EXPLANATORY MEMORANDUM TO

THE FINANCE ACT 2009, SECTIONS 101 AND 102 (VALUE ADDED TAX) (LATE PAYMENT INTEREST AND REPAYMENT INTEREST) (EXCEPTIONS AND CONSEQUENTIAL AMENDMENTS) ORDER 2022

2022 No. 1298

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.

2. Purpose of the instrument

2.1 With effect from 1 January 2023, amounts of Value Added Tax (VAT) and penalties in respect of VAT that are due to HMRC will be subject to provisions for late payment interest under section 101 Finance Act 2009 (FA09). Where VAT amounts are to be paid or repaid by HMRC, they will be subject to provisions for repayment interest under section 102 FA09. These changes mainly apply to VAT registered businesses making periodic returns to account for VAT.

2.2 This instrument provides for existing interest provisions to be disapplied in circumstances where the new provisions apply. It also provides for amounts payable under certain schemes to be excepted from the provisions for repayment interest from 1 January 2023, to ensure the interest provisions operate as intended.

2.3 This instrument also makes the necessary consequential amendments to both primary and secondary legislation. The consequential amendments will have effect from the same date as the introduction of late payment interest and repayment interest.

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 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 Victoria Atkins MP, Financial Secretary to the Treasury, has made the following statement regarding Human Rights:

"In my view the provisions of The Finance Act 2009, Sections 101 and 102 (Value Added Tax) (Late Payment Interest and Repayment Interest) (Exceptions and Consequential Amendments) Order 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument is being made, in conjunction with the Finance Act 2009, Finance (No. 3) Act 2010 and Finance Act 2021 (Value Added Tax) (Interest) (Appointed Days) Regulations 2022 to complete the implementation of changes to interest for VAT, starting from 1 January 2023. The Regulations commence sections 101 and 102 of FA09 for the purposes of VAT, including penalties assessed in relation to that tax.

6.2 The instrument is being made using powers conferred by section 39 of the Value Added Tax Act 1994 (VATA94) and sections 102(2)(c) and 104(5) to (7) of FA09.

6.3 The instrument makes exceptions and consequential provisions to ensure the regime operates as intended.

6.4 This is the first use of the power in section 102(2)(c) to disapply repayment interest on sums of certain descriptions to be paid by HMRC. The power is being used to except certain refund and repayment claims made outside the VAT return from repayment interest under section 102. The pre-existing rules will remain in place for such claims.

6.5 Part 3 makes consequential amendments to VATA94 and the Value Added Tax Regulations 1995 (S.I. 1995/2518) (VAT Regulations 1995) to repeal existing provisions for interest payable to and by HMRC, to the extent the FA09 late payment and repayment interest provisions will apply. It also makes other changes to ensure the regime operates as intended, including by removing references to existing provisions concerning interest and repayment supplement.

6.6 A new section 77ZA is inserted into VATA94 to permit the enforcement of FA09 late payment interest in respect of VAT as if it were VAT.

6.7 Apart from the new section 77ZA, the provisions in Part 3 have effect only in respect of amounts payable by reference to prescribed accounting periods, amounts assessed under sections 80(4A) and 80B VATA94 and amounts recoverable under paragraph 5(2) of Schedule 11 to VATA94. The effect is limited to prescribed accounting periods starting, or invoices issued, on or after 1 January 2023 respectively.

6.8 Regulations 173W and 173X of VAT Regulations 1995 are modified to ensure that the interest rate for overseas repayments is aligned to the interest rate under FA09.

6.9 Prior to this instrument coming into force, the Income Tax (Trading and Other Income) Act 2005 and the Corporation Tax Act 2009 prohibited the claiming of VATA94 interest as an expense. Provision is included to ensure that, where interest is charged under FA09, a deduction for that interest is similarly prohibited.

7. Policy background

What is being done and why?

7.1 The changes to interest which will commence for VAT from 1 January 2023 are intended to bring greater consistency, as VAT interest will become more closely aligned to interest for other taxes (such as Income Tax Self-Assessment) that are already provided for by FA09. These wider changes are generally intended to apply to VAT registered businesses that make periodic returns accounting for VAT.

7.2 The provisions in this instrument support the policy provided for by primary legislation and commenced by a separate statutory instrument. This instrument does not make substantive changes to that overarching policy but ensures that the interest provisions operate as intended.

7.3 The consequential amendments which are the subject of this instrument are required to ensure that amounts owed to HMRC cannot give rise to two interest charges, and multiple forms of recompense are not due to those to whom HMRC makes payments of VAT.

7.4 The instrument also maintains the effect of other provisions by replacing cross references to existing interest provisions with cross references to the FA09 interest provisions.

7.5 A number of repayment schemes do not involve VAT registered businesses. These schemes are excepted, meaning that the rules in relation to those schemes remain unchanged.

8. European Union Withdrawal and Future Relationship

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

9. Consolidation

9.1 There are no plans to consolidate this instrument as it makes only modest changes to several other instruments.

10. Consultation outcome

10.1 The interest changes which take effect from 1 January 2023 have been subject to extensive consultation with a wide range of stakeholders as part of consultation on making tax digital. The most recent consultation, taking into account two earlier consultation papers, is available on www.gov.uk/government/consultations/making-tax-digital-interest-harmonisation-and-sanctions-for-late-payment.

10.2 There was broad support for harmonisation of interest across all taxes.

10.3 This instrument addresses the consequential changes that form part of the overall interest package and so has not been separately consulted on.

11. Guidance

11.1 The changes to interest do not impose a new obligation so guidance is not required in advance of the introduction. However, an overview of the interest changes is available on www.gov.uk/guidance/prepare-for-upcoming-changes-to-vat-penalties-and-vat-interest-charges. More detailed guidance for customers will be published on gov.uk prior to 1 January 2023.

11.2 Technical guidance on the FA09 interest rules is available due to their application to other taxes. It can be found at www.gov.uk/hmrc-internal-manuals/compliance-handbook/ch140000. It will be updated before 1 January 2023 to reflect the changes specific to VAT.

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 policy was published on 3 March 2021 alongside Budget 2021 and is available on the website at https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins. It remains an accurate summary of the impacts that apply to this policy.

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 the rules are expected to have a low impact on businesses as there are no additional obligations imposed by these changes. Small businesses who pay their VAT on time will be unaffected.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is to continue engagement with stakeholders to review that the wider interest provisions (including this legislation) are operating as intended.

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 Louise Becker at HMRC Telephone: 03000 518924 or email: louise.partridge@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Anna Longman, Deputy Director for Penalty Reform Policy and Readiness 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.