

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

First Delegated Legislation Committee

VALUE ADDED TAX (PLACE OF SUPPLY OF
SERVICES) (SUPPLIES OF ELECTRONIC,
TELECOMMUNICATION AND BROADCASTING
SERVICES) ORDER 2018

Monday 10 December 2018

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The Committee consisted of the following Members:

Chair: STEWART HOSIE

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| † Brown, Lyn (<i>West Ham</i>) (Lab) | Mahmood, Shabana (<i>Birmingham, Ladywood</i>) (Lab) |
| † Clark, Colin (<i>Gordon</i>) (Con) | † Mak, Alan (<i>Havant</i>) (Con) |
| † Crawley, Angela (<i>Lanark and Hamilton East</i>) (SNP) | Reynolds, Emma (<i>Wolverhampton North East</i>) (Lab) |
| † Grant, Mrs Helen (<i>Maidstone and The Weald</i>)
(Con) | † Seely, Mr Bob (<i>Isle of Wight</i>) (Con) |
| † Hart, Simon (<i>Carmarthen West and South
Pembrokeshire</i>) (Con) | † Smith, Jeff (<i>Manchester, Withington</i>) (Lab) |
| Hodge, Dame Margaret (<i>Barking</i>) (Lab) | † Stride, Mel (<i>Financial Secretary to the Treasury</i>) |
| Jarvis, Dan (<i>Barnsley Central</i>) (Lab) | † Walker, Thelma (<i>Colne Valley</i>) (Lab) |
| † Kawczynski, Daniel (<i>Shrewsbury and Atcham</i>)
(Con) | † Whittaker, Craig (<i>Lord Commissioner of Her
Majesty's Treasury</i>) |
| † Maclean, Rachel (<i>Redditch</i>) (Con) | Jack Dent, <i>Committee Clerk</i> |
| | † attended the Committee |

First Delegated Legislation Committee

Monday 10 December 2018

[STEWART HOSIE *in the Chair*]

Value Added Tax (Place of Supply of Services) (Supplies of Electronic, Telecommunication and Broadcasting Services) Order 2018

4.30 pm

The Financial Secretary to the Treasury (Mel Stride): I beg to move,

That the Committee has considered the Value Added Tax (Place of Supply of Services) (Supplies of Electronic, Telecommunication and Broadcasting Services) Order 2018 (S.I., 2018, No. 1194).

It is a pleasure to serve under your chairmanship once again, Mr Hosie. The order implements changes to article 58 of the EU VAT directive by amending the UK's VAT place of supply rules. It introduces an annual £8,818 threshold below which, where a UK business makes cross-border supplies of certain digital services to private EU consumers, the deemed place of supply will be the United Kingdom.

It may be helpful if I set out the background to the order. In January 2015, suppliers of digital services to EU consumers were made liable to account for VAT in the member states in which their customers are located, not those in which the supplier is based. Traders of digital services therefore needed to register in each member state in which their customers were located, irrespective of the value of their sales. To mitigate the administrative impact of those changes, the VAT mini one-stop shop—MOSS—accounting simplification scheme was introduced, which made it possible for businesses to register in one member state and account via that single registration for VAT due throughout the EU. UK businesses trading below the VAT registration threshold therefore needed to register for VAT in the member states in which they made supplies, register for VAT in order to join the VAT MOSS scheme, or decide not to supply to private EU consumers. In December 2017, vital easements to these rules that the UK had pushed for were agreed to by EU Finance Ministers. The order implements one such change, further simplifying VAT accounting and easing the administrative burden on small traders.

The UK remains committed to simplifying the tax system to support small businesses. UK businesses that sell digital services to EU customers below a turnover value of £8,818 in the current and preceding calendar year can treat the UK as the place of supply for those sales, which will therefore be subject to UK VAT rules. UK businesses that have a turnover below the UK VAT registration threshold and that make digital sales to private EU customers below the cross-border sales threshold will not have to register for VAT unless they choose to do so. This will be of great benefit to small businesses,

reducing their running costs as well as making them more competitive since they do not have to comply with an additional obligation.

The order will allow UK businesses under the new threshold to choose to keep the place of supply in the EU member states in which their customers are based and account for VAT using the MOSS system or register in the relevant member states. To do so, they must notify HMRC. This treatment will apply from the date of election until the end of that year and for the following two full calendar years, allowing businesses the scope to choose the best option for their circumstances. The changes to the VAT digital services rules are welcomed by businesses and were lobbied for by the UK.

The order is expected to have a positive impact on approximately 1,100 businesses—around 50% of UK businesses using MOSS—that fall below the threshold. HMRC has produced guidance updates to reflect the introduction of the proposed changes, which will take effect from 1 January 2019 and which the UK has pressed for at EU level. The order updates UK law in line with the European VAT directive and simplifies the VAT rules for the trade of digital services for our smallest businesses. I commend it to the Committee.

4.34 pm

Lyn Brown (West Ham) (Lab): It is an absolute pleasure to serve under your chairmanship, Mr Hosie. As the Minister said, the VAT MOSS system was introduced in 2015 as a means for small businesses that export digital services to simplify how they pay VAT to different EU countries. The locus for VAT payment was changed from the country of the seller to the country of the buyer.

As hon. Members are aware, the introduction of VAT MOSS was chaotic, to put it mildly. Labour MPs and MEPs were involved in trying to ensure that microbusinesses could continue to operate despite ambiguity about whether or how they should be paying VAT on digital services. I am told that, unfortunately, some of the platforms used by many of the microbusinesses refuse to aid them in capturing the customer data required to enable them to pay VAT through VAT MOSS. It would be helpful if the Minister could inform us of any discussions his Department has had with online platforms about how they will be able to support microbusinesses in complying with the new VAT rules.

The EU VAT rules mean that even very small businesses that currently export digital services to other EU member states have to account for VAT for each and every country in which they make a sale. For example, a music publishing business in the UK that allows fans in other EU countries to pay to download music would have to collect two separate pieces of data to prove which country each payment has come from. That is necessary for small businesses to confirm that they are compliant with the law and paying the right VAT.

In 2011, the average cost for small and medium-sized enterprises to account for VAT in other member states was estimated by the European Commission to be roughly €4,100 a year, although that was before the introduction of VAT MOSS. For many smaller digital businesses, high administration costs could make engaging with customers in other EU countries simply not worth it. The Commission found evidence that having to deal

with a range of different VAT regimes was leading to geo-blocking, where businesses actively deny access to their services to consumers from different EU states. The problem is not just that small businesses obviously lose trade revenues, but that opportunities for those thousands of small businesses to increase productivity and for trade growth simply are not being taken up.

The directive that this SI implements, Council directive 2017/2455, is designed to remedy that situation. It allows small businesses to operate solely within their own country's VAT regulations if their sales to customers in other EU countries are worth less than the local equivalent of €10,000. This statutory instrument incorporates the 2017 directive into UK law, with the threshold figure set at £8,818. It is based on the exchange rate published by the European Central Bank at the time the 2017 directive was first adopted by the European Union. Businesses will have the option to opt out of these changes. If they do, they will have to follow the previous VAT rules and account for transactions in every EU member state in which they have made a sale for the following two calendar years.

The Institute of Chartered Accountants in England and Wales has pointed out that, because our domestic VAT laws also contain thresholds, a small number of firms may be able to use this new exemption to ensure that they will not have to register for VAT anywhere, despite trading in both the UK and other EU states. Has the Minister made any assessment of the number of firms, if any, that would be in that position?

The new rules could increase VAT revenue in the UK as small services exporters opt to pay VAT here to save on the administration costs involved in accounting for transactions elsewhere. However, they could also decrease VAT receipts in the same way if firms in other EU countries that export here do likewise. Which effect will be larger will partly depend on the UK-EU balance of trade in services for this specific set of small digital trading businesses. Has the Minister made any assessment of whether this change will lead to net gains or net losses in VAT receipts to the Treasury?

I would also like to know more about the threshold, which is set at a nominal value of €10,000 across the EU and has been converted to £8,818 based on the exchange rate on a specific day. There seems to be no mechanism to uprate this threshold automatically to compensate for inflation or nominal growth in the economy. Presumably, that will mean that, unless the threshold is uprated through legislation every few years, EU-wide the exemption this SI establishes will be relevant to fewer and fewer businesses over time and will stop serving its intended purpose. Does the Minister know of any plans to uprate this threshold in future or to establish a mechanism to do so automatically?

Brexit will have an obvious effect. Let us imagine, wildly, that the Government's Brexit deal goes through once we are given the opportunity to vote on it. This is an area where, to quote the draft political declaration, "the United Kingdom will consider aligning with Union rules in relevant areas."

It is noteworthy that the VAT reform process within the EU is ongoing, and major changes are on the horizon. EU institutions are working on

"a simpler and resilient definitive EU VAT system",

which, as things stand, could deeply affect our businesses, including SMEs, but our Government may have little influence. Has the Minister considered how to engage with those reform proposals, how continued alignment will work if we take that course, or how to adapt domestic policy to minimise damage to trading businesses if we end up on the outside of reformed VAT regulations in the future?

If we face the disaster of no deal after 29 March, small businesses will have had to deal with three different sets of VAT rules within just three months. The current set of rules will apply until new year's eve. The new rules will apply until 29 March. From 30 March, businesses will potentially need to use the rules for non-EU VAT registration. That seems deeply unfair to small businesses. How will HMRC keep businesses up-to-date on the rules that will apply to them if Brexit goes badly? I fear that this is yet another case in which the Government's failures in the Brexit negotiations are leaving UK businesses without the certainty that they crave.

4.41 pm

Angela Crawley (Lanark and Hamilton East) (SNP): It is a pleasure to serve under your chairship, Mr Hosie. The order amends paragraph 15 of schedule 4A of the Value Added Tax Act 1994, which determines the place of supply of electronically supplied telecommunication and broadcasting services. The order relates to the supply of services made on or after 1 January 2019.

The order is required to implement amendments made to article 58 of EU Council directive 2006 on the common system of value added tax, which take effect on 1 January 2019. While the Prime Minister struggles to get her deal through Parliament, the EU is pressing on with such technical changes to ensure that it is the best place to do business. To replace that expertise with the UK Government, who are unable to even get support from their own Back Benchers, is a recipe for chaos from which Scotland must protect itself.

If it has taken this long to be able to deal with this technical statutory instrument, it is totally unrealistic to expect the UK Government to be able to pass a raft of legislation via statutory instruments in time for Brexit. I therefore seek clarifications on the implementation of the order, as well as the thresholds and timescales implied.

4.43 pm

Mel Stride: I thank both hon. Ladies for their contributions and questions, which I will endeavour to address as comprehensively as I can. On VAT MOSS and whether there have been discussions with online platforms—I think that was expression used by the hon. Member for West Ham—most of the businesses to which the statutory instrument will be relevant will be, by definition, fairly small. They tend to trade more directly than through online platforms. I assure the hon. Lady that there was a four-week consultation on the statutory instrument, and there was only one response, which related to a typo in the draft legislation.

The hon. Member for West Ham asked perfectly reasonably about the cost of dealing with VAT. We see the order as a relieving measure and estimate that the 1,100 businesses that are likely to benefit from the

[Mel Stride]

change will save, on average, about £260 per year, largely on their own administration costs. She also asked specifically about businesses that would not have to register for the VAT MOSS approach but that might be below the £85,000 VAT registration threshold. I do not have a specific figure but I am happy to look into that further and write to her.

The hon. Lady also asked about the net effect of these changes for the United Kingdom and the EU27 member states. Again, I do not have that to hand. Unless it comes to me very quickly—[*Interruption.*] It has not. How disappointing it is to get a note that does not have what you would like in it, but there you go. I am of course very happy to look at that and see what information I can establish. On the specific issue of the

potential uprating of the threshold, neither I nor my officials are aware of any proposed uprating, but if that is the case I will certainly let the hon. Lady know.

The hon. Lady and the hon. Member for Lanark and Hamilton East both made various points about Brexit and timetables and asked what will happen in the various deal and no-deal circumstances. We are confident that there will be a deal and that we will therefore move into the implementation period from the end of March until the end of 2020. Under those circumstances, the draft order will have relevance and the arrangements it makes will benefit small businesses up and down the United Kingdom. On that basis, I commend the order to the Committee.

Question put and agreed to.

4.46 pm

Committee rose.

