



STATUTORY INSTRUMENTS.

**S.I. No. 327 of 2021**

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EUROPEAN UNION (VALUE-ADDED TAX) REGULATIONS 2021

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I, PASCHAL DONOHOE, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving further effect to Council Directive 2006/112/EC of 19 December 2006<sup>1</sup> as amended by Council Directive (EU) 2017/2455 of 29 December 2017<sup>2</sup> (as amended by Council Decision 2020/1109 of 20 July 2020<sup>3</sup>), Council Directive (EU) 2018/1910 of 4 December 2018<sup>4</sup> and Council Directive 2019/1995 of 21 November 2019<sup>5</sup>(as amended by Council Decision 2020/1109 of 20 July 2020<sup>6</sup>), hereby make the following regulations:

**Citation**

1. These Regulations may be cited as the European Union (Value-Added Tax) Regulations 2021.

**Commencement**

2. These Regulations come into operation on 1 July 2021.

**Definition**

3. In these Regulations “Act of 2010” means the Value-Added Tax Consolidation Act 2010 (No. 31 of 2010).

**Amendment of section 2 of Act of 2010**

4. Section 2 of the Act of 2010 is amended in subsection (1) by the insertion of the following definitions:

“ ‘intra-Community distance sales of goods’ means supplies of goods dispatched or transported by or on behalf of the supplier, including where the supplier intervenes indirectly in the transport or dispatch of the goods, from a Member State other than that in which the dispatch or transport of the goods to the customer ends, where—

- (a) the supply of goods is carried out for a taxable person, or for a non-taxable legal person, whose intra-Community acquisitions of goods are not subject to value-added tax pursuant to Article 3(1) of the VAT Directive, or for any other non-taxable person, and

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<sup>1</sup> OJ No. L347, 11.12.2006, p. 1

<sup>2</sup> OJ No. L348, 29.12.2017, p. 7

<sup>3</sup> OJ No. L244, 29.7.2020, p. 3

<sup>4</sup> OJ No. L311, 7.12.2018, p. 3

<sup>5</sup> OJ No. L310, 2.12.2019, p. 1

<sup>6</sup> OJ No. L244, 29.7.2020, p. 3

- (b) the goods supplied are neither new means of transport nor goods supplied after assembly or installation, with or without a trial run, by or on behalf of the supplier;

‘distance sales of goods imported from third territories or third countries’ means supplies of goods dispatched or transported by or on behalf of the supplier, including where the supplier intervenes indirectly in the transport or dispatch of the goods, from outside the Community, to a customer in a Member State, where—

- (a) the supply of goods is carried out for a taxable person, or a non-taxable legal person, whose intra-Community acquisitions of goods are not subject to value-added tax pursuant to Article 3(1), or for any other non-taxable person, and
- (b) the goods supplied are neither new means of transport nor goods supplied after assembly or installation, with or without a trial run, by or on behalf of the supplier;”.

#### **Amendment of section 5 of Act of 2010**

5. Section 5(1) of the Act of 2010 is amended in paragraph (b) by the substitution of “sections 9, 10, 12, 15, 17(1), 94(3), 108C, 109A and 91J(10)” for “sections 9, 10, 12, 15, 17(1), 94(3), 108C and 109A”.

#### **Amendment of section 6 of Act of 2010**

6. Section 6(1) of the Act of 2010 is amended in paragraph (c)(i) by the substitution of “section 30(a) and (b)” for “section 30(1)(a)(i)”.

#### **Amendment of section 30 of Act of 2010**

7. The following section is substituted for section 30 of the Act of 2010:

**“30.** Notwithstanding section 29(1)(a) or (2), for the purposes of this Act, the place where goods are supplied shall be deemed to be—

- (a) subject to section 35A, in the case of an intra-Community distance sale of goods, the place where the goods are located when the dispatch or transport of the goods to the customer ends,
- (b) in the case of distance sales of goods imported from third territories or third countries into a Member State other than that in which the dispatch or transport of the goods to the customer ends, the place where the goods are located when the dispatch or transport of the goods to the customer ends;
- (c) in the case of distance sales of goods imported from third territories or third countries into the Member State in which the dispatch or transport of the goods to the customer ends, that Member State, provided that the value-added tax on those goods is declared under the provisions implementing Section 4 of

Chapter 6 of Title XII of the VAT Directive in that Member State.”.

### **Amendment of section 32A of Act of 2010**

8. Section 32A of the Act of 2010 is amended by the insertion of the following subsection after subsection (3):

“(4) This section does not apply to transactions in which a taxable person facilitates (within the meaning of section 91G(1)), through the use of an electronic interface such as a marketplace, platform, portal or similar means, the supply of goods and is the deemed supplier of those goods under Article 14a of the VAT Directive.”.

### **Amendment of section 33 of Act of 2010**

9. Section 33 of the Act of 2010 is amended by the deletion of subsection (4B).

### **Amendment of section 34 of Act of 2010**

10. Section 34 of the Act of 2010 is amended -

- (a) in paragraph (kc), by the substitution of “subject to section 35A” for “subject to paragraph (kd),”, and
- (b) by the deletion of paragraph (kd).

### **Amendment of Part 4 of Act of 2010**

11. Part 4 of the Act of 2010 is amended by the insertion of the following Chapter after section 35:

#### **“Chapter 4**

*Place of supply for certain taxable persons making supplies of intra-Community distance sales of goods and supplies of telecommunication services, radio or television broadcasting services or electronically supplied services*

**35A.** (1) Subject to subsection (3), sections 30(a) and 34(kc) shall not apply to—

- (a) intra-Community distance sales of goods, or
- (b) supplies of telecommunications services, radio or television broadcasting services or electronically supplied services,

made by a taxable person where—

- (i) the taxable person is established or, in the absence of an establishment, has his or her permanent address or usually resides in the State only,
- (ii) the goods referred to in paragraph (a) are dispatched or transported to a Member State other than the State, or

services referred to in paragraph (b) are supplied to a non-taxable person who is established, has his or her permanent address or usually resides in a Member State other than the State, and

- (iii) the total value of the supplies, exclusive of value-added tax, of goods referred to in paragraph (a) and services referred to in paragraph (b) does not in the current calendar year, and did not in the previous calendar year, exceed €10,000.

(2) Subject to subsections (3) and (4), where subsection (1) applies—

- (a) section 29(1)(a) shall apply to intra-Community distances sales of goods, and
- (b) section 34(b) shall apply to the supply of telecommunications services, radio or television broadcasting services or electronically supplied services.

(3) Where, during a calendar year, the threshold referred to in subsection (1)(iii) is exceeded, sections 30(a) and 34(kc) shall apply from the date on which that threshold is exceeded.

- (4) (a) A taxable person in respect of whom subsection (1) applies may opt for the place of supply of the supplies of goods referred to in subsection (1)(a) and services referred to in subsection (1)(b) to be determined in accordance with sections 30(a) and 34(kc).
- (b) Where a taxable person exercises the option provided for in paragraph (a), that option shall apply for a period of not less than 2 calendar years from the date on which the option is exercised.”.

### **Amendment of section 66 of Act of 2010**

12. Section 66(1) of the Act of 2010 is amended in paragraph (a) by the substitution of the following subparagraph for subparagraph (ii):

- “(ii) who supplies goods to a person the supply of which goods is deemed, by virtue of section 30, to have taken place in another Member State, except where the Union scheme within the meaning of section 91A is used.”.

### **Amendment of section 74 of Act of 2010**

13. Section 74(1) of the Act of 2010 is amended -

- (a) in paragraph (c), by the deletion of “and” after “those supplies,”, and
- (b) by the insertion of the following paragraph after paragraph (c):  
“(ca) in the case of a supply of goods in accordance with section 91G, at the time payment for the goods has been accepted, and”.

### **Amendment of section 76 of Act of 2010**

14. Section 76(1) of the Act of 2010 is amended by the substitution of “and sections 91C(3), 91E(3) and 91K(3)” for “and sections 91C(3) and 91E(3)”.

### **Amendment of Part 10 of Act of 2010**

15. Part 10 of the Act of 2010 is amended by the substitution of the following title for the title to Chapter 2:

*“Special schemes for taxable persons supplying services to non-taxable persons, making intra-Community distance sales of goods, making certain domestic supplies of goods or importing goods”.*

### **Amendment of section 91A of Act of 2010**

16. Section 91A of the Act of 2010 is amended -

- (a) by the substitution of the following definition for the definition of “Implementing Regulation”:

“ ‘Implementing Regulation’ means Council Implementing Regulation (EU) 282/2011 of 15 March 2011<sup>7</sup> (as amended by Council Regulation (EU) 967/2012 of 9 October 2012<sup>8</sup>, Council Regulation (EU) 2019/2026 of 21 November 2019<sup>9</sup> and Council Regulation (EU) 2020/1112 of 20 July 2020<sup>10</sup>);”,

- (b) by the substitution of the following definition for the definition of “Member State of consumption”:

“ ‘Member State of consumption’ means—

- (a) in the case of the non-Union scheme, the Member State in which the supply of scheme services is deemed to take place according to Chapter 3 of Title V of the VAT Directive, and

- (b) in the case of the Union scheme—

- (i) in respect of the supply of scheme services, the Member State in which the supply is deemed to take place according to Chapter 3 of Title V of the VAT Directive,

- (ii) in respect of the intra-Community distance sales of goods, the Member State where the dispatch or transport to the consumer ends, and

- (iii) in respect of the supply of goods made by a taxable person facilitating those supplies in accordance with section 91G(1)(b), and where

<sup>7</sup> OJ No. L77, 23.3.2011, p.1

<sup>8</sup> OJ No. L290, 20.10.2012, p.1

<sup>9</sup> OJ No. L313, 4.12.2019, p. 14

<sup>10</sup> OJ No. L244, 29.7.2020, p. 9

the dispatch or transport of the goods supplied begins and ends in the same Member State, that Member State;”;

- (c) by the substitution of the following definition for the definition of “Member State of identification”:

“ ‘Member State of identification’ means—

- (a) in the case of the non-Union scheme, the Member State in which the taxable person applies to be identified for the purposes of that scheme, and
- (b) in the case of the Union scheme—
  - (i) the Member State in which the taxable person has established his or her business,
  - (ii) where the taxable person has not established his or her business in the Community, but has a fixed establishment in the Community, the Member State in which he or she has that fixed establishment,
  - (iii) where the taxable person has not established his or her business in the Community and has no fixed establishment in the Community, the Member State in which the dispatch or transport of the goods begins,
  - (iv) where the taxable person has not established his or her business in the Community, and has more than one fixed establishment in the Community, the Member State in which he or she has a fixed establishment and which he or she has chosen to be the Member State of identification for the purposes of the Union scheme, or
  - (v) where the taxable person has not established his or her business in the Community and has no fixed establishment in the Community, and there is more than one Member State in which the dispatch or transport of the goods begins, the Member State in which the dispatch or transport of the goods begins which he or she has chosen to be the Member State of identification for the purposes of the Union scheme.”,
- (d) by the substitution of the following definition for the definition of “non-Union scheme”:
 

“‘non-Union scheme’ means the scheme for scheme services supplied by a taxable person whose business is not established in the Community, and who has no fixed establishment in the Community;”,

- (e) by the substitution of the following definition for the definition of “scheme services”:
  - “ ‘scheme services’ means services supplied to non-taxable persons within the Community;”,
- (f) by the substitution of the following definition for the definition of “Union scheme”:
  - “ ‘Union scheme’ means the scheme for—
    - (a) scheme services, supplied by a taxable person whose business is established in the Community or who has a fixed establishment in the Community but whose business is not established in, and who has no fixed establishment in, the Member State of consumption,
    - (b) intra-Community distance sales of goods, and
    - (c) qualifying domestic supplies of goods;”,
- (g) by the substitution of the following definition for the definition of “VAT return”:
  - “ ‘VAT return’ means the statement containing the information necessary to establish the amount of EU value-added tax that has become chargeable in each Member State in respect of the following supplies within the scope of the Union or non-Union scheme, as the case may be, made during a calendar quarter:
    - (a) supplies of scheme services;
    - (b) intra-Community distance sales of goods;
    - (c) qualifying domestic supplies of goods.”,
- and
- (h) by the insertion of the following definitions:
  - “ ‘import scheme’ means the scheme for the payment of value-added tax provided for in sections 91I to 91K;
  - ‘intrinsic value’ has the same meaning as it has in Article 1(48) of Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015<sup>11</sup>;
  - ‘qualifying domestic supplies of goods’ means supplies of goods facilitated through the use of an electronic interface such as a marketplace, platform, portal or similar means in accordance with Article 14a(2) of the VAT Directive where the dispatch or transport of those goods begins and ends in the same Member State;
  - ‘taxable person not established within the Community’ means a taxable person who has not established his or her business in the Community and who has no fixed establishment there;

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<sup>11</sup> OJ No. L343, 29.12.2015, p. 1

‘taxable person not established in the Member State of consumption’ means a taxable person who has established his or her business in the Community or who has a fixed establishment there but who has not established his or her business, and has no fixed establishment, within the territory of the Member State of consumption;”.

### **Amendment of section 91B of Act of 2010**

17. Section 91B of the Act of 2010 is amended –

- (a) in subsection (1)(b)(i), by the deletion of “or the Union Scheme”,
- (b) in subsection (7)(a) -
  - (i) by the substitution of “by the end of the month” for “within 20 days”, and
  - (ii) in subparagraph (ii)(I), by the substitution of “Chapters 3 and 4 of Part 4” for “section 34(kc)”,
- (c) by the insertion of the following subsection after subsection (10):
 

“(10A) Notwithstanding subsection (10), where an identified person is required to be registered in the State under section 65 in respect of activities other than those undertaken under the non-Union scheme, any deduction made in accordance with section 59 shall include the tax charged in respect of all taxable activities covered by this scheme.”,

and
- (d) by the substitution of the following subsection for subsection (11):
 

“(11) (a) Without prejudice to the provisions of section 99, where corrections to a VAT return (‘the initial return’) are required after it has been submitted, the corrections shall be included in a subsequent VAT return submitted by electronic means within 3 years from the date on which the initial return was required to be submitted in accordance with subsection (7).

(b) The correction to the VAT return referred to in paragraph (a) shall contain—

  - (i) the Member State of consumption to which the scheme services are supplied,
  - (ii) the calendar quarter to which the correction relates, and
  - (iii) the amount of value-added tax for which any corrections are required.”.

### **Amendment of section 91C of Act of 2010**

18. Section 91C of the Act of 2010 is amended –

- (a) in subsection (1), by the substitution of “in accordance with Chapter 3 of Part 4” for “in accordance with section 34(kc)”,
- (b) in subsection (3) -
  - (i) by the substitution of “by the end of the month” for “on or before the 20<sup>th</sup> day of the month”, and
  - (ii) by the substitution of the following subparagraph for subparagraph (i):  
“(i) ‘by the end of the month’ were substituted for ‘within 9 days immediately after the 10<sup>th</sup> day of the month’, ”,
- (c) in subsection (4) –
  - (i) by the substitution of “by the end of the month” for “on or before the 20th day of the month”, and
  - (ii) by the substitution of the following subparagraph for subparagraph (i):  
“(i) ‘by the end of the month’ were substituted for ‘within 9 days immediately after the 10<sup>th</sup> day of the month’, ”,
- and
- (d) in subsection (6), by the substitution of the following subparagraph for subparagraph (b):  
“(b) shall-
  - (i) be entitled to claim a refund of such tax in accordance with, and using the rules applicable to, Council Directive No. 86/560/EEC of 17 November 1986<sup>12</sup>, notwithstanding Articles 2(2) and (3) and 4(2) of that Directive, or
  - (ii) where that scheme participant is an accountable person other than in relation to supplies of scheme services, subject to Chapter 1 of Part 8, be entitled to deduct the tax borne or paid in the return which he or she is obliged to submit in accordance with Chapter 3 of Part 9.”.

### **Amendment of section 91D of Act of 2010**

19. Section 91D of the Act of 2010 is amended -

- (a) in subsection (1) -
  - (i) by the substitution of the following paragraph for paragraph (a):

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<sup>12</sup> OJ No. L326, 21.11.1986, p. 40

“(a) A taxable person may opt to apply the Union scheme to his or her qualifying supplies of scheme services, intra-Community distance sales of goods and qualifying domestic supplies of goods, provided that the taxable person—

- (i) makes or intends to make qualifying supplies of scheme services, intra-Community distance sales of goods and qualifying domestic supplies of goods in the course or furtherance of business,
- (ii) has established his or her business in the State or, if he or she has not established his or her business in the Community, the taxable person has a fixed establishment in the State, or if he or she has not established his or her business in the Community and does not have a fixed establishment in the State, the taxable person supplies goods from the State and has indicated that he or she wishes to identify in the State for the purposes of the Scheme, and
- (iii) has been assigned a registration number under section 65(2).”,

and

- (ii) in paragraph (c)(i) by the deletion of “the non-Union scheme or”,
- (b) in subsection (3), by the substitution of the following paragraph for paragraph (d):  
“(d) the date of commencement of supplies made under the Union scheme;”,
- (c) in subsection (4), by the insertion of the following paragraphs after paragraph (b):
  - “(c) Where the taxable person has not established his or her business in the Community and has more than one fixed establishment in the Community including a fixed establishment in the State, and has chosen the State as Member State of identification for the purposes of the Union scheme, he or she shall be bound by that decision for the remainder of the calendar year of registration plus an additional 2 calendar years.
  - (d) Where the taxable person has not established his or her business in the Community and has no fixed establishment therein, and there is more than one Member State in which the dispatch or transport of the goods begins, including the State, and the taxable person has chosen the State as Member State of identification for the purposes of the Union scheme, he or she shall be bound by that decision for

the remainder of the calendar year of registration plus an additional 2 calendar years.”,

(d) by the substitution of the following subsection for subsection (7):

“(7) (a) Subject to paragraph (b), an identified person shall, by the end of the month immediately following the end of each calendar quarter—

(i) furnish to the Revenue Commissioners a VAT return, by electronic means using such form as is made available by the Commissioners for the purposes of the Union scheme and prepared in accordance with, and containing such particulars as are specified in, subsection (8), in respect of—

- (I) qualifying supplies of scheme services,
- (II) qualifying domestic supplies of goods, and
- (III) intra-Community distance sales of goods, made in the Community in that quarter,

and

(ii) remit to the Revenue Commissioners, at the same time as furnishing such VAT return, into a bank account designated by them and denominated in euro, the amount of EU value-added tax, if any, payable by that person in respect of that quarter in relation to—

- (I) qualifying supplies of scheme services,
- (II) qualifying domestic supplies of goods, and
- (III) intra-Community distance sales of goods.

(b) Where an identified person has not made any such—

- (i) qualifying supplies of scheme services,
- (ii) qualifying domestic supplies of goods, or
- (iii) intra-Community distance sales of goods,

during a calendar quarter, he or she shall furnish a nil VAT return in respect of that quarter.”,

(e) by the substitution of the following subsection for subsection (8):

“(8) (a) The VAT return referred to in subsection (7) shall be made in euro and shall contain—

- (i) the person’s identification number,
- (ii) for each Member State where EU value-added tax has become due in respect of qualifying

supplies of scheme services, qualifying domestic supplies of goods or intra-Community distance sales of goods—

- (I) the total value, exclusive of EU value-added tax, of qualifying supplies of scheme services, qualifying domestic supplies of goods, or intra-Community distance sales of goods made during the calendar quarter,
- (II) the amount of such value liable to EU value-added tax at the applicable rate or rates, and
- (III) the amount of EU value-added tax corresponding to such value at the applicable rate or rates,

and

- (iii) the total EU value-added tax due, if any.

(b) Where a taxable person makes intra-Community distance sales of goods, other than those to which section 91G(1)(b) applies, and those goods are dispatched or transported from a Member State other than the State, the VAT return referred to in subsection (7) shall also contain—

- (i) the person's identification number allocated by the Member State from which the goods are dispatched or transported,
- (ii) for each Member State where EU value-added tax has become due in respect of intra-Community distance sales of goods other than those to which section 91G(1)(b) applies, and those goods are dispatched or transported from a Member State other than the State, and for each Member State from which the goods are dispatched or transported—
  - (I) the total value, exclusive of EU value-added tax, of supplies of intra-Community distance sales of goods other than those to which section 91G(1)(b) applies, and those goods are dispatched or transported from a Member State other than the State, made during the calendar quarter,
  - (II) the amount of such value liable to EU value-added tax at the applicable rate or rates, and

- (III) the amount of EU value-added tax corresponding to such value at the applicable rate or rates,
- and
- (iii) the total EU value-added tax due in each Member State from which the goods are dispatched or transported, if any.
- (c) Where a taxable person makes intra-Community distance sales of goods to which section 91G(1)(b) applies and the goods are dispatched or transported from a Member State other than the State, or makes qualifying domestic supplies of goods to which section 91G(1)(b) applies and the dispatch or transport of those goods begins and ends in the same Member State, the VAT return referred to in subsection (7) shall also contain—
- (i) the person's identification number allocated by the Member State from which the goods are dispatched or transported, if available,
  - (ii) for each Member State where EU value-added tax has become due in respect of intra-Community distance sales of goods and qualifying domestic supplies of goods—
    - (I) the total value, exclusive of EU value-added tax, of supplies of intra-Community distance sales of goods and qualifying domestic supplies of goods, made during the calendar quarter,
    - (II) the amount of such value liable to EU value-added tax at the applicable rate or rates, and
    - (III) the amount of EU value-added tax corresponding to such value at the applicable rate or rates,
- and
- (iii) the total EU value-added tax due in each Member State from which the goods are dispatched or transported from, if any.
- (d) Where a person supplying scheme services has one or more fixed establishments in the Community from which scheme services are provided, other than that in the Member State of identification, the VAT return referred to in subsection (7) shall also contain—

- (i) the person's identification number allocated by the Member State from which scheme services are provided, and,
  - (ii) for each Member State from which scheme services are provided, and for each Member State to which the scheme services are supplied—
    - (I) the total value, exclusive of EU value-added tax, of supplies of scheme services, made during the calendar quarter,
    - (II) the amount of such value liable to EU value-added tax at the applicable rate or rates, and
    - (III) the amount of EU value-added tax corresponding to such value at the applicable rate or rates,
- and
- (iii) the total EU value-added tax due, if any.”,
- and
- (f) by the substitution of the following subsection for subsection (11):
- “(11) (a) Without prejudice to the provisions of section 99, where corrections to a VAT return ('the initial return') are required after it has been submitted, the corrections shall be included in a subsequent VAT return within 3 years from the date on which the initial return was required to be submitted in accordance with subsection (7).
  - (b) The correction to the VAT return referred to in paragraph (a) shall contain—
    - (i) the Member State of consumption of the goods or services,
    - (ii) the calendar quarter to which the correction is made, and
    - (iii) the amount of value-added tax for which a correction is required.”.

#### **Amendment of section 91E of Act of 2010**

20. Section 91E of the Act of 2010 is amended -

- (a) by the substitution of the following subsection for subsection (1):
  - “(1) A person who applies the Union scheme under the provisions implementing the scheme in another Member State,

where that other Member State is the Member State of identification, and who—

- (a) supplies scheme services,
- (b) makes intra-Community distance sales of goods, or
- (c) makes qualifying domestic supplies of goods,

which are taxable in the State shall, in relation to those supplies or sales, be an accountable person for the purposes of this Act and, for the purposes of this section, shall be referred to as a ‘scheme participant’.”,

- (b) by the substitution of the following subsection for subsection (2):

“(2) Notwithstanding subsection (3) of section 65, a scheme participant shall, in relation to—

- (a) supplies of scheme services,
- (b) intra-Community distance sales of goods, or
- (c) qualifying domestic supplies of goods,

be regarded as having fulfilled his or her obligations as an accountable person under that subsection and shall not be obliged or entitled to be registered under that section unless he or she is an accountable person other than in relation to those supplies or sales.”,

- (c) in subsection (3) -

- (i) by the substitution of “by the end of the month” for “on or before the 20th day of the month”,
- (ii) by the substitution of “scheme services, intra-Community distance sales of goods or qualifying domestic supplies of goods, taxable in the State,” for “scheme services taxable in the State”, and
- (iii) by the substitution of the following subparagraph for subparagraph (i):  
“(i) ‘by the end of the month’ were substituted for ‘within 9 days immediately after the 10<sup>th</sup> day of the month’, ”,

- (d) by the substitution of the following subsection for subsection (4):

“(4) A scheme participant shall remit the tax payable in relation to a calendar quarter under the provisions of the Union scheme to the tax authorities of the Member State of identification by the end of the month immediately following the end of the relevant calendar quarter and, for the purposes of this Act, to the extent that that tax payable relates to—

- (a) supplies of scheme services,
- (b) intra-Community distance sales of goods, or

- (c) qualifying domestic supplies of goods, taxable in the State, the tax payable shall be—
- (i) treated as if it were tax payable in accordance with section 76, and
  - (ii) deemed to have been paid to the Collector-General on the date it was received by the tax authorities of the Member State of identification,

and this Act shall apply to a scheme participant and have effect as if in section 76(1)—

- (I) ‘by the end of the month’ were substituted for ‘within 9 days immediately after the 10th day of the month’,
- (II) ‘a calendar quarter’ were substituted for ‘a taxable period’, and
- (III) in paragraphs (a)(i) and (b) ‘that calendar quarter’ were substituted for ‘that taxable period’ in each place.”,

- (e) by the substitution of the following subsection for subsection (6):  
“(6) A scheme participant—

- (a) shall not, in computing the amount of tax payable by him or her in respect of supplies of scheme services, intra-Community distance sales of goods or qualifying domestic supplies of goods, be entitled to deduct any tax borne or paid in relation to those supplies or sales in the VAT return, but
- (b) shall—
  - (i) be entitled to claim a refund of such tax in accordance with, and using the rules applicable to, section 101, notwithstanding subsection (14) of that section, or
  - (ii) where that scheme participant is an accountable person other than in relation to supplies of scheme services, intra-Community distance sales of goods or qualifying domestic supplies of goods, subject to Chapter 1 of Part 8, be entitled to deduct the tax borne or paid in the return which he or she is obliged to submit in accordance with Chapter 3 of Part 9.”,

and

- (f) by the substitution of the following subsection for subsection (7):

“(7) Notwithstanding section 84, a scheme participant who supplies scheme services, makes intra-Community distance sales of goods or makes qualifying domestic supplies of goods, which are taxable in the State, shall be bound by the requirements of section 91D(14)(a), (b) and (d) in relation to such supplies or sales and shall retain such records until the expiry of a period of 10 years from 31 December of the year during which the transaction was carried out.”.

### **Amendment of section 91F of Act of 2010**

21. The following section is substituted for section 91F of the Act of 2010:

**“91F.** (1) The Revenue Commissioners may make regulations as necessary for the purposes of giving effect to the non-Union scheme or the Union scheme, as the case may be.

(2) The Revenue Commissioners may make regulations as necessary for the purposes of giving effect to the schemes contained in sections 91G to 91K.”.

### **Insertion of new sections into Act of 2010**

22. The following sections are inserted after section 91F of the Act of 2010:

#### **“Electronic interfaces facilitating distance sales of goods**

**91G.** (1)(a) Where a taxable person facilitates (within the meaning of Article 5b of the Implementing Regulation), through the use of an electronic interface such as a marketplace, platform, portal or similar means, the distance sale of goods imported from third territories or third countries in consignments of an intrinsic value which does not exceed €150, the taxable person shall be deemed to have received and supplied those goods himself or herself.

(b) Where a taxable person facilitates (within the meaning aforesaid), through the use of an electronic interface such as a marketplace, platform, portal or similar means, the supply of goods within the Community by a taxable person not established within the Community to a non-taxable person, the taxable person who facilitates the supply shall be deemed to have received and supplied those goods himself or herself.

(2) Where a taxable person is deemed, by virtue of paragraph (a) or (b), as the case may be, of subsection (1), to have received and supplied goods, the dispatch or transport of the goods shall be ascribed to the supply made by that taxable person.

(3) Where a taxable person is the deemed supplier of the goods concerned by virtue of paragraph (a) or (b), as the case may be, of subsection (1), such taxable person shall—

(a) keep records of all transactions which are facilitated (within the meaning of subsection (1) through the use of the electronic interface and those records shall be sufficiently detailed, in

accordance with Article 54c(1) of the Implementing Regulation, to enable the Member State in which the transactions are taxable to verify that the VAT return is correct,

- (b) make such records available, by electronic means and on request, to the Revenue Commissioners, and
- (c) make such records available, by electronic means and on request, to the relevant Member State in which the transactions are taxable.

(4) A taxable person who facilitates (within the meaning of Article 54b of the Implementing Regulation) the supply of goods and services through the use of an electronic interface such as a marketplace, platform, portal or similar means to a non-taxable person within the Community in accordance with Title V of the VAT Directive where the taxable person is neither—

- (a) presumed to be acting in his or her own name for the supply of services under Article 9a of the Implementing Regulation, nor
- (b) deemed to have supplied the goods by virtue of paragraph (a) or (b), as the case may be, of subsection (1), shall—
  - (i) keep records of all transactions which are facilitated (within the meaning aforesaid) through the use of the electronic interface and those records shall be sufficiently detailed, in accordance with Article 54c(2) of the Implementing Regulation, to enable the Member State in which the transactions are taxable to verify that the VAT return is correct,
  - (ii) make such records available, by electronic means and on request, to the Revenue Commissioners,
  - (iii) make such records available, by electronic means and on request, to the relevant Member State in which the transactions are taxable, and
  - (iv) notwithstanding section 84, retain such records for each transaction until the expiry of a period of 10 years from 31 December of the year during which the transaction was carried out.

### **Special arrangements for value-added tax on import**

**91H.** (1) In this section “special arrangements for value-added tax on import” means the arrangements provided for in this section for the payment of value-added tax on import by the person presenting the goods to customs on behalf of the person to whom the goods are destined.

(2) Where—

- (a) goods are imported into the State in a consignment with an intrinsic value which does not exceed €150,
- (b) the goods referred to in paragraph (a) are not subject to duties of excise,

- (c) the arrangements set out in section 91I have not been used to pay the value-added tax due on importation, and
- (d) the dispatch or transport of the goods ends in the State,

the person presenting the goods to customs may pay the value-added tax on import due on behalf of the person to whom the goods are destined.

(3) A person who wishes to apply the special arrangements for value-added tax on import shall—

- (a) be subject to the conditions applicable for the deferment of payment of customs duty in accordance with Regulation (EU) No. 952/2013<sup>13</sup> of the European Parliament and of the Council, and
- (b) complete and submit to the Revenue Commissioners such application form as may be provided by the Revenue Commissioners for the purpose of the application of the special arrangements.

(4) Where the person presenting the goods to customs decides to use the special arrangements for value-added tax on import—

- (a) the person for whom the goods are destined shall be liable for the payment of value-added tax, and
- (b) the person presenting the goods to customs shall—
  - (i) collect the value-added tax due from the person for whom the goods are destined,
  - (ii) take appropriate measures to ensure that the correct amount of value-added tax is paid by the person for whom the goods are destined, and
  - (iii) pay the value-added tax collected to the Revenue Commissioners.

(5) Where the person presenting the goods to customs uses the special arrangements for value-added tax on import, the value-added tax rate applicable to those goods is the value-added tax rate specified in section 46(1)(a).

- (6) (a) Subject to paragraph (b), the person presenting the goods to customs shall, not later than the 15<sup>th</sup> day of the month immediately following the month of importation of the goods concerned—
- (i) furnish by electronic means to the Revenue Commissioners a declaration in the form made available by the Commissioners for that purpose and prepared by the person concerned in accordance with, and containing such particulars as are specified in, subsection (7), in respect of value-added tax collected through the use of the special arrangements for value-added tax on import in the month of importation of the goods, and

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<sup>13</sup> OJ No. L269, 10.10.2013, p.1

- (ii) remit to the Revenue Commissioners, at the same time as so furnishing the declaration referred to in subparagraph (i) into a bank account designated by them and denominated in euro, the amount of value-added tax (if any) so collected.
  - (b) Where the person presenting the goods to customs has not collected any value-added tax due on import through the use of the special arrangements for value-added tax on import during a month, he or she shall furnish a nil declaration to the Revenue Commissioners in respect of that month.
- (7) The declaration referred to in subsection (6) shall contain the following particulars for the relevant month:
- (a) the total value added tax collected during that month;
  - (b) the master reference number (within the meaning of Article 1(22) of Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015<sup>14</sup>) of declarations, where special arrangements for value-added tax on import have been applied, submitted for customs purposes where the value-added tax amount declared for customs purposes has been collected during the month;
  - (c) the master reference number (within the meaning aforesaid) of declarations, where special arrangements for value-added tax on import have been applied, submitted for customs purposes where the value-added tax amount declared for customs purposes has not been collected during the month, and
  - (d) the master reference number (within the meaning aforesaid) of—
    - (i) relevant declarations submitted for customs purposes which have been invalidated, and
    - (ii) the original corresponding declaration submitted for customs purposes.

(8) A person using the special arrangements for value-added tax on import shall—

- (a) keep records of all transactions covered by those arrangements and those records shall be sufficiently detailed to verify that the value-added tax paid is correct,
- (b) make such records available, by electronic means and on request, to the Revenue Commissioners,
- (c) notwithstanding section 84, retain such records for each such transaction until the expiry of a period of 3 years from 31 December of the year during which the transaction took place.

### **Import scheme - interpretation and general provisions**

**91I.** (1) In this section and sections 91J and 91K—

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<sup>14</sup> OJ No. L343, 29.12.2015, p. 1

‘intermediary’ means a person established in the Community appointed by the taxable person making distance sales of goods imported from third territories or third countries as the person liable for the payment of the value-**added** tax and to fulfil the obligations laid down in the import scheme in the name and on behalf of the taxable person;

‘Member State of consumption’ means the Member State where the dispatch or transport of the goods to the customer ends;

‘Member State of identification’ means—

- (a) the Member State in which the taxable person has established his or her business,
- (b) if the taxable person has not established his or her business in the Community but has one or more fixed establishments therein, the Member State in which he or she has a fixed establishment and in which he or she chooses to be identified for the purposes of the import scheme,
- (c) the Member State in which the taxable person chooses to register for the purposes of the import scheme, where that taxable person is not established within the Community,
- (d) the Member State in which the intermediary has established his or her business, or
- (e) if the intermediary has not established his or her business in the Community but has one or more fixed establishments therein, the Member State in which he or she has a fixed establishment and in which he or she chooses to be identified for the purposes of the scheme;

‘VAT return’ means the statement containing the information necessary to establish the amount of EU value-added tax that has become chargeable in each Member State in respect of distance sales of goods imported from third territories or third countries during a month.

(2) For the purposes of paragraphs (b) and (e) of the definition of ‘Member State of identification’ in subsection (1), where the taxable person or the intermediary has more than one fixed establishment in the Community, he or she shall be bound by the decision to indicate the Member State of establishment for the calendar year concerned and the following two calendar years.

(3) Sections 91J and 91K apply to distance sales of goods imported from third territories or third countries, except products subject to duties of excise, in consignments of an intrinsic value which does not exceed €150.

(4) The following taxable persons are permitted to use the import scheme where they are making distance sales of goods imported from third territories or third countries:

- (a) any taxable person established in the Community;
- (b) any taxable person whether or not established in the Community who is represented by an intermediary established in the Community;

(c) any taxable person established outside the Community in a state or territory with which the Union has concluded an agreement on mutual assistance similar in scope to Council Directive 2010/24/EU of 16 March 2010<sup>15</sup> and Regulation (EU) 904/2010 of 7 October 2010<sup>16</sup> and who is making distance sales of goods from that state or territory.

(5) Where a taxable person makes use of the import scheme, it shall apply to all of that taxable person's distance sales of goods imported from third territories or third countries.

(6) Where a taxable person appoints an intermediary referred to in subsection (4)(b) for the purposes of the import scheme, the taxable person cannot appoint more than one intermediary at the same time.

(7) Where value-added tax is declared on distance sales of goods imported from third territories or third countries under the import scheme, the goods shall be regarded as having been supplied at the time when the payment has been accepted and the value-added tax shall become chargeable at the time of that supply.

#### **Import scheme (where the State is Member State of identification)**

**91J.** (1) A taxable person, or intermediary acting on behalf of a taxable person, who is identified in the State for the purposes of the import scheme, shall notify the Revenue Commissioners by electronic means when he or she commences or ceases his or her activity under the import scheme, or changes that activity in such a way that he or she no longer meets the conditions necessary for use of the import scheme.

(2) A taxable person, or where applicable, his or her intermediary, may not be registered in the State for the purposes of the import scheme if he or she—

- (a) is already identified in another Member State for the purposes of this scheme, or
- (b) is excluded from applying this scheme by Article 369r of the VAT Directive or Article 58 of the Implementing Regulation.

(3) The Revenue Commissioners shall establish and maintain a register (in this section referred to as the 'import scheme identification register') of persons who are identified in the State for the purposes of the import scheme.

(4) A taxable person who does not make use of an intermediary, shall provide the following information to the Revenue Commissioners before the person commences use of the import scheme:

- (a) his or her name and postal address;
- (b) his or her electronic addresses, including website addresses;
- (c) his or her value-added tax identification number or national tax number.

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<sup>15</sup> OJ No. L84, 31.3.2010, p. 1

<sup>16</sup> OJ No. L268, 12.10.2010, p. 1

(5) An intermediary shall provide the following information to the Revenue Commissioners before the intermediary commences use of the import scheme on behalf of a taxable person:

- (a) his or her name and postal address;
- (b) his or her electronic addresses, including website addresses;
- (c) his or her value-added tax identification number identification number.

(6) An intermediary shall also provide the following information to the Revenue Commissioners in respect of each taxable person that he or she represents before such taxable person commences use of the import scheme:

- (a) the person's name and postal address;
- (b) the person's electronic addresses, including website addresses;
- (c) the person's value-added tax identification number or national tax number;
- (d) the person's identification number allocated in accordance with subsection (8)(b)(iii).

(7) A taxable person or, where applicable, his or her intermediary, who registers for use of the import scheme in the State, shall notify the Revenue Commissioners of any changes in the information provided under subsection (4), (5) or (6), as the case may be.

- (8) (a) Where a taxable person has provided the information required under subsection (4) and the Revenue Commissioners are satisfied that the requirements for registration for the purposes of the import scheme are met, the Revenue Commissioners shall—
- (i) register the person in the import scheme identification register,
  - (ii) allocate to that person an identification number for the purposes of the import scheme, and
  - (iii) notify that person by electronic means of the identification number so allocated and the date from which registration takes effect.
- (b) Where an intermediary has provided the information required under subsections (5) and (6), and the Revenue Commissioners are satisfied that the requirements for registration for the purposes of the import scheme are met, the Revenue Commissioners shall—
- (i) register the intermediary in the import scheme identification register,
  - (ii) allocate to the intermediary an identification number identifying the intermediary as an intermediary for the purpose of the import scheme,

- (iii) allocate to the intermediary an identification number in respect of each taxable person in respect of whom the intermediary is appointed, and
  - (iv) notify the intermediary by electronic means of the identification numbers so allocated and the date from which the registration takes effect.
- (c) The identification number allocated under paragraph (a) or (b) shall be used only for the purpose of the import scheme.
- (9) (a) The Revenue Commissioners shall remove a taxable person not making use of an intermediary from the import scheme identification register where—
- (i) the taxable person notifies the Revenue Commissioners that he or she no longer makes distance sales of goods imported from third territories or third countries,
  - (ii) the taxable person no longer meets the conditions necessary for use of the import scheme,
  - (iii) the taxable person has, in accordance with Article 58b of the Implementing Regulation, persistently failed to comply with the rules relating to the import scheme, or
  - (iv) it may otherwise be assumed by the Revenue Commissioners that the taxable person's taxable activities of distance sales of goods imported from third territories or third countries have ceased.
- (b) The Revenue Commissioners shall remove an intermediary from the import scheme identification register where the intermediary—
- (i) has not acted as an intermediary on behalf of a taxable person making use of the import scheme for a period of 2 consecutive calendar quarters,
  - (ii) no longer meets the conditions necessary for acting as an intermediary, or
  - (iii) has, in accordance with Article 58b of the Implementing Regulation, persistently failed to comply with the rules relating to the import scheme.
- (c) The Revenue Commissioners shall remove a taxable person represented by an intermediary from the import scheme identification register where—
- (i) the intermediary notifies the Revenue Commissioners that the taxable person no longer makes distance sales of goods imported from third territories or third countries,
  - (ii) the taxable person no longer meets the conditions necessary for use of the import scheme,
  - (iii) the intermediary notifies the Revenue Commissioners that he or she no longer represents the taxable person,

- (iv) the taxable person has, in accordance with Article 58b of the Implementing Regulation, persistently failed to comply with the rules relating to the import scheme, or
  - (v) it may otherwise be assumed by the Revenue Commissioners that the taxable activities of distance sales of goods imported from third territories or third countries of the taxable person have ceased.
- (10) (a) Where it appears requisite to them to do so for the protection of the revenue, the Revenue Commissioners may, in the case where the taxable person concerned is established outside the Community and no legal instrument relating to mutual assistance similar in scope to that provided for in Council Directive 2010/24/EU of 16 March 2010<sup>17</sup> and Council Regulation (EU) 904/2010 of 7 October 2010<sup>18</sup> exists with the country in which that taxable person is established, serve on an intermediary and the taxable person by whom the intermediary is appointed a notice in writing in accordance with paragraph (c).
- (b) An intermediary shall be jointly and severally liable with the taxable person by whom the intermediary is appointed for the tax due and payable on the taxable supplies of that taxable person under the import scheme and shall be liable to pay that tax as if it were tax due and payable by the intermediary.
- (c) A notice served under paragraph (a) shall—
- (i) specify the date from which the notice shall have effect,
  - (ii) state that the intermediary shall, by virtue of this subsection, be jointly and severally liable with the taxable person specified in the notice for the payment of tax due and payable by that taxable person on the taxable supplies of that taxable person under the import scheme and shall be liable to pay that tax as if it were tax due and payable by the intermediary, and
  - (iii) specify the taxable person with whom the intermediary is so jointly and severally liable.
- (11) (a) Subject to paragraph (b), a taxable person or his or her intermediary shall by the end of the month immediately following the end of the period covered by the VAT return—
- (i) furnish to the Revenue Commissioners a VAT return, by electronic means using such form as is made available by the Commissioners for the purposes of the import scheme and prepared in accordance with, and containing such particulars as are specified in, subsection (12), in respect of supplies under the import scheme made in the Community in that month, and

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<sup>17</sup> OJ No. L84, 31.3.2010, p.1

<sup>18</sup> OJ No. L268, 12.10.2010, p. 1

- (ii) remit to the Revenue Commissioners, at the same time as furnishing such VAT return, into a bank account designated by them and denominated in euro, the amount of EU value-added tax, if any, payable by that person in respect of that month in relation to—
    - (I) distance sales of goods imported from third territories or third countries where the place of supply is the State determined in accordance with section 30, and
    - (II) distance sales of goods imported from third territories or third countries where the place of supply is a Member State (other than the State) determined in accordance with the provisions implementing Article 33 of the VAT Directive.
  - (b) Where a taxable person has not made any distance sales of goods imported from third territories or third countries during a month, he or she or his or her intermediary shall furnish a nil VAT return in respect of that month.
- (12) The VAT return referred to in subsection (11) shall be made in euro and shall contain—
- (a) the person's identification number allocated under subsection (8),
  - (b) for each Member State where EU value-added tax has become due in respect of distance sales of goods imported from third territories or third countries—
    - (i) the total value, exclusive of EU value-added tax, of distance sales of goods imported from third territories or third countries made during the month,
    - (ii) the amount of such value liable to EU value-added tax at the applicable rate or rates, and
    - (iii) the amount of EU value-added tax corresponding to such value at the applicable rate or rates,
  - and
  - (c) the total EU value-added tax due, if any.

(13) Where supplies have been made using a currency other than the euro, the exchange rate to be used for the purpose of expressing the corresponding amount in euro in the VAT return shall be that published by the European Central Bank for the last day of the month to which the VAT return relates or, if there is no publication on that date, on the next date of publication.

(14) (a) Without prejudice to the provisions of section 99, where corrections to a VAT return ('the initial return') are required after it has been submitted, the corrections shall be included in a subsequent VAT return within 3 years from the date on which the initial return was required to be submitted in accordance with subsection (11).

- (b) Where a correction is included in a subsequent VAT return under paragraph (a), the subsequent VAT return shall identify—
  - (i) the Member State of consumption to which the correction relates,
  - (ii) the period for which the correction is made, and
  - (iii) the amount of value-added tax for which a correction is required.

(15) A taxable person shall not make any deduction of tax in the VAT return, or make any adjustment to the amounts therein, in relation to any value-added tax incurred by him or her in the Community.

(16) Where, on the 10th day following the due date for submission of the VAT return in accordance with subsection (11)(a), the return has not been submitted, the Revenue Commissioners shall issue a reminder by electronic means to the taxable person or his or her intermediary.

(17) Where a VAT return has been submitted but no payment or only partial payment has been made, the Revenue Commissioners shall issue a reminder by electronic means to the taxable person or his or her intermediary on the 10th day following the due date for payment of the EU value-added tax in accordance with subsection (11)(a).

(18) A taxable person and where applicable his or her intermediary shall—

- (a) keep records of all transactions covered by the import scheme and those records shall be sufficiently detailed, in accordance with Article 63c(2) of the Implementing Regulation, to enable the Member State of consumption to verify that the VAT return is correct,
- (b) make such records available, by electronic means and on request, to the Revenue Commissioners,
- (c) make such records available, by electronic means and on request, to the relevant Member State of consumption, and
- (d) notwithstanding section 84, retain such records for each transaction until the expiry of a period of 10 years from 31 December of the year during which the transaction was carried out.

#### **Import scheme (where the State is Member State of consumption)**

**91K.** (1) A person who—

- (a) is registered in the import scheme identification register (within the meaning of section 91J), or
- (b) applies the special scheme for distance sales of goods imported from third territories or third countries under the provisions implementing that scheme in another Member State, where that other Member State is the Member State of identification,

shall, in relation to goods supplied in the State under the import scheme, be an accountable person for the purposes of this Act and, in relation to those supplies, shall, for the purposes of this section, be referred to as a ‘scheme participant’.

(2) Notwithstanding subsection (3) of section 65, a scheme participant shall, in relation to supplies covered by the import scheme, be regarded as having fulfilled his or her obligations as an accountable person under the said subsection (3) and shall not otherwise be obliged or entitled to be registered under that section for supplies covered by the import scheme.

(3) A scheme participant shall furnish the VAT return required for a month under the provisions of the import scheme to the relevant authorities of the Member State of identification by the end of the month immediately following the end of the period covered by the return and, for the purposes of this Act, to the extent that the VAT return relates to goods supplied under the import scheme taxable in the State, the VAT return shall be—

- (a) treated, with any necessary modifications, as if it were a return required to be furnished in accordance with section 76, and
- (b) deemed to have been received by the Collector-General on the date it was received by the relevant authorities of the Member State of identification,

and this Act shall apply to a scheme participant and have effect as if in section 76(1)—

- (i) ‘by the end of the month immediately following the end of the period covered by the return’ were substituted for ‘within 9 days immediately after the 10<sup>th</sup> day of the month immediately following a taxable period’,
- (ii) ‘a month’ were substituted for ‘a taxable period’, and
- (iii) in paragraphs (a)(i) and (b) ‘that month’ were substituted for ‘that taxable period’ in each place.

(4) A scheme participant shall remit the tax payable in relation to a month under the provisions of the import scheme to the relevant authorities of the Member State of identification by the end of the month immediately following the end of the period covered by the return and, for the purposes of this Act, to the extent that the tax payable relates to goods supplied under the import scheme taxable in the State, the tax payable shall be—

- (a) treated as if it were tax payable in accordance with section 76, and
- (b) deemed to have been paid to the Collector-General on the date it was received by the relevant authorities of the Member State of identification,

and this Act shall apply to a scheme participant and have effect as if in section 76(1)—

- (i) ‘by the end of the month immediately following the end of the period covered by the return’ were substituted for ‘within 9 days immediately after the 10<sup>th</sup> day of the month immediately following a taxable period’,

- (ii) ‘a month’ were substituted for ‘a taxable period’, and
- (iii) in paragraphs (a)(i) and (b) ‘that month’ were substituted for ‘that taxable period’ in each place.

(5) Where supplies have been made using a currency other than the euro, the exchange rate to be used for the purpose of expressing the corresponding amount in euro in the VAT return shall be that published by the European Central Bank for the last day of the month to which the VAT return relates or, if there is no publication on that date, on the next date of publication.

(6) Notwithstanding Chapter 1 of Part 8, a scheme participant—

- (a) shall not, in computing the amount of tax payable by him or her in respect of goods supplied under the import scheme taxable in the State, be entitled to deduct any tax borne or paid in relation to those supplies in the VAT return, but
- (b) shall—
  - (i) where that scheme participant is established or has a fixed establishment in the Community, be entitled to claim a refund of such tax in accordance with, and using the rules applicable to, section 101, notwithstanding subsection (14) of that section, or
  - (ii) where that scheme participant is not established and does not have a fixed establishment in the Community, be entitled to claim a refund of such tax in accordance with, and using the rules applicable to, Council Directive No. 86/560/EEC of 17 November 1986<sup>19</sup>, notwithstanding Articles 2(2) and (3) and 4(2) of that Directive, or
  - (iii) where that scheme participant is an accountable person other than in relation to distance sales of goods imported from third territories or third countries, subject to Chapter 1 of Part 8, be entitled to deduct the tax borne or paid in the return which he or she is obliged to submit in accordance with Chapter 3 of Part 9.

(7) Notwithstanding section 84, a scheme participant who makes distance sales of goods imported from third territories or third countries to the State which are taxable in the State shall be bound by the requirements of section 91J(18)(a), (b) and (d) in relation to such sales and retain such records until the expiry of a period of 10 years from 31 December of the year during which the transaction was carried out.”.

#### **Amendment of section 101 of Act of 2010**

23. Section 101(14)(a) of the Act of 2010 is amended -

- (a) in subparagraph (i), by the deletion of “or”,
- (b) in subparagraph (ii), by the insertion of “or” after “applies,” , and

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<sup>19</sup> OJ No. L326, 21.11.1986, p. 40

- (c) by the insertion of the following subparagraph after subparagraph (ii):
  - “(iii) goods, the supply of which is taxable in accordance with section 30, to which the import scheme (within the meaning of section 91A) applies, or”.

#### **Amendment of section 102 of Act of 2010**

24. Section 102(3)(b) of the Act of 2010 is amended—
- (a) in subparagraph (i), by the substitution of “chargeable,” for “chargeable, or”,
  - (b) in subparagraph (ii), by the substitution of “applies, or” for “applies.”, and
  - (c) by the insertion of the following subparagraph after subparagraph (ii):
    - “(iii) goods, the supply of which is taxable in accordance with section 30, to which the import scheme (within the meaning of section 91A) applies.”.

#### **Amendment of section 111 of Act of 2010**

25. Section 111(1) of the Act of 2010 is amended in subparagraphs (a) and (d)(i)(I) by the substitution of “with section 108C(3), 109A(4) or 91J(10)(b)” for “with section 108C(3) or 109A(4)” in each place where it occurs.

#### **Amendment of section 115 of Act of 2010**

26. Section 115(1) of the Act of 2010 is amended by the insertion of the following subparagraph after subparagraph (c):
- “(d) Paragraph (a) shall not apply to a person, being an intermediary (within the meaning of section 91I), where—
    - (i) that person is jointly and severally liable by virtue of section 91J(10), and
    - (ii) the penalty which would otherwise arise under paragraph (a) only relates to the tax for which that person is jointly and severally liable by virtue of section 91J(10).”.

#### **Amendment of section 116 of Act of 2010**

27. Section 116 of the Act of 2010 is amended by the insertion of the following subsection after subsection (1B):
- “(1C) This section shall not apply to a person, being an intermediary (within the meaning of section 91I), where—
    - (a) that person is jointly and severally liable by virtue of section 91J(10), and

- (b) the penalty which would otherwise arise under this section only relates to tax for which that person is jointly and severally liable by virtue of section 91J(10).”.

#### **Amendment of section 120 of Act of 2010**

28. Section 120 of the Act of 2010 is amended -

- (a) in subsection (4), by the substitution of “section 35A” for “section 30(2)”, and
- (b) in subsection (10) -
  - (i) in paragraph (i), by the substitution of “operate,” for “operate.”, and
  - (ii) by the insertion of the following paragraphs after paragraph (i):
    - “(j) the manner in which the import scheme (within the meaning of section 91A) shall operate,
    - “(k) the manner in which the special arrangements for value-added tax on import (within the meaning of section 91H) shall operate.”.

#### **Amendment of Part 1 of Schedule 2 to Act of 2010**

29. Part 1 of Schedule 2 to the Act of 2010 -

- (a) in paragraph 1, by the insertion of the following subparagraph after subparagraph (4):
  - “(5) The supply of goods to a taxable person, being goods which that taxable person is deemed to supply under section 91G.”,and
- (b) in paragraph 2, by the insertion of the following subparagraph after subparagraph (2):
  - “(3) The importation of goods where the value-added tax is declared under the special scheme in Section 4 of Chapter 6 of Title XII of the VAT Directive and where, at the latest upon lodging of the import declaration, the identification number for the application of the special scheme of the supplier or of the intermediary acting on his or her behalf allocated under Article 369q of the VAT Directive has been provided at importation.”.

#### **Amendment of Schedule 9 to Act of 2010**

30. Schedule 9 to the Act of 2010 is amended -

- (a) in Part 1, by the deletion of the following:
  - “Section 91A

Section 91B

Section 91C

Section 91D

Section 91E",

and

- (b) in Part 2, by the insertion of the following:

"Section 35A

Section 91A

Section 91D

Section 91E".

GIVEN under my Official Seal,  
29 June, 2021.

PASCHAL DONOHOE,  
Minister for Finance.

L.S.

## EXPLANATORY NOTE

*(This note is not part of the Instrument and does not purport to be a legal interpretation.)*

These Regulations transpose into Irish VAT law Council Directive (EU) 2017/2455 of 29 December 2017<sup>20</sup> (as amended by Council Decision 2020/1109 of 20 July 2020<sup>21</sup>), and Council Directive 2019/1995 of 21 November 2019<sup>22</sup> (as amended by Council Decision 2020/1109 of 20 July 2020<sup>23</sup>). These Regulations also give further effect to Council Directive (EU) 2018/1910 of 4 December 2018<sup>24</sup>.

Council Directives (EU) 2017/2455 and 2018/1910 (as amended) amend the EU VAT Directive (2006/112/EC) to expand the scope of supplies which may be accounted for using the Union and non-Union schemes within the VAT One Stop Shop (previously the VAT Mini One Stop Shop). The EU VAT Directive has also been amended by these Directives to create the Import One Stop Shop (Import Scheme), the Special Arrangements for VAT on Import (Special Arrangements), and to introduce a new deeming provision in respect of supplies facilitated by electronic interfaces.

Transposition is effected by way of amendment of the Value-Added Tax Consolidation Act 2010 (the Act). Regulations 4 to 30 amend sections 2, 5, 6, 30, 32A, 33, 34, 66, 74, 76, 91A, 91B, 91C, 91D, 91E, 91F, 101, 102, 111, 115, 116, 120, Schedule 2 and Schedule 9 of the Act, and insert the new sections 35A, 91G, 91H, 91I, 91J and 91K into the Act. These amendments will come into force from 1 July 2021.

An explanation of the Regulations is set out below.

**Regulation 1** gives the citation and title of the Regulations.

**Regulation 2** sets out the date of coming into effect of the Regulations.

**Regulation 3** defines, for the purposes of these Regulations, the Act of 2010 as meaning the Value-Added Tax Consolidation Act 2010.

**Regulation 4** amends section 2 of the Act by inserting the new definitions “*intra-Community distance sales of goods*” and “*distance sales of goods imported from third territories or third countries*”.

**Regulation 5** contains a consequential amendment to *section 5(1)* of the Act to insert a reference to *section 91J(10)*.

**Regulation 6** includes a consequential amendment to *section 6* of the Act which is required as a result of the changes made to *section 30* in Regulation 7 below.

**Regulation 7** substitutes a new section in place of the existing *section 30*. *Section 30* sets out the place of supply rules for intra-Community distance sales

<sup>20</sup> OJ No. L348, 29.12.2017, p. 7

<sup>21</sup> OJ No. L 244, 29.7.2020, p. 3

<sup>22</sup> OJ No. L 310, 2.12.2019, p. 1

<sup>23</sup> OJ No. L244, 29.7.2020, p. 3

<sup>24</sup> OJ No. L311, 7.12.2018, p. 3.

of goods and distance sales of goods imported from third territories and third countries.

**Regulation 8** amends *section 32A* of the Act, which relates to chain transactions, and provides that where a deemed supplier is the supplier of goods, it is not possible for the provision relating to chain transactions to apply to that supply.

**Regulation 9** amends *section 33* by the deletion of subsection (4B). It is a consequential amendment required as a result of the deletion of paragraph (kd) in *section 34* by Regulation 10 below.

**Regulation 10** contains an amendment of *section 34*. Paragraph (kd) of that section is deleted, while paragraph (kc) is amended to replace the reference to paragraph (kd) in that paragraph with a reference to *section 35A*, as inserted by Regulation 11.

**Regulation 11** amends Part 4 of the Act by inserting a new Chapter 4, which contains a new *section 35A*. *Section 35A* sets out place of supply rules for some suppliers who make supplies of intra-Community distance sales of goods and supplies of telecommunication services, radio or television broadcasting services or electronically supplied services (TBE services).

Subsections (1) and (2) provide that a supplier who makes such supplies from the State to non-taxable persons resident in other Member States, and the value of the goods and services supplied in one year is less than the threshold of €10,000, *section 29(1)(a)* will apply to the intra-Community distance sales of goods, and *section 34(b)* will apply to the supply of TBE services. This means that the place of supply rules which will apply are those which would apply to a domestic supply of goods and services, and as such the VAT due on those supplies will be accounted for in the State.

Subsection (3) of that section provides that where the €10,000 is exceeded in a calendar year, the place of supply rules contained in *sections 30(a)* and *section 34(kc)* will apply to those sales from the date on which the threshold is exceeded.

Subsection (4)(a) provides that a person who has not exceeded the €10,000 threshold may opt for the place of supply rules contained in *section 30(a)* and *section 34(kc)* to apply to sales which he or she makes. Where a person opts for those sections to apply to intra-Community distance sales of goods or supplies of TBE services which he or she makes, subsection (4)(b) provides that such a decision will apply for a period not less than 2 years from the date on which the option is exercised.

**Regulation 12** amends *section 66(1)(a)(ii)* to provide that a taxable person must issue an invoice where a supply is deemed to have taken place in another Member State, except where the Union scheme is used to declare and pay the VAT due on the goods.

**Regulation 13** amends *section 74(1)* to specify that the time at which payment is accepted is the time at which tax is chargeable where a supply of goods is made by an electronic interface who is the deemed supplier of the goods under *section 91G*.

**Regulation 14** amends *section 76(1)* to include a reference to section *91K(3)* in that subsection.

**Regulation 15** inserts a new title for Chapter 2 of Part 10 of the Act.

**Regulation 16** amends a number of definitions contained in *section 91A*, and also inserts a number of new definitions into that section.

The definitions “*Implementing Regulation*”, “*Member State of consumption*”, “*Member State of identification*”, “*non-Union scheme*”, “*scheme services*”, “*Union scheme*” and “*VAT return*” have been amended in order to provide for the increased scope of the OSS and the introduction of the Import Scheme, the deeming of electronic interfaces and the Special Arrangements for VAT on Import.

The definitions “*import scheme*”, “*intrinsic value*”, “*qualifying domestic supply of goods*”, “*taxable person not established in the Community*” and “*taxable person not established in the Member State of Consumption*” are also inserted by this regulation. These definitions apply to all of Chapter 2 of Part 10 of the Act.

**Regulation 17** amends *section 91B*, where the State is the Member State of identification for the non-Union scheme, to provide for the increased scope of the non-Union scheme within the One Stop Shop.

Paragraph (a) amends subsection (1)(b)(i) to allow for the use of the non-Union scheme in the State and the Union scheme in another Member State.

Paragraph (b) amends subsection 7(a) to set out the new date by which returns are required to be made. It is also amended by changing a reference from section 34(kc) to the relevant chapters of the Act.

Paragraph (c) inserts a new subsection (10A) which sets out the rules pertaining to deductibility where a person makes use of the non-Union scheme.

Paragraph (d) substitutes a new subsection (11). This substituted subsection sets out the conditions under which corrections to a previously made VAT return may be submitted and what information this correction is to contain.

**Regulation 18** amends *section 91C*, where the State is the Member State to which supplies of services is made under the non-Union Scheme.

Paragraph (a) contains a consequential amendment to subsection (1) to reflect the amendment made to section 34 and associated insertion of Chapter 3 of Part 4.

Paragraphs (b) and (c) amend the dates contained in subsections (3) and (4) respectively.

Paragraph (d) amends subsection (6)(b) to set out the rules relating to deductibility for a supplier making supplies to the State.

**Regulation 19** amends *section 91D*, where the State is the Member State of identification for the Union scheme, to provide for the extended scope of the Union scheme within the One Stop Shop.

Paragraph (a) amends subsection (1) to provide for the persons who may use the Union scheme, and to allow for the use of the non-Union scheme and the Union scheme simultaneously.

Paragraph (b) amends subsection (3) to provide that the date on which supplies under the Union scheme have commenced must be provided to the Revenue Commissioners.

Paragraph (c) amends subsection (4) by inserting new paragraphs (c) and (d) to provide that where a taxable person chooses the State as the Member State of Identification, that decision has effect for the remainder of the year in question and a further period of 2 years.

Paragraph (d) amends subsection (7) to provide that a taxable person registered for the Union scheme must submit a VAT return by the end of the month following a calendar quarter, and remit the VAT due on supplies made under the scheme. A VAT return must be made even if no supplies have been made during that quarter.

Paragraph (e) amends subsection (8) to provide that the VAT return made under subsection (7) must be made in euro and sets out the details of what is to be included in the VAT return.

Paragraph (f) amends subsection (11) to set out the conditions under which corrections to a previously made VAT return may be submitted and what information this correction is to contain.

**Regulation 20** amends *section 91E*, where Ireland is the Member State of consumption for the purposes of the Union scheme. The amendments contained in paragraphs (a) to (f) are required in order to account for the increase scope of transactions which may be declared using the Union scheme and to reflect the change of dates on which returns and remittances are to be made under the Union scheme.

**Regulation 21** amends *section 91F* to provide that regulations may be made in relation to the Union scheme and the non-Union scheme, as well as the Special Arrangements, the Import Scheme and the deeming provision for electronic interfaces.

**Regulation 22** inserts *sections 91G, 91H, 91I, 91J and 91K* into the Act.

*Section 91G* transposes the provisions of the Directive relating to the deeming of electronic interfaces to be the suppliers of goods in certain circumstances.

Subsection (1) describes the circumstances in which an electronic interface will be the deemed supplier of goods imported into the EU (paragraph (a)) and goods that are in free circulation within the EU and the underlying supplier of the goods is not established in the EU (paragraph (b)).

Subsection (2) provides that the transport of goods where an electronic interface is deemed to have supplied goods is ascribed to the supply made by the deemed supplier.

Subsection (3) sets out the record keeping responsibilities of a deemed supplier,

Subsection (4) sets out the record keeping responsibilities of an electronic interface who facilitates the sale of goods and services. These record keeping responsibilities apply even where an electronic interface is not the deemed supplier of goods. The records must be sufficiently detailed to enable VAT to be verified, must be made available to the Revenue Commissioners and Member States in which the transactions are taxable on request, and must be retained for a period of 10 years from 31 December of the year in which the transaction was carried out.

*Section 91H* transposes the provisions of the Directive relating to the Special Arrangements for VAT on Import.

Subsection (1) defines the Special Arrangements for the purposes of the section.

Subsection (2) sets out the circumstances in which the Special Arrangements may be used.

Subsection (3) contains the conditions which must be fulfilled by a taxable person in order to use the special arrangements.

Subsection (4)(a) provides that where the Special Arrangements are used, the person to whom the goods are destined remains liable for the VAT due. Subsection (4)(b) also provides that the person using the Special Arrangements is to collect and pay the VAT due to the Revenue Commissioners.

Subsection (5) specifies that where goods are declared through the Special Arrangements, the VAT rate which will apply is the standard rate of VAT. This is regardless of the rate of VAT which would otherwise apply to the goods.

Subsection (6) sets out the manner in which information is to be provided to the Revenue Commissioners by a user of the Special Arrangements each month.

Subsection (7) specifies the information to be contained in a declaration made to the Revenue Commissioners for the purposes of the Special Arrangements.

Subsection (8) contains the record keeping obligations which a user of the Special Arrangements must fulfil.

*Section 91I* contains interpretation and general provisions relating to the Import Scheme contained in the eCommerce Package.

Subsection (1) defines the terms “*intermediary*”, “*Member State of consumption*”, “*Member State of identification*” and “*VAT return*” for the purposes of the Import Scheme as contained in *sections 91I, 91J and 91K* of the Act.

Subsection (2) provides that if a taxable person or an intermediary acting on behalf of a taxable person has more than one fixed establishment in the Community, the decision in respect of the Member State of identification which that taxable person or intermediary makes for the purposes of the Import Scheme has effect for the remainder of the year concerned and an additional period of 2 years.

Subsection (3) sets out the goods to which the Import Scheme may apply.

Subsection (4) details the taxable persons who may use the Import Scheme, and whether a taxable person must appoint an intermediary in order to use the Import Scheme.

Subsection (5) provides that where a person uses the Import Scheme, it must be used to declare all supplies which are within scope of the Import Scheme.

Subsection (6) states that a person may not appoint more than one intermediary at any one time.

Subsection (7) holds that where goods are supplied under the Import Scheme, goods are regarded as having been supplied at the time payment is accepted. VAT is then chargeable at the time of the supply.

*Section 91J* sets out how the Import Scheme operates where the State is the Member State of identification for the purposes of the scheme.

Subsection (1) provides that where a person or an intermediary acting on behalf of a person must notify the Revenue Commissioners where activity commences under the Import Scheme, or where activity changes such that the person or the intermediary no longer meets the conditions associated with using the Import Scheme.

Subsection (2) holds that a person may not be registered in the State for the purposes of the Import Scheme if that person is registered for the scheme in another Member State or that person has been excluded from the scheme.

Subsection (3) obliges the Revenue Commissioners to create an import scheme identification register for the Import Scheme. This register will be used in order to record persons identified in the State for the purposes of the scheme.

Subsection (4) sets out the information a taxable person not using an intermediary is to provide the Revenue Commissioners before that person commences use of the Import Scheme.

Subsection (5) sets out the information a person seeking to become an intermediary is to provide the Revenue Commissioners before that person commences use of the Import Scheme on behalf of a taxable person.

Subsection (6) sets out the information an intermediary is to provide the Revenue Commissioners on behalf of a taxable person before that taxable person commences use of the Import Scheme.

Subsection (7) mandates that a taxable person or an intermediary acting on his or her behalf must notify the Revenue Commissioners of any changes in the information provided under subsections (4) to (6).

Subsection (8) sets out the process which will be followed where a taxable person (paragraph (a)) or an intermediary acting on behalf of a taxable person (paragraph (b)) submits the information required under subsections (4) to (6) (as appropriate) to the Revenue Commissioners.

Where the information is received, the taxable person or intermediary will be registered on the import scheme identification register, be allocated an identification number and be notified of the number and the date on which the registration will go live. An intermediary will be allocated an identification number in respect of each taxable person which he or she represents.

Paragraph (c) specifies that an identification number issued can only be used for the purposes of the Import Scheme.

Subsection (9) sets out the circumstances in which a taxable person or an intermediary will be removed from the identification register for the Import Scheme.

Under paragraph (a), a taxable person who does not use an intermediary will be removed from the register where:

- the Revenue Commissioners are notified that supplies under the Import Scheme are no longer made,
- the taxable person no longer meets the conditions associated with the Import Scheme,
- the taxable person persistently fails to comply with the rules of the scheme, or
- the Revenue Commissioners can assume the taxable person's supplies have ceased.

Under paragraph (b), an intermediary will be removed from the register where:

- the intermediary has not acted on behalf of a taxable person for two consecutive calendar quarters,
- the intermediary no longer meets the conditions associated with acting as an intermediary, or
- the intermediary persistently fails to comply with the rules of the scheme,

Under paragraph (c), a taxable person who uses an intermediary will be removed from the register where:

- the Revenue Commissioners are notified by the intermediary that supplies under the Import Scheme are no longer made,
- the taxable person no longer meets the conditions associated with the Import Scheme,
- the intermediary notifies the Revenue Commissioners that he or she no longer represents the taxable person,
- the taxable person persistently fails to comply with the rules of the scheme, or
- the Revenue Commissioners can assume the taxable person's supplies have ceased.

Subsection (10) provides that the Revenue Commissioners may issue a notice to an intermediary and a taxable person which that intermediary represents holding that intermediary jointly and severally liable for supplies made under the Import Scheme. The Revenue Commissioners may issue such a notice for the protection of the revenue.

Subsection (11) obliges a taxable person or his or her intermediary to submit a VAT return for the purposes of the Import Scheme by the end of the month following a taxable period, and to remit the VAT due on supplies made under the Import Scheme. Paragraph (b) provides that a VAT return must be made even if no supplies have been made for that month.

Subsection (12) provides that the VAT return made under subsection (11) must be made in euro and sets out the details of what is to be included in the VAT return.

Subsection (13) describes the exchange rate to be used where supplies made under the Import Scheme are not made in the euro.

Subsection (14) provides that a correction may be made to a previously submitted VAT return in a subsequent return within 3 years of the original return being submitted. Paragraph (b) details the information to be provided where such a correction is being made.

Subsection (15) holds that a taxable person may not make a deduction in the VAT return to be submitted for the purposes of the Import Scheme.

Subsections (16) and (17) provide that the Revenue Commissioners will issue an electronic reminder in relation to an outstanding VAT return or payment to a taxable person or an intermediary on the 10<sup>th</sup> day after:

- the date on which a VAT return was to be submitted, or
- a VAT return is received but partial or no payment has been made.

Subsection (18) contains the record keeping obligations which taxable persons and intermediaries must adhere to under the Import Scheme. The records must be sufficiently detailed to enable the Member State of consumption to verify that the VAT return is correct, must be made available to the Revenue Commissioners and Member States in which the transactions are taxable on request, and must be retained for a period of 10 years from 31 December of the year in which the transaction was carried out.

*Section 91K* sets out the manner in which the Import Scheme operates where the State is the Member State of consumption to which goods are supplied.

Subsection (1) provides that a person who is registered for the Import Scheme in the State or in another Member State, is an accountable person in relation to goods supplied in the State under the Import Scheme.

Subsections (2), (3) and (4) provide that a person who is registered for the Import Scheme in another Member State and who, in accordance with the provisions of the scheme in that other Member State, files a return and pays the tax due in the State, will be regarded as having fulfilled his

or her obligations in relation to registration, returns and payments under the VAT Consolidation Act 2010. The returns and payments made under the provisions of the Import Scheme will be regarded as if they were returns and payments which were required to be made under the normal return and payments provisions of the Act.

Subsection (5) deals with the exchange rate to be applied where supplies are not made in the euro in the Import Scheme.

Subsection (6) deals with the entitlement to deduct VAT for taxable persons registered for the Import Scheme.

Subsection (7) deals with record keeping requirements.

**Regulation 23** contains a consequential amendment to *section 101(14)(a)*. This amendment inserts a reference to goods supplied under the Import Scheme which are taxable in the State.

**Regulation 24** contains a consequential amendment to *section 102(3)(b)*. This amendment inserts a reference to goods supplied under the Import Scheme which are taxable in the State.

**Regulation 25** amends *section 111(1)* to insert references to *section 91J(10)* throughout that section.

**Regulation 26** amends *section 115(1)* to provide that paragraph (a) of that section will not apply to an intermediary where that intermediary is jointly and severally liable under *section 91J(10)*.

**Regulation 27** amends *section 116* to provide that the section will not apply to an intermediary where that intermediary is jointly and severally liable under *section 91J(10)*.

**Regulation 28** amends *section 120* of the Act. Paragraph (a) contains an amendment to subsection (4) which is consequential to the changes made to section 30 and the associated insertion of *section 35A*. Paragraph (b) contains an amendment to subsection (10) to provide that the Revenue Commissioners may make Regulations to provide for the manner in which the Import Scheme, and the Special Arrangements operate.

**Regulation 29** amends Part 1 of *Schedule 2* of the Act.

Paragraph (a) inserts a new subparagraph (5) into paragraph 1. This new subparagraph provides that the supply of goods to a taxable person who is subsequently the deemed supplier of those goods is zero-rated.

Paragraph (b) inserts a new subparagraph (3) into paragraph 2. This new subparagraph provides that the importation of goods into the State is zero-rated where the Import Scheme is used to declare and pay the VAT due on the importation of the goods.

**Regulation 30** amends Part 1 and Part 2 of *Schedule 9* of the Act to reflect the change to the scope of the Union and non-Union schemes. In Part 1, references to *sections 91A, 91B, 91C, 91D* and *91E* are deleted. In Part 2, references to *sections 35A, 91A, 91D* and *91E* are inserted.

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