

EXPLANATORY MEMORANDUM TO
THE VALUE ADDED TAX (INPUT TAX) (PERSON SUPPLIED) ORDER 2005

2005 No. 3291

1. This explanatory memorandum has been prepared by HM Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. **Description**

- 2.1 This Order revokes the Value Added Tax (Input Tax) (Person Supplied) Order 1991.

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

- 3.1 None

4. **Legislative Background**

- 4.1 This Order has been made by the Treasury in the exercise of their powers under section 24(4) of the Value Added Tax Act 1994.

- 4.2 It revokes the Value Added Tax (Input Tax) (Person Supplied) Order 1991 which was made by the Treasury in the exercise of the same powers. By virtue of section 14 of the Interpretation Act 1978 (c. 30), these powers include a power to revoke an order as well as to make one.

- 4.2 This Order has been made following the ECJ's judgment in the case of *Commission v UK* (Case C-33/03), which held that the UK, in making the Value Added Tax (Input Tax) (Person Supplied) Order 1991, had made provision which was contrary to the provisions of articles 17(2)(a) and 18(1)(a) of the Sixth Council Directive (77/388/EEC of 17 May 1977).

- 4.3 The Value Added Tax (Input Tax) (Reimbursement by Employers of Employees' Business Use of Road Fuel) Regulations 2005 (S.I. 2005/YYYY) have been made to replace the revoked order.

5. **Extent**

- 5.1 This instrument applies to all of the United Kingdom

6. **European Convention on Human Rights**

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Value Added Tax (Input Tax) (Person Supplied) Order 1991 made provision which permitted an employer to recover VAT where he reimbursed an employee for the purchase of road fuel used for the employer's business. The UK believed the Order reflected the economic reality of how businesses operated and upheld the principle of fiscal neutrality, which dictates that taxable persons should not have to bear the cost of any VAT in relation to their taxable supplies. However, in Case C-33/03, the European Court held that the terms of the Order were not compatible with the provisions of Articles 17(2)(a) and 18(1)(a) of the Sixth Council Directive (77/388/EEC of 17 May 1977). This was because they did not ensure (1) that the VAT recovered related solely to fuel used for the purposes of the taxable person's taxable transactions and (2) that the taxable person was required to hold a VAT invoice.

7.2 Accordingly, the Order is being revoked and is being replaced by Value Added Tax (Input Tax) (Reimbursement by Employers of Employees' Business Use of Road Fuel) Regulations 2005, which will come into force on 1st January 2006. The new Order makes it explicit that employers can recover only that VAT on road fuel which is used in their business in making taxable supplies (or can recover the VAT in full and apply the fuel scale charge to account for output tax on private use) and must hold a VAT invoice in support of their claims.

8. Impact

8.1 A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of businesses, charities or voluntary bodies.

8.2 There is no impact on the public sector.

9. Contact

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