EXPLANATORY MEMORANDUM TO

THE VALUE ADDED TAX (TREATMENT OF TRANSACTIONS AND SPECIAL PROVISIONS) (AMENDMENT) ORDER 2006

2006 No.2187

1. This explanatory memorandum has been prepared by HM Treasury and is laid before the House of Commons by Command of Her Majesty.

2. Description

2.1 The instrument provides that sales by auction of works of art, antiques, collections and collector's pieces – which at the time of auction are subject to the customs temporary importation procedure and are then imported following their removal from that procedure - are to be treated as supplies of goods or services for the purposes of VAT in the ordinary way. The provision of related services is also to be treated as a normal supply for VAT purposes.

2.2 The instrument also enables the auctioneers to account for VAT on just the profit margin instead of by reference to the value of the supply.

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

3.1 None.

4. Legislative Background

4.1 Sections 21(2A) and 21(2B) of the Value Added Tax Act 1994 (c. 23) were inserted and brought into force by section 18 of the Finance Act 2006 (c. 25) and S.I. 2006/2149 (C. 72). They provide that any commission or premium payable to the auctioneer in connection with such sales is excluded from the value of the goods for VAT purposes in relation to their subsequent importation. So the commission or premium is also excluded from the reduced value for the import VAT under section 21(4) (namely, 28.58 per cent of the actual value, as inserted by section 22 of the Finance Act 1995 (c. 4) and section 12 of the Finance Act 1999 (c. 16)).

4.2 Articles 2(3) and 2(2) of the instrument remove the sales and related services from the scope of the Value Added Tax (Treatment of Transactions) Order 1995 (S.I. 1995/958). They are consequently treated for VAT purposes as ordinary supplies of goods or services.

4.3 Article 3 of the instrument enables the auctioneers to account for VAT on just the profit margin, using the existing scheme for dealers and auctioneers in articles 12 and 13 of the Value Added Tax (Special Provisions) Order 1995 (S.I. 1995/1268), instead of by reference to the value of the supply.

4.4 So the sales by auction - and the commission and premium - are taxed under the ordinary VAT rules instead of being incorporated in, and taxed on the basis

of, the reduced import value.

4.5 This is to comply with the Judgment of the Court of Justice of the European Communities of 9 February 2006 in Case No C-305/03, Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland.

4.6 Articles 2(1) and 3(1) of the Order take the opportunity to revoke otiose references in S.I. 1995/958 and update a reference in S.I. 1995/1268.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

7.1 For many years the United Kingdom has taxed such auctioneers' commission and premia on the basis that they ought to be included in the value of the goods for the purposes of VAT on their importation.

7.2 This led to a practical VAT rate of 5% (2.5% before 27 July 1999) based on the reduced value of such importations.

7.3 On 9 February 2006 the Court of Justice of the European Communities adjudged that the United Kingdom's practice constituted a failure to fulfil its obligations under Council Directive 77/388/EEC (the Sixth VAT Directive). Such commissions should be taxed in practice at the standard VAT rate of 17.5%.

7.4 The instrument helps fulfil those policy objectives of the Directive as adjudged by the Court.

7.5 The problem is limited to sales of works of art, collectors' items and antiques sold by auction whilst subject to the customs temporary importation procedure for goods from outside the European Community. The level of public interest is low and limited to those involved in such sales. The changes are not politically important, but they are legally important because they help fulfil the United Kingdom's obligations under the Directive.

7.6 Those consulted included the British Art Market Federation and the leading auction houses, and the responses were favourable. The trade recognise the need for the changes and have signalled their contentment with the wording of the statutory instrument.

7.7 HM Revenue & Customs Notices 702 and 718 will be amended to explain the new rules to those affected.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is nil.

9. Contact

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