EXPLANATORY MEMORANDUM TO THE

THE VALUE ADDED TAX (CARS) (AMENDMENT) ORDER 2004

2004 No. 3084

1. 1.1 This explanatory memorandum has been prepared by HM Customs and Excise and is laid before the House of Commons by Command of Her Majesty. It contains information for the Select Committee on Statutory Instruments.

2. Description

2.1 This instrument removes the definition of "insurer" from the Value Added Tax (Cars) Order 1992. This means that one of the provisions of the Order (whereby the disposal of a used motor car, which has been taken in settlement of an insurance claim, is not charged to VAT) is no longer restricted to persons who are permitted or otherwise authorised to carry on insurance business.

2.2 The amendment is made as a consequence of the removal of corresponding restrictions to the VAT exemption for insurance and reinsurance transactions.

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

3.1 None.

4. Legislative Background

4.1 Article 4(1) of Value Added Tax (Cars) Order 1992 relieves certain supplies of, or in connection with, motor cars from VAT. Paragraph (b) applies this relief to the disposal of a used motor car by an insurer who has taken it in settlement of an insurance claim. The Order defines "insurer" so as to restrict its meaning to persons who have been given permission to carry out contracts of insurance under the Financial Services and Markets Act 2000.

4.2 The European Court of Justice has ruled[1] that the VAT exemption for insurance and reinsurance transactions is determined by the nature of the transaction and not by who makes it. In order to maintain consistency with the VAT exemption the term "insurer" should not be defined by reference to authorised persons.

4.3 The instrument is thus consequential to the Value Added Tax (Insurance) Order 2004 No.3083, which implements the ruling and removes the restrictions which limit the scope of the VAT exemption to certain categories of persons. A similar consequential amendment[2] to the Value Added Tax (Special Provisions) Order 1995 has also been made.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

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[1] Card Protection Plan v Commissioners of Customs and Excise (reference C-394/96) referred by the House of Lords which endorsed the ruling in its judgment on 31 January 2001 [2001] STC 174.

[2] The Value Added Tax (Special Provisions) (Amendment) (No.2) Order 2004 No.3085.

6. European Convention on Human Rights

6.1 Statement not required.

7. Policy Background

7.1 This explanatory memorandum complements, and should be read together with, that for the Value Added Tax (Insurance) Order 2004 No.3083 which implements the judgment of the European Court of Justice referred to in paragraph 4.2 above. A further relevant instrument is the Value Added Tax (Special Provisions) (Amendment) (No.2) Order No.3085.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has negligible impact on business, charities or voluntary bodies.

8.2 There is no impact on the public sector.

9. Contact

9.1 Any enquiries regarding this instrument may be directed to Isabel Pitts at HM Customs and Excise; Tel: 020-7865-5393 (up to 4 December 2004 and 020-7147-0516 thereafter) or e-mail: isabel.pitts@hmce.gsi.gov.uk.