

**EXPLANATORY MEMORANDUM TO  
THE VALUE ADDED TAX (CONSIDERATION FOR FUEL PROVIDED FOR  
PRIVATE USE) ORDER 2009**

**2009 No. 1030**

1. This Explanatory Memorandum has been prepared by Her Majesty's 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. **Purpose of the instrument**

2.1 VAT is payable if road fuel of a business is used for private motoring. Table A of section 57(3) of the Value Added Tax Act 1994 applies flat rate values for private use of fuel in vehicles based on their CO<sub>2</sub> emissions. Section 57(4) provides that the Treasury may by order taking effect from the beginning of any prescribed accounting period substitute a new table for Table A. New tables have been substituted annually to ensure that the flat rates reflect any changes in road fuel costs and this measure introduces a new table with effect from a taxable person's first prescribed accounting period started after 30 April 2009. Section 57(4A) gives the power to substitute a table which describes vehicles by reference to their CO<sub>2</sub> emissions figure.

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

3.1 The laying of the instrument before the House of Commons breaches the '21 day rule'. The instrument has been made by the Treasury in exercise of its powers conferred by section 57(4) and 57(4A) of the Value Added Tax Act 1994. Section 97(5) of the Act provides, with certain exceptions that are not applicable here, that a statutory instrument made under any provision of the Act shall be subject to annulment in pursuance of a resolution of the House of Commons.

3.2 The instrument implements measures announced as part of Budget 2009; the revalorisation factors in the latest available fuel prices before Budget and any potential changes to fuel duty that may take effect on Budget day therefore the figures can only be finalised shortly before Budget. The measure takes effect from 1 May 2009, to ensure certainty for businesses that are expecting the change from this date. Consequently, it was not possible to lay this instrument before the House of Commons 21 days before commencement.

4. **Legislative Context**

4.1 The UK has a derogation (Council Decision 659/2006/EC) from the EC Sixth Council Directive (77/388/EEC)<sup>1</sup>. The derogation authorises the UK to fix, on a flat rate basis, the proportion of Value Added Tax relating to expenditure on fuel used for private purposes in business cars. The rates are to be established on the basis of the CO<sub>2</sub>

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<sup>1</sup> Recast as Council Directive 2006/112/EC, OJ L 347, 11.12.2006.

emissions level of the type of vehicle and reflect fuel consumption. The derogation is operative until 31st December 2015. The amounts of the flat rates must be adjusted annually to reflect changes in the average cost of fuel. This measure makes the necessary adjustments to those figures.

## **5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

The Exchequer Secretary to the Treasury: Angela Eagle MP has made the following statement regarding Human Rights:

“In my view the provisions of the Value Added Tax (Consideration for Fuel Provided for Private Use) Order 2009 are compatible with the Convention rights.”

## **7. Policy background**

- *What is being done and why*

7.1 VAT is payable if a business provides road fuel that is used, not for the purposes of the business, but for private motoring. The annual revalorisation amends the value of the existing flat rates for private use of fuel in business vehicles to reflect any change in the fuel price. This adjustment is necessary for the UK to satisfy the terms of the derogation referred to above.

7.2 Table A in section 57(3) of the Value Added Tax Act 1994 applies to calculate the figure that represents the tax inclusive value of the supply. This provides flat rates based on CO<sub>2</sub> emissions in line with the terms of the derogation. Where a vehicle does not have a CO<sub>2</sub> emissions figure the Notes to the table apply a CO<sub>2</sub> emissions figure by reference to the vehicle's engine size. The revalorised flat rates have been calculated in line with the average cost of fuel applicable in April 2009.

## **8. Consultation outcome**

8.1 Consultation was not required; the fuel scale charges are revalorised annually to reflect any change in the fuel price in line with the terms of the derogation.

## **9. Guidance**

9.1 All guidance will be updated as appropriate as part of the normal period process of review.

## **10. Impact**

10.1 An Impact Assessment has not been produced for this instrument as it has a negligible impact on business, charities, voluntary bodies or the public sector.

## **11. Regulating small business**

11.1 The legislation applies to small businesses. Respondents to informal consultation on the more significant change of reforming the fuel scale charges to a CO<sub>2</sub> basis in 2007 raised no concerns about the impact on small businesses of altering fuel scale charges in general.

## **12. Monitoring & review**

12.1 The revalorisation of fuel scale charges will be subject to internal review after 12 months and the legislation will be amended if necessary to reflect any changes to the average cost of fuel.

## **13. Contact**

Elizabeth Beecroft at Her Majesty's Revenue & Customs, Tel: 020 7147 0020 or e-mail: [beth.beecroft@hmrc.gsi.gov.uk](mailto:beth.beecroft@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.