

**EXPLANATORY MEMORANDUM TO
THE VALUE ADDED TAX TRIBUNALS (AMENDMENT) RULES 2007**

2007 No. 2351

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. **Description**

2.1 The Value Added Tax (Amendment) Rules 2007 ('the Rules') make amendments to the Value Added Tax Tribunals Rules 1986 (SI 1986/590, 'the 1986 Rules'). The Rules broaden the definition of 'appellant' so the VAT and Duties Tribunal can take on new appeal jurisdictions. They also make consequential amendments as a result of an amendment made to the Tobacco Products Duty Act 1979 ('the 1979 Act') by the Finance Act 2006 ('the Finance Act'), the commencement of the Control of Cash (Penalties) Regulations 2007 (the '2007 Regulations'), which give effect to Community Regulation 1889/2005, and the alteration of the title of the Commissioners of Customs and Excise.

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

3.1 None.

4. **Legislative Background**

4.1 The amendment to the definition of "appellant" in the 1986 Rules has arisen as a result of the following new measures which are being introduced by HMRC through the Finance Act 2006 ('the 2006 Act'): extension to provisions of Schedule 10 of the VAT Act 1994, relating to buildings and land (Clause 17, Finance Act), an amendment to the Tobacco Products Duty Act 1979 in relation to tobacco products duty evasion (Duty not to facilitate smuggling) (Clause 2, Finance Act), and the commencement of the Control of Cash (Penalties) Regulations which give effect to Community Regulation 1889/2005. Rather than add these legislative provisions to the definition of "appellant" as has been the procedure to date, it was decided to amend the definition of "appellant" in the Rules so that it would not need frequently to be amended to take account of new appeal rights in the future.

4.2 This amendment however, will not preclude the need for future changes to the definitions in other provisions in the 1986 Rules, relating to evasion penalty appeals, mitigation appeals and reasonable excuse appeals. It will, therefore, continue to be necessary to specify the legislation providing for any new appeal right in those provisions. Furthermore, additional changes to the 1986 Rules may, in future, need to

be made, depending on the particular nature of any new appeal rights. However, unlike the current definition of “appellant” in the 1986 Rules, it is not expected that it will be necessary to make amendments to those provisions frequently.

4.3 In addition Rules 2(3) and (4) amend rules 4(3) (dealing with times for appealing) and 20(1A) (disclosure, inspection and production of documents) of the 1986 Rules to take account of the amendment made to the Tobacco Products Duty Act 1979 by section 2(1) of the Finance Act 2006 and the Control of Cash (Penalties) Regulations 2007.

4.4 Section 2(1) of the 2006 Act inserts provisions into the 1979 Act that place a legal duty on tobacco manufacturers not to facilitate smuggling and impose penalties on manufacturers who fail to comply with that duty. The new section 7C(3)(d) of the 1979 Act specifies when a penalty notice will be deemed to have been confirmed by a Commissioner following a request by a manufacturer for that penalty notice to be reviewed.

4.5 The 2007 Regulations give effect to Community Regulation 1889/2005. The 2007 Regulations provide for penalties for failing to declare movements of cash, as required under article 3 of the Community Regulation, and for an appeal against the imposition of those penalties.

4.6 A public consultation about these amending rules took place between 3 May and 11 June 2007. Five responses to the consultation paper were received, all of which concerned technical drafting points which have now been included in the amendment Rules. The substance of the Rules remains unchanged.

5. Extent

5.1 This instrument applies to England, Wales, Scotland and Northern Ireland.

6. European Convention on Human Rights

6.1 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 The new measures have come about further to the Finance Act and EU legislation. The changes are minor and not politically or legally significant. Consultation has taken place with a limited number of interested bodies.

Measure relating to Buildings and Land

7.2 These appeals will be against the exercise of the HMRC Commissioners' discretion, the Tribunal having a supervisory jurisdiction only. The law is being changed simply as a matter of good governance. Under Schedule 10 of the VAT Act 1994 ('schedule 10'), taxpayers have a right of taxation, which means they can 'opt to tax' supplies of land and buildings that would normally be exempt from VAT. The option to tax is, however, (in certain circumstances) subject to the Commissioners' permission. As a result of changes being made to Schedule 10, taxpayers will, in future, have a right of appeal where such permission is not granted. Other changes to Schedule 10, in particular the introduction of rules governing the revocation of an option to tax after 20 years, are currently proposed. These changes will also be subject to a "permission" regime and the same rights of appeal. However, in public consultation, business advised that very few would be applying to revoke an option after 20 years. Due to the large amounts of VAT involved in commercial property transactions, the legislation is sensitive (in revenue terms) and targeted by large-scale avoiders.

Tobacco products duty: evasion. "Duty not to facilitate smuggling"

7.3 In essence, this measure requires tobacco manufacturers not to facilitate smuggling, and provides for a penalty for failure to comply with that requirement. Tobacco manufacturers will be under a general obligation to conduct their business in such a way as to ensure that they do not supply tobacco products (specifically cigarettes and hand-rolling tobacco (HRT)), to those intending to smuggle them into the UK. They must consider, when supplying cigarettes or HRT to a customer in or in relation to a country other than the UK, whether the size or nature of the supply suggests that the products may be required for smuggling. They are to comply with a written policy about the steps to be taken, in order to meet the above obligations.

7.4 There will be additional obligations on tobacco manufacturers whose products have a significant presence in the UK illicit market. Commissioners will inform manufacturers of material seizures and manufacturers will be obliged to provide specified information. If they fail to comply, then a written Initial Notice will be issued. If during 6 months following the Notice, the manufacturers do not take sufficient action to comply, then Commissioners may serve a penalty notice. Manufacturers may then appeal to the VAT & Duties Tribunal.

The Control of Cash (Penalties) Regulations 2007

7.5 The 2007 Regulations, came into force on 15 June 2007 but the earliest date by which appeals can be expected to reach the VAT and Duties Tribunal is October 2007.

7.6 The Community Regulation 1889/2005 introduced a harmonised control and information procedure for large-scale movements of cash in or out of the Community and empowers the national authorities to take appropriate administrative actions, including an obligation to impose penalties. The 2007 Regulations provide for penalties for failing to declare movements of cash as required under article 3 of the

Community Regulation, and provide for an appeal from the imposition of those penalties.

'Time for appealing' amendment

7.6 The SI also inserts two new provisions into Rule 4(3) of the 1986 Rules ("Time for appealing") to take account of the amendment made to the Tobacco Products Duty Act 1979 by section 2(1) of the Finance Act 2006 and the Control of Cash (Penalties) Regulations 2007. These amendments relate to the period within which appeals should be brought, to make it clearer for these types of appeals.

Disclosure amendment

7.7 The amendment to rule 20(1A) of the 1986 Rules ensures that documents relied upon in reviews, in relation to cases under the 2007 Regulations, are served by the Commissioners on the parties to the appeal.

General

7.8 In addition to enabling the Tribunal to take on new appeal jurisdictions, the amendment as drafted, should negate the need for future amendments to the 1986 Rules, when similar new appeals are introduced.

7.9 The earliest the VAT and Duties Tribunal could receive any appeals for any of the above measures is around the end of September 2007.

8. Impact

9.1 A Regulatory Impact Assessment has not been prepared for this instrument as the changes proposed are minor and should not impact on business, charities, the voluntary or public sectors.

9. Contact

Olga Kostiw at the Ministry of Justice (Telephone: 020 7340 6538 or e-mail: olga.kostiw@tribunals.gsi.gov.uk) can answer any queries about the instrument.