EXPLANATORY MEMORANDUM TO

THE VALUE ADDED TAX (PLACE OF SUPPLY OF GOODS) (AMENDMENT) ORDER 2010

2010 No. 2923

THE VALUE ADDED TAX (IMPORTED GAS, ELECTRICITY, HEAT AND COOLING) RELIEF ORDER 2010

2010 No. 2924

THE VALUE ADDED TAX (REMOVAL OF GAS, ELECTRICITY, HEAT AND COOLING) ORDER 2010

2010 No. 2925

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

2. Purpose of the instruments

These instruments:-

- amend the Value Added Tax (Place of Supply of Goods) Order 2004[1] ("the Place of Supply Order") so that the place of supply of heat or cooling supplied through a network is determined by the same rules that apply to supplies of natural gas and electricity and the description of the natural gas system to which those rules apply is changed;

- revoke and replace the Value Added Tax (Imported Gas and Electricity) Relief Order 2004[2] so that importations of heat or cooling, of natural gas and electricity through the systems and networks described in the Order, and of natural gas via ships which deliver the gas into those networks or systems are relieved from value added tax;

- revoke and replace the Value Added Tax (Removal of Gas and Electricity) Order 2004[3] so that the removal of natural gas, electricity and heat or cooling from one EU Member State to another via the systems or networks described in the Order is not treated as a supply of goods for VAT purposes.

[1] SI 2004/3148
[2] SI 2004/3147
[3] SI 2004/3150

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

None.

4. Legislative Context

4.1 Council Directive 2006/112/EC[4] ("the Principal VAT Directive")(EUR-lex link[5]), which provides the framework for a common system of VAT, has been amended with effect from 15 January 2010 by Council Directive 2009/162/EU[6] ("the Technical Directive")(EUR-lex link[7]). Member States are required to implement the changes with effect from 1 January 2011.

4.2 A number of the amendments made by the Technical Directive affect the VAT treatment of natural gas, heat and cooling[8]. These Orders implement some of those changes as follows:

(a) The Value Added Tax (Place of Supply of Goods) (Amendment) Order 2010 ("the Amending Order")

(i) Prior to amendment by the Technical Directive Articles 38 and 39 of the Principal VAT Directive provided for particular rules to determine the place of supply of natural gas and electricity for VAT purposes. The supply of natural gas was described by reference to the distribution system used to transport it. Following amendment the place of supply rules now also apply to supplies of heat and cooling via a network and the description of the natural gas distribution system has been changed.

(ii) Part 3 ("Part 3") of the Place of Supply Order, for the purposes of UK VAT, specifies the rules which determine the place of supply of natural gas and electricity. Article 9 of the Place of Supply Order defines the relevant goods to which Part 3 applies. The Amending Order amends the description of the relevant goods to change the description of the natural gas distribution system and to add heat and cooling via a network to the categories of goods to which Part 3 applies.

(iii) The Amending Order also amends the description of the subject matter of section 9A of the Value Added Tax Act 1994 ("section 9A")

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[4] OJ No L347, 11.12.06, p 1.

[5] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2006L0112:20100101:EN:PDF for the text prior to amendment by the Technical Directive; http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2006L0112:20100409:EN:PDF for the text following amendment by the technical Directive

[6] OJ No L10, 15.01.10, p 14.

[7] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:010:0014:0018:EN:PDF

[8] Some of the changes to this treatment are expected to be implemented by the Finance (No. 2) Bill 2010 and by an affirmative statutory instrument SI 2010/3017 which will be laid later in December 2010.

in article 14 of the Place of Supply Order. The reference to "gas and electricity" has been changed to a reference to "certain goods". That change anticipates the extension of the ambit of section 9A which is expected to be effected by the Finance (No. 2) Bill 2010 when it receives Royal Assent.

(b) The Value Added Tax (Imported Gas, Electricity, Heat and Cooling) Relief Order 2010 ("the Relief Order")

(i) Prior to amendment by the Technical Directive Article 143(l) of the Principal VAT Directive relieved natural gas and electricity from a charge to VAT on importation. The importation of natural gas was described by reference to the gas distribution system used to transport it. Following amendment the description of the natural gas distribution system has been changed and the relief from importation has been extended to natural gas delivered into the system by ships and to importations of heat or cooling via a network.

(ii) The Value Added Tax (Imported Gas and Electricity) Relief Order 2004 ("the Revoked Relief Order") relieves from VAT the importation into the UK of natural gas and electricity. The Relief Order revokes and replaces the Revoked Relief Order by relieving from VAT the importations of electricity, heat or cooling via a network and natural gas (including both natural gas imported via systems and networks as described in accordance with the amended Principal VAT Directive and via ships which deliver natural gas into those systems and networks).

(c) The Value Added Tax (Removal of Gas, Electricity, Heat and Cooling) Order 2010 ("the Removal Order")

(i) Prior to amendment Article 17(2)(d) of the Principal VAT Directive excepted the removal of natural gas and electricity from the normal rule that removal, to another member State, by a taxable person, of goods which form part of his assets is to be treated for VAT purposes as a supply of goods for consideration. The removal of natural gas was described by reference to the gas distribution system used to transport it.

(ii) Following amendment the description of the natural gas distribution system has been changed and the exception from the normal rule on removal of goods has been extended to removal of heat or cooling via a network.

(iii) Paragraph 6(1) ("paragraph 6(1)") of Schedule 4 to the Act provides that removal, from one member State to another, by a taxable person, of goods which form part of his assets is to be treated for UK VAT purposes as a supply of goods.

(iv) The Value Added Tax (Removal of Gas and Electricity) Order 2004 ("the Revoked Removal Order") provides that paragraph 6(1) shall not apply to the removal of natural gas and electricity.

(v) The Removal Order revokes and replaces the Revoked Removal Order by providing that paragraph 6(1) shall not apply to the removal of electricity, heat or cooling via a network and natural gas via systems and networks as described in accordance with the amended Principal VAT Directive.

4.3 A transposition note is annexed to this memorandum which sets out how these Orders and an affirmative instrument[9] implement amended Articles of the Principal VAT Directive.

5. Territorial Extent and Application

These instruments apply to all of the United Kingdom.

6. European Convention on Human Rights

As these instruments are subject to the negative resolution procedure and do not amend primary legislation no statement is required in respect of them.

7. Policy background

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

7.1 Supplies of natural gas and electricity are treated as supplies of goods for the purposes of VAT. However, their intangible nature makes it difficult to apply some of the normal VAT rules and so they are subject to special arrangements.

7.2 A key element of the special arrangements are place of supply rules under which supplies of natural gas and electricity for resale take place where the customer belongs, rather than where the gas or electricity is located. Hand in hand with this are provisions disapplying the normal VAT consequences that would arise through movement of gas or electricity either in the course of being imported into the EU or transferred to another EU Member State.

7.3 The VAT Technical Directive corrects unintended restrictions in the scope of the existing arrangements (insofar as they apply to natural gas) and makes other technical changes to adjust the scope of the rules. This includes extending the application of the special rules applicable to gas and electricity to supplies of heat and cooling.

7.4 The Orders make the necessary changes for each of these key elements by altering their scope in relation to natural gas and extending them to heat and cooling.

[9] S.I. 2010/3017, to be laid later in December 2010.

- ***Consolidation***

7.5 There are no plans to consolidate the VAT (Place of Supply of Goods) Order 2004.

8. Consultation outcome

8.1 The Technical Directive changes affect only a relatively small group of UK businesses trading in natural gas for resale. Meetings were held with industry representatives during the EU negotiations of the Directive. The changes are welcomed by those businesses.

8.2 The broadening in scope to include heat and cooling is expected to have little, if any, impact in the UK.

9. Guidance

VAT Information Sheet 10/04 is to be updated and re-published to reflect the various changes affecting natural gas, heat and cooling that take effect from 1 January 2011.

10. Impact

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

10.2 The impact on the public sector is nil.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

The changes are technical and will have limited impact. No formal monitoring is planned.

13. Contact

Phil Bryant at HMRC Tel: 020 7147 0067 or email: phil.bryant@hmrc.gsi.gov.uk can answer any queries regarding the instrument.

ANNEX

TRANSPOSITION NOTE

The implementation of Articles 17(2)(d), 38, 39, 59(h) and 143(1)(g) of Council Directive 2006/112/EC as amended by Council Directive 2009/162/EU

Implementing instruments:-

The Value Added Tax (Place of Supply of Goods) (Amendment) Order 2010 (SI 2010/2923)

The Value Added Tax (Imported Gas, Electricity, Heat and Cooling) Order 2010 (SI 2010/2924)

The Value Added Tax (Removal of Gas, Electricity, Heat and Cooling) Order 2010 (SI 2010/2925)

The Value Added Tax (Exceptions Relating to supplies not Made to Relevant Business Person) Order 2010 (SI 2010/3017)

Council Directive 2006/112/EC of 28 November 2006 (OJ No L347, 11.12.06, p 1) ("the Principal VAT Directive") on the common system of Value Added Tax provides the framework governing the harmonization of the laws of the member States relating to VAT. The Directive is implemented in the UK by the Value Added Tax Act 1994 (c.23)("the Act") and various statutory instruments.

From 15 January 2010 the Principal VAT Directive is amended by Council Directive 2009/162/EU (OJ No L10, 15.01.10, p 14) ("the Technical Directive"). The Technical Directive amendments include changes to the VAT treatment of supplies of natural gas, electricity, heat and cooling, and certain related supplies of services. Member States are required to implement these changes on 1 January 2011.

Special VAT rules already apply to supplies of natural gas and electricity. The amendments to the Principal VAT Directive correct unintended restrictions to the extent to which they apply to natural gas and make other technical adjustments including an extension of the application of the special rules to supplies of heat and cooling.

The amended provisions of the Principal VAT Directive which govern the VAT treatment of supplies of natural gas, electricity, heat and cooling, and certain related services are transposed by the implementing instruments listed above as follows:-

Amended Articles Dir. 2006/112	Objectives	Implementation
Article 17(2)(d)	Prior to amendment Article 17(2)(d) of the Principal VAT Directive excepted the removal of natural gas and electricity from the normal rule	By the Value Added Tax (Removal of Gas, Electricity, Heat And Cooling) Order 2010

	that removal, to another member State, by a taxable person, of goods which form part of his assets is to be treated for VAT purposes as a supply of goods for consideration. The removal of natural gas was described by reference to the gas distribution system used to transport it. Following amendment the description of the natural gas distribution system has been changed and the exception from the normal rule on removal of goods has been extended to removal of heat or cooling via a network.	("the Removal Order") which revokes and replaces the Value Added Tax (Removal of Gas and Electricity) Order 2004 ("the revoked removal order"). Paragraph 6(1) ("paragraph 6(1)") of Schedule 4 to the Act provides that removal, from one member State to another, by a taxable person, of goods which form part of his business assets is to be treated for UK VAT purposes as a supply of goods. The Revoked Removal Order provides that paragraph 6(1) shall not apply to the removal of natural gas and electricity. The Removal Order revokes and replaces the Revoked Removal Order and provides that paragraph 6(1) shall not apply to the removal of electricity, heat or cooling via a network and natural gas via systems and networks as described in accordance with the amended Principal VAT Directive.
Articles 38 and 39	Prior to amendment by the Technical Directive Articles 38 and 39 of the Principal VAT Directive provided for particular rules to determine the place of supply of natural gas and electricity for VAT purposes. The supply of natural gas was described by reference to the distribution system used to transport it. Following amendment those special rules now also apply to supplies of heat and cooling via a network and the description of the natural gas distribution system has been changed.	By the Value Added Tax (Place Of Supply Of Goods) (Amendment) Order 2010 ("the Amending Order") which amends Article 9(c) of the Value Added Tax (Place of Supply of Goods) Order 2004 "the Place of Supply order"). Part 3 ("Part 3") of the Place of Supply Order, for the purposes of UK VAT, specifies the rules which determine the place of supply of natural gas and electricity. Article 9 of the Place of Supply Order defines the relevant goods to which Part 3 applies. The Amending

		Order amends the description of the relevant goods by changing the description of the natural gas distribution system and to adding heat and cooling via a network to the categories of goods to which Part 3 applies.
Article 59(h)	Article 59 of the Principal VAT Directive provides that certain services (described in points (a) to (k) of that Article) which are supplied to non-business persons situated outside the EU are to be treated, for VAT purposes, as taking place where the customer belongs. Prior to its amendment point (h) of Article 59 described services consisting in the provision of access to, and of transport and transmission through, natural gas and electricity distribution systems and the provision of other services directly linked thereto. Following amendment the pipeline descriptor for the natural gas services has been changed and the provision of access to, or of transport or transmission through, heating or cooling networks and the provision of other services directly linked thereto has been added to the described services.	By the Value Added Tax (Exceptions Relating to supplies not Made to Relevant Business Person) Order 2010 (SI 2010/3017) ("the Exceptions Order") which amends paragraph 16 (other services provided to recipient belonging outside EC) of Schedule 4A (place of supply of services: special rules) ("the Schedule") to the Act. Paragraph 16 makes provision for certain services, specified in paragraph 16(2)(a) to (k), to be treated as being made where the recipient belongs if that recipient is not engaged in business activity and belongs outside the EU. The Exceptions Order amends paragraph 16(2)(f) of the Schedule by changing the description of the natural gas distribution system and adding a reference to a network through which heat or cooling is supplied.
Article 143(1)(g)	Prior to amendment Article 143(l) of the Principal VAT Directive relieved natural gas and electricity from a charge to VAT on importation. The importation of natural gas was described by reference to the gas distribution system used to transport it. Following amendment the description of the natural gas distribution system has been changed and the relief from importation has been extended to natural gas delivered into the system by ships and to importations of heat or	By the Value Added Tax (Imported Gas, Electricity, Heat And Cooling) Order 2010 ("the Relief Order") which revokes and replaces the Value Added Tax (Imported Gas, Electricity, Heat And Cooling) Order 2010 ("the Revoked Relief Order").

	cooling via a network.	The Revoked Relief Order relieves from VAT the importation into the UK of natural gas and electricity. The Relief Order revokes and replaces the Revoked Relief Order. It relives from VAT the importations of electricity, heat or cooling via a network and natural gas (including both natural gas imported via systems and networks as described in accordance with the amended Principal VAT Directive and via ships which deliver natural gas into those systems and networks).