

**2019 No. 818**

**EXITING THE EUROPEAN UNION**

**STAMP DUTY**

**STAMP DUTY RESERVE TAX**

**TAXES**

**The Taxes (Amendments) (EU Exit) (No. 2) Regulations 2019**

*Made* - - - - - *5th April 2019*

*Laid before the House of Commons* *8th April 2019*

*Coming into force in accordance with regulation 1*

The Treasury make the following Regulations in exercise of the power conferred by section 90(1)(a) and (b), (2) and (6) of the Finance Act 2019(a).

Further to section 90(7)(b) of that Act, the Prime Minister has notified the President of the European Council, in accordance with Article 50(3) of the Treaty on European Union(b), of the United Kingdom's request to extend the period in which the Treaties shall still apply to the United Kingdom.

**PART 1**

**Introduction**

**Citation and commencement**

**1.**—(1) These Regulations may be cited as the Taxes (Amendments) (EU Exit) (No. 2) Regulations 2019.

(2) This regulation and regulation 8(1) to (6) come into force on exit day.

(3) Regulations 3 to 7, 8(7) and 9 to 13 come into force immediately after the coming into force of the Taxes (Amendments) (EU Exit) Regulations 2019(c).

(4) Regulations 2 and 14 come into force immediately after the coming into force of the Stamp Duty and Stamp Duty Reserve Tax (Amendment) (EU Exit) Regulations 2019(d).

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(a) 2019 c. 1.

(b) OJ No. C 326, 26.10.2012, p.13.

(c) S.I. 2019/689.

(d) S.I. 2019/515.

## PART 2

### Amendments to primary legislation

#### Finance Act 1986

**2.**—(1) Part 3 of the Finance Act 1986(a) (stamp duty) is amended as follows.

(2) In section 80B(2)—

(a) in the definition of “multilateral trading facility”—

(i) for paragraph (c) substitute—

“(c) a Gibraltar multilateral trading facility within the meaning given by Article 26(11)(b)(ii) of that Regulation(b);”;

(ii) omit the words from “and in paragraph (c)” to the end;

(b) in the definition of “regulated market” for paragraph (c) substitute—

“(c) a Gibraltar regulated market within the meaning given by Article 26(11)(b)(i) of that Regulation;”.

#### Finance Act 1991

**3.**—(1) Part 4 of the Finance Act 1991(c) (stamp duty and stamp duty reserve tax) is amended as follows.

(2) In section 116—

(a) for subsection (4)(b)(id) and (ie) substitute—

“(id) a Gibraltar regulated market (within the meaning given by Article 26(11)(b)(i) of that Regulation);

(ie) a Gibraltar multilateral trading facility (within the meaning given by Article 26(11)(b)(ii) of that Regulation);”;

(b) omit subsection (5).

#### Taxation of Chargeable Gains Act 1992

**4.**—(1) The Taxation of Chargeable Gains Act 1992(d) is amended as follows.

(2) In section 151N(2A) in the definition of “multilateral trading facility”—

(a) for paragraph (c) substitute—

“(c) a Gibraltar multilateral trading facility within the meaning given by Article 26(11)(b)(ii) of that Regulation.”;

(b) omit the words from “and in paragraph (c)” to the end.

#### Income Tax (Trading and Other Income) Act 2005

**5.**—(1) The Income Tax (Trading and Other Income) Act 2005(e) is amended as follows.

(2) For section 381E(3)(c) substitute—

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- (a) 1986 c. 41. Section 80B was inserted by section 97(1) of the Finance Act 1997 (c. 16) and relevantly amended by S.I. 2019/515.
- (b) Regulation (EU) No. 600/2014 is amended by S.I. 2018/1403 (as that instrument is amended by S.I. 2019/710).
- (c) 1991 c. 31. Section 116 was relevantly amended by S.I. 2013/504 and S.I. 2019/689.
- (d) 1992 c. 12. Section 151N was inserted by paragraph 34 of Schedule 2 to the Taxation (International and Other Provisions) Act 2010 (c. 8) and relevantly amended by S.I. 2019/689.
- (e) 2005 c. 5. Section 381E was inserted by paragraph 3 of Schedule 12 to the Finance Act 2013 (c. 29) and amended by S.I. 2017/701 and S.I. 2019/689.

“(c) a Gibraltar regulated market within the meaning given by Article 26(11)(b)(i) of that Regulation.”.

### **Income Tax Act 2007**

**6.**—(1) The Income Tax Act 2007(a) is amended as follows.

(2) For section 274(4)(c)(b) substitute—

“(c) a Gibraltar regulated market within the meaning given by Article 26(11)(b)(i) of that Regulation.”.

(3) In section 564G(2A)(c), in the definition of “multilateral trading facility”—

(a) for paragraph (c) substitute—

“(c) a Gibraltar multilateral trading facility within the meaning given by Article 26(11)(b)(ii) of that Regulation.”;

(b) omit the words from “and in paragraph (c)” to the end.

(4) In section 987(2)(b)(d)—

(a) for sub-paragraph (iii) substitute—

“(iii) a Gibraltar multilateral trading facility within the meaning given by Article 26(11)(b)(ii) of that Regulation.”;

(b) omit the words from “and in sub-paragraph (iii)” to the end.

### **Corporation Tax Act 2009**

**7.**—(1) The Corporation Tax Act 2009(e) is amended as follows.

(2) In section 507(2A), in the definition of “multilateral trading facility”—

(a) for paragraph (c) substitute—

“(c) a Gibraltar multilateral trading facility within the meaning given by Article 26(11)(b)(ii) of that Regulation.”;

(b) omit the words from “and in paragraph (c)” to the end.

### **Corporation Tax Act 2010**

**8.**—(1) The Corporation Tax Act 2010(f) is amended as follows.

(2) In section 357B(4)(a) for “section 357BB” substitute “sections 357BB and 357BBA”.

(3) In section 357BB—

(a) in subsection (1)—

(i) at the end of paragraph (d) insert “and”;

(ii) omit paragraph (f);

(b) for subsections (3) to (5) substitute—

“(3) Where a product benefits from marketing protection (see subsection (4)) or data protection (see subsection (5)), the person who holds the relevant marketing authorisation in respect of the product (see subsection (6A)) is to be treated for the purposes of this Part as having been granted a right to which this Part applies in respect of the product.

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(a) 2007 c. 3.

(b) Section 274(4) was inserted by paragraph 2 of Schedule 2 to the Finance (No. 3) Act 2010 (c. 33) and amended by S.I. 2017/701 and S.I. 2019/689.

(c) Section 564G was inserted by paragraph 8 of Schedule 2 to the Taxation (International and Other Provisions) Act 2010 and relevantly amended by S.I. 2019/689.

(d) Section 987(2) was inserted by section 34 of the Finance Act 2018 (c. 3) and amended by S.I. 2019/689.

(e) 2009 c. 4. Section 507 was relevantly amended by S.I. 2019/689.

(f) 2010 c. 4. Sections 357B and 357BB were inserted by paragraph 1(1) of Schedule 2 to the Finance Act 2012 (c. 14).

- (4) A product benefits from marketing protection if—
- (a) a marketing authorisation under the Human Medicines Regulations 2012<sup>(a)</sup> has been granted in respect of the product and the period during which a generic of the product may be prevented from being sold by reason of regulation 51(8) of those Regulations has not expired;
  - (b) an orphan marketing authorisation under the Human Medicines Regulations 2012 has been granted in respect of the product and the prohibition arising in connection with that authorisation under regulation 58D(1) of those Regulations remains in force;
  - (c) a marketing authorisation to which paragraph 6 of Schedule 33A to the Human Medicines Regulations 2012 applies has been granted in respect of the product and the holder of the authorisation continues to benefit from marketing exclusivity by reason of sub-paragraph (4)(f) or (7) of that paragraph;
  - (d) a marketing authorisation under the Veterinary Medicines Regulations 2013<sup>(b)</sup> has been granted in respect of the product and the period during which an equivalent of the product may be prevented from being placed on the market by paragraph 11(3) of Schedule 1 to those Regulations has not expired.
- (5) A product benefits from data protection if—
- (a) a marketing authorisation in respect of the product under the Human Medicines Regulations 2012 has been granted or varied in circumstances giving rise to the prohibition in regulation 51(16) or 64A(3) of those Regulations and that prohibition remains in force;
  - (b) a marketing authorisation under Regulation (EC) No 1107/2009<sup>(c)</sup> has been granted in respect of the product and data relating to the product benefits from data protection under Article 59 of that Regulation.”;
- (c) in subsection (6) for “subsection (5)(c)” substitute “subsection (5)(b)”;
- (d) after subsection (6) insert—
- “(6A) In subsection (3) the relevant marketing authorisation is the marketing authorisation by reference to which it is determined that the product benefits from marketing protection or data protection.”;
- (e) in subsection (7), in the appropriate place, insert—
- ““Regulation (EC) No 1107/2009” means Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market.”;
- (f) in subsection (8)—
- (i) in paragraph (a) for “this section”, in the second place where the expression occurs, substitute “subsection (3)”;
  - (ii) omit paragraph (b).
- (4) After section 357BB insert—

**“Rights to which this Part applies: EU rights**

**357BBA.**—(1) This Part applies to the following rights—

- (a) an EU supplementary protection certificate, and
- (b) any Community plant variety rights granted under Council Regulation (EC) No 2100/94<sup>(d)</sup>.

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(a) S.I. 2012/1916, relevantly amended by S.I. 2013/1855, S.I. 2013/2593, S.I. 2014/1878, S.I. 2019/62, S.I. 2019/775.

(b) S.I. 2013/2033, amended by S.I. 2014/599, S.I. 2018/761, S.I. 2019/676, S.I. 2019/788.

(c) Regulation (EC) No 1107/2009 is amended by S.I. 2019/556.

(d) OJ No. L 227, 01.09.1994, p. 1.

(2) Where—

- (a) a person holds a marketing authorisation in respect of any product in accordance with any legislation having effect in EU law, and
- (b) the product benefits from EU marketing protection (see subsection (3)) or EU data protection (see subsection (4)),

the person is to be treated for the purposes of this Part as having been granted a right to which this Part applies in respect of the product.

(3) A product benefits from EU marketing protection if—

- (a) the product benefits from marketing protection by virtue of Article 14.11 of Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medical products for human use(a), or
- (b) any of the following prohibitions is in force—
  - (i) the prohibition on placing on the market a generic of the product imposed by Article 10.1 of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use(b),
  - (ii) the prohibition imposed by Article 8.1 of Regulation (EC) No 141/2000 of the European Parliament and the Council of 16 December 1999 on orphan medicinal products(c), and
  - (iii) the prohibition on placing on the market a generic of the product imposed by Article 13.1 of Directive 2001/82/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to veterinary medicinal products(d).

(4) A product benefits from EU data protection if—

- (a) the product benefits from the data exclusivity conferred by Article 10.5 of Directive 2001/83/EC of the European Parliament and of the Council,
- (b) the prohibition on referring to the results of tests or trials in relation to the product imposed by Article 74a of that Directive is in force, or
- (c) data relating to the product benefits from data protection under Article 59 of Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market(e).

(5) The reference to data in subsection (4)(c) does not include a study necessary for the renewal or review of a marketing authorisation granted in respect of the product in accordance with Regulation (EC) No 1107/2009.

(6) In this section “EU supplementary protection certificate” means a certificate issued under—

- (a) Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products(f), or

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(a) OJ No. L 136, 30.04.2004, p. 1, to which there are amendments not relevant to these Regulations.

(b) OJ No. L 311, 28.11.2001, p. 67, relevantly amended by Directive 2004/27/EC OJ No. L 136, 30.04.2004, p.34.

(c) OJ No. L 18, 22.01.2000, p. 1, to which there are amendments not relevant to these Regulations

(d) OJ No. L 311, 28.11.2001, p. 1, relevantly amended by Directive 2004/28/EC OJ No. L 136, 30.04.2004, p.58.

(e) OJ No. L 309, 24.11.2009, p. 1, to which there are amendments not relevant to these Regulations.

(f) OJ No. L 152, 16.06.2009, p. 1.

- (b) Regulation (EC) No 1610/96 of the European Parliament and of the Council of 23 July 1996 concerning the creation of a supplementary protection certificate for plant protection products<sup>(a)</sup>.
- (7) A reference in this section to any EU legislation is a reference to that legislation as it has effect in EU law.
- (8) The Treasury may by regulations—
  - (a) amend this section so as to make provision about the circumstances in which a product benefits from EU marketing protection or EU data protection for the purposes of subsection (2);
  - (b) make such provision amending any reference in this section to EU legislation as appears to the Treasury appropriate in consequence of any EU legislation amending or replacing that EU legislation.
- (9) Regulations under subsection (8) may make any incidental, supplemental, consequential, transitional or saving provision, including provision amending or modifying this Part.”.
- (5) In section 1081(1) after “be” insert “UK resident or”.
- (6) In section 1127—
  - (a) in subsection (6) for the words from “the European Commission” to “international accounting standard” substitute “an international accounting standard has been adopted by the United Kingdom or the European Commission”;
  - (b) in subsection (7) before the definition of “IAS accounts” insert—
    - ““adopted by the United Kingdom” means adopted for use within the United Kingdom by virtue of Chapter 2 or 3 of Part 2 of the International Accounting Standards and European Public Limited-Liability Company (Amendment etc.) (EU Exit) Regulations 2019<sup>(b)</sup>,
    - “adopted by the European Commission” means adopted by the European Commission in accordance with Regulation (EC) No 1606/2002 of the European Parliament and the Council of 19 July 2002 on the application of international accounting standards (as it has effect in EU law),<sup>(c)</sup>”.
- (7) For section 1158(4)(c)<sup>(d)</sup> substitute—
  - “(c) a Gibraltar regulated market within the meaning given by Article 26(11)(b)(i) of that Regulation.”.

## PART 3

### Amendments to subordinate legislation

#### **The Authorised Investment Funds (Tax) Regulations 2006**

- 9.—**(1) The Authorised Investment Funds (Tax) Regulations 2006<sup>(e)</sup> are amended as follows.
- (2) For regulation 14ZD(6)(b)(iii) substitute—
  - “(iii) a Gibraltar regulated market within the meaning given by Article 26(11)(b)(i) of that Regulation.”.

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(a) OJ No. L 198, 08.08.1996, p. 30.

(b) S.I. 2019/685.

(c) OJ No. L 243, 11.09.2002, p. 1.

(d) Section 1158 was substituted by section 49 of the Finance Act 2011 (c. 11) and relevantly amended by S.I. 2017/701 and S.I. 2019/689.

(e) S.I. 2006/964, relevant amending instruments are S.I. 2011/2192, S.I. 2017/701, S.I. 2019/689.

### **The Offshore Funds (Tax) Regulations 2009**

**10.**—(1) The Offshore Funds (Tax) Regulations 2009(a) are amended as follows.

(2) In regulation 12 in the definition of “regulated market” for paragraph (c) substitute—

“(c) a Gibraltar regulated market within the meaning given by Article 26(11)(b)(i) of that Regulation;”.

### **The Investment Trust (Approved Company) (Tax) Regulations 2011**

**11.**—(1) The Investment Trust (Approved Company) (Tax) Regulations 2011(b) are amended as follows.

(2) For regulation 45(6)(b)(iii) substitute—

“(iii) a Gibraltar regulated market within the meaning given by Article 26(11)(b)(i) of that Regulation.”.

### **The Inheritance Tax (Market Makers and Discount Houses) Regulations 2012**

**12.**—(1) The Inheritance Tax (Market Makers and Discount Houses) Regulations 2012(c) are amended as follows.

(2) For regulation 8(c) substitute—

“(c) a Gibraltar regulated market within the meaning given by Article 26(11)(b)(i) of that Regulation.”.

### **The Unauthorised Unit Trusts (Tax) Regulations 2013**

**13.**—(1) The Unauthorised Unit Trusts (Tax) Regulations 2013(d) are amended as follows.

(2) For regulation 23(3)(c) substitute—

“(c) a Gibraltar regulated market within the meaning given by Article 26(11)(b)(i) of that Regulation.”.

### **The Stamp Duty and Stamp Duty Reserve Tax (Exchange Traded Funds) (Exemption) Regulations 2014**

**14.**—(1) The Stamp Duty and Stamp Duty Reserve Tax (Exchange Traded Funds) (Exemption) Regulations 2014(e) are amended as follows.

(2) In regulation 2—

(a) in the definition of “multilateral trading facility”—

(i) for paragraph (c) substitute—

“(c) a Gibraltar multilateral trading facility within the meaning given by Article 26(11)(b)(ii) of that Regulation;”;

(ii) omit the words from “and in paragraph (c)” to the end;

(b) in the definition of “regulated market” for paragraph (c) substitute—

“(c) a Gibraltar regulated market within the meaning given by Article 26(11)(b)(i) of that Regulation;”.

*Craig Whittaker  
Paul Maynard*

5th April 2019

Two of the Lords Commissioners of Her Majesty’s Treasury

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(a) S.I. 2009/3001, relevant amending instruments are S.I. 2011/1211, S.I. 2017/701, S.I. 2019/689.

(b) S.I. 2011/2999, relevant amending instruments are S.I. 2017/701, S.I. 2019/689.

(c) S.I. 2012/2903 is amended by S.I. 2019/689.

(d) S.I. 2013/2819, relevant amending instruments are S.I. 2017/701, S.I. 2019/689.

(e) S.I. 2014/911, amended by S.I. 2017/701, S.I. 2019/515.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend various provisions of tax legislation to ensure the effective operation of that legislation after the withdrawal of the United Kingdom from the European Union.

Part 1 provides for introductory provisions, Part 2 amends primary legislation and Part 3 amends subordinate legislation.

These Regulations make amendments to certain tax legislation in connection with regulations that have been made under section 8 of the European Union (Withdrawal) Act 2018 (c. 16) to remedy deficiencies arising from the withdrawal of the United Kingdom from the European Union. These include amendments which update amendments made by the Taxes (Amendments) (EU Exit) Regulations 2019 (S.I. 2019/689) and the Stamp Duty and Stamp Duty Reserve Tax (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/515) following the making of the Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/710).

These Regulations also maintain the effect of the legislation which they amend on withdrawal of the United Kingdom from the European Union (and accordingly, on the United Kingdom ceasing to be a member of the European Economic Area).

A Tax Information and Impact Note has not been prepared for this Instrument as it contains no substantive changes to tax policy.

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