EXPLANATORY MEMORANDUM TO

THE CAPITAL ALLOWANCES (ENVIRONMENTALLY BENEFICIAL PLANT AND MACHINERY) (AMENDMENT NO. 2) ORDER 2012

2012 No. 2602

1. This Explanatory Memorandum has been prepared by Her Majesty's Revenue & Customs on behalf of the Treasury and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Capital Allowances (Environmentally Beneficial Plant and Machinery) Order 2003 (S.I. 2003/2076, as amended; "the principal Order"). The effect is that from 7th November 2012, the revised lists of qualifying technologies and products issued by the Secretary of State for Environment, Food and Rural Affairs ("the Secretary of State") on 10th October 2012 have statutory effect for the purposes of 100 per cent first year capital allowances for expenditure on qualifying environmentally beneficial plant and machinery technologies: The enhanced capital allowances scheme for environmentally beneficial technologies or "the ECA scheme".

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

3.1 None

4. Legislative Context

4.1 Sections 45H to 45J of the Capital Allowances Act 2001 contain the provisions relating to the ECA scheme.

4.2 Section 45H(1) provides that qualifying expenditure is expenditure on environmentally beneficial plant or machinery. Sections 45H(2) and (3) define what is meant by environmentally beneficial plant and machinery. It is plant and machinery that is of a description specified by Treasury order and meeting the environmentally beneficial criteria specified by Treasury order. Section 45H(5) provides that the Treasury can specify the descriptions and criteria by reference to any technology or product list issued by the Secretary of State.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy Background

- ***What is being done and why***

7.1 The Government is committed to protecting the environment and conserving natural resources whilst continuing to ensure the competitiveness of UK industry. The Government believes that environmental taxes and other economic instruments will continue to be key policy tools for achieving environmental improvements.

7.2 The ECA scheme enables a business to claim accelerated tax relief on expenditure on qualifying water efficient technologies. The cash-flow benefit of accelerated tax relief can encourage businesses to invest in technologies that reduce water use and improve water quality. The scheme is dynamic with the detailed environmentally beneficial criteria and qualifying technologies being reviewed annually.

7.3 The current qualifying technologies and products for the ECA scheme are published in lists: the Water Technology Criteria List and Water Technology Product List issued by the Secretary of State on 5 July 2012. These lists are given statutory effect, for the purposes of the ECA scheme, by S.I. 2012/1838, which amended the principal Order.

7.4 Due to an error, the Water Technology Criteria List issued by the Secretary of State on 5 July 2012 did not properly incorporate the planned revisions to the criteria for four existing technologies: toilets, showers, taps and industrial washing machines. A new Water Technology Criteria List and a new Water Technology Product List dated 17th September 2012 were issued by the Secretary of State on 10th October 2012. This instrument gives statutory effect from 7th November 2012, for the purposes of the ECA scheme, to the new Water Technology Criteria List and new Water Technology Product List issued by the Secretary of State on 10th October 2012.

7.5 The revised lists for the ECA scheme are available at http://www.defra.gov.uk and http://www.businesslink.gov.uk.

8. Consultation outcome

8.1 Although no formal consultation has taken place, a series of informal discussions are held annually with industry to establish market trends and developments. The technologies and the products included in the qualifying lists are reviewed every year by the Secretary of State. This ensures that they are still relevant. The wording of the qualifying criteria is discussed with suppliers to ensure that it is achievable.

9. Guidance

9.1 All guidance will be updated as appropriate as part of the normal process of review**.**

10. Impact

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

10.2 No impact on the public sector is foreseen.

10.3 A Tax Information and Note covering this instrument was published on 21 March 2012 and is available on the HMRC website at http://www.hmrc.gov.uk/budget2012/tiin-0691.htm. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 - The legislation applies to small business.

11.2- The ECA scheme is primarily designed to improve the cash flow of those businesses that purchase qualifying products, because it allows the full cost of an investment in designated environmentally beneficial plant and machinery to be written off against the taxable profits of the period in which the investment is made. In practice the scheme only affects those businesses with qualifying plant and machinery expenditure above the Annual Investment Allowance limit of £25,000 per annum, which is around 5% of all businesses. As a result the impact on small firms is negligible.

11.3 Following the Secretary of State's annual consultation about the focus of the ECA scheme and publication of the revised lists of technologies and products, HMRC are required to update the ECA scheme to ensure that those lists take legal effect for tax purposes.

12. Monitoring and review

12.1 The lists of technologies and products that qualify for the ECA scheme are reviewed every year by the Secretary of State to ensure that they are still relevant, and the wording of the qualifying criteria discussed with suppliers to ensure that it is achievable.

13. Contact

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