EXPLANATORY MEMORANDUM TO

THE VALUE ADDED TAX (CONSIDERATION FOR FUEL PROVIDED FOR PRIVATE USE) ORDER 2013

2013 No. 659

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.

2. Purpose of the instrument

2.1 Value Added tax ("VAT") is payable if fuel, which forms part of the assets of a business, is used for private motoring. Table A of section 57(3) ("Table A") of the Value Added Tax Act 1994 ("the Act") sets out the flat rate values to be applied to the supply of fuel for private use in vehicles and is based on a vehicle's CO_2 emissions. Table A is updated annually to reflect the average cost of road fuel. This Order substitutes a new Table A with effect from a taxable person's first prescribed accounting period starting on or after 1 May 2013 and is required to ensure that the flat rates in the Table reflect the change 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/EC) (OJ No L347, 11.12.2006, p. 1) requires a business to account for VAT where goods are provided for or appropriated to private use (and permanently removed from the assets of the business). The amount of VAT payable is the purchase / cost price of the goods. In the case of fuel this would require detailed mileage records in order to calculate the exact amount of VAT payable in relation to private motoring. The UK is permitted by Council Decision 2006/659/EC (OJ No L272, 3.10.2006, p.15) to derogate from this requirement. 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 16 and 74.

4.2 The derogation authorises the UK to determine, on a flat rate basis, the amount of VAT relating to expenditure on business fuel used for private purposes. The rates are to be established on the basis of the CO_2 emissions from the car, as there is a correlation between these emissions and fuel consumption. The derogation is operative until 31 December 2015. 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 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 sets out how a vehicle's CO_2 emissions figure is to be established.

4.4 Section 57(4) of the Act 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 Act. 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 changes in road fuel costs. This Order substitutes a new Table A. The new rates have effect from a taxable person's first prescribed accounting period starting on or after 1 May 2013.

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, Sajid Javid 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 2013 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 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 applies to calculate a figure that represents the VAT 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 Table A apply a CO_2 emissions figure by reference to the vehicle's engine capacity. The revalorised flat rates have been calculated in line with the average cost of fuel applicable in March 2013.

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 fuel 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 in accordance with a predetermined indexation formula.

11. Regulating small business

11.1 The legislation applies equally to small business. An informal consultation (in 2007) on the proposal that the fuel scale charges be calculated by reference to a vehicle's CO_2 emissions did not raise any concerns about the impact of this change on small businesses.

12. Monitoring & review

12.1 Draft Legislation is to be introduced in the 2013 Finance Bill which, if passed, will mean that as from 1 February 2014 sections 56 and 57 of the Act will be repealed and replaced by new provisions in Schedule 6 of the Act.

12.2 If the proposed changes are enacted the flat rates set out in Table A, as amended by this Order, will be transposed into an Order made by the Treasury and continue in force until 30 April 2014. Thereafter they will form the baseline for annual mandatory updates of the flat rates in accordance with a formula set out in the Order.

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.