EXPLANATORY MEMORANDUM TO

THE VALUE ADDED TAX (MARGIN SCHEMES AND REMOVAL OR EXPORT OF GOODS: VAT-RELATED PAYMENTS) ORDER 2023

2023 No. 68

1. Introduction

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

1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument introduces a VAT-related payment scheme ("the scheme") which will apply to second-hand motor vehicles and which will come into effect from 1 May 2023.

2.2 Under the Northern Ireland Protocol (NI Protocol), the Value Added Tax (VAT) second-hand margin schemes (margin schemes) are not available for sales of goods in Northern Ireland if they were purchased in Great Britain or the Isle of Man. Consequently, motor vehicle dealers in Northern Ireland must account for VAT on the full value of sales of these vehicles rather than only on the profit margin.

2.3 The scheme enables businesses removing or exporting used motor vehicles from Great Britain or the Isle of Man to Northern Ireland or the European Union (EU) for resale to claim a VAT-related payment from HMRC, generally equivalent to VAT on the price they paid for the vehicle or the value of the vehicle at the time of removal or export. It therefore puts affected Northern Ireland dealers in a comparable financial position to their counterparts in the rest of the United Kingdom (UK).

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 This instrument is the first exercise of the powers conferred by section 50B of the Value Added Tax Act 1994 (VATA) (section 50B).

3.2 Section 50B, which was inserted by section 70 of the Finance Act 2022, allows the Treasury, by order, to provide for VAT-related payments to be made in connection with relevant supplies described in the order. Relevant supplies are defined in section 50B(2).

3.3 Section 50B(7)(a) provides that an order made under that section may confer a power on the Commissioners for HMRC (the Commissioners) to make provision in a direction or notice and subsection (7)(b) further provides that an order may make provision, or enable the Commissioners to make provision, generally or for particular purposes. This instrument contains various provisions that allow the Commissioners to make provision in directions:

- article 6 (appointment of a payment representative),

- article 8 (form, manner and timing of a claim),
- article 9 (form and manner of correcting an error),
- article 11 (record keeping), and
- article 15 (form and manner of payment of an assessment).

3.4 Article 2(3) of this instrument provides that where the Order empowers the Commissioners to make provision by way of a direction, the Commissioners may make different provision for different cases and so directions may be made generally or in a particular case or class of cases.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 Margin schemes are provided for by orders made under section 50A VATA which allow VAT on the sales of specified goods to be accounted for on the profit margin rather than the full sale price. The NI Protocol precludes the use of such schemes for the sale of goods in Northern Ireland where the goods have been obtained in Great Britain or the Isle of Man.

6.2 Section 50B allows the Treasury to provide, by order, for VAT-related payments to be made in respect of relevant supplies of goods which are specified in the order. What constitutes a relevant supply is defined in section 50B(2). A relevant supply is one where goods have been obtained in Great Britain or the Isle of Man and removed to Northern Ireland or exported to the EU with the intention of reselling them. The circumstances must be such that, had the goods not been removed to Northern Ireland or exported, they could have been sold via a margin scheme.

6.3 This instrument provides that VAT-related payments are to be made in respect of a relevant supply of a motor vehicle which is not an excluded good (as defined in the instrument) if it has been removed to Northern Ireland or exported to an EU member state by a person who is VAT registered in the place of destination.

6.4 This instrument also makes provision for how the scheme is to operate and sets out the detailed conditions for making a claim and the administrative arrangements for making the VAT-related payment.

6.5 The instrument provides that a business is to be treated as having a business establishment in the UK only if that business has a permanent presence of both the human and technical resources necessary for the provision of the taxable supplies for which that business is VAT registered. If a claimant does not have a business establishment in the UK that claimant may appoint a UK based representative in relation to the claim and HMRC may require appointment of such a representative as a condition of paying a claim. The representative will be jointly and severally liable with the claimant for any liability arising from an incorrect claim.

6.6 The instrument provides that UK VAT registered businesses which have a business establishment in the UK must make a claim via their VAT return as though the VAT-related payment were input tax. It also provides that the legislation that applies to claims for credit to input tax will also apply to a claim for a VAT-related payment as if the claim to the payment were a claim for credit to input tax. All other claimants must submit claims (overseas claims) directly to HMRC subject to conditions set by HMRC.

6.7 The instrument allows HMRC to direct how an overseas claim should be made through a published notice that has force of law. It also sets out when an overseas claim can be made and the time limits for making a claim.

6.8 The instrument provides for an error correction mechanism for overseas claims. Overseas claims will be paid in sterling and any costs incurred by HMRC related to making the payment overseas deducted from the claim.

6.9 The instrument provides powers for HMRC to direct what records must be kept (by both UK and EU claimants) and for how long. Existing legal provision relating to inspection of records in Schedule 36 to the Finance Act 2008 will apply to overseas claims. In addition, the provisions of section 72 VATA (offences) and Schedule 24 to the Finance Act 2007 (penalties for errors) will apply to overseas claims.

6.10 The instrument provides for HMRC to assess and recover an overclaim by an overseas claimant. Any unpaid assessment or penalty in respect of an overseas claim can be offset against a future overseas claim.

6.11 The instrument provides an overseas claimant with the right of appeal to the First-tier Tribunal (Tax chamber) in respect of the amount of a claim or any assessment for amounts overclaimed or for any penalty.

6.12 Where possible the legislation applicable to overseas claims mirrors rules in, and made under, VATA.

7. Policy background

What is being done and why?

7.1 The second-hand motor vehicle sector in Northern Ireland relies heavily on sourcing vehicles in Great Britain.

7.2 Under the NI Protocol, the VAT second-hand margin schemes are not available for sales of goods in Northern Ireland if they were purchased in Great Britain or the Isle of Man. This means that motor vehicle dealers in Northern Ireland must account for VAT on the full value (normally the selling price) of sales of these vehicles rather than on the profit margin. This would disrupt the UK’s internal market, potentially increase prices for consumers or costs for businesses, and risk undermining the trade in motor vehicles in Northern Ireland altogether.

7.3 The instrument provides for the scheme in circumstances where motor vehicles registered with the Driver and Vehicle Licensing Agency (or Isle of Man equivalent) are removed to Northern Ireland, where they would have been otherwise eligible to be sold under the VAT margin scheme in Great Britain (or Isle of Man). The scheme is conditional on the goods being removed with the intention of being resold by a VAT registered business.

7.4 The payment is calculated as though the amount paid by the business dealing in motor vehicles were VAT inclusive. Calculating the payment in this way will put affected businesses in a comparable financial position to that of selling second-hand motor vehicles under the VAT margin scheme.

7.5 The scheme is also available to EU VAT registered businesses which purchase eligible used motor vehicles in Great Britain and export them to the EU for resale.

7.6 UK VAT registered businesses with a UK establishment must make the claim through their VAT return. All other claimants will be able to lodge periodic claims with HMRC.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018 but relates to the withdrawal of the UK from the EU because the legislation ensures that the UK's internal market and wider VAT regime operates as intended while meeting obligations under the NI Protocol.

8.2 More broadly, it should be noted that the government is seeking to find a new balance in operating the NI Protocol in order to place it on a more sustainable footing. The government's July 2021 Command Paper (Northern Ireland Protocol: the way forward) set out these re-balancing proposals, which include arrangements covering trade in goods and the institutional framework. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1008451/CCS207_CCS0721914902-005_Northern_Ireland_Protocol_Web_Accessible__1_.pdf,

9. Consolidation

9.1 This instrument is stand-alone and there are no plans to consolidate the legislation.

10. Consultation outcome

10.1 No formal consultation has been carried out. HMRC has engaged with key industry stakeholder groups (including the Confederation of British Industry and the National Franchised Dealers Association).

11. Guidance

11.1 Guidance on the Second-hand Motor Vehicle Payment Scheme can be found at www.gov.uk/guidance/sales-of-second-hand-motor-vehicles-in-northern-ireland.

11.2 Guidance on EU exit in relation to Northern Ireland can be found at www.gov.uk/government/publications/accounting-for-vat-on-goods-moving-between-great-britain-and-northern-ireland-from-1-january-2021.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A Tax Information and Impact Note covering this instrument will be published on the website at www.gov.uk/government/collections/tax-information-and-impact-notes-tiins.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses is that no mitigating action is proposed as the rules are, of necessity, of general application.

14. Monitoring & review

14.1 That instrument will be kept under review through communications with key stakeholder groups, including the Joint VAT Consultative Committee, to ensure that it meets the policy objectives set out in section 7 above.

14.2 The instrument does not include a statutory review clause because it relates to tax and therefore meets the requirements of the exemption set out in section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015.

15. Contact

15.1 Peter Bennet at HMRC Telephone: 03000 585559 or email:peter.bennet@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Eileen Patching, Deputy Director for VAT Principles and Risk, Indirect Tax Directorate, at HMRC can confirm that this Explanatory Memorandum meets the required standard.

15.3 Victoria Atkins MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.