

**EXPLANATORY MEMORANDUM TO**  
**THE VALUE ADDED TAX (EXCEPTIONS RELATING TO SUPPLIES NOT**  
**MADE TO RELEVANT BUSINESS PERSON) ORDER 2010**

**2010 No. 3017**

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs ("HMRC") on behalf of the Treasury and is laid before the House of Commons by Command of Her Majesty.

2. **Purpose of the instrument**

Paragraph 16(2)(f) of Schedule 4A to the Value Added Tax Act 1994 ("the Act"), for the purposes of VAT, treats supplies of access to, and transmission and transport through, natural gas and electricity distribution systems and other directly linked services as being made where the recipient of the supplies belongs if that recipient is not engaged in business and belongs outside the EU. This Order amends the description of the natural gas distribution system and adds the provision of heating and cooling through a network to the category of supplies to which the place of supply rule in paragraph 16(2)(f) applies.

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

None.

4. **Legislative Context**

4.1 Council Directive 2006/112/EC<sup>1</sup> ("the Principal VAT Directive")(EUR-lex link<sup>2</sup>), which provides the framework for a common system of VAT, has been amended with effect from 15 January 2010 by Council Directive 2009/162/EU<sup>3</sup> ("the Technical Directive")(EUR-lex link<sup>4</sup>). Member States are required to implement the changes with effect from 1 January 2011.

4.2 This Order implements the amendment to Article 59(h) ("Article 59(h)") of the Principal VAT Directive<sup>5</sup> by amending paragraph 16(2)(f) of Schedule 4A to the Act.

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<sup>1</sup> OJ No L347, 11.12.06, p 1.

<sup>2</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2006L0112:20100101:EN:PDF> for the text prior to amendment by the Technical Directive;  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2006L0112:20100409:EN:PDF> for the text following amendment by the technical Directive

<sup>3</sup> OJ No L10, 15.01.10, p 14.

<sup>4</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:010:0014:0018:EN:PDF>

<sup>5</sup> Article 59(h) was amended by Article 1(6) of the Technical Directive.

4.3 Article 59 of the Principal VAT Directive provides that certain services (described in points (a) to (k) of that Article) which are supplied to non-business persons situated outside the EU are to be treated, for VAT purposes, as taking place where the customer belongs.

4.4 Prior to its amendment Article 59(h) described services consisting in the provision of access to, and of transport and transmission through, natural gas and electricity distribution systems and the provision of other services directly linked thereto. Following amendment the pipeline descriptor for the natural gas services has been changed and the provision of access to, or of transport or transmission through, heating or cooling networks and the provision of other services directly linked thereto has been added to the described services.

4.5 Paragraph 16 (other services provided to recipient belonging outside EC) of Schedule 4A (place of supply of services: special rules) to the Act makes provision for certain services, specified in paragraph 16(2)(a) to (k), to be treated as being made where the recipient belongs if that recipient is not engaged in business activity and belongs outside the EU.

4.6 This Order amends paragraph 16(2)(f) of Schedule 4A by changing the description of the natural gas distribution system and adding a reference to a network through which heat or cooling is supplied, in line with the amendments made to Article 59(h).

4.7 The amendment to Article 59(h) is one of a number of amendments made by the Technical Directive that affect the VAT treatment of natural gas, heat and cooling. These other amendments have been transposed by section 20 of the Finance (No. 3) Act 2010 (c. 33) and by three Treasury Orders subject to negative procedure<sup>6</sup> (“the negative instruments”). A transposition note is annexed to this memorandum which sets out how this Order and the negative instruments implement amended Articles of the principal VAT Directive.

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

This instrument applies to all of the United Kingdom.

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

The Exchequer Secretary to the Treasury, David Gauke, has made the following statement regarding Human Rights:

“In my view the provisions of the Value Added Tax (Exceptions Relating to Supplies not Made to Relevant Business Person) Order 2010 are compatible with the Convention rights.”.

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<sup>6</sup> Some of the changes to this treatment are implemented by section 20 of the Finance (No.3) Act 2010 (c.33). Others are implemented by statutory instruments SI 2010/2923, 2924 and 2925.

## **7. Policy background**

- *What is being done and why*

7.1 Supplies of natural gas and electricity are treated as supplies of goods for the purposes of VAT . However, their intangible nature makes it difficult to apply some of the normal VAT rules and so they are subject to particular rules determining their place of supply.

7.2 A corollary of this treatment is that certain services supplied in connection with provision of natural gas and electricity have also been subject to special place of supply rules where the recipient is not in business and belongs outside the EU.

7.3 The provisions of the Principal VAT Directive which apply to the supply of natural gas and electricity have been amended by the Technical Directive. The principal changes to these provisions concern an amendment to the pipeline descriptor for supplies of natural gas (to correct unintended restrictions to, and amend the scope of, the application of the special rules to supplies of natural gas) and the extension of the application of those special rules to supplies of heat and cooling via a network (because of the similar intangible nature of those supplies).

7.4 These changes apply also to the special place of supply rules applicable to services supplied in connection with provision of natural gas and electricity where the recipient is not in business and belongs outside the EU. This Order therefore brings UK legislation, which implements the place of supply rules relating to such services, into line with the provisions of the Principal VAT Directive as amended.

- *Consolidation*

7.5 There are no plans to consolidate the Act.

## **8. Consultation outcome**

8.1 The Technical Directive changes affect only a relatively small group of UK businesses trading in natural gas for resale. Meetings were held with industry representatives during the EU negotiations of the Directive. The changes are welcomed by those businesses.

8.2 The broadening in scope to include heat and cooling is expected to have little, if any, impact in the UK.

## **9. Guidance**

VAT Information Sheet 10/04 is to be updated and re-published to reflect the various changes affecting natural gas, heat and cooling that take effect from 1 January 2011.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is nil.

10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

The legislation does not apply to small business.

## **12. Monitoring & review**

The change is technical and will have little impact. No formal monitoring is planned

## **13. Contact**

Phil Bryant at HMRC Tel: 020 7147 0067 or email:  
phil.bryant@hmrc.gsi.gov.uk can answer any queries regarding the instrument.

### **TRANSPOSITION NOTE**

**The implementation of Articles 17(2)(d), 38, 39, 59(h) and 143(1)(g) of Council Directive 2006/112/EC as amended by Council Directive 2009/162/EU**

#### **Implementing instruments:-**

**The Value Added Tax (Place of Supply Of Goods) (Amendment) Order 2010 (SI 2010/2923)**

**The Value Added Tax (Imported Gas, Electricity, Heat and Cooling) Order 2010 (SI 2010/2924)**

**The Value Added Tax (Removal of Gas, Electricity, Heat and Cooling) Order 2010 (SI 2010/2925)**

**The Value Added Tax (Exceptions Relating to supplies not Made to Relevant Business Person) Order 2010 (SI 2010/3017)**

Council Directive 2006/112/EC of 28 November 2006 (OJ No L347, 11.12.06, p 1) (“the Principal VAT Directive”) on the common system of Value Added Tax provides the framework governing the harmonization of the laws of the member States relating to VAT. The Directive is implemented in the UK by the Value Added Tax Act 1994 (c.23) (“the Act”) and various statutory instruments.

From 15 January 2010 the Principal VAT Directive is amended by Council Directive 2009/162/EU (OJ No L10, 15.01.10, p 14) (“the Technical Directive”). The Technical

Directive amendments include changes to the VAT treatment of supplies of natural gas, electricity, heat and cooling, and certain related supplies of services. Member States are required to implement these changes on 1 January 2011.

Special VAT rules already apply to supplies of natural gas and electricity. The amendments to the Principal VAT Directive correct unintended restrictions to the extent to which they apply to natural gas and make other technical adjustments including an extension of the application of the special rules to supplies of heat and cooling.

The amended provisions of the Principal VAT Directive which govern the VAT treatment of supplies of natural gas, electricity, heat and cooling, and certain related services are transposed by the implementing instruments listed above as follows:-

Amended Articles Dir. 2006/112	Objectives	Implementation
Article 17(2)(d)	<p>Prior to amendment Article 17(2)(d) of the Principal VAT Directive excepted the removal of natural gas and electricity from the normal rule that removal, to another member State, by a taxable person, of goods which form part of his assets is to be treated for VAT purposes as a supply of goods for consideration. The removal of natural gas was described by reference to the gas distribution system used to transport it.</p> <p>Following amendment the description of the natural gas distribution system has been changed and the exception from the normal rule on removal of goods has been extended to removal of heat or cooling via a network.</p>	<p>By the Value Added Tax (Removal of Gas, Electricity, Heat And Cooling) Order 2010 (“the Removal Order”) which revokes and replaces the Value Added Tax (Removal of Gas and Electricity) Order 2004 (“the revoked removal order”).</p> <p>Paragraph 6(1) (“paragraph 6(1)”) of Schedule 4 to the Act provides that removal, from one member State to another, by a taxable person, of goods which form part of his business assets is to be treated for UK VAT purposes as a supply of goods.</p> <p>The Revoked Removal Order provides that paragraph 6(1) shall not apply to the removal of natural gas and electricity.</p> <p>The Removal Order revokes and replaces the Revoked Removal Order and provides that paragraph 6(1) shall not apply to the removal of electricity, heat or cooling via a network and natural gas via systems and networks as</p>

		described in accordance with the amended Principal VAT Directive.
Articles 38 and 39	<p>Prior to amendment by the Technical Directive Articles 38 and 39 of the Principal VAT Directive provided for particular rules to determine the place of supply of natural gas and electricity for VAT purposes. The supply of natural gas was described by reference to the distribution system used to transport it. Following amendment those special rules now also apply to supplies of heat and cooling via a network and the description of the natural gas distribution system has been changed.</p>	<p>By the Value Added Tax (Place Of Supply Of Goods) (Amendment) Order 2010 (“the Amending Order”) which amends Article 9(c) of the Value Added Tax (Place of Supply of Goods) Order 2004 “the Place of Supply order”). Part 3 (“Part 3”) of the Place of Supply Order, for the purposes of UK VAT, specifies the rules which determine the place of supply of natural gas and electricity. Article 9 of the Place of Supply Order defines the relevant goods to which Part 3 applies. The Amending Order amends the description of the relevant goods by changing the description of the natural gas distribution system and to adding heat and cooling via a network to the categories of goods to which Part 3 applies.</p>
Article 59(h)	<p>Article 59 of the Principal VAT Directive provides that certain services (described in points (a) to (k) of that Article) which are supplied to non-business persons situated outside the EU are to be treated, for VAT purposes, as taking place where the customer belongs.</p> <p>Prior to its amendment point (h) of Article 59 described services consisting in the provision of access to, and of transport and transmission through, natural gas and electricity distribution systems and the provision of other services directly linked thereto. Following amendment the pipeline descriptor for the natural gas services has been changed and the provision of access to, or of transport or transmission through, heating or cooling networks and the provision of other services directly linked thereto has been added to the described services.</p>	<p>By the Value Added Tax (Exceptions Relating to supplies not Made to Relevant Business Person) Order 2010 (“the Exceptions Order”) which amends paragraph 16 (other services provided to recipient belonging outside EC) of Schedule 4A (place of supply of services: special rules) (“the Schedule”) to the Act.</p> <p>Paragraph 16 makes provision for certain services, specified in paragraph 16(2)(a) to (k), to be treated as being made where the recipient belongs if that recipient is not engaged in business activity and belongs</p>

		<p>outside the EU.</p> <p>The Exceptions Order amends paragraph 16(2)(f) of the Schedule by changing the description of the natural gas distribution system and adding a reference to a network through which heat or cooling is supplied.</p>
Article 143(1)(g)	<p>Prior to amendment Article 143(1) of the Principal VAT Directive relieved natural gas and electricity from a charge to VAT on importation. The importation of natural gas was described by reference to the gas distribution system used to transport it. Following amendment the description of the natural gas distribution system has been changed and the relief from importation has been extended to natural gas delivered into the system by ships and to importations of heat or cooling via a network.</p>	<p>By the Value Added Tax (Imported Gas, Electricity, Heat And Cooling) Order 2010 (“the Relief Order”) which revokes and replaces the Value Added Tax (Imported Gas, Electricity, Heat And Cooling) Order 2010 (“the Revoked Relief Order”).</p> <p>The Revoked Relief Order relieves from VAT the importation into the UK of natural gas and electricity .</p> <p>The Relief Order revokes and replaces the Revoked Relief Order. It relives from VAT the importations of electricity, heat or cooling via a network and natural gas (including both natural gas imported via systems and networks as described in accordance with the amended Principal VAT Directive and via ships which deliver natural gas into those systems and networks).</p>