

2010 No. 2239

VALUE ADDED TAX

**The Value Added Tax (Section 55A) (Specified Goods and
Services and Excepted Supplies) Order 2010**

<i>Made</i>	- - - -	<i>13th September 2010</i>
<i>Laid before the House of Commons</i>		<i>14th September 2010</i>
<i>Coming into force</i>	- -	<i>1st November 2010</i>

The Treasury, in exercise of the powers conferred by sections 55A(9), (10), (11) and (14) of the Value Added Tax Act 1994(a), make the following Order:

Citation, commencement and effect

1.—(1) This Order may be cited as the Value Added Tax (Section 55A) (Specified Goods and Services and Excepted Supplies) Order 2010.

(2) This Order shall come into force on 1st November 2010 and has effect in relation to supplies made on or after that date.

Revocation

2. The Value Added Tax (Section 55A) (Specified Goods and Excepted Supplies) Order 2007(b) is revoked.

Interpretation

3. In this Order—

“the Act” means the Value Added Tax Act 1994;

“allowance” has the meaning given in Article 3 of the Directive;

“certified emission reduction” has the meaning given in Article 3 of the Directive;

“the Directive” means Directive 2003/87/EC(c) of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC(d);

“emission reduction unit” has the meaning given in Article 3 of the Directive;

“operator” has the meaning given in Article 3 of the Directive;

(a) 1994 c. 23; Section 55A was amended by section 50(1) of the Finance Act 2010 (c. 13).

(b) S.I. 2007/1417.

(c) OJ No L 275, 25.10.03, p 32, relevant amending instrument is Directive 2004/101/EC, OJ No. L 338, 13.11.2004, p.18.

(d) OJ No L 257, 10.10.96, p 26.

“public electronic communications service” has the meaning given in section 151(a) of the Communications Act 2003.

The application of section 55A of the Act to specified goods and services

4. The goods and services specified in articles 5 and 6 are goods and services to which section 55A of the Act (customers to account for tax on supplies of goods or services of a kind used in missing trader intra-community fraud) applies.

Specified goods

5. The goods referred to in article 4 are—

- (a) a mobile telephone, whether or not it has any function in addition to the transmitting and receiving of spoken messages;
- (b) an integrated circuit device, such as a central processing unit and microprocessor unit, in a state prior to integration into an end user product.

Specified services

6. The services referred to in article 4 are—

- (a) a transfer of an allowance;
- (b) a transfer of an emission reduction unit which can be used by an operator for compliance with the scheme established by the Directive;
- (c) a transfer of a certified emission reduction which can be used by an operator for compliance with the scheme established by the Directive.

Excepted supplies

7. For the purposes of section 55A of the Act a supply of a description specified below is an excepted supply—

- (a) a supply of specified goods where the value of the supply is less than £5000;
- (b) a supply of specified goods where the supply is of a description specified in an order made under section 50A(b) of the Act (margin schemes) and, in accordance with such an order, the supplier opts to account for the VAT chargeable on the supply on the profit margin on the supply instead of by reference to its value;
- (c) a supply of a mobile telephone where, at the time a person enters into the agreement to purchase the telephone—
 - (i) he enters into an agreement (including the renewal or extension of an existing agreement) with a provider of a public electronic communications service for the supply, in relation to that telephone, of such a service, and
 - (ii) that agreement is not one that requires periodical pre-payments in order to use the service (“Pay as You Go”);
- (d) a transfer or disposal of specified goods for no consideration that is treated as a supply of goods by virtue of paragraph 5(1)(c) of Schedule 4 to the Act.

8. Article 7(a) does not apply to a supply of specified goods where—

(a) 2003 c.21; there are no relevant amendments.
(b) Section 50A was amended by section 24(1) of the Finance Act 1995 (c. 4).
(c) Paragraph 5 of Schedule 4 was amended by section 33 of the Finance Act 1995 (c. 4), section 21 of the Finance Act 1998 (c. 36), section 33 of the Finance Act 1996 (c. 8), section 136 of the Finance Act 2000 (c. 17), sections 21 and 22 of the Finance Act 2003 (c.14), Section 99 and 114 of, and part 6(1) of Schedule 27 to, the Finance Act 2007 (c. 11).

- (a) the supply is particularised on the same VAT invoice^(a) as a supply, or supplies, of other specified goods, and
- (b) the total value of the supplies equals or exceeds £5000.

Michael Fabricant
Jeremy Wright

13th September 2010

Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which comes into force on 1st November 2010, revokes and replaces the Value Added Tax (Section 55A) (Specified Goods and Excepted Supplies) Order 2007 (“the Revoked Order”). Its effect is to apply a reverse charge to specified goods and services of a kind used in missing trader intra-community fraud.

Council Directive 2006/112/EC (OJ No L 347, 11.12.06, p1) (“the Principal VAT Directive”) establishes a common system of value added tax applicable throughout the European Union. As a general rule the Principal VAT Directive requires the supplier of goods or services to account for the VAT due on them. In certain circumstances the VAT may instead be accounted for and paid by the VAT registered recipient of those supplies. A charge to tax in these circumstances is referred to as “a reverse charge”.

The United Kingdom is permitted, until 30th April 2011, to derogate from the general rule in order to apply a reverse charge to supplies of goods of a kind used in missing trader intra-community (“MTIC”) fraud, namely mobile telephones and integrated circuit devices. This derogation is permitted by Council Decision 2007/250/EC (OJ No L 109, 26.4.07, p 42) as amended by Council Decision 2009/439/EC (OJ No L 148, 11.6.09, p 14).

The Principal VAT Directive was amended by Council Directive 2010/23/EU (OJ No L 72, 20.3.10, p 1) by inserting Article 199a which permits member States, until 30th June 2015, to apply a reverse charge to the transfer of allowances and other units that are recognised for the purposes of the European Union greenhouse gas emission allowance trading scheme “the EU ETS scheme”). These supplies are treated as supplies of services for the purposes of VAT and are of a kind used in MTIC fraud.

Section 55A of the Value Added Tax Act 1994 (customers to account for tax on supplies of goods or services of a kind used in missing trader intra-community fraud) (“section 55A”), as amended by section 50 of the Finance Act 2010 (c. 13), provides that supplies of goods and services which, pursuant to powers provided for in that section, have been specified in a Treasury Order, shall be subject to a reverse charge.

By specifying (with certain exceptions) mobile telephones and integrated circuit devices as goods to which section 55A applies this Order reproduces the effect of the Revoked Order. In addition it specifies that transfers of allowances and other units that are recognised for the purposes of the EU ETS scheme are services to which section 55A applies.

Article 2 revokes the Revoked Order.

Article 4 provides that goods and services specified in articles 5 and 6 are goods and services to which section 55A applies.

Articles 5 and 6 respectively specify the goods and services to which section 55A applies.

(a) “VAT invoice” is defined in section 6(15) of the Value Added Tax Act 1994 (c. 23).

Article 7 makes provision for certain types of supplies of specified goods to be excepted from the effect of section 55A.

Article 8 limits the application of one of the exceptions provided for in article 7.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

A transposition note explaining how Article 199a of the Principal VAT Directive is transposed into UK law is annexed to the Explanatory Memorandum which is available alongside this Order on the OPSI website (<http://www.opsi.gov.uk>).