EXPLANATORY MEMORANDUM TO

THE VALUE ADDED TAX (REVERSE CHARGE)(GAS AND ELECTRICITY) ORDER 2004

2004 No.3149

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

The Order applies to supplies of services in the form of access to, and of transport or transmission through, natural gas and electricity distribution systems and other directly linked services. From 1 January 2005, supplies made to a customer who is outside the EC, or is in business in another Member State, will take place where that customer belongs.

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 (Imported Gas and Electricity) Relief Order 2004.
- The Value Added Tax (Removal of Gas and Electricity) Order 2004.
- The Value Added Tax (Amendment) (No.4) 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 9 which sets the rules governing where a supply of services is to be treated as taking place. The VAT place of supply rules serve to determine whether a supply takes place within the EC and, if so, the Member State in which it is taxable. Within the context of the package of changes in relation to gas and electricity this is a new provision specifically for supplies arising from access to, and the use of, natural gas and electricity distribution systems.

4.4 They have been added to the category of services falling within Article 9(2)(e). Consequently, from 1 January 2005, they will be treated as taking place wherever a customer who is outside the EU, or is in business in another Member State, is established. This is to be implemented in UK law in this Order by adding services of this description to those listed in Schedule 5 to the Value Added Tax Act 1994 under the powers provided by section 8(5) of that Act. To this extent the Order amends primary legislation.

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

The Paymaster General has made the following statement regarding Human Rights:

In my view the provisions of the Value Added Tax (Reverse Charge) (Gas and Electricity) Order 2004 are compatible with the Convention rights.

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 These problems include inconsistencies in the VAT treatment of associated services and so one of the aims in this is to standardise the place of supply of services connected with the operation of gas and electricity distribution systems.

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

8. Impact

8.1 A Regulatory Impact Assessment has been prepared for this Order.

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.