

DRAFT EXPLANATORY MEMORANDUM TO

THE VALUE ADDED TAX (PLACE OF SUPPLY OF SERVICES: EXCEPTIONS RELATING TO SUPPLIES MADE TO RELEVANT BUSINESS PERSON) ORDER 2016

2016 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs ('HMRC') on behalf of HM Treasury and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument introduces an exception to the general VAT rule regarding place of supply of services which treats business to business supplies as made where the recipient belongs. The exception applies to repairs to moveable goods (such as cars and mobile phones but not buildings or their fixtures and fittings) which are carried out under a contract of insurance as a result of a claim made by the insured. The exception applies where, under the general rule, either the supply is made in the UK, but is effectively used and enjoyed outside the EU; or is made outside the EU, but is effectively used and enjoyed in the UK. In either of those cases the exception treats the supply as taking place in the territory where it is effectively used and enjoyed.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland and is not a financial instrument that relates exclusively to England, Wales and Northern Ireland.

4. Legislative Context

- 4.1 Section 7A of the Value Added Tax Act 1994 ('VATA') provides the general rules for determining the place of supply of services for the purposes of value added tax. Section 7A(2)(a) provides that the supply of services to a relevant business person is to be treated as made in the country where the recipient of the services belongs. Section 7(5) provides that subsection (2) has effect subject to Schedule 4A to VATA ('Schedule 4A'). Part 2 ('Part 2') of Schedule 4A provides for exceptions to the general rule for supplies to relevant business persons.
- 4.2 This instrument introduces a new paragraph, 9D, into Part 2 which provides that supplies of services of repair to tangible moveable property pursuant to a claim made under a contract of insurance will, in certain circumstances, be treated as made where they are effectively used and enjoyed.

- 4.3 The exception applies where the general rule under section 7A(2)(a) of VATA would otherwise result in either the place of supply of services used and enjoyed in the UK being treated as made outside the territories of the member states or the place of supply of services used and enjoyed outside the territories of the member states being treated as made in the UK.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

- 6.1 The Financial Secretary David Gauke has made the following statement regarding Human Rights:
- 6.2 In my view the provisions of the Value Added Tax (Place of Supply of Services: Exceptions Relating to Supplies Made to Relevant Business Person) Order 2016 are compatible with the Convention rights

7. Policy background

What is being done and why

- 7.1 This provision is targeted at those insurers that have set up outside the EU but write insurance in the UK and have contracted with the UK insured party to carry out repairs to the insured's goods ('indemnity repair') rather than provide a cash indemnity or replace the goods concerned.
- 7.2 It will require the service provider to charge VAT at the standard rate on the repairs they perform irrespective of where the provider of the insurance cover for the goods is located.
- 7.3 Currently such transactions when performed for a UK insurer by a UK service provider are subject to VAT at the standard rate. As the supply of insurance is exempt from VAT, the insurer cannot recover the VAT charged as input tax.
- 7.4 When performed for an insurer located outside the EU, the indemnity repair services fall under the general VAT place of supply rule for business to business transactions, which means that they are treated as supplied in the country where the recipient of the service is established. The result of this is that the repair services are outside the scope of VAT.
- 7.5 This creates an opportunity for providers of insurance to set up or locate off-shore to avoid the VAT charge, which would otherwise be irrecoverable as input tax. Advantage of this is known to have taken place in respect of car and mobile phone repair services and has caused concern amongst UK based insurers, who feel that they will become uncompetitive for UK business.
- 7.6 This provision changes the place of supply for indemnity repair services. Where, under the normal rules, the services would be treated as taking place outside the EU but they are used and enjoyed in the UK they will be treated as taking place in the UK.

Conversely where the services would be treated as taking place in the UK but are used and enjoyed outside the EU they will be treated as taking place outside the EU.

- 7.7 This means that when repairs are carried out under an insurance contract by a provider of those services for an insurer against a claim made by the insured, the indemnity repair service will be subject to VAT when the risk insured belongs in the UK and not when the risk belongs outside the EU. This ensures there is no competitive advantage gained by an offshore insurer over their UK counterparts or vice versa.

Consolidation

- 7.8 This Instrument introduces a new paragraph into VAT Act 1994 Schedule 4A and therefore the changes made will be consolidated within the existing primary legislation of the place of supply of services.

8. Consultation outcome

- 8.1 In accordance with HMRC's Tax Consultation Framework, the Order was published in draft for a four week technical consultation period on [01/02/2016]

9. Guidance

- 9.1 The changes made by this instrument will be reflected in published guidance on the place of supply of services.

10. Impact

- 10.1 This instrument will affect a small number of offshore insurers and those that supply them with repair services. The repairer will now be expected to charge VAT on repairs to goods located in the UK supplied to insurers located outside the EU. The insurer will not be entitled to recover this VAT. The impact on the UK providers of the repair services is expected to be negligible as they will already be applying VAT to UK sales. The impact on charities and voluntary bodies is negligible.
- 10.2 The impact on the public sector will be negligible as this provision relates to supplies made to offshore businesses.
- 10.3 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 No specific action is proposed to minimise regulatory burdens on small businesses as this measure is believed to have minimal impact upon them.

12. Monitoring & review

- 12.1 This Instrument is excluded from the review provisions of the Small Business, Enterprise and Employment Act 2015 by virtue of section 28(3) of that Act. But its effect on the behaviour of, and VAT receipts from, the insurance sector will be subject to monitoring and review by HMRC.

13. Contact

- 13.1 Desmond Farndell at HMRC Telephone: 03000 544596 or email: desmond.farndell@hmrc.gsi.gov.uk or Andy Heywood Telephone 03000 544534 or email: andrew.heywood@hmrc.gsi.gov.uk can answer any queries regarding the instrument.

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