

Status: Point in time view as at 30/07/2020.

Changes to legislation: There are currently no known outstanding effects for the Value Added Tax Act 1994, PART 4. (See end of Document for details)

SCHEDULES

[^{F1}SCHEDULE 3BA U.K.]

ELECTRONIC, TELECOMMUNICATION AND BROADCASTING SERVICES: UNION SCHEME

Textual Amendments

- F1** Sch. 3BA inserted (with effect in accordance with Sch. 22 paras. 23, 24 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 22 para. 1](#)

PART 4 U.K.

PERSONS REGISTERED UNDER NON-UK SPECIAL SCHEMES

Meaning of “non-UK special scheme”

- 14 (1) In this Schedule “non-UK special scheme” means any provision of the law of a member State other than the United Kingdom which implements Section 3 of Chapter 6 of Title XII of Directive [2006/112/EC](#).
- (2) In relation to a non-UK special scheme, references to the “administering member State” are to the member State under whose law the scheme is established.

Exemption from requirement to register under this Act

- 15 (1) A participant in a non-UK special scheme is not required to be registered under this Act by virtue of making supplies of scheme services in respect of which the participant is required to make returns under that scheme.
- (2) Sub-paragraph (1) overrides any contrary provision in this Act.
- (3) Where a participant in a non-UK special scheme who is not registered under this Act (“the unregistered person”) makes relevant supplies, it is to be assumed for all purposes of this Act relating to the determination of—
- (a) whether or not VAT is chargeable under this Act on those supplies,
 - (b) how much VAT is chargeable under this Act on those supplies,
 - (c) the time at which those supplies are treated as taking place, and
 - (d) any other matter that the Commissioners may specify by regulations,
- that the unregistered person is registered under this Act.
- (4) Supplies of scheme services made by the unregistered person are “relevant supplies” if—
- (a) the value of the supplies must be accounted for in a return required to be made by the unregistered person under the non-UK special scheme, and
 - (b) the supplies are treated as made in the United Kingdom.

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De-registration

- 16 (1) Sub-paragraph (2) applies where a person who is registered under Schedule 1A—
- (a) satisfies the Commissioners that the person intends to apply for identification under a non-UK special scheme, and
 - (b) asks the Commissioners to cancel the person's registration under Schedule 1A.
- (2) The Commissioners may cancel the person's registration under Schedule 1A with effect from—
- (a) the day on which the request is made, or
 - (b) a later date agreed between the person and the Commissioners.

Scheme participants who are also registered under this Act

- 17 (1) A person who—
- (a) is a participant in a non-UK special scheme, and
 - (b) is also registered, or required to be registered, under this Act,
- is not required to discharge any obligation placed on the person as a taxable person, so far as the obligation relates to relevant supplies.
- (2) The reference in sub-paragraph (1) to an obligation placed on the person as a taxable person is to an obligation—
- (a) to which the person is subject under or by virtue of this Act, and
 - (b) to which the person would not be subject if the person were neither registered nor required to be registered under this Act.
- (3) A supply made by a participant in a non-UK special scheme is a “relevant supply” if—
- (a) the value of the supply must be accounted for in a return required to be made by the participant under the non-UK special scheme, and
 - (b) the supply is treated as made in the United Kingdom.
- (4) The Commissioners may by regulations specify cases in relation to which sub-paragraph (1) is not to apply.
- (5) In section 25(2) (deduction of input tax from output tax by taxable person) the reference to output tax that is due from the taxable person does not include any VAT that the taxable person is liable under a non-UK special scheme to pay to the tax authorities for the administering member State.

Modifications etc. (not altering text)

- C1** Sch. 3BA para. 17(1) excluded by S.I. 1995/2518, Pt. 27, reg. 223 (as inserted (1.1.2015) by [The Value Added Tax \(Amendment\) \(No.3\) Regulations 2014 \(S.I. 2014/2430\)](#), regs. 1(3), **11**)

Value of supplies to connected persons

- 18 In paragraph 1 of Schedule 6 (valuation: supply to connected person at less than market value) the reference to a supply made by a taxable person is to be read as including a supply of scheme services that is made by a participant in a non-UK special scheme (and is treated as made in the United Kingdom).

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Refund of VAT on supplies of goods and services supplied to scheme participant

- 19 The power of the Commissioners to make regulations under section 39 (repayment of VAT to those in business overseas) includes power to make provision for giving effect to the second sentence of Article 369j of Directive 2006/112/EC (which provides for VAT on certain supplies to participants in special accounting schemes to be refunded in accordance with Directive 2008/9/EC).

Assessments: general modifications of section 73

- 20 (1) For the purposes of this Schedule, section 73 (assessments: incorrect returns etc) is to be read as if—
- (a) the reference in subsection (1) of that section to returns required under this Act included relevant non-UK returns, and
 - (b) references in that section to a prescribed accounting period included a tax period.
- (2) See also the modifications in paragraph 21.
- (3) In this Schedule “relevant non-UK return” means a non-UK return (see paragraph 38(1)) that is required to be made (wholly or partly) in respect of supplies of scheme services that are treated as made in the United Kingdom.

Assessment in connection with increase in consideration

- 21 (1) Sub-paragraphs (2) to (4) make modifications of sections 73 and 76 which—
- (a) have effect for the purposes of this Schedule, and
 - (b) are in addition to any other modifications of those sections made by this Schedule.
- (2) Section 73 has effect as if the following were inserted after subsection (3) of that section—
- “(3A) Where a person has failed to make an amendment or notification that the person is required to make under paragraph 31 of Schedule 3BA in respect of an increase in the consideration for a UK supply (as defined in paragraph 31(7)), the Commissioners may assess the amount of VAT due from the person as a result of the increase to the best of their judgement and notify it to the person.
- (3B) An assessment under subsection (3A)—
- (a) is of VAT due for the tax period mentioned in paragraph 31(1)(a) of Schedule 3BA;
 - (b) must be made within the time limits provided for in section 77, and must not be made after the later of—
 - (i) 2 years after the end of the tax period referred to in paragraph 31(1)(a);
 - (ii) one year after evidence of facts sufficient in the opinion of the Commissioners to justify making the assessment comes to their knowledge.
- (3C) Subject to section 77, where further evidence such as is mentioned in subsection (3B)(b)(ii) comes to the Commissioners' knowledge after they

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have made an assessment under subsection (3A), another assessment may be made under that subsection, in addition to any earlier assessment.”

- (3) The reference in section 73(9) to subsection (1) of that section is taken to include a reference to section 73(3A) (as inserted by sub-paragraph (2)).
- (4) Section 76 (assessment of amounts due by way of interest etc) is to be read as if the reference in subsection (5) of that section to section 73(1) included a reference to section 73(3A) (as inserted by sub-paragraph (2)).

Assessments: consequential modifications

- 22 References to prescribed accounting periods in the following provisions are to be read in accordance with the modifications made by paragraphs 20 and 21—
 - (a) section 74 (interest on VAT recovered or recoverable by assessment);
 - (b) section 76 (assessment of amounts due by way of penalty, interest or surcharge);
 - (c) section 77 (assessment: time limits).

Deemed amendments of relevant non-UK returns

- 23 (1) Where a person who has made a relevant non-UK return makes a claim under paragraph 29(7)(b) (overpayments) in relation to an error in the return, the relevant non-UK return is taken for the purposes of this Act to have been amended by the information in the claim.
- (2) Where a person who has made a relevant non-UK return gives the Commissioners a notice relating to the return under paragraph 31(2)(b) (increase or decrease in consideration), the relevant non-UK return is taken for the purposes of this Act to have been amended by that information.
- (3) Where (in a case not falling within sub-paragraph (1) or (2)) a person who has made a relevant non-UK return notifies the Commissioners (after the expiry of the period during which the non-UK return may be amended under Article 61 of the Implementing Regulation) of a change that needs to be made to the return to correct an error, or rectify an omission, in it, the relevant non-UK return is taken for the purposes of this Act to have been amended by that information.
- (4) The Commissioners may by regulations—
 - (a) specify within what period and in what form and manner notice is to be given under sub-paragraph (3);
 - (b) require notices to be supported by documentary evidence described in the regulations.

Interest on VAT: “reckonable date”

- 24 (1) Sub-paragraph (2) states the “reckonable date” for the purposes of section 74(1) and (2) for any case where an amount carrying interest under that section—
 - (a) is an amount assessed under section 73(2) (refunds etc) in reliance on paragraph 20, or that could have been so assessed, and
 - (b) was correctly paid or credited to the person, but would not have been paid or credited to the person had the facts been as they later turn out to be.

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- (2) The “reckonable date” is the first day after the end of the tax period in which the events occurred as a result of which the Commissioners were authorised to make the assessment (that was or could have been made) under section 73(2).
- (3) Sub-paragraph (4) states the “reckonable date” for any other case where an amount carrying interest under section 74 is assessed under section 74(1) or (2) in reliance on paragraph 20, or could have been so assessed.
- (4) The “reckonable date” is taken to be the latest date by which a non-UK return was required to be made for the tax period to which the amount assessed relates.
- (5) Where section 74(1) or (2) (interest on VAT recovered or recoverable by assessment) applies in relation to an amount assessed under section 73(3A) (as inserted by paragraph 21(2)), the “reckonable date” for the purposes of section 74(1) or (2) is taken to be the day after the end of the tax period referred to in paragraph 31(2).

Default surcharge: notice of special surcharge period

- 25
- (1) A person who is required to make a relevant non-UK return for a tax period is regarded for the purposes of this paragraph and paragraph 26 as being in default in respect of that period if either—
 - (a) conditions 1A and 2A are met, or
 - (b) conditions 1B and 2B are met;(but see also paragraph 27).
 - (2) For the purposes of sub-paragraph (1)(a)—
 - (a) condition 1A is that the tax authorities for the administering member State have not received the return by the deadline for submitting it;
 - (b) condition 2A is that those tax authorities have, in accordance with Article 60a of the Implementing Regulation, issued a reminder of the obligation to submit the return.
 - (3) For the purposes of sub-paragraph (1)(b)—
 - (a) condition 1B is that, by the deadline for submitting the return, the tax authorities for the administering member State have received the return but have not received the amount of VAT shown on the return as payable by the person in respect of the tax period;
 - (b) condition 2B is that those tax authorities have, in accordance with Article 60a of the Implementing Regulation, issued a reminder of the VAT outstanding.
 - (4) The Commissioners may serve on a person who is in default in respect of a tax period a notice (a “special surcharge liability notice”) specifying a period—
 - (a) ending on the first anniversary of the last day of that tax period, and
 - (b) beginning on the date of the notice.
 - (5) A period specified under sub-paragraph (4) is a “special surcharge period”.
 - (6) If a special surcharge liability notice is served in respect of a tax period which ends at or before the end of an existing special surcharge period, the special surcharge period specified in that notice must be expressed as a continuation of the existing special surcharge period (so that the existing period and its extension are regarded as a single special surcharge period).

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Further default after service of notice

- 26 (1) If a person on whom a special surcharge liability notice has been served—
- (a) is in default in respect of a tax period ending within the special surcharge period specified in (or extended by) that notice, and
 - (b) has outstanding special scheme VAT for that tax period,
- the person is to be liable to a surcharge of the amount given by sub-paragraph (2).
- (2) The surcharge is equal to whichever is the greater of—
- (a) £30, and
 - (b) the specified percentage of the person's outstanding special scheme VAT for the tax period.
- (3) The specified percentage depends on whether the tax period is the first, second or third etc in the default period in respect of which the person is in default and has outstanding special scheme VAT, and is—
- (a) for the first such tax period, 2%;
 - (b) for the second such tax period, 5%;
 - (c) for the third such tax period, 10%;
 - (d) for each such tax period after the third, 15%.
- (4) “Special scheme VAT”, in relation to a person, means VAT that the person is liable to pay to the tax authorities for the administering member State under a non-UK special scheme in respect of supplies of scheme services treated as made in the United Kingdom.
- (5) A person has “outstanding special scheme VAT” for a tax period if some or all of the special scheme VAT for which the person is liable in respect of that period has not been paid by the deadline for the person to submit a non-UK return for that period (and the amount unpaid is referred to in sub-paragraph (2)(b) as “the person's outstanding special scheme VAT” for the tax period).

Default surcharge: exceptions for reasonable excuse etc

- 27 (1) A person who would otherwise have been liable to a surcharge under paragraph 26(1) is not to be liable to the surcharge if the person satisfies the Commissioners or, on appeal, the tribunal that, in the case of a default which is material to the surcharge—
- (a) the non-UK return or, as the case may be, the VAT shown on that return, was despatched at such a time and in such manner that it was reasonable to expect that it would be received by the tax authorities for the administering member State within the appropriate time limit, or
 - (b) there is a reasonable excuse for the return or the VAT not having been so despatched.
- (2) Where sub-paragraph (1) applies to a person—
- (a) the person is treated as not having been in default in respect of the tax period in question, and
 - (b) accordingly, any special surcharge liability notice the service of which depended on that default is regarded as not having been served.
- (3) A default is “material” to a surcharge if—
- (a) it is the default which gives rise to the surcharge, under paragraph 26(1), or

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- (b) it is a default which was taken into account in the service of the special surcharge liability notice on which the surcharge depends and the person concerned has not previously been liable to a surcharge in respect of a tax period ending within the special surcharge period specified in or extended by that notice.
- (4) A default is left out of account for the purposes of paragraphs 25(4) and 26(1) if—
 - (a) the conduct by virtue of which the person is in default is also conduct falling within section 69(1) (breaches of regulatory provisions), and
 - (b) by reason of that conduct the person concerned is assessed to a penalty under that section.
- (5) If the Commissioners, after consultation with the Treasury, so direct, a default in respect of a tax period specified in the direction is to be left out of account for the purposes of paragraphs 25(4) and 26(1).
- (6) Section 71(1) (meaning of “reasonable excuse”) applies for the purposes of this paragraph as it applies for the purposes of sections 59 to 70.

Interest in certain cases of official error

- 28 (1) Section 78 (interest in certain cases of official error) applies as follows in relation to a case where, due to an error on the part of the Commissioners—
- (a) a person has accounted under a non-UK special scheme for an amount by way of UKVAT that was not UKVAT due from the person, and as a result the Commissioners are liable under paragraph 29 to pay (or repay) an amount to the person, or
 - (b) (in a case not falling within paragraph (a)), a person has paid, in accordance with an obligation under a non-UK special scheme, an amount by way of UKVAT that was not UKVAT due from the person and which the Commissioners are in consequence liable to repay to the person.
- (2) Section 78 has effect as if the condition in section 78(1)(a) were met in relation to that person.
- (3) In the application of section 78 as a result of this paragraph, section 78(12)(b) is read as providing that any reference in that section to a return is to a return required to be made under a non-UK special scheme.
- (4) In section 78, as it applies as a result of this section, “output tax” has the meaning that that expression would have if the reference in section 24(2) to a “taxable person” were to a “person”.

Overpayments

- 29 (1) A person may make a claim if the person—
- (a) has made a non-UK return for a tax period relating wholly or partly to supplies of scheme services treated as made in the United Kingdom,
 - (b) has accounted to the tax authorities for the administering member State for VAT in respect of those supplies, and
 - (c) in doing so has brought into account as UKVAT due to those authorities an amount (“the overpaid amount”) that was not UKVAT due to them.

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- (2) A person may make a claim if the person has, as a participant in a non-UK special scheme, paid (to the tax authorities for the administering member State or to the Commissioners) an amount by way of UKVAT that was not UKVAT due (“the overpaid amount”), otherwise than in the circumstances mentioned in sub-paragraph (1)(c).
- (3) A person who is or has been a participant in a non-UK special scheme may make a claim if the Commissioners—
- (a) have assessed the person to VAT for a tax period, and
 - (b) in doing so, have brought into account as VAT an amount (“the amount not due”) that was not VAT due.
- (4) Where a person makes a claim under sub-paragraph (1) or (2), the Commissioners must repay the overpaid amount to the person.
- (5) Where a person makes a claim under sub-paragraph (3), the Commissioners must credit the person with the amount not due.
- (6) Where—
- (a) as a result of a claim under sub-paragraph (3) an amount is to be credited to a person, and
 - (b) after setting any sums against that amount under or by virtue of this Act, some or all of the amount remains to the person's credit,
- the Commissioners must pay (or repay) to the person so much of the amount as remains to the person's credit.
- (7) The reference in sub-paragraph (1) to a claim is to a claim made—
- (a) by correcting, in accordance with Article 61 of the Implementing Regulation, the error in the non-UK return mentioned in sub-paragraph (1)(a), or
 - (b) (after the expiry of the period during which the non-UK return may be amended under Article 61) to the Commissioners.
- (8) Sub-paragraphs (1) and (2) do not require any amount to be repaid except so far as that is required by Article 63 of the Implementing Regulation.

Overpayments: supplementary

- 30 (1) In section 80—
- (a) subsections (3) to (3C) (unjust enrichment), and
 - (b) subsections (4A), (4C) and (6) (recovery by assessment of amounts wrongly credited),
- have effect as if a claim under paragraph 29(1) were a claim under section 80(1), a claim under paragraph 29(2) were a claim under section 80(1B) and a claim under paragraph 29(3) were a claim under section 80(1A).
- (2) In section 80(3) to (3C), (4A), (4C) and (6), as applied by sub-paragraph (1)—
- (a) references to the crediting of amounts are to be read as including the payment of amounts;
 - (b) references to a prescribed accounting period include a tax period.
- (3) The Commissioners are not liable to repay the overpaid amount on a claim made—
- (a) under paragraph 29(2), or

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- (b) as mentioned in paragraph 29(7)(b),
if the claim is made more than 4 years after the relevant date.
- (4) On a claim made under paragraph 29(3), the Commissioners are not liable to credit the amount not due if the claim is made more than 4 years after the relevant date.
- (5) The “relevant date” is—
 - (a) in the case of a claim under paragraph 29(1), the end of the tax period mentioned in paragraph 29(1)(a), except in the case of a claim resulting from an incorrect disclosure;
 - (b) in the case of a claim under paragraph 29(1) resulting from an incorrect disclosure, the end of the tax period in which the disclosure was made;
 - (c) in the case of a claim under paragraph 29(2), the date on which the payment was made;
 - (d) in the case of a claim under paragraph 29(3), the end of the quarter in which the assessment was made.
- (6) A person makes an “incorrect disclosure” where—
 - (a) the person discloses to the tax authorities in question (whether the Commissioners or the tax authorities for the administering member State) that the person has not brought into account for a tax period an amount of UKVAT due for the period (“the disclosed amount”),
 - (b) the disclosure is made in a later tax period, and
 - (c) some or all of the disclosed amount is not in fact VAT due.

Increase or decrease in consideration for a supply

- 31
- (1) This paragraph applies where—
 - (a) a person makes a non-UK return for a tax period (“the affected tax period”) relating (wholly or partly) to a UK supply, and
 - (b) after the return has been made the amount of the consideration for the UK supply increases or decreases.
 - (2) The person must, in the tax period in which the increase or decrease is accounted for in the person's business accounts—
 - (a) amend the non-UK return to take account of the increase or decrease, or
 - (b) (if the period during which the person is entitled under Article 61 of the Implementing Regulation to amend the non-UK return has expired) notify the Commissioners of the adjustment needed to the figures in the non-UK return because of the increase or decrease.
 - (3) Where the change to which an amendment or notice under sub-paragraph (2) relates is an increase in the consideration for a UK supply, the person must pay to the tax authorities for the administering member State (in accordance with Article 62 of the Implementing Regulation) or, in a case falling within sub-paragraph (2)(b), the Commissioners, the difference between—
 - (a) the amount of VAT that was chargeable on the supply before the increase in consideration, and
 - (b) the amount of VAT that is chargeable in respect of the whole of the increased consideration for the supply.

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- (4) Where the change to which an amendment or notice under sub-paragraph (2) relates is a decrease in the consideration for a UK supply, the amendment or notice has effect as a claim; and where a claim is made the Commissioners must repay any VAT paid by the person that would not have been VAT due from the person had the consideration for the supply always been the decreased amount.
- (5) The Commissioners may by regulations specify—
- (a) the latest time by which, and the form and manner in which, a claim or other notice under sub-paragraph (2)(b) must be given;
 - (b) the latest time by which, and the form in which, a payment under sub-paragraph (3) must be made in a case within sub-paragraph (2)(b).
- (6) A payment made under sub-paragraph (3) in a case within sub-paragraph (2)(a) must be made before the end of the tax period referred to in sub-paragraph (2).
- (7) In this paragraph “UK supply” means a supply of scheme services that is treated as made in the United Kingdom.

Bad debts

- 32 Where a participant in a non-UK special scheme—
- (a) has submitted a non-UK return to the tax authorities for the administering member State, and
 - (b) amends the return to take account of the writing-off as a bad debt of the whole or part of the consideration for a supply of scheme services that is treated as made in the United Kingdom,
- the amending of the return may be treated as the making of a claim to the Commissioners for the purposes of section 36(2) (bad debts: claim for refund of VAT).

Records relating to supplies in UK

- 33 (1) A person who is a participant in a non-UK special scheme must keep records of the transactions which the person enters into for the purposes of, or in connection with, relevant supplies.
- (2) A supply made by a participant in a non-UK special scheme is a “relevant supply” if—
- (a) the value of the supply must be accounted for in a return required to be made by the participant under the non-UK special scheme, and
 - (b) the supply is treated as made in the United Kingdom.
- (3) The records must be sufficiently detailed to enable the Commissioners to determine whether any special scheme return submitted in respect of the supplies is correct.
- (4) The records must be made available on request to the Commissioners by electronic means.
- (5) Records must be kept for 10 years beginning with the 1 January following the date on which the transaction was entered into.

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Penalties for errors: disclosure

- 34 Where a person corrects a non-UK return in a way that constitutes telling the tax authorities for the administering member State about—
- (a) an inaccuracy in the return,
 - (b) a supply of false information, or
 - (c) a withholding of information,
- the person is regarded as telling HMRC about that for the purposes of paragraph 9 of Schedule 24 to the Finance Act 2007.

Set-offs

- 35 Where a participant in a non-UK special scheme is liable to pay UKVAT to the tax authorities for the administering member State in accordance with the scheme, the UKVAT is regarded for the purposes of section 130(6) of the Finance Act 2008 (set-off: England, Wales and Northern Ireland) as payable to the Commissioners.]

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