

EXPLANATORY MEMORANDUM TO
THE VALUE ADDED TAX (INPUT TAX) (REIMBURSEMENT BY EMPLOYERS
OF EMPLOYEES' BUSINESS USE OF ROAD FUEL) REGULATIONS 2005

2005 No. 3290

- 1.** This explanatory memorandum has been prepared by HM 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. Description

2.1 These Regulations make provision which allow an employer who is a taxable person to recover input tax on road fuel purchased by his employee for use either in whole or in part for business purposes.

2.2 The road fuel must be delivered to and paid for by the employee acting in his employer's name and on his behalf. The employer must reimburse his employee by one of the specified reimbursement methods and must hold the appropriate invoice in relation to the supply of road fuel.

2.3 The amount which can be deducted by the employer under section 24(1) of the Value Added Tax Act 1994 falls to be quantified by reference to the amount which has been so reimbursed.

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

3.1 None

4. Legislative Background

4.1 These Regulations have been made by the Commissioners for Her Majesty's Revenue and Customs in the exercise of their powers under section 24(6)(a) of the Value Added Tax Act 1994.

4.2 Section 24(6)(a) allows the Commissioners to make regulations which allow a taxable person to treat VAT paid or payable by him as his input tax only if and to the extent that it is evidenced and quantified by reference to such documents or other information as may be specified in the regulations.

4.3 These Regulations replace the Value Added Tax (Input Tax) (Person Supplied) Order 1991 which has been revoked by SI 2005/XXXX following the ECJ's judgment in the case of Commission v UK (Case C-33/03) which held that the provisions contained in that order were contrary to the provisions of articles 17(2)(a) and 18(1)(a) of the Sixth Council Directive (77/388/EEC of 17 May 1977).

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

7.1 The Value Added Tax (Input Tax) (Reimbursement by Employers of Employees' Business Use of Road Fuel) Regulations 2005 replace the Value Added Tax (Input Tax) (Person Supplied) Order 1991, which made provision to permit an employer to recover VAT where he reimbursed an employee for the purchase of road fuel used for the employer's business. The UK believed the Order reflected the economic reality of how businesses operated and upheld the principle of fiscal neutrality, which dictates that taxable persons should not have to bear the cost of any VAT in relation to their taxable supplies. However, in Case C-33/03, the European Court held that the terms of the Order were not compatible with the provisions of Articles 17(2)(a) and 18(1)(a) of the Sixth Council Directive (77/388/EEC of 17 May 1977). This was because they did not ensure (1) that the VAT recovered related solely to fuel used for the purposes of the taxable person's taxable transactions and (2) that the taxable person was required to hold a VAT invoice.

7.2 The Value Added Tax (Input Tax) (Reimbursement by Employers of Employees' Business Use of Road Fuel) Regulations 2005 will come into force on 1st January 2006. They make it explicit that employers can recover only that VAT on road fuel which is used in their business in making taxable supplies (or can recover the VAT in full and apply the fuel scale charge to account for output tax on private use) and must hold a VAT invoice in support of their claims.

8. Impact

8.1 A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of businesses, charities or voluntary bodies.

8.2 There is no impact on the public sector.

9. Contact

Jack Warr at HM Revenue and Customs Tel: 020 7147 0633 or e-mail:
jack.warr@hmrc.gsi.gov.uk can answer any queries regarding the instrument.