PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Eighth Delegated Legislation Committee

VAT (PLACE OF SUPPLY OF SERVICES) (SUPPLIES OF ELECTRONIC, TELECOMMUNICATIONS AND BROADCASTING SERVICES) (AMENDMENT AND REVOCATION) (EU EXIT) ORDER 2019

FINANCE ACT 2011, SCHEDULE 23 (DATA-GATHERING POWERS) (AMENDMENT) (EU EXIT) REGULATIONS 2019

CUSTOMS (RECORDS) (EU EXIT) REGULATIONS 2019

Tuesday 14 May 2019

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Saturday 18 May 2019

The Committee consisted of the following Members:

Chair: Mr Virendra Sharma

† Clarke, Mr Simon *(Middlesbrough South and East Cleveland)* (Con)
Daby, Janet *(Lewisham East)* (Lab)
† Dakin, Nic *(Scunthorpe)* (Lab)
† Flint, Caroline *(Don Valley)* (Lab)
† Fysh, Mr Marcus *(Yeovil)* (Con)
† Hart, Simon *(Carmarthen West and South Pembrokeshire)* (Con)
Hill, Mike *(Hartlepool)* (Lab)
† Jack, Mr Alister *(Dumfries and Galloway)* (Con)
† Knight, Sir Greg *(East Yorkshire)* (Con)
† Lammy, Mr David *(Tottenham)* (Lab)
† McGinn, Conor *(St Helens North)* (Lab)
† Merriman, Huw *(Bexhill and Battle)* (Con)
† Morris, James *(Halesowen and Rowley Regis)* (Con)
† Reynolds, Jonathan *(Stalybridge and Hyde)* (Lab/Co-op)
† Robinson, Mary *(Cheadle)* (Con)
† Stride, Mel *(Financial Secretary to the Treasury)*
† Thewliss, Alison *(Glasgow Central)* (SNP)

Sarah Rees, *Committee Clerk*

† attended the Committee

Eighth Delegated Legislation Committee

Tuesday 14 May 2019

[Mr Virendra Sharma *in the Chair*]

Value Added Tax (Place of Supply of Services) (Supplies of Electronic, Telecommunication and Broadcasting Services) (Amendment and Revocation) (EU Exit) Order 2019

2.30 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) (Amendment and Revocation) (EU Exit) Order 2019 (S.I. 2019, No. 404).

The Chair: With this it will be convenient to consider the Finance Act 2011, Schedule 23 (Data-gathering Powers) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019, No. 397) and the Customs (Records) (EU Exit) Regulations 2019 (S.I. 2019, No. 113).

Mel Stride: It is a pleasure to serve under your chairmanship, Mr Sharma. The Value Added Tax (Place of Supply of Services) (Supplies of Electronic, Telecommunication and Broadcasting Services) (Amendment and Revocation) (EU Exit) Order 2019 amends the Value Added Tax Act 1994 to reverse changes made on 1 January in consequence of an EU-wide change to the place of supply of electronic, telecommunication and broadcasting services, or "digital services". The place of supply rules govern where VAT has to be paid.

Since 1 January 2015, the place of supply of digital services made to a private consumer in the EU has been the consumer's member state. Businesses that make supplies of digital services are therefore required to account for VAT in each member state where their consumers are located. To facilitate payment of VAT, the mini one-stop shop, or MOSS, was established. MOSS is an EU-wide simplified registration and accounting scheme, which allows businesses that supply digital services to consumers to register for VAT in one member state, rather than in each member state where they make supplies. Since VAT MOSS is an EU scheme, on exit from the EU, the UK will no longer be eligible to take part in it.

On 1 January 2019, the EU made further changes to the place of supply rules for digital services, which were implemented by amendments to the VAT Act. Those changes removed the requirement for EU businesses with very low cross-border trade to register in respect of supplies to consumers in other member states. If an EU business's total cross-border supplies are valued at less than €10,000, or £8,818, the place of supply is now the supplier's member state and not the consumer's. In those circumstances, VAT is due in the supplier's member state, subject to any domestic registration threshold. That treatment could no longer apply to UK businesses in the event that the UK left without a deal, because the UK would no longer be a member state. The changes to the VAT Act would therefore become redundant.

The changes made by the order are consistent with the changes to the VAT Act made by the Taxation (Cross-border Trade) Act 2018, which included removal of the VAT MOSS. However, the 2018 Act predated the changes to the place of supply rules, which is why a separate instrument is required. If we did not proceed with this instrument there would be no immediate impact, since the legislation is otiose and should no longer have practical effect. However, manipulation of the place of supply rules has been used in the past for tax avoidance, so, although no risk has been identified, it makes sense to remove the superfluous legislation now. That approach will also provide certainty and consistency with other amendments made to VAT primary legislation. I commend the order to the Committee.

The Finance Act 2011, Schedule 23 (Data-gathering Powers) (Amendment) (EU Exit) Regulations 2019 enable Her Majesty's Revenue and Customs to request data from postal operators in support of the compliance strategy for parcels. In the unlikely event of the UK leaving the EU without a deal, the Value Added Tax (Postal Packets and Amendment) (EU Exit) Regulations 2018 would introduce a new policy in respect of imports of parcels, transferring the liability for payment of import VAT on consignments of goods with a value of £135 or less from the UK consumer to the overseas supplier. To enable HMRC to ensure compliance with the new regime, it will be necessary for it to obtain information on those imports from businesses involved in the transaction chain.

Clearly, postal operators are well placed to provide useful information on the parcels they deliver in order to allow HMRC to ensure that overseas suppliers pay the import VAT due. The regulations are the first step in ensuring that HMRC can obtain that information. Schedule 23 to the Finance Act 2011 enables HMRC to collect relevant data from certain third parties. The regulations simply extend those powers to include postal operators in the unlikely event of the UK leaving the EU without a deal.

The next step will be to set out in detail the type of information that HMRC can require postal operators to provide. That will be done by way of a separate statutory instrument. However, HMRC can require data holders only to provide information that they acquire as part of their normal business activities. It cannot require them to collect additional information and provide it to HMRC. The rules as a whole will therefore balance the need to ensure that tax is collected, where due, with the need to prevent additional costs or administrative burdens from falling on business.

Failing to agree to proceed with this instrument will not in itself change the introduction of the new parcels policy in the unlikely event of the UK leaving the EU without a deal, but it will mean that HMRC may not be able to collect the necessary data to ensure compliance with that policy. HMRC may be unable to satisfactorily assure itself that the new policy is working correctly and therefore spot and deal with any difficulties. That in turn could lead to losses in VAT revenue.

The third instrument is the Customs (Records) (EU Exit) Regulations 2019, which are needed to incorporate existing record-keeping requirements relating to customs obligations, currently contained in EU law, in UK law after the UK's departure from the EU. They cover all types of customs transaction and are designed to provide customs officials with an effective audit trail for the

movement of goods, including the intended use of the goods, the point at which they became liable for import duty, the level of that duty, and details of the payment. The regulations require HMRC to publish a notice containing the requirements for the types of record that importers and exporters and those connected to imports and exports will be expected to keep, the format of those records and the length of time for which they will need to be retained.

The requirements contained in the notice, in conjunction with provisions in the Customs Traders (Accounts and Records) Regulations 1995, will maintain existing record-keeping requirements, which means that those involved will be required to continue to retain relevant documentation for a customs transaction, on both imports and exports, for a suitable period, usually not less than three years. That is in line with the Government commitment to provide maximum certainty for businesses after EU exit. The record-keeping requirement is of course essential to enable a customs authority to assure customs processes by checking and confirming transactions and declarations, particularly where potential discrepancies are identified after the relevant transactions have taken place.

I commend the instruments to the Committee.

2.38 pm

Jonathan Reynolds (Stalybridge and Hyde) (Lab/Co-op): It is indeed a great pleasure to serve under you in the Chair, Mr Sharma. It has been a while since the Minister and I addressed a no-deal statutory instrument together, but unfortunately we remain n a process beset by uncertainty and have little insight into whether we will actually need this regime. The Opposition's view has not changed and we continue to have profound concerns about conducting such significant decision making through the secondary legislative process.

Today, we are here to discuss matters relating to VAT. Existing VAT exemptions for cross-border trade among member states are critical, and any changes need to be carefully considered. I would like to raise two broad questions before getting into the detail of the instruments. In the run-up to 29 March, Opposition Members spent many happy hours in Committee Rooms debating dozens of no-deal statutory instruments that the Government had laid before the House. However, with the extension until 31 October, that preparation essentially ceased. Indeed, some legislation, such as the Financial Services (Implementation of Legislation) Bill, has not returned to Parliament at all, and we still have no date for that. First, therefore, I ask the Minister why selective no-deal preparation has resumed today, with instruments such as these. Will he offer some clarity as to the strategy now being pursued?

Secondly, a large number of the instruments that we dealt with in that period related to establishing a temporary permissions regime and to onshoring EU rules on financial services, so that firms operating in the sector would have a minimum period to cope with transition and to mitigate any consumer detriment in a no-deal scenario. Given that the proposed non-EU scheme will allow British companies to operate within the EU in the same way as they do now, why are the Government not seeking regulatory alignment on some of the VAT issues raised today, even on a temporary basis?

We are talking about the impact on small businesses, which have fewer resources and less time to deal with disruption, so what efforts are being made to minimise disruption for them? The approach seems inconsistent, as in some elements there has been a divergence from the status quo and in others we have had measures intended to duplicate the existing framework. It does not seem right that such policy decisions are being taken in an opaque manner without any real explanation being provided to Parliament.

The first instrument before us will repeal the most recent changes to the VAT MOSS provisions, as the Minister described. Those provisions made life easy for businesses by preventing them from having to register for VAT in every member state in which they supplied digital services. It is worrying, therefore, in relation to smaller businesses that may not be in a position to quickly adapt to the changes, that those provisions may be withdrawn if we crash out without a deal. Has action been taken to raise awareness of the potential change among small businesses? With the addition of the difficulties raised by the Making Tax Digital programme, is there not a risk that small businesses will be heavily disrupted by wide-ranging and rapid change in VAT, for which there is insufficient resource at HMRC to offer appropriate support? I note that no impact assessment has been carried out, which seems ill advised given the potential consequences for small businesses. How can HMRC offer adequate support if we do not know how many businesses will be affected, and to what extent?

The second instrument relates to the data-gathering powers in schedule 23 of the Finance Act 2011. The Minister has elaborated on the explanatory memorandum's stating that the instrument enables:

"HMRC to ensure that overseas businesses sending goods to the UK in postal packets comply with those regulations... HMRC will require information on such imports and therefore will need to obtain data from various parties involved in these transactions. The instrument amends current data gathering legislation to add "postal operators" as a category'."

Once again, the Opposition are concerned that legislation has been designed to enable a new customs regime without proper parliamentary consultation. The instrument stipulates that data can be provided only if it is relevant to VAT; however, the rationale for that limitation has not been made clear and I ask the Minister to clarify it just a bit further.

The final instrument, the Customs (Records) (EU Exit) Regulations 2019, require that

"a person who is subject to a Customs obligation…keep and preserve records, in such form, and for such period, as specified in a notice published by HMRC."

Although the explanatory note indicates that the intention is to replicate the current EU requirements, there is insufficient clarity about what is required and what the potential penalties might be for non-compliance. Will the Minister confirm whether there will be any change from the current system? How will any penalties be decided? What communication has taken place with the businesses that may be affected? I shall be grateful if the Minister provides some clarity on those points before we decide our course of action today.

2.43 pm

Alison Thewliss (Glasgow Central) (SNP): It is a pleasure to see you in the Chair, Mr Sharma.

It seems that we are back in the land that time forgot—the land of Brexit statutory instruments, which is in a different time zone altogether if the Committee Room clock is to be believed. It feels as though the SIs

[Alison Thewliss]

we are looking at today were the Brexit SIs that the Government forgot. If they were so vital why are we dealing with them now rather than before the Government cancelled their original date for Brexit back at the end of the March? These SIs are important. They deal with the functioning of many processes that businesses find incredibly important, and overshadowing all that is what exactly the future regime envisaged by the Government looks like, and how businesses can prepare themselves and adapt for it.

As hon. Members have laid out, the first SI, on VAT and the supply of services, changes the circumstances with the mini one-stop shops—the MOSS regime. As this was introduced in January 2019 and we are now getting rid of it, we seem to be in a veritable customs VAT hokey-cokey. Electronic, telecommunication and digital services are important to the economy. I was at the ScotlandIS awards on Friday night; there are many companies working in the digital sphere doing incredibly innovative and exciting things. They need to have some degree of certainty that they will be able to do their business from Scotland—from Glasgow—and the rest of the UK in a couple of months' time. This really gives us very little clarity.

The mini one-stop shops have gone about the business of simplifying the rules for businesses, but businesses want to continue to supply digital services. They will perhaps need to re-register in the different member states of the EU and comply with those regimes, in circumstances where, as the hon. Member for Stalybridge and Hyde said, there has been no consultation and no impact assessment.

We do not have any real idea, as Members of Parliament, how this will affect businesses and what it will cost. We do know that there is a risk of losing 47,000 jobs in Scotland with the loss of the single market. That is a huge number of jobs, and they will probably be in this type of high-skills sector. Many of the people involved in these sectors are bright young things who can travel and are very flexible. If they find that their business will be located on the other side of the English channel and carry on as now, they will most likely consider that rather than staying, which will be to the detriment of us all. I want to hear from the Minister what the impact will look like and who the Government have consulted.

I will now turn to the Finance Act 2011, Schedule 23 (Data-gathering Powers) (Amendment) (EU Exit) Regulations 2019. A no-deal Brexit—Brexit in general—was supposed to be about ripping up red tape and removing paperwork to make things simple, but this appears to be another example of how, if we end up with a no-deal Brexit, we will have more paperwork and things being far more complicated. I note that it says that overseas suppliers are liable for the import VAT on

> "any consignment of goods sent into the UK in a 'postal packet' if the value of goods it contains is £135 or less. Overseas suppliers may discharge the liability by…registering with HMRC and accounting for import VAT…or…paying the import VAT due to the postal operator".

All those things require additional procedures and processes. They require the people transacting to know that they have to do this and that this is an obligation on them. I would be interested to see what the regime looks like if they do not comply with what is being asked here. Will there be fines or some manner of sanction imposed on people who overlook this new process? People are being asked to do something different in the circumstances of no deal.

As the explanatory note points out,

> "The definition of a 'postal operator' is wide—it covers any person who carries parcels from one place to another or who receives, collects, sorts or delivers parcels."

That could be quite wide and quite significant. Some people feel that they have not been captured within this definition and therefore that they do not have to register. It would be good to get a lot more detail on when the Minister intends to bring these subsequent regulations to the House, how they will be scrutinised when they come to the House, and what consultation he intends to do to ensure that people who are affected by these regulations actually have some say on what they contain.

Yet again, there has been no formal consultation regarding this SI and it is not clear from what is set out here exactly which stakeholders the Government have engaged with. Although it says that stakeholders have been engaged with, there is no further detail on that. It is difficult for us to see the extent to which that has already been done.

The third instrument—the Customs (Records) (EU Exit) Regulations 2019—is again a replication of current EU law, but, as it is regarding many of these SIs, it is unclear what the future will look like. It is unclear whether anything will change, when further notice will come back to the House for us to decide and whether it will come back to a Committee like this. Given the uncertainty around deal or no deal, we do not know exactly when that might come either.

The Government are saying today that they want to get their withdrawal agreement done and dusted by the summer recess. Well, good for them if they can. Who knows if they will? We need to know when the Government will introduce these measures and that it will be done in a reasonable timescale, so that full consultation can be conducted and that those who need to know these things can do so.

Does the Minister have any figures on familiarisation costs, which were very much part of the financial services SIs and impact assessments, but do not seem to be, as far as I have seen, part of these Sis? Will new processes be put in place? How long will firms have to become familiar with those processes and understand them? How far ahead will the Government notify them of any new processes that they may have to follow?

The Minister said that data will have to be retained for a suitable period—perhaps three years—but again, people need to plan for and understand that process. They need more certainty. Just saying in this Committee, "A suitable period of about three years is what we intend," is different from saying when the regulations will be introduced.

Finally, how will the Government notify all the organisations, companies and individuals who will be affected by the proposed processes? We have heard a bit about the issue of people having to register for settled status and there has been advertising about that, but if this is going to be a serious issue for businesses in the event of no deal, what will the Government's process be for getting in touch with them? Is there a communications

plan, should it be needed, if we end up without a deal? Hopefully the Minister will be able to answer some of those concerns.

2.51 pm

Mel Stride: I thank the hon. Members for Stalybridge and Hyde and for Glasgow Central for their contributions. I will endeavour to go through their points.

The hon. Member for Stalybridge and Hyde made a general overarching point about the uncertainty of Brexit. I agree with him about that, which is why the Government are working so hard, including through conversations with his Front Bench, to secure a negotiated arrangement with the European Union whereby we have an orderly exit. The measures are being brought in only on the basis that, in the unlikely event of day one no deal, we will be able to switch them on by way of an appointed day order.

An important point for the Committee is that we are not rushing these measures in immediately; we have time to see how the negotiations conclude and to bring the measures into effect at the appropriate moment. That also gives us some time to address the specific point about how we propose to make sure that those affected by the measures are aware of them. Of course, we have consulted extensively on these matters with businesses across the country that are involved in imports and exports, and there is an extensive amount of information on that area on gov.uk. There was also an impact assessment that covered, among others, the two instruments that relate specifically to VAT measures, which concluded that the impact would be relatively modest.

The hon. Gentleman is also concerned about the fact that we are using secondary legislation for the measures, but we published the statutory instruments some time ago. I think I am right in saying that the instrument relating to VAT MOSS was published in January, and the other two have also been available for hon. Members to consider for a reasonable amount of time. Of course, they are also affirmative instruments, rather than negative instruments, given that they make amendments to primary legislation.

I was asked specifically why the instruments were being moved today, rather than at any other point. It is a case of making sure that we put them in place so we can switch them on through an appointed day order in the event that we come out without a deal. Of course, in theory at least, we have until the end of October to conclude our arrangements with the European Union.

The hon. Gentleman spoke about the importance, as he saw it, of regulatory alignment with the EU in the context of VAT, on which I agree with him. We have always made it clear that it is our intention and desire for VAT and other tax issues, and indeed customs measures more generally, between us and the European Union to be as closely aligned as possible, so we have a period of stability as we go forward in whatever new arrangement we end up in.

The hon. Gentleman also asked about what would happen to the UK businesses that have benefited from what I accept are considerable easements and simplifications related to the operation of VAT MOSS if we leave without a deal. We have always been clear that either they would have to register with the individual member states with whom they were transacting VAT-applicable business and digital services, or they could afford themselves of the benefits of the non-Union VAT MOSS arrangements available to those outside the European Union.

The hon. Members for Stalybridge and Hyde and for Glasgow Central both made points about the data that will need to be collected under the parcels regulations. I assure the Committee that, as I set out in my opening remarks, there will be no additional burden on business. The focus is strictly on obtaining data that is relevant to parcel collections.

Alison Thewliss: The Minister says that there is no additional burden to business, but is he not asking businesses to do something that they were not doing before?

Mel Stride: The additional burden, such as it might be, would be registering and being prepared to provide information that is already being collected. In their day-to-day transactions, those businesses already collect a large amount of information, for example on the flow of parcels, where they come from and their value. As the hon. Lady will know, for parcels with a value below £135 the responsibility for accounting for the VAT will transfer from the UK to the sender in one of the EU27 states. To rephrase my point, the additional administrative burden will be proportionate and relatively slight—that is probably a better way to describe it.

The hon. Lady asked about the penalty regime with respect to the responsibilities and obligations that will materialise under the regulations on customs transactions. The answer is that there will be no change to the regime for the businesses concerned. She spoke about consultation, which I think I have dealt with. She also observed that the changes under the VAT MOSS order relate to changes that happened as recently as January 2019. We could not have foreseen those changes, and there are no changes to primary UK legislation. As I set out in my opening speech, it makes sense to rid ourselves of that superfluous legislation, for the reasons that I gave about the potential risk that it could be used for tax avoidance purposes.

The hon. Lady mentioned the three-year period for which customs data will have to be held. Under the current European Union arrangements, however, the data is retained for four years, so the new system will be no more onerous.

Question put and agreed to.

Resolved,

That the Committee has considered the Value Added Tax (Place of Supply of Services) (Supplies of Electronic, Telecommunication a Broadcasting Services) (Amendment and Revocation) (EU Exit) Order 2019 (S.I. 2019, No. 404).

Finance Act 2011, Schedule 23 (Data-gathering Powers) (Amendment) (EU Exit) Regulations 2019

Resolved,

That the Committee has considered the Finance Act 2011, Schedule 23 (Data-gathering Powers) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019, No. 397).—*(Mel Stride.)*

Customs (Records) (EU Exit) Regulations 2019

Resolved,

That the Committee has considered the Customs (Records) (EU Exit) Regulations 2019 (S.I. 2019, No. 113).—*(Mel Stride.)*

2.59 pm

Committee rose.