

EXPLANATORY MEMORANDUM TO
THE VALUE ADDED TAX (AMENDMENT) (No. 3) REGULATIONS 2012
2012 No. 2951

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.

2. Purpose of the instrument

2.1 This instrument amends Parts 3 (VAT invoices and other invoicing requirements) and 11 (time of supply and time of acquisition) of the Value Added Tax Regulations 1995 (S.I. 1995/2518) ('the Principal Regulations') to implement the changes required by Council Directive 2010/45/EU dated 13 July 2010 ('the Invoicing Directive').

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

3.1 None.

4. Legislative Context

4.1 This instrument amends the Principal Regulations.

4.2 A Transposition Note covering the changes is included at Annex A.

5. Territorial Extent and Application

5.1 This instrument applies to the whole of the United Kingdom ('UK').

6. European Convention on Human Rights

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

7. Policy background

7.1 The Invoicing Directive made changes to the EU rules for VAT invoices as well as making minor changes to the time of supply and acquisition rules for some intra-EU acquisitions. The changes simplify and harmonise existing VAT invoice rules with the aims of reducing administrative burdens on business, promoting small and medium enterprises, increasing the use of electronic invoicing and helping to tackle VAT fraud.

7.2 This instrument amends the Principal Regulations to implement those parts of the Invoicing Directive that are not already reflected in UK law. The existing barriers to the use of electronic invoices and the requirement for VAT invoices to be issued for cross-border exempt financial supplies are being removed to reduce the

administrative burdens on UK VAT registered businesses in relation to their VAT invoicing obligations.

Consolidation

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

8. Consultation outcome

8.1 A Technical Note document was published on 31 May 2012 and a Summary of Responses document will be published on the HMRC website at <http://www.hmrc.gov.uk/consultations>.

8.2 The summary includes an overview of the responses received together with details of the proposed legislative changes

9. Guidance

9.1 Guidance will be published before the changes take effect.

10. Impact

10.1 A Tax Information and Impact Note covering this instrument has been published on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>.

11. Regulating small business

11.1 The changes are beneficial to UK business and will have a positive impact on small businesses.

12. Monitoring & review

12.1 The impact of the changes will be monitored to further evaluate the success of the measure in simplifying the current invoicing rules and removing the administrative burdens from UK VAT registered businesses.

13. Contact

Mark Crawford at HMRC Tel: 0151 242 8025 or email: mark.crawford@hmrc.gsi.gov.uk can answer any queries regarding this instrument.

ANNEX A

Transposition Note

Council Directive 2010/45/EU, dated 13 July 2010 amends Council Directive 2006/112/EC (the Principal VAT Directive). It makes changes to the rules on VAT invoicing.

This transposition note shows how the amendments made to the Principal VAT Directive (“PVD”) have been implemented in UK law by the Value Added Tax (Amendment) (No.3) Regulations 2012 (“the Amendment Regulations”) and the Value Added Tax (Removal of Goods) (Amendment) Order 2012 (“the Amendment Order”), which both take effect from 1 January 2013.

It also identifies where no action is required because the amendments either only affect headings and references in the PVD or they are already reflected in UK law.

Article	Objective	Implementation	Responsibility
17(2),(f)	Amends the provisions relating to the movement of own goods to include goods temporarily sent to another MS for valuation.	Article 2 of the Amendment Order makes the necessary provision.	HMRC ¹
64(2)	Makes provision about the time of supply in the case of continuous supplies of services.	Regulation 2(7) and (8) of the Amendment Regulations makes the necessary provision.	HMRC
66(1)(c)	Amends the derogation provision in article 66 in relation to when VAT is to become chargeable.	No action required. The new article 66(1)(c) works in conjunction with article 222 which, for domestic supplies, permits MS to determine their own time limits for issuing a VAT invoice.	HMRC
67	This is a cosmetic amendment so that article 67 is now read in conjunction with amended article 222.	No action required. The implementation of the '15 day rule' in article 222 through regulation 6, combined with section 6(8) of the Value Added Tax Act 1994 (“VATA”), meets the requirement.	HMRC
69	This is a cosmetic amendment so that article 69 is now read in conjunction with amended article 222.	The implementation of the '15 day rule' in article 222 through regulation 2(3)(d) of the Amendment Regulations combined with section 6(8) VATA, meets the requirement.	HMRC
91(2)	Allows taxpayers to use the European Central Bank (ECB) exchange rate for currency conversions.	Schedule 6, paragraph 11 and Schedule 7, paragraph 4 VATA allow the UK to include the ECB exchange rate option in relevant Public Notices having the force of law.	HMRC
167a	Allows for an optional cash accounting scheme.	No action required. The UK already adopts a cash accounting scheme	HMRC

¹ Her Majesty's Revenue & Customs

		under regulations 56 - 65 of the VAT Regulations 1995 (SI 1995/2518) ("the VAT Regulations"), and those parts of VAT Public Notice 731 that have the force of law. The statement entered in the Council Minutes allowing MS to derogate from the principle laid down in article 167 of the PVD permits the retention and operation of this scheme (Annex 2 of Council Document FISC 26 dated 16 March 2010 refers).	
178	Updates certain references.	No action required.	HMRC
181	Updates certain references.	No action required.	HMRC
197(1)	Updates certain references.	No action required.	HMRC
217	Change of definitions in respect of electronic invoicing.	Regulation 2(4) of the Amendment Regulations makes the necessary provision.	HMRC
219a	Specifies the basis for determining which MS rules will apply for VAT invoicing purposes.	No action required.	HMRC
220	Amends the rules relating to the supplies for which an invoice must be issued to exclude specified financial services supplies.	Regulation 2(3) of the Amendment Regulations removes the requirement to issue a VAT invoice for supplies falling within Group 2 or Group 5 of Schedule 9, VATA.	HMRC
220a	Provides the basis for the use of a simplified invoice for supplies below a pre-determined threshold.	Regulation 2(6) of the Amendment Regulations extends the use of simplified invoices.	HMRC
221	This is a cosmetic amendment in relation to the option to impose invoicing obligations.	No action required.	HMRC
222	Requirement to invoice by 15 th day of month following that in which an intra-Community supply is made.	Regulation 2(3) of the Amendment Regulations makes the necessary provision.	HMRC
223	Allows the issue of a single summary invoice covering several separate supplies of goods and services, provided that the VAT on the supplies covered by the summary invoice becomes chargeable during the same calendar month.	No action required. This requirement is already covered by section 6(10)(b) VATA.	HMRC
224	Amends the rules for VAT self-billing.	Regulation 2(3) of the Amendment Regulations makes the necessary provision.	HMRC
225	Optional provision allowing	No action required.	HMRC

	MS to impose specific additional conditions on the customer or third party involved in self-billing where the customer or third party is established in a country where no legal instrument exists relating to mutual assistance.	UK law does not include such an optional provision, but regulation 13(3D)(b) of the VAT Regulations (which is being retained) permits HMRC to impose further conditions in particular cases.	
226, point (7a)	Optional cash accounting scheme.	No action required. The UK already has a cash accounting scheme, which allows input tax recovery by a customer without reference to payment to the cash accounting supplier. The statement entered in the Council Minutes allowing MS to derogate from the principle laid down in article 167 of the PVD permits the retention and operation of this scheme (Annex 2 of Council Document FISC 26 dated 16 March 2010 refers).	HMRC
226, point (10a)	Self-billed invoices to include the legend "Self Billing".	Schedule 11, paragraph 2B(2)(b) VATA allows the specification of the requirement in a Public Notice having legal effect. The legend is included in paragraph 4.2 of Notice 700/62 under the legal requirements for a self-billed VAT invoice.	HMRC
226, point (11)	Exempt invoices to include a reference to the applicable provision in EU or national law, or any other reference to indicate that the supply is exempt.	No action required. Regulation 14(2)(h) of the VAT Regulations covers this requirement.	HMRC
226, point (11a)	Invoices for supplies subject to the reverse charge to include a reference to being 'reverse charge' invoices.	Regulation 2(5)(b) of the Amendment Regulations makes the necessary provision.	HMRC
226, point (13)	Invoices for margin scheme invoices issued by tour operators to include a specified reference.	Regulation 2(5)(a) of the Amendment Regulations makes the necessary provision.	HMRC
226, point (14)	Invoices for margin schemes to include a specified reference.	Regulation 2(5)(a) of the Amendment Regulations makes the necessary provision.	HMRC
226a	Basis for intra-Community invoices to contain less detail.	No action required. Regulation 14(2) of the VAT Regulations makes this provision.	HMRC
226b	Requirements for a	Regulation 2(6) of the	HMRC

	simplified VAT invoice.	Amendment Regulations makes the necessary provision.	
228	Less detail required on a document amending an invoice.	No action required. This requirement is covered by the measures to implement articles 220a and 226b, effectively making article 228 redundant.	HMRC
230	Requirement for the VAT amount to be expressed in national currency.	No action required. Regulation 14(1)(l) of the VAT Regulations and the exchange rate rules cover this requirement.	HMRC
231	Article deleted and replaced by new article 248a.	No action required.	HMRC
Section 5, chapter 3, title XI heading	Change of heading references.	No action required.	HMRC
232	Change of definitions in respect of electronic invoicing.	Regulation 2(4) of the Amendment Regulations makes the necessary provision.	HMRC
233	Obligation to ensure authenticity of origin, integrity of content and legibility of an invoice is maintained for the period of storage.	Regulation 2(3) of the Amendment Regulations 1995 makes the necessary provision.	HMRC
234	Deletion of possibility for MS to impose formalities and obligations in respect of electronic invoices.	No action required. The UK has not imposed additional formalities and obligations in respect of electronic invoices.	HMRC
235	Presentational change to replace the reference to Directive 76/308/EEC with a reference to Directive 2010/24/EU.	No action required.	HMRC
236	Presentational change to include the word 'electronic' and remove the words 'by electronic means'.	No action required.	HMRC
237	Obligation of European Commission to report on impact of changes by 31 December 2016.	No action required.	HMRC
238	Provision allowing for a simplified VAT invoice for amounts greater than €100 but not exceeding €400.	The UK already allows simplified retailer VAT invoices to be issued for supplies up to the value of £250 (see regulation 16 of the VAT Regulations) and further provision is made in new regulation 16A inserted by regulation 2(6) of the Amendment Regulations 1995.	HMRC

243	Amendment to include own goods sent to another MS for valuation purposes.	Article 2 of the Amendment Order removes redundant provisions and makes it clear that, in cases covered by paragraph (e), the goods have to be returned to the owner in the MS of dispatch after they are valued or work has been carried out on them in the MS to which they have been removed.	HMRC
246	Removal of the 'authenticity of origin' and 'integrity of content' requirements specifically in respect of storage of electronic invoices.	No action required. The article refers specifically to 'authenticity of origin' and 'integrity of content' requirements in respect of storage of electronic invoices. However, because of the removal of the specific requirements for electronic invoices and the general requirement for invoices in the new article 233(1), this article is now redundant. The VAT invoice storage requirements are now reflected in the amendment to article 247.	HMRC
247(2)	Optional requirement for MS to require invoices to be retained in their original form.	No action required. Requirements relating to the storage and retention of invoices are covered by regulations 31(1)(c) and (d) and 31A(5) of the VAT Regulations.	HMRC
247(3)	Optional requirement for MS to impose specific conditions for the storage of invoices stored in jurisdictions where the MS does not have an existing legal mutual assistance instrument.	No action required. Requirements relating to the storage and retention of invoices are covered by regulations 31(1)(c) and (d) and 31A(5) of the VAT Regulations.	HMRC
248a	Basis for translation of VAT invoices, replacing the former Article 231 requirement.	No action required. The change reflects current UK policy and is covered by regulation 13B of the VAT Regulations.	HMRC
249	Article establishing right of access to invoices by MS of issue and MS of receipt.	No action required. The MS of issue has always had access to the records of the issuer, and the MS of receipt has always had access to the invoices held by the recipient. Section 10 of the Finance Act 1985 provides the UK legal basis for accessing computerised records.	HMRC

272(1)	Change of sub-paragraph to include references to relevant chapters and sections, where previously the reference was to specific articles under these chapters and sections.	No action required.	HMRC
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