

TAXATION (POST-TRANSITION PERIOD) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Taxation (Post-transition Period) Bill as introduced in the House of Commons on 8 December 2020 (Bill 227).

- These Explanatory Notes have been prepared by HM Treasury in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 On 23 June 2016, the UK voted to leave the EU, and on 29 March 2017 the Prime Minister wrote to European Council President Donald Tusk to notify him of the UK's intention to leave the EU. The Withdrawal Agreement was approved at the European Council on 17 October 2019 and published on 19 October 2019. The Withdrawal Agreement was given legal effect in the UK by the European Union (Withdrawal Agreement) Act 2020, which amends the European Union (Withdrawal) Act 2018. These Acts legislated for a transition period ending on 31 December 2020.
- 2 The Taxation (Post-transition Period) Bill makes provision in respect of certain matters of taxation which are required to prepare for the end of the Transition Period. It aims to ensure the smooth continuation of business in 2021, particularly in relation to the implementation of the Northern Ireland Protocol regarding customs, VAT and excise issues.

- 3 The Taxation (Post-Transition Period) Bill contains 12 clauses and 4 schedules.
- 4 The section below provides more detail on each of these measures.

Policy background

Northern Ireland Protocol – Customs

- 5 The Bill will introduce the framework for customs duty charges on goods arriving in NI (from both Great Britain and Rest of World countries), subject to conditions agreed under Article 5 of the Northern Ireland Protocol, as well as a customs duty charge for goods arriving in GB from NI that do not qualify for Unfettered Access to UK markets (non-qualifying Northern Ireland goods), and goods moved to Great Britain via Northern Ireland for avoidance purposes.
- 6 The provisions allow the Government to make regulations to implement the outcome of Joint Committee negotiations in relation to goods to be considered as ‘at risk’ or ‘not at risk’ of

onward movement to the EU. As set out in the [20 May Command Paper](#), only those UK goods ultimately entering Ireland or the rest of the EU, or at clear and substantial risk of doing so, should pay the EU tariff.

Northern Ireland Protocol – VAT & Excise charging elements

7 The Bill introduces changes required to implement the VAT and excise elements of the Northern Ireland Protocol (article 8 and annex 3) including making a number of consequential changes. The rules for movements between the Northern Ireland and the EU will continue to apply, modified as necessary. Although the Northern Ireland Protocol requires that movements between Great Britain and Northern Ireland are treated as though they are imports/exports, the Bill, together with any necessary secondary legislation, will use flexibilities in EU law to comply with this whilst minimising the practical changes for businesses

and individuals. It will also put measures in place to protect VAT and excise revenues and ensure the continued efficient flow of goods between Great Britain and Northern Ireland.

Aviation Gasoline (Avgas) rate increase

8 The Bill will increase the Avgas rate by 0.5p per litre from £0.3770 per litre to £0.3820 per litre from 1 January 2021 across the UK to comply with the EU Energy Tax Directive (Council Directive 2003/96/EC) , as required by Article 8 of the Northern Ireland Protocol. Article 8 of the NI Protocol applies the Directive to the United Kingdom (UK) in respect of NI.

9 Article 13(1) of the EU Energy Tax Directive (Council Directive 2003/96/EC) sets a minimum level of duty on leaded petrol used for propulsion of 421 EUR per 1,000 litres.. Each year Member States which retain their own national currency must ensure their national rate of taxation complies with the minimum, based on the exchange rate at the start of October, by 1 January each year to ensure compliance.

Although the UK is not bound to comply with the Directive in respect of Great Britain (GB) from 1 January 2021, it will still apply in Northern Ireland (NI) as part of Northern Ireland Protocol to the Withdrawal Agreement.

VAT treatment of goods from overseas sellers and on imported goods

- 10 The Bill introduces a new model for the VAT treatment of goods arriving into the UK. The current VAT treatment for goods that are sold into the UK by overseas sellers is linked to EU rules; this link will remain for Northern Ireland. Following the end of the transition period, the UK will implement a new model for the VAT treatment of goods arriving from overseas.
- 11 The new treatment includes a number of changes, including:
 - a. the abolition of a relief from import VAT for consignments not exceeding £15 for goods arriving in Great Britain. LVCR will continue to apply in Northern Ireland. However, it will not apply to goods that are ordered remotely;
 - b. moving VAT collection away from the border for consignments not exceeding £135;

- c. placing the responsibility to pay VAT onto either an overseas seller or an online marketplace, where they facilitate a sale or the UK recipient if they are VAT registered; and
- d. the introduction of online marketplace liability for goods already in GB at the point of sale that are sold by an overseas business to a UK consumer, regardless of value.

Amendment to Insurance Premium Tax (IPT) liability notices power

12 The Bill amends the power to make regulations under which HM Revenue & Customs (HMRC) can issue Liability Notices to insured persons where an insurer fails to pay Insurance Premium Tax (IPT) due. These notices inform the insured that their insurer is not complying with its IPT obligations and notifies them that they will be liable to pay the IPT themselves in future periods, if they continue to use the non-compliant insurer.

13 Currently, liability notices may only be issued where the relevant insurer is located in a country:

- a. Outside of the EU; and

b. With which the UK does not have a mutual assistance arrangement similar in scope to those available within the EU.

14 The law was modified to its current form by the Finance Act 2008, to reflect the fact that Liability Notices are unnecessary where an insurer is located in a state with which the UK has mutual assistance arrangements. While the UK was a member of the EU and during the transition period, HMRC has been able to rely on the mutual assistance agreements in place between EU states.

15 Following the end of the transition period, the EU mutual assistance arrangements will no longer apply. This clause ensures that HMRC retains the ability to issue Liability Notices where an insurer is within an EU member state but where the UK does not have a mutual assistance agreement.

16 Consequently, this clause removes the requirement for the insurer to be located in a country outside of the EU in order for HMRC to issue a Liability Notice, preserving the original purpose of the legislation.

Controlled Foreign Companies (CFC) state aid recovery

- 17 The Bill amends the Controlled Foreign Companies (CFC) legislation in Part 9A of the Taxation (International and Other Provisions) Act 2010. It introduces specific powers enabling HMRC to raise additional CFC tax charges for periods from 1 January 2013 to 31 December 2018, for the purposes of recovering state aid. It also enables HMRC to charge interest on any additional amounts of CFC tax at a compound rate, in accordance with EU Commission Regulation 794/2004.
- 18 These changes are intended to ensure that the UK can recover state aid in line with EU Commission Decision 2019/1352 ('the Commission Decision').
- 19 CFC charges raised under the new powers will be based on HMRC's view of the amount of state aid to be recovered. Taxpayers will have the usual rights of appeal against such charges, but they will not be able to postpone any of the tax charged. The tax charged will be due 30 days after the charge has been raised.
- 20 The new powers allow HMRC to vary these CFC charges to take account of additional

information received, for example in relation to any reliefs claimed by the taxpayer.

21 The UK is challenging the Commission Decision via the courts. If the Commission Decision is revoked or annulled, the measure provides that regulations must be made to cancel any charges raised using the new powers and to put taxpayers back in the position they would have been in absent the Commission Decision.

Legal background

Northern Ireland Protocol

22 Following the UK's exit from the EU, the UK is no longer bound by EU law in relation to customs, VAT and excise. However, as a result of the Withdrawal Agreement, the UK has agreed to apply EU rules in relation to goods as set out in the NI Protocol.

23 During the Transition Period, Union customs legislation has continued to apply in the UK. The UK customs legislation that will apply from the

end of the Transition Period in relation to duty matters is contained in the Taxation (Cross-border Trade) Act 2018 (TCTA 2018).

Amendments are required to TCTA 2018 to allow HMRC to impose charges to customs duty, in line with the Protocol. The Protocol sets out the special arrangements for Northern Ireland that were agreed by the United Kingdom and the European Union as part of the terms of the Withdrawal Agreement, which was approved at the European Council on 17 October 2019 and published on 19 October 2019. The Withdrawal Agreement was given legal effect in the UK by the European Union (Withdrawal Agreement) Act 2020, which amends the European Union (Withdrawal) Act 2018. As a consequence of the European Union (Withdrawal) Act 2018, Union customs legislation will also apply in Northern Ireland directly.

24 Current VAT law is contained in VAT Act 1994 and extensive secondary legislation made under it, as well as in other primary legislation such as various Finance Acts. In the light of the

UK's exit from the EU, the Taxation (Cross-border Trade) Act 2018 amended VATA. Current excise legislation is contained in Customs and Excise Management Act 1979, the Hydrocarbon Oils Duty Act 1979, the Alcoholic Liquors Duty Act 1979 and the Tobacco Products Duty Act 1979 as well as in other primary legislation and substantial secondary legislation, principally the Excise Goods (Holding, Movement and Duty Point) Regulations 2010 (SI 2010/593). Existing law on VAT and excise contains rules in relation to imports into the territory of the European Community, exports from the territory of the European Community and intra-EU movement of goods (see for example Sections 10-18 VATA), but not specifically in relation to NI.

Aviation Gasoline

25 Council Directive 2003/96/EC (The EU's Energy Tax Directive) sets a minimum level of duty on leaded petrol used for propulsion of 42.1 euro-cents per litre. The effect of Article 13(1) of

2003/96/EC is that each year Member States should ensure their national rate of taxation complies with the minimum rate in euros using the exchange rate as it stands on the first working day of October, and if they find their national rate of taxation is below the minimum adjust their tax rate by 1 January the following year to ensure compliance. Although the UK is not bound to comply with the Directive in respect of Great Britain (GB) from 1 January 2021, it will still apply in Northern Ireland (NI) as part of Northern Ireland Protocol to the Withdrawal Agreement. Article 8 of the NI Protocol applies the Directive to the UK in respect of NI.

Insurance Premium Tax

26 Insurance Premium Tax is a tax on insurance premiums provided for in the Finance Act 1994.

State aid

27 In April 2019 the European Commission decided that the United Kingdom (UK) had unlawfully provided state aid in the period 1 January 2013 to 31 December 2018 to certain UK companies in multi-national groups in the form of an exemption from the Controlled Foreign Companies (CFC) tax charge. The UK is required to recover such unlawful aid together with compound interest at rates set by EU regulations without delay. Under the terms of the Withdrawal Acts, this obligation to recover will remain after the end of the Transition Period as the Commission's decision relates to periods when the UK was a member of the EU.

28 This measure will introduce a specific statutory mechanism to enable HMRC to recover the unlawful aid together with compound interest in an efficient and uniform manner as soon as possible, with a view to fulfilling the UK's obligation to recover. The ability of the companies concerned to appeal on the grounds that they were not in fact beneficiaries of

unlawful state aid, or to dispute the quantum of such aid, is retained, but they will not be able to postpone payment pending the outcome of such appeals.

Territorial extent and application

29 The extent of a Bill is the jurisdictions which the Bill forms part of the law of. Application is about where a Bill produces a practical effect.

30 The Bill extends, and applies in relation to England, Wales, Scotland and Northern Ireland. Whilst certain provisions will apply to a movement of goods between Northern Ireland and the EU, the practical effect of those provisions will extend to businesses and individuals wherever located in the UK.

31 The Bill does not contain any provision which gives rise to the need for a legislative consent motion in the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly.

32 See the table in Annex A for a summary of the position regarding territorial extent and

application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

Commentary on provisions of Bill

Clause 1: Duty on goods removed to Northern Ireland

33 Clause 1 inserts new sections 40A and 40B into TCTA 2018. The changes, which concern goods moving to Northern Ireland from Great Britain, support the practical application of the provision in the Northern Ireland Protocol at Article 5(1) and (3).

34 New section 40A is inserted after section 40.

35 New section 40A provides that goods moving to Northern Ireland from Great Britain, that are not domestic goods or are ‘at risk’ of subsequently being moved into the European

Union will be chargeable to customs duty in accordance with Union customs legislation.

36 The Treasury will be able to define in regulations goods that are ‘at risk’ of being subsequently moved into the European Union, in accordance with the Withdrawal Agreement Joint Committee decision on this matter.

37 Duty chargeable under new section 40A is a duty of customs, but will be charged in accordance with the provisions of Union customs legislation.

38 New section 40B provides supplementary provisions in relation to the charge introduced at section 40A.

39 New section 40B introduces new powers to enable the Treasury, by regulations, to provide that certain matters relating to the charging of duty will be determined in accordance with TCTA 2018 and not Union customs legislation in relation to goods of a specified description. This will, for example, enable the duty charge for

specified goods to be calculated with reference to the UK tariff.

40 New section 40B introduces other new powers to enable the Treasury, by regulations, to make provisions generally, for the purposes of duty under section 40A. This includes powers to provide by regulations that the charge under section 40A will not apply to goods of a specified description; to waive or reimburse EU duties within the confines of Article 10 of the Northern Ireland Protocol; to make provisions on the application of other customs legislation in relation to the charge; to supplement or modify Union customs legislation in relation to the charge; to impose checks, controls and administrative processes; and, to regulate removal and movement of goods from Great Britain to Northern Ireland, and their landing and unloading.

41 New section 40B sets out how regulations made under this section may specify a description of goods, where relevant to duty under section 40A.

- 42 Section 40B also makes various provisions in relation to regulations, by applying the supplementary rules concerning regulations set out in section 40 TCTA 2018.
- 43 Any reference to Great Britain in new sections 40A and 40B, includes the United Kingdom Territorial Sea (i.e., including the Territorial Sea of the United Kingdom surrounding Northern Ireland to reflect that the relevant provisions of the Protocol do not apply to those waters).
- 44 Expressions used in new sections 40A and 40B that are defined for the purposes of Part 1 of TCTA 2018 have the same meaning as in Part 1.

Clause 2: Duty on goods imported into or removed from Northern Ireland

- 45 Clause 2 inserts new sections 30A, 30B and 30C into TCTA 2018 and makes consequential amendments to sections 1 and 2 of TCTA 2018. New sections 30A and 30B, which concern imports into the United Kingdom by entry of

goods into Northern Ireland from the EU and the rest of the world, support the practical application of provisions in the Northern Ireland Protocol at Articles 5(1) second subparagraph and 5(3). New section 30C, which concerns goods moving to Great Britain from Northern Ireland, supports the practical application of provisions in the Northern Ireland Protocol at Article 6(1) and is a necessary consequence of entering into the Northern Ireland Protocol and the Withdrawal Agreement.

46 Sections 1 and 2 of TCTA 2018 (concerning the charge to import duty) are updated to take account of the duty charge that will apply for goods imported into the United Kingdom as a result of their entry into Northern Ireland.

47 New section 30A is inserted into TCTA 2018 after section 30.

48 New section 30A provides that European Union goods imported into the United Kingdom by entering Northern Ireland will be treated as domestic goods so will not be chargeable

to import duty.

49 Non-European Union goods imported into the United Kingdom by entering Northern Ireland will be subject to duty charged in accordance with Union customs legislation.

50 HMRC is responsible for collecting and managing customs duties charged on goods imported into the United Kingdom as a result of their entry into Northern Ireland, whether that duty is chargeable in accordance with Union customs legislation or TCTA 2018.

51 New section 30B introduces new powers to enable the Treasury, by regulations, to provide that for goods of a specified description, matters relating to the charging of duty will be determined in accordance with the TCTA 2018 and not Union customs legislation.

52 Section 30B introduces other new powers to enable the Treasury, by regulations, to make provisions generally, for the purposes of the duty under section 30A. These include provisions in relation to waiving and reimbursing EU

duties within the confines of Article 10 of the Northern Ireland Protocol; applying other customs legislation in relation to the charge; and, supplementing or modifying provisions in Union customs legislation in relation to the charge.

53 New section 30C provides that goods removed from Northern Ireland to Great Britain will be chargeable to customs duty where these are not Qualifying Northern Ireland Goods (QNIGs). QNIGs are those goods that will qualify for measures facilitating access to the market within Great Britain and are defined in regulations made under section 8C EUWA 2018 (see the draft Definition of Qualifying Northern Ireland Goods (EU Exit) Regulations 2020 laid before Parliament). Any QNIGs that are removed to Great Britain from Northern Ireland for an avoidance purpose will however be chargeable to duty calculated under TCTA 2018.

54 Section 30C also applies (with modifications) many provisions of TCTA 2018 in relation to goods removed from Northern Ireland

to Great Britain, as if references in these provisions to chargeable goods and importation were references to such goods and their removal. The import duty provisions at sections 3 to 28 and 34 and Schedules 1 to 6 of TCTA 2018 apply for the purposes of duty charged under new section 30C (subject to modifications made by new section 30C and any further modifications provided for in regulations).

55 New section 30C introduces new powers to enable the Treasury, by regulations, to make provisions generally, for the purposes of the duty that is chargeable under the section. These include power to make provision in regulations to: disapplying the charge in respect of goods of a specified description; specifying that the reference to Great Britain includes the United Kingdom Territorial Sea; applying or modifying other customs legislation in relation to the charge; imposing checks, controls and administrative processes; and, regulating the removal and movement of goods from Northern Ireland to Great Britain, and their unloading and

landing.

56 Clause 2 also introduces Schedule 1, which makes further amendments to domestic customs legislation, for the purposes of the charges at new sections 30A, 30C and 40A of TCTA 2018, and to ensure that this domestic legislation can continue to apply alongside Union customs legislation in Northern Ireland.

Clause 3: Value added tax in Northern Ireland

57 Clause 3 inserts a new Section 40A into VATA which deals with the application of VAT in Northern Ireland. Section 40A (and Schedule 2) introduces new Schedules 9ZA and 9ZB into VATA. New Schedule 9ZA to VATA contains provisions in relation to VAT on acquisition of goods in NI from EU member States and makes other modifications in relation to movements between the EU and Northern Ireland. New Schedule 9ZB makes provision for the VAT treatment of goods imported into the UK as a result of their entry into Northern Ireland and those moving between Northern Ireland and GB. It also contains other provisions relevant to the

application of VATA in relation to Northern Ireland and the rest of the United Kingdom in line with the Northern Ireland Protocol.

Clause 4: Excise duty on the removal of goods to Northern Ireland

- 58 Clause 4 extends the circumstances in which a charge to excise duty arises on excise goods to include the removal of those goods to Northern Ireland (NI) from Great Britain (GB).
- 59 Subsection 1 provides that excise duty will be charged on goods to which certain provisions apply where those goods are removed to NI from GB.
- 60 Subsection 2 sets out the relevant excise duty provisions in relation to which the charge has been extended by subsection (1).
- 61 Subsection 3 provides that subsection 1 does not cover removals of biodiesel, bioethanol and fuel substitutes unless prior to their removal they were set aside for, or put to, a chargeable use by any person.
- 62 Subsection 4 sets out that the charge to excise duty does not apply to a removal of road fuel gas unless prior to its removal the gas was sent out from the premises of a person

producing or dealing in road fuel gas, or set aside for use, or put to use as a fuel for a road vehicle by any person.

63 Subsection 5 sets out when goods are removed to NI as their entry in NI from GB would amount to the goods being imported within the meaning of Article 4 of the Union excise directive with modifications.

64 Subsection 6 provides the definitions of both “the Union excise directive” and “Union customs legislation” as mentioned within subsection 5.

Clause 5: Duty under section 4: supplementary

65 This clause sets out supplementary requirements in relation to Clause 4: Excise duty on removal of goods to Northern Ireland from Great Britain.

66 Subsection 1 provides that provisions made by or under the customs and excise Acts which apply to or in connection with duty charged under the relevant excise duty provisions by reference to the importation of goods, also apply to the duty charged as a result of [Clause 4] as if any reference to ‘importation of goods’ referred to the removal of the goods to Northern Ireland from Great Britain, and any reference to the entry of any person or vehicle into the United

Kingdom were to the arrival of that person or vehicle in NI. This means that those excise provisions in and under those Acts (such as reliefs and enforcement powers) will apply to movements from GB to NI in the same way that they apply to imports into the UK.

- 67 Subsection 2 provides that the Treasury may make regulations about (including modifying) the application of the customs and excise Acts (including this section and section 4) to duty charged as a result of section 4 or to goods that are or may be subject to that duty.
- 68 Subsection 3 provides that a statutory instrument containing regulations made under subsection (2) above is subject to annulment in pursuance of a resolution of the House of Commons.
- 69 Subsection 4 defines both “the customs and excise Acts” and “relevant excise duty provision”.
- 70 Subsection 5 provides for this section and section [Excise NI] to have effect in relation to any removal of goods to NI from GB that commences on or after IP completion day.
- 71 Subsection 6 provides for when a removal of goods to Northern Ireland from Great Britain

commences.

Clause 6: Rate of fuel duty on aviation gasoline (Avgas)

72 Clause 6 amends the aviation gasoline fuel duty rate at Hydrocarbon Oil Duties Act 1979, section 6(1A)(aa). Council Directive 2003/96/EC (The EU's Energy Tax Directive) sets a minimum level of duty on leaded petrol used for propulsion of 42.1 euro-cents per litre. The effect of Article 13(1) of 2003/96/EC is that each year Member States must ensure their national rate of taxation complies with the minimum rate in euros using the exchange rate as it stands on the first working day of October, and if they find their national rate of taxation is below the minimum adjust their tax rate by 1 January the following year to ensure compliance.

73 Although the UK is not bound to comply with the Directive in respect of Great Britain (GB) from 1 January 2021, it will still apply in Northern Ireland (NI) as part of Northern Ireland Protocol to the Withdrawal Agreement. Article 8 of the NI

Protocol applies the Directive to the United Kingdom (UK) in respect of NI.

74 Clause 6 amends section 6(1A)(aa) to increase the rate of Avgas from £0.3770 per litre to £0.382 per litre. The rate increase applies to Avgas across the UK.

Clause 7: Online sales by overseas persons and low value importations

75 Clause 7 introduces Schedule 3 which makes amendments in relation to the VAT treatment of certain supplies by overseas sellers and imported goods.

Clause 8: Liability of insured in certain cases

76 Clause 8 replaces subsections (1A) and (1B) of section 65 of FA 1994 with a new clause (1A).

77 The new clause specifies, through reference to section 173 of the Finance Act 2006, that regulations regarding Liability Notices may only be made in circumstances where the insurer is located in a country with which the UK does not

have an agreement through which tax debts can be recovered or relevant information exchanged.

78 This change allows HMRC to issue Liability Notices where the relevant insurer is located in a country with which the UK does not have mutual assistance arrangements, whether or not that country is an EU member state; restoring the legislation to its original purpose.

Clause 9: Recovery of unlawful state aid

79 Clause 9 introduces Schedule 4. This Schedule introduces new section 371UFA and new Schedule 7ZA in TIOPA 2010, in order to facilitate the recovery of state aid in accordance with a Commission Decision (EU) 2019/1352 of April 2019 (“the Commission Decision”) in relation to exemptions available under Chapter 9, Part 9A TIOPA 2010.

80 Schedule 4 enables HMRC to raise such additional CFC charges, and related interest charges, as it considers appropriate in order to recover state aid in accordance with the Commission Decision.

Schedule 1: Customs duties etc: amendments relating to the Northern Ireland Protocol

81 Schedule 1 makes provision for how various United Kingdom legislation will apply for the purposes of duty charges established in clauses 1 and 2. These provisions are designed to ensure this legislation can operate appropriately for the purposes of these charges, alongside the EU legislation that will apply in Northern Ireland.

82 Section 33 of TCTA 2018 (meaning of “domestic goods”) is amended to provide for goods to be treated as domestic goods if they are discharged in Northern Ireland from a customs procedure under Union customs legislation that corresponds to TCTA 2018 free-circulation or authorised use procedure. Section 33 is also amended to provide for rules concerning loss of domestic status when goods are exported from the United Kingdom as a result of their removal from Northern Ireland.

83 Section 36 of TCTA 2018 (outward processing procedure) is amended to provide that a declaration to the outward processing

procedure is a declaration that the goods are to be exported from the United Kingdom as a result of the removal of the goods from Great Britain; and following the processing, the goods are to be imported into the United Kingdom and removed to Great Britain.

84 Section 37 of TCTA 2018 (minor definitions) is amended to insert definitions for “the customs and excise Acts”; “Northern Ireland Protocol”; “qualifying Northern Ireland goods”; “Union customs legislation”; and “Union goods”. Section 38 (table of definitions) is amended to include the new definitions inserted by section 37.

85 Various provisions at Schedule 1 and 2 to TCTA 2018 are also amended consequential to clauses 1 and 2, for example to reflect the fact that these TCTA 2018 provisions will only apply while goods are in Great Britain, or to take account of the Union customs legislation that will apply in Northern Ireland.

86 Paragraphs 146, 150 and 156 of Schedule 7 to TCTA 2018 (import duty: consequential

amendments) which amend the Terrorism Act 2000, Finance Act 2003 and the Borders, Citizenship and Immigration Act 2009 are further amended consequential to other changes made in this Schedule.

The Schedule also introduces a new Part 4 of Schedule 7 to TCTA 2018. This makes savings, modifications and other provision for United Kingdom legislation relating to customs duty charges established by clause 1 and 2. Part 4 deals with the Customs and Excise Management Act 1979 (concerning various customs matters); the Customs and Excise Duties (General Reliefs) Act 1979 (concerning duty reliefs); Finance Act 1994 (provisions in relation to customs enforcement, reviews and appeals); and Finance Act 2003 (provisions in relation to customs penalties).

87 The effect of provisions within Part 4 is, broadly, to retain the above customs legislation as it currently applies (subject to specified exceptions) for the purposes of the duty charges for goods in Northern Ireland. This will ensure

that this United Kingdom legislation concerning customs can continue to apply alongside the Union customs legislation that will have effect in Northern Ireland. Part 4 provisions also ensure that customs legislation can apply in relation to the movement of goods, people and vehicles from Northern Ireland to Great Britain and from Great Britain to Northern Ireland. In addition, provision is made to specify how this legislation will apply in relation to the duty charges at clauses 1 and 2, including details of how various terms in this legislation are to be read for the purposes of these charges.

88 Part 4 also makes provision consequential to other changes in this Schedule, in relation to VAT and temporary storage facilities. This will ensure that for specified purposes within VAT legislation, such facilities will include ‘transit sheds’ (which is the term used in the Customs and Excise Management Act 1979, as this Act will apply for the purposes of the duty charges for goods in Northern Ireland).

- 89 Schedule 9 to the TCTA 2018 is also updated (at paragraph 11) so that amendments made by this Schedule will not have effect for the purposes of the charge to excise duty under clause 4(1) of the Bill and in relation to goods in Northern Ireland.
- 90 Paragraph 12 of the Schedule amends the Isle of Man Act 1979, in order to ensure that certain provisions within that Act concerning movements of goods between the United Kingdom and Isle of Man (and deeming these movements not to be imports to, or exports from, the United Kingdom), will not apply where goods are moved between Northern Ireland and the Isle of Man.
- 91 Paragraph 13 of the Schedule amends the Finance (No. 2) Act 1992, which makes provision in relation to application of customs rules for goods entering the United Kingdom from an EU member state. The amendments include those designed to ensure that (subject to certain exceptions) specified customs powers in relation to the importation or exportation of

goods will continue not to be exercisable for goods moving between Northern Ireland and the EU.

Schedule 2: Value added tax: amendments relating to the Northern Ireland Protocol etc

Part 1: Amendments of VATA 1994

92 The changes made by this Schedule are made to VATA together with necessary consequential amendments to other Acts, to reflect changes to implement the Northern Ireland Protocol and to make consequential changes.

93 This mainly consists of the introduction of two new Schedules into VATA to implement rules specific to goods in Northern Ireland. In most cases, this consists of preserving the effect of VAT rules in Northern Ireland that are otherwise being changed at the end of the transition period (in relation to Great Britain).

94 Paragraph 2 inserts new Schedules 9ZA (VAT on acquisitions in Northern Ireland from member States) and 9ZB (Goods removed to or

from Northern Ireland and supply rules) into VATA.

Schedule 9ZA (VAT on acquisitions in Northern Ireland from member States)

95 Under the Northern Ireland Protocol, EU VAT rules in relation to goods will continue to apply in Northern Ireland. This means that existing rules in relation to acquisitions will continue to apply between NI and the EU. New Schedule 9ZA to VATA contains provisions in relation to VAT on acquisition of goods in NI from member States. The new Schedule effectively retains existing rules, modified as required, in relation to intra-EU movement of goods (specifically acquisitions) for the movement of goods between the EU and NI.

96 Part 1 (Paragraphs 1-7) of Schedule 9ZA (9ZA) provides for a charge to VAT on the acquisition of goods in Northern Ireland from a member State (referred to in this Schedule as “NI acquisition VAT”) and determines the meaning, the scope, the time and the place of an acquisition. It deals with the situation where

a person who makes supplies of goods in Northern Ireland, acts as an intermediate supplier in a supply of goods from one business to another, who are in different member States. Finally, it makes provision for, and confers a power on the Commissioners to make provision by regulations regarding how businesses will be identified for VAT in Northern Ireland.

97 Part 2 (Paragraphs 8-13) of 9ZA determines the valuation of acquisitions and how that is to be calculated. This includes how below market value transactions are treated, situations where there is no consideration, conversion of value into sterling] and defines what is meant by ‘relevant transaction’ and ‘relevant time’ in respect of the acquisition of goods in Northern Ireland.

98 Part 3 (Paragraphs 14-15) of 9ZA defines the circumstances in which NI acquisition VAT is input tax and provides that NI acquisition VAT is output tax in relation to a taxable person and is to be accounted for in the same way.

99 Part 4 (Paragraphs 16-19) of 9ZA provides

that NI acquisition VAT is calculated at the same rate as if the goods were supplied in the UK. It provides for zero rating of supplies of goods removed from Northern Ireland and acquired in a member State. It also provides for refunds of VAT charged on the acquisition of goods for claims in certain circumstances under sections 33 to 33C, 33E and 34 of VATA. Finally, it provides a refund of VAT on a new means of transport removed from Northern Ireland to a member State by a non-taxable person.

100 Part 5 (Paragraphs 20-26) of 9ZA determines how acquisition VAT will apply in certain circumstances, in relation to the Crown, VAT groups, agents who act as principals, those using a margin scheme, partnerships, VAT Representatives, any body corporate or any club, association, organisation or other incorporated body.

101 Part 6 (Paragraphs 27-33) of 9ZA reinstates rules for administration, collection and enforcement of NI acquisition VAT. This applies penalties for breaches of regulatory procedures

and ensures the offence of dishonest evasion applies, permits recovery of VAT for failure to make returns and provides for interest in cases where the person is no longer entitled to exemption from registration. It permits the Commissioners for HM Revenue and Customs to assess for VAT in cases of goods subject to a duty of excise or which consists in a new means of transport where unsatisfactory information has been provided and details times limits, rights of appeal, recovery and alternative persons to be notified. Finally, it provides for time limits to assess for VAT and determines that any EU instrument relating to VAT which has effect in Northern Ireland is a 'VAT provision' when considering a claim for a credit or a repayment for overstated or overpaid VAT.

102 Part 7 (Paragraphs 34-37) of 9ZA determines additional matters that can be subject to appeal to the tribunal in the light of the changes made by the rest of the Schedule. It also provides for what acquisition VAT may be paid in the case when the VAT rate changes

during a transaction. It makes provision for what should happen to NI acquisition VAT as a result of the failure of a resolution under the Provision Collection of Taxes Act 1968. It provides that VAT charged on the acquisition of goods to the Government of Northern Ireland can be recovered in the same way as VAT on supplies of goods and services supplied to it.

103 Part 8 (Paragraphs 38-47) of 9ZA sets out the circumstances when a person is liable to be registered in relation to acquisitions from the EU, and makes rules regarding notification of that liability, exemption from registration and when a person ceases to be liable for registration. It also provides the Treasury a power to increase the sums involved in these provisions and for the Commissioners to be able to specify any notification requirements in or under regulations.

104 Part 9 (Paragraphs 48-56) of 9ZA sets out the circumstances when a person is liable to be registered in respect of distance sales into Northern Ireland, including the registration threshold, when a person must notify their

liability to register and when they cease to be liable to register or can cancel their registration. It also provides the Treasury a power to increase the sums involved in these provisions and for the Commissioners to be able to specify any notification requirement in or under regulations.

105 Part 10 (Paragraphs 57-65) of 9ZA determines when a business can move its own goods from Northern Ireland to a member State or vice versa under call-off stock provisions and is not required to register and account for VAT in the country of their customer – something their customer does. It provides for how long the stock can remain and under what circumstances before the supplier must account for acquisition tax. It also provides for certain record keeping requirements.

106 Part 11 (Paragraphs 66-74) of 9ZA modifies the various Schedules to VATA in consequence of the provisions on the acquisition of goods in Northern Ireland. This includes modification of the rules on registration, valuation, zero-rating,

exemption of certain goods and avoidance. It provides for regulations to allow the Commissioners to require statements, notifications and other particulars in respect of goods moving between a member State and Northern Ireland. It also determines that NI acquisition VAT applies to the acquisition of dutiable goods, that conditions that apply to electronic storage of VAT invoices or other documents for supplies made in Northern Ireland apply and that a non-taxable person who acquires goods subject to a duty of excise or a new means of transport must keep those acquisition records as the Commissioners require in regulations.

107 Part 12 (Paragraphs 75 to 80) of 9ZA modifies a number of different Acts of Parliament so that they have effect in relation to NI acquisition VAT, as is the case for other VAT.

108 Part 13 (Paragraphs 81-84) of 9ZA reinstates a number of interpretive provisions which were removed by the Taxation (Cross-border Trade) Act 2018 but remain relevant in

relation to NI. This includes interpretation of references to taxation under the laws of a member State and provides a power to the Commissioners to make regulations as to how requirements of such laws are to be evidenced, including in legal proceedings. It also confers a power on the Commissioners by regulations to identify which territories of the EU or member States are to be included or excluded in references to those territories for any of the purposes of VATA. Finally, it defines new means of transport and that where the context requires it, references to VAT in this Schedule (9ZA) means VAT charged in accordance with the law of a member State rather than in accordance with VATA.

Schedule 9ZB (Goods removed to or from Northern Ireland and Supply rules)

109 Paragraph 2 of the Schedule also inserts a further new Schedule, 9ZB, into VATA. The purpose of Schedule 9ZB is to make provision for the VAT treatment of goods imported into Northern Ireland from non-EU countries and

goods exported from Northern Ireland to non-EU countries. It also provides for the VAT treatment of goods moving between Northern Ireland and Great Britain in line with the Northern Ireland Protocol.

110 Part 1 (paragraphs 1 and 2) of Schedule 9ZB deals with importations.

111 Paragraph 1 of Schedule 9ZB ensures goods entering Northern Ireland from EU countries are not treated as imports but, where applicable, are subject to the rules on acquisitions set out in Schedule 9ZA. Where goods are imported into Northern Ireland from non-EU countries VAT is due as if it were “relevant NI import duty” charged under section 30A(3) of TCTA 2018. Sections 15 and 16 of VATA are adapted to refer to relevant NI import duty and to apply EU customs legislation. The Commissioners may make regulations to supplement or modify legislation applicable to VAT on imports into Northern Ireland.

112 Paragraph 2 of Schedule 9ZB adapts the

import valuation provisions in section 21 of VATA to apply to goods imported into Northern Ireland.

113 Part 2 (paragraphs 3-7) of Schedule 9ZB deals with the movement of goods between Northern Ireland and Great Britain.

114 Paragraph 3 of Schedule 9ZB sets out the VAT treatment of goods moving between Northern Ireland and Great Britain. Goods entering Great Britain from Northern Ireland will be subject to VAT as though they were imports and relevant UK legislation will apply. Goods entering Northern Ireland from Great Britain will also be subject to VAT as though they were imports and relevant EU or UK legislation will apply. The Treasury may make regulations to supplement or modify relevant legislation.

115 Paragraph 4 of Schedule 9ZB applies for determining liability for the VAT charged under paragraph 3. It provides that goods are treated as imported for VAT purposes when the liability to pay duty arises, or would arise, on the basis

of certain assumptions. For goods moved in the course of a taxable supply the VAT registered supplier is responsible for accounting for the VAT (not the recipient customer). In all other cases the person liable for the duty will also be liable to pay the VAT. This is the case even if no duty is due or the goods are not subject to customs processes on entry. The Commissioners may make regulations to treat other persons as the importer, to apply or modify legislation for enforcing payment of the VAT and to require a taxable person liable to VAT to give notification of the removal of the goods and specify how the VAT is paid. Where more than one person is treated as importing the goods they are jointly and severally liable for any VAT due.

116 Paragraph 5 of Schedule 9ZB provides that where goods are moved from Northern Ireland to Great Britain in the course of a supply they must be valued under section 19 of VATA which covers supplies and not section 21 which covers imports.

- 117 Paragraph 6 of Schedule 9ZB relieves the VAT on “qualifying Northern Ireland goods” moved from Northern Ireland to Great Britain. Relief will not apply where goods are moved in the course of a taxable supply made by a taxable person or where a supply of goods in Northern Ireland is eligible for zero rating or a refund of VAT on the basis that the purchaser will remove them to Great Britain.
- 118 Paragraph 7 modifies the effect of item 1 of Group 13 of Schedule 8. Item 1 of Group 13 zero rates the supply of imported goods, subject to conditions, where the supply takes place before the customs declaration is made. The modification ensures that the treatment does not apply where goods enter Great Britain from Northern Ireland and no customs declaration is required.
- 119 Part 3 (paragraphs 8-14) of Schedule 9ZB deals with modifications of the VATA in relation to exports.
- 120 Paragraph 8 of Schedule 9ZB modifies the

effect of section 30(5) of VATA (export of goods by charities) in the context of movements between Northern Ireland and Great Britain to maintain the current VAT effect. It also prevents the extension of the relief to movements of goods from Northern Ireland to EU member States.

121 Paragraph 9 of Schedule 9ZB modifies the effect of section 30(6) of VATA so that supplies of goods from Northern Ireland to EU member States are not zero rated as exports.

122 Paragraph 10 of Schedule 9ZB modifies the effect of section 30(8) VATA as if export of goods includes movement between Great Britain and Northern Ireland but not goods moved from Northern Ireland to a member State.

123 Paragraph 11 of Schedule 9ZB modifies the effect of section 30(9) of VATA (zero rating of supply of exported goods let on hire) so that it does not apply to goods moved from Northern Ireland to a member State.

124 Paragraph 12 of Schedule 9ZB applies the

provisions of section 30(10) of VATA. If a supply of goods has been zero rated because the goods are to move from Northern Ireland to Great Britain or vice versa they are liable to forfeiture if they have not been moved or conditions imposed in relation to the zero-rating have not been met, unless HMRC has approved or waived the non-removal or non-compliance.

125 Paragraph 13 of Schedule 9ZB modifies section 37 of VATA which provides powers for Treasury orders to relieve VAT and Commissioners' regulations to refund VAT on imports. Paragraph 12 extends the secondary legislation making powers to cover movements between Northern Ireland and Great Britain and ensures references to "export" do not apply to movements of goods from Northern Ireland to an EU member State.

126 Paragraph 14 of Schedule 9ZB modifies Group 13 of Schedule 8 to VATA so that references to exports do not include goods moved from Northern Ireland to the Member States.

127 Paragraph 14 also modifies Group 15 of Schedule 8 so that references to exports apply to movements between Northern Ireland and Great Britain.

128 Part 4 of Schedule 9ZB (paragraphs 15 -26) provides for warehouses and fiscal warehouses in Northern Ireland as covered in sections 18 to 18E of VATA. These sections were amended by the TCTA broadly to remove references to acquisitions and to reflect the fact that goods could no longer be moved between warehouses in the UK and those in EU member States without VAT consequences. Under the Northern Ireland Protocol after the transition period warehouses in Northern Ireland will be able to operate as they do today in respect of transactions with other member States. Part 4 therefore effectively reverses the TCTA changes in respect of warehouses by reinstating the effect of sections 18 to 18E. Although there is some change to the ordering compared to those sections and some modernising of the language and legislative cross references Part 4 is not

intended to make any substantive changes to the effect of the legislation as it exists currently save for the fact that goods will be unable to move as freely between fiscal warehouses located in Northern Ireland and those located in Great Britain as they do today.

129 Paragraph 26 of Schedule 9ZB makes consequential changes to Schedules 6 and 11 to VATA section 702 of the Income Tax (Earnings and Pensions) Act 2003 and Schedule 36 to the Finance Act 2008 to reflect the warehousing regime for Northern Ireland set out in Part 4 of Schedule 9ZB.

130 Part 5 of Schedule 9ZB (paragraphs 27-31) provides for rules relating to particular supplies.

131 Paragraph 27 of Schedule 9ZB deals with the taxation of gas, electricity, heating or cooling supplied through networks and adapts the self-supply rules so that they apply separately to Northern Ireland.

132 Paragraph 28 of Schedule 9ZB reinstates the rules governing the time of supply of goods

involving both a supply and acquisition to cover supplies of goods from a business in Northern Ireland to a business customer in an EU member State

- 133 Paragraph 29 of Schedule 9ZB reinstates the EU-wide distance selling rules in respect of goods sold by businesses based in Northern Ireland to non-business customers in member States and by businesses in the EU to non-business customers in Northern Ireland.
- 134 Paragraph 30 of Schedule 9ZB reinstates the rules on movements of own goods between Northern Ireland and EU member States.
- 135 Paragraph 31 of Schedule 9ZB creates, in the case of goods in Northern Ireland at the time they are supplied, an exception to the rule in section 43(1)(a) of VATA (under which supplies between VAT group members are disregarded for VAT) unless supplier and recipient are established in Northern Ireland.
- 136 Part 6 of Schedule 9ZB (paragraphs 32-33) provides for rules in relation to Northern Ireland

and the Isle of Man. It provides that movements from the Isle of Man to Northern Ireland will be treated as imports and movements from Northern Ireland to the Isle of Man will be treated as exports.

137 Paragraph 34 provides that Part 4 of Schedule 9ZB (warehouses) has effect as though references to Great Britain include references to the Isle of Man. Paragraph 35 provides that nothing in the Schedule should be taken as extending to the Isle of Man.

Other amendments to VATA 1994

138 Paragraph 3 of the Schedule amends section 3 of VATA to introduce additional circumstances where a person can be a taxable person and required to register for VAT.

139 Paragraph 4 amends section 5 of VATA to provide that by Treasury Order, paragraph 27 of new Schedule 9ZB which treats the removal of assets of a business from Northern Ireland or a member State as a supply of goods, may not apply in circumstances set out in the Treasury Order.

- 140 Paragraph 5 makes amendments to section 9A VATA (reverse charge on gas, electricity, heat or cooling supplied by persons outside the United Kingdom) in relation to Northern Ireland.
- 141 Paragraph 6 updates a number of definitions in connection with companies and individuals when considering past compliance of applicants to be a fiscal warehouse keeper.
- 142 Paragraph 7 withdraws the rules for call-off stock (save for Northern Ireland – see Part 10 of new Schedule 9ZA) and provides for a saving provision. It also provides for the removal or amendment of consequential legislative changes made elsewhere.
- 143 Paragraphs 8 and 9 make further consequential amendments to Schedule 8, Group 18 and Schedule 11A to VATA.

Part 2: Amendments of other legislation

- 144 Part 2 of the Schedule (paragraphs 10-14) makes minor amendments to the Finance (No 2) Act 2017 and TCTA 2018, and consequential changes to the VAT (Place of Supply of Goods)

Order 2004 and the Value Added Tax (Relief for European Research Infrastructure Consortia) Order 2012. It also omits regulation 7 of the Value Added Tax (Miscellaneous Amendments, Revocation and Transitional Provisions) (EU Exit) Regulations 2019 which is no longer required.

Schedule 3: Online sales by overseas persons and low value importations

145 Schedule 3 makes amendments and modifications to the Value Added Tax Act 1994 (VATA) and to other enactments relating to VAT to provide for the VAT treatment of certain imported goods.

Part 1: Main Amendments

146 Part 1 amends provisions in VATA, the Value Added Tax Regulations 1995 and revokes provisions in the Value Added Tax (Imported Goods) Relief Order 1984. Part 1 only has effect for goods imported into GB, or for goods located in GB sold to GB consumers.

Amendments to VATA 1994

- 147 Paragraph 2 inserts new section 5A into VATA to provide that in certain circumstances the operator of an online marketplace, which facilitates the supply of goods that are imported into the UK at the point of sale, is treated as both having received a supply of those goods and supplied those goods for business purposes and must account for the VAT.
- 148 Paragraph 3 provides for new section 5A to be amended to expand the circumstances in which the operator of an online marketplace is deemed to be the supplier of goods whose supply it facilitates to cover cases where the goods are not imported at the point of sale but where the seller is established outside the UK (with some exceptions).
- 149 Paragraph 4 inserts new subsections (5A), (5B) and (9A) into section 7 of VATA.
- a. Subsection (5A) provides that the place of supply of goods that are deemed to be supplied by the seller to the operator of an online marketplace by virtue of new section

5A is outside the United Kingdom.

b. Subsection (5B) provides that the place of supply of certain imported goods that are valued at no more than £135, that would otherwise be outside the United Kingdom, is the United Kingdom.

c. Subsection (9A) provides that the Commissioners may amend the figure of £135.

150 Paragraph 5 inserts new section 7AA into VATA to provide that a taxable person that receives certain supplies of imported goods is treated as both making and receiving the supply for business purposes and must account for the VAT and further provides that the Commissioners may amend the figure of £135.

151 Paragraph 6 amends section 16A(1) of VATA (inserted by paragraph 14 of Schedule 8 to TCTA) to remove the reference to the Postal Services Act 2000.

152 Paragraph 7 amends the heading to section 37 of VATA and inserts new subsection (A1) into

that section to remove the charge to import VAT on goods to which new section 7(5B) of VATA applies.

153 Paragraph 8 amends section 77B of VATA to remove the definitions of “online marketplace” and “operator” and the vires to amend these definitions by regulations as these definitions have been moved to new section 95A of VATA. Paragraphs 9 to 12 make minor consequential amendments to sections 77BA, 77C, 77D, and 77E of VATA.

154 Paragraph 13 inserts new section 77F into VATA to set out when an operator of an online marketplace will not be liable for any additional VAT due pursuant to new section 5A of VATA.

155 Paragraph 14 inserts new section 95A into VATA to define “online marketplace” and “operator” for the purpose of VATA, explains the meaning of “facilitates” for the purpose of those definitions and provide that the Treasury may amend those definitions by regulations.

156 Paragraph 15 amends section 96(1) of

VATA to insert definitions for “postal operator” and “postal packet” for the purpose of VATA.

157 Paragraph 16 inserts new Group 21 into Schedule 8 to VATA to provide that VAT is chargeable at the zero rate on deemed supplies of goods made to an operator of an online marketplace by a person established outside the United Kingdom (cases where the operator is deemed to be the supplier pursuant to new section 5A of VATA provided that the supply does not involve the goods being imported).

158 Paragraph 15 amends paragraph 6 of Schedule 11 to VATA to insert new subparagraphs (4A) to (4D). Together, these subparagraphs require taxable persons that make supplies of goods to which new sections 5A or 7(5B) of VATA apply to preserve records electronically and, if requested, to provide those records to HMRC electronically.

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

159 Paragraph 18 amends the Value Added Tax (Imported Goods) Relief Order 1984 to remove

the provisions relating to low value consignment relief which exempts packages valued at £15 or less from import VAT.

Amendments to the Value Added Tax Regulations 1995

160 Paragraphs 19 to 24 amend the Value Added Tax Regulations 1995 to impose a requirement to issue a VAT invoice for supplies to non-taxable persons where the supplies fall within new sections 5A or 7(5B) of VATA whilst excluding such supplies from certain other regulatory provisions.

Part 2: Amendments and modifications relating to Northern Ireland

161 Part 2 amends and modifies various provisions in VATA and the Value Added Tax (Imported Goods) Relief Order 1984 in relation to Northern Ireland.

162 Paragraph 26 amends section 40A of VATA (inserted by Clause 3 of this Bill) to introduce new Schedule 9ZC (Online Sales By Overseas Persons And Low Value Importations: Modifications Relating To Northern Ireland) into

VATA and make consequential amendments to Schedule 9ZB to VATA (to be inserted by Schedule 2 to this Bill).

Schedule 9ZC Online sales by overseas persons and low value importations: modifications relating to the Northern Ireland Protocol

Modifications of VATA 1994

163 Part 1 of Schedule 9ZC modifies provisions in VATA, including those introduced by Part 1 of this Schedule, to provide that in certain circumstances the supplier of goods, or the operator of an online marketplace which facilitates the supply of goods, imported into Northern Ireland at the point of sale, is treated as the importer of the goods and liable to account for the VAT due. It also modifies paragraph 6 of Schedule 11 to VATA by including those liable for VAT under Schedule 9ZC in the requirement to preserve records electronically and, if requested, to provide those records to HMRC electronically.

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

164 Part 2 of Schedule 9ZC modifies the Value Added Tax (Imported Goods) Relief Order 1984 so that provisions relating to low value consignment relief, omitted by Part 1 of this Schedule, continue to apply for good imported into the UK as a result of their entry into Northern Ireland.

Registration

165 Part 3 of Schedule 9ZC introduces registration provisions requiring those deemed to be the importer of goods under Schedule 9ZC to register for VAT.

166 Paragraphs 7 to 12 of Schedule 9ZC sets out the circumstances when a person is who is treated as having imported goods under Part 1 of Schedule 9ZC is liable to be registered, and makes rules regarding notification of that liability, entitlement to be registered, notification of matters affecting continuance of registration and when a person ceases to be liable for registration. It also provides for the Commissioners to be able to specify any notification requirements in or under regulations.

167 Paragraph 13 of Schedule 9ZC defines “relevant supply” for the purposes of Part 3 of Schedule 9ZC.

Modification of the Finance Act 2008

168 Paragraph 14 of Schedule 9ZC modifies the application of paragraph 1 of Schedule 41 to the Finance Act 2008 (penalties: failure to notify etc) to include the new obligation to notify liability to register and notify matters affecting continuance of registration under Schedule 9ZC.

Amendments to Schedule 9ZC

169 Paragraph 29 of Schedule 3 provides for Schedule 9ZC to be amended to provide that the supplier of goods, or the operator of an online marketplace, which facilitates the supply of goods, imported into Northern Ireland at the point of sale, is treated as the importer of the goods to cover cases where the goods are located in Great Britain at the point of sale but where the seller is established outside the UK (with some exceptions).

Schedule 4: Recovery of unlawful state aid

170 This Schedule introduces new Section 371UFA into Part 9A of the Taxation (International and Other Provisions) Act 2010 (“TIOPA 2010”), and new Schedule 7ZA into TIOPA 2010. This new section and schedule provide for the recovery of state aid in line with a European Commission Decision in relation to the UK CFC regime.

Section 371UFA, Chapter 21A, Part 9A TIOPA 2010

171 This section sets out that Schedule 7ZA of TIOPA 2010 provides for the recovery of state aid in accordance with European Commission Decision (EU) 2019/1352, which concerns the CFC Group Financing Exemption (“the Commission Decision”).

Schedule 7ZA TIOPA 2010

172 This schedule provides for the recovery of state aid in line with European Commission Decision (EU) 2019/1352.

173 Paragraph 2 provides that HMRC can issue a charging notice to a company in order to recover the additional amounts it considers to be

due. Such a notice must specify the additional amount for each accounting period, the basis on which those amounts have been calculated, how interest will be calculated, and when the payment must be made.

174 Paragraph 3 provides that charging notices must be issued within 12 months of the Schedule coming into effect. This time limit can be extended by Treasury regulations.

175 An additional amount for the purposes of this Schedule is any amount which would have been chargeable under the CFC rules in Part 9A TIOPA 2010 had a company not benefitted from unlawful state aid within the terms of the Commission Decision. Additional amounts specified in a charging notice must be paid within 30 days. Paragraph 2(3) provides that payment cannot be postponed on any grounds.

176 Paragraph 4 provides that HMRC can issue a consequential amendment notice to any company to reduce the additional amounts chargeable as a result of a charging notice. This

can take account of any claim, election or representation in relation to a charging notice, or any Tribunal decision in relation to an appeal. A consequential amendment notice can also be issued to any company that has, for example, made a claim or election to surrender reliefs to the company to whom the charging notice is issued. Where a consequential amendment notice reduces the additional amount chargeable in the charging notice, any amount overpaid will be repaid.

177 A claim or election, including to set reliefs against an additional amount, in relation to a charging notice or a consequential amendment notice has to be made within 60 days from the issue of that notice.

178 To prevent any double-charge to tax arising, paragraph 5 provides that any discovery assessment, claim or election ceases to have effect to the extent that it relates to an additional amount in a charging notice. Additionally, any charging notices and consequential amendment notices must be taken into account when closure

notices are issued for the same accounting period.

179 Paragraph 6 provides that taxpayers have the right to appeal against a charging notice or a consequential amendment notice. Such appeals must be in writing to HMRC within 30 days of the notice being given.

180 The rules in Part 5 TMA 1970 (appeals etc) in relation to assessments apply. Paragraph 6(4) provides that on appeal the Tribunal can confirm, amend or cancel a notice.

181 Paragraph 7 enables HMRC to issue an interest charging notice in respect of additional amounts paid by a company. Paragraph 8 provides that the interest charge is calculated by reference to the compound interest rates provided for in the relevant EU regulations. Amounts specified in the notice must be paid within 30 days, and payment cannot be postponed on any grounds. HMRC can cancel or vary such notices

182 Paragraph 9 provides that HMRC can issue a notice to recover an additional amount or interest charge from any related company where the original company does not fully pay an additional amount or related interest charge, or goes into liquidation, administration or receivership, or has been dissolved. Such notices will only be issued when HMRC consider that any benefit or advantage as a result of the state aid has been received by that related company.

183 Paragraph 10 provides that in the case that the Commission Decision is revoked or annulled, Treasury regulations must be made to put any company affected by the Schedule back in the position it would have been in had the Commission Decision not been made. This requirement does not apply if it is considered that there may be a further Commission Decision with the same or similar effect.

184 Paragraph 10(3) provides that if there is a variation of the Commission Decision, or any further decision with the same or similar effect as the Commission's Decision, Treasury may

make such regulations as are necessary.

185 Paragraph 12 provides that the application of certain corporation tax rules to a CFC charge applies subject to this Schedule, and any other changes needed to give effect to the Commission Decision.

186 Paragraph 12(2) and (3) provide that for the purposes of the recovery of state Aid, any relevant time limit is disregarded, apart from those applicable under this Schedule.

187 Paragraph 13 provides various definitions that apply for the purposes of this Schedule.

188 This Schedule comes into force on Royal Assent.

Commencement

189 Subsection (1) secures that section 9 and Schedule 4 (recovery of state aid) come into force on Royal Assent. It also secures that powers to make secondary legislation are exercisable as from Royal Assent. Subsection (2) provides for the increase in the rate of fuel

duty on aviation gasoline to come into force on 1 January 2021.

190 The remaining provisions of this Bill come into force in accordance with commencement regulations.

191 Subsection (5) confers power on the Treasury to make consequential, supplementary, incidental, transitional, transitory or saving provision.

Financial implications of the Bill

192 The Bill contains provisions to implement a tariff charge for certain goods moving from Great Britain to Northern Ireland, where these goods are ‘at risk’ of onward movement to the EU. The same charge is also applicable to goods arriving in Northern Ireland from Rest of World countries which are also ‘at risk’ of movement into the EU. A further charge is put in place for certain goods moving from Northern Ireland to Great Britain – this charges the UK tariff on non-qualifying goods (non-Northern Irish goods).

193 This implementation of the VAT and Excise elements of the Northern Ireland Protocol are not expected to have a significant fiscal impact

- 194 The increases in the aviation gasoline rate by 0.5p per litre from 37.70 ppl to 38.20ppl from 1 January 2021 across the UK will have a negligible revenue impact.
- 195 The Bill contains changes to the VAT treatment of overseas goods arriving into GB. This includes abolishing a relief from import VAT for goods valued at not greater than £135 and moving the collection of VAT away from the border. This new method of VAT collection is expected to be much more effective than the current method and so is likely to increase VAT revenues.
- 196 The Amendment to Insurance Premium Tax (IPT) liability notices power does not have any financial implications.
- 197 The Bill contains new powers for HMRC to raise CFC tax charges for the period from 1 January 2013 to 31 December 2018 in connection with EU Commission Decision 2019/1352. The tax collected will flow into the Consolidated Fund in the usual way. Although the new powers establish an efficient legal mechanism for the assessment and collection of those tax charges, the UK has an existing legal

obligation to collect the tax concerned and so the measure does not raise new revenue.

198 The explanatory memorandum accompanying each statutory instrument made by the Treasury or Secretary of State under a power in the Bill will include details of financial implications of the instrument, if any, providing ongoing transparency on the financial implications of the use of the powers in the bill.

Parliamentary approval for financial costs or for charges imposed

199 The Bill was brought in on ways and means resolutions passed by the House of Commons on 8 December 2020.

Compatibility with the European Convention on Human Rights

200 Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement before Second Reading about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act). Rishi

Sunak, Chancellor of the Exchequer, has made the following statement:

“In my view the provisions of the Taxation (Post-Implementation Period) Bill are compatible with the Convention rights.”

201 The Government will publish an ECHR memorandum which explains in detail its assessment of the compatibility of the Bill’s provisions with the Convention rights.

Related documents

202 The following documents are relevant to the Bill and can be read at the stated locations:

- Delegated Powers Memorandum
<https://www.gov.uk/government/publications/taxation-post-transition-period-bill>

Annex A - Territorial extent and application in the United Kingdom

The Bill extends, and applies in relation to, England, Wales, Scotland and Northern Ireland.¹

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of Senedd Cymru?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion sought?
All clauses and schedules	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No

¹ References in this Annex to a provision being within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

TAXATION (POST-TRANSITION PERIOD) BILL

EXPLANATORY NOTES

These Explanatory Notes relate to the Taxation (Post-transition Period) Bill as introduced in the House of Commons on 8 December 2020 (Bill 227).

Ordered by the House of Commons to be printed,
8 December 2020

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