

SCHEDULES

SCHEDULE 3

VALUE ADDED TAX: ABOLITION OF FISCAL FRONTIERS ETC.

PART I

AMENDMENTS OF THE VALUE ADDED TAX ACT 1983 (C. 55)

General

- 38 In section 38 (which gives effect to Schedule 7), after “effect” there shall be inserted
“subject to section 46A(6) below.”
- 39 (1) In subsection (1A) of section 39—
- (a) in paragraph (b) (evasion by obtaining refund), after “under” there shall be inserted “section 20A.”;
 - (b) after that paragraph there shall be inserted the following paragraph—
“(ba) a refund under any regulations made by virtue of section 8C(5) above; or”;
 - (c) in sub-paragraph (ii), after “paragraph (b)” there shall be inserted “paragraph (ba)”.
- (2) In subsection (2B)(a) of that section (penalties in the case of refunds)—
- (a) after “under”, in the first place where it occurs, there shall be inserted “section 20A.”;
 - (b) after “22 above” there shall be inserted “for a refund under any regulations made by virtue of section 8C(5) above”.
- (3) In subsection (4) of that section (handling goods in respect of which there is evasion), for “or on the importation of the goods” there shall be substituted “on the acquisition of the goods from another member State or on the importation of the goods from a place outside the member States”.
- 40 In subsection (1) of section 40 (appeals)—
- (a) in paragraph (b), for the words from “or, subject” to the end of the paragraph there shall be substituted “on the acquisition of goods from another member State or, subject to subsection (5) below, on the importation of goods from a place outside the member States”;
 - (b) after paragraph (d) there shall be inserted the following paragraph—
“(da) the amount of any refunds under section 20A above.”;
 - (c) after paragraph (f) there shall be inserted the following paragraph—
“(fa) any claim for a refund under any regulations made by virtue of section 8C(5) above.”;
 - (d) after paragraph (j) there shall be inserted the following paragraph—

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- “(ja) any direction under paragraph 1 of Schedule 4A to this Act;”
- (e) in paragraph (m), at the end of sub-paragraph (ii) there shall be inserted “or (iii) under paragraph 4A of that Schedule;”;
- (f) in paragraph (n), after “under” there shall be inserted “section 32A(7) above or”;
- (g) in paragraph (o), for “17” there shall be substituted “17A”.
- 41 (1) In subsection (1) of section 41 (supplies spanning change of rate), at the end there shall be inserted “or exempt or zero-rated acquisitions”.
- (2) After subsection (3) of that section there shall be inserted the following subsection—
- “(3A) Where—
- (a) any acquisition of goods from another member State which is affected by the change would not have been affected (in whole or in part) if it had been treated as taking place at the time of the event which, in relation to that acquisition, is the first relevant event for the purposes of taxing the acquisition; or
- (b) any acquisition of goods from another member State which is not so affected would have been affected (in whole or in part) if it had been treated as taking place at the time of that event,
- the rate at which tax is chargeable on the acquisition, or any question whether it is zero-rated or exempt, shall, if the person making the acquisition so elects, be determined as at the time of that event.”
- (3) After subsection (5) of that section there shall be inserted the following subsection—
- “(6) References in this section to an acquisition being zero-rated are references to an acquisition of goods from another member State being one in relation to which section 16(3) above provides for no tax to be chargeable.”
- 42 (1) In subsection (1) of section 43 (failure of resolution under the Provisional Collection of Taxes Act 1968)—
- (a) in paragraph (a), after “section 10(2) above” there shall be inserted “or on the acquisition of goods from another member State by reference to a value determined under section 10A(3) above”; and
- (b) in paragraph (b), after “supply” there shall be inserted “or acquisition”.
- (2) In subsection (2) of that section—
- (a) in paragraph (a), after “the said section 10(2)” there shall be inserted “or on the acquisition of goods from another member State by reference to a value determined under the said section 10A(3)”; and
- (b) in paragraph (b), after “supply” there shall be inserted “or acquisition”.
- (3) In subsection (3) of that section, after “20” there shall be inserted “20A”.
- 43 In section 46 (service of notices), for the words from “at his” onwards there shall be substituted “or his tax representative at the last or usual residence or place of business of that person or representative.”
- 44 After section 46 there shall be inserted the following sections—

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“46A Taxation under the laws of other member States etc

- (1) Subject to the following provisions of this section, references in this Act, in relation to another member State, to the law of that member State shall be construed as confined to so much of the law of that member State as for the time being has effect for the purposes of any Community instrument relating to value added tax.
- (2) Subject to the following provisions of this section—
 - (a) references in this Act to a person being taxable in another member State are references to that person being taxable under so much of the law of that member State as makes provision for purposes corresponding, in relation to that member State, to the purposes of so much of this Act as makes provision as to whether a person is a taxable person; and
 - (b) references in this Act to goods being acquired by a person in another member State are references to goods being treated as so acquired in accordance with provisions of the law of that member State corresponding, in relation to that member State, to so much of this Act as makes provision for treating goods as acquired in the United Kingdom from another member State.
- (3) Without prejudice to subsection (5) below, the Commissioners may by regulations make provision for the manner in which any of the following are to be or may be proved for any of the purposes of this Act, that is to say—
 - (a) the effect of any provisions of the law of any other member State;
 - (b) that provisions of any such law correspond or have a purpose corresponding, in relation to any member State, to or to the purpose of any provision of this Act.
- (4) The Commissioners may by regulations provide—
 - (a) for a person to be treated for prescribed purposes of this Act as taxable in another member State only where he has given such notification, and furnished such other information, to the Commissioners as may be prescribed;
 - (b) for the form and manner in which any notification or information is to be given or furnished under the regulations and the particulars which it is to contain;
 - (c) for the proportion of any consideration for any transaction which is to be taken for the purposes of this Act as representing a liability, under the law of another member State, for value added tax to be conclusively determined by reference to such invoices or in such other manner as may be prescribed.
- (5) In any proceedings (whether civil or criminal), a certificate of the Commissioners—
 - (a) that a person was or was not, at any date, taxable in another member State; or
 - (b) that any value added tax payable under the law of another member State has or has not been paid,

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shall be sufficient evidence of that fact until the contrary is proved, and any document purporting to be a certificate under this subsection shall be deemed to be such a certificate until the contrary is proved.

- (6) Without prejudice to the generality of any of the powers of the Commissioners under the information provisions of Schedule 7 to this Act, those powers shall, for the purpose of facilitating compliance with any Community obligations, be exercisable with respect to matters that are relevant to a charge to value added tax under the law of another member State, as they are exercisable with respect to matters that are relevant for any of the purposes of this Act.
- (7) The reference in subsection (6) above to the information provisions of Schedule 7 to this Act is a reference to the provisions of that Schedule relating to—
- (a) the keeping of accounts;
 - (b) the making of returns and the submission of other documents to the Commissioners;
 - (c) the production, use and contents of invoices;
 - (d) the keeping and preservation of records; and
 - (e) the furnishing of information and the production of documents.

46B Territories included in references to other member States etc

- (1) The Commissioners may by regulations provide for the territory of the Community, or for the member States, to be treated for any of the purposes of this Act as including or excluding such territories as may be prescribed.
- (2) Without prejudice to the generality of the powers conferred by subsection (1) and section 24(1) above, the Commissioners may, for any of the purposes of this Act, by regulations provide for prescribed provisions of any customs and excise legislation to apply in relation to cases where any territory is treated under subsection (1) above as excluded from the territory of the Community, with such exceptions and adaptations as may be prescribed.
- (3) In subsection (2) above the reference to customs and excise legislation is a reference to any enactment or subordinate or Community legislation (whenever passed, made or adopted) which has effect in relation to, or to any assigned matter connected with, the importation or exportation of goods.
- (4) In subsection (3) above “assigned matter” has the same meaning as in the Customs and Excise Management Act 1979.”

45 After section 47 there shall be inserted the following section—

“47A Meaning of “new means of transport”

- (1) In this Act “means of transport” in the expression “new means of transport” means any of the following, that is to say—
- (a) any ship exceeding 7.5 metres in length;
 - (b) any aircraft the take-off weight of which exceeds 1550 kilograms;
 - (c) any motorized land vehicle which—

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- (i) has an engine with a cylinder capacity exceeding 48 cubic centimetres; or
 - (ii) is constructed or adapted to be electrically propelled using more than 7.2 kilowatts.
 - (2) For the purposes of this Act a means of transport shall be treated as new at any time unless at that time—
 - (a) a period of more than three months has elapsed since its first entry into service; and
 - (b) it has, since its first entry into service, travelled under its own power—
 - (i) in the case of a ship, for more than 100 hours;
 - (ii) in the case of an aircraft, for more than 40 hours; and
 - (iii) in the case of a land vehicle, for more than 3000 kilometres.
 - (3) The Treasury may by order vary this section—
 - (a) by adding or deleting any ship, aircraft or vehicle of a description specified in the order to or from those which are for the time being specified in subsection (1) above; and
 - (b) by altering, omitting or adding to the provisions of subsection (2) above for determining whether a means of transport is new.
 - (4) The Commissioners may by regulations make provision specifying the circumstances in which a means of transport is to be treated for the purposes of this section as having first entered into service.”
- 46 (1) In subsection (1) of section 48 (interpretation)—
 - (a) after “in this Act-” there shall be inserted the following definition—
 - ““another member State” means, subject to section 46B(1) above, any member State other than the United Kingdom, and “other member States” shall be construed accordingly;”
 - (b) after the definition of “ship” there shall be inserted the following definition—
 - ““subordinate legislation” has the same meaning as in the Interpretation Act 1978;”
 - (c) in the definition of “tax”, at the end there shall be inserted “charged in accordance with the provisions of this Act”;
 - (d) for the definition of “taxable person” there shall be substituted the following definition—
 - ““taxable person” means (subject to section 32B(3) above) a person who is a taxable person under section 2C above;”.
- (2) After subsection (1) of that section there shall be inserted the following subsections—
 - “(1A) Subject to section 46B above—
 - (a) the question whether or not goods have entered the territory of the Community;
 - (b) the time when any Community customs debt in respect of duty on the entry of any goods into the territory of the Community would be incurred; and

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(c) the person by whom any such debt would fall to be discharged, shall for the purposes of this Act be determined (whether or not the goods in question are themselves subject to any such duties) according to the Community legislation applicable to goods which are in fact subject to such duties.

(1B) Any reference in this Act to the amount of any duty of excise on any goods shall be taken to be a reference to the amount of duty charged on those goods with any addition or deduction falling to be made under section 1 of the Excise Duties (Surcharges or Rebates) Act 1979.”

(3) In subsection (5) of that section, after “determined” there shall be inserted “(subject to any provision made under section 7(6) above)”.

(4) After subsection (8) of that section there shall be inserted the following subsection—

“(9) References in this Act to being registered shall be construed in accordance with section 2C(3) of this Act and, (without prejudice to paragraph 2 of Schedule 10 to this Act) shall, in relation to registration under Schedule 1 to this Act or any provision of that Schedule, include a reference to being registered under the corresponding provision of any enactment re-enacted in that Schedule.”

47 In section 49 (refund of tax to Government of Northern Ireland)—

- (a) for “or on the importation of goods by, that Government” there shall be substituted “that Government, on the acquisition of any goods by that Government from another member State or on the importation of any goods by that Government from a place outside the member States”; and
- (b) after “supplies” there shall be inserted “acquisitions”.