

SCHEDULES

SCHEDULE 7

Section 38.

ADMINISTRATION, COLLECTION AND ENFORCEMENT

General

- 1 (1) The tax shall be under the care and management of the Commissioners.
- (2) All money and securities for money collected or received for or on account of the tax shall—
 - (a) if collected or received in Great Britain, be placed to the general account of the Commissioners kept at the Bank of England under section 17 of the Customs and Excise Management Act 1979 ;
 - (b) if collected or received in Northern Ireland, be paid into the Consolidated Fund of the United Kingdom in such manner as the Treasury may direct.

Accounting for and payment of tax

- 2 (1) Regulations under this paragraph may require the keeping of accounts and the making of returns in such form and manner as may be specified in the regulations and may require taxable persons supplying goods or services to other taxable persons to provide them with invoices (to be known as "tax invoices") containing statements of such particulars as may be so specified of the supply, the tax chargeable on it and the persons by and to whom the goods or services are supplied.
- (2) The regulations may, where they require a tax invoice to be provided in connection with any description of supply, require it to be provided within a prescribed time after the supply is treated as taking place, and may allow for that time to be extended in accordance with general or special directions given by the Commissioners.
- (3) Regulations under this paragraph may make special provision for such taxable supplies by retailers of any goods or of any description of goods or of services or any description of services as may be determined by or under the regulations and, in particular—
 - (a) for permitting the value which is to be taken as the value of the supplies in any prescribed accounting period or part thereof to be determined, subject to any limitations or restrictions, by such method or one of such methods as may have been described in any notice published by the Commissioners in pursuance of the regulations and not withdrawn by a further notice or as may be agreed with the Commissioners ; and
 - (b) for determining the proportion of the value of the supplies which is to be attributed to any description of supplies ; and
 - (c) for adjusting that value and proportion for periods comprising two or more prescribed accounting periods or parts thereof.
- (4) Regulations under this paragraph may make provision—

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- (a) for treating tax chargeable in one prescribed accounting period as chargeable in another such period; and
 - (b) for the adjustment of accounts in cases where tax has become chargeable by reference to a consideration and the amount of the consideration is reduced or no consideration becomes payable and in such other circumstances as may be specified in the regulations ; and
 - (c) for the correction of errors.
- (5) Regulations under this paragraph may make different provision for different circumstances and may provide for different dates as the commencement of prescribed accounting periods applicable to different persons.
- (6) The provisions made by regulations under this paragraph for cases where goods are treated as supplied by a taxable person by virtue of paragraph 6 of Schedule 2 to this Act may require the tax chargeable on the supply to be accounted for and paid, and particulars thereof to be provided, by such other person and in such manner as may be specified by the regulations.
- (7) Where, at the end of a prescribed accounting period, the amount of tax due from any person or the amount due to any person under section 14(5) of this Act would be less than £1 that amount shall be treated as nil.

Production of tax invoices by computer

- 3 (1) For the purposes of any provision contained in or having effect under this Act which relates to tax invoices a person shall be treated as issuing, or as providing another person with, a tax unvoice if the requisite particulars are recorded in a computer and transmitted by electronic means and without the delivery of any document.
- (2) No provision relating to tax invoices shall be treated as complied with by the production by means of a computer of any material other than a document in writing, by delivering any such material so produced or by making any such transmission as is mentioned in sub-paragraph (1) above unless the person producing or delivering the material or making the transmission and, in the case of delivered material or a transmission, the person receiving it—
- (a) has given the Commissioners at least one month's notice in writing that he proposes to produce or deliver such material or make such transmissions or, as the case may be, receive such material or transmissions ; and
 - (b) complies with such requirements as may be specified in regulations or as the Commissioners may from time to time impose in his case.
- (3) An authorised person—
- (a) shall be entitled at any reasonable time to have access to, and to inspect and check the operation of .any computer and any associated apparatus or material which is or has been in use by a taxable person in connection with the production, delivery or receipt of material which is or purports to be a tax invoice or with the transmission as mentioned in sub-paragraph (1) above of particulars which are or purport to be particulars of such an invoice ; and
 - (b) may require the taxable person or any other person having charge of any such computer, apparatus or material to afford him such assistance as he may require for the purposes of paragraph (a) above.
- (4) Any parson who obstructs an authorised person in the exercise of his powers under paragraph (a) of sub-paragraph (3) above or without reasonable excuse fails to

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comply with a requirement under paragraph (b) of that sub-paragraph shall be liable on summary conviction to a penalty of level 4 on the standard scale.

Power of Commissioners to assess tax due

- 4 (1) Where a person has failed to make any returns required under this Act or to keep any documents and afford the facilities necessary to verify such returns or where it appears to the Commissioners that such returns are incomplete or incorrect they may assess the amount of tax due from him to the best of their judgment and notify it to him.
- (2) In any case where—
- (a) an amount has been repaid to any person as being a repayment of tax, which ought not to have been repaid, or
 - (b) an amount has been paid to any person as being due to him in accordance with section 14(5) of this Act, which ought not to have been paid to him,
- the Commissioners may assess that amount as being tax due from him in the prescribed accounting period in which the amount was repaid or, as the case may be, paid and notify it to him accordingly.
- (3) Where a person is assessed under sub-paragraphs (1) and (2) above in respect of the same prescribed accounting period the assessments may be combined and notified to him as one assessment.
- (4) Where the person failing to make a return, or making a return which appears to the Commissioners to be incomplete or incorrect, was required to make the return as a personal representative, trustee in bankruptcy, receiver, liquidator or person otherwise acting in a representative capacity in relation to another person, sub-paragraph (1) above shall apply as if the reference to tax due from him included a reference to tax due from that other person.
- (5) An assessment under sub-paragraph (1) or (2) above of an amount of tax due for any prescribed accounting period shall not be made after the later of the following—
- (a) two years after the end of the prescribed accounting period ; or
 - (b) one year after evidence of facts, sufficient in the opinion of the Commissioners to justify the making of the assessment, comes to their knowledge,
- but may, where further such evidence comes to their knowledge after the making of such an assessment, be made in addition to that assessment.
- (6) Where a taxable person has acquired or imported any goods in the course or furtherance of any business carried on by him the Commissioners may require him from time to time to account for the goods ; and if he fails to prove that the goods have been or are available to be supplied by him or have been lost or destroyed they may assess to the best of their judgment and notify to him the amount of tax that would have been chargeable in respect of the supply of the goods if they had been supplied by him.
- (7) An assessment under sub-paragraph (1), (2) or (6) above shall not be made more than six years after the end of the prescribed accounting period or importation concerned, nor, if the taxable person has died, more than three years after his death; except that if the Commissioners satisfy a value added tax tribunal that there are reasonable grounds for believing that tax has been or may have been lost through the fraud or wilful default or neglect of any person an assessment may, with the leave of the

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tribunal, be made at any time or, if the taxable person has died, at any time not later than six years after the death.

- (8) Members of a value added tax tribunal giving leave for an assessment shall not take part in the proceedings or be present when an appeal against the assessment or against the amount of the assessment is heard or determined.
- (9) Where an amount has been assessed and notified to any person under sub-paragraph (1), (2) or (6) above it shall, subject to the provisions of this Act as to appeals, be deemed to be an amount of tax due from him and may be recovered accordingly, unless, or except to the extent that, the assessment has subsequently been withdrawn or reduced.
- (10) For the purposes of this paragraph notification to a personal representative, trustee in bankruptcy, receiver, liquidator or person otherwise acting as aforesaid shall be treated as notification to the person in relation to whom he so acts.

Power to require security and production of evidence

- 5 (1) The Commissioners may, as a condition of allowing or repaying any input tax to any person, require the production of such documents relating to the tax as may have been supplied to him and may, if they think it necessary for the protection of the revenue, require as a condition of making any payment under section 14(5) of this Act the giving of such security for the amount of the payment as appears to them appropriate.
- (2) Where it appears to the Commissioners requisite to do so for the protection of the revenue they may require a taxable person, as a condition of his supplying goods or services under a taxable supply, to give security, or further security, of such amount and in such manner as they may determine, for the payment of any tax which is or may become due from him.

Recovery of tax, etc.

- 6 (1) Tax due from any person shall be recoverable as a debt due to the Crown.
- (2) Where an invoice shows a supply of goods or services as taking place with tax chargeable on it, there shall be recoverable from the person who issued the invoice an amount equal to that which is shown on the invoice as tax or, if the tax is not separately shown, to so much of the total amount shown as payable as is to be taken as representing tax on the supply.
- (3) Sub-paragraph (2) above applies whether or not—
 - (a) the invoice is a tax invoice issued in pursuance of paragraph 2(1) above; or
 - (b) the supply shown on the invoice actually takes or has taken place, or the amount shown as tax, or any amount of tax, is or was chargeable on the supply ; or
 - (c) the person issuing the invoice is a taxable person;
 and any sum recoverable from a person under the sub-paragraph shall, if it is in any case tax, be recoverable as such and shall otherwise be recoverable as a debt due to the Crown.
- (4) The Commissioners may by regulations make provision—
 - (a) in respect of England and Wales and Northern Ireland for authorising distress to be levied on the goods and chattels of any person refusing or neglecting

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to pay any tax due from him or any amount recoverable as if it were tax due from him and for the disposal of any goods or chattels on which distress is levied in pursuance of the regulations ; and

- (b) in respect of Scotland for authorising the pointing of the corporeal moveables of any person refusing or neglecting to pay any tax due from him or any amount recoverable as if it were tax due from him and for the disposal of any moveables which are pointed in pursuance of the regulations.

Duty to keep records

- 7 (1) Every taxable person shall keep such records as the Commissioners may require.
- (2) The Commissioners may require any records kept in pursuance of this paragraph to be preserved for such period not exceeding three years as they may require.
- (3) The duty under this paragraph to preserve records may be discharged by the preservation of the information contained therein by such means as the Commissioners may approve; and where that information is so preserved a copy of any document forming part of the records shall, subject to the following provisions of this paragraph, be admissible in evidence in any proceedings, whether civil or criminal, to the same extent as the records themselves.
- (4) The Commissioners may, as a condition of approving under sub-paragraph (3) above any means of preserving information contained in any records, impose such reasonable requirements as appear to them necessary for securing that the information will be as readily available to them as if the records themselves had been preserved.
- (5) A statement contained in a document produced by a computer shall not be admissible in evidence by virtue of sub-paragraph (3) above unless the conditions mentioned in subsection (2) of section 5 of the Civil Evidence Act 1968 or in the corresponding Scottish enactment are satisfied in relation to the statement and the computer; and the other provisions of that section and subsections (1), (2), (3) and (5) of section 6 of that Act (supplementary provisions) and the like provisions of the corresponding Scottish enactment shall, with the necessary modifications, apply in relation to the giving of evidence in pursuance of this paragraph.
- (6) Notwithstanding the preceding provisions of this paragraph, in criminal proceedings the court may, for special cause, require oral evidence to be given of any matter of which evidence could ordinarily be given by means of a certificate under section 5(4) of the Civil Evidence Act 1968 or under the corresponding Scottish enactment as applied by sub-paragraph (5) above.
- (7) For the purposes of this paragraph—
- (a) section 13 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 is the corresponding Scottish enactment to section 5 of the Civil Evidence Act 1968 and the provisions of the said section 13 (which are identical in number with the provisions of the said section 5) shall apply accordingly;
- (b) section 14 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 is the corresponding Scottish enactment to subsections (1), (2), (3) and (5) of section 6 of the Civil Evidence Act 1968.
- (8) In the application of this paragraph to Northern Ireland, for references to any subsection of section 5 or 6 of the Civil Evidence Act 1968 there shall be substituted

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references to the same subsection of sections 2 or 3 of the Civil Evidence Act (Northern Ireland) 1971.

Furnishing of information and production of documents

- 8 (1) The Commissioners may by regulations make provision for requiring taxable persons to notify to the Commissioners such particulars of changes in circumstances relating to those persons or any business carried on by them as appear to the Commissioners required for the purpose of keeping the register kept under this Act up to date.
- (2) Every person who is concerned (in whatever capacity) in the supply of goods in the course or furtherance of any business or to whom such a supply is made shall—
- (a) furnish to the Commissioners, within such time and in such form as they may require, such information relating to the goods or to the supply as the Commissioners may specify; and
 - (b) upon demand made by an authorised person, produce or cause to be produced any documents relating to the goods or to the supply for inspection by the authorised person and permit him to take copies of or to make extracts from them or to remove them at a reasonable time and for a reasonable period.
- (3) Every person who is concerned (in whatever capacity) in the taxable supply of any services or to whom such a supply is made shall—
- (a) furnish to the Commissioners, within such time and in such form as they may require, such information relating to the consideration for the supply or to the name and address of the person to whom the supply is made as the Commissioners may specify; and
 - (b) upon demand made by an authorised person, produce or cause to be produced any documents relating to the consideration for inspection by the authorised person and permit him to take copies of or to make extracts from them or to remove them at a reasonable time and for a reasonable period.
- (4) For the purposes of this paragraph, the documents relating to the supply of goods, or to the consideration for the supply of services, in the course or furtherance of any business shall be taken to include any profit and loss account and balance sheet relating to that business.
- (5) Where any documents removed under the powers conferred by this paragraph are lost or damaged the Commissioners shall be liable to compensate their owner for any expenses reasonably incurred by him in replacing or repairing the documents.

Power to take samples

- 9 (1) An authorised person, if it appears to him necessary for the protection of the revenue against mistake or fraud, may at any time take, from the goods in the possession of any person who supplies goods, such samples as the authorised person may require with a view to determining how the goods or the materials of which they are made ought to be or to have been treated for the purposes of tax.
- (2) Any sample taken under this paragraph shall be disposed of and accounted for in such manner as the Commissioners may direct.
- (3) Where a sample is taken under this paragraph from the goods in any person's possession and is not returned to him within a reasonable time and in good condition

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the Commissioners shall pay him by way of compensation a sum equal to the cost of the sample to him or such larger sum as they may determine.

Entry and search of premises and persons

- 10 (1) For the purpose of exercising any powers under this Act an authorised person may at any reasonable time enter premises used in connection with the carrying on of a business.
- (2) Where an authorised person has reasonable cause to believe that any premises are used in connection with the supply of goods under taxable supplies and that goods to be so supplied are on those premises, he may at any reasonable time enter and inspect those premises and inspect any goods found on them.
- (3) If a justice of the peace or in Scotland a justice (within the meaning of section 462 of the Criminal Procedure (Scotland) Act 1975) is satisfied on information on oath that there is reasonable ground for suspecting that an offence in connection with the tax is being, has been or is about to be committed on any premises or that evidence of the commission of such an offence is to be found there, he may issue a warrant in writing authorising any authorised person to enter those premises, if necessary by force, at any time within 14 days from the time of the issue of the warrant and search them; and any person who enters the premises under the authority of the warrant may—
- (a) take with him such other persons as appear to him to be necessary ;
 - (b) seize and remove any documents or other things whatsoever found on the premises which he has reasonable cause to believe may be required as evidence for the purposes of proceedings in respect of such an offence ; and
 - (c) search or cause to be searched any person found on the premises whom he has reasonable cause to believe to have committed or be about to commit such an offence or to be in possession of any such documents or other things ;
- but no woman or girl shall be searched except by a woman.

Evidence by certificate, etc.

- 11 (1) A certificate of the Commissioners—
- (a) that a person was or was not, at any date, registered under this Act; or
 - (b) that any return required by or under this Act has not been made or had not been made at any date ; or
 - (c) that any tax shown as due in any return or assessment made in pursuance of this Act has not been paid ;
- shall be sufficient evidence of that fact until the contrary is proved.
- (2) A photograph of any document furnished to the Commissioners for the purposes of this Act and certified by them to be such a photograph shall be admissible in any proceedings, whether civil or criminal, to the same extent as the document itself.
- (3) Any document purporting to be a certificate under sub-paragraph (1) or (2) above shall be deemed to be such a certificate until the contrary is proved.

Priority of tax in bankruptcy, winding up, etc.

- 12 (1) There shall be included among the debts which—

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- (a) under section 33 of the Bankruptcy Act 1914 are to be paid in priority to all other debts in the distribution of the property of a bankrupt or person dying insolvent; or
 - (b) under section 118 of the Bankruptcy (Scotland) Act 1913 are to be paid in priority to all other debts in the division of a bankrupt's estate ; or
 - (c) under section 319 of the Companies Act 1948 are to be paid in priority to all other debts in the winding up of a company, or under section 94 of the Act of 1948 are on an appointment of a receiver on behalf of debenture holders or taking of possession by or on behalf of debenture holders to be paid in priority to any claim for principal or interest in respect of the debentures;
- the amount of any tax due at the relevant date from the bankrupt, debtor, person dying or company and having become due within the 12 months next before that date.
- (2) In this paragraph " the relevant date "—
- (a) in relation to section 33 of the Act of 1914, means the date of the receiving order or of the death, as the case may be ;
 - (b) in relation to section 118 of the Act of 1913, means the date mentioned in subsection (4) of that section;
 - (c) in relation to section 319 of the Act of 1948, has the meaning assigned to it by that section, and in relation to section 94 of the Act of 1948, means the date of the appointment of the receiver or taking of possession.
- (3) For the purposes of sub-paragraph (1) above, the tax having become due within the 12 months mentioned in that sub-paragraph in respect of any prescribed accounting period falling partly within and partly outside those 12 months shall be taken to be such part of the tax due for the whole of that accounting period as is proportionate to that part of that period falling within those 12 months.
- (4) In this paragraph the reference to tax due at the relevant date is a reference to tax which is then unpaid (whether payable before or after that date); and references to tax which has become due within the 12 months next before that date are references to tax (whether payable before or after that date) which is attributable to any prescribed accounting period falling—
- (a) wholly within those 12 months ; or
 - (b) subject to apportionment in accordance with sub-paragraph (3) above, partly within and partly outside those 12 months,
- including such tax assessed (whether before or after that date) under paragraph 4 above.