EXPLANATORY MEMORANDUM TO

THE VALUE ADDED TAX (SECTION 55A) (SPECIFIED SERVICES AND EXCEPTED SUPPLIES) ORDER 2016

2016 No. 12

1. Introduction

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

2. Purpose of the instrument

2.1 The Value Added Tax Act 1994 ("the Act"), as a general rule, requires a supplier of goods and services to account for VAT on those supplies. Section 55A of the Act requires VAT to be paid by the recipient of supplies ("a reverse charge") if the supplies are of a type specified for that purpose in a Treasury order. A reverse charge prevents supplies of goods and services from being exploited by those engaged in missing trader intra-community ("MTIC") fraud. This instrument imposes a reverse charge, with effect from 1st February 2016, on wholesale supplies of electronic communications services which involve speech communication and associated services.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 Section 55A (customers to account for tax on supplies of goods or services of a kind used in MTIC fraud) provides that where a taxable person makes a supply of goods or services to which that section applies, and the supply is not an excepted supply, where the recipient of that supply is a taxable person and it is supplied in connection with the carrying on by him of any business, then it is for the recipient, on the supplier's behalf, to account for and pay tax on the supply.

4.2 The goods and services to which section 55A applies and the goods and services which are to be excepted from its application are to be specified by Treasury order pursuant to powers contained in section 55A(9) and (10).

4.3 Article 4(1) of this instrument applies section 55A and therefore a reverse charge to supplies of telecommunications services which enable speech communication and telecommunication services which enable the receipt of signals, writing, sounds or information of any nature when those services are provided in connection with the

services of speech communication. Article 4(2) provides that "telecommunication services" in this context has the same meaning as that given in paragraph 8(2) of Schedule 4A to the Act.

4.4 Article 5 excepts supplies that are not wholesale supplies of the services specified in article 4. It also excepts them if they are supplies to which a reverse charge already applies under section 8 of the Act (which applies a reverse charge to supplies received from abroad).

5. Extent and Territorial Application

5.1 The extent of this instrument is the United Kingdom.

5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

6.1 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 This instrument, with effect from the 1st of February, applies a reverse charge to certain wholesale supplies of electronic communication services to remove the opportunity for MTIC fraud in the telecommunications sector.

7.2 MTIC fraud is a highly sophisticated and well organised criminal attack on the VAT system. The fraud is perpetrated through transaction chains involving supplies of high-value goods or services with the tax loss occurring when the VAT charged by the supplier is not paid to HMRC but is retained by the recipient.

7.3 MTIC fraud has been used by criminals to steal billions of pounds in VAT from Governments throughout the European Union. In the UK the Government has previously had to act to combat MTIC fraud in the trading of mobile telephones and computer chips and in the trading of emissions allowances. A reverse charge for mobile telephones and computer chips was introduced with effect from 1st June 2007 and one for emissions allowances was introduced with effect from 1st November 2010. A further reverse charge for gas and electricity was introduced with effect from 1st July 2014.

7.4 Reverse charge accounting makes it impossible for fraudsters to perpetrate MTIC fraud using the goods or services to which it applies because the customer rather than the supplier accounts for the VAT due on the supply directly to HMRC.

7.5 HMRC has tackled and continues to tackle this fraud operationally with success, reducing its impact on VAT receipts and successfully catching and prosecuting the perpetrators.

7.6 Given the size of the telecommunications sector, and in the knowledge that fraudsters are in the market, the Government has decided to introduce this instrument now to address the residual risk and prevent any escalation in attacks.

Consolidation

7.7 There is no current plan to consolidate the various Treasury orders that specify the goods and services to which section 55A applies.

8. Consultation outcome

8.1 HMRC has consulted informally with representatives in the telecommunications sector about the introduction of the reverse charge. They are in principle supportive of the introduction of a reverse charge to remove the opportunity for MTIC fraud in their sector. HMRC considered that formal consultation was not appropriate as the instrument was drafted on a contingency basis and it was not known whether it would ever be needed and, if needed, what ultimate form it might be necessary for it to take as fraud methodologies can evolve rapidly. It is now necessary, in order to protect the revenue, to introduce it within a tight timescale which does not allow for formal consultation.

9. Guidance

9.1 HMRC will publish guidance to coincide with the introduction of the reverse charge so that businesses affected have the information they need to be able to make the changes to their systems.

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 A Tax Information and Impact Note covering this instrument has been published and is available on the government website at https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 No specific action is proposed to minimise regulatory burdens on small businesses.

11.3 The basis for the final decision on what action to take to assist small businesses was that, although the changes do not discriminate between businesses few, if any, small businesses are affected. The impact on small and micro businesses is negligible.

12. Monitoring & review

12.1 It is a requirement of Article 199a(3) of Directive 2006/112/EU[1] (the Principal VAT Directive) that an evaluation report on the application of reverse charges for the purpose of combatting fraud should be provided to the Commission by 30th June 2017. HMRC will monitor the application of this reverse charge and will also continue to monitor whether fraud may spread to other goods and what further measures may be appropriate.

[1] OJ No L 347, 11.12.2006, p1

13. Contact

13.1 Nick Chambers at the HM Revenue & Customs email: nick.chambers@hmrc.gsi.gov.uk can answer any queries regarding the instrument.