

**EXPLANATORY MEMORANDUM TO THE
THE VALUE ADDED TAX (INSURANCE) ORDER 2004**

2004 No. 3083

1. 1.1 This explanatory memorandum has been prepared by HM Customs and Excise and is laid before the House of Commons by Command of Her Majesty. It contains information for the Select Committee on Statutory Instruments.

2. Description

2.1 This instrument removes the conditions subject to which exemption from VAT for the provision of insurance services is restricted to specific persons, including those who are authorised (or exempted from authorisation) by the Financial Services Authority.

3. Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 Article 13B(a) of Council Directive 77/388/EEC, the “Sixth VAT Directive”, requires member states to legislate so that insurance and reinsurance transactions are exempt from VAT. The exemption was implemented in the United Kingdom and is now contained in Group 2, Schedule 9 to the Value Added Tax Act 1994. Section 31(2) of the Act confers a power to vary Schedule 9 by means of a Treasury order.

4.2 Group 2 allows VAT exemption for insurance and reinsurance transactions but restricts its scope to certain persons who carry out those transactions. Broadly, these restrictions are linked to the regulation of insurance business in the United Kingdom and the Act specifies particular categories of persons who are entitled to exempt their services from VAT.

4.3 These restrictions were found to be unlawful by the European Court of Justice on a reference by the House of Lords in the case of Card Protection Plan v Commissioners of Customs and Excise (CPP)¹.

4.4 The European Court ruled that the VAT exemption for insurance and reinsurance is determined by the nature of the transaction and not by who makes it. This instrument therefore removes the restrictions limiting the scope of the VAT exemption to certain categories of persons.

4.5 Orders² to effect consequential changes to the Value Added Tax (Special Provisions Order 1995 and the Value Added Tax (Cars) Order 1992 have also been made.

¹ Case C-394/96 [1999] STC 270.

² The Value Added Tax (Special Provisions) (Amendment) (No.2) Order 2004 No.3085 and the Value Added Tax (Cars) (Amendment) Order 2004 No.3084.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Paymaster General has made the following statement regarding Human Rights:

In my view the provisions of the Value Added Tax (Insurance) Order 2004 are compatible with the Convention rights.

7. Policy Background

7.1 Subject to certain exceptions, a person who carries on insurance business in the United Kingdom must first obtain permission under the Financial Services and Markets Act 2000. The VAT exemption for insurance and reinsurance transactions was implemented in the United Kingdom so that it applied to the services of those persons who carry out such transactions lawfully, i.e. within the regulatory framework.

7.2 The House of Lords, which had referred the CPP case to the European Court, delivered its final judgment on 31 January 2001. Business Brief (02/2001) was published on 15 February 2001 in which Customs stated that they accept that someone who is providing insurance without authorisation is nevertheless entitled to VAT exemption, subject to their being satisfied that what is being provided is in fact insurance. Customs went on to advise businesses seeking VAT exemption as providers of insurance to clarify their regulatory position under the Insurance Companies Act 1982³ with the Financial Services Authority.

7.3 The draft of this instrument was circulated to insurance representatives and advisers for their comments. The only feedback received was from the Association of British Insurers and The International Underwriters Association. They were concerned that the proposed amendments represented a change to existing policy beyond that intended. Customs have assured them that the policy changes are confined to those required by the ECJ case.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has negligible impact on business, charities or voluntary bodies.

8.2 There is no impact on the public sector.

³ The relevant provisions of the Insurance Companies Act 1982 are now in the Financial Services and Markets Act 2000.

9. Contact

- 9.1 Any enquiries regarding this instrument may be directed to Isabel Pitts at HM Customs and Excise; Tel: 020-7865-5393 (up to 4 December 2004 and 020-7147-0516 thereafter) or e-mail: isabel.pitts@hmce.gsi.gov.uk.