

EXPLANATORY MEMORANDUM TO
THE VALUE ADDED TAX (AMENDMENT) (NO.3) REGULATIONS 2010
2010 No. 2940

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

2. **Purpose of the instrument**

2.1 This instrument amends the Value Added Tax Regulations 1995 (SI 1995/2518) (“the Principal Regulations”).

Regulation 3

2.2 Regulation 3 amends regulation 15A to add a reference to Schedule 2 to the Finance (No. 2) Act 2010 to ensure that the invoicing requirements specified in that regulation apply in circumstances where a supplementary charge arises under that Schedule.

Regulations 4 and 5

2.3 Regulations 4 and 5 amend the Flat Rate Scheme by (1) substituting a new table with revised percentages to reflect the increase in the VAT standard rate from 17.5 per cent to 20 per cent on 4 January 2011 and (2) providing revised figures for the exit thresholds to reflect that increase.

Regulation 6

2.4 Regulation 6 amends regulation 173P to insert a new deadline by which claims for repayment of VAT incurred in 2009 by an EU-based business in another Member State must be made. Such VAT is recoverable under Council Directive 2008/9/EC (“Directive 2008/9”) which was implemented in the UK by regulations 173A to 173X of the Principal Regulations. Member States agreed that, for claims for repayment of tax incurred in 2009, the deadline for submission of a claim should be extended by 6 months from 30 September 2010 to 31 March 2011. This was given effect by Council Directive 2010/66/EU (“Directive 2010/66”).

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

Regulation 6

Directive 2010/66 came into force on 21 October 2010 but has effect from 1 October 2010. No implementation date is specified.

4. **Legislative Context**

4.1 This instrument amends the Principal Regulations.

Regulation 6

4.2 Article 15(1) of Directive 2008/9 allows a period of 9 months from the end of the claim year for the submission of claims for refunds of VAT incurred in other Member States. Due to problems associated with the roll out of the new electronic system, this deadline has been extended by 6 months from 30 September 2010 to 31 March 2011. The proposal was ratified on 14 October 2010. As this was after the expiry of the current deadline for submitting claims, the amendment to Directive 2008/9 was given retrospective effect.

4.3 A transposition note has not been produced as the change is a minor one and the resources required are significantly greater than can be justified by the resulting added benefit to the reader. The transposition note for the Value Added Tax (Amendment) (No. 5) Regulations 2009 (S.I. 2009/3241), which transposed into UK law the provisions of Council Directive 2006/112/EC (as amended by Council Directives 2008/8/EC and 2008/117/EC) is available at:
http://www.legislation.gov.uk/ukxi/2009/3241/pdfs/ukxiem_20093241_en.pdf.

5. Territorial Extent and Application

This instrument applies to the whole of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

Regulation 3

7.1 On 22 June 2010 the Chancellor announced an increase in the standard rate of VAT from 17.5 per cent to 20 per cent to take effect on 4 January 2011.

7.2 In a written statement dated 22 June 2010 the Exchequer Secretary to the Treasury set out the scope of anti-forestalling legislation that the Government intended to introduce to prevent artificial avoidance seeking to exploit the change in VAT rate together with a draft of the legislation to be introduced.

7.3 The legislation was enacted as part of the Finance (No. 2) Act 2010. It counters forestalling by introducing a “supplementary charge to VAT” where a VAT invoice is issued or prepayment received before 4 January 2011 but the provision of goods or services is to take place on or after that date. VAT of 17.5 per cent is due on the date of issue of the invoice or receipt of payment but, in certain circumstances, a supplementary charge of 2.5 per cent becomes due on the date that the standard rate increases to 20 per cent (or, if it arises on a grant of a right, on the date of the first exercise of the right on or after that date). This regulation ensures that the invoicing requirements specified in regulation 15A of the Principal Regulations will apply in cases where this supplementary charge is triggered.

Regulations 4 and 5

7.4 Regulation 4 substitutes a new table into regulation 55K of the Principal Regulations containing revised percentage figures to take account of the increase in the VAT rate and regulation 5 amends the figures for the exit thresholds to reflect the increase in the VAT rate.

Regulation 6

7.5 Under EU VAT law a business established in a Member State is entitled to a refund of VAT incurred in any other Member State. Historically, refund applications were sent in paper format to the Member State of refund but, from 1 January 2010, an electronic system was introduced that permitted businesses to submit an application to any Member State by way of a portal set up in the country in which they are established.

7.6 While the UK developed and implemented a good quality system for dealing with EU VAT refunds, there have been implementation problems in some Member States which have led to complaints about the poor functioning of the system. As a result, the EU Council has agreed to an extension of the deadline for submitting claims for tax incurred in 2009 to ensure that businesses across the EU, including those in the UK, are able to submit applications for refunds of VAT that may previously have been blocked by defective technology.

Consolidation

7.7 There are no projects presently on hand to consolidate the Principal Regulations.

8. Consultation outcome

Regulations 3 to 5

8.1 These changes are required as a result of the increase in the VAT standard rate and have not been subject to consultation.

Regulation 6

8.2 This change is non-contentious and has not been subject to consultation.

9. Guidance

Regulation 3

9.1 HMRC guidance on the operation of anti-forestalling legislation including the issuing of invoices is available at: <http://www.hmrc.gov.uk/vat/forms-rates/rates/anti-forestall-guidance.pdf>.

Regulations 4 and 5

9.2 The updated flat rate percentages can be found at <http://www.hmrc.gov.uk/vat/start/schemes/flat-rate.htm#5a> and the updated flat rate exit thresholds can be found in paragraph 8.4 at: <http://www.hmrc.gov.uk/vat/forms-rates/rates/rate-rise-guidance.pdf#page24>.

Regulation 6

9.3 HMRC have publicised this change and that claims for repayment may be submitted after 30 September 2010, notwithstanding that the law had not yet been amended. Relevant guidance is in the process of being amended.

10. Impact

Regulations 3 to 5

10.1 An Impact Assessment has not been produced as these changes have no impact on business, charities or voluntary bodies.

10.2 An Impact Assessment of the effect that the increase in the VAT rate will have on the costs of business and the voluntary sector is available at <http://www.hmrc.gov.uk/better-regulation/ia.htm>.

Regulation 6

10.3 An Impact Assessment has not been produced as this change only has a positive impact on business, charities or voluntary bodies (the extension to the deadline benefits all businesses making claims for VAT incurred outside of their own Member State and the amendment to UK law only applies to non-UK EU businesses making claims for UK VAT) and has no impact on the public sector.

11. Regulating small business

Regulation 3

11.1 Technically, the changes do not discriminate between businesses but few, if any, small businesses are likely to be affected.

Regulations 4 and 5

11.2 The scheme is available as a simplification measure to all businesses with annual turnover not exceeding £150,000.

Regulation 6

11.3 The legislation does not affect UK taxpayers and therefore has no impact on small businesses.

12. Monitoring & review

Regulation 3

12.1 The changes are administrative with negligible cost and no formal monitoring is planned. HMRC will monitor any feedback by way of technical commentary or casework.

Regulations 4 and 5

12.2 The flat rate percentages are reviewed annually.

Regulation 6

12.3 No formal monitoring is planned.

13. Contact

Regulation 3

13.1 Ian Allen at HMRC Tel: 0207 147 0009 or email: ian.allen@hmrc.gsi.gov.uk can answer any queries.

Regulations 4 and 5

13.2 Stephen Davies at HMRC Tel: 0151 703 8653 or email: stephen.c.davies@hmrc.gsi.gov.uk can answer any queries.

Regulation 6

13.3 David Webb at HMRC Tel: 020 7587 0641 or email: david.webb@hmrc.gsi.gov.uk can answer any queries.