

**EXPLANATORY MEMORANDUM TO
THE VALUE ADDED TAX (AMENDMENT) REGULATIONS 2014**

2014 No. 548

1. This explanatory memorandum has been prepared by Her Majesty's 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 1 (preliminary), 5 (accounting, payment and records) and 17 (new means of transport) of the Value Added Tax Regulations 1995 (S.I. 1995/2518) ("the Principal Regulations").

Regulations 3 and 5

2.2 Regulations 3 and 5 make some minor changes to the notification scheme that was introduced in 2013 in relation to the arrival in the United Kingdom of motorised land vehicles ("the notification scheme").

Regulation 4

2.3 Regulation 4 inserts a new regulation 38ZA which requires both the first supplier (who is a taxable person) in a chain of taxable supplies relating to the same goods (typically a manufacturer or wholesale importer) and a final consumer at the end of that chain who is a taxable person (typically the recipient of a supply from a retailer) to adjust their VAT accounts in the circumstances specified where the consideration for the final supply in the chain has decreased as a result of the first supplier having made a relevant payment as defined.

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

None.

4. Legislative Context

4.1 This instrument amends the Principal Regulations.

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

What is being done and why

Regulations 3 and 5

7.1 These changes are being made to deal with a number of issues that have arisen in relation to the day to day operation of the notification scheme.

7.2 Under the scheme, penalties for late notification are being generated in certain cases where the intention with regard to the ultimate use of a motorised land vehicle changes after its arrival in the UK and its arrival has not been notified within the specified time limit on the basis that, at that point, notification was not required. To prevent this happening in the future, the changes will provide for a later notification in such cases by linking the notification date to the date of the subsequent decision rather than the date of arrival. The changes will also facilitate the use of the online notification system rather than the paper form in such cases.

Regulation 4

7.3 EU law requires that the VAT accounted for on a supply of goods is proportionate to the total consideration paid by the final consumer, after taking into account any refund made.

7.4 Normally a refund to a final consumer (e.g. for faulty goods) will be made by the retailer who supplied the goods to the final consumer as they have a direct relationship. Existing regulation 38 of the Principal Regulations expressly provides for VAT adjustments to be made in such circumstances.

7.5 However, in some cases, the first supplier in the chain of supply (e.g. a manufacturer, wholesaler or importer) may make a refund direct to a final consumer in respect of goods which are unsatisfactory in some way. The existing regulations do not expressly provide for a VAT adjustment in such cases.

7.6 This amendment sets out the circumstances in which the first supplier and, the final consumer (if a taxable person) must make a VAT adjustment in such cases. It also makes express provision for adjustments where the first supplier reduces the price paid by the final consumer under the terms of a business promotion scheme involving cash backs or money-off coupons where the first supplier reimburses the retailer who has accepted the money-off coupon from the final consumer.

Consolidation

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

8. Consultation outcome

Regulations 3 and 5

8.1 These changes have been subject to a limited consultation and are generally supported. They have been made to address specific concerns which have been raised by trade bodies and businesses in relation to the ongoing operation of the notification scheme.

Regulation 4

8.2 HMRC consulted on these changes between 31 May and 31 August 2013. The consultation was restricted to refunds made to final consumers by manufacturers and sought views on the extent to which manufacturers make refunds, the range of circumstances that may give rise to a refund, how the proposed changes should be implemented and what impact and administrative burdens this might give rise to.

8.3 In total, six responses were received all but one of which supported the underlying policy rationale that manufacturers should be permitted to adjust their VAT to take account of refunds made direct to dissatisfied customers. Some respondents suggested that confining the measure to manufacturers was too restrictive and that it should include other businesses in the supply chain, such as importers and wholesalers. HMRC agreed with this and the regulation therefore allows for an adjustment to be made by the first supplier in the chain (where they are a taxable person) and is not restricted to manufacturers.

8.4 HMRC did not agree that the measure should extend to payments incurred by manufacturers such as the cost of repairing goods as this goes beyond the requirements of the Principal VAT Directive which envisages a reduction in price. Nor did HMRC agree that the measure should encompass third party payments made on behalf of manufacturers (such as those made by credit card providers, insurers and PPI claims companies) on the same basis.

8.5 Promotional refunds made by manufacturers were outside the scope of the consultation as VAT adjustments are permitted in such cases. However, as one respondent raised the point that there is no existing UK legislative provision which confirms the treatment of such refunds, HMRC decided to take the opportunity to make specific provision to put the matter beyond doubt.

8.6 Comments were also made about error correction claims for overpaid VAT, guidance, legislation, and the status of the customer.

8.7 The Summary of Responses document is available at:

<https://www.gov.uk/government/publications>.

8.8 Following the publication of the draft legislation, two of the respondents to the original consultation made further written representations. These included re-iterating points they had made previously and specific comments on some of the wording of the proposed legislation. However, HMRC was not persuaded that it was necessary or appropriate to alter the wording of the proposed legislation.

9. Guidance

The relevant guidance will be updated in due course.

10. Impact

Regulations 3 and 5

10.1 A Tax Information and Impact Note has not been prepared in relation to the changes made by regulations 3 and 5 as they contain no substantive change to tax policy.

Regulation 4

10.2 A Tax Information and Impact Note covering the changes made by regulation 4 will be published on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>.

11. Regulating small business

Regulations 3 and 5

11.1 The changes will have no specific impact on small businesses.

Regulation 4

11.2 A small VAT registered business which makes a refund of the type covered by this measure is entitled to reduce its VAT payment to reflect this. A small VAT-registered business which benefits from such a refund is required to adjust its VAT claim to reflect the reduced amount it paid for the goods.

12. Monitoring & review

Regulations 3 and 5

12.1 The notification scheme is subject to a programme of on-going review and these changes will be monitored in the context of this.

Regulation 4

12.2 The changes will be kept under review through communication with affected taxpayer groups.

13. Contact

Regulations 3 and 5

13.1 Stephen Roberts at HMRC Tel: 03000 585 455 or email: stephen.roberts@hmrc.gsi.gov.uk can answer any queries regarding these regulations.

Regulation 4

13.2 Michael Kelly at HMRC Tel: 03000 585 636 or email:
Michael.kelly3@hmrc.gsi.gov.uk can answer any queries regarding this regulation.