EXPLANATORY MEMORANDUM TO

THE VALUE ADDED TAX (SECTION 55A) (SPECIFIED SERVICES) ORDER 2019

2019 No. 1015

1. Introduction

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

1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

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 Value Added Tax (VAT) on those supplies. Section 55A of the Act ("section 55A") 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 14 June 2019, on supplies of gas and electricity certificates (also known as "renewable energy certificates").

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 This instrument is an anti-fraud measure and urgent action is needed to prevent substantial VAT losses. This means breaching the 21-day rule. Delaying the legislation to comply with the 21-day rule will give the fraudsters advance notice of its introduction and the opportunity to speed up their activities quickly resulting in the potential loss of millions of pounds of VAT.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

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

5. European Convention on Human Rights

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

6. Legislative Context

6.1 This instrument is being made to prevent substantial VAT losses in response to a serious and credible threat on the VAT system. This instrument changes the way in which VAT is paid and accounted for on sales and purchases of renewable energy certificates. This will stop the VAT being passed by the customer to the supplier of those services and prevent it from being stolen.

6.2 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 which is not an excepted supply to a taxable person, it is for the recipient taxable person, on the supplier's behalf, to account for and pay tax on the supply.

6.3 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).

6.4 Article 4 of this instrument specifies gas and electricity certificates as specified services under section 55A and thereby applies a reverse charge to those services. No supplies are excepted by this instrument.

7. Policy background

What is being done and why?

7.1 In response to a serious and credible threat to the VAT system, this instrument applies a reverse charge with effect from 14 June 2019 to supplies of renewable energy certificates. This removes the opportunity for organised criminal groups to carry out MTIC fraud.

7.2 Renewable energy certificates are issued to gas and electricity generators when they produce energy from renewable means. However, they can also be bought and sold as a commodity attracting others into the market which creates an opportunity for fraud.

7.3 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 to and recovered from the customer by the supplier is not passed on to HMRC but is retained by the supplier.

7.4 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 emissions allowances. A reverse charge for mobile telephones and computer chips was introduced with effect from 1 June 2007 and one for emissions allowances with effect from 1 November 2010. A further reverse charge for gas and electricity was introduced with effect from 1 July 2014 and most recently a reverse charge for telecommunications services was introduced with effect from 1 February 2016.

7.5 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.

7.6 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.

7.7 Given the serious and credible threat, the government has decided to introduce this instrument now to prevent millions of pounds of VAT losses from occurring.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

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

10. Consultation outcome

10.1 There has been no formal consultation with the trade sectors affected by this instrument. The government has needed to act quickly and within tight timescales in order to protect the revenue which does not allow for formal consultation.

10.2 HMRC has spoken informally with representatives from the affected trade sectors ahead of the implementation of this instrument in order for them to prepare to make the necessary accounting changes.

11. Guidance

11.1 HMRC will publish guidance on GOV.UK to coincide with the introduction of the reverse charge so that affected businesses have the information they need to be able to make the changes to their systems. VAT Notice 735 will also be updated in due course.

12. Impact

12.1 The impact on business, charities or voluntary bodies is that the changes will affect less than 100 businesses. Some of these businesses will already be familiar with how a reverse charge works. All affected businesses will need to familiarise themselves with the change and may need to modify their Information Technology systems and invoices in order to operate the reverse charge. The one-off implementation costs and ongoing administrative burdens are estimated to be negligible.

12.2 There is no, or no significant, impact on the public sector.

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

13. Regulating small business

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

13.2 No specific action is proposed to minimise regulatory burdens on small businesses (employing up to 50 people).

13.3 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 will be affected. The impact on small and micro businesses is negligible.

14. Monitoring & review

14.1 HMRC will monitor the application and effectiveness of this reverse charge and also continue to monitor whether fraud may spread to other goods or services and what further measures may be appropriate.

14.2 The instrument does not include a statutory review clause because it relates to tax and therefore meets the requirements of the exemption set out in section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015.

15. Contact

15.1 Paul Grimwood at HMRC email: paul.grimwood@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Eileen Patching Deputy Director VAT Principles and Risk, Indirect Tax Directorate, at HMRC can confirm that this Explanatory Memorandum meets the required standard.

15.3 Jesse Norman MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.