) of Schedule 9ZE along with Part 3 establish a special accounting scheme (the IOSS scheme) which may be used by persons making supplies of goods to Northern Ireland or into the European Union from countries

or territories other than member States. Part 2 determines the rules for registering for the IOSS scheme. A person making qualifying supplies of goods may register for the IOSS scheme if that person's business is established in Northern Ireland or within a country or territory which the EU has an agreement on mutual assistance or administrative cooperation or the person has an IOSS representative established in Northern Ireland. It also determines what information needs to be provided to register for the IOSS scheme and when the Commissioners must cancel the registration. Each person registered will be allocated a registration number which is held on a register by the Commissioners. If an IOSS representative registers for the IOSS scheme, every person they act for must also be registered for the IOSS scheme. Finally, the Commissioners may by regulations, determine what information is included in a request for registration, how that request is made and how certain changes are notified. The Commissioners may also make further provision about registration under this Schedule by means of a notice published by them.

25. Part 3 (paragraphs 10-15) of Schedule 9ZE determines how a person, who makes supplies under the IOSS scheme, calculates the VAT due to be paid, when that amount is declared on a return and how that return is submitted together with payment of the VAT due and in what currency. This also determines that no VAT is chargeable on a supply of qualifying goods supplied in the UK by an IOSS registered person who is established in the UK and who is not registered, or liable to be registered, for VAT. This also determines what and how records must be kept and made available to the Commissioners or the tax authorities of a member State in respect of qualifying supplies of goods made there. Finally, the Commissioners may by regulations, determine how an IOSS return is submitted and how payment is made. The Commissioners may also direct how an IOSS return is submitted by means of a notice published by them.
26. Part 4 (paragraphs 16-30) of Schedule 9ZE determines that a person who is registered for the IOSS scheme can be assessed for failing to submit an appropriate return or submitting an incorrect return, for interest, default surcharges and penalties in accordance with existing provisions in VATA but subject to modifications and exceptions in this Part. It also determines the treatment of overpayments, changes in consideration, interest in cases of official error, bad debts, penalties for errors and set-offs in relation to UK VAT which a person is liable to pay whether in the UK or a member State in respect of qualifying supplies treated as made in NI. Finally, the Commissioners may by regulations, determine the latest time, form and manner that a claim for an increase or decrease in consideration can be made and any payment made.
27. Part 5 (paragraphs 31-33) of Schedule 9ZE determines that an IOSS representative can be established in Northern Ireland. A person can only be represented by one IOSS representative at a time. An IOSS representative may act on a person's behalf in relation to the IOSS scheme, must meet and discharge any obligations and liabilities of that person and be personally liable for that person's failed compliance. Any obligations and liabilities imposed on the person the IOSS representative acts for are treated as if imposed on them both jointly and severally. Finally, the Commissioners may by regulations, make provision about

the registration of an IOSS representative which may include a register of names the representative represents, the timing of notifying of their appointment, requirements for registration and cancellation of registration, allowing the Commissioners to refuse or cancel their registration, circumstances that a person is appointed or ceased and the making and deleting of entries in the register. The Commissioners may also make further provision about registration of a person as an IOSS representative by means of a notice published by them.

28. Part 6 (paragraphs 34-41) of Schedule 9ZE determines a number of supplementary provisions. It determines that a person who is registered for the IOSS scheme is not required to be registered for VAT but that the rules of VATA apply to determine the VAT treatment of any goods supplied as if the person were registered for VAT. A person who has registered for VAT under VATA may deregister if their only supplies are those for which they will register under the IOSS scheme or for the special scheme operated by a member State. It also determines that a person who is registered both for VAT and the IOSS scheme does not include any VAT due under the IOSS scheme on their VAT return. No import VAT is chargeable on importation of goods into the United Kingdom as a result of their entry into Northern Ireland or their removal to Northern Ireland from Great Britain providing the importation is in the course of a qualifying supply of those goods and the supplier is registered under the IOSS scheme. The Commissioners cannot direct a person using the IOSS scheme to appoint a VAT representative and claims for VAT by third country traders can be made in relation to supplies made under the IOSS scheme with some modifications.
29. Part 7 (paragraph 42) of Schedule 9ZE determines the circumstances in which an appeal can be made to the tribunal. For example, it provides for an appeal for refusal to register for IOSS scheme, cancellation of IOSS scheme registration, refusal to repay an overpayment claim or reduction in consideration claim and the liability to a default surcharge.
30. Part 8 (paragraph 43) of Schedule 9ZE provides definitions of terms used in the that Schedule.

#### **Schedule 9ZF: Modifications etc in connection with Schedules 9ZD and 9ZE**

31. Part 1 (paragraphs 1-9) of Schedule 9ZF determines a small number of modifications to VATA in connection with the OSS and IOSS schemes. It modifies provisions in VATA relating to assessments so that they apply in relation to surcharges in certain cases involving the new special accounting schemes under Schedules 9ZD and 9ZE. It also modifies Section 80 to VATA to limit claims for overpayment in relation to OSS and IOSS to the routes set out in that section and in Schedules 9ZD and 9ZE. In addition, it determines that a tribunal does not have the power to vary an amount assessed by way of penalty, interest or surcharge except as VATA already provides and that subject to satisfying the Commissioners that they are entitled to cancel their registration, that cancellation applies from the day of application or such later date as may be agreed.
32. Part 2 (paragraphs 10-14) of Schedule 9ZF makes a number of consequential

amendments to other acts dealing with correcting errors on returns, interest on late payments, suspension of penalties during period of agreed deferment of payment and disapplying Section 54 of the Taxation (Cross-border Trade) Act 2018 (prohibition on collection of certain taxes or duties on behalf of a country or territory without reciprocity) in respect of the OSS and IOSS schemes.

33. Part 3 (paragraphs 15-19) of Schedule 9ZF makes a number of modifications to the Value Added Tax Regulations 1995. These modifications apply to extend the relevant provisions to the operation of the OSS and IOSS schemes including modifications of rules on overpayments, bad debt relief, the making of a claim to the Commissioners, changes in consideration, timing and method of repayments. It also provides rules for the registration, notification of changes, returns, adjustments, claims and error correction all in connection with the OSS and IOSS schemes.
34. Part 3 of the Schedule: Paragraph 7 omits Part 2 of Schedule 9ZC to VATA as this is replaced by the IOSS scheme.
35. Part 4 of the Schedule: Paragraph 8 introduces changes to Schedule 9ZC to VATA which treats goods sold via online marketplaces as a supply between the seller and the marketplace operator and then a further supply between the marketplace operator and the customer. This supply arrangement applies in two situations. Firstly, it applies where the customer is established in Northern Ireland and is not a taxable person, the goods are qualifying goods as determined by Schedule 9ZE (the IOSS scheme) and the online marketplace is registered for the IOSS scheme, however this arrangement does not apply if the seller is established in the UK and the supply involves the removal of goods from Great Britain to Northern Ireland. Secondly, this arrangement applies where the customer belongs in Northern Ireland or a member State and is not a taxable person and the goods are located in Northern Ireland and in free circulation at the time they are supplied, however this does not apply where the seller is established in Great Britain and the customer belongs in Northern Ireland. Finally, this paragraph determines the retention and making available of records by an online marketplace in these transactions and changes in invoicing requirements.

## Background note

36. These changes implement two special VAT accounting schemes of One Stop Shop (“OSS”) and Import One Stop Shop (“IOSS”) for Northern Ireland as a result of the Northern Ireland Protocol.
37. Both OSS and IOSS are EU wide schemes and go live with effect from 1 July 2021. The commencement of these provisions in the United Kingdom will be by way of regulations.