



# Value Added Tax Act 1994

## 1994 CHAPTER 23

### PART IV

#### ADMINISTRATION, COLLECTION AND ENFORCEMENT

##### *Assessments of VAT and other payments due*

#### **76 Assessment of amounts due by way of penalty, interest or surcharge.**

(1) Where any person is liable—

- (a) to a surcharge under section 59<sup>[F1]</sup>, section 59A, paragraph 16F of Schedule 3B or paragraph 26 of Schedule 3BA,] or
- (b) to a penalty under any of sections 60 <sup>[F2]</sup>to <sup>[F3]</sup>69B]], or
- (c) for interest under section 74, <sup>[F4]</sup>or
- (d) a penalty under regulations made under section 135 of the Finance Act 2002 (mandatory electronic filing of returns) in connection with VAT,]

the Commissioners may, subject to subsection (2) below, assess the amount due by way of penalty, interest or surcharge, as the case may be, and notify it to him accordingly; and the fact that any conduct giving rise to a penalty under any of sections 60 <sup>[F2]</sup>to <sup>[F3]</sup>69B]]<sup>[F5]</sup> or the regulations] may have ceased before an assessment is made under this section shall not affect the power of the Commissioners to make such an assessment.

(2) Where a person is liable to a penalty under section 69 for any failure to comply with such a requirement as is referred to in subsection (1)(c) to (f) of that section, no assessment shall be made under this section of the amount due from him by way of such penalty unless, within the period of 2 years preceding the assessment, the Commissioners have issued him with a written warning of the consequences of a continuing failure to comply with that requirement.

(3) In the case of the penalties, interest and surcharge referred to in the following paragraphs, the assessment under this section shall be of an amount due in respect of the prescribed accounting period which in the paragraph concerned is referred to as “the relevant period”—

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*Changes to legislation: There are currently no known outstanding effects for the Value Added Tax Act 1994, Section 76. (See end of Document for details)*

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- (a) in the case of a surcharge under section 59 [<sup>F6</sup>or 59A], the relevant period is the prescribed accounting period in respect of which the taxable person is in default and in respect of which the surcharge arises;
- (b) in the case of a penalty under section 60 relating to the evasion of VAT, the relevant period is the prescribed accounting period for which the VAT evaded was due;
- (c) in the case of a penalty under section 60 relating to the obtaining of the payment of a VAT credit, the relevant period is the prescribed accounting period in respect of which the payment was obtained;
- (d) in the case of a penalty under section 63, the relevant period is the prescribed accounting period for which liability to VAT was understated or, as the case may be, for which entitlement to a VAT credit was overstated; <sup>F7</sup>...
- (e) in the case of interest under section 74, the relevant period is the prescribed accounting period in respect of which the VAT (or amount assessed as VAT) was due [<sup>F8</sup>], and
- (f) in the case of a penalty under regulations made under section 135 of the Finance Act 2002, the relevant period is the prescribed accounting period in respect of which the contravention of, or failure to comply with, the regulations occurred].

[<sup>F9</sup>(3A) In the case of a surcharge under paragraph 16F of Schedule 3B or paragraph 26 of Schedule 3BA, the assessment under this section is of an amount due in respect of “the relevant period”, that is to say, the tax period (see section 76A) in respect of which the person is in default and in respect of which the surcharge arises.]

- (4) In any case where the amount of any penalty, interest or surcharge falls to be calculated by reference to VAT which was not paid at the time it should have been and that VAT (or the supply which gives rise to it) cannot be readily attributed to any one or more prescribed accounting periods, it shall be treated for the purposes of this Act as VAT due for such period or periods as the Commissioners may determine to the best of their judgment and notify to the person liable for the VAT and penalty, interest or surcharge.
- (5) Where a person is assessed under this section to an amount due by way of any penalty, interest or surcharge falling within subsection (3) [<sup>F10</sup>or (3A)] above and is also assessed under section 73(1), (2) [<sup>F11</sup>, (7), (7A) or (7B)] for the prescribed accounting period which is the relevant period under subsection (3) [<sup>F10</sup>or (3A)] above, the assessments may be combined and notified to him as one assessment, but the amount of the penalty, interest or surcharge shall be separately identified in the notice.
- (6) An assessment to a penalty under section 67 by virtue of subsection (1)(b) of that section may be combined with an assessment under section 75 and the 2 assessments notified together but the amount of the penalty shall be separately identified in the notice.
- (7) In the case of an amount due by way of penalty under section 66 or 69 or interest under section 74—
  - (a) a notice of assessment under this section shall specify a date, being not later than the date of the notice, to which the aggregate amount of the penalty which is assessed or, as the case may be, the amount of interest is calculated; and
  - (b) if the penalty or interest continues to accrue after that date, a further assessment or assessments may be made under this section in respect of amounts which so accrue.

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- (8) If, within such period as may be notified by the Commissioners to the person liable to a penalty under section 66 or 69 or for interest under section 74—
- (a) a failure or default falling within section 66(1) or 69(1) is remedied, or
  - (b) the VAT or other amount referred to in section 74(1) is paid,
- it shall be treated for the purposes of section 66 or 69 or, as the case may be, section 74 as paid or remedied on the date specified as mentioned in subsection (7)(a) above.
- (9) If an amount is assessed and notified to any person under this section, then unless, or except to the extent that, the assessment is withdrawn or reduced, that amount shall be recoverable as if it were VAT due from him.
- (10) For the purposes of this section, notification to a personal representative, trustee in bankruptcy, [<sup>F12</sup>trustee in sequestration], receiver, liquidator or person otherwise acting in a representative capacity in relation to the person who made the acquisition in question shall be treated as notification to the person in relation to whom he so acts.

#### Textual Amendments

- F1** Words in s. 76(1)(a) substituted (with effect in accordance with Sch. 22 para. 23 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), **Sch. 22 para. 13(a)**
- F2** Words in s. 76(1) substituted (28.7.2000) by [2000 c. 17, s. 137\(4\)](#)
- F3** Word in s. 76(1) substituted (19.7.2006) by [Finance Act 2006 \(c. 25\)](#), **s. 21(3)**
- F4** S. 76(1)(d) and word inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), **s. 93(5)**
- F5** Words in s. 76(1) inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), **s. 93(6)**
- F6** Words in s. 76(3)(a) substituted (29.4.1996 with effect as mentioned in [s. 35\(8\)](#) of the amending Act) by [1996 c. 8, s. 35\(7\)\(8\)](#)
- F7** Word in s. 76(3)(d) repealed (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), **Sch. 27 Pt. 5(4)**
- F8** S. 76(3)(f) and word inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), **s. 93(7)**
- F9** S. 76(3A) inserted (with effect in accordance with Sch. 22 para. 23 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), **Sch. 22 para. 13(b)**
- F10** Words in s. 76(5) inserted (with effect in accordance with Sch. 22 para. 23 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), **Sch. 22 para. 13(c)**
- F11** Words in s. 76(5) inserted (1.6.1996 with application to any acquisition of goods from another member State and any supply taking place on or after that day) by [1996 c. 8, ss. 25, 26](#), **Sch. 3 para. 11**; [S.I. 1996/1249](#), **art. 2**
- F12** Words in s. 76(10) substituted (30.11.2016) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, **Sch. 1 para. 12(4)**

#### Modifications etc. (not altering text)

- C1** S. 76(1)-(8) excluded (1.4.2004) by [The Recovery of Duties and Taxes Etc. Due in Other Member States \(Corresponding UK Claims, Procedure and Supplementary\) Regulations 2004 \(S.I. 2004/674\)](#), reg. 1, **Sch. 2 para. 3(1)**
- C2** S. 76(9) applied (with modifications) (1.4.2004) by [The Recovery of Duties and Taxes Etc. Due in Other Member States \(Corresponding UK Claims, Procedure and Supplementary\) Regulations 2004 \(S.I. 2004/674\)](#), reg. 1, **Sch. 2 para. 3(2)**
- C3** S. 76(9) restricted (1.4.2004) by [The Recovery of Duties and Taxes Etc. Due in Other Member States \(Corresponding UK Claims, Procedure and Supplementary\) Regulations 2004 \(S.I. 2004/674\)](#), reg. 1, **Sch. 2 para. 3(1)**
- C4** S. 76(10) amended (retrospectively) by [1997 c. 16, s. 45\(6\)](#)

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- C5** S. 76(10) excluded (1.4.2004) by [The Recovery of Duties and Taxes Etc. Due in Other Member States \(Corresponding UK Claims, Procedure and Supplementary\) Regulations 2004 \(S.I. 2004/674\)](#), reg. 1, [Sch. 2 para. 3\(1\)](#)

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