EXPLANATORY MEMORANDUM TO

THE VALUE ADDED TAX (AMENDMENT) (No. 2) REGULATIONS 2012

2012 No. 1899

1. This explanatory memorandum has been prepared by HM Revenue and Customs ("HMRC") and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

Regulations 4 to 8 and 10 to 22

2.1 Regulations 4 to 8, 10 to 16 and 18 to 27 of this instrument amend the Value Added Tax Regulations 1995 (S.I. 1995/2518) ("the Principal Regulations") to: (1) enable businesses to make specified communications by means of an electronic communications system; (2) make provision in relation to a number of forms that are being removed from Schedule 1 to the Principal Regulations; and (3) make consequential changes following the insertion of new Schedule 1A into the Value Added Tax Act 1994 ("VATA") by section 203 of, and Schedule 28 to, the Finance Act 2012 relating to the VAT registration of non-established taxable persons.

Regulation 9

2.2 Regulation 9 of this instrument makes provision in relation to invoicing requirements when an anti-forestalling charge provided for by paragraph 2 of Schedule 27 to the Finance Act 2012 is due.

Regulation 17

2.3 Regulation 17 of this instrument makes special transitional provision in relation to the Capital Goods Scheme to allow owners of items that would qualify for that scheme other than in relation to the value of the item to opt into the scheme where they are making supplies that were exempt but have become taxable under Item 1(ka) of Group 1 of Schedule 9 VATA (inserted by section 196(1) of, and Schedule 26 to, the Finance Act 2012).

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

None.

4. Legislative Context

This instrument amends the Principal Regulations.

5. Territorial Extent and Application

This instrument applies to the whole of the United Kingdom.

6. European Convention on Human Rights

As the 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***

Regulations 4 to 8, 10 to 16 and 18 to 27

7.1 Regulation 5 inserts new regulations 4A and 4B to allow businesses to make various communications to HMRC using an electronic communications system. The purpose is to enhance and expand the range of electronic services that HMRC offer businesses in order to provide choice about the medium they use to comply with their VAT obligations.

7.2 The other regulations reflect changes to VATA (made in section 204 of, and Schedule 29 to, the Finance Act 2012) to allow the Commissioners to specify the form of a number of specific communications which were previously prescribed in Schedule 1 to the Principal Regulations ("prescribed VAT forms") in tertiary law. These prescribed VAT forms are a small subset of the total number of VAT forms that HMRC make available to businesses to facilitate communications. The amendments will enable HMRC to update and revise the prescribed VAT forms without having to amend the Principal Regulations and therefore respond more quickly to business needs.

7.3 The changes also ensure that the Principal Regulations include, where appropriate, references to businesses established outside the UK which are required under Schedule 1A to VATA to register for VAT if they make any taxable supplies in the UK regardless of value. Schedule 1A was inserted by section 203 of, and Schedule 28 to, the Finance Act 2012.

Regulation 9

7.4 Where an anti-forestalling charge arises under paragraph 2 of Schedule 27 to the Finance Act 2012 on a supply (of self storage facilities or approved alterations to protected buildings) to a VAT registered customer, VAT invoices including the charge are required. Regulation 9 makes provision in relation to such invoices. Where no previous VAT invoice including the supply has been issued, a detailed VAT invoice must be issued. Where a previous VAT invoice has been issued that includes the supply but not the charge, a less detailed additional invoice is required. Where a previous VAT invoice has been issued that includes the charge, no additional invoice is required.

Regulation 17

7.5 This change follows from the taxation of certain supplies of self storage that were previously exempt. Suppliers of self storage whose supplies become taxable under Item 1(ka) of Group 1 of Schedule 9 to VATA will be able to benefit from input tax deduction under the Capital Goods Scheme in relation to any capital items that they have irrespective of the value of those items.

- ***Consolidation***

7.6 There are no projects presently on hand to consolidate the Principal Regulations.

8. Consultation outcome

Regulations 4 to 8, 10 to 16 and 18 to 27

8.1 Consultation with business took place from 8 August 2011 to 31 October 2011. This sought to identify how HMRC could encourage businesses to use the online channel to register/ deregister for VAT and make changes to their details.

8.2 Although few comments were received, the majority related to concerns that a number of groups (which had previously been identified by HMRC) would find it difficult to go online if this was mandated.

8.3 As this instrument does not require online registration (or any other form of online communication) but merely permits it in specified cases, all VAT registered persons will have a choice as to whether they use an online electronic communications system or use a paper communications system for the communications specified in new regulation 4B.

8.4 The consultation also sought to identify any concerns businesses had with the proposal to remove the prescribed VAT forms from Schedule 1 to the Principal Regulations and the impact on businesses of removing the VAT registration threshold for businesses established outside the UK.

8.5 Few comments were received on removal of the prescribed VAT forms from the regulations, although several respondents requested that HMRC consult on any future changes to the forms. The majority of replies relating to the removal of the registration threshold for businesses established outside the UK accepted the need for the legislation to be changed in line with EU law.

8.6 The Consultation Responses document – '*Next steps for moving VAT online*' can be found at www.hmrc.gov.uk.

Regulation 9

8.7 As the changes effected by the regulation are administrative in nature and will have no impact on the vast majority of businesses, they have not been subject to consultation.

Regulation 17

8.8 This change is being made as a result of responses to the consultation in relation to the VAT Borderline changes that were made in section 196(1) of, and Schedule 26 to, the Finance Act 2012.

9. Guidance

Regulations 4 to 8, 10 to 16 and 18 to 27

9.1 Guidance on how businesses will access and make use of the online communications system and in relation to registration requirements for non established businesses and VAT forms will be published on the HMRC website (www.hmrc.gov.uk) in 2012. Paper versions of the guidance will be available on request.

Regulation 9

9.2 Guidance on the operation of the anti-forestalling charge will be published on the HMRC website (www.hmrc.gov.uk).

Regulation 17

9.3 Guidance on the operation of Item 1(ka) of Group 1 of Schedule 9 to VATA will be published on the HMRC website (www.hmrc.gov.uk).

10. Impact

Regulations 4 to 8, 10 to 16 and 18 to 27

10.1 No significant economic effects are expected from the changes relating to online notification or the changes to VAT forms.

10.2 The cost to HMRC of removing the VAT threshold for businesses established outside the UK is estimated to be negligible.

10.3 A Tax Information and Impact Note covering this part of the instrument was published on the HMRC website in December 2011 and a revised Tax Information and Impact Note will be issued in summer 2012 when the specification for the new system has been finalised which will also be published on the HMRC website (in both cases at http://www.hmrc.gov.uk/thelibrary/tiins.htm).

Regulations 9 and 17

10.4 Tax Information and Impact Notes for the substantive provisions which the changes made by these regulations relate to have been published at: http://www.hmrc.gov.uk/budget2012/tiins.htm.

10.5 A Tax Information and Impact Note was also published as part of the Summary of Responses Document on 28 June 2012 and can be found at http://www.hmrc.gov.uk/thelibrary.

11. Regulating small business

11.1 The legislation applies to small business.

Regulations 4 to 8, 10 to 16 and 18 to 27

11.2 In relation to online communications, all businesses will have a choice as to whether to use an electronic communications system or a paper channel.

Regulation 9

11.3 All businesses will be required to pay the anti-forestalling charge where it becomes due and the same invoicing requirements will apply.

Regulation 17

11.4 This change will benefit small businesses.

12. Monitoring & review

Regulations 4 to 8, 10 to 16 and 18 to 27

12.1 After they have been removed from the Principal Regulations, HMRC will consult business (either generally or for particular sectors depending on the changes) to establish any impacts before any changes are made to the prescribed VAT forms.

12.2 The number of businesses signing up and making use of the online VAT Registration service will be monitored on a regular basis.

12.3 Successful implementation of the removal of the UK VAT threshold for non established businesses will be assured through data identifying any increase in registration of businesses established outside the UK whose annual turnover is below the UK registration threshold.

Regulation 9

12.4 As the changes are administrative with negligible costs, no formal monitoring is planned.

Regulation 17

12.5 The extent to which the policy is achieving its objectives will be monitored through communication with affected taxpayer groups and information collected as part of the normal compliance process.

13. Contact

Regulations 4 to 8, 10 to 16 and 18 to 27

13.1 Stephen Davies at HMRC Tel: 0151 703 8172 or email: stephen.c.davies@hmrc.gsi.gov.uk can answer any queries regarding this part of the instrument.

Regulation 9

13.2 Nick Chambers at HMRC Tel: 0207 147 0179 or email: nick.chambers@hmrc.gsi.gov.uk can answer any queries regarding this part of the instrument.

Regulation 17

13.3 David Bond at HMRC Tel: 0207 147 0058 or email: david.bond2@hmrc.gsi.gov.uk can answer any queries regarding this part of the instrument.