EXPLANATORY MEMORANDUM TO THE

VALUE ADDED TAX (IMPORTED GAS AND ELECTRICITY) RELIEF ORDER 2004

2004 No. 3147

1. This explanatory memorandum has been prepared by H.M. Customs and Excise 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. Description

This Order provides that, from 1 January 2005, importations of gas through the natural gas distribution systems or of electricity from a place outside the EC, will no longer be subject to VAT.

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

None

4. Legislative Background

4.1 This Order is one of a number of measures required to implement EC Directive 2003/92/EC (O.J. L260, 11.10.2003. p 0008-0009). They all take effect from 1 January 2005 and amend the VAT rules in relation to supplies of natural gas and electricity. They comprise:

- Section 9A of the Value Added Tax Act 1994 (c. 23) inserted by section 21 of the Finance Act 2004 (c. 12).
- The Value Added Tax (Place of Supply of Goods) Order 2004.
- The Value Added Tax (Reverse Charge) (Gas and Electricity) Order 2004.
- The Value Added Tax (Removal of Gas and Electricity) Order 2004.
- The Value Added Tax (Amendment) (No.) Regulations 2004.

4.2 EC Directive 2003/92/EC amends Articles 8, 9, 14, 21 22 & 28 of Council Directive 77/388/EEC ("The Sixth VAT Directive") A Transposition Note is attached.

4.3 This Order implements the changes to Article 14. Most goods are subject to VAT when imported from a place outside the EC. The amendment to Article 14 adds

importations of gas through the natural gas distribution system and of electricity to the categories of goods which are relieved of VAT at importation.

4.4 This is to be implemented in UK law from 1 January 2005 by this Order which is made under the powers contained in section 37(1) of the Value Added Tax Act 1994.

4.4 The Draft Council Directive amending Directive 77/388 EEC is cited in the House of Commons, European Scrutiny – Sixth Report, printed on 8 January 2003, at paragraph 13 (reference (24085) 15369/02 COM (02) 688)) and considered not to raise questions of sufficient legal or political importance to warrant a substantive report to the House.

4.5 The proposal cleared scrutiny in the House of Lords and is cited in Part II i of the House of Lords, European Union – Progress of Scrutiny Report, printed on 19 February 2003 (reference 15369/02).

5. Extent

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

Not applicable

7. Policy background

7.1 These changes to the EC VAT rules are intended to modernise and simplify the VAT system as it applies to supplies of natural gas and electricity. They reflect an increasing liberalisation of the gas and electricity markets through deregulation, and an increase in trade between Member States.

7.2 In the past, these problems have had little impact since the gas and electricity industries were almost completely state-owned, and trade was limited to within the borders of each Member State. Since the establishment of the internal market and the increasing liberalisation of the gas and electricity market, these problems have become more evident.

7.3 The changes are aimed at standardising EC treatment and reducing the need for suppliers to register in other Member States. This, is to be achieved through changes in the place of supply and by transferring responsibility to account for VAT in certain circumstances to the person receiving the supply. This relief from VAT at importation is necessary to prevent double taxation which might otherwise arise under the new place of supply rules.

7.4 The changes have been welcomed by the UK gas and electricity industries.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

8.2 The impact on the public sector is minimal.

9. Contact

Bob Gilligan at H.M. Customs & Excise Tel: 0208 929 4675 or e-mail: bob.gilligan@hmce.gsi.co.uk can answer any queries regarding the instrument.