

SCHEDULES

SCHEDULE 3

VALUE ADDED TAX: ABOLITION OF FISCAL FRONTIERS ETC.

PART II

AMENDMENTS OF THE FINANCE ACT 1985 (C. 54)

Introduction

- 76 Chapter II of Part I of the Finance Act 1985 (enforcement provisions in relation to value added tax) shall be amended in accordance with the following provisions of this Part of this Schedule.

Civil penalties

- 77 (1) In subsection (2) of section 13 (tax evasion)—
- (a) in paragraph (b) (evasion by obtaining refund), after “under” there shall be inserted “section 20A,”; and
 - (b) after that paragraph there shall be inserted the following paragraph—
“(ba) a refund under any regulations made by virtue of section 8C(5) of that Act;”.
- (2) In subsection (3)(b) of that section, after “paragraphs (b)” there shall be inserted “(ba)”.
- 78 In section 14(5B)(b) (references to input tax for purposes of application of section in relation to certain public bodies), after “supplies” there shall be inserted “acquisitions”.
- 79 After section 14A there shall be inserted the following section—

“14B Inaccuracies in EC sales statements

- (1) Where—
- (a) an EC sales statement containing a material inaccuracy has been submitted by any person to the Commissioners;
 - (b) the Commissioners have, within six months of discovering the inaccuracy, issued that person with a written warning identifying that statement and stating that future inaccuracies might result in the service of a notice for the purposes of this section;
 - (c) another EC sales statement containing a material inaccuracy (“the second inaccurate statement”) has been submitted by that person to the Commissioners;

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- (d) the submission date for the second inaccurate statement fell within the period of two years beginning with the day after the warning was issued;
 - (e) the Commissioners have, within six months of discovering the inaccuracy in the second inaccurate statement, served that person with a notice identifying that statement and stating that future inaccuracies will attract a penalty under this section;
 - (f) yet another EC sales statement containing a material inaccuracy is submitted by that person to the Commissioners; and
 - (g) the submission date for the statement falling within paragraph (f) above is not more than two years after the service of the notice or the date on which any previous statement attracting a penalty was submitted by that person to the Commissioners,
- that person shall be liable to a penalty of £100 in respect of the statement so falling.
- (2) Subject to subsections (3) and (4) below, an EC sales statement shall be regarded for the purposes of this section as containing a material inaccuracy if, having regard to the matters required to be included in the statement, the inclusion or omission of any information from the statement is misleading in any material respect.
- (3) An inaccuracy contained in an EC sales statement shall not be regarded as material for the purposes of this section if—
- (a) the person who submitted the statement satisfies the Commissioners or, on appeal, a value added tax tribunal that there is a reasonable excuse for the inaccuracy; or
 - (b) at a time when he had no reason to believe that enquiries were being made by the Commissioners into his affairs, that person furnished the Commissioners with full information with respect to the inaccuracy.
- (4) Where, by reason of the submission of a statement containing a material inaccuracy by any person, that person is convicted of an offence (whether under the principal Act or otherwise), the inaccuracy to which the conviction relates shall be regarded for the purposes of this section as not being material.
- (5) Where the only statement identified in a warning or notice served for the purposes of subsection (1)(b) or (e) above is one which (whether by virtue of either or both of subsections (3) and (4) above or otherwise) is regarded as containing no material inaccuracies, that warning or notice shall be deemed not to have been issued or served for those purposes.
- (6) In this section—
- “EC sales statement” means any statement which is required to be submitted to the Commissioners in accordance with regulations under paragraph 2(2A) of Schedule 7 to the principal Act; and
- “submission date”, in relation to such a statement, means whichever is the earlier of the last day for the submission of the statement to the Commissioners in accordance with those regulations and the day on which it was in fact submitted to the Commissioners.”

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- 80 (1) In subsection (1) of section 15 (penalties for breach of regulatory provisions)—
- (a) in paragraph (a), after “principal Act” there shall be inserted “with paragraph 3 of Schedule 1A to that Act or with paragraph 3 or 8(2) of Schedule 1B to that Act”;
 - (b) after paragraph (a) there shall be inserted the following paragraph—
 - “(aa) a person fails to comply with a requirement of regulations under paragraph 2(2B) of Schedule 7 to the principal Act (notification of acquisition of excise duty goods or new means of transport), or”.
- (2) In subsection (3) of that section (meaning of “relevant tax”)—
- (a) after “means” there shall be inserted “(subject to subsections (3B) and (3C) below)”;
 - (b) in paragraph (a), after “principal Act” there shall be inserted “with paragraph 3 of Schedule 1A to that Act or with paragraph 3 of Schedule 1B to that Act”;
 - (c) in paragraph (b), after “principal Act” there shall be inserted “or with sub-paragraph (2) of paragraph 8 of Schedule 1B to that Act”;
 - (d) after paragraph (b) there shall be inserted the following paragraph—
 - “(ba) in relation to a person’s failure to comply with a requirement of regulations under paragraph 2(2B) of Schedule 7 to the principal Act, the tax on the acquisition to which the failure relates; and”.
- (3) In subsection (3A) of that section (the specified percentage)—
- (a) in paragraph (a), after “nine months” there shall be inserted “or where the relevant tax is given by paragraph (ba) of that subsection and the failure in question did not continue for more than three months”; and
 - (b) in paragraph (b), for “so given” there shall be substituted “given by paragraph (a) or (b) of subsection (3) above” and after “eighteen months” there shall be inserted “or where that tax is given by paragraph (ba) of that subsection and the failure in question continued for more than three months but did not continue for more than six months”.
- (4) After subsection (3A) of that section there shall be inserted the following subsections—
- “(3B) Where—
- (a) the amount of tax which (apart from this subsection) would be treated for the purposes of subsection (1) above as the relevant tax in relation to a failure mentioned in subsection (3)(a) above includes tax on an acquisition of goods from another member State; and
 - (b) the Commissioners are satisfied that value added tax has been paid under the law of another member State on the supply in pursuance of which those goods were acquired,
- then, in the determination of the amount of the relevant tax in relation to that failure, an allowance shall be made for the value added tax paid under the law of that member State; and the amount of the allowance shall not exceed the amount of tax due on the acquisition but shall otherwise be equal to the amount of value added tax which the Commissioners are satisfied has been paid on that supply under the law of that member State.
- (3C) Where—

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- (a) the amount of tax which (apart from this subsection) would be treated for the purposes of subsection (1) above as the relevant tax in relation to a failure mentioned in subsection (3)(a) above includes tax chargeable by virtue of section 6(2B) of the principal Act on any supply; and
- (b) the Commissioners are satisfied that value added tax has been paid under the law of another member State on that supply,

then, in the determination of the amount of the relevant tax in relation to that failure, an allowance shall be made for the tax paid under the law of the other member State; and the amount of the allowance shall not exceed the amount of tax chargeable by virtue of section 6(2B) on that supply but shall otherwise be equal to the amount of tax which the Commissioners are satisfied has been paid on that supply under the law of that other member State.”

81 In section 17(1) (penalties for breach of regulatory provisions)—

- (a) in paragraph (a), after “principal Act” there shall be inserted “paragraph 5 of Schedule 1A to that Act or paragraph 5 of Schedule 1B to that Act”;
- (b) after paragraph (a) there shall be inserted the following paragraph—
 - “(aa) any regulations made under section 32A of the principal Act requiring a tax representative, for the purposes of registration, to notify the Commissioners that his appointment has taken effect or has ceased to have effect, or”.

82 After section 17 there shall be inserted the following section—

“17A Penalties for failure to submit EC sales statement

- (1) If by the last day on which a person is required in accordance with regulations under the principal Act to submit an EC sales statement for any prescribed period to the Commissioners, the Commissioners have not received that statement, that person shall be regarded for the purposes of this section as being in default in relation to that statement until it is submitted.
- (2) Where any person is in default in respect of any EC sales statement the Commissioners may serve notice on him stating—
 - (a) that he is in default in relation to the statement specified in the notice;
 - (b) that (subject to the liability mentioned in paragraph (d) below) no action will be taken if he remedies the default before the end of the period of fourteen days beginning with the day after the service of the notice;
 - (c) that if the default is not so remedied, that person will become liable in respect of his default to penalties calculated on a daily basis from the end of that period in accordance with the following provisions of this section; and
 - (d) that that person will become liable, without any further notices being served under this section, to penalties under this section if he commits any more defaults before a period of twelve months has elapsed without his being in default.
- (3) Where a person has been served with a notice under subsection (2) above, he shall become liable under this section—

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- (a) if the statement to which the notice relates is not submitted before the end of the period of fourteen days beginning with the day after the service of the notice, to a penalty in respect of that statement; and
 - (b) whether or not that statement is so submitted, to a penalty in respect of any EC sales statement the last day for the submission of which is after the service and before the expiry of the notice and in relation to which he is in default.
- (4) For the purposes of this section a notice served on any person under subsection (2) above shall continue in force—
 - (a) except in a case falling within paragraph (b) below, until the end of the period of twelve months beginning with the day after the service of the notice; and
 - (b) where at any time in that period of twelve months that person is in default in relation to any EC sales statement other than one in relation to which he was in default when the notice was served, until a period of twelve months has elapsed without that person becoming liable to a penalty under this section in respect of any EC sales statement.
- (5) The amount of any penalty to which a person who has been served with a notice under subsection (2) above is liable under this section shall be whichever is the greater of £50 and—
 - (a) in the case of a liability in respect of the statement to which the notice relates, a penalty of £5 for every day for which the default continues after the end of the period of fourteen days mentioned in subsection (3)(a) above, up to a maximum of one hundred days; and
 - (b) in the case of a liability in respect of any other statement, a penalty of the relevant amount for every day for which the default continues, up to a maximum of one hundred days.
- (6) In subsection (5)(b) above “the relevant amount”, in relation to a person served with a notice under subsection (2) above, means—
 - (a) £5, where (that person not having been liable to a penalty under this section in respect of the statement to which the notice relates) the statement in question is the first statement in respect of which that person has become liable to a penalty while the notice has been in force;
 - (b) £10, where the statement in question is the second statement in respect of which he has become so liable while the notice has been in force (counting the statement to which the notice relates where he has become liable in respect of that statement); and
 - (c) £15, in any other case.
- (7) If a person who, apart from this subsection, would be liable to a penalty under this section satisfies the Commissioners or, on appeal a value added tax tribunal, that—
 - (a) an EC sales statement has been submitted at such a time and in such a manner that it was reasonable to expect that it would be received by the Commissioners within the appropriate time limit; or
 - (b) there is a reasonable excuse for such a statement not having been dispatched,

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he shall be treated for the purposes of this Act as not having been in default in relation to that statement and, accordingly, he shall not be liable to any penalty under this section in respect of that statement and any notice served under subsection (2) above exclusively in relation to the failure to submit that statement shall have no effect for the purposes of this section.

- (8) If it appears to the Treasury that there has been a change in the value of money since the coming into force of this section or, as the case may be, the last occasion when the sums specified in subsections (5) and (6) above were varied, they may by order substitute for the sums for the time being specified in those subsections such other sums as appear to them to be justified by the change; but an order under this section shall not apply to any default in relation to a statement the last day for the submission of which was before the order comes into force.
- (9) A statutory instrument containing an order under subsection (8) above shall be subject to annulment in pursuance of a resolution of the House of Commons.
- (10) In this section “EC sales statement” means any statement which is required to be submitted to the Commissioners in accordance with regulations under paragraph 2(2A) of Schedule 7 to the principal Act.”

Interest on tax

- 83 In section 18(1)(c) (interest recovered or recoverable on assessment), after “principal Act” there shall be inserted “or under paragraph 8 of Schedule 1B to that Act”.

Assessments

- 84 (1) In subsection (1) of section 21 (assessment to penalty), for “17”, in each place where it occurs, there shall be substituted “17A”.
- (2) After subsection (4) of that section there shall be inserted the following subsection—
- “(4A) An assessment to a penalty under section 15 above by virtue of subsection (1) (aa) of that section may be combined with an assessment under paragraph 4A of Schedule 7 to the principal Act and the two assessments notified together but the amount of the penalty shall be separately identified in the notice.”
- (3) In subsection (5) of that section (notice of assessment while penalty period continuing), after “section 17” there shall be inserted “or section 17A”.
- (4) In subsection (6) of that section (remedying of failure etc. after assessment)—
- (a) after the words “section 17”, in the first place where they occur, there shall be inserted “or section 17A”;
- (b) in paragraph (a), for “falling within section 17(1) above” there shall be substituted “or default falling within section 17(1) or section 17A(1) above”; and
- (c) in the words after paragraph (b), after “section 17” there shall be inserted “section 17A”.
- 85 (1) In subsection (1) of section 22 (time limits for assessments)—

- (a) in paragraph (a), after “paragraph 4” there shall be inserted “or paragraph 4A”; and
 - (b) after “importation” there shall be inserted “or acquisition”.
- (2) In subsection (2) of that section, after “beginning” there shall be inserted—
- “
 - (a) in the case of a penalty under section 14B or section 17A above, with the time when facts sufficient in the opinion of the Commissioners to indicate, as the case may be—
 - (i) that the statement in question contained a material inaccuracy; or
 - (ii) that there had been a default within the meaning of section 17A(1) above, came to the Commissioners knowledge; and
 - (b) in any other case, with the time”.
- (3) In subsection (7) of that section, after “paragraph 4” there shall be inserted “or subparagraph (2)(b) of paragraph 4A”.
- 86 In section 33(5)(a) (interpretation and construction of Chapter II), for “17” there shall be substituted “17A”.