EXPLANATORY NOTE

(This note is not part of the Order)

This Order appoints the days on which the provisions of Schedule 39 to the Finance Act 2008 (c. 9) ("Schedule 39") come into force. It also contains savings and transitional provisions. Schedule 39 aligns the time limits for assessments and claims etc across income tax, corporation tax and value added tax (VAT).

Article 2(1) appoints 1st April 2009 as the day on which paragraphs 32 to 36 of Schedule 39 come into force. These paragraphs make changes to VAT time limits. Article 2(2) appoints 1st April 2010 as the day on which paragraphs 1 to 31 and 37 to 66 come into force (subject to the transitional provisions contained in article 10). These paragraphs make changes to income tax and corporation tax time limits.

Articles 3 to 6 make savings for the purpose of changes to VAT time limits.

Article 3 concerns the change in time limits from 3 to 4 years for refunds of VAT to museums and galleries under section 33A of the Value Added Tax Act 1994 (VATA 1994). It ensures this does not allow claims that are already out of time to be brought back within the time limit. As such, the 4-year time limit would not apply to a situation where the day on which the supply was made or the acquisition or importation took place was on or before 31st March 2006.

Article 4 concerns the change in time limits from 3 to 4 years for VAT assessments under section 77 of VATA 1994. It ensures this does not allow assessments that are already out of time to be brought back within the time limit. As such, the 4-year time limit would not apply where the end of the prescribed accounting period or the importation, acquisition or event giving rise to the penalty, as appropriate, occurred on or before 31st March 2006. It makes similar provision for the time limit on assessments due by reason of some conduct of the deceased. The 4-year time limit will not apply if the date of the death was on or before 31st March 2006.

Article 5 concerns the change in time limits from 3 to 4 years for claims for interest in certain cases of official error under section 78 of VATA 1994. It ensures this does not allow claims that are already out of time to be brought back within the time limit. As such, the 4-year time limit would not apply where the end of the applicable period to which the claim relates was on or before 31st March 2006.

Article 6 concerns the change in time limits from 3 to 4 years for claims for credit for or repayment of overstated or overpaid VAT under section 80 of VATA 1994. It ensures this does not allow claims that are already out of time to be brought back within the time limit. As such, the 4-year time limit would not apply where the relevant date is on or before 31st March 2006.

Article 7 makes transitional provision for the new subsections 36(1A)(b) and (c) of the Taxes Management 1970, which apply an extended time limit for assessing income tax or capital gains tax where there is a failure to notify liability or a failure to notify an avoidance scheme as required by section 309, 310 or 313 of the Finance Act 2004. It ensures this provision is not retrospective. For the tax years 2008-09 and earlier, the extended time limit will only apply if it also applied under the previous rules, namely if there has been negligent conduct.

Article 8 makes similar provision to article 4 for corporation tax. It makes transitional provision for the new sub-paragraphs 46(2A)(b) and (c) of Schedule 18 to the Finance Act 1998, which apply an extended time limit for assessing income tax or capital gains tax where there is a failure to notify liability or a failure to notify an avoidance scheme as required by section 309, 310 or 313 of the Finance Act 2004. It ensures this provision is not retrospective. For accounting periods ending on or

before 31 March 2010, the extended time limit will only apply if it also applied under the previous rules, namely if there has been negligence.

Article 9 makes transitional provision for the new sections 77(4A)(c) and (d) of VATA 1994, which apply an extended time limit for assessing income tax or capital gains tax where there is a failure to notify liability or a failure to notify an avoidance scheme as required by paragraph 6 of Schedule 11A to VATA 1994. It ensures this provision is not retrospective. For accounting periods ending, or importations, acquisitions or events on or before 31 March 2010, the extended time limit will only apply if it also applied under the previous rules, namely if there have been circumstances giving rise to a penalty under section 67 of VATA [or schedule 41 to the Finance Act 2008] for failure to notify or unauthorised issue of invoices.

Article 10 makes transitional provision where income tax or capital gains tax have been overpaid, to allow taxpayers to take the appropriate action by delaying the time limit changes by two years.

Paragraph 1 applies this transitional provision to years for which the taxpayer is outside self assessment. This is where the taxpayer has not been given notice to make a self assessment return within a year of the end of the tax year.

Paragraph 2 provides that for such years, the appointed day on which paragraphs 1 to 31 and 37 to 65 of Schedule 39 come into force is 1st April 2012, rather than 1st April 2010 as provided for by Article 2(2). These paragraphs do not include those related to VAT or Petroleum Revenue Tax.

Paragraph 3 provides that this two-year delay shall only apply where tax has been overpaid.

Paragraph 4 sets out the actions to which time limits apply. These are: assessments, including self assessments, claims and a notice requiring Her Majesty's Revenue and Customs to issue a return. The reference to "claims" includes elections, by virtue of section 42(10) of the Taxes Management Act 1970.

Paragraph 5 provides that the delay shall not apply for companies.