

EXPLANATORY MEMORANDUM TO

THE VALUE ADDED TAX (TREATMENT OF TRANSACTIONS) (REVOCATION) ORDER 2021

2021 No. 1023

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Revenue & Customs (HMRC) on behalf of HM Treasury and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument will revoke the Value Added Tax (Treatment of Transactions) Order 1992 (SI 1992/630) (“the 1992 Order”). The effect of this instrument is to remove a piece of redundant legislation which could be exploited by government departments to obtain a full refund of Value Added Tax (VAT) on their employees’ own private vehicles.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
4.2 The territorial application of this instrument 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 The 1992 Order provides for transactions made under salary sacrifice arrangements to be treated as neither a supply of goods nor services.
6.2 The Value Added Tax (Cars) Order 1992 (SI 1992/3122), Articles 4(1), (1B) and (1C) provide the same treatment of cars supplied under a salary sacrifice scheme as is provided by the 1992 Order.

7. Policy background

What is being done and why?

- 7.1 The 1992 Order was originally introduced to give effect to a tribunal decision, which found that where an employee accepted lower wages in exchange for the supply of a motor car, the amount of salary sacrificed did not constitute consideration, and therefore no VAT was due. This decision conflicted with existing United Kingdom (UK) legislation, which resulted in double taxation, and the enacting of the 1992

Order provided for the treatment of salary sacrifice transactions as neither a supply of goods nor services.

- 7.2 However, since the 1992 Order was laid, the legislative framework around the treatment of salary sacrifice schemes and cars has changed, and new UK legislation was introduced to ensure that double taxation did not arise in circumstances where VAT recovery was restricted. As a result, the 1992 Order became redundant.
- 7.3 However, in the case of Northumbria Healthcare NHS Foundation Trust ([2020] EWCA Civ 874) the Court of Appeal interpreted the 1992 Order in such a way that resulted in an NHS trust being entitled to a full refund of the VAT incurred by them in respect of their employees' own private vehicle. In line with the legislation, the trust had previously only been recovering 50 percent of the VAT incurred with no requirement to charge output VAT to its employees. Under the UK's VAT refund scheme for government departments and NHS bodies (section 41 of the Value Added Tax Act 1994), departments are entitled to a full refund of VAT on certain services that they use to carry out their non-business public service activities. Such VAT is not recoverable under normal VAT rules. However, the court concluded that the effect of the 1992 Order was to treat the supply of the car to the employee as a non-business activity, resulting in a full refund under the section 41 scheme, with no requirement to charge VAT to the employee.
- 7.4 This decision means that any government department or NHS body that operates a salary sacrifice scheme for cars, and which had recovered 50 percent of the VAT incurred in line with HMRC's policy, would now be entitled to make a claim for the remaining 50 percent. There is now an unwelcome interaction between the redundant 1992 Order and the active section 41 provisions, and so the revocation of the 1992 Order is proposed.

Why is it being changed?

- 7.5 The Value Added Tax (Cars) Order 1992 provides the same treatment of cars supplied under a salary sacrifice scheme, and therefore the Value Added Tax (Treatment of Transactions) Order 1992 is no longer required.

What will it now do?

- 7.6 This This Order comes into force on 21 October 2021. It includes a transitional provision relating to supplies made under certain contracts entered into before 21 October 2021.
- 7.7 There is no change in policy but a clarification of the law.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 This instrument does not consolidate any other legislation.

10. Consultation outcome

- 10.1 A draft of the order was published on 20 July 2021. The consultation period ran for 4 weeks. Four responses were received but none suggested the draft needed to be amended.

11. Guidance

- 11.1 Existing guidance <https://www.gov.uk/hmrc-internal-manuals/vat-input-tax/vit55100> is being updated. No further guidance is required at this stage.

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 <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is through normal audit activity and regular communication with affected taxpayer groups.
- 14.2 The instrument does not include a statutory review clause because it does not relate to a qualifying activity as specified by section 29 of the Small Business, Enterprise and Employment Act 2015.

15. Contact

- 15.1 David Smith at HMRC Telephone: 03000 593922 or e-mail: david.smith7@hmrc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Eileen Patching, Deputy Director for Indirect Tax Policy at HMRC, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.