**EXPLANATORY MEMORANDUM TO**

**THE VALUE ADDED TAX (INPUT TAX) AMENDMENT ORDER 2009**

**2009 No. 217**

**1.** This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs ("HMRC") 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 This instrument gives effect to an Extra-statutory Concession (ESC) which is part of a group of ESCs which are being legislated following the House of Lords' decision in *R v HM Commissioners of Inland Revenue ex p Wilkinson [2005] UKHL 30*, which made clear that the scope of HMRC's administrative discretion to make concessions that depart from the strict statutory position is not as wide as previously thought. This statutory instrument preserves the tax effect of this ESC by putting it on a statutory footing.

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

3.1 This order relates to three other orders relating to ESCs, also laid before the House of Commons today. The main order, the Enactment of Extra-Statutory Concessions Order 2009, is made under section 160 of the Finance Act 2008 (c. 9).

## 4. Legislative Context

4.1 This instrument is made under the powers conferred by section 25(7) of the Value Added Tax Act 1994 ("VATA 1994"). However, it is laid before the House of Commons to the same broad timescale as the Enactment of Extra-Statutory Concessions Order 2009, as it forms part of the same policy package.

4.2 The amending effect of this instrument is to bring certain types of transport for the disabled back into VAT credit where it would otherwise be excluded. In these circumstances, it is inappropriate to use the affirmative resolution procedure provided for under section 97(4)(c)(ii) of the VATA 1994, which applies to orders which exclude VAT from credit under section 25 of that Act. The negative resolutions procedure is the correct one to apply to this instrument, see section 97 VATA.

## 5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

## 6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## 7. Policy background

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

7.1 Extra-statutory Concessions (ESCs) have been a feature of the UK's tax system for decades and will continue to be made and withdrawn as necessary. For this purpose the term 'Extra-statutory Concession' refers to any statement made by the Commissioners of HM Revenue and Customs made before the passing of the Finance Act 2008, and having effect at that time, that they will treat persons as if they were entitled to a reduction to tax or duty, or any other concession relating to tax or duty to which they are not, or may not be, entitled in accordance with the law. Such statements might comprise extra-statutory concessions described as such in the former Inland Revenue booklet IR1 and the former HM Customs and Excise booklet Notice 48, or otherwise as a statement of practice, press release or a statement made in any other way.

7.2 The House of Lords' decision in the *Wilkinson* case made clear that the scope of HMRC's administrative discretion to make concessions that depart from the strict statutory position is not as wide as previously thought.

7.3 In light of that decision, HMRC is reviewing its published concessions and the indications are that most ESCs will be able to continue in their current form as they are within the scope of HMRC' s administrative discretion. Where an existing concession exceeds the scope of the discretion of the *Wilkinson* judgment the effect of the concession will be maintained by putting it on to a legislative basis where it is appropriate to do so. Each concession will be considered carefully and, while the aim is to retain as many concessions as possible, some may no longer be required and it may not be possible to legislate for the effect of some others.

*7.4* Currently VAT incurred on purchasing motor cars is only deductible as input tax in a few specific cases. In accordance with current VAT legislation, a vehicle constructed or adapted to have a carrying capacity of less than 12 passengers would not normally qualify for input tax deduction since it falls within the current definition of a "motor car". However there currently exists an extra-statutory concession whereby a vehicle which would otherwise have 12 or more seats, has a carrying capacity of less than 12 passengers solely because it is equipped with facilities for persons in wheelchairs, it can be treated, for VAT purposes, as if it had at least 12 seats.

7.5 The effect of the extra-statutory concession is that purchasers of the vehicles described in it, are able to claim as input tax the VAT incurred on its purchase. It is intended that the legislation will afford the same benefits to those who currently benefit from the concession by removing such vehicles from the definition of a motor car.

- ***Consolidation***

7.6 There are no plans to consolidate the Value Added Tax (Input Tax) Order 1992 as a result of this minor amendment.

## 8. Consultation outcome

8.1 A 12 week consultation[1], beginning on November 3 2008 was undertaken to seek views as to whether the legislation accurately translated the effect of this and the other ESCs referred to in paragraph 2 above. The main overarching tax bodies were consulted as well as representative bodies from the particular sectors affected. The two responses affecting this ESC sought clarification that the terminology used in the legislation had the same meaning as the wording used in the ESC. We were able to confirm that this was the case.

8.2 The consultation and responses document are published on HMRC's website.

## 9. Guidance

9.1 The instrument confirms existing treatment and so further guidance is not required.

## 10. Impact

10.1 An Impact Assessment has not been prepared for this instrument because there is no impact on business, charities, voluntary bodies or the public sector. The instrument puts the existing ESC on a statutory footing, and there is no change to the tax effect.

## 11. Regulating small business

11.1 The legislation may apply to small business but a Small Firms Impact Test has not been undertaken because the legislation does not alter the existing tax effect.

## 12. Monitoring & review

12.1 Monitoring and review is not required as the instrument confirms existing treatment.

## 13. Contact

Phil Sears at HMRC. Tel 020 7147 0551 or email: phil.sears@hmrc.gsi.gov.uk can answer any queries regarding the instrument.

[1] http://www.hmrc.gov.uk/consultations/index.htm