EXPLANATORY MEMORANDUM TO

THE VALUE ADDED TAX (CONSIDERATION FOR FUEL PROVIDED FOR PRIVATE USE) ORDER 2011

2011 No. 898

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs ('HMRC') on behalf of Her Majesty's Treasury and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 VAT is payable if the road fuel of a business is used for private motoring. Table A of section 57(3) of the Value Added Tax Act 1994 sets out the flat rate values to be applied to the supply, for private use, of fuel in vehicles and is based on the vehicle's CO_2 emissions. This order substitutes a new Table A (updated annually) and amends note (6)(c) to reflect the change to the highest category of CO_2 rating with effect from a taxable person's first prescribed accounting period starting on or after 1 May 2011 and is required to ensure that the flat rates in the Table reflect any changes in road fuel costs.

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

3.1 None.

4. Legislative Context

4.1 The Principal VAT Directive (2006/112/EEC) requires a business to account for VAT where business assets are used for private purposes. The method of valuation of the amount of VAT payable is the full cost of the goods. In the case of fuel this would require detailed mileage records in order to calculate, for each car, the exact amount of VAT related to private and business motoring. The UK is permitted by Council Decision 659/2006/EC (OJ No. L272/15, 3.10.2006, p.15) to derogate from this normal rule. The derogation refers to Articles 5(6) and 11(A)(1)(b) of the EC Sixth Council Directive (77/388/EEC). The Sixth Directive has been recast as Council Directive 2006/112/EC, OJ No. L347, 11.12.2006 and the relevant provisions are now contained in Articles 26 and 75.

4.2 The derogation authorises the UK to fix, on a flat rate basis, the proportion of Value Added Tax relating to expenditure on fuel used for private purposes in business cars. The rates are to be established on the basis of the CO_2 emissions level of the type of vehicle and reflect fuel consumption. The derogation is operative until 31 December 2015. The amounts of the flat rates

must be adjusted annually to reflect changes in the average cost of fuel. This Order makes the necessary adjustments to those figures.

4.3 Section 56 of the Value Added Tax Act 1994 ('the Act') provides that where the fuel of a business is used for private purposes it is to be treated as a taxable supply for consideration. The value of the consideration is calculated in accordance with the flat rate values set out in Table A of section 57. The flat rate values are based on a vehicle's CO_2 emissions. Where a CO_2 emissions figure is available for the vehicle involved in private use, Table A of Section 57 stipulates the value for the supply of fuel determined by reference to the relevant CO_2 emissions figure. Where no emissions value is available, note (6) in section 57(3) of the Act attributes a CO_2 emissions figure to the vehicle according to its cylinder capacity for the purpose of determining the value of the fuel used.

4.4 Section 57(4) of the Value Added Tax Act 1994 provides that the Treasury may by order taking effect from the beginning of any prescribed accounting period substitute a new table for Table A in section 57(3) of the Value Added Tax Act 1994. Section 57(4A) gives the power to substitute a table which describes vehicles by reference to their CO_2 emissions figure. A new table has been substituted annually to ensure that the flat rates reflect any changes in road fuel costs. This Order substitutes a new table A and amends note (6)(c) to reflect the change to the highest category of CO_2 rating. The highest category of CO_2 rating has been amended in line with direct tax tables. The new rates have effect from a taxable person's first prescribed accounting period starting on or after 1 May 2011.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Economic Secretary to the Treasury, Justine Greening MP, has made the following statement regarding Human Rights:

'In my view the provisions of the Value Added Tax (Consideration for Fuel Provided for Private Use) Order 2011 are compatible with the Convention rights.'

7. Policy background

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

7.1 VAT is payable if a business provides road fuel that is used, not for the purposes of the business, but for private motoring. The annual revalorisation amends the value of the existing flat rates for private use of fuel in business vehicles to reflect any change in the fuel price. This annual adjustment is necessary for the UK to satisfy the terms of the derogation referred to in paragraph 4.1.

7.2 Table A in section 57(3) of the Value Added Tax Act 1994 applies to calculate the figure that represents the tax inclusive value of the supply. This provides flat rates based on CO_2 emissions in line with the terms of the derogation. Where a vehicle does not have a CO_2 emissions figure the Notes to the Table apply a CO_2 emissions figure by reference to the vehicle's engine size. The revalorised flat rates have been calculated in line with the average cost of fuel applicable in March 2011.

8. Consultation outcome

8.1 The Government does not generally consult on straightforward changes to rates, allowances and thresholds.

9. Guidance

9.1 An Overview of Tax Legislation and Rates document details the changes to the scale charges.

10. Impact

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

10.2 The impact on the public sector is negligible.

10.3 In line with government commitments, a Tax Information and Impact Note has not been prepared for this instrument as it gives effect to previously announced policy and relates to routine changes to rates to a predetermined indexation formula.

11. Regulating small business

11.1 The legislation applies equally to small business. Respondents to informal consultation on the more significant change of reforming the fuel scale charges to a CO_2 basis in 2007 raised no concerns about the impact on small businesses of altering fuel scale charges in general.

12. Monitoring & review

12.1 The revalorisation of fuel scale charges will be subject to internal review after 12 months and the legislation will be amended if necessary to reflect any changes to the average cost of fuel.

13. Contact

Karen Pittis at Her Majesty's Revenue and Customs, Tel: 0207 147 2572 or email: karen.pittis@hmrc.gsi.gov.uk can answer any queries regarding the instrument.