



# Value Added Tax Act 1994

## 1994 CHAPTER 23

### PART I

#### THE CHARGE TO TAX

##### *Imposition and rate of VAT*

#### **1 Value added tax.**

- (1) Value added tax shall be charged, in accordance with the provisions of this Act—
  - (a) on the supply of goods or services in the United Kingdom (including anything treated as such a supply),
  - (b) on the acquisition in the United Kingdom from other member States of any goods, and
  - (c) on the importation of goods from places outside the member States,and references in this Act to VAT are references to value added tax.
- (2) VAT on any supply of goods or services is a liability of the person making the supply and (subject to provisions about accounting and payment) becomes due at the time of supply.
- (3) VAT on any acquisition of goods from another member State is a liability of the person who acquires the goods and (subject to provisions about accounting and payment) becomes due at the time of acquisition.
- (4) VAT on the importation of goods from places outside the member States shall be charged and payable as if it were a duty of customs.

#### **2 Rate of VAT.**

- (1) Subject to the following provisions<sup>F1</sup> and to the provisions of section 29A] of this section<sup>F2</sup> . . . , VAT shall be charged at the rate of 17.5 per cent. and shall be charged—

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- (a) on the supply of goods or services, by reference to the value of the supply as determined under this Act; and
- (b) on the acquisition of goods from another member State, by reference to the value of the acquisition as determined under this Act; and
- (c) on the importation of goods from a place outside the member States, by reference to the value of the goods as determined under this Act.

<sup>F3</sup>(1A) .....

<sup>F3</sup>(1B) .....

<sup>F4</sup>(1C) .....

- (2) The Treasury may by order increase or decrease the rate of VAT for the time being in force<sup>F5</sup> under this section] by such percentage thereof not exceeding 25 per cent. as may be specified in the order, but any such order shall cease to be in force at the expiration of a period of one year from the date on which it takes effect, unless continued in force by a further order under this subsection.
- (3) In relation to an order made under subsection (2) above to continue, vary or replace a previous order, the reference in that subsection to the rate for the time being in force<sup>F5</sup> under this section] is a reference to the rate which would be in force if no order under that subsection had been made.

#### Textual Amendments

- F1** Words in s. 2(1) inserted (11.5.2001 with effect as mentioned in s. 99(7)(a) of the amending Act) by 2001 c. 9, s. 99(2)
- F2** Words in s. 2(1) omitted (1.5.1995 with application as mentioned in s. 21(6) of the amending Act) by virtue of 1995 c. 4, s. 21(2)
- F3** S. 2(1A)(1B) repealed (11.5.2001 with effect as mentioned in s. 99(7) of the amending Act) by 2001 c. 9, ss. 99(3), 110, Sch. 33 Pt. 3(1) Note 2
- F4** S. 2(1C) repealed (1.11.2001) by 2001 c. 9, ss. 99(3), 110, Sch. 33 Pt. 3(1) Note 1
- F5** Words in s. 2(2)(3) inserted (11.5.2001 with effect as mentioned in s. 99(9)(a) of the amending Act) by 2001 c. 9, s. 99, Sch. 31 para. 2

### 3 Taxable persons and registration.

- (1) A person is a taxable person for the purposes of this Act while he is, or is required to be, registered under this Act.
- (2) [<sup>F6</sup>Schedules 1 to 3A] shall have effect with respect to registration.
- (3) Persons registered under any of those Schedules shall be registered in a single register kept by the Commissioners for the purposes of this Act; and, accordingly, references in this Act to being registered under this Act are references to being registered under any of those Schedules.
- (4) The Commissioners may by regulations make provision as to the inclusion and correction of information in that register with respect to the Schedule under which any person is registered.

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#### Textual Amendments

- F6** Words in s. 3(2) substituted (28.7.2000 with effect as mentioned in s. 136(10) of the amending Act) by 2000 c. 17, s. 136(1)

### [<sup>F7</sup>3A Supply of electronic services in member States: special accounting scheme

- (1) Schedule 3B (scheme enabling persons who supply electronically supplied services in any member State, but who are not established in a member State, to account for and pay VAT in the United Kingdom on those supplies) has effect.
- (2) The Treasury may by order amend Schedule 3B.
- (3) The power of the Treasury by order to amend Schedule 3B includes power to make such incidental, supplemental, consequential and transitional provision in connection with any amendment of that Schedule as they think fit.]

#### Textual Amendments

- F7** S. 3A inserted (with effect in accordance with s. 23(2) of the amending Act) by Finance Act 2003 (c. 14), Sch. 2 para. 2

### *Supply of goods or services in the United Kingdom*

#### 4 Scope of VAT on taxable supplies.

- (1) VAT shall be charged on any supply of goods or services made in the United Kingdom, where it is a taxable supply made by a taxable person in the course or furtherance of any business carried on by him.
- (2) A taxable supply is a supply of goods or services made in the United Kingdom other than an exempt supply.

#### 5 Meaning of supply: alteration by Treasury order.

- (1) Schedule 4 shall apply for determining what is, or is to be treated as, a supply of goods or a supply of services.
- (2) Subject to any provision made by that Schedule and to Treasury orders under subsections (3) to (6) below—
  - (a) “supply” in this Act includes all forms of supply, but not anything done otherwise than for a consideration;
  - (b) anything which is not a supply of goods but is done for a consideration (including, if so done, the granting, assignment or surrender of any right) is a supply of services.
- (3) The Treasury may by order provide with respect to any description of transaction—
  - (a) that it is to be treated as a supply of goods and not as a supply of services; or
  - (b) that it is to be treated as a supply of services and not as a supply of goods; or
  - (c) that it is to be treated as neither a supply of goods nor a supply of services;

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and without prejudice to the foregoing, such an order may provide that paragraph 5(4) of Schedule 4 is not to apply, in relation to goods of any prescribed description used or made available for use in prescribed circumstances, so as to make that a supply of services under that paragraph and may provide that paragraph 6 of that Schedule shall not apply, in such circumstances as may be described in the order, so as to make a removal of assets a supply of goods under that paragraph.

- (4) Without prejudice to subsection (3) above, the Treasury may by order make provision for securing, with respect to services of any description specified in the order, that where—
- (a) a person carrying on a business does anything which is not a supply of services but would, if done for a consideration, be a supply of services of a description specified in the order; and
  - (b) such other conditions as may be specified in the order are satisfied,
- such services are treated for the purposes of this Act as being supplied by him in the course or furtherance of that business.
- (5) The Treasury may by order make provision for securing, subject to any exceptions provided for by or under the order, that where in such circumstances as may be specified in the order goods of a description so specified are taken possession of or produced by a person in the course or furtherance of a business carried on by him and—
- (a) are neither supplied to another person nor incorporated in other goods produced in the course or furtherance of that business; but
  - (b) are used by him for the purpose of a business carried on by him,
- the goods are treated for the purposes of this Act as being both supplied to him for the purpose of that business and supplied by him in the course or furtherance of it.
- (6) The Treasury may by order make provision for securing, with respect to services of any description specified in the order, that where—
- (a) a person, in the course or furtherance of a business carried on by him, does anything for the purpose of that business which is not a supply of services but would, if done for a consideration, be a supply of services of a description specified in the order; and
  - (b) such other conditions as may be specified in the order are satisfied,
- such services are treated for the purposes of this Act as being both supplied to him for the purpose of that business and supplied by him in the course or furtherance of it.
- (7) For the purposes of this section, where goods are manufactured or produced from any other goods, those other goods shall be treated as incorporated in the first-mentioned goods.
- (8) An order under subsection (4) or (6) above may provide for the method by which the value of any supply of services which is treated as taking place by virtue of the order is to be calculated.

## 6 Time of supply.

- (1) The provisions of this section shall apply, subject to [<sup>F8</sup>sections 18, 18B and 18C]for determining the time when a supply of goods or services is to be treated as taking place for the purposes of the charge to VAT.

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- (2) Subject to subsections (4) to (14) below, a supply of goods shall be treated as taking place—
- (a) if the goods are to be removed, at the time of the removal;
  - (b) if the goods are not to be removed, at the time when they are made available to the person to whom they are supplied;
  - (c) if the goods (being sent or taken on approval or sale or return or similar terms) are removed before it is known whether a supply will take place, at the time when it becomes certain that the supply has taken place or, if sooner, 12 months after the removal.
- (3) Subject to subsections (4) to (14) below, a supply of services shall be treated as taking place at the time when the services are performed.
- (4) If, before the time applicable under subsection (2) or (3) above, the person making the supply issues a VAT invoice in respect of it or if, before the time applicable under subsection (2)(a) or (b) or (3) above, he receives a payment in respect of it, the supply shall, to the extent covered by the invoice or payment, be treated as taking place at the time the invoice is issued or the payment is received.
- (5) If, within 14 days after the time applicable under subsection (2) or (3) above, the person making the supply issues a VAT invoice in respect of it, then, unless he has notified the Commissioners in writing that he elects not to avail himself of this subsection, the supply shall (to the extent that it is not treated as taking place at the time mentioned in subsection (4) above) be treated as taking place at the time the invoice is issued.
- (6) The Commissioners may, at the request of a taxable person, direct that subsection (5) above shall apply in relation to supplies made by him (or such supplies made by him as may be specified in the direction) as if for the period of 14 days there were substituted such longer period as may be specified in the direction.
- (7) Where any supply of goods involves both—
- (a) the removal of the goods from the United Kingdom; and
  - (b) their acquisition in another member State by a person who is liable for VAT on the acquisition in accordance with provisions of the law of that member State corresponding, in relation to that member State, to the provisions of section 10,
- subsections (2), (4) to (6) and (10) to (12) of this section shall not apply and the supply shall be treated for the purposes of this Act as taking place on whichever is the earlier of the days specified in subsection (8) below.
- (8) The days mentioned in subsection (7) above are—
- (a) the 15th day of the month following that in which the removal in question takes place; and
  - (b) the day of the issue, in respect of the supply, of a VAT invoice or of an invoice of such other description as the Commissioners may by regulations prescribe.
- (9) Where a taxable person provides a document to himself which—
- (a) purports to be a VAT invoice in respect of a supply of goods or services to him by another taxable person; and
  - (b) is in accordance with regulations under paragraph 2 of Schedule 11 treated as the VAT invoice required by the regulations to be provided by the supplier,
- subsections (5) and (6) above shall have effect in relation to that supply as if—

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- (i) the provision of the document to himself by the first-mentioned taxable person were the issue by the supplier of a VAT invoice in respect of the supply; and
  - (ii) any notice of election given or request made by the first-mentioned taxable person for the purposes of those provisions had been given or made by the supplier.
- (10) The Commissioners may, at the request of a taxable person, by direction alter the time at which supplies made by him (or such supplies made by him as may be specified in the direction) are to be treated as taking place, either—
- (a) by directing those supplies to be treated as taking place—
    - (i) at times or on dates determined by or by reference to the occurrence of some event described in the direction; or
    - (ii) at times or on dates determined by or by reference to the time when some event so described would in the ordinary course of events occur, the resulting times or dates being in every case earlier than would otherwise apply; or
  - (b) by directing that, notwithstanding subsections (5) and (6) above, those supplies shall (to the extent that they are not treated as taking place at the time mentioned in subsection (4) above) be treated as taking place—
    - (i) at the beginning of the relevant working period (as defined in his case in and for the purposes of the direction); or
    - (ii) at the end of the relevant working period (as so defined).
- (11) Where goods are treated as supplied by an order under section 5(5), the supply is treated as taking place when they are appropriated to the use mentioned in that section.
- (12) Where there is a supply of goods by virtue only of paragraph 5(1) of Schedule 4, the supply is treated as taking place when the goods are transferred or disposed of as mentioned in that paragraph.
- (13) Where there is a supply of services by virtue only of paragraph 5(4) of Schedule 4, the supply is treated as taking place when the goods are appropriated to the use mentioned in that paragraph.
- (14) The Commissioners may by regulations make provision with respect to the time at which (notwithstanding subsections (2) to (8) and (11) to (13) above or section 55(4)) a supply is to be treated as taking place in cases where—
- (a) it is a supply of goods or services for a consideration the whole or part of which is determined or payable periodically, or from time to time, or at the end of any period, or
  - (b) it is a supply of goods for a consideration the whole or part of which is determined at the time when the goods are appropriated for any purpose, or
  - (c) there is a supply to which section 55 applies, or
  - (d) there is a supply of services by virtue of paragraph 5(4) of Schedule 4 or an order under section 5(4);
- and for any such case as is mentioned in this subsection the regulations may provide for goods or services to be treated as separately and successively supplied at prescribed times or intervals.

[<sup>F9</sup>(14A) In relation to any services of a description specified in an order under section 7(11), this section and any regulations under this section or section 8(4) shall have effect subject to section 97A.]

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- (15) In this Act “VAT invoice” means such an invoice as is required under paragraph 2(1) of Schedule 11, or would be so required if the person to whom the supply is made were a person to whom such an invoice should be issued.

#### Textual Amendments

- F8** Words in s. 6(1) substituted (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. 1**; S.I. 1996/1249, **art. 2**
- F9** S. 6(14A) inserted (retrospective to 17.3.1998) by 1998 c. 36, **s. 22(2)(3)**

## 7 Place of supply.

- (1) This section shall apply (subject to <sup>F10</sup>sections 14, 18 and 18B) for determining, for the purposes of this Act, whether goods or services are supplied in the United Kingdom.
- (2) Subject to the following provisions of this section, if the supply of any goods does not involve their removal from or to the United Kingdom they shall be treated as supplied in the United Kingdom if they are in the United Kingdom and otherwise shall be treated as supplied outside the United Kingdom.
- (3) Goods shall be treated—
- as supplied in the United Kingdom where their supply involves their installation or assembly at a place in the United Kingdom to which they are removed; and
  - as supplied outside the United Kingdom where their supply involves their installation or assembly at a place outside the United Kingdom to which they are removed.
- (4) Goods whose place of supply is not determined under any of the preceding provisions of this section shall be treated as supplied in the United Kingdom where—
- the supply involves the removal of the goods to the United Kingdom by or under the directions of the person who supplies them;
  - the supply is a transaction in pursuance of which the goods are acquired in the United Kingdom from another member State by a person who is not a taxable person;
  - the supplier—
    - is liable to be registered under Schedule 2; or
    - would be so liable if he were not already registered under this Act or liable to be registered under Schedule 1; and
  - the supply is neither a supply of goods consisting in a new means of transport nor anything which is treated as a supply for the purposes of this Act by virtue only of paragraph 5(1) or 6 of Schedule 4.
- (5) Goods whose place of supply is not determined under any of the preceding provisions of this section and which do not consist in a new means of transport shall be treated as supplied outside the United Kingdom where—
- the supply involves the removal of the goods, by or under the directions of the person who supplies them, to another member State;
  - the person who makes the supply is taxable in another member State; and

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- (c) provisions of the law of that member State corresponding, in relation to that member State, to the provisions made by subsection (4) above make that person liable to VAT on the supply;
- but this subsection shall not apply in relation to any supply in a case where the liability mentioned in paragraph (c) above depends on the exercise by any person of an option in the United Kingdom corresponding to such an option as is mentioned in paragraph 1(2) of Schedule 2 unless that person has given, and has not withdrawn, a notification to the Commissioners that he wishes his supplies to be treated as taking place outside the United Kingdom where they are supplies in relation to which the other requirements of this subsection are satisfied.
- (6) Goods whose place of supply is not determined under any of the preceding provisions of this section shall be treated as supplied in the United Kingdom where—
- (a) their supply involves their being imported from a place outside the member States; and
  - (b) the person who supplies them is the person by whom, or under whose directions, they are so imported.
- (7) Goods whose place of supply is not determined under any of the preceding provisions of this section but whose supply involves their removal to or from the United Kingdom shall be treated—
- (a) as supplied in the United Kingdom where their supply involves their removal from the United Kingdom without also involving their previous removal to the United Kingdom; and
  - (b) as supplied outside the United Kingdom in any other case.
- (8) For the purposes of the preceding provisions of this section, where goods, in the course of their removal from a place in the United Kingdom to another place in the United Kingdom, leave and re-enter the United Kingdom the removal shall not be treated as a removal from or to the United Kingdom.
- (9) The Commissioners may by regulations provide that a notification for the purposes of subsection (5) above is not to be given or withdrawn except in such circumstances, and in such form and manner, as may be prescribed.
- (10) A supply of services shall be treated as made—
- (a) in the United Kingdom if the supplier belongs in the United Kingdom; and
  - (b) in another country (and not in the United Kingdom) if the supplier belongs in that other country.
- (11) The Treasury may by order provide, in relation to goods or services generally or to particular goods or services specified in the order, for varying the rules for determining where a supply of goods or services is made.

#### Textual Amendments

- F10** Words in s. 7(1) substituted (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. 2](#); [S.I. 1996/1249, art. 2](#)



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## **8 Reverse charge on supplies received from abroad.**

- (1) Subject to subsection (3) below, where relevant services are—
- (a) supplied by a person who belongs in a country other than the United Kingdom, and
  - (b) received by a person (“the recipient”) who belongs in the United Kingdom for the purposes of any business carried on by him,
- then all the same consequences shall follow under this Act (and particularly so much as charges VAT on a supply and entitles a taxable person to credit for input tax) as if the recipient had himself supplied the services in the United Kingdom in the course or furtherance of his business, and that supply were a taxable supply.
- (2) In this section “relevant services” means services of any of the descriptions specified in Schedule 5, not being services within any of the descriptions specified in Schedule 9.
- (3) Supplies which are treated as made by the recipient under subsection (1) above are not to be taken into account as supplies made by him when determining any allowance of input tax in his case under section 26(1).
- (4) In applying subsection (1) above, the supply of services treated as made by the recipient shall be assumed to have been made at a time to be determined in accordance with regulations prescribing rules for attributing a time of supply in cases within that subsection.
- (5) The Treasury may by order add to, or vary, Schedule 5.
- (6) The power of the Treasury by order to add to or vary Schedule 5 shall include power, where any services whose place of supply is determined by an order under section 7(11) are added to that Schedule, to provide that subsection (1) above shall have effect in relation to those services as if a person belongs in the United Kingdom for the purposes of paragraph (b) of that subsection if, and only if, he is a taxable person.
- [<sup>F11</sup>(7) The power of the Treasury by order to add to or vary Schedule 5 shall include power to make such incidental, supplemental, consequential and transitional provision in connection with any addition to or variation of that Schedule as they think fit.
- (8) Without prejudice to the generality of subsection (7) above, the provision that may be made under that subsection includes—
- (a) provision making such modifications of section 43(2A) to (2E) as the Treasury may think fit in connection with any addition to or variation of that Schedule; and
  - (b) provision modifying the effect of any regulations under subsection (4) above in relation to any services added to the Schedule.]

### **Textual Amendments**

**F11** S. 8(7)(8) inserted (19.3.1997) by 1997 c. 16, s. 42

## **9 Place where supplier or recipient of services belongs.**

- (1) Subsection (2) below shall apply for determining, in relation to any supply of services, whether the supplier belongs in one country or another and subsections (3) and (4) below shall apply (subject to any provision made under section 8(6)) for determining,

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in relation to any supply of services, whether the recipient belongs in one country or another.

- (2) The supplier of services shall be treated as belonging in a country if—
  - (a) he has there a business establishment or some other fixed establishment and no such establishment elsewhere; or
  - (b) he has no such establishment (there or elsewhere) but his usual place of residence is there; or
  - (c) he has such establishments both in that country and elsewhere and the establishment of his which is most directly concerned with the supply is there.
- (3) If the supply of services is made to an individual and received by him otherwise than for the purposes of any business carried on by him, he shall be treated as belonging in whatever country he has his usual place of residence.
- (4) Where subsection (3) above does not apply, the person to whom the supply is made shall be treated as belonging in a country if—
  - (a) either of the conditions mentioned in paragraphs (a) and (b) of subsection (2) above is satisfied; or
  - (b) he has such establishments as are mentioned in subsection (2) above both in that country and elsewhere and the establishment of his at which, or for the purposes of which, the services are most directly used or to be used is in that country.
- (5) For the purposes of this section (but not for any other purposes)—
  - (a) a person carrying on a business through a branch or agency in any country shall be treated as having a business establishment there; and
  - (b) “usual place of residence”, in relation to a body corporate, means the place where it is legally constituted.

#### *Acquisition of goods from member States*

### **10 Scope of VAT on acquisitions from member States.**

- (1) VAT shall be charged on any acquisition from another member State of any goods where—
  - (a) the acquisition is a taxable acquisition and takes place in the United Kingdom;
  - (b) the acquisition is otherwise than in pursuance of a taxable supply; and
  - (c) the person who makes the acquisition is a taxable person or the goods are subject to a duty of excise or consist in a new means of transport.
- (2) An acquisition of goods from another member State is a taxable acquisition if—
  - (a) it falls within subsection (3) below or the goods consist in a new means of transport; and
  - (b) it is not an exempt acquisition.
- (3) An acquisition of goods from another member State falls within this subsection if—
  - (a) the goods are acquired in the course or furtherance of—
    - (i) any business carried on by any person; or
    - (ii) any activities carried on otherwise than by way of business by any body corporate or by any club, association, organisation or other unincorporated body;

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- (b) it is the person who carries on that business or, as the case may be, those activities who acquires the goods; and
- (c) the supplier—
  - (i) is taxable in another member State at the time of the transaction in pursuance of which the goods are acquired; and
  - (ii) in participating in that transaction, acts in the course or furtherance of a business carried on by him.

## **11 Meaning of acquisition of goods from another member State.**

- (1) Subject to the following provisions of this section, references in this Act to the acquisition of goods from another member State shall be construed as references to any acquisition of goods in pursuance of a transaction in relation to which the following conditions are satisfied, that is to say—
  - (a) the transaction is a supply of goods (including anything treated for the purposes of this Act as a supply of goods); and
  - (b) the transaction involves the removal of the goods from another member State; and references in this Act, in relation to such an acquisition, to the supplier shall be construed accordingly.
- (2) It shall be immaterial for the purposes of subsection (1) above whether the removal of the goods from the other member State is by or under the directions of the supplier or by or under the directions of the person who acquires them or any other person.
- (3) Where the person with the property in any goods does not change in consequence of anything which is treated for the purposes of this Act as a supply of goods, that supply shall be treated for the purposes of this Act as a transaction in pursuance of which there is an acquisition of goods by the person making it.
- (4) The Treasury may by order provide with respect to any description of transaction that the acquisition of goods in pursuance of a transaction of that description is not to be treated for the purposes of this Act as the acquisition of goods from another member State.

## **12 Time of acquisition.**

- (1) Subject to [F12sections 18 and 18B] and any regulations under subsection (3) below, where goods are acquired from another member State, the acquisition shall be treated for the purposes of this Act as taking place on whichever is the earlier of—
  - (a) the 15th day of the month following that in which the event occurs which, in relation to that acquisition, is the first relevant event for the purposes of taxing the acquisition; and
  - (b) the day of the issue, in respect of the transaction in pursuance of which the goods are acquired, of an invoice of such a description as the Commissioners may by regulations prescribe.
- (2) For the purposes of this Act the event which, in relation to any acquisition of goods from another member State, is the first relevant event for the purposes of taxing the acquisition is the first removal of the goods which is involved in the transaction in pursuance of which they are acquired.
- (3) The Commissioners may by regulations make provision with respect to the time at which an acquisition is to be treated as taking place in prescribed cases where the

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whole or part of any consideration comprised in the transaction in pursuance of which the goods are acquired is determined or payable periodically, or from time to time, or at the end of a period; and any such regulations may provide, in relation to any case to which they apply, for goods to be treated as separately and successively acquired at prescribed times or intervals.

#### Textual Amendments

**F12** Words in s. 12(1) substituted (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. 3**; S.I. 1996/1249, **art. 2**

### 13 Place of acquisition.

- (1) This section shall apply (subject to <sup>F13</sup>sections 18 and 18B) for determining for the purposes of this Act whether goods acquired from another member State are acquired in the United Kingdom.
- (2) The goods shall be treated as acquired in the United Kingdom if they are acquired in pursuance of a transaction which involves their removal to the United Kingdom and does not involve their removal from the United Kingdom, and (subject to the following provisions of this section) shall otherwise be treated as acquired outside the United Kingdom.
- (3) Subject to subsection (4) below, the goods shall be treated as acquired in the United Kingdom if they are acquired by a person who, for the purposes of their acquisition, makes use of a number assigned to him for the purposes of VAT in the United Kingdom.
- (4) Subsection (3) above shall not require any goods to be treated as acquired in the United Kingdom where it is established, in accordance with regulations made by the Commissioners for the purposes of this section that VAT—
  - (a) has been paid in another member State on the acquisition of those goods; and
  - (b) fell to be paid by virtue of provisions of the law of that member State corresponding, in relation to that member State, to the provision made by subsection (2) above.
- (5) The Commissioners may by regulations make provision for the purposes of this section—
  - (a) for the circumstances in which a person is to be treated as having been assigned a number for the purposes of VAT in the United Kingdom;
  - (b) for the circumstances in which a person is to be treated as having made use of such a number for the purposes of the acquisition of any goods; and
  - (c) for the refund, in prescribed circumstances, of VAT paid in the United Kingdom on acquisitions of goods in relation to which the conditions specified in subsection (4)(a) and (b) above are satisfied.

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### Textual Amendments

- F13** Words in s. 13(1) substituted (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. 4**; S.I. 1996/1249, **art. 2**

## 14 Acquisitions from persons belonging in other member States.

(1) Subject to subsection (3) below, where—

- (a) a person (“the original supplier”) makes a supply of goods to a person who belongs in another member State (“the intermediate supplier”);
- (b) that supply involves the removal of the goods from another member State and their removal to the United Kingdom but does not involve the removal of the goods from the United Kingdom;
- (c) both that supply and the removal of the goods to the United Kingdom are for the purposes of the making of a supply by the intermediate supplier to another person (“the customer”) who is registered under this Act;
- (d) neither of those supplies involves the removal of the goods from a member State in which the intermediate supplier is taxable at the time of the removal without also involving the previous removal of the goods to that member State; and
- (e) there would be a taxable acquisition by the customer if the supply to him involved the removal of goods from another member State to the United Kingdom,

the supply by the original supplier to the intermediate supplier shall be disregarded for the purposes of this Act and the supply by the intermediate supplier to the customer shall be treated for the purposes of this Act, other than Schedule 3, as if it did involve the removal of the goods from another member State to the United Kingdom.

(2) Subject to subsection (3) below, where—

- (a) a person belonging in another member State makes such a supply of goods to a person who is registered under this Act as involves their installation or assembly at a place in the United Kingdom to which they are removed; and
- (b) there would be a taxable acquisition by the registered person if that supply were treated as not being a taxable supply but as involving the removal of the goods from another member State to the United Kingdom,

that supply shall be so treated except for the purposes of Schedule 3.

(3) Neither subsection (1) nor subsection (2) above shall apply in relation to any supply unless the intermediate supplier or, as the case may be, the person making the supply complies with such requirements as to the furnishing (whether before or after the supply is made) of invoices and other documents, and of information, to—

- (a) the Commissioners, and
- (b) the person supplied,

as the Commissioners may by regulations prescribe; and regulations under this subsection may provide for the times at which, and the form and manner in which, any document or information is to be furnished and for the particulars which it is to contain.

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- (4) Where this section has the effect of treating a taxable acquisition as having been made, section 12(1) shall apply in relation to that acquisition with the omission of the words from “whichever” to “acquisition; and” at the end of paragraph (a).
- (5) For the purposes of this section a person belongs in another member State if—
- (a) he does not have any business establishment or other fixed establishment in the United Kingdom and does not have his usual place of residence in the United Kingdom;
  - (b) he is neither registered under this Act nor required to be so registered;
  - (c) he does not have a VAT representative and is not for the time being required to appoint one; and
  - (d) he is taxable in another member State;
- but, in determining for the purposes of paragraph (b) above whether a person is required to be registered under this Act, there shall be disregarded any supplies which, if he did belong in another member State and complied with the requirements prescribed under subsection (3) above, would fall to be disregarded by virtue of this section.
- (6) Without prejudice to section 13(4), where—
- (a) any goods are acquired from another member State in a case which corresponds, in relation to another member State, to the case specified in relation to the United Kingdom in subsection (1) above; and
  - (b) the person who acquires the goods is registered under this Act and would be the intermediate supplier in relation to that corresponding case,
- the supply to him of those goods and the supply by him of those goods to the person who would be the customer in that corresponding case shall both be disregarded for the purposes of this Act, other than the purposes of the information provisions referred to in section 92(7).
- (7) References in this section to a person being taxable in another member State shall not include references to a person who is so taxable by virtue only of provisions of the law of another member State corresponding to the provisions of this Act by virtue of which a person who is not registered under this Act is a taxable person if he is required to be so registered.
- (8) This section does not apply in relation to any supply of goods by an intermediate supplier to whom the goods were supplied before 1st August 1993.

*Importation of goods from outside the member States*

**15 General provisions relating to imported goods.**

- (1) For the purposes of this Act goods are imported from a place outside the member States where—
- (a) having been removed from a place outside the member States, they enter the territory of the Community;
  - (b) they enter that territory by being removed to the United Kingdom or are removed to the United Kingdom after entering that territory; and
  - (c) the circumstances are such that it is on their removal to the United Kingdom or subsequently while they are in the United Kingdom that any Community

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customs debt in respect of duty on their entry into the territory of the Community would be incurred.

- (2) Accordingly—
- (a) goods shall not be treated for the purposes of this Act as imported at any time before a Community customs debt in respect of duty on their entry into the territory of the Community would be incurred, and
  - (b) the person who is to be treated for the purposes of this Act as importing any goods from a place outside the member States is the person who would be liable to discharge any such Community customs debt.
- (3) Subsections (1) and (2) above shall not apply, except in so far as the context otherwise requires or provision to the contrary is contained in regulations under section 16(1), for construing any references to importation or to an importer in any enactment or subordinate legislation applied for the purposes of this Act by section 16(1).

## 16 Application of customs enactments.

- (1) Subject to such exceptions and adaptations as the Commissioners may by regulations prescribe and except where the contrary intention appears—
- (a) the provision made by or under the Customs and Excise Acts 1979 and the other enactments and subordinate legislation for the time being having effect generally in relation to duties of customs and excise charged on the importation of goods into the United Kingdom; and
  - (b) the Community legislation for the time being having effect in relation to Community customs duties charged on goods entering the territory of the Community,
- shall apply (so far as relevant) in relation to any VAT chargeable on the importation of goods from places outside the member States as they apply in relation to any such duty of customs or excise or, as the case may be, Community customs duties.
- (2) Regulations under [<sup>F14</sup>section 105 of the Postal Services Act 2000] (which provides for the application of customs enactments to postal packets) may make special provision in relation to VAT.

### Textual Amendments

**F14** Words in s. 16(2) substituted (26.3.2001) by 2000 c. 26, s. 127(4), **Sch. 8 para. 22(2)**; S.I. 2000/2957, art. 2(3), **Sch. 3** (as amended by S.I. 2001/1148, arts. 2, 43(1)(2), **Sch.** (with art. 34))

## 17 Free zone regulations.

- (1) This section applies in relation to VAT chargeable on the importation of goods from places outside the member States; and in this section “free zone” has the meaning given by section 100A(2) of the Management Act.
- (2) Subject to any contrary provision made by any directly applicable Community provision, goods which are chargeable with VAT may be moved into a free zone and may remain as free zone goods without payment of VAT.
- (3) The Commissioners may by regulations (“free zone regulations”) make provision with respect to the movement of goods into, and the removal of goods from, any free zone

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and the keeping, securing and treatment of goods which are within a free zone, and subject to any provision of the regulations, “free zone goods” means goods which are within a free zone.

- (4) Without prejudice to the generality of subsection (3), free zone regulations may make provision—
- (a) for enabling the Commissioners to allow goods to be removed from a free zone without payment of VAT in such circumstances and subject to such conditions as they may determine;
  - (b) for determining where any VAT becomes payable in respect of goods which cease to be free zone goods—
    - (i) the rates of any VAT applicable; and
    - (ii) the time at which those goods cease to be free zone goods;
  - (c) for determining for the purpose of enabling VAT to be charged in respect of free zone goods in a case where a person wishes to pay that VAT notwithstanding that the goods will continue to be free zone goods, the rate of VAT to be applied; and
  - (d) permitting free zone goods to be destroyed without payment of VAT in such circumstances and subject to such conditions as the Commissioners may determine.
- (5) The Commissioners, with respect to free zone goods or the movement of goods into any free zone, may by regulations make provision—
- (a) for relief from the whole or part of any VAT chargeable on the importation of goods into the United Kingdom in such circumstances as they may determine;
  - (b) in place of, or in addition to, any provision made by section 6 or any other enactment, for determining the time when a supply of goods which are or have been free zone goods is to be treated as taking place for the purposes of the charge to VAT; and
  - (c) as to the treatment, for the purposes of VAT, of goods which are manufactured or produced within a free zone from other goods or which have other goods incorporated in them while they are free zone goods.

*Goods subject to a warehousing regime*

**18 Place and time of acquisition or supply.**

- (1) Where—
- (a) any goods have been removed from a place outside the member States and have entered the territory of the Community;
  - (b) the material time for any acquisition of those goods from another member State or for any supply of those goods is while they are subject to a warehousing regime and before the duty point; and
  - (c) those goods are not mixed with any dutiable goods which were produced or manufactured in the United Kingdom or acquired from another member State,
- then the acquisition or supply mentioned in paragraph (b) above shall be treated for the purposes of this Act as taking place outside the United Kingdom.
- (2) Subsection (3) below applies where—
- (a) any dutiable goods are acquired from another member State; or
  - (b) any person makes a supply of—



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- (i) any dutiable goods which were produced or manufactured in the United Kingdom or acquired from another member State; or
    - (ii) any goods comprising a mixture of goods falling within subparagraph (i) above and other goods.
- (3) Where this subsection applies and the material time for the acquisition or supply mentioned in subsection (2) above is while the goods in question are subject to a warehousing regime and before the duty point, that acquisition or supply shall be treated for the purposes of this Act as taking place outside the United Kingdom if the material time for any subsequent supply of those goods is also while the goods are subject to the warehousing regime and before the duty point.
- (4) Where the material time for any acquisition or supply of any goods in relation to which subsection (3) above applies is while the goods are subject to a warehousing regime and before the duty point but the acquisition or supply nevertheless falls, for the purposes of this Act, to be treated as taking place in the United Kingdom—
  - (a) that acquisition or supply shall be treated for the purposes of this Act as taking place at the earlier of the following times, that is to say, the time when the goods are removed from the warehousing regime and the duty point; and
  - (b) in the case of a supply, any VAT payable on the supply shall be paid (subject to any regulations under subsection (5) below)—
    - (i) at the time when the supply is treated as taking place under paragraph (a) above; and
    - (ii) by the person by whom the goods are so removed or, as the case may be, together with the duty or agricultural levy, by the person who is required to pay the duty or levy.
- [<sup>F15</sup>(5) The Commissioners may by regulations make provision for enabling a taxable person to pay the VAT he is required to pay by virtue of paragraph (b) of subsection (4) above at a time later than that provided for by that paragraph.
- (5A) Regulations under subsection (5) above may in particular make provision for either or both of the following—
  - (a) for the taxable person to pay the VAT together with the VAT chargeable on other supplies by him of goods and services;
  - (b) for the taxable person to pay the VAT together with any duty of excise deferment of which has been granted to him under section 127A of the <sup>M1</sup>Customs and Excise Management Act 1979;and they may make different provision for different descriptions of taxable person and for different descriptions of goods.]
- (6) In this section—
  - “dutiable goods” means any goods which are subject—
    - (a) to a duty of excise; or
    - (b) in accordance with any provision for the time being having effect for transitional purposes in connection with the accession of any State to the European Communities, to any Community customs duty or agricultural levy of the European Community;
  - “the duty point”, in relation to any goods, means—
    - (a) in the case of goods which are subject to a duty of excise, the time when the requirement to pay the duty on those goods takes effect; and

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- (b) in the case of goods which are not so subject, the time when any Community customs debt in respect of duty on the entry of the goods into the territory of the Community would be incurred or, as the case may be, the corresponding time in relation to any such duty or levy as is mentioned in paragraph (b) of the definition of dutiable goods;

“material time”—

- (a) in relation to any acquisition or supply the time of which is determined in accordance with regulations under section 6(14) or 12(3), means such time as may be prescribed for the purpose of this section by those regulations;
- (b) in relation to any other acquisition, means the time of the event which, in relation to the acquisition, is the first relevant event for the purposes of taxing it; and
- (c) in relation to any other supply, means the time when the supply would be treated as taking place in accordance with subsection (2) of section 6 if paragraph (c) of that subsection were omitted;

“warehouse” means any warehouse where goods may be stored in any member State without payment of any one or more of the following, that is to say—

- (a) Community customs duty;
- (b) any agricultural levy of the European Community;
- (c) VAT on the importation of the goods into any member State;
- (d) any duty of excise or any duty which is equivalent in another member State to a duty of excise.

- (7) References in this section to goods being subject to a warehousing regime is a reference to goods being kept in a warehouse or being transported between warehouses (whether in the same or different member States) without the payment in a member State of any duty, levy or VAT; and references to the removal of goods from a warehousing regime shall be construed accordingly.

#### Textual Amendments

**F15** S. 18(5)(5A) substituted (1.5.1995) for s. 18(5) by 1995 c. 4, s. 29

#### Marginal Citations

**M1** 1979 c. 2.

### [<sup>F16</sup>18A Fiscal warehousing.

- (1) The Commissioners may, if it appears to them proper, upon application approve any registered person as a fiscal warehousekeeper; and such approval shall be subject to such conditions as they shall impose.
- (2) Subject to those conditions and to regulations made under section 18F such a person shall be entitled to keep a fiscal warehouse.
- (3) “Fiscal warehouse” means such place in the United Kingdom in the occupation or under the control of the fiscal warehousekeeper, not being retail premises, as he shall notify to the Commissioners in writing; and such a place shall become a fiscal warehouse on receipt by the Commissioners of that notification or on the date stated

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in it as the date from which it is to have effect, whichever is the later, and, subject to subsection (6) below, shall remain a fiscal warehouse so long as it is in the occupation or under the control of the fiscal warehousekeeper or until he shall notify the Commissioners in writing that it is to cease to be a fiscal warehouse.

(4) The Commissioners may in considering an application by a person to be a fiscal warehousekeeper take into account any matter which they consider relevant, and may without prejudice to the generality of that provision take into account all or any one or more of the following—

- (a) his record of compliance and ability to comply with the requirements of this Act and regulations made hereunder;
- (b) his record of compliance and ability to comply with the requirements of the customs and excise Acts (as defined in the Management Act) and regulations made thereunder;
- (c) his record of compliance and ability to comply with Community customs provisions;
- (d) his record of compliance and ability to comply with the requirements of other member States relating to VAT and duties equivalent to duties of excise;
- (e) if the applicant is a company the records of compliance and ability to comply with the matters set out at (a) to (d) above of its directors, persons connected with its directors, its managing officers, any shadow directors or any of those persons, and, if it is a close company, the records of compliance and ability to comply with the matters set out at (a) to (d) above of the beneficial owners of the shares of the company or any of them; and
- (f) if the applicant is an individual the records of compliance and ability to comply with the matters set out at (a) to (d) above of any company of which he is or has been a director, managing officer or shadow director or, in the case of a close company, a shareholder or the beneficial owner of shares,

and for the purposes of paragraphs (e) and (f) “connected” shall have the meaning given by section 24(7), “managing officer” the meaning given by section 61(6), “shadow director” the meaning given by section 741(2) of the <sup>M2</sup>Companies Act 1985 and “close company” the meaning given by the Taxes Act.

(5) Subject to subsection (6) below, a person approved under subsection (1) shall remain a fiscal warehousekeeper until he ceases to be a registered person or until he shall notify the Commissioners in writing that he is to cease to be a fiscal warehousekeeper.

(6) The Commissioners may if they consider it appropriate from time to time—

- (a) impose conditions on a fiscal warehousekeeper in addition to those conditions, if any, which they imposed under subsection (1), and vary or revoke any conditions previously imposed;
- (b) withdraw approval of any person as a fiscal warehousekeeper, and
- (c) withdraw fiscal warehouse status from any premises.

(7) Any application by or on behalf of a person to be a fiscal warehousekeeper shall be in writing in such form as the Commissioners may direct and shall be accompanied by such information as they shall require.

(8) Any approval by the Commissioners under subsection (1) above, and any withdrawal of approval or other act by them under subsection (6) above, shall be notified by them to the fiscal warehousekeeper in writing and shall take effect on such notification being made or on any later date specified for the purpose in the notification.

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- (9) Without prejudice to the provisions of section 43 concerning liability for VAT, in subsections (1) and (2) above “registered person” includes any body corporate which under that section is for the time being treated as a member of a group.]

#### Textual Amendments

**F16** S. 18A 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. 5**; S.I. 1996/1249, **art. 2**

#### Marginal Citations

**M2** 1985 c. 6.

### [<sup>F17</sup>18B Fiscally warehoused goods: relief.

- (1) Subsections (3) and (4) below apply where—
- (a) there is an acquisition of goods from another member State;
  - (b) those goods are eligible goods;
  - (c) either—
    - (i) the acquisition takes place while the goods are subject to a fiscal warehousing regime; or
    - (ii) after the acquisition but before the supply, if any, of those goods which next occurs, the acquirer causes the goods to be placed in a fiscal warehousing regime; and
  - (d) the acquirer, not later than the time of the acquisition, prepares and keeps a certificate that the goods are subject to a fiscal warehousing regime, or (as the case may be) that he will cause paragraph (c)(ii) above to be satisfied; and the certificate shall be in such form and be kept for such period as the Commissioners may by regulations specify.
- (2) Subsections (3) and (4) below also apply where—
- (a) there is a supply of goods;
  - (b) those goods are eligible goods;
  - (c) either—
    - (i) that supply takes place while the goods are subject to a fiscal warehousing regime; or
    - (ii) after that supply but before the supply, if any, of those goods which next occurs, the person to whom the former supply is made causes the goods to be placed in a fiscal warehousing regime;
  - (d) in a case falling within paragraph (c)(ii) above, the person to whom the supply is made gives the supplier, not later than the time of the supply, a certificate in such form as the Commissioners may by regulations specify that he will cause paragraph (c)(ii) to be satisfied; and
  - (e) the supply is not a retail transaction.
- (3) The acquisition or supply in question shall be treated for the purposes of this Act as taking place outside the United Kingdom if any subsequent supply of those goods is while they are subject to the fiscal warehousing regime.

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- (4) Where subsection (3) does not apply and the acquisition or supply in question falls, for the purposes of this Act, to be treated as taking place in the United Kingdom, that acquisition or supply shall be treated for the purposes of this Act as taking place when the goods are removed from the fiscal warehousing regime.
- (5) Where—
- (a) subsection (4) above applies to an acquisition or a supply,
  - (b) the acquisition or supply is taxable and not zero-rated, and
  - (c) the acquirer or supplier is not a taxable person but would be were it not for paragraph 1(9) of Schedule 1, paragraph 1(7) of Schedule 2 and paragraph 1(6) of Schedule 3, or any of those provisions,
- VAT shall be chargeable on that acquisition or supply notwithstanding that the acquirer or the supplier is not a taxable person.
- (6) In this section “eligible goods” means goods—
- (a) of a description falling within Schedule 5A;
  - (b) upon which any import duties, as defined in article 4(10) of the Community Customs Code of 12th October 1992 (Council Regulation (EEC) No.2913/92), either have been paid or have been deferred under article 224 of that Code or regulations made under section 45 of the Management Act;
  - (c) (in the case of goods imported from a place outside the member States) upon which any VAT chargeable under section 1(1)(c) has been either paid or deferred in accordance with Community customs provisions, and
  - (d) (in the case of goods subject to a duty of excise) upon which that duty has been either paid or deferred under section 127A of the Management Act.
- (7) For the purposes of this section, apart from subsection (4), an acquisition or supply shall be treated as taking place at the material time for the acquisition or supply.
- (8) The Treasury may by order vary Schedule 5A by adding to or deleting from it any goods or varying any description of any goods.]

#### Textual Amendments

- F17** S. 18B inserted (29.4.1996 for certain purposes and 1.6.1996 otherwise with application to any acquisition of goods from another member State and any supply taking place on or after 1.6.1996) by 1996 c. 8, ss. 25, 26, **Sch. 3 para. 5**; S.I. 1996/1249, **art. 2**

### 18C <sup>F18</sup> Warehouses and fiscal warehouses: services.

- (1) Where—
- (a) a taxable person makes a supply of specified services;
  - (b) those services are wholly performed on or in relation to goods while those goods are subject to a warehousing or fiscal warehousing regime;
  - (c) (except where the services are the supply by an occupier of a warehouse or a fiscal warehousekeeper of warehousing or fiscally warehousing the goods) the person to whom the supply is made gives the supplier a certificate, in such a form as the Commissioners may by regulations specify, that the services are so performed;

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- (d) the supply of services would (apart from this section) be taxable and not zero-rated; and
  - (e) the supplier issues to the person to whom the supply is made an invoice of such a description as the Commissioners may by regulations prescribe,  
his supply shall be zero-rated.
- (2) If a supply of services is zero-rated under subsection (1) above (“the zero-rated supply of services”) then, unless there is a supply of the goods in question the material time for which is—
- (a) while the goods are subject to a warehousing or fiscal warehousing regime, and
  - (b) after the material time for the zero-rated supply of services,
- subsection (3) below shall apply.
- (3) Where this subsection applies—
- (a) a supply of services identical to the zero-rated supply of services shall be treated for the purposes of this Act as being, at the time the goods are removed from the warehousing or fiscal warehousing regime or (if earlier) at the duty point, both made (for the purposes of his business) to the person to whom the zero-rated supply of services was actually made and made by him in the course or furtherance of his business,
  - (b) that supply shall have the same value as the zero-rated supply of services,
  - (c) that supply shall be a taxable (and not a zero-rated) supply, and
  - (d) VAT shall be charged on that supply even if the person treated as making it is not a taxable person.
- (4) In this section “specified services” means—
- (a) services of an occupier of a warehouse or a fiscal warehousekeeper of keeping the goods in question in a warehousing or fiscal warehousing regime;
  - (b) in relation to goods subject to a warehousing regime, services of carrying out on the goods operations which are permitted to be carried out under Community customs provisions or warehousing regulations as the case may be; and
  - (c) in relation to goods subject to a fiscal warehousing regime, services of carrying out on the goods any physical operations (other than any prohibited by regulations made under section 18F), for example, and without prejudice to the generality of the foregoing words, preservation and repacking operations.

#### Textual Amendments

**F18** S. 18C inserted (29.4.1996 for certain purposes and 1.6.1996 otherwise 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. 5**; S.I. 1996/1249, **art. 2**

#### [<sup>F19</sup>18D] **Removal from warehousing: accountability.**

- (1) This section applies to any supply to which section 18B(4) or section 18C(3) applies (supply treated as taking place on removal or duty point) and any acquisition to which section 18B(5) applies (acquisition treated as taking place on removal where acquirer not a taxable person).

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- (2) Any VAT payable on the supply or acquisition shall (subject to any regulations under subsection (3) below) be paid—
  - (a) at the time when the supply or acquisition is treated as taking place under the section in question; and
  - (b) by the person by whom the goods are removed or, as the case may be, together with the excise duty, by the person who is required to pay that duty.
- (3) The Commissioners may by regulations make provision for enabling a taxable person to pay the VAT he is required to pay by virtue of subsection (2) above at a time later than that provided by that subsection; and they may make different provisions for different descriptions of taxable persons and for different descriptions of goods and services.]

#### Textual Amendments

**F19** S. 18D inserted (29.4.1996 for specified purposes otherwise 1.6.1996 with application to any acquisition of goods from another member State and any supply taking place on or after 1.6.1996) by 1996 c. 8, ss. 25, 26, **Sch. 3 para. 5**; S.I. 1996/1249, **art. 2**

#### [<sup>F20</sup>18E Deficiency in fiscally warehoused goods.

- (1) This section applies where goods have been subject to a fiscal warehousing regime and, before being lawfully removed from the fiscal warehouse, they are found to be missing or deficient.
- (2) In any case where this section applies, unless it is shown to the satisfaction of the Commissioners that the absence of or deficiency in the goods can be accounted for by natural waste or other legitimate cause, the Commissioners may require the fiscal warehousekeeper to pay immediately in respect of the missing goods or of the whole or any part of the deficiency, as they see fit, the VAT that would have been chargeable.
- (3) In subsection (2) “VAT that would have been chargeable” means VAT that would have been chargeable on a supply of the missing goods, or the amount of goods by which the goods are deficient, taking place at the time immediately before the absence arose or the deficiency occurred, if the value of that supply were the open market value; but where that time cannot be ascertained to the Commissioners’ satisfaction, that VAT shall be the greater of the amounts of VAT which would have been chargeable on a supply of those goods—
  - (a) if the value of that supply were the highest open market value during the period (the relevant period) commencing when the goods were placed in the fiscal warehousing regime and ending when the absence or deficiency came to the notice of the Commissioners, or
  - (b) if the rate of VAT chargeable on that supply were the highest rate chargeable on a supply of such goods during the relevant period and the value of that supply were the highest open market value while that rate prevailed.
- (4) This section has effect without prejudice to any penalty incurred under any other provision of this Act or regulations made under it.]

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### Textual Amendments

**F20** S. 18E 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. 5**; S.I. 1996/1249, **art. 2**

### [<sup>F21</sup>18F Sections 18A to 18E: supplementary.

- (1) In sections 18A to 18E and this section—
- “duty point” has the meaning given by section 18(6);
  - “eligible goods” has the meaning given by section 18B(6);
  - “fiscal warehouse” means a place notified to the Commissioners under section 18A(3) and from which such status has not been withdrawn;
  - “fiscal warehousekeeper” means a person approved under section 18A(1);
  - “material time”—
- (a) in relation to any acquisition or supply the time of which is determined in accordance with regulations under section 6(14) or 12(3), means such time as may be prescribed for the purpose of this section by those regulations;
  - (b) in relation to any other acquisition, means the time when the goods reach the destination to which they are despatched from the member State in question;
  - (c) in relation to any other supply of goods, means the time when the supply would be treated as taking place in accordance with subsection (2) of section 6 if paragraph (c) of that subsection were omitted; and
  - (d) in relation to any other supply of services, means the time when the services are performed;
- “warehouse”, except in the expression “fiscal warehouse”, has the meaning given by section 18(6);
  - “warehousing regulations” has the same meaning as in the Management Act.
- (2) Any reference in sections 18A to 18E or this section to goods being subject to a fiscal warehousing regime is, subject to any regulations made under subsection (8)(e) below, a reference to eligible goods being kept in a fiscal warehouse or being transferred between fiscal warehouses in accordance with such regulations; and any reference to the removal of goods from a fiscal warehousing regime shall be construed accordingly.
- (3) Subject to subsection (2) above, any reference in sections 18C and 18D to goods being subject to a warehousing regime or to the removal of goods from a warehousing regime shall have the same meaning as in section 18(7).
- (4) Where as a result of an operation on eligible goods subject to a fiscal warehousing regime they change their nature but the resulting goods are also eligible goods, the provisions of sections 18B to 18E and this section shall apply as if the resulting goods were the original goods.



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- (5) Where as a result of an operation on eligible goods subject to a fiscal warehousing regime they cease to be eligible goods, on their ceasing to be so sections 18B to 18E shall apply as if they had at that time been removed from the fiscal warehousing regime; and for that purpose the proprietor of the goods shall be treated as if he were the person removing them.
- (6) Where—
- (a) any person ceases to be a fiscal warehousekeeper; or
  - (b) any premises cease to have fiscal warehouse status,
- sections 18B to 18E and this section shall apply as if the goods of which he is the fiscal warehousekeeper, or the goods in the fiscal warehouse, as the case may be, had at that time been removed from the fiscal warehousing regime; and for that purpose the proprietor of the goods shall be treated as if he were the person removing them.
- (7) The Commissioners may make regulations governing the deposit, keeping, securing and treatment of goods in a fiscal warehouse, and the removal of goods from a fiscal warehouse.
- (8) Regulations may, without prejudice to the generality of subsection (7) above, include provisions—
- (a) in relation to—
    - (i) goods which are, have been or are to be subject to a fiscal warehousing regime,
    - (ii) other goods which are, have been or are to be kept in fiscal warehouses,
    - (iii) fiscal warehouse premises, and
    - (iv) fiscal warehousekeepers and their businesses,as to the keeping, preservation and production of records and the furnishing of returns and information by fiscal warehousekeepers and any other persons;
  - (b) requiring goods deposited in a fiscal warehouse to be produced to or made available for inspection by an authorised person on request by him;
  - (c) prohibiting the carrying out on fiscally warehoused goods of such operations as they may prescribe;
  - (d) regulating the transfer of goods from one fiscal warehouse to another;
  - (e) concerning goods which, though kept in a fiscal warehouse, are not eligible goods or are not intended by a relevant person to be goods in respect of which reliefs are to be enjoyed under sections 18A to 18E and this section;
  - (f) prohibiting the fiscal warehousekeeper from allowing goods to be removed from the fiscal warehousing regime without payment of any VAT payable under section 18D on or by reference to that removal and, if in breach of that prohibition he allows goods to be so removed, making him liable for the VAT jointly and severally with the remover,
- and may contain such incidental or supplementary provisions as the Commissioners think necessary or expedient.
- (9) Regulations may make different provision for different cases, including different provision for different fiscal warehousekeepers or descriptions of fiscal warehousekeeper, for fiscal warehouses of different descriptions or for goods of different classes or descriptions or of the same class or description in different circumstances.]

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### Textual Amendments

- F21** S. 18F inserted (29.4.1996 for specified purposes otherwise 1.6.1996 with application to any acquisition of goods from another member State and any supply taking place on or after 1.6.1996) by 1996 c. 8, ss. 25, 26, **Sch. 3 para. 5**; S.I. 1996/1249, **art. 2**

### *Determination of value*

## 19 Value of supply of goods or services.

- (1) For the purposes of this Act the value of any supply of goods or services shall, except as otherwise provided by or under this Act, be determined in accordance with this section and Schedule 6, and for those purposes subsections (2) to (4) below have effect subject to that Schedule.
- (2) If the supply is for a consideration in money its value shall be taken to be such amount as, with the addition of the VAT chargeable, is equal to the consideration.
- (3) If the supply is for a consideration not consisting or not wholly consisting of money, its value shall be taken to be such amount in money as, with the addition of the VAT chargeable, is equivalent to the consideration.
- (4) Where a supply of any goods or services is not the only matter to which a consideration in money relates, the supply shall be deemed to be for such part of the consideration as is properly attributable to it.
- (5) For the purposes of this Act the open market value of a supply of goods or services shall be taken to be the amount that would fall to be taken as its value under subsection (2) above if the supply were for such consideration in money as would be payable by a person standing in no such relationship with any person as would affect that consideration.

### Modifications etc. (not altering text)

- C1** S. 19(5) modified (20.10.1995) by S.I. 1995/2518, **reg. 77**

## 20 Valuation of acquisitions from other member States.

- (1) [<sup>F22</sup>Subject to section 18C,]for the purposes of this Act the value of any acquisition of goods from another member State shall be taken to be the value of the transaction in pursuance of which they are acquired.
- (2) Where goods are acquired from another member State otherwise than in pursuance of a taxable supply, the value of the transaction in pursuance of which they are acquired shall be determined for the purposes of subsection (1) above in accordance with this section and Schedule 7, and for those purposes—
  - (a) subsections (3) to (5) below have effect subject to that Schedule; and
  - (b) section 19 and Schedule 6 shall not apply in relation to the transaction.
- (3) If the transaction is for a consideration in money, its value shall be taken to be such amount as is equal to the consideration.

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- (4) If the transaction is for a consideration not consisting or not wholly consisting of money, its value shall be taken to be such amount in money as is equivalent to the consideration.
- (5) Where a transaction in pursuance of which goods are acquired from another member State is not the only matter to which a consideration in money relates, the transaction shall be deemed to be for such part of the consideration as is properly attributable to it.

#### Textual Amendments

**F22** Words in s. 20(1) 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. 6; S.I. 1996/1249, art. 2

## 21 Value of imported goods.

- (1) For the purposes of this Act, the value of goods imported from a place outside the member States shall (subject to subsections (2) [<sup>F23</sup>to (4)] below) be determined according to the rules applicable in the case of Community customs duties, whether or not the goods in question are subject to any such duties.
- (2) For the purposes of this Act the value of any goods imported from a place outside the member States shall be taken to include the following so far as they are not already included in that value in accordance with the rules mentioned in subsection (1) above, that is to say—
  - (a) all taxes, duties and other charges levied either outside or, by reason of importation, within the United Kingdom (except VAT); <sup>F24</sup> . . .
  - [<sup>F25</sup>(b) all incidental expenses, such as commission, packing, transport and insurance costs, up to the goods' first destination in the United Kingdom; and
  - (c) if at the time of the importation of the goods from a place outside the member States a further destination for the goods is known, and that destination is within the United Kingdom or another member State, all such incidental expenses in so far as they result from the transport of the goods to that other destination;and in this subsection “the goods' first destination” means the place mentioned on the consignment note or any other document by means of which the goods are imported into the United Kingdom, or in the absence of such documentation it means the place of the first transfer of cargo in the United Kingdom.]
- (3) Subject to subsection (2) above, where—
  - (a) goods are imported from a place outside the member States for a consideration which is or includes a price in money payable as on the transfer of property;
  - (b) the terms on which those goods are so imported allow a discount for prompt payment of that price;
  - (c) those terms do not include provision for payment of that price by instalments; and
  - (d) payment of that price is made in accordance with those terms so that the discount falls to be allowed,

the value of the goods shall be taken for the purposes of this Act to be reduced by the amount of the discount.

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[<sup>F26</sup>(4) [<sup>F27</sup>Subject to subsection (6D) below,]For the purposes of this Act, the value of any goods falling within subsection (5) below which are imported from a place outside the member States shall be taken to be an amount equal to [<sup>F28</sup>28.58 per cent.] of the amount which, apart from this subsection, would be their value for those purposes.

[ The goods that fall within this subsection are—

- <sup>F29</sup>(5) (a) any work of art;
- (b) any antique, not falling within paragraph (a) above or (c) below, that is more than one hundred years old;
- (c) any collection or collector’s piece that is of zoological, botanical, mineralogical, anatomical, historical, archaeological, palaeontological, ethnographic, numismatic or philatelic interest.
- (6) In this section “work of art” means, subject to subsections (6A) and (6B) below—
- (a) any mounted or unmounted painting, drawing, collage, decorative plaque or similar picture that was executed by hand;
- (b) any original engraving, lithograph or other print which—
- (i) was produced from one or more plates executed by hand by an individual who executed them without using any mechanical or photomechanical process; and
- (ii) either is the only one produced from the plate or plates or is comprised in a limited edition;
- (c) any original sculpture or statuary, in any material;
- (d) any sculpture cast which—
- (i) was produced by or under the supervision of the individual who made the mould or became entitled to it by succession on the death of that individual; and
- (ii) either is the only cast produced from the mould or is comprised in a limited edition;
- (e) any tapestry or other hanging which—
- (i) was made by hand from an original design; and
- (ii) either is the only one made from the design or is comprised in a limited edition;
- (f) any ceramic executed by an individual and signed by him;
- (g) any enamel on copper which—
- (i) was executed by hand;
- (ii) is signed either by the person who executed it or by someone on behalf of the studio where it was executed;
- (iii) either is the only one made from the design in question or is comprised in a limited edition; and
- (iv) is not comprised in an article of jewellery or an article of a kind produced by goldsmiths or silversmiths;
- (h) any mounted or unmounted photograph which—
- (i) was printed by or under the supervision of the photographer;
- (ii) is signed by him; and
- (iii) either is the only print made from the exposure in question or is comprised in a limited edition;

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- (6A) The following do not fall within subsection (5) above by virtue of subsection (6)(a) above, that is to say—
- (a) any technical drawing, map or plan;
  - (b) any picture comprised in a manufactured article that has been hand-decorated;  
or
  - (c) anything in the nature of scenery, including a backcloth.
- (6B) An item comprised in a limited edition shall be taken to be so comprised for the purposes of subsection (6)(d) to (h) above only if—
- (a) in the case of sculpture casts—
    - (i) the edition is limited so that the number produced from the same mould does not exceed eight; or
    - (ii) the edition comprises a limited edition of nine or more casts made before 1st January 1989 which the Commissioners have directed should be treated, in the exceptional circumstances of the case, as a limited edition for the purposes of subsection (6)(d) above;
  - (b) in the case of tapestries and hangings, the edition is limited so that the number produced from the same design does not exceed eight;
  - (c) in the case of enamels on copper—
    - (i) the edition is limited so that the number produced from the same design does not exceed eight; and
    - (ii) each of the enamels in the edition is numbered and is signed as mentioned in subsection (6)(g)(ii) above;
  - (d) in the case of photographs—
    - (i) the edition is limited so that the number produced from the same exposure does not exceed thirty; and
    - (ii) each of the prints in the edition is numbered and is signed as mentioned in subsection (6)(h)(ii) above.
- (6C) For the purposes of this section a collector's piece is of philatelic interest if—
- (a) it is a postage or revenue stamp, a postmark, a first-day cover or an item of pre-stamped stationery; and
  - (b) it is franked or (if unfranked) it is not legal tender and is not intended for use as such.
- (6D) Subsection (4) above does not apply in the case of any goods imported from outside the member States if—
- (a) the whole of the VAT chargeable on their importation falls to be relieved by virtue of an order under section 37(1); or
  - (b) they were exported from the United Kingdom during the period of twelve months ending with the date of their importation.]
- (7) An order under section 2(2) may contain provision making such alteration of the percentage for the time being specified in subsection (4) above as the Treasury consider appropriate in consequence of any increase or decrease by that order of the rate of VAT.]

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### Textual Amendments

- F23** Words in s. 21(1) substituted (1.5.1995 with effect as mentioned in s. 22(2) of the amending Act) by 1995 c. 4, s. 22(1)
- F24** Word in s. 21(2)(a) repealed (29.4.1996 with effect in relation to goods imported on or after 1.1.1996) by 1996 c. 8, ss. 27(2)(4), 205, Sch. 41 Pt. IV(3) Note
- F25** S. 21(2)(b)(c) substituted (29.4.1996 with effect in relation to goods imported on or after 1.1.1996) for s. 21(2)(b) by 1996 c. 8, s. 27(3)(4)
- F26** S. 21(4)-(7) inserted (1.5.1995 with effect as mentioned in s. 22(2) of the amending Act) by 1995 c. 4, s. 22(1)
- F27** Words in s.21(4) inserted (27.7.1999 with effect as mentioned in s. 12(3) of the amending Act) by 1999 c. 16, s. 12(1)(a)
- F28** Words in s. 21(4) substituted (27.7.1999 with effect as mentioned in s. 12(3) of the amending Act) by 1999 c. 16, s. 12(1)(b)
- F29** S. 21(5)-(6D) substituted (27.7.1999 with effect as mentioned in s. 12(3) of the amending Act) for s. 21(5)(6) by 1999 c. 16, s. 12(2)

<sup>F30</sup> 22 .....

### Textual Amendments

- F30** S. 22 repealed (29.4.1996 with application in relation to supplies made on or after 1.1.1996) by 1996 c. 8, ss. 28, 205, Sch. 41 Pt. IV(2)

## 23 Gaming machines.

- (1) Where a person plays a game of chance by means of a gaming machine, then for the purposes of VAT (but without prejudice to subsection (2) below) the amount paid by him to play shall be treated as the consideration for a supply of services to him.
- (2) The value to be taken as the value of supplies made in the circumstances mentioned in subsection (1) above in any period shall be determined as if the consideration for the supplies were reduced by an amount equal to the amount (if any) received in that period by persons (other than the person making the supply and persons acting on his behalf) playing successfully.
- (3) The insertion of a token into a machine shall be treated for the purposes of subsection (1) above as the payment of an amount equal to that for which the token can be obtained; and the receipt of a token by a person playing successfully shall be treated for the purposes of subsection (2) above—
  - (a) if the token is of a kind used to play the machine, as the receipt of an amount equal to that for which such a token can be obtained;
  - (b) if the token is not of such a kind but can be exchanged for money, as the receipt of an amount equal to that for which it can be exchanged.
- (4) In this section—
 

“game of chance” has the same meaning as in the <sup>M3</sup>Gaming Act 1968; and

“gaming machine” means a machine in respect of which the following conditions are satisfied, namely—

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- (a) it is constructed or adapted for playing a game of chance by means of it; and
- (b) a player pays to play the machine (except where he has an opportunity to play payment-free as the result of having previously played successfully), either by inserting a [<sup>F31</sup>coin, token or other thing] into the machine or in some other way; and
- (c) the element of chance in the game is provided by means of the machine.

#### Textual Amendments

**F31** Words in s. 23(4) substituted (10.7.2003) by Finance Act 2003 (c. 14), s. 10(4)(a)

#### Marginal Citations

**M3** 1968 c. 65.

### *Payment of VAT by taxable persons*

## **24 Input tax and output tax.**

- (1) Subject to the following provisions of this section, “input tax”, in relation to a taxable person, means the following tax, that is to say—
  - (a) VAT on the supply to him of any goods or services;
  - (b) VAT on the acquisition by him from another member State of any goods; and
  - (c) VAT paid or payable by him on the importation of any goods from a place outside the member States,being (in each case) goods or services used or to be used for the purpose of any business carried on or to be carried on by him.
- (2) Subject to the following provisions of this section, “output tax”, in relation to a taxable person, means VAT on supplies which he makes or on the acquisition by him from another member State of goods (including VAT which is also to be counted as input tax by virtue of subsection (1)(b) above).
- (3) For the purposes of subsections (1) and (2) above, where goods or services are supplied to a company, goods are acquired by a company from another member State or goods are imported by a company from a place outside the member States and the goods or services which are so supplied, acquired or imported are used or to be used in connection with the provision of accommodation by the company, they shall not be treated as used or to be used for the purposes of any business carried on by the company to the extent that the accommodation is used or to be used for domestic purposes by—
  - (a) a director of the company, or
  - (b) a person connected with a director of the company.
- (4) The Treasury may by order provide with respect to any description of goods or services that, where goods or services of that description are supplied to a person who is not a taxable person, they shall, in such circumstances as may be specified in the order, be treated for the purposes of subsections (1) and (2) above as supplied to such other person as may be determined in accordance with the order.
- (5) Where goods or services supplied to a taxable person, goods acquired by a taxable person from another member State or goods imported by a taxable person from a place

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outside the member States are used or to be used partly for the purposes of a business carried on or to be carried on by him and partly for other purposes, VAT on supplies, acquisitions and importations shall be apportioned so that only so much as is referable to his business purposes is counted as his input tax.

(6) Regulations may provide—

- (a) for VAT on the supply of goods or services to a taxable person, VAT on the acquisition of goods by a taxable person from other member States and VAT paid or payable by a taxable person on the importation of goods from places outside the member States to be treated as his input tax only if and to the extent that the charge to VAT is evidenced and quantified by reference to such documents [<sup>F32</sup>or other information] as may be specified in the regulations or the Commissioners may direct either generally or in particular cases or classes of cases;
- (b) for a taxable person to count as his input tax, in such circumstances, to such extent and subject to such conditions as may be prescribed, VAT on the supply to him of goods or services or on the acquisition of goods by him from another member State or paid by him on the importation of goods from places outside the member States notwithstanding that he was not a taxable person at the time of the supply, acquisition or payment;
- (c) for a taxable person that is a body corporate to count as its input tax, in such circumstances, to such extent and subject to such conditions as may be prescribed, VAT on the supply, acquisition or importation of goods before the company's incorporation for appropriation to the company or its business or on the supply of services before that time for its benefit or in connection with its incorporation;
- (d) in the case of a person who has been, but is no longer, a taxable person, for him to be paid by the Commissioners the amount of any VAT on a supply of services made to him for the purposes of the business carried on by him when he was a taxable person.

(7) For the purposes of this section “director” means—

- (a) in relation to a company whose affairs are managed by a board of directors or similar body, a member of that board or similar body;
- (b) in relation to a company whose affairs are managed by a single director or similar person, that director or person;
- (c) in relation to a company whose affairs are managed by the members themselves, a member of the company,

and a person is connected with a director if that person is the director's wife or husband, or is a relative, or the wife or husband of a relative, of the director or of the director's wife or husband.

#### Textual Amendments

**F32** Words in s. 24(6)(a) inserted (retrospective to 10.4.2003) by [Finance Act 2003 \(c. 14\), s. 17\(2\)\(8\)](#)

## 25 Payment by reference to accounting periods and credit for input tax against output tax.

(1) A taxable person shall—

- (a) in respect of supplies made by him, and



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- (b) in respect of the acquisition by him from other member States of any goods, account for and pay VAT by reference to such periods (in this Act referred to as “prescribed accounting periods”) at such time and in such manner as may be determined by or under regulations and regulations may make different provision for different circumstances.
- (2) Subject to the provisions of this section, he is entitled at the end of each prescribed accounting period to credit for so much of his input tax as is allowable under section 26, and then to deduct that amount from any output tax that is due from him.
- (3) If either no output tax is due at the end of the period, or the amount of the credit exceeds that of the output tax then, subject to subsections (4) and (5) below, the amount of the credit or, as the case may be, the amount of the excess shall be paid to the taxable person by the Commissioners; and an amount which is due under this subsection is referred to in this Act as a “VAT credit”.
- (4) The whole or any part of the credit may, subject to and in accordance with regulations, be held over to be credited in and for a subsequent period; and the regulations may allow for it to be so held over either on the taxable person’s own application or in accordance with general or special directions given by the Commissioners from time to time.
- (5) Where at the end of any period a VAT credit is due to a taxable person who has failed to submit returns for any earlier period as required by this Act, the Commissioners may withhold payment of the credit until he has complied with that requirement.
- (6) A deduction under subsection (2) above and payment of a VAT credit shall not be made or paid except on a claim made in such manner and at such time as may be determined by or under regulations; and, in the case of a person who has made no taxable supplies in the period concerned or any previous period, payment of a VAT credit shall be made subject to such conditions (if any) as the Commissioners think fit to impose, including conditions as to repayment in specified circumstances.
- (7) The Treasury may by order provide, in relation to such supplies, acquisitions and importations as the order may specify, that VAT charged on them is to be excluded from any credit under this section; and—
- (a) any such provision may be framed by reference to the description of goods or services supplied or goods acquired or imported, the person by whom they are supplied, acquired or imported or to whom they are supplied, the purposes for which they are supplied, acquired or imported, or any circumstances whatsoever; and
- (b) such an order may contain provision for consequential relief from output tax.

## **26 Input tax allowable under section 25.**

- (1) The amount of input tax for which a taxable person is entitled to credit at the end of any period shall be so much of the input tax for the period (that is input tax on supplies, acquisitions and importations in the period) as is allowable by or under regulations as being attributable to supplies within subsection (2) below.
- (2) The supplies within this subsection are the following supplies made or to be made by the taxable person in the course or furtherance of his business—
- (a) taxable supplies;

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- (b) supplies outside the United Kingdom which would be taxable supplies if made in the United Kingdom;
  - (c) such other supplies outside the United Kingdom and such exempt supplies as the Treasury may by order specify for the purposes of this subsection.
- (3) The Commissioners shall make regulations for securing a fair and reasonable attribution of input tax to supplies within subsection (2) above, and any such regulations may provide for—
- (a) determining a proportion by reference to which input tax for any prescribed accounting period is to be provisionally attributed to those supplies;
  - (b) adjusting, in accordance with a proportion determined in like manner for any longer period comprising two or more prescribed accounting periods or parts thereof, the provisional attribution for any of those periods;
  - (c) the making of payments in respect of input tax, by the Commissioners to a taxable person (or a person who has been a taxable person) or by a taxable person (or a person who has been a taxable person) to the Commissioners, in cases where events prove inaccurate an estimate on the basis of which an attribution was made; and
  - (d) preventing input tax on a supply which, under or by virtue of any provision of this Act, a person makes to himself from being allowable as attributable to that supply.
- (4) Regulations under subsection (3) above may make different provision for different circumstances and, in particular (but without prejudice to the generality of that subsection) for different descriptions of goods or services; and may contain such incidental and supplementary provisions as appear to the Commissioners necessary or expedient.

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

C2 S. 26 excluded (27.7.1999) by 1999 c. 16, s. 13(1)

**[<sup>F33</sup>26A Disallowance of input tax where consideration not paid**

- (1) Where—
- (a) a person has become entitled to credit for any input tax, and
  - (b) the consideration for the supply to which that input tax relates, or any part of it, is unpaid at the end of the period of 6 months following the relevant date,
- he shall be taken, as from the end of that period, not to have been entitled to credit for input tax in respect of the VAT that is referable to the unpaid consideration or part.
- (2) For the purposes of subsection (1) above “the relevant date”, in relation to any sum representing consideration for a supply, is—
- (a) the date of the supply, or
  - (b) if later, the date on which the sum became payable.
- (3) Regulations may make such supplementary, incidental, consequential or transitional provisions as appear to the Commissioners to be necessary or expedient for the purposes of this section.
- (4) Regulations under this section may in particular—

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- (a) make provision for restoring the whole or any part of an entitlement to credit for input tax where there is a payment after the end of the period mentioned in subsection (1) above;
  - (b) make rules for ascertaining whether anything paid is to be taken as paid by way of consideration for a particular supply;
  - (c) make rules dealing with particular cases, such as those involving payment of part of the consideration or mutual debts.
- (5) Regulations under this section may make different provision for different circumstances.
- (6) Section 6 shall apply for determining the time when a supply is to be treated as taking place for the purposes of construing this section.]

#### Textual Amendments

**F33** S. 26A inserted (with effect as mentioned in s. 22(3) of the amending Act) by Finance Act 2002 (c. 23), s. 22(1); S.I. 2002/3028, art. 2

#### [<sup>F34</sup>26B Flat-rate scheme

- (1) The Commissioners may by regulations make provision under which, where a taxable person so elects, the amount of his liability to VAT in respect of his relevant supplies in any prescribed accounting period shall be the appropriate percentage of his relevant turnover for that period.
- A person whose liability to VAT is to any extent determined as mentioned above is referred to in this section as participating in the flat-rate scheme.
- (2) For the purposes of this section—
- (a) a person's "relevant supplies" are all supplies made by him except supplies made at such times or of such descriptions as may be specified in the regulations;
  - (b) the "appropriate percentage" is the percentage so specified for the category of business carried on by the person in question;
  - (c) a person's "relevant turnover" is the total of—
    - (i) the value of those of his relevant supplies that are taxable supplies, together with the VAT chargeable on them, and
    - (ii) the value of those of his relevant supplies that are exempt supplies.
- (3) The regulations may designate certain categories of business as categories in relation to which the references in subsection (1) above to liability to VAT are to be read as references to entitlement to credit for VAT.
- (4) The regulations may provide for persons to be eligible to participate in the flat-rate scheme only in such cases and subject to such conditions and exceptions as may be specified in, or determined by or under, the regulations.
- (5) Subject to such exceptions as the regulations may provide for, a participant in the flat-rate scheme shall not be entitled to credit for input tax.

This is without prejudice to subsection (3) above.

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- (6) The regulations may—
- (a) provide for the appropriate percentage to be determined by reference to the category of business that a person is expected, on reasonable grounds, to carry on in a particular period;
  - (b) provide, in such circumstances as may be prescribed, for different percentages to apply in relation to different parts of the same prescribed accounting period;
  - (c) make provision for determining the category of business to be regarded as carried on by a person carrying on businesses in more than one category.
- (7) The regulations may provide for the following matters to be determined in accordance with notices published by the Commissioners—
- (a) when supplies are to be treated as taking place for the purposes of ascertaining a person's relevant turnover for a particular period;
  - (b) the method of calculating any adjustments that fall to be made in accordance with the regulations in a case where a person begins or ceases to participate in the flat-rate scheme.
- (8) The regulations may make provision enabling the Commissioners—
- (a) to authorise a person to participate in the flat-rate scheme with effect from—
    - (i) a day before the date of his election to participate, or
    - (ii) a day that is not earlier than that date but is before the date of the authorisation;
  - (b) to direct that a person shall cease to be a participant in the scheme with effect from a day before the date of the direction.
- The day mentioned in paragraph (a)(i) above may be a day before the date on which the regulations come into force.
- (9) Regulations under this section—
- (a) may make different provision for different circumstances;
  - (b) may make such incidental, supplemental, consequential or transitional provision as the Commissioners think fit, including provision disapplying or applying with modifications any provision contained in or made under this Act.]

#### Textual Amendments

**F34** S. 26B inserted (retroactive to 24.4.2002) by [Finance Act 2002 \(c. 23\)](#), s. 23(1)(4)

## 27 Goods imported for private purposes.

- (1) Where goods are imported by a taxable person from a place outside the member States and—
- (a) at the time of importation they belong wholly or partly to another person; and
  - (b) the purposes for which they are to be used include private purposes either of himself or of the other,

VAT paid or payable by the taxable person on the importation of the goods shall not be regarded as input tax to be deducted or credited under section 25; but he may make a separate claim to the Commissioners for it to be repaid.

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- (2) The Commissioners shall allow the claim if they are satisfied that to disallow it would result, in effect, in a double charge to VAT; and where they allow it they shall do so only to the extent necessary to avoid the double charge.
- (3) In considering a claim under this section, the Commissioners shall have regard to the circumstances of the importation and, so far as appearing to them to be relevant, things done with, or occurring in relation to, the goods at any subsequent time.
- (4) Any amount allowed by the Commissioners on the claim shall be paid by them to the taxable person.
- (5) The reference above to a person's private purposes is to purposes which are not those of any business carried on by him.

## **28 Payments on account of VAT.**

- (1) The Treasury may make an order under this section if they consider it desirable to do so in the interests of the national economy.
- (2) An order under this section may provide that a taxable person of a description specified in the order shall be under a duty—
  - (a) to pay, on account of any VAT he may become liable to pay in respect of a prescribed accounting period, amounts determined in accordance with the order, and
  - (b) to do so at such times as are so determined.

[<sup>F35</sup>(2AA) An order under this section may provide for the matters with respect to which an appeal under section 83 lies to a tribunal to include such decisions of the Commissioners under that or any other order under this section as may be specified in the order.]

[<sup>F36</sup>(2A) The Commissioners may give directions, to persons who are or may become liable by virtue of any order under this section to make payments on account of VAT, about the manner in which they are to make such payments; and where such a direction has been given to any person and has not subsequently been withdrawn, any duty of that person by virtue of such an order to make such a payment shall have effect as if it included a requirement for the payment to be made in the manner directed.]

- (3) Where an order is made under this section, the Commissioners may make regulations containing such supplementary, incidental or consequential provisions as appear to the Commissioners to be necessary or expedient.
- (4) A provision of an order or regulations under this section may be made in such way as the Treasury or, as the case may be, the Commissioners think fit (whether by amending provisions of or made under the enactments relating to VAT or otherwise).
- (5) An order or regulations under this section may make different provision for different circumstances.

### **Textual Amendments**

**F35** S. 28(2AA) inserted (29.4.1996) by 1997 c. 16, s. 43

**F36** S. 28(2A) inserted (29.4.1996) by 1996 c. 8, s. 34

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## 29 Invoices provided by recipients of goods or services.

Where—

- (a) a taxable person (“the recipient”) provides a document to himself which purports to be an invoice in respect of a taxable supply of goods or services to him by another taxable person; and
  - (b) that document understates the VAT chargeable on the supply,
- the Commissioners may, by notice served on the recipient and on the supplier, elect that the amount of VAT understated by the document shall be regarded for all purposes as VAT due from the recipient and not from the supplier.

## PART II

### RELIEFS, EXEMPTIONS AND REPAYMENTS

*Reliefs etc. generally available*

#### [<sup>F37</sup> 29A Reduced rate

- (1) VAT charged on—
  - (a) any supply that is of a description for the time being specified in Schedule 7A, or
  - (b) any equivalent acquisition or importation,
 shall be charged at the rate of 5 per cent.
- (2) The reference in subsection (1) above to an equivalent acquisition or importation, in relation to any supply that is of a description for the time being specified in Schedule 7A, is a reference (as the case may be) to—
  - (a) any acquisition from another member State of goods the supply of which would be such a supply; or
  - (b) any importation from a place outside the member States of any such goods.
- (3) The Treasury may by order vary Schedule 7A by adding to or deleting from it any description of supply or by varying any description of supply for the time being specified in it.
- (4) The power to vary Schedule 7A conferred by subsection (3) above may be exercised so as to describe a supply of goods or services by reference to matters unrelated to the characteristics of the goods or services themselves. In the case of a supply of goods, those matters include, in particular, the use that has been made of the goods.]

#### Textual Amendments

**F37** S. 29A inserted (11.5.2001 with effect as mentioned in s. 99(7)(c) of the amending Act) by 2001 c. 9, s. 99(4)

## 30 Zero-rating.

- (1) Where a taxable person supplies goods or services and the supply is zero-rated, then, whether or not VAT would be chargeable on the supply apart from this section—

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- (a) no VAT shall be charged on the supply; but
  - (b) it shall in all other respects be treated as a taxable supply;
- and accordingly the rate at which VAT is treated as charged on the supply shall be nil.
- (2) A supply of goods or services is zero-rated by virtue of this subsection if the goods or services are of a description for the time being specified in Schedule 8 or the supply is of a description for the time being so specified.
- [<sup>F38</sup>(2A) A supply by a person of services which consist of applying a treatment or process to another person's goods is zero-rated by virtue of this subsection if by doing so he produces goods, and either—
- (a) those goods are of a description for the time being specified in Schedule 8; or
  - (b) a supply by him of those goods to the person to whom he supplies the services would be of a description so specified.]
- (3) Where goods of a description for the time being specified in that Schedule, or of a description forming part of a description of supply for the time being so specified, are acquired in the United Kingdom from another member State or imported from a place outside the member States, no VAT shall be chargeable on their acquisition or importation, except as otherwise provided in that Schedule.
- (4) The Treasury may by order vary Schedule 8 by adding to or deleting from it any description or by varying any description for the time being specified in it.
- [<sup>F39</sup>(5) The export of any goods by a charity to a place outside the member States shall for the purposes of this Act be treated as a supply made by the charity—
- (a) in the United Kingdom, and
  - (b) in the course or furtherance of a business carried on by the charity.]
- (6) A supply of goods is zero-rated by virtue of this subsection if the Commissioners are satisfied that the person supplying the goods—
- (a) has exported them to a place outside the member States; or
  - (b) has shipped them for use as stores on a voyage or flight to an eventual destination outside the United Kingdom, or as merchandise for sale by retail to persons carried on such a voyage or flight in a ship or aircraft,
- and in either case if such other conditions, if any, as may be specified in regulations or the Commissioners may impose are fulfilled.
- (7) Subsection (6)(b) above shall not apply in the case of goods shipped for use as stores on a voyage or flight to be made by the person to whom the goods were supplied and to be made for a purpose which is private.
- (8) Regulations may provide for the zero-rating of supplies of goods, or of such goods as may be specified in the regulations, in cases where—
- (a) the Commissioners are satisfied that the goods have been or are to be exported to a place outside the member States or that the supply in question involves both—
    - (i) the removal of the goods from the United Kingdom; and
    - (ii) their acquisition in another member State by a person who is liable for VAT on the acquisition in accordance with provisions of the law of that member State corresponding, in relation to that member State, to the provisions of section 10; and

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- (b) such other conditions, if any, as may be specified in the regulations or the Commissioners may impose are fulfilled.
- [<sup>F40</sup>(8A) Regulations may provide for the zero-rating of supplies of goods, or of such goods as may be specified in regulations, in cases where—
- (a) the Commissioners are satisfied that the supply in question involves both—
- (i) the removal of the goods from a fiscal warehousing regime within the meaning of section 18F(2); and
  - (ii) their being placed in a warehousing regime in another member State, or in such member State or States as may be prescribed, where that regime is established by provisions of the law of that member State corresponding, in relation to that member State, to the provisions of sections 18A and 18B; and
- (b) such other conditions, if any, as may be specified in the regulations or the Commissioners may impose are fulfilled.]
- (9) Regulations may provide for the zero-rating of a supply of services which is made where goods are let on hire and the Commissioners are satisfied that the goods have been or are to be removed from the United Kingdom during the period of the letting, and such other conditions, if any, as may be specified in the regulations or the Commissioners may impose are fulfilled.
- (10) Where the supply of any goods has been zero-rated by virtue of subsection (6) above or in pursuance of regulations made under [<sup>F41</sup>subsection (8), (8A) or (9)] above and—
- (a) the goods are found in the United Kingdom after the date on which they were alleged to have been or were to be exported or shipped or otherwise removed from the United Kingdom; or
  - (b) any condition specified in the relevant regulations under [<sup>F41</sup>subsection (6), (8), (8A) or (9)] above or imposed by the Commissioners is not complied with,
- and the presence of the goods in the United Kingdom after that date or the non-observance of the condition has not been authorised for the purposes of this subsection by the Commissioners, the goods shall be liable to forfeiture under the Management Act and the VAT that would have been chargeable on the supply but for the zero-rating shall become payable forthwith by the person to whom the goods were supplied or by any person in whose possession the goods are found in the United Kingdom; but the Commissioners may, if they think fit, waive payment of the whole or part of that VAT.

#### Textual Amendments

- F38** S. 30(2A) inserted (29.4.1996 with effect as mentioned in s. 29(5) of the amending Act) by 1996 c. 8, s. 29(2)(5)
- F39** S. 30(5) substituted (1.5.1995 with effect as mentioned in s. 28(2) of the amending Act) by 1995 c. 4, s. 28(1)
- F40** S. 30(8A) inserted (29.4.1996 for specified purposes and otherwise 1.6.1996 with application to any acquisition of goods from another member State and any supply taking place on or after 1.6.1996) by 1996 c. 8, ss. 25, 26, **Sch. 3 para. 7**; S.I. 1996/1249, **art. 2**
- F41** Words in s. 30(10) substituted (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. 7**; S.I. 1996/1249, **art. 2**



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### 31 Exempt supplies and acquisitions.

- (1) A supply of goods or services is an exempt supply if it is of a description for the time being specified in Schedule 9 and an acquisition of goods from another member State is an exempt acquisition if the goods are acquired in pursuance of an exempt supply.
- (2) The Treasury may by order vary that Schedule by adding to or deleting from it any description of supply or by varying any description of supply for the time being specified in it, and the Schedule may be varied so as to describe a supply of goods by reference to the use which has been made of them or to other matters unrelated to the characteristics of the goods themselves.

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

C3 S. 31(2) extended (27.7.1999) by 1999 c. 16, s. 13(2)

<sup>F42</sup>32 .....

#### Textual Amendments

F42 S. 32 repealed (1.6.1995) by 1995 c. 4, ss. 24(2), 162, Sch. 29 Pt. VI(3) Note; S.I. 1995/1374, art. 2

### 33 Refunds of VAT in certain cases.

- (1) Subject to the following provisions of this section, where—
  - (a) VAT is chargeable on the supply of goods or services to a body to which this section applies, on the acquisition of any goods by such a body from another member State or on the importation of any goods by such a body from a place outside the member States, and
  - (b) the supply, acquisition or importation is not for the purpose of any business carried on by the body,

the Commissioners shall, on a claim made by the body at such time and in such form and manner as the Commissioners may determine, refund to it the amount of the VAT so chargeable.

- (2) Where goods or services so supplied to or acquired or imported by the body cannot be conveniently distinguished from goods or services supplied to or acquired or imported by it for the purpose of a business carried on by it, the amount to be refunded under this section shall be such amount as remains after deducting from the whole of the VAT chargeable on any supply to or acquisition or importation by the body such proportion thereof as appears to the Commissioners to be attributable to the carrying on of the business; but where—
  - (a) the VAT so attributable is or includes VAT attributable, in accordance with regulations under section 26, to exempt supplies by the body, and
  - (b) the VAT attributable to the exempt supplies is in the opinion of the Commissioners an insignificant proportion of the VAT so chargeable,they may include it in the VAT refunded under this section.
- (3) The bodies to which this section applies are—
  - (a) a local authority;

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- (b) a river purification board established under section 135 of the <sup>M4</sup>Local Government (Scotland) Act 1973, and a water development board within the meaning of section 109 of the <sup>M5</sup>Water (Scotland) Act 1980;
  - (c) an internal drainage board;
  - (d) a passenger transport authority or executive within the meaning of Part II of the <sup>M6</sup>Transport Act 1968;
  - (e) a port health authority within the meaning of the <sup>M7</sup>Public Health (Control of Disease) Act 1984, and a port local authority and joint port local authority constituted under Part X of the <sup>M8</sup>Public Health (Scotland) Act 1897;
  - (f) a police authority and the Receiver for the Metropolitan Police District;
  - (g) a development corporation within the meaning of the <sup>M9</sup>New Towns Act 1981 or the <sup>M10</sup>New Towns (Scotland) Act 1968, a new town commission within the meaning of the <sup>M11</sup>New Towns Act (Northern Ireland) 1965 and the Commission for the New Towns;
  - (h) a general lighthouse authority within the meaning of [<sup>F43</sup>Part VIII of the <sup>M12</sup>Merchant Shipping Act 1995];
  - (i) the British Broadcasting Corporation;
  - (j) a nominated news provider, as defined by section 31(3) of the <sup>M13</sup>Broadcasting Act 1990; and
  - (k) any body specified for the purposes of this section by an order made by the Treasury.
- (4) No VAT shall be refunded under this section to a general lighthouse authority which in the opinion of the Commissioners is attributable to activities other than those concerned with the provision, maintenance or management of lights or other navigational aids.
- (5) No VAT shall be refunded under this section to a nominated news provider which in the opinion of the Commissioners is attributable to activities other than the provision of news programmes for broadcasting by holders of regional Channel 3 licences (within the meaning of Part I of the <sup>M14</sup>Broadcasting Act 1990).
- (6) References in this section to VAT chargeable do not include any VAT which, by virtue of any order under section 25(7), is excluded from credit under that section.

#### Textual Amendments

**F43** Words in s. 33(3)(h) substituted (1.1.1996) by 1995 c. 21, ss. 314(2), 316(2), **Sch. 13 para. 95** (with s. 312(1))

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

**C4** S. 33 applied (15.8.1995) (*temp.* until 1.4.1996) by S.I. 1995/1878, **art. 4**

#### Marginal Citations

**M4** 1973 c. 65.  
**M5** 1980 c. 45.  
**M6** 1968 c. 73.  
**M7** 1984 c. 22.  
**M8** 1897 c. 38.  
**M9** 1981 c. 64.  
**M10** 1968 c. 16.  
**M11** 1965 c. 60.

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**M12** 1995 c. 21.

**M13** 1990 c. 42.

**M14** 1990 c. 42.

### **33A** <sup>F44</sup> **Refunds of VAT to museums and galleries**

- (1) Subsections (2) to (5) below apply where—
  - (a) VAT is chargeable on—
    - (i) the supply of goods or services to a body to which this section applies,
    - (ii) the acquisition of any goods by such a body from another member State, or
    - (iii) the importation of any goods by such a body from a place outside the member States,
  - (b) the supply, acquisition or importation is attributable to the provision by the body of free rights of admission to a relevant museum or gallery, and
  - (c) the supply is made, or the acquisition or importation takes place, on or after 1st April 2001.
- (2) The Commissioners shall, on a claim made by the body in such form and manner as the Commissioners may determine, refund to the body the amount of VAT so chargeable.
- (3) The claim must be made before the end of the claim period.
- (4) Subject to subsection (5) below, “the claim period” is the period of 3 years beginning with the day on which the supply is made or the acquisition or importation takes place.
- (5) If the Commissioners so determine, the claim period is such shorter period beginning with that day as the Commissioners may determine.
- (6) Subsection (7) below applies where goods or services supplied to, or acquired or imported by, a body to which this section applies that are attributable to free admissions cannot conveniently be distinguished from goods or services supplied to, or acquired or imported by, the body that are not attributable to free admissions.
- (7) The amount to be refunded on a claim by the body under this section shall be such amount as remains after deducting from the VAT related to the claim such proportion of that VAT as appears to the Commissioners to be attributable otherwise than to free admissions.
- (8) For the purposes of subsections (6) and (7) above—
  - (a) goods or services are, and VAT is, attributable to free admissions if they are, or it is, attributable to the provision by the body of free rights of admission to a relevant museum or gallery;
  - (b) the VAT related to a claim is the whole of the VAT chargeable on—
    - (i) the supplies to the body, and
    - (ii) the acquisitions and importations by the body,to which the claim relates.
- (9) The Treasury may by order—
  - (a) specify a body as being a body to which this section applies;
  - (b) when specifying a body under paragraph (a), specify any museum or gallery that, for the purposes of this section, is a “relevant” museum or gallery in relation to the body;

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- (c) specify an additional museum or gallery as being, for the purposes of this section, a “relevant” museum or gallery in relation to a body to which this section applies;
  - (d) when specifying a museum or gallery under paragraph (b) or (c), provide that this section shall have effect in the case of the museum or gallery as if in subsection (1)(c) there were substituted for 1st April 2001 a later date specified in the order.
- (10) References in this section to VAT do not include any VAT which, by virtue of any order under section 25(7), is excluded from credit under that section.

#### Textual Amendments

F44 S. 33A inserted (11.5.2001 for specified purposes otherwise 1.9.2001) by 2001 c. 9, s. 98(2)(10)(11)

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

C5 S. 33A applied (with modifications) (1.9.2001) by S.I. 2001/2879, arts. 2-4, Sch.

### 34 Capital goods.

- (1) The Treasury may by order make provision for the giving of relief, in such cases, to such extent and subject to such exceptions as may be specified in the order, from VAT paid on the supply, acquisition or importation for the purpose of a business carried on by any person of machinery or plant or any specified description of machinery or plant in cases where that VAT or part of that VAT cannot be credited under section 25 and such other conditions are satisfied as may be specified in the order.
- (2) Without prejudice to the generality of subsection (1) above, an order under this section may provide for relief to be given by deduction or refunding of VAT and for aggregating or excluding the aggregation of value where goods of the same description are supplied, acquired or imported together.

### 35 Refund of VAT to persons constructing certain buildings.

[<sup>F45</sup>(1) Where—

- (a) a person carries out works to which this section applies,
- (b) his carrying out of the works is lawful and otherwise than in the course or furtherance of any business, and
- (c) VAT is chargeable on the supply, acquisition or importation of any goods used by him for the purposes of the works,

the Commissioners shall, on a claim made in that behalf, refund to that person the amount of VAT so chargeable.

(1A) The works to which this section applies are—

- (a) the construction of a building designed as a dwelling or number of dwellings;
- (b) the construction of a building for use solely for a relevant residential purpose or relevant charitable purpose; and
- (c) a residential conversion.

(1B) For the purposes of this section goods shall be treated as used for the purposes of works to which this section applies by the person carrying out the works in so far only

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as they are building materials which, in the course of the works, are incorporated in the building in question or its site.

(1C) Where—

- (a) a person (“the relevant person”) carries out a residential conversion by arranging for any of the work of the conversion to be done by another (“a contractor”),
- (b) the relevant person’s carrying out of the conversion is lawful and otherwise than in the course or furtherance of any business,
- (c) the contractor is not acting as an architect, surveyor or consultant or in a supervisory capacity, and
- (d) VAT is chargeable on services consisting in the work done by the contractor, the Commissioners shall, on a claim made in that behalf, refund to the relevant person the amount of VAT so chargeable.

(1D) For the purposes of this section works constitute a residential conversion to the extent that they consist in the conversion of a non-residential building, or a non-residential part of a building, into—

- (a) a building designed as a dwelling or a number of dwellings;
- (b) a building intended for use solely for a relevant residential purpose; or
- (c) anything which would fall within paragraph (a) or (b) above if different parts of a building were treated as separate buildings.]

(2) The Commissioners shall not be required to entertain a claim for a refund of VAT under this section unless the claim—

- (a) is made within such time and in such form and manner, and
- (b) contains such information, and
- (c) is accompanied by such documents, whether by way of evidence or otherwise, as the Commissioners may by regulations prescribe [<sup>F46</sup>or, in the case of documents, as the Commissioners may determine in accordance with the regulations].

(3) This section shall have effect—

- (a) as if the reference in subsection (1) above to the VAT chargeable on the supply of any goods included a reference to VAT chargeable on the supply in accordance with the law of another member State; and
- (b) in relation to VAT chargeable in accordance with the law of another member State, as if references to refunding VAT to any person were references to paying that person an amount equal to the VAT chargeable in accordance with the law of that member State;

and the provisions of this Act and of any other enactment or subordinate legislation (whenever passed or made) so far as they relate to a refund under this section shall be construed accordingly.

[<sup>F47</sup>(4) The notes to Group 5 of Schedule 8 shall apply for construing this section as they apply for construing that Group.

(5) The power of the Treasury by order under section 30 to vary Schedule 8 shall include—

- (a) power to apply any variation made by the order for the purposes of this section; and
- (b) power to make such consequential modifications of this section as they may think fit [<sup>F48</sup>but this is subject to subsection (4A) below.].]

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- [<sup>F49</sup>(4A) The meaning of “non-residential” given by Note (7A) of Group 5 of Schedule 8 (and not that given by Note (7) of that Group) applies for the purposes of this section but as if—
- (a) references in that Note to item 3 of that Group were references to this section, and
  - (b) paragraph (b)(iii) of that Note were omitted.]

#### Textual Amendments

- F45** S. 35(1)(1A)-(1D) substituted (29.4.1996 with application as mentioned in s. 30(4) of the amending Act) for s. 35(1) by 1996 c. 8, s. 30(1)
- F46** Words in s. 35(2) inserted (29.4.1996 with application as mentioned in s. 30(4) of the amending Act) by 1996 c. 8, s. 30(2)
- F47** S. 35(4)(5) inserted (29.4.1996 with application as mentioned in s. 30(4) of the amending Act) by 1996 c. 8, s. 30(3)
- F48** Words in s. 35(4) inserted (1.8.2001) by S.I. 2001/2305, art. 4(a)
- F49** S. 35(4A) inserted (1.8.2001) by S.I. 2001/2305, art. 4(b)

### 36 Bad debts.

- (1) Subsection (2) below applies where—
  - (a) a person has supplied goods or services <sup>F50</sup> . . . and has accounted for and paid VAT on the supply,
  - (b) the whole or any part of the consideration for the supply has been written off in his accounts as a bad debt, and
  - (c) a period of 6 months (beginning with the date of the supply) has elapsed.
- (2) Subject to the following provisions of this section and to regulations under it the person shall be entitled, on making a claim to the Commissioners, to a refund of the amount of VAT chargeable by reference to the outstanding amount.

- [<sup>F51</sup>(3) In subsection (2) above “the outstanding amount” means—
- (a) if at the time of the claim no part of the consideration written off in the claimant’s accounts as a bad debt has been received, an amount equal to the amount of the consideration so written off;
  - (b) if at that time any part of the consideration so written off has been received, an amount by which that part is exceeded by the amount of the consideration written off;

and in this subsection “received” means received either by the claimant or by a person to whom has been assigned a right to receive the whole or any part of the consideration written off.]

- [<sup>F52</sup>(3A) For the purposes of this section, where the whole or any part of the consideration for the supply does not consist of money, the amount in money that shall be taken to represent any non-monetary part of the consideration shall be so much of the amount made up of—
- (a) the value of the supply, and
  - (b) the VAT charged on the supply,
- as is attributable to the non-monetary consideration in question.]

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- (4) A person shall not be entitled to a refund under subsection (2) above unless—
- (a) the value of the supply is equal to or less than its open market value,<sup>F53</sup> . . .
  - <sup>F53</sup>(b) . . . . .
- (4A)<sup>F54</sup> . . . . .
- (5) Regulations under this section may—
- (a) require a claim to be made at such time and in such form and manner as may be specified by or under the regulations;
  - (b) require a claim to be evidenced and quantified by reference to such records and other documents as may be so specified;
  - (c) require the claimant to keep, for such period and in such form and manner as may be so specified, those records and documents and a record of such information relating to the claim and to [<sup>F55</sup>anything subsequently received] by way of consideration as may be so specified;
  - (d) require the repayment of a refund allowed under this section where any requirement of the regulations is not complied with;
  - (e) require the repayment of the whole or, as the case may be, an appropriate part of a refund allowed under this section [<sup>F56</sup>where any part (or further part) of the consideration written off in the claimant's accounts as a bad debt is subsequently received either by the claimant or, except in such circumstances as may be prescribed, by a person to whom has been assigned a right to receive the whole or any part of that consideration;]
  - (ea)<sup>F57</sup> . . . . .
  - (f) include such supplementary, incidental, consequential or transitional provisions as appear to the Commissioners to be necessary or expedient for the purposes of this section;
  - (g) make different provision for different circumstances.
- (6) The provisions which may be included in regulations by virtue of subsection (5)(f) above may include rules for ascertaining—
- (a) whether, when and to what extent consideration is to be taken to have been written off in accounts as a bad debt;
  - (b) whether [<sup>F58</sup>anything received] is to be taken as received by way of consideration for a particular supply;
  - (c) whether, and to what extent, [<sup>F58</sup>anything received] is to be taken as received by way of consideration written off in accounts as a bad debt.
- (7) The provisions which may be included in regulations by virtue of subsection (5)(f) above may include rules dealing with particular cases, such as those involving [<sup>F59</sup>receipt of part of the consideration] or mutual debts; and in particular such rules may vary the way in which the following amounts are to be calculated—
- (a) the outstanding amount mentioned in subsection (2) above, and
  - (b) the amount of any repayment where a refund has been allowed under this section.
- (8) Section 6 shall apply for determining the time when a supply is to be treated as taking place for the purposes of construing this section.

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#### Textual Amendments

- F50** Words in s. 36(1)(a) repealed (31.7.1998 with effect as mentioned in s. 23(7) of the amending Act) by 1998 c. 36, ss. 23(1)(7), 165, **Sch. 27 Pt. II** Note
- F51** S. 36(3) substituted (27.7.1999 with effect as mentioned in s. 15(5) of the amending Act) by S.I. 1999 c. 16, s. 15(1)
- F52** S. 36(3A) inserted (31.7.1998 with effect as mentioned in s. 23(7) of the amending Act) by 1998 c. 36, s. 23(3)(7)
- F53** S. 36(4)(b) and word “and” immediately preceding it repealed (19.3.1997 with effect as mentioned in s. 39 of the amending Act) by 1997 c. 16, ss. 39, 113, **Sch. 18 Pt. IV(3)** Note
- F54** S. 36(4A) repealed (with effect as mentioned in s. 22(3) of the amending Act) by Finance Act 2002 (c. 23), s. 22(2), **Sch. 40 Pt. 2(1)**; S.I. 2002/3028, art. 2
- F55** Words in s. 36(5)(c) substituted (31.7.1998) by 1998 c. 36, s. 23(4)(a)
- F56** Words in s. 36(5)(e) substituted (27.7.1999 with effect as mentioned in s. 15(5) of the amending Act) by 1999 c. 16, s. 15(2)
- F57** S. 36(5)(ea) repealed (with effect as mentioned in s. 22(3) of the amending Act) by Finance Act 2002 (c. 23), s. 22(2), **Sch. 40 Pt. 2(1)**; S.I. 2002/3028, art. 2
- F58** Words in s. 36(6)(b)(c) substituted (31.7.1998) by 1998 c. 36, s. 23(5)
- F59** Words in s. 36(7) substituted (31.7.1998) by 1998 c. 36, s. 23(6)

#### <sup>F60</sup> Acquisitions

#### Textual Amendments

- F60** S. 36A and preceding cross heading inserted (24.7.2002) by Finance Act 2002 (c.23), s. 25

#### <sup>F61</sup> 36A Relief from VAT on acquisition if importation would attract relief

- (1) The Treasury may by order make provision for relieving from VAT the acquisition from another member State of any goods if, or to the extent that, relief from VAT would be given by an order under section 37 if the acquisition were an importation from a place outside the member States.
- (2) An order under this section may provide for relief to be subject to such conditions as appear to the Treasury to be necessary or expedient.

These may—

- (a) include conditions prohibiting or restricting the disposal of or dealing with the goods concerned;
- (b) be framed by reference to the conditions to which, by virtue of any order under section 37 in force at the time of the acquisition, relief under such an order would be subject in the case of an importation of the goods concerned.
- (3) Where relief from VAT given by an order under this section was subject to a condition that has been breached or not complied with, the VAT shall become payable at the time of the breach or, as the case may be, at the latest time allowed for compliance.]]

#### Textual Amendments

- F61** S. 36A and preceding cross heading inserted (24.7.2002) by Finance Act 2002 (c. 23), s. 25



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*Imports, overseas businesses etc*

**37 Relief from VAT on importation of goods.**

- (1) The Treasury may by order make provision for giving relief from the whole or part of the VAT chargeable on the importation of goods from places outside the member States, subject to such conditions (including conditions prohibiting or restricting the disposal of or dealing with the goods) as may be imposed by or under the order, if and so far as the relief appears to the Treasury to be necessary or expedient, having regard to any international agreement or arrangements.
- (2) In any case where—
  - (a) it is proposed that goods which have been imported from a place outside the member States by any person (“the original importer”) with the benefit of relief under subsection (1) above shall be transferred to another person (“the transferee”), and
  - (b) on an application made by the transferee, the Commissioners direct that this subsection shall apply,this Act shall have effect as if, on the date of the transfer of the goods (and in place of the transfer), the goods were exported by the original importer and imported by the transferee and, accordingly, where appropriate, provision made under subsection (1) above shall have effect in relation to the VAT chargeable on the importation of the goods by the transferee.
- (3) The Commissioners may by regulations make provision for remitting or repaying, if they think fit, the whole or part of the VAT chargeable on the importation of any goods from places outside the member States which are shown to their satisfaction to have been previously exported from the United Kingdom or removed from any member State.
- (4) The Commissioners may by regulations make provision for remitting or repaying the whole or part of the VAT chargeable on the importation of any goods from places outside the member States if they are satisfied that the goods have been or are to be re-exported or otherwise removed from the United Kingdom and they think fit to do so in all the circumstances and having regard—
  - (a) to the VAT chargeable on the supply of like goods in the United Kingdom;
  - (b) to any VAT which may have become chargeable in another member State in respect of the goods.

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

C6 S. 37(1) extended (27.7.1999) by 1999 c. 16, s. 13(3)

**38 Importation of goods by taxable persons.**

The Commissioners may by regulations make provision for enabling goods imported from a place outside the member States by a taxable person in the course or furtherance of any business carried on by him to be delivered or removed, subject to such conditions or restrictions as the Commissioners may impose for the protection of the revenue, without payment of the VAT chargeable on the importation, and for that VAT to be accounted for together with the VAT chargeable on the supply of goods or services by him or on the acquisition of goods by him from other member States.

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### **39 Repayment of VAT to those in business overseas.**

- (1) The Commissioners may, by means of a scheme embodied in regulations, provide for the repayment, to persons to whom this section applies, of VAT on supplies to them in the United Kingdom or on the importation of goods by them from places outside the member States which would be input tax of theirs if they were taxable persons in the United Kingdom.
- (2) This section—
  - (a) applies to persons carrying on business in another member State, and
  - (b) shall apply also to persons carrying on business in other countries, if, pursuant to any Community Directive, rules are adopted by the Council of the Communities about refunds of VAT to persons established elsewhere than in the member States,but does not apply to persons carrying on business in the United Kingdom.
- (3) Repayment shall be made in such cases only, and subject to such conditions, as the scheme may prescribe (being conditions specified in the regulations or imposed by the Commissioners either generally or in particular cases); and the scheme may provide—
  - (a) for claims and repayments to be made only through agents in the United Kingdom;
  - (b) either generally or for specified purposes—
    - (i) for the agents to be treated under this Act as if they were taxable persons; and
    - (ii) for treating claims as if they were returns under this Act and repayments as if they were repayments of input tax; and
  - (c) for generally regulating the methods by which the amount of any repayment is to be determined and the repayment is to be made.

### **40 Refunds in relation to new means of transport supplied to other member States.**

- (1) Subject to subsection (2) below, where a person who is not a taxable person makes such a supply of goods consisting in a new means of transport as involves the removal of the goods to another member State, the Commissioners shall, on a claim made in that behalf, refund to that person, as the case may be—
  - (a) the amount of any VAT on the supply of that means of transport to that person, or
  - (b) the amount of any VAT paid by that person on the acquisition of that means of transport from another member State or on its importation from a place outside the member States.
- (2) The amount of VAT refunded under this section shall not exceed the amount that would have been payable on the supply involving the removal if it had been a taxable supply by a taxable person and had not been zero-rated.
- (3) The Commissioners shall not be entitled to entertain a claim for refund of VAT under this section unless the claim—
  - (a) is made within such time and in such form and manner;
  - (b) contains such information; and
  - (c) is accompanied by such documents, whether by way of evidence or otherwise, as the Commissioners may by regulations prescribe.

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## PART III

### APPLICATION OF ACT IN PARTICULAR CASES

#### 41 Application to the Crown.

- (1) This Act shall apply in relation to taxable supplies by the Crown as it applies in relation to taxable supplies by taxable persons.
- (2) Where the supply by a Government department of any goods or services does not amount to the carrying on of a business but it appears to the Treasury that similar goods or services are or might be supplied by taxable persons in the course or furtherance of any business, then, if and to the extent that the Treasury so direct, the supply of those goods or services by that department shall be treated for the purposes of this Act as a supply in the course or furtherance of any business carried on by it.
- (3) Where VAT is chargeable on the supply of goods or services to a Government department, on the acquisition of any goods by a Government department from another member State or on the importation of any goods by a Government department from a place outside the member States and the supply, acquisition or importation is not for the purpose—
  - (a) of any business carried on by the department, or
  - (b) of a supply by the department which, by virtue of a direction under subsection (2) above, is treated as a supply in the course or furtherance of a business,then, if and to the extent that the Treasury so direct and subject to subsection (4) below, the Commissioners shall, on a claim made by the department at such time and in such form and manner as the Commissioners may determine, refund to it the amount of the VAT so chargeable.
- (4) The Commissioners may make the refunding of any amount due under subsection (3) above conditional upon compliance by the claimant with requirements with respect to the keeping, preservation and production of records relating to the supply, acquisition or importation in question.
- (5) For the purposes of this section goods or services obtained by one Government department from another Government department shall be treated, if and to the extent that the Treasury so direct, as supplied by that other department and similarly as regards goods or services obtained by or from the Crown Estate Commissioners.
- (6) In this section “Government department” includes [<sup>F62</sup>the Scottish Administration][<sup>F63</sup>the National Assembly for Wales,]a Northern Ireland department, a Northern Ireland health and social services body, any body of persons exercising functions on behalf of a Minister of the Crown, including <sup>F64</sup>. . . any part of a Government department (as defined in the foregoing) designated for the purposes of this subsection by a direction of the Treasury.
- (7) For the purposes of subsection (6) above, [<sup>F65</sup>a health service body as defined in section 60(7) of the National Health Service and Community Care Act 1990, and a National Health Service trust established under Part I of that Act] or the <sup>M15</sup>National Health Service (Scotland) Act 1978 [<sup>F66</sup>and a Primary Care Trust][<sup>F67</sup>and a Local Health Board] shall be regarded as a body of persons exercising functions on behalf of a Minister of the Crown.

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- (8) In subsection (6) “a Northern Ireland health and social services body” means—
- (a) a health and social services body as defined in Article 7(6) of the <sup>M16</sup>Health and Personal Social Services (Northern Ireland) Order 1991; and
  - (b) a Health and Social Services trust established under that Order.

#### Textual Amendments

- F62** Words in s. 41(6) inserted (6.5.1999) by 1998 c. 46, s. 125, **Sch. 8 para. 30** (with s. 126(3)); S.I. 1998/3178, **art. 2(2)**, **Sch. 3**
- F63** Words in s. 41(6) inserted (1.4.1999) by 1998 c. 38, s. 125, **Sch. 12 para. 35** (with ss. 139(2), 143(2)); S.I. 1999/782, **art. 2**
- F64** Words in s. 41(6) omitted (8.2.2000) by virtue of S.I. 2000/90, **art. 3(1)**, **Sch. 1 para. 29(a)** (with **art. 2(5)**)
- F65** Words in s. 41(7) substituted (8.2.2000) by S.I. 2000/90, **art. 3(1)**, **Sch. 1 para. 29(b)** (with **art. 2(5)**)
- F66** Words in s. 41(7) inserted (1.4.2000 (E.W.) otherwise 11.5.2001) by 1999 c. 8, s. 65, **Sch. 4 para. 86**; S.I. 1999/2342, **art. 2(4)(b)(iii)**; S.I. 2001/1985, **art. 2(4)**
- F67** Words in s. 41(7) inserted (10.10.2002 for W., 1.3.2007 in so far as not already in force, immediately before the National Health Service Act 2006 comes into force) by **National Health Service Reform and Health Care Professions Act 2002** (c. 17), s. 42(3), **Sch. 5 para. 40**; S.I. 2002/2532, **art. 2**, **Sch.**; S.I. 2006/1407, **art. 1(1)**, **Sch. 1 para. 12** (with **art. 4**)

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

- C7** S. 41 modified (2.12.1999) by S.I. 1999/3145, **art. 8**; S.I. 1999/3208, **art. 2**

#### Marginal Citations

- M15** 1978 c. 29.  
**M16** S.I.1991/194.

## 42 Local authorities.

A local authority which makes taxable supplies is liable to be registered under this Act, whatever the value of the supplies; and accordingly Schedule 1 shall apply, in a case where the value of the taxable supplies made by a local authority in any period of one year does not exceed the sum for the time being specified in paragraph 1(1)(a) of that Schedule, as if that value exceeded that sum.

## 43 Groups of companies.

- (1) Where under [<sup>F68</sup>sections 43A to 43C] any bodies corporate are treated as members of a group, any business carried on by a member of the group shall be treated as carried on by the representative member, and—
- (a) any supply of goods or services by a member of the group to another member of the group shall be disregarded; and
  - (b) any [<sup>F69</sup>supply which is a supply to which paragraph (a) above does not apply and is a supply] of goods or services by or to a member of the group shall be treated as a supply by or to the representative member; and
  - (c) any VAT paid or payable by a member of the group on the acquisition of goods from another member State or on the importation of goods from a place outside the member States shall be treated as paid or payable by the representative member and the goods shall be treated—

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(i) in the case of goods acquired from another member State, for the purposes of section 73(7); and  
(ii) in the case of goods imported from a place outside the member States, for those purposes and the purposes of section 38,  
as acquired or, as the case may be, imported by the representative member;  
and all members of the group shall be liable jointly and severally for any VAT due from the representative member.

[<sup>F70</sup>(1AA) Where—

- (a) it is material, for the purposes of any provision made by or under this Act (“ the relevant provision ”), whether the person by or to whom a supply is made, or the person by whom goods are acquired or imported, is a person of a particular description,
- (b) paragraph (b) or (c) of subsection (1) above applies to any supply, acquisition or importation, and
- (c) there is a difference that would be material for the purposes of the relevant provision between—
  - (i) the description applicable to the representative member, and
  - (ii) the description applicable to the body which (apart from this section) would be regarded for the purposes of this Act as making the supply, acquisition or importation or, as the case may be, as being the person to whom the supply is made,

the relevant provision shall have effect in relation to that supply, acquisition or importation as if the only description applicable to the representative member were the description in fact applicable to that body.

(1AB) Subsection (1AA) above does not apply to the extent that what is material for the purposes of the relevant provision is whether a person is a taxable person.]

(1A) .....

(2) An order under section 5(5) or (6) may make provision for securing that any goods or services which, if all the members of the group were one person, would fall to be treated under that section as supplied to and by that person, are treated as supplied to and by the representative member [<sup>F71</sup>and may provide for that purpose that the representative member is to be treated as a person of such description as may be determined under the order].

[<sup>F72</sup>(2A) A supply made by a member of a group (“ the supplier ”) to another member of the group (“ the UK member ”) shall not be disregarded under subsection (1)(a) above if—

- (a) it would (if there were no group) be a supply of services falling within Schedule 5 to a person belonging in the United Kingdom;
- (b) those services are not within any of the descriptions specified in Schedule 9;
- (c) the supplier has been supplied (whether or not by a person belonging in the United Kingdom) with [<sup>F73</sup>any services falling within paragraphs 1 to 8 of Schedule 5 which do not fall within any of the descriptions specified in Schedule 9;]
- (d) the supplier belonged outside the United Kingdom when it was supplied with the services mentioned in paragraph (c) above; and
- (e) the services so mentioned have been used by the supplier for making the supply to the UK member.

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- (2B) Subject to subsection (2C) below, where a supply is excluded by virtue of subsection (2A) above from the supplies that are disregarded in pursuance of subsection (1)(a) above, all the same consequences shall follow under this Act as if that supply—
- (a) were a taxable supply in the United Kingdom by the representative member to itself, and
  - (b) without prejudice to that, were made by the representative member in the course or furtherance of its business.
- (2C) <sup>F74</sup>Except in so far as the Commissioners may by regulations otherwise provide, a supply which is deemed by virtue of subsection (2B) above to be a supply by the representative member to itself—
- (a) shall not be taken into account as a supply made by the representative member when determining any allowance of input tax under section 26(1) in the case of the representative member;
  - (b) shall be deemed for the purposes of paragraph 1 of Schedule 6 to be a supply in the case of which the person making the supply and the person supplied are connected within the meaning of section 839 of the Taxes Act (connected persons); and
  - (c) subject to paragraph (b) above, shall be taken to be a supply the value and time of which are determined as if it were a supply of services which is treated by virtue of section 8 as made by the person by whom the services are received.
- (2D) For the purposes of subsection (2A) above where—
- (a) there has been a supply of the assets of a business of a person (“ the transferor ”) to a person to whom the whole or any part of that business was transferred as a going concern (“ the transferee ”),
  - (b) that supply is either—
    - (i) a supply falling to be treated, in accordance with an order under section 5(3), as being neither a supply of goods nor a supply of services, or
    - (ii) a supply that would have fallen to be so treated if it had taken place in the United Kingdom,
 and
  - (c) the transferor was supplied with services falling within paragraphs 1 to 8 of Schedule 5 at a time before the transfer when the transferor belonged outside the United Kingdom,
- those services, so far as they are used by the transferee for making any supply falling within that Schedule, shall be deemed to have been supplied to the transferee at a time when the transferee belonged outside the United Kingdom.
- (2E) Where, in the case of a supply of assets falling within paragraphs (a) and (b) of subsection (2D) above—
- (a) the transferor himself acquired any of the assets in question by way of a previous supply of assets falling within those paragraphs, and
  - (b) there are services falling within paragraphs 1 to 8 of Schedule 5 which, if used by the transferor for making supplies falling within that Schedule, would be deemed by virtue of that subsection to have been supplied to the transferor at a time when he belonged outside the United Kingdom,

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that subsection shall have effect, notwithstanding that the services have not been so used by the transferor, as if the transferor were a person to whom those services were supplied and as if he were a person belonging outside the United Kingdom at the time of their deemed supply to him; and this subsection shall apply accordingly through any number of successive supplies of assets falling within paragraphs (a) and (b) of that subsection.]

<sup>F75</sup>(3) .....

(4) .....

(5) .....

<sup>F76</sup>(5A) .....

(6) .....

(7) .....

(8) .....

[<sup>F77</sup>(9) Schedule 9A (which makes provision for ensuring that this section is not used for tax avoidance) shall have effect.]

#### Textual Amendments

- F68** Words in s. 43(1) substituted (27.7.1999) by 1999 c. 16, s. 16, **Sch. 2 para. 1(2)**
- F69** Words in s. 43(1)(b) substituted (1.5.1995 with effect as mentioned in s. 25(5) of the amending Act) by 1995 c. 4, s. 25(2)(5)
- F70** S. 43(1AA)(1AB) inserted (with effect in relation to any supply made after 26.11.1996 and in relation to any acquisition or importation taking place after that date) by 1997 c. 16, s. 40(1)(3)
- F71** Words in s. 43(2) inserted (19.3.1997) by 1997 c. 16, s. 40(2)
- F72** S. 43(2A)-(2E) inserted (with effect in relation to supplies made on or after 26.11.1996) by 1997 c. 16, s. 41(1)(2)
- F73** Words in s. 43(2A) substituted (19.3.1997) by 1997 c. 16, s. 41(3)(4)
- F74** Words in s. 43(2C) inserted (19.3.1997) by 1997 c. 16, s. 41(3)(5)
- F75** S 43(3)-(8) repealed (27.7.1999 with effect as mentioned in Sch. 2 para. 6 of the amending Act)) by 1999 c. 16, ss. 16, 139, Sch. 2 para. 1(3), **Sch. 20 Pt. II(1)**
- F76** S. 43(5A) inserted (1.5.1995 with effect as mentioned in s. 25(5) of the amending Act) by 1995 c. 4, s. 25(4)(5)
- F77** S. 43(9) inserted (29.4.1996) by 1996 c. 8, s. 31(1)

#### [43A <sup>F78</sup>Groups: eligibility.

- (1) Two or more bodies corporate are eligible to be treated as members of a group if each is established or has a fixed establishment in the United Kingdom and—
  - (a) one of them controls each of the others,
  - (b) one person (whether a body corporate or an individual) controls all of them, or
  - (c) two or more individuals carrying on a business in partnership control all of them.
- (2) For the purposes of this section a body corporate shall be taken to control another body corporate if it is empowered by statute to control that body's activities or if it is

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that body's holding company within the meaning of section 736 of the <sup>M17</sup>Companies Act 1985.

- (3) For the purposes of this section an individual or individuals shall be taken to control a body corporate if he or they, were he or they a company, would be that body's holding company within the meaning of that section.]

#### Textual Amendments

**F78** Ss. 43A-43C inserted (27.7.1999) by 1999 c. 16, s. 16, Sch. 2 para. 2

#### Marginal Citations

**M17** 1985 c.6.

### [<sup>F79</sup>43B Groups: applications.

- (1) This section applies where an application is made to the Commissioners for two or more bodies corporate, which are eligible under section 43A(1), to be treated as members of a group.
- (2) This section also applies where two or more bodies corporate are treated as members of a group and an application is made to the Commissioners—
  - (a) for another body corporate, which is eligible under section 43A(1) to be treated as a member of the group, to be treated as a member of the group,
  - (b) for a body corporate to cease to be treated as a member of the group,
  - (c) for a member to be substituted as the group's representative member, or
  - (d) for the bodies corporate no longer to be treated as members of a group.
- (3) An application with respect to any bodies corporate—
  - (a) must be made by one of them or by the person controlling them, and
  - (b) in the case of an application for the bodies to be treated as a group, must appoint one of them as the representative member.
- (4) Where this section applies in relation to an application it shall, subject to subsection (6) below, be taken to be granted with effect from—
  - (a) the day on which the application is received by the Commissioners, or
  - (b) such earlier or later time as the Commissioners may allow.
- (5) The Commissioners may refuse an application, within the period of 90 days starting with the day on which it was received by them, if it appears to them—
  - (a) in the case of an application such as is mentioned in subsection (1) above, that the bodies corporate are not eligible under section 43A(1) to be treated as members of a group,
  - (b) in the case of an application such as is mentioned in subsection (2)(a) above, that the body corporate is not eligible under section 43A(1) to be treated as a member of the group, or
  - (c) in any case, that refusal of the application is necessary for the protection of the revenue.
- (6) If the Commissioners refuse an application it shall be taken never to have been granted.]



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#### Textual Amendments

**F79** Ss. 43A-43C inserted (27.7.1999) by 1999 c. 16, s. 16, Sch. 2 para. 2

### [<sup>F80</sup> 43C Groups: termination of membership.

- (1) The Commissioners may, by notice given to a body corporate, terminate its treatment as a member of a group from a date—
  - (a) which is specified in the notice, and
  - (b) which is, or falls after, the date on which the notice is given.
- (2) The Commissioners may give a notice under subsection (1) above only if it appears to them to be necessary for the protection of the revenue.
- (3) Where—
  - (a) a body is treated as a member of a group, and
  - (b) it appears to the Commissioners that the body is not, or is no longer, eligible under section 43A(1) to be treated as a member of the group,the Commissioners shall, by notice given to the body, terminate its treatment as a member of the group from a date specified in the notice.
- (4) The date specified in a notice under subsection (3) above may be earlier than the date on which the notice is given but shall not be earlier than—
  - (a) the first date on which, in the opinion of the Commissioners, the body was not eligible to be treated as a member of the group, or
  - (b) the date on which, in the opinion of the Commissioners, the body ceased to be eligible to be treated as a member of the group.]

#### Textual Amendments

**F80** Ss. 43A-43C inserted (27.7.1999) by 1999 c. 16, s. 16, Sch. 2 para. 2

### 44 Supplies to groups.

- (1) Subject to subsections (2) to (4) below, subsection (5) below applies where—
  - (a) a business, or part of a business, carried on by a taxable person is transferred as a going concern to a body corporate treated as a member of a group under section 43;
  - (b) on the transfer of the business or part, chargeable assets of the business are transferred to the body corporate; and
  - (c) the transfer of the assets is treated by virtue of section 5(3)(c) as neither a supply of goods nor a supply of services.
- (2) Subsection (5) below shall not apply if the representative member of the group is entitled to credit for the whole of the input tax on supplies to it and acquisitions and importations by it—
  - (a) during the prescribed accounting period in which the assets are transferred, and
  - (b) during any longer period to which regulations under section 26(3)(b) relate and in which the assets are transferred.

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- (3) Subsection (5) below shall not apply if the Commissioners are satisfied that the assets were assets of the taxable person transferring them more than 3 years before the day on which they are transferred.
- (4) Subsection (5) below shall not apply to the extent that the chargeable assets consist of capital items in respect of which regulations made under section 26(3) and (4), and in force when the assets are transferred, provide for adjustment to the deduction of input tax.
- (5) The chargeable assets shall be treated for the purposes of this Act as being, on the day on which they are transferred, both supplied to the representative member of the group for the purpose of its business and supplied by that member in the course or furtherance of its business.
- (6) A supply treated under subsection (5) above as made by a representative member shall not be taken into account as a supply made by him when determining the allowance of input tax in his case under section 26.
- (7) The value of a supply treated under subsection (5) above as made to or by a representative member shall be taken to be the open market value of the chargeable assets.
- (8) For the purposes of this section, the open market value of any chargeable assets shall be taken to be the price that would be paid on a sale (on which no VAT is payable) between a buyer and a seller who are not in such a relationship as to affect the price.
- (9) The Commissioners may reduce the VAT chargeable by virtue of subsection (5) above in a case where they are satisfied that the person by whom the chargeable assets are transferred has not received credit for the full amount of input tax arising on the supply to or acquisition or importation by him of the chargeable assets.
- (10) For the purposes of this section, assets are chargeable assets if their supply in the United Kingdom by a taxable person in the course or furtherance of his business would be a taxable supply (and not a zero-rated supply).

#### **45 Partnerships.**

- (1) The registration under this Act of persons—
  - (a) carrying on a business in partnership, or
  - (b) carrying on in partnership any other activities in the course or furtherance of which they acquire goods from other member States,
 may be in the name of the firm; and no account shall be taken, in determining for any purpose of this Act whether goods or services are supplied to or by such persons or are acquired by such persons from another member State, of any change in the partnership.
- (2) Without prejudice to section 36 of the <sup>M18</sup>Partnership Act 1890 (rights of persons dealing with firm against apparent members of firm), until the date on which a change in the partnership is notified to the Commissioners a person who has ceased to be a member of a partnership shall be regarded as continuing to be a partner for the purposes of this Act and, in particular, for the purpose of any liability for VAT on the supply of goods or services by the partnership or on the acquisition of goods by the partnership from another member State.

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- (3) Where a person ceases to be a member of a partnership during a prescribed accounting period (or is treated as so doing by virtue of subsection (2) above) any notice, whether of assessment or otherwise, which is served on the partnership and relates to, or to any matter arising in, that period or any earlier period during the whole or part of which he was a member of the partnership shall be treated as served also on him.
- (4) Without prejudice to section 16 of the <sup>M19</sup>Partnership Act 1890 (notice to acting partner to be notice to the firm) any notice, whether of assessment or otherwise, which is addressed to a partnership by the name in which it is registered by virtue of subsection (1) above and is served in accordance with this Act shall be treated for the purposes of this Act as served on the partnership and, accordingly, where subsection (3) above applies, as served also on the former partner.
- (5) Subsections (1) and (3) above shall not affect the extent to which, under section 9 of the <sup>M20</sup>Partnership Act 1890, a partner is liable for VAT owed by the firm; but where a person is a partner in a firm during part only of a prescribed accounting period, his liability for VAT on the supply by the firm of goods or services during that accounting period or on the acquisition during that period by the firm of any goods from another member State shall be such proportion of the firm's liability as may be just.

#### Marginal Citations

**M18** 1890 c. 39.

**M19** 1890 c. 39.

**M20** 1890 c. 39.

#### 46 Business carried on in divisions or by unincorporated bodies, personal representatives etc.

- (1) The registration under this Act of a body corporate carrying on a business in several divisions may, if the body corporate so requests and the Commissioners see fit, be in the names of those divisions.
- (2) The Commissioners may by regulations make provision for determining by what persons anything required by or under this Act to be done by a person carrying on a business is to be done where a business is carried on in partnership or by a club, association or organisation the affairs of which are managed by its members or a committee or committees of its members.
- (3) The registration under this Act of any such club, association or organisation may be in the name of the club, association or organisation; and in determining whether goods or services are supplied to or by such a club, association or organisation or whether goods are acquired by such a club, association or organisation from another member State, no account shall be taken of any change in its members.
- (4) The Commissioners may by regulations make provision for persons who carry on a business of a taxable person who has died or become bankrupt or has had his estate sequestrated or has become incapacitated to be treated for a limited time as taxable persons, and for securing continuity in the application of this Act in cases where persons are so treated.
- (5) In relation to a company which is a taxable person, the reference in subsection (4) above to the taxable person having become bankrupt or having had his estate

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sequestered or having become incapacitated shall be construed as a reference to its being in liquidation or receivership or to an administration order being in force in relation to it.

- (6) References in this section to a business include references to any other activities in the course or furtherance of which any body corporate or any club, association, organisation or other unincorporated body acquires goods from another member State.

#### 47 Agents etc.

- (1) Where—

- (a) goods are acquired from another member State by a person who is not a taxable person and a taxable person acts in relation to the acquisition, and then supplies the goods as agent for the person by whom they are so acquired; or  
(b) goods are imported from a place outside the member States by a taxable person who supplies them as agent for a person who is not a taxable person,

[<sup>F81</sup>then, if the taxable person acts in relation to the supply in his own name, the goods shall] be treated for the purposes of this Act as acquired and supplied or, as the case may be, imported and supplied by the taxable person as principal.

- (2) For the purposes of subsection (1) above a person who is not resident in the United Kingdom and whose place or principal place of business is outside the United Kingdom may be treated as not being a taxable person if as a result he will not be required to be registered under this Act.

[<sup>F82</sup>(2A) Where, in the case of any supply of goods to which subsection (1) above does not apply, goods are supplied through an agent who acts in his own name, the supply shall be treated both as a supply to the agent and as a supply by the agent.]

- (3) Where <sup>F83</sup> . . . services are supplied through an agent who acts in his own name the Commissioners may, if they think fit, treat the supply both as a supply to the agent and as a supply by the agent.

#### Textual Amendments

- F81** Words in s. 47(1) substituted (1.5.1995 with effect as mentioned in s. 23(4)(a) of the amending Act) by 1995 c. 4, s. 23(1)  
**F82** S. 47(2A) inserted (1.5.1995 with effect as mentioned in s. 23(4)(b) of the amending Act) by 1995 c. 4, s. 23(2)  
**F83** Words in s. 47(3) repealed (1.5.1995 with effect as mentioned in s. 23(4)(b) of the amending Act) by 1995 c. 4, ss. 23(3), 162, Sch. 29 Pt. VI(2) Note

#### 48 VAT representatives.

- (1) Where any person—

- (a) is a taxable person for the purposes of this Act or, without being a taxable person, is a person who makes taxable supplies or who acquires goods in the United Kingdom from one or more other member States;

<sup>F84</sup>(b) is not established, and does not have any fixed establishment, in the United Kingdom;

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- (ba) is established in a country or territory in respect of which it appears to the Commissioners that the condition specified in subsection (1A) below is satisfied; and
- (c) in the case of an individual, does not have his usual place of residence in the United Kingdom,

the Commissioners may direct that person to appoint another person (in this Act referred to as a “VAT representative”) to act on his behalf in relation to VAT.

<sup>F85</sup>(1A) The condition mentioned in subsection (1)(ba) above is that—

- (a) the country or territory is neither a member State nor a part of a member State, and
- (b) there is no provision for mutual assistance between the United Kingdom and the country or territory similar in scope to the assistance provided for between the United Kingdom and each other member State by the mutual assistance provisions.

(1B) In subsection (1A) above “the mutual assistance provisions” means—

- <sup>F86</sup>(a) section 134 of the Finance Act 2002 and Schedule 39 to that Act (recovery of taxes etc due in other member States);
- (b) section 197 of the Finance Act 2003 (exchange of information between tax authorities of member States);]
- (c) Council Regulation (EEC) No. 218/92 of 27th January 1992 on administrative cooperation in the field of indirect taxation (VAT).

<sup>F87</sup>(2) With the agreement of the Commissioners, a person—

- (a) who has not been required under subsection (1) above to appoint another person to act on his behalf in relation to VAT, and
- (b) in relation to whom the conditions specified in paragraphs (a), (b) and (c) of that subsection are satisfied,

may appoint another person to act on his behalf in relation to VAT.

(2A) In this Act “VAT representative” means a person appointed under subsection (1) or (2) above.

(3) Where any person is appointed by virtue of this section to be the VAT representative of another (“his principal”), then, subject to subsections (4) to (6) below, the VAT representative—

- (a) shall be entitled to act on his principal’s behalf for any of the purposes of this Act, of any other enactment (whenever passed) relating to VAT or of any subordinate legislation made under this Act or any such enactment;
- (b) shall, subject to such provisions as may be made by the Commissioners by regulations, secure (where appropriate by acting on his principal’s behalf) his principal’s compliance with and discharge of the obligations and liabilities to which his principal is subject by virtue of this Act, any such other enactment or any such subordinate legislation; and
- (c) shall be personally liable in respect of—
  - (i) any failure to secure his principal’s compliance with or discharge of any such obligation or liability; and
  - (ii) anything done for purposes connected with acting on his principal’s behalf,

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as if the obligations and liabilities imposed on his principal were imposed jointly and severally on the VAT representative and his principal.

- (4) A VAT representative shall not be liable by virtue of subsection (3) above himself to be registered under this Act, but regulations made by the Commissioners may—
- (a) require the registration of the names of VAT representatives against the names of their principals in any register kept for the purposes of this Act; and
  - (b) make it the duty of a VAT representative, for the purposes of registration, to notify the Commissioners, within such period as may be prescribed, that his appointment has taken effect or has ceased to have effect.
- (5) A VAT representative shall not by virtue of subsection (3) above be guilty of any offence except in so far as—
- (a) the VAT representative has consented to, or connived in, the commission of the offence by his principal;
  - (b) the commission of the offence by his principal is attributable to any neglect on the part of the VAT representative; or
  - (c) the offence consists in a contravention by the VAT representative of an obligation which, by virtue of that subsection, is imposed both on the VAT representative and on his principal.
- (6) The Commissioners may by regulations make provision as to the manner and circumstances in which a person is to be appointed, or is to be treated as having ceased to be, another's VAT representative; and regulations under this subsection may include such provision as the Commissioners think fit for the purposes of subsection (4) above with respect to the making or deletion of entries in any register.
- (7) Where a person fails to appoint a VAT representative in accordance with any direction under subsection (1) above, the Commissioners may require him to provide such security, or further security, as they may think appropriate for the payment of any VAT which is or may become due from him.
- [<sup>F88</sup>(7A) A sum required by way of security under subsection (7) above shall be deemed for the purposes of—
- (a) section 51 of the Finance Act 1997 (enforcement by distress) and any regulations under that section, and
  - (b) section 52 of that Act (enforcement by diligence),
- to be recoverable as if it were VAT due from the person who is required to provide it. ]
- (8) For the purposes of this Act a person shall not be treated as having been directed to appoint a VAT representative, or as having been required to provide security under subsection (7) above, unless the Commissioners have either—
- (a) served notice of the direction or requirement on him; or
  - (b) taken all such other steps as appear to them to be reasonable for bringing the direction or requirement to his attention.
- [<sup>F89</sup>(9) The Treasury may by order amend the definition of “the mutual assistance provisions” in subsection (1B) above.]

#### Textual Amendments

**F84** S. 48(1)(b)(ba) substituted for s. 48(1)(b) (31.12.2001) by 2001 c. 9, s. 100(1)(4)

**F85** S. 48(1A)(1B) inserted (31.12.2001) by 2001 c. 9, s. 100(2)(4)

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- F86** S. 48(1B)(a)(b) substituted (10.7.2003) by [Finance Act 2003 \(c. 14\), s. 197\(7\)\(a\)](#)  
**F87** S. 48(2)(2A) substituted for s. 48(2) (31.12.2001) by [2001 c. 9, s. 100\(3\)\(4\)](#)  
**F88** S. 48(7A) inserted (1.7.1997) by [1997 c. 16, s. 53\(6\)](#); [S.I. 1997/1432, art. 2](#)  
**F89** S. 48(9) inserted (10.7.2003) by [Finance Act 2003 \(c. 14\), s. 197\(7\)\(b\)](#)

#### **49 Transfers of going concerns.**

- (1) Where a business carried on by a taxable person is transferred to another person as a going concern, then—
- (a) for the purpose of determining whether the transferee is liable to be registered under this Act he shall be treated as having carried on the business before as well as after the transfer and supplies by the transferor shall be treated accordingly; and
  - (b) any records relating to the business which, under paragraph 6 of Schedule 11, are required to be preserved for any period after the transfer shall be preserved by the transferee instead of by the transferor, unless the Commissioners, at the request of the transferor, otherwise direct.
- (2) Without prejudice to subsection (1) above, the Commissioners may by regulations make provision for securing continuity in the application of this Act in cases where a business carried on by a taxable person is transferred to another person as a going concern and the transferee is registered under this Act in substitution for the transferor.
- (3) Regulations under subsection (2) above may, in particular, provide—
- (a) for liabilities and duties under this Act (excluding sections 59 to 70) of the transferor to become, to such extent as may be provided by the regulations, liabilities and duties of the transferee; and
  - (b) for any right of either of them to repayment or credit in respect of VAT to be satisfied by making a repayment or allowing a credit to the other;
- but no such provision as is mentioned in paragraph (a) or (b) of this subsection shall have effect in relation to any transferor and transferee unless an application in that behalf has been made by them under the regulations.

#### **50 Terminal markets.**

- (1) The Treasury may by order make provision for modifying the provisions of this Act in their application to dealings on terminal markets and such persons ordinarily engaged in such dealings as may be specified in the order, subject to such conditions as may be so specified.
- (2) Without prejudice to the generality of subsection (1) above, an order under this section may include provision—
- (a) for zero-rating the supply of any goods or services or for treating the supply of any goods or services as exempt;
  - (b) for the registration under this Act of any body of persons representing persons ordinarily engaged in dealing on a terminal market and for disregarding such dealings by persons so represented in determining liability to be registered under this Act, and for disregarding such dealings between persons so represented for all the purposes of this Act;
  - (c) for refunding, to such persons as may be specified by or under the order, input tax attributable to such dealings on a terminal market as may be so specified,

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and may contain such incidental and supplementary provisions as appear to the Treasury to be necessary or expedient.

- (3) An order under this section may make different provision with respect to different terminal markets and with respect to different commodities.

#### [<sup>F90</sup>50A Margin schemes.

- (1) The Treasury may by order provide, in relation to any such description of supplies to which this section applies as may be specified in the order, for a taxable person to be entitled to opt that, where he makes supplies of that description, VAT is to be charged by reference to the profit margin on the supplies, instead of by reference to their value.
- (2) This section applies to the following supplies, that is to say—
- (a) supplies of works of art, antiques or collectors' items;
  - (b) supplies of motor vehicles;
  - (c) supplies of second-hand goods; and
  - (d) any supply of goods through a person who acts as an agent, but in his own name, in relation to the supply.
- (3) An option for the purposes of an order under this section shall be exercisable, and may be withdrawn, in such manner as may be required by such an order.
- (4) Subject to subsection (7) below, the profit margin on a supply to which this section applies shall be taken, for the purposes of an order under this section, to be equal to the amount (if any) by which the price at which the person making the supply obtained the goods in question is exceeded by the price at which he supplies them.
- (5) For the purposes of this section the price at which a person has obtained any goods and the price at which he supplies them shall each be calculated in accordance with the provisions contained in an order under this section; and such an order may, in particular, make provision stipulating the extent to which any VAT charged on a supply, acquisition or importation of any goods is to be treated as included in the price at which those goods have been obtained or are supplied.
- (6) An order under this section may provide that the consideration for any services supplied in connection with a supply of goods by a person who acts as an agent, but in his own name, in relation to the supply of the goods is to be treated for the purposes of any such order as an amount to be taken into account in computing the profit margin on the supply of the goods, instead of being separately chargeable to VAT as comprised in the value of the services supplied.
- (7) An order under this section may provide for the total profit margin on all the goods of a particular description supplied by a person in any prescribed accounting period to be calculated by—
- (a) aggregating all the prices at which that person obtained goods of that description in that period together with any amount carried forward to that period in pursuance of paragraph (d) below;
  - (b) aggregating all the prices at which he supplies goods of that description in that period;
  - (c) treating the total profit margin on goods supplied in that period as being equal to the amount (if any) by which, for that period, the aggregate calculated in pursuance of paragraph (a) above is exceeded by the aggregate calculated in pursuance of paragraph (b) above; and



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- (d) treating any amount by which, for that period, the aggregate calculated in pursuance of paragraph (b) above is exceeded by the aggregate calculated in pursuance of paragraph (a) above as an amount to be carried forward to the following prescribed accounting period so as to be included, for the period to which it is carried forward, in any aggregate falling to be calculated in pursuance of paragraph (a) above.
- (8) An order under this section may—
- (a) make different provision for different cases; and
  - (b) make provisions of the order subject to such general or special directions as may, in accordance with the order, be given by the Commissioners with respect to any matter to which the order relates.]

#### Textual Amendments

**F90** S. 50A inserted (1.5.1995) by [1995 c. 4, s. 24\(1\)](#)

## 51 Buildings and land.

- (1) Schedule 10 shall have effect with respect to buildings and land.
- (2) The Treasury may by order amend Schedule 10.

### [<sup>F91</sup>51B Face-value vouchers

Schedule 10A shall have effect with respect to face-value vouchers.]

#### Textual Amendments

**F91** S. 51B inserted (with application in accordance with Sch. 1 para. 4 of the amending Act) by [Finance Act 2003 \(c. 14\), Sch. 1 para. 1](#)

## 52 Trading stamp schemes.

The Commissioners may by regulations modify sections 19 and 20 and Schedules 6 and 7 for the purpose of providing (in place of the provision for the time being contained in those sections and Schedules) for the manner of determining for the purposes of this Act the value of—

- (a) a supply of goods, or
- (b) a transaction in pursuance of which goods are acquired from another member State,

in a case where the goods are supplied or acquired under a trading stamp scheme (within the meaning of the <sup>M21</sup>Trading Stamps Act 1964 or the <sup>M22</sup>Trading Stamps Act (Northern Ireland) 1965) or under any scheme of an equivalent description which is in operation in another member State.

#### Marginal Citations

**M21** [1964 c. 71.](#)

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**M22** 1965 c. 6 (N.I.).

### **53 Tour operators.**

- (1) The Treasury may by order modify the application of this Act in relation to supplies of goods or services by tour operators or in relation to such of those supplies as may be determined by or under the order.
- (2) Without prejudice to the generality of subsection (1) above, an order under this section may make provision—
  - (a) for two or more supplies of goods or services by a tour operator to be treated as a single supply of services;
  - (b) for the value of that supply to be ascertained, in such manner as may be determined by or under the order, by reference to the difference between sums paid or payable to and sums paid or payable by the tour operator;
  - (c) for account to be taken, in determining the VAT chargeable on that supply, of the different rates of VAT that would have been applicable apart from this section;
  - (d) excluding any body corporate from the application of section 43;
  - (e) as to the time when a supply is to be treated as taking place.
- (3) In this section “tour operator” includes a travel agent acting as principal and any other person providing for the benefit of travellers services of any kind commonly provided by tour operators or travel agents.
- (4) Section 97(3) shall not apply to an order under this section, notwithstanding that it makes provision for excluding any VAT from credit under section 25.

### **54 Farmers etc.**

- (1) The Commissioners may, in accordance with such provision as may be contained in regulations made by them, certify for the purposes of this section any person who satisfies them—
  - (a) that he is carrying on a business involving one or more designated activities;
  - (b) that he is of such a description and has complied with such requirements as may be prescribed; and
  - (c) where an earlier certification of that person has been cancelled, that more than the prescribed period has elapsed since the cancellation or that such other conditions as may be prescribed are satisfied.
- (2) Where a person is for the time being certified under this section, then (whether or not that person is a taxable person) so much of any supply by him of any goods or services as, in accordance with provision contained in regulations, is allocated to the relevant part of his business shall be disregarded for the purpose of determining whether he is, has become or has ceased to be liable or entitled to be registered under Schedule 1.
- (3) The Commissioners may by regulations provide for an amount included in the consideration for any taxable supply which is made—
  - (a) in the course or furtherance of the relevant part of his business by a person who is for the time being certified under this section;
  - (b) at a time when that person is not a taxable person; and
  - (c) to a taxable person,

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to be treated, for the purpose of determining the entitlement of the person supplied to credit under sections 25 and 26, as VAT on a supply to that person.

- (4) The amount which, for the purposes of any provision made under subsection (3) above, may be included in the consideration for any supply shall be an amount equal to such percentage as the Treasury may by order specify of the sum which, with the addition of that amount, is equal to the consideration for the supply.
- (5) The Commissioners' power by regulations under section 39 to provide for the repayment to persons to whom that section applies of VAT which would be input tax of theirs if they were taxable persons in the United Kingdom includes power to provide for the payment to persons to whom that section applies of sums equal to the amounts which, if they were taxable persons in the United Kingdom, would be input tax of theirs by virtue of regulations under this section; and references in that section, or in any other enactment, to a repayment of VAT shall be construed accordingly.
- (6) Regulations under this section may provide—
  - (a) for the form and manner in which an application for certification under this section, or for the cancellation of any such certification, is to be made;
  - (b) for the cases and manner in which the Commissioners may cancel a person's certification;
  - (c) for entitlement to a credit such as is mentioned in subsection (3) above to depend on the issue of an invoice containing such particulars as may be prescribed, or as may be notified by the Commissioners in accordance with provision contained in regulations; and
  - (d) for the imposition on certified persons of obligations with respect to the keeping, preservation and production of such records as may be prescribed and of obligations to comply with such requirements with respect to any of those matters as may be so notified;

and regulations made by virtue of paragraph (b) above may confer on the Commissioners power, if they think fit, to refuse to cancel a person's certification, and to refuse to give effect to any entitlement of that person to be registered, until the end of such period after the grant of certification as may be prescribed.

- (7) In this section references, in relation to any person, to the relevant part of his business are references—
  - (a) where the whole of his business relates to the carrying on of one or more designated activities, to that business; and
  - (b) in any other case, to so much of his business as does so relate.
- (8) In this section "designated activities" means such activities, being activities carried on by a person who, by virtue of carrying them on, falls to be treated as a farmer for the purposes of Article 25 of the directive of the Council of the European Communities dated 17th May 1977 No. [77/388/EEC](#) (common flat-rate scheme for farmers), as the Treasury may by order designate.

## **55 Customers to account for tax on supplies of gold etc.**

- [1] Where any person makes a supply of gold to another person and that supply is a taxable supply but not a zero rated supply, the supply shall be treated for purposes of Schedule 1—
  - (a) as a taxable supply of that other person (as well as a taxable supply of the person who makes it); and

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- (b) in so far as that other person is supplied in connection with the carrying on by him of any business, as a supply made by him in the course or furtherance of that business;
- but nothing in paragraph (b) above shall require any supply to be disregarded for the purposes of that Schedule on the grounds that it is a supply of capital assets of that other person's business.
- (2) Where a taxable person makes a supply of gold to a person who—
- (a) is himself a taxable person at the time when the supply is made; and
  - (b) is supplied in connection with the carrying on by him of any business,
- it shall be for the person supplied, on the supplier's behalf, to account for and pay tax on the supply, and not for the supplier.
- (3) So much of this Act and of any other enactment or any subordinate legislation as has effect for the purposes of, or in connection with, the enforcement of any obligation to account for and pay VAT shall apply for the purposes of this section in relation to any person who is required under subsection (2) above to account for and pay any VAT as if that VAT were VAT on a supply made by him.
- (4) Section 6(4) to (10) shall not apply for determining when any supply of gold is to be treated as taking place.]
- (5) References in this section to a supply of gold are references to—
- [<sup>F92</sup>(a) any supply of goods consisting in fine gold, in gold grain of any purity or in gold coins of any purity; or]. . .
  - (b) any supply of goods containing gold where the consideration for the supply (apart from any VAT) is, or is equivalent to, an amount which does not exceed, or exceeds by no more than a negligible amount, the open market value of the gold contained in the goods [<sup>F93</sup>; or.
  - (c) any supply of services consisting in the application to another person's goods of a treatment or process which produces goods a supply of which would fall within paragraph (a) above.]
- (6) The Treasury may by order provide for this section to apply, as it applies to the supplies specified in subsection (5) above, to such other supplies of—
- (a) goods consisting in or containing any precious or semi-precious metal or stones; or
  - (b) services relating to, or to anything containing, any precious or semi-precious metal or stones,
- as may be specified or described in the order.

#### Textual Amendments

**F92** S. 55(5)(a) substituted (29.4.1996 with application in relation to any supply after 28.11.1995) by [1996 c. 8, s. 32\(1\)\(2\)](#)

**F93** S. 55(5)(c) inserted (29.4.1996 with application to supplies made on or after 1.1.1996) by [1996 c. 8, s. 29\(3\)\(5\)](#)

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

**C8** S. 55(1)-(4) applied (1.1.2000) by [S.I. 1999/3116, art. 4](#)

**C9** S. 55(2) excluded (1.1.2000) by [S.I. 1973/173, art. 7](#) (as added (1.1.2000) by [S.I. 1999/3117, art. 8](#))

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## 56 Fuel for private use.

- (1) The provisions of this section apply where, in any prescribed accounting period, fuel which is or has previously been supplied to or imported or manufactured by a taxable person in the course of his business—
  - (a) is provided or to be provided by the taxable person to an individual for private use in his own vehicle or a vehicle allocated to him and is so provided by reason of that individual's employment; or
  - (b) where the taxable person is an individual, is appropriated or to be appropriated by him for private use in his own vehicle; or
  - (c) where the taxable person is a partnership, is provided or to be provided to any of the individual partners for private use in his own vehicle.
- (2) For the purposes of this section fuel shall not be regarded as provided to any person for his private use if it is supplied at a price which—
  - (a) in the case of fuel supplied to or imported by the taxable person, is not less than the price at which it was so supplied or imported; and
  - (b) in the case of fuel manufactured by the taxable person, is not less than the aggregate of the cost of the raw material and of manufacturing together with any excise duty thereon.
- (3) For the purposes of this section and section 57—
  - (a) “fuel for private use” means fuel which, having been supplied to or imported or manufactured by a taxable person in the course of his business, is or is to be provided or appropriated for private use as mentioned in subsection (1) above;
  - (b) any reference to fuel supplied to a taxable person shall include a reference to fuel acquired by a taxable person from another member State and any reference to fuel imported by a taxable person shall be confined to a reference to fuel imported by that person from a place outside the member States;
  - (c) any reference to an individual's own vehicle shall be construed as including any vehicle of which for the time being he has the use, other than a vehicle allocated to him;
  - (d) subject to subsection (9) below, a vehicle shall at any time be taken to be allocated to an individual if at that time it is made available (without any transfer of the property in it) either to the individual himself or to any other person, and is so made available by reason of the individual's employment and for private use; and
  - (e) fuel provided by an employer to an employee and fuel provided to any person for private use in a vehicle which, by virtue of paragraph (d) above, is for the time being taken to be allocated to the employee shall be taken to be provided to the employee by reason of his employment.
- (4) Where under section 43 any bodies corporate are treated as members of a group, any provision of fuel by a member of the group to an individual shall be treated for the purposes of this section as provision by the representative member.
- (5) In relation to the taxable person, tax on the supply, acquisition or importation of fuel for private use shall be treated for the purposes of this Act as input tax, notwithstanding that the fuel is not used or to be used for the purposes of a business carried on by the taxable person (and, accordingly, no apportionment of VAT shall fall to be made under section 24(5) by reference to fuel for private use).

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- (6) At the time at which fuel for private use is put into the fuel tank of an individual's own vehicle or of a vehicle allocated to him, the fuel shall be treated for the purposes of this Act as supplied to him by the taxable person in the course or furtherance of his business for a consideration determined in accordance with subsection (7) below (and, accordingly, where the fuel is appropriated by the taxable person to his own private use, he shall be treated as supplying it to himself in his private capacity).
- (7) In any prescribed accounting period of the taxable person in which, by virtue of subsection (6) above, he is treated as supplying fuel for private use to an individual, the consideration for all the supplies made to that individual in that period in respect of any one vehicle shall be that which, by virtue of section 57, is appropriate to a vehicle of that description, and that consideration shall be taken to be inclusive of VAT.
- (8) In any case where—
- (a) in any prescribed accounting period, fuel for private use is, by virtue of subsection (6) above, treated as supplied to an individual in respect of one vehicle for a part of the period and in respect of another vehicle for another part of the period; and
  - (b) at the end of that period one of those vehicles neither belongs to him nor is allocated to him,
- subsection (7) above shall have effect as if the supplies made to the individual during those parts of the period were in respect of only one vehicle.
- (9) In any prescribed accounting period a vehicle shall not be regarded as allocated to an individual by reason of his employment if—
- (a) in that period it was made available to, and actually used by, more than one of the employees of one or more employers and, in the case of each of them, it was made available to him by reason of his employment but was not in that period ordinarily used by any one of them to the exclusion of the others; and
  - (b) in the case of each of the employees, any private use of the vehicle made by him in that period was merely incidental to his other use of it in that period; and
  - (c) it was in that period not normally kept overnight on or in the vicinity of any residential premises where any of the employees was residing, except while being kept overnight on premises occupied by the person making the vehicle available to them.
- (10) In this section and section 57—
- “employment” includes any office; and related expressions shall be construed accordingly;
- “vehicle” means a mechanically propelled road vehicle other than—
- (a) a motor cycle as defined in section 185(1) of the <sup>M23</sup>Road Traffic Act 1988 or, for Northern Ireland, in Article 37(1)(f) of the <sup>M24</sup>Road Traffic (Northern Ireland) Order 1981, or
  - (b) an invalid carriage as defined in that section or, for Northern Ireland, in Article 37(1)(g) of that Order.

#### Marginal Citations

**M23** 1988 c. 54.

**M24** S.I.1981/154 (N.I.1).

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## 57 Determination of consideration for fuel supplied for private use.

- (1) This section has effect to determine the consideration referred to in section 56(7) in respect of any one vehicle; and in this section—

“the prescribed accounting period” means that in respect of supplies in which the consideration is to be determined; and

“the individual” means the individual to whom those supplies are treated as made.

[<sup>F94</sup>(1A) Where the prescribed accounting period is a period of 12 months, the consideration appropriate to any vehicle is that specified in relation to a vehicle of the appropriate description in the second column of Table A below.]

- (2) Where the prescribed accounting period is a period of 3 months, the consideration appropriate to any vehicle is that specified in relation to a vehicle of the appropriate description in the [<sup>F95</sup>third] column of Table A below.

- (3) Where the prescribed accounting period is a period of one month, the consideration appropriate to any vehicle is that specified in relation to a vehicle of the appropriate description in the [<sup>F96</sup>fourth] column of Table A below.

[<sup>F97</sup>TABLE A

<i>Description of vehicle (Type of engine and cylinder capacity in cubic centimetres)</i>	<i>12 month period £</i>	<i>3 month period £</i>	<i>1 month period £</i>
Diesel engine			
2000 or less	900	225	75
More than 2000	1,135	283	94
Any other type of engine			
1400 or less	950	237	79
More than 1400 but not more than 2000	1,200	300	100
More than 2000	1,770	442	147]

- (4) The Treasury may by order taking effect from the beginning of any prescribed accounting period beginning after the order is made substitute a different Table for Table A for the time being set out above.

- (5) Where, by virtue of section 56(8), subsection (7) of that section has effect as if, in the prescribed accounting period, supplies of fuel for private use made in respect of 2 or more vehicles were made in respect of only one vehicle, the consideration appropriate shall be determined as follows—

- (a) if each of the 2 or more vehicles falls within the same description of vehicle specified in Table A above, that Table shall apply as if only one of the vehicles were to be considered throughout the whole period, and

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- (b) if one of those vehicles falls within a description of vehicle specified in that Table which is different from the other or others, the consideration shall be the aggregate of the relevant fractions of the consideration appropriate for each description of vehicle under that Table.
- (6) For the purposes of subsection (5)(b) above, the relevant fraction in relation to any vehicle is that which the part of the prescribed accounting period in which fuel for private use was supplied in respect of that vehicle bears to the whole of that period.
- (7) In the case of a vehicle having an internal combustion engine with one or more reciprocating pistons, its cubic capacity for the purposes of Table A above is the capacity of its engine as calculated for the purposes of the <sup>M25</sup>Vehicle Excise and Registration Act 1994.
- (8) In the case of a vehicle not falling within subsection (7) above, its cubic capacity shall be such as may be determined for the purposes of Table A above by order by the Treasury.

#### Textual Amendments

- F94** S. 57(1A) inserted (with application in relation to prescribed accounting periods beginning on or after 6.4.1995) by [1995 c. 4, s. 30\(2\)\(6\)\(7\)](#)
- F95** Word in s. 57(2) substituted (with application in relation to prescribed accounting periods beginning on or after 6.4.1995) by [1995 c. 4, s. 30\(3\)\(6\)\(7\)](#)
- F96** Word in s. 57(3) substituted (with application in relation to prescribed accounting periods beginning on or after 6.4.1995) by [1995 c. 4, s. 30\(4\)\(6\)\(7\)](#)
- F97** S. 57 Table A substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [Value Added Tax \(Consideration for Fuel Provided for Private Use\) Order 2003 \(S.I. 2003/1057\), arts. 1\(1\), 2](#)

#### Marginal Citations

- M25** [1994 c. 22.](#)

## PART IV

### ADMINISTRATION, COLLECTION AND ENFORCEMENT

#### *General administrative provisions*

#### **58 General provisions relating to the administration and collection of VAT.**

Schedule 11 shall have effect, subject to section 92(6), with respect to the administration, collection and enforcement of VAT.

#### *Default surcharges and other penalties and criminal offences*

#### **59 The default surcharge.**

- (1) [<sup>F98</sup>Subject to subsection (1A) below]if, by the last day on which a taxable person is required in accordance with regulations under this Act to furnish a return for a prescribed accounting period—



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- (a) the Commissioners have not received that return, or
  - (b) the Commissioners have received that return but have not received the amount of VAT shown on the return as payable by him in respect of that period,
- then that person shall be regarded for the purposes of this section as being in default in respect of that period.
- [<sup>F99</sup>(1A) A person shall not be regarded for the purposes of this section as being in default in respect of any prescribed accounting period if that period is one in respect of which he is required by virtue of any order under section 28 to make any payment on account of VAT.]
- (2) Subject to subsections (9) and (10) below, subsection (4) below applies in any case where—
- (a) a taxable person is in default in respect of a prescribed accounting period; and
  - (b) the Commissioners serve notice on the taxable person (a “surcharge liability notice”) specifying as a surcharge period for the purposes of this section a period ending on the first anniversary of the last day of the period referred to in paragraph (a) above and beginning, subject to subsection (3) below, on the date of the notice.
- (3) If a surcharge liability notice is served by reason of a default in respect of a prescribed accounting period and that period ends at or before the expiry of an existing surcharge period already notified to the taxable person concerned, the surcharge period specified in that notice shall be expressed as a continuation of the existing surcharge period and, accordingly, for the purposes of this section, that existing period and its extension shall be regarded as a single surcharge period.
- (4) Subject to subsections (7) to (10) below, if a taxable person on whom a surcharge liability notice has been served—
- (a) is in default in respect of a prescribed accounting period ending within the surcharge period specified in (or extended by) that notice, and
  - (b) has outstanding VAT for that prescribed accounting period,
- he shall be liable to a surcharge equal to whichever is the greater of the following, namely, the specified percentage of his outstanding VAT for that prescribed accounting period and £30.
- (5) Subject to subsections (7) to (10) below, the specified percentage referred to in subsection (4) above shall be determined in relation to a prescribed accounting period by reference to the number of such periods in respect of which the taxable person is in default during the surcharge period and for which he has outstanding VAT, so that—
- (a) in relation to the first such prescribed accounting period, the specified percentage is 2 per cent;
  - (b) in relation to the second such period, the specified percentage is 5 per cent;
  - (c) in relation to the third such period, the specified percentage is 10 per cent; and
  - (d) in relation to each such period after the third, the specified percentage is 15 per cent.
- (6) For the purposes of subsections (4) and (5) above a person has outstanding VAT for a prescribed accounting period if some or all of the VAT for which he is liable in respect of that period has not been paid by the last day on which he is required (as mentioned in subsection (1) above) to make a return for that period; and the reference in subsection (4) above to a person’s outstanding VAT for a prescribed accounting

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period is to so much of the VAT for which he is so liable as has not been paid by that day.

(7) If a person who, apart from this subsection, would be liable to a surcharge under subsection (4) above satisfies the Commissioners or, on appeal, a tribunal that, in the case of a default which is material to the surcharge—

- (a) the return or, as the case may be, the VAT shown on the return was despatched 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 the return or VAT not having been so despatched,

he shall not be liable to the surcharge and for the purposes of the preceding provisions of this section he shall be treated as not having been in default in respect of the prescribed accounting period in question (and, accordingly, any surcharge liability notice the service of which depended upon that default shall be deemed not to have been served).

(8) For the purposes of subsection (7) above, a default is material to a surcharge if—

- (a) it is the default which, by virtue of subsection (4) above, gives rise to the surcharge; or
- (b) it is a default which was taken into account in the service of the surcharge liability notice upon which the surcharge depends and the person concerned has not previously been liable to a surcharge in respect of a prescribed accounting period ending within the surcharge period specified in or extended by that notice.

(9) In any case where—

- (a) the conduct by virtue of which a person is in default in respect of a prescribed accounting period is also conduct falling within section 69(1), and
- (b) by reason of that conduct, the person concerned is assessed to a penalty under that section,

the default shall be left out of account for the purposes of subsections (2) to (5) above.

(10) If the Commissioners, after consultation with the Treasury, so direct, a default in respect of a prescribed accounting period specified in the direction shall be left out of account for the purposes of subsections (2) to (5) above.

[<sup>F100</sup>(11) For the purposes of this section references to a thing's being done by any day include references to its being done on that day.]

#### Textual Amendments

**F98** Words in s. 59(1) inserted (29.4.1996 with effect as mentioned in s. 35(8) of the amending Act) by 1996 c. 8, s. 35(3)

**F99** S. 59(1A) inserted (29.4.1996 with effect as mentioned in s. 35(8) of the amending Act) by 1996 c. 8, s. 35(3)

**F100** S. 59(11) inserted (29.4.1996 with effect as mentioned in s. 35(8) of the amending Act) by 1996 c. 8, s. 35(4)

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## [<sup>F101</sup>59A Default surcharge: payments on account.

- (1) For the purposes of this section a taxable person shall be regarded as in default in respect of any prescribed accounting period if the period is one in respect of which he is required, by virtue of an order under section 28, to make any payment on account of VAT and either—
  - (a) a payment which he is so required to make in respect of that period has not been received in full by the Commissioners by the day on which it became due; or
  - (b) he would, but for section 59(1A), be in default in respect of that period for the purposes of section 59.
- (2) Subject to subsections (10) and (11) below, subsection (4) below applies in any case where—
  - (a) a taxable person is in default in respect of a prescribed accounting period; and
  - (b) the Commissioners serve notice on the taxable person (a “surcharge liability notice”) specifying as a surcharge period for the purposes of this section a period which—
    - (i) begins, subject to subsection (3) below, on the date of the notice; and
    - (ii) ends on the first anniversary of the last day of the period referred to in paragraph (a) above.
- (3) If—
  - (a) a surcharge liability notice is served by reason of a default in respect of a prescribed accounting period, and
  - (b) that period ends at or before the expiry of an existing surcharge period already notified to the taxable person concerned,the surcharge period specified in that notice shall be expressed as a continuation of the existing surcharge period; and, accordingly, the existing period and its extension shall be regarded as a single surcharge period.
- (4) Subject to subsections (7) to (11) below, if—
  - (a) a taxable person on whom a surcharge liability notice has been served is in default in respect of a prescribed accounting period,
  - (b) that prescribed accounting period is one ending within the surcharge period specified in (or extended by) that notice, and
  - (c) the aggregate value of his defaults in respect of that prescribed accounting period is more than nil,that person shall be liable to a surcharge equal to whichever is the greater of £30 and the specified percentage of the aggregate value of his defaults in respect of that prescribed accounting period.
- (5) Subject to subsections (7) to (11) below, the specified percentage referred to in subsection (4) above shall be determined in relation to a prescribed accounting period by reference to the number of such periods during the surcharge period which are periods in respect of which the taxable person is in default and in respect of which the value of his defaults is more than nil, so that—
  - (a) in relation to the first such prescribed accounting period, the specified percentage is 2 per cent.;
  - (b) in relation to the second such period, the specified percentage is 5 per cent.;
  - (c) in relation to the third such period, the specified percentage is 10 per cent.; and

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- (d) in relation to each such period after the third, the specified percentage is 15 per cent.
- (6) For the purposes of this section the aggregate value of a person's defaults in respect of a prescribed accounting period shall be calculated as follows—
- (a) where the whole or any part of a payment in respect of that period on account of VAT was not received by the Commissioners by the day on which it became due, an amount equal to that payment or, as the case may be, to that part of it shall be taken to be the value of the default relating to that payment;
  - (b) if there is more than one default with a value given by paragraph (a) above, those values shall be aggregated;
  - (c) the total given by paragraph (b) above, or (where there is only one default) the value of the default under paragraph (a) above, shall be taken to be the value for that period of that person's defaults on payments on account;
  - (d) the value of any default by that person which is a default falling within subsection (1)(b) above shall be taken to be equal to the amount of any outstanding VAT less the amount of unpaid payments on account; and
  - (e) the aggregate value of a person's defaults in respect of that period shall be taken to be the aggregate of—
    - (i) the value for that period of that person's defaults (if any) on payments on account; and
    - (ii) the value of any default of his in respect of that period that falls within subsection (1)(b) above.
- (7) In the application of subsection (6) above for the calculation of the aggregate value of a person's defaults in respect of a prescribed accounting period—
- (a) the amount of outstanding VAT referred to in paragraph (d) of that subsection is the amount (if any) which would be the amount of that person's outstanding VAT for that period for the purposes of section 59(4); and
  - (b) the amount of unpaid payments on account referred to in that paragraph is the amount (if any) equal to so much of any payments on account of VAT (being payments in respect of that period) as has not been received by the Commissioners by the last day on which that person is required (as mentioned in section 59(1)) to make a return for that period.
- (8) If a person who, apart from this subsection, would be liable to a surcharge under subsection (4) above satisfies the Commissioners or, on appeal, a tribunal—
- (a) in the case of a default that is material for the purposes of the surcharge and falls within subsection (1)(a) above—
    - (i) that the payment on account of VAT was despatched at such a time and in such a manner that it was reasonable to expect that it would be received by the Commissioners by the day on which it became due, or
    - (ii) that there is a reasonable excuse for the payment not having been so despatched,
  - or
  - (b) in the case of a default that is material for the purposes of the surcharge and falls within subsection (1)(b) above, that the condition specified in section 59(7)(a) or (b) is satisfied as respects the default,

he shall not be liable to the surcharge and for the purposes of the preceding provisions of this section he shall be treated as not having been in default in respect of the prescribed accounting period in question (and, accordingly, any surcharge liability

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notice the service of which depended upon that default shall be deemed not to have been served).

- (9) For the purposes of subsection (8) above, a default is material to a surcharge if—
- (a) it is the default which, by virtue of subsection (4) above, gives rise to the surcharge; or
  - (b) it is a default which was taken into account in the service of the surcharge liability notice upon which the surcharge depends and the person concerned has not previously been liable to a surcharge in respect of a prescribed accounting period ending within the surcharge period specified in or extended by that notice.
- (10) In any case where—
- (a) the conduct by virtue of which a person is in default in respect of a prescribed accounting period is also conduct falling within section 69(1), and
  - (b) by reason of that conduct, the person concerned is assessed to a penalty under section 69,
- the default shall be left out of account for the purposes of subsections (2) to (5) above.
- (11) If the Commissioners, after consultation with the Treasury, so direct, a default in respect of a prescribed accounting period specified in the direction shall be left out of account for the purposes of subsections (2) to (5) above.
- (12) For the purposes of this section the Commissioners shall be taken not to receive a payment by the day on which it becomes due unless it is made in such a manner as secures (in a case where the payment is made otherwise than in cash) that, by the last day for the payment of that amount, all the transactions can be completed that need to be completed before the whole amount of the payment becomes available to the Commissioners.
- (13) In determining for the purposes of this section whether any person would, but for section 59(1A), be in default in respect of any period for the purposes of section 59, subsection (12) above shall be deemed to apply for the purposes of section 59 as it applies for the purposes of this section.
- (14) For the purposes of this section references to a thing's being done by any day include references to its being done on that day.]

#### Textual Amendments

**F101** S. 59A inserted (29.4.1996 with application as mentioned in s. 35(8) of the amending Act) by 1996 c. 8, s. 35(2)

#### [<sup>F102</sup>59B Relationship between sections 59 and 59A.

- (1) This section applies in each of the following cases, namely—
- (a) where a section 28 accounting period ends within a surcharge period begun or extended by the service on a taxable person (whether before or after the coming into force of section 59A) of a surcharge liability notice under section 59; and
  - (b) where a prescribed accounting period which is not a section 28 accounting period ends within a surcharge period begun or extended by the service on a taxable person of a surcharge liability notice under section 59A.

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- (2) In a case falling within subsection (1)(a) above section 59A shall have effect as if—
- (a) subject to paragraph (b) below, the section 28 accounting period were deemed to be a period ending within a surcharge period begun or, as the case may be, extended by a notice served under section 59A; but
  - (b) any question—
    - (i) whether a surcharge period was begun or extended by the notice, or
    - (ii) whether the taxable person was in default in respect of any prescribed accounting period which was not a section 28 accounting period but ended within the surcharge period begun or extended by that notice,
 were to be determined as it would be determined for the purposes of section 59.
- (3) In a case falling within subsection (1)(b) above section 59 shall have effect as if—
- (a) subject to paragraph (b) below, the prescribed accounting period that is not a section 28 accounting period were deemed to be a period ending within a surcharge period begun or, as the case may be, extended by a notice served under section 59;
  - (b) any question—
    - (i) whether a surcharge period was begun or extended by the notice, or
    - (ii) whether the taxable person was in default in respect of any prescribed accounting period which was a section 28 accounting period but ended within the surcharge period begun or extended by that notice,
 were to be determined as it would be determined for the purposes of section 59A; and
  - (c) that person were to be treated as having had outstanding VAT for a section 28 accounting period in any case where the aggregate value of his defaults in respect of that period was, for the purposes of section 59A, more than nil.
- (4) In this section “ a section 28 accounting period ”, in relation to a taxable person, means any prescribed accounting period ending on or after the day on which the Finance Act 1996 was passed in respect of which that person is liable by virtue of an order under section 28 to make any payment on account of VAT. ]

#### Textual Amendments

**F102** S. 59B inserted (29.4.1996 with effect as mentioned in [s. 35\(8\)](#) of the amending Act) by [1996 c. 8, s. 35\(5\)](#)

## 60 VAT evasion: conduct involving dishonesty.

- (1) In any case where—
- (a) for the purpose of evading VAT, a person does any act or omits to take any action, and
  - (b) his conduct involves dishonesty (whether or not it is such as to give rise to criminal liability),
- he shall be liable, subject to subsection (6) below, to a penalty equal to the amount of VAT evaded or, as the case may be, sought to be evaded, by his conduct.
- (2) The reference in subsection (1)(a) above to evading VAT includes a reference to obtaining any of the following sums—

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- (a) a refund under any regulations made by virtue of section 13(5);
  - (b) a VAT credit;
  - (c) a refund under section 35, 36 or 40 of this Act or section 22 of the 1983 Act; and
  - (d) a repayment under section 39,
- in circumstances where the person concerned is not entitled to that sum.
- (3) The reference in subsection (1) above to the amount of the VAT evaded or sought to be evaded by a person's conduct shall be construed—
- (a) in relation to VAT itself or a VAT credit as a reference to the aggregate of the amount (if any) falsely claimed by way of credit for input tax and the amount (if any) by which output tax was falsely understated; and
  - (b) in relation to the sums referred to in subsection (2)(a), (c) and (e) above, as a reference to the amount falsely claimed by way of refund or repayment.
- (4) Statements made or documents produced by or on behalf of a person shall not be inadmissible in any such proceedings as are mentioned in subsection (5) below by reason only that it has been drawn to his attention—
- (a) that, in relation to VAT, the Commissioners may assess an amount due by way of a civil penalty instead of instituting criminal proceedings and, though no undertaking can be given as to whether the Commissioners will make such an assessment in the case of any person, it is their practice to be influenced by the fact that a person has made a full confession of any dishonest conduct to which he has been a party and has given full facilities for investigation, and
  - (b) that the Commissioners or, on appeal, a tribunal have power under section 70 to reduce a penalty under this section,
- and that he was or may have been induced thereby to make the statements or produce the documents.
- (5) The proceedings mentioned in subsection (4) above are—
- (a) any criminal proceedings against the person concerned in respect of any offence in connection with or in relation to VAT, and
  - (b) any proceedings against him for the recovery of any sum due from him in connection with or in relation to VAT.
- (6) Where, by reason of conduct falling within subsection (1) above, a person is convicted of an offence (whether under this Act or otherwise), that conduct shall not also give rise to liability to a penalty under this section.
- (7) On an appeal against an assessment to a penalty under this section, the burden of proof as to the matters specified in subsection (1)(a) and (b) above shall lie upon the Commissioners.

## **61 VAT evasion: liability of directors etc.**

- (1) Where it appears to the Commissioners—
- (a) that a body corporate is liable to a penalty under section 60, and
  - (b) that the conduct giving rise to that penalty is, in whole or in part, attributable to the dishonesty of a person who is, or at the material time was, a director or managing officer of the body corporate (a “named officer”),
- the Commissioners may serve a notice under this section on the body corporate and on the named officer.

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- (2) A notice under this section shall state—
- (a) the amount of the penalty referred to in subsection (1)(a) above (“the basic penalty”), and
  - (b) that the Commissioners propose, in accordance with this section, to recover from the named officer such portion (which may be the whole) of the basic penalty as is specified in the notice.
- (3) Where a notice is served under this section, the portion of the basic penalty specified in the notice shall be recoverable from the named officer as if he were personally liable under section 60 to a penalty which corresponds to that portion; and the amount of that penalty may be assessed and notified to him accordingly under section 76.
- (4) Where a notice is served under this section—
- (a) the amount which, under section 76, may be assessed as the amount due by way of penalty from the body corporate shall be only so much (if any) of the basic penalty as is not assessed on and notified to a named officer by virtue of subsection (3) above; and
  - (b) the body corporate shall be treated as discharged from liability for so much of the basic penalty as is so assessed and notified.
- (5) No appeal shall lie against a notice under this section as such but—
- (a) where a body corporate is assessed as mentioned in subsection (4)(a) above, the body corporate may appeal against the Commissioners’ decision as to its liability to a penalty and against the amount of the basic penalty as if it were specified in the assessment; and
  - (b) where an assessment is made on a named officer by virtue of subsection (3) above, the named officer may appeal against the Commissioners’ decision that the conduct of the body corporate referred to in subsection (1)(b) above is, in whole or part, attributable to his dishonesty and against their decision as to the portion of the penalty which the Commissioners propose to recover from him.
- (6) In this section a “managing officer”, in relation to a body corporate, means any manager, secretary or other similar officer of the body corporate or any person purporting to act in any such capacity or as a director; and where the affairs of a body corporate are managed by its members, this section shall apply in relation to the conduct of a member in connection with his functions of management as if he were a director of the body corporate.

## 62 Incorrect certificates as to zero-rating etc.

- <sup>F103</sup>(1) Subject to subsections (3) and (4) below, where—
- (a) a person to whom one or more supplies are, or are to be, made—
    - (i) gives to the supplier a certificate that the supply or supplies fall, or will fall, wholly or partly within<sup>F104</sup> any of the Groups of Schedule 7A,], Group 5 or 6 of Schedule 8 or Group 1 of Schedule 9, or
    - (ii) gives to the supplier a certificate for the purposes of section 18B(2)(d) or 18C(1)(c),

and
  - (b) the certificate is incorrect,
- the person giving the certificate shall be liable to a penalty.



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- (1A) Subject to subsections (3) and (4) below, where—
- (a) a person who makes, or is to make, an acquisition of goods from another member State prepares a certificate for the purposes of section 18B(1)(d), and
  - (b) the certificate is incorrect,
- the person preparing the certificate shall be liable to a penalty.
- (2) The amount of the penalty shall be equal to—
- (a) in a case where the penalty is imposed by virtue of subsection (1) above, the difference between—
    - (i) the amount of the VAT which would have been chargeable on the supply or supplies if the certificate had been correct; and
    - (ii) the amount of VAT actually chargeable;
  - (b) in a case where it is imposed by virtue of subsection (1A) above, the amount of VAT actually chargeable on the acquisition.]
- (2) The amount of the penalty shall be equal to the difference between the amount of the VAT which would have been chargeable on the supply or supplies if the certificate had been correct and the amount of VAT actually so chargeable.
- (3) The giving [<sup>F105</sup>or preparing] of a certificate shall not give rise to a penalty under this section if the person who gave [<sup>F106</sup>or prepared] it satisfies the Commissioners or, on appeal, a tribunal that there is a reasonable excuse for his having given [<sup>F106</sup>or prepared]it.
- (4) Where by reason of giving [<sup>F105</sup>or preparing]a certificate a person is convicted of an offence (whether under this Act or otherwise), the giving of the certificate shall not also give rise to a penalty under this section.

#### Textual Amendments

**F103** S. 62(1)(1A)(2) substituted (27.7.1999 with effect as mentioned in s. 17(2) of the amending Act) for s. 62(1)(2) by 1999 c. 16, s. 17(1)

**F104** Words in s. 62(1)(a)(i) substituted (11.5.2001 with effect as mentioned in s. 99(9)(b) of the amending Act) by 2001 c. 9, s. 99, Sch. 31 para. 3

**F105** Words in s. 62(1)(3)(4) 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. 8(3); S.I. 1996/1249, art. 2

**F106** Words in s. 62(3) 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. 8(4); S.I. 1996/1249, art. 2

### 63 Penalty for misdeclaration or neglect resulting in VAT loss for one accounting period equalling or exceeding certain amounts.

- (1) In any case where, for a prescribed accounting period—
- (a) a return is made which understates a person's liability to VAT or overstates his entitlement to a VAT credit, or
  - (b) an assessment is made which understates a person's liability to VAT and, at the end of the period of 30 days beginning on the date of the assessment, he has not taken all such steps as are reasonable to draw the understatement to the attention of the Commissioners,

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and the circumstances are as set out in subsection (2) below, the person concerned shall be liable, subject to subsections (10) and (11) below, to a penalty equal to 15 per cent. of the VAT which would have been lost if the inaccuracy had not been discovered.

- (2) The circumstances referred to in subsection (1) above are that the VAT for the period concerned which would have been lost if the inaccuracy had not been discovered equals or exceeds whichever is the lesser of £1,000,000 and 30 per cent. of the relevant amount for that period.
- (3) Any reference in this section to the VAT for a prescribed accounting period which would have been lost if an inaccuracy had not been discovered is a reference to the amount of the understatement of liability or, as the case may be, overstatement of entitlement referred to, in relation to that period, in subsection (1) above.
- (4) In this section “the relevant amount”, in relation to a prescribed accounting period, means—
  - (a) for the purposes of a case falling within subsection (1)(a) above, the gross amount of VAT for that period; and
  - (b) for the purposes of a case falling within subsection (1)(b) above, the true amount of VAT for that period.
- (5) In this section “the gross amount of tax”, in relation to a prescribed accounting period, means the aggregate of the following amounts, that is to say—
  - (a) the amount of credit for input tax which (subject to subsection (8) below) should have been stated on the return for that period, and
  - (b) the amount of output tax which (subject to that subsection) should have been so stated.
- (6) In relation to any return which, in accordance with prescribed requirements, includes a single amount as the aggregate for the prescribed accounting period to which the return relates of—
  - (a) the amount representing credit for input tax, and
  - (b) any other amounts representing refunds or repayments of VAT to which there is an entitlement,

references in this section to the amount of credit for input tax shall have effect (so far as they would not so have effect by virtue of subsection (9) below) as references to the amount of that aggregate.
- (7) In this section “the true amount of VAT”, in relation to a prescribed accounting period, means the amount of VAT which was due from the person concerned for that period or, as the case may be, the amount of the VAT credit (if any) to which he was entitled for that period.
- (8) Where—
  - (a) a return for any prescribed accounting period overstates or understates to any extent a person’s liability to VAT or his entitlement to a VAT credit, and
  - (b) that return is corrected, in such circumstances and in accordance with such conditions as may be prescribed, by a return for a later such period which understates or overstates, to the corresponding extent, that liability or entitlement,

it shall be assumed for the purposes of this section that the statements made by each of those returns (so far as they are not inaccurate in any other respect) are correct statements for the accounting period to which it relates.

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- (9) This section shall have effect in relation to a body which is registered and to which section 33 applies as if—
- (a) any reference to a VAT credit included a reference to a refund under that section, and
  - (b) any reference to credit for input tax included a reference to VAT chargeable on supplies, acquisitions or importations which were not for the purposes of any business carried on by the body.
- <sup>F107</sup>(9A) This section shall have effect in relation to a body which is registered and to which section 33A applies as if—
- (a) any reference to a VAT credit included a reference to a refund under that section, and
  - (b) any reference to credit for input tax included a reference to VAT chargeable on supplies, acquisitions or importations which were attributable to the provision by the body of free rights of admission to a museum or gallery that in relation to the body was a relevant museum or gallery for the purposes of section 33A.
- (10) Conduct falling within subsection (1) above shall not give rise to liability to a penalty under this section if—
- (a) the person concerned satisfies the Commissioners or, on appeal, a tribunal that there is a reasonable excuse for the conduct, or
  - (b) at a time when he had no reason to believe that enquiries were being made by the Commissioners into his affairs, so far as they relate to VAT, the person concerned furnished to the Commissioners full information with respect to the inaccuracy concerned.
- (11) Where, by reason of conduct falling within subsection (1) above—
- (a) a person is convicted of an offence (whether under this Act or otherwise), or
  - (b) a person is assessed to a penalty under section 60,
- that conduct shall not also give rise to liability to a penalty under this section.

#### Textual Amendments

**F107** S. 63(9A) inserted (11.5.2001 for specified purposes otherwise 1.9.2001) by **2001 c. 9, s. 98(3)(10)(11)**

## 64 Repeated misdeclarations.

- (1) In any case where—
- (a) for a prescribed accounting period (including one beginning before the commencement of this section), a return has been made which understates a person's liability to VAT or overstates his entitlement to a VAT credit; and
  - (b) the VAT for that period which would have been lost if the inaccuracy had not been discovered equals or exceeds whichever is the lesser of £500,000 and 10 per cent. of the gross amount of tax for that period,
- the inaccuracy shall be regarded, subject to subsections (5) and (6) below, as material for the purposes of this section.
- (2) Subsection (3) below applies in any case where—
- (a) there is a material inaccuracy in respect of any prescribed accounting period;

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- (b) the Commissioners serve notice on the person concerned (a “penalty liability notice”) specifying a penalty period for the purposes of this section;
  - (c) that notice is served before the end of 5 consecutive prescribed accounting periods beginning with the period in respect of which there was the material inaccuracy; and
  - (d) the period specified in the penalty liability notice as the penalty period is the period of 8 consecutive prescribed accounting periods beginning with that in which the date of the notice falls.
- (3) If, where a penalty liability notice has been served on any person, there is a material inaccuracy in respect of any of the prescribed accounting periods falling within the penalty period specified in the notice, that person shall be liable, except in relation to the first of those periods in respect of which there is a material inaccuracy, to a penalty equal to 15 per cent. of the VAT for the prescribed accounting period in question which would have been lost if the inaccuracy had not been discovered.
- (4) Subsections (3), (5), (8) and (9) of section 63 shall apply for the purposes of this section as they apply for the purposes of that section.
- (5) An inaccuracy shall not be regarded as material for the purposes of this section if—
- (a) the person concerned satisfies the Commissioners or, on appeal, a 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, so far as they relate to VAT, the person concerned furnished to the Commissioners full information with respect to the inaccuracy.
- [<sup>F108</sup>(6) Subject to subsection (6A) below, where by reason of conduct falling within subsection (1) above—
- (a) a person is convicted of an offence (whether under this Act or otherwise), or
  - (b) a person is assessed to a penalty under section 60 or 63,
- the inaccuracy concerned shall not be regarded as material for the purposes of this section.
- (6A) Subsection (6) above shall not prevent an inaccuracy by reason of which a person has been assessed to a penalty under section 63—
- (a) from being regarded as a material inaccuracy in respect of which the Commissioners may serve a penalty liability notice under subsection (2) above; or
  - (b) from being regarded for the purposes of subsection (3) above as a material inaccuracy by reference to which any prescribed accounting period falling within the penalty period is to be treated as the first prescribed accounting period so falling in respect of which there is a material inaccuracy.
- (7) Where subsection (5) or (6) above requires any inaccuracy to be regarded as not material for the purposes of the serving of a penalty liability notice, any such notice served in respect of that inaccuracy shall be deemed not to have been served.]

#### Textual Amendments

**F108** S. 64(6)(6A)(7) substituted (29.4.1996 with effect in relation to inaccuracies contained in returns made on or after 29.4.1996) for s. 64(6)(7) by 1996 c. 8, s. 36

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## **65 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 6 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;
- (d) the submission date for the second inaccurate statement fell within the period of 2 years beginning with the day after the warning was issued;
- (e) the Commissioners have, within 6 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 2 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 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 this 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—

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“EC sales statement” means any statement which is required to be submitted to the Commissioners in accordance with regulations under paragraph 2(3) of Schedule 11; 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.

## **66 Failure to submit EC sales statement.**

- (1) If, by the last day on which a person is required in accordance with regulations under this 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 14 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 12 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—
  - (a) if the statement to which the notice relates is not submitted before the end of the period of 14 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 12 months beginning with the day after the service of the notice; and
  - (b) where at any time in that period of 12 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 12 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—

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- (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 14 days mentioned in subsection (3)(a) above, up to a maximum of 100 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 100 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 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, he shall be treated for the purposes of this section and sections 59 to 65 and 67 to 71, 73, 75 and 76 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 1st January 1993 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) 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(3) of Schedule 11.

## **67 Failure to notify and unauthorised issue of invoices.**

- (1) In any case where—
- (a) a person fails to comply with any of paragraphs 5, 6 <sup>[F109]</sup>, 7] and 14(2) and (3) of Schedule 1 with paragraph 3 of Schedule 2 <sup>[F110]</sup>, with paragraph 3 or 8(2) of Schedule 3 or paragraph 3, 4 or 7(2) or (3) of Schedule 3A], or
  - (b) a person fails to comply with a requirement of regulations under paragraph 2(4) of Schedule 11, or

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- (c) an unauthorised person issues one or more invoices showing an amount as being VAT or as including an amount attributable to VAT,  
he shall be liable, subject to subsections (8) and (9) below, to a penalty equal to the specified percentage of the relevant VAT or, if it is greater or the circumstances are such that there is no relevant VAT, to a penalty of £50.
- (2) In subsection (1)(c) above, “an unauthorised person” means anyone other than—
- (a) a person registered under this Act; or
  - (b) a body corporate treated for the purposes of section 43 as a member of a group; or
  - (c) a person treated as a taxable person under regulations made under section 46(4); or
  - (d) a person authorised to issue an invoice under regulations made under paragraph 2(12) of Schedule 11; or
  - (e) a person acting on behalf of the Crown.
- (3) In subsection (1) above “relevant VAT” means (subject to subsections (5) and (6) below)—
- (a) in relation to a person’s failure to comply with paragraph 5 <sup>[F111]</sup>, 6 or 7] of Schedule 1, paragraph 3 of Schedule 2 <sup>[F112]</sup>, paragraph 3 of Schedule 3 or paragraph 3 or 4 of Schedule 3A], the VAT (if any) for which he is liable for the period beginning on the date with effect from which he is, in accordance with that paragraph, required to be registered and ending on the date on which the Commissioners received notification of, or otherwise became fully aware of, his liability to be registered; and
  - (b) in relation to a person’s failure to comply with sub-paragraph (2) or (3) of paragraph 14 of Schedule 1 <sup>[F113]</sup>, with sub-paragraph (2) of paragraph 8 of Schedule 3 or with sub-paragraph (2) or (3) of paragraph 7 of Schedule 3A], the VAT (if any) for which, but for any exemption from registration, he would be liable for the period beginning on the date of the change or alteration referred to in that sub-paragraph and ending on the date on which the Commissioners received notification of, or otherwise became fully aware of, that change or alteration; and
  - (c) in relation to a person’s failure to comply with a requirement of regulations under paragraph 2(4) of Schedule 11, the VAT on the acquisition to which the failure relates; and
  - (d) in relation to the issue of one or more invoices as are referred to in subsection (1)(c) above, the amount which is, or the aggregate of the amounts which are—
    - (i) shown on the invoice or invoices as VAT, or
    - (ii) to be taken as representing VAT.
- (4) For the purposes of subsection (1) above the specified percentage is—
- (a) <sup>[F114]</sup>5 per cent.] where the relevant VAT is given by subsection (3)(a) or (b) above and the period referred to in that paragraph does not exceed 9 months or where the relevant VAT is given by subsection (3)(c) above and the failure in question did not continue for more than 3 months;
  - (b) <sup>[F115]</sup>10 per cent.] where that VAT is given by subsection (3)(a) or (b) above and the period so referred to exceeds 9 months but does not exceed 18 months or where that VAT is given by subsection (3)(c) and the failure in question



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continued for more than 3 months but did not continue for more than 6 months;  
and

(c) [<sup>F116</sup>15 per cent.]in any other case.

(5) Where—

- (a) the amount of VAT which (apart from this subsection) would be treated for the purposes of subsection (1) above as the relevant VAT in relation to a failure mentioned in subsection (3)(a) above includes VAT on an acquisition of goods from another member State; and
- (b) the Commissioners are satisfied that VAT 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 VAT in relation to that failure, an allowance shall be made for the VAT paid under the law of that member State; and the amount of the allowance shall not exceed the amount of VAT due on the acquisition but shall otherwise be equal to the amount of VAT which the Commissioners are satisfied has been paid on that supply under the law of that member State.

(6) Where—

- (a) the amount of VAT which (apart from this subsection) would be treated for the purposes of subsection (1) above as the relevant VAT in relation to a failure mentioned in subsection (3)(a) above includes VAT chargeable by virtue of section 7(4) on any supply; and
- (b) the Commissioners are satisfied that VAT has been paid under the law of another member State on that supply,

then, in the determination of the amount of the relevant VAT in relation to that failure, an allowance shall be made for the VAT paid under the law of the other member State; and the amount of the allowance shall not exceed the amount of VAT chargeable by virtue of section 7(4) on that supply but shall otherwise be equal to the amount of VAT which the Commissioners are satisfied has been paid on that supply under the law of that other member State.

(7) This section shall have effect in relation to any invoice which—

- (a) for the purposes of any provision made under section 54(3) shows an amount as included in the consideration for any supply, and
- (b) either—
  - (i) fails to comply with the requirements of any regulations under that section; or
  - (ii) is issued by a person who is not for the time being authorised to do so for the purposes of that section,

as if the person issuing the invoice were an unauthorised person and that amount were shown on the invoice as an amount attributable to VAT.

(8) Conduct falling within subsection (1) above shall not give rise to liability to a penalty under this section if the person concerned satisfies the Commissioners or, on appeal, a tribunal that there is a reasonable excuse for his conduct.

(9) Where, by reason of conduct falling within subsection (1) above—

- (a) a person is convicted of an offence (whether under this Act or otherwise), or
- (b) a person is assessed to a penalty under section 60,

that conduct shall not also give rise to liability to a penalty under this section.

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- (10) If it appears to the Treasury that there has been a change in the value of money since 25th July 1985 or, as the case may be, the last occasion when the power conferred by this subsection was exercised, they may by order substitute for the sum for the time being specified in subsection (1) above such other sum as appears to them to be justified by the change.
- (11) An order under subsection (10) above shall not apply in relation to a failure to comply which ended on or before the date on which the order comes into force.

#### Textual Amendments

- F109** Word in s. 67(1)(a) inserted (29.4.1996 with effect as mentioned in s. 37(2)(3) of the amending Act) by 1996 c. 8, s. 37(1)(a)
- F110** Words in s. 67(1)(a) substituted (28.7.2000 with effect as mentioned in s. 136(10) of the amending Act) by 2000 c. 17, s. 136(2)(a)
- F111** Words in s. 67(3)(a) substituted (29.4.1996 with effect as mentioned in s. 37(2)(3) of the amending Act) by 1996 c. 8, s. 37(1)(b)
- F112** Words in s. 67(3)(a) substituted (28.7.2000 with effect as mentioned in s. 136(10) of the amending Act) by 2000 c. 17, s. 136(2)(b)
- F113** Words in s. 67(3)(b) substituted (28.7.2000 with effect as mentioned in s. 136(10) of the amending Act) by 2000 c. 17, s. 136(2)(c)
- F114** Words in s. 67(4)(a) substituted (1.5.1995 with effect as mentioned in s. 32(3)(4) of the amending Act) by 1995 c. 4, s. 32(1)(a)
- F115** Words in s. 67(4)(b) substituted (1.5.1995 with effect as mentioned in s. 32(3)(4) of the amending Act) by 1995 c. 4, s. 32(1)(b)
- F116** Words in s. 67(4)(c) substituted (1.5.1995 with effect as mentioned in s. 32(3)(4) of the amending Act) by 1995 c. 4, s. 32(1)(c)

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

- C10** S. 67 amended (29.4.1996) by 1996 c. 8, s. 37(3)

## 68 Breaches of walking possession agreements.

- (1) This section applies where—
- in accordance with regulations under [F117 section 51 of the Finance Act 1997 (enforcement by distress)], a distress is authorised to be levied on the goods and chattels of a person (a “person in default”) who has refused or neglected to pay any VAT due or any amount recoverable as if it were VAT due, and
  - the person levying the distress and the person in default have entered into a walking possession agreement, as defined in subsection (2) below.
- (2) In this section a “walking possession agreement” means an agreement under which, in consideration of the property distrained upon being allowed to remain in the custody of the person in default and of the delaying of its sale, the person in default—
- acknowledges that the property specified in the agreement is under distraint and held in walking possession; and
  - undertakes that, except with the consent of the Commissioners and subject to such conditions as they may impose, he will not remove or allow the removal of any of the specified property from the premises named in the agreement.

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- (3) Subject to subsection (4) below, if the person in default is in breach of the undertaking contained in a walking possession agreement, he shall be liable to a penalty equal to half of the VAT or other amount referred to in subsection (1)(a) above.
- (4) The person in default shall not be liable to a penalty under subsection (3) above if he satisfies the Commissioners or, on appeal, a tribunal that there is a reasonable excuse for the breach in question.
- (5) This section does not extend to Scotland.

#### Textual Amendments

F117 Words in s. 68(1)(a) substituted (1.7.1997) by 1997 c. 16, s. 53(7)(9); S.I. 1997/1432, art. 2

### 69 Breaches of regulatory provisions.

- (1) If any person fails to comply with a regulatory requirement, that is to say, a requirement imposed under—
  - (a) paragraph 11 or 12 of Schedule 1, paragraph 5 of Schedule 2 [<sup>F118</sup>, paragraph 5 of Schedule 3 or paragraph 5 of Schedule 3A]; or
  - (b) any regulations made under section 48 requiring a VAT representative, for the purposes of registration, to notify the Commissioners that his appointment has taken effect or has ceased to have effect; or
  - (c) paragraph 6(1) or 7 of Schedule 11; or
  - (d) any regulations or rules made under this Act, other than rules made under paragraph 9 of Schedule 12; or
  - (e) any order made by the Treasury under this Act; or
  - (f) any regulations made under the <sup>M26</sup>European Communities Act 1972 and relating to VAT, [<sup>F119</sup>; or
  - (g) section 18A in the form of a condition imposed by the Commissioners under subsection (1) or (6) of that section,]he shall be liable, subject to subsections (8) and (9) below and section 76(6), to a penalty equal to the prescribed rate multiplied by the number of days on which the failure continues (up to a maximum of 100) or, if it is greater, to a penalty of £50.
- (2) If any person fails to comply with a requirement to preserve records imposed under paragraph 6(3) of Schedule 11, he shall be liable, subject to the following provisions of this section, to a penalty of £500.
- (3) Subject to subsection (4) below, in relation to a failure to comply with any regulatory requirement, the prescribed rate shall be determined by reference to the number of occasions in the period of 2 years preceding the beginning of the failure in question on which the person concerned has previously failed to comply with that requirement and, subject to the following provisions of this section, the prescribed rate shall be—
  - (a) if there has been no such previous occasion in that period, £5;
  - (b) if there has been only one such occasion in that period, £10; and
  - (c) in any other case, £15.
- (4) For the purposes of subsection (3) above—

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- (a) a failure to comply with any regulatory requirement shall be disregarded if, as a result of the failure, the person concerned became liable for a surcharge under section 59 [F120 or 59A];
  - (b) a continuing failure to comply with any such requirement shall be regarded as one occasion of failure occurring on the date on which the failure began;
  - (c) if the same omission gives rise to a failure to comply with more than one such requirement, it shall nevertheless be regarded as the occasion of only one failure; and
  - (d) in relation to a failure to comply with a requirement imposed by regulations as to the furnishing of a return or as to the payment of VAT, a previous failure to comply with such a requirement as to either of those matters shall be regarded as a previous failure to comply with the requirement in question.
- (5) Where the failure referred to in subsection (1) above consists—
- (a) in not paying the VAT due in respect of any period within the time required by regulations under section 25(1), or
  - (b) in not furnishing a return in respect of any period within the time required by regulations under paragraph 2(1) of Schedule 11,
- the prescribed rate shall be whichever is the greater of that which is appropriate under subsection (3)(a) to (c) above and an amount equal to one-sixth, one-third or one-half of 1 per cent. of the VAT due in respect of that period, the appropriate fraction being determined according to whether subsection (3)(a), (b) or (c) above is applicable.
- (6) For the purposes of subsection (5) above, the VAT due—
- (a) if the person concerned has furnished a return, shall be taken to be the VAT shown in the return as that for which he is accountable in respect of the period in question, and
  - (b) in any other case, shall be taken to be such VAT as has been assessed for that period and notified to him under section 73(1).
- (7) If it appears to the Treasury that there has been a change in the value of money since 25th July 1985 or, as the case may be, the last occasion when the power conferred by this subsection was exercised, they may by order substitute for the sums for the time being specified in subsections (2) and (3)(a) to (c) above such other sums as appear to them to be justified by the change; but an order under this subsection shall not apply to a failure which began before the date on which the order comes into force.
- (8) A failure by any person to comply with any regulatory requirement or the requirement referred to in subsection (2) above shall not give rise to liability to a penalty under this section if the person concerned satisfies the Commissioners or, on appeal, a tribunal that there is a reasonable excuse for the failure; and a failure in respect of which the Commissioners or tribunal have been so satisfied shall be disregarded for the purposes of subsection (3) above.
- (9) Where, by reason of conduct falling within subsection (1) or (2) above—
- (a) a person is convicted of an offence (whether under this Act or otherwise), or
  - (b) a person is assessed to a surcharge under section 59 [F121 or 59A], or
  - (c) a person is assessed to a penalty under section 60 or 63,
- that conduct shall not also give rise to liability to a penalty under this section.
- (10) This section applies in relation to failures occurring before as well as after the commencement of this Act, and for that purpose any reference to any provision of this

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Act includes a reference to the corresponding provision of the enactments repealed by this Act.

#### Textual Amendments

- F118** Words in s. 69(1)(a) substituted (28.7.2000 with effect as mentioned in s. 136(10) of the amending Act) by 2000 c. 17, s. 136(3)
- F119** S. 69(1)(g) and word preceding it 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. 9; S.I. 1996/1249, art. 2
- F120** Words in s. 69(4)(a) inserted (29.4.1996 with effect as mentioned in s. 35(8) of the amending Act) by 1996 c. 8, s. 35(6)(8)
- F121** Words in s. 69(9)(b) inserted (29.4.1996 with effect as mentioned in s. 35(8) of the amending Act) by 1996 c. 8, s. 35(6)(8)

#### Marginal Citations

- M26** 1972 c. 68.

### [<sup>F122</sup>69A Breach of record-keeping requirements etc. in relation to transactions in gold.

- (1) This section applies where a person fails to comply with a requirement of regulations under section 13(5)(a) or (b) of the <sup>M27</sup>Finance Act 1999 (gold: duties to keep records or provide information).

Where this section applies, the provisions of section 69 do not apply.

- (2) A person who fails to comply with any such requirement is liable to a penalty not exceeding 17.5% of the value of the transactions to which the failure relates.
- (3) For the purposes of assessing the amount of any such penalty, the value of the transactions to which the failure relates shall be determined by the Commissioners to the best of their judgement and notified by them to the person liable.
- (4) No assessment of a penalty under this section shall be made more than 2 years after evidence of facts sufficient in the opinion of the Commissioners to justify the making of the assessment comes to their knowledge.
- (5) The reference in subsection (4) above to facts sufficient to justify the making of the assessment is to facts sufficient—
- to indicate that there had been a failure to comply with any such requirement as is referred to in subsection (1) above, and
  - to determine the value of the transactions to which the failure relates.
- (6) A failure by any person to comply with any such requirement as is mentioned in subsection (1) above shall not give rise to a liability to a penalty under this section if the person concerned satisfies the Commissioners or, on appeal, a tribunal, that there is a reasonable excuse for the failure.
- (7) Where by reason of conduct falling within subsection (1) above a person—
- is assessed to a penalty under section 60, or
  - is convicted of an offence (whether under this Act or otherwise),
- that conduct shall not also give rise to a penalty under this section.]

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#### Textual Amendments

**F122** S. 69A inserted (28.7.2000) by [2000 c. 17, s. 137\(2\)](#)

#### Marginal Citations

**M27** [1999 c. 16.](#)

### 70 Mitigation of penalties under sections 60, 63, 64 and 67.

- (1) Where a person is liable to a penalty under section 60, 63, 64 [<sup>F123</sup> 67 or 69A], the Commissioners or, on appeal, a tribunal may reduce the penalty to such amount (including nil) as they think proper.
- (2) In the case of a penalty reduced by the Commissioners under subsection (1) above, a tribunal, on an appeal relating to the penalty, may cancel the whole or any part of the reduction made by the Commissioners.
- (3) None of the matters specified in subsection (4) below shall be matters which the Commissioners or any tribunal shall be entitled to take into account in exercising their powers under this section.
- (4) Those matters are—
  - (a) the insufficiency of the funds available to any person for paying any VAT due or for paying the amount of the penalty;
  - (b) the fact that there has, in the case in question or in that case taken with any other cases, been no or no significant loss of VAT;
  - (c) the fact that the person liable to the penalty or a person acting on his behalf has acted in good faith.

#### Textual Amendments

**F123** Words in s. 70(1) substituted (28.7.2000) by [2000 c. 17, s. 137\(3\)](#)

### 71 Construction of sections 59 to 70.

- (1) For the purpose of any provision of sections 59 to 70 which refers to a reasonable excuse for any conduct—
  - (a) an insufficiency of funds to pay any VAT due is not a reasonable excuse; and
  - (b) where reliance is placed on any other person to perform any task, neither the fact of that reliance nor any dilatoriness or inaccuracy on the part of the person relied upon is a reasonable excuse.
- (2) In relation to a prescribed accounting period, any reference in sections 59 to 69 to credit for input tax includes a reference to any sum which, in a return for that period, is claimed as a deduction from VAT due.

### 72 Offences.

- (1) If any person is knowingly concerned in, or in the taking of steps with a view to, the fraudulent evasion of VAT by him or any other person, he shall be liable—

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- (a) on summary conviction, to a penalty of the statutory maximum or of three times the amount of the VAT, whichever is the greater, or to imprisonment for a term not exceeding 6 months or to both; or
  - (b) on conviction on indictment, to a penalty of any amount or to imprisonment for a term not exceeding 7 years or to both.
- (2) Any reference in subsection (1) above or subsection (8) below to the evasion of VAT includes a reference to the obtaining of—
- (a) the payment of a VAT credit; or
  - (b) a refund under section 35, 36 or 40 of this Act or section 22 of the 1983 Act; or
  - (c) a refund under any regulations made by virtue of section 13(5); or
  - (d) a repayment under section 39;
- and any reference in those subsections to the amount of the VAT shall be construed—
- (i) in relation to VAT itself or a VAT credit, as a reference to the aggregate of the amount (if any) falsely claimed by way of credit for input tax and the amount (if any) by which output tax was falsely understated, and
  - (ii) in relation to a refund or repayment falling within paragraph (b), (c) or (d) above, as a reference to the amount falsely claimed by way of refund or repayment.
- (3) If any person—
- (a) with intent to deceive produces, furnishes or sends for the purposes of this Act or otherwise makes use for those purposes of any document which is false in a material particular; or
  - (b) in furnishing any information for the purposes of this Act makes any statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular,
- he shall be liable—
- (i) on summary conviction, to a penalty of the statutory maximum or, where subsection (4) or (5) below applies, to the alternative penalty specified in that subsection if it is greater, or to imprisonment for a term not exceeding 6 months or to both; or
  - (ii) on conviction on indictment, to a penalty of any amount or to imprisonment for a term not exceeding 7 years or to both.
- (4) In any case where—
- (a) the document referred to in subsection (3)(a) above is a return required under this Act, or
  - (b) the information referred to in subsection (3)(b) above is contained in or otherwise relevant to such a return,
- the alternative penalty referred to in subsection (3)(i) above is a penalty equal to three times the aggregate of the amount (if any) falsely claimed by way of credit for input tax and the amount (if any) by which output tax was falsely understated.
- (5) In any case where—
- (a) the document referred to in subsection (3)(a) above is a claim for a refund under section 35, 36 or 40 of this Act or section 22 of the 1983 Act, for a refund under any regulations made by virtue of section 13(5) or for a repayment under section 39, or
  - (b) the information referred to in subsection (3)(b) above is contained in or otherwise relevant to such a claim,

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- the alternative penalty referred to in subsection (3)(i) above is a penalty equal to 3 times the amount falsely claimed.
- (6) The reference in subsection (3)(a) above to furnishing, sending or otherwise making use of a document which is false in a material particular, with intent to deceive, includes a reference to furnishing, sending or otherwise making use of such a document, with intent to secure that a machine will respond to the document as if it were a true document.
- (7) Any reference in subsection (3)(a) or (6) above to producing, furnishing or sending a document includes a reference to causing a document to be produced, furnished or sent.
- (8) Where a person's conduct during any specified period must have involved the commission by him of one or more offences under the preceding provisions of this section, then, whether or not the particulars of that offence or those offences are known, he shall, by virtue of this subsection, be guilty of an offence and liable—
- (a) on summary conviction, to a penalty of the statutory maximum or, if greater, 3 times the amount of any VAT that was or was intended to be evaded by his conduct, or to imprisonment for a term not exceeding 6 months or to both, or
  - (b) on conviction on indictment to a penalty of any amount or to imprisonment for a term not exceeding 7 years or to both.
- (9) Where an authorised person has reasonable grounds for suspecting that an offence has been committed under the preceding provisions of this section, he may arrest anyone whom he has reasonable grounds for suspecting to be guilty of the offence.
- (10) If any person acquires possession of or deals with any goods, or accepts the supply of any services, having reason to believe that VAT on the supply of the goods or services, on the acquisition of the goods from another member State or on the importation of the goods from a place outside the member States has been or will be evaded, he shall be liable on summary conviction to a penalty of level 5 on the standard scale or three times the amount of the VAT, whichever is the greater.
- (11) If any person supplies [<sup>F124</sup>or is supplied with] goods or services in contravention of paragraph 4(2) of Schedule 11, he shall be liable on summary conviction to a penalty of level 5 on the standard scale.
- (12) Subject to subsection (13) below, sections 145 to 155 of the Management Act (proceedings for offences, mitigation of penalties and certain other matters) shall apply in relation to offences under this Act (which include any act or omission in respect of which a penalty is imposed) and penalties imposed under this Act as they apply in relation to offences and penalties under the customs and excise Acts as defined in that Act; and accordingly in section 154(2) as it applies by virtue of this subsection the reference to duty shall be construed as a reference to VAT.
- (13) In subsection (12) above the references to penalties do not include references to penalties under sections 60 to 70.

#### Textual Amendments

**F124** Words in s. 72(11) inserted (retrospective to 10.4.2003) by [Finance Act 2003 \(c. 14\), s. 17\(5\)\(8\)](#)



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

#### **73 Failure to make returns etc.**

- (1) Where a person has failed to make any returns required under this Act (or under any provision repealed by 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 VAT due from him to the best of their judgment and notify it to him.
- (2) In any case where, for any prescribed accounting period, there has been paid or credited to any person—
  - (a) as being a repayment or refund of VAT, or
  - (b) as being due to him as a VAT credit,an amount which ought not to have been so paid or credited, or which would not have been so paid or credited had the facts been known or been as they later turn out to be, the Commissioners may assess that amount as being VAT due from him for that period and notify it to him accordingly.
- (3) An amount—
  - (a) which has been paid to any person as being due to him as a VAT credit, and
  - (b) which, by reason of the cancellation of that person's registration under paragraph 13(2) to (6) of Schedule 1, paragraph 6(2) of Schedule 2 <sup>[F125]</sup>, paragraph 6(2) or (3) of Schedule 3 or paragraph 6(1) or (2) of Schedule 3A] ought not to have been so paid,may be assessed under subsection (2) above notwithstanding that cancellation.
- (4) Where a person is assessed under subsections (1) and (2) above in respect of the same prescribed accounting period the assessments may be combined and notified to him as one assessment.
- (5) 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, interim or permanent trustee, receiver, liquidator or person otherwise acting in a representative capacity in relation to another person, subsection (1) above shall apply as if the reference to VAT due from him included a reference to VAT due from that other person.
- (6) An assessment under subsection (1), (2) or (3) above of an amount of VAT due for any prescribed accounting period must be made within the time limits provided for in section 77 and shall not be made after the later of the following—
  - (a) 2 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 (subject to that section) where further such evidence comes to the Commissioners' knowledge after the making of an assessment under subsection (1), (2) or (3) above, another assessment may be made under that subsection, in addition to any earlier assessment.
- (7) Where a taxable person—
  - (a) has in the course or furtherance of a business carried on by him, been supplied with any goods, acquired any goods from another member State or otherwise obtained possession or control of any goods, or

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- (b) has, in the course or furtherance of such a business, imported any goods from a place outside the member States,
- 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 exported or otherwise removed from the United Kingdom without being exported or so removed by way of supply or have been lost or destroyed, they may assess to the best of their judgment and notify to him the amount of VAT that would have been chargeable in respect of the supply of the goods if they had been supplied by him.
- [<sup>F126</sup>(7A) Where a fiscal warehousekeeper has failed to pay VAT required by the Commissioners under section 18E(2), the Commissioners may assess to the best of their judgment the amount of that VAT due from him and notify it to him.
- (7B) Where it appears to the Commissioners that goods have been removed from a warehouse or fiscal warehouse without payment of the VAT payable under section 18(4) or section 18D on that removal, they may assess to the best of their judgment the amount of VAT due from the person removing the goods or other person liable and notify it to him.]
- (8) In any case where—
- (a) as a result of a person's failure to make a return for a prescribed accounting period, the Commissioners have made an assessment under subsection (1) above for that period,
  - (b) the VAT assessed has been paid but no proper return has been made for the period to which the assessment related, and
  - (c) as a result of a failure to make a return for a later prescribed accounting period, being a failure by a person referred to in paragraph (a) above or a person acting in a representative capacity in relation to him, as mentioned in subsection (5) above, the Commissioners find it necessary to make another assessment under subsection (1) above,
- then, if the Commissioners think fit, having regard to the failure referred to in paragraph (a) above, they may specify in the assessment referred to in paragraph (c) above an amount of VAT greater than that which they would otherwise have considered to be appropriate.
- (9) Where an amount has been assessed and notified to any person under subsection (1), (2), (3) [<sup>F127</sup>, (7), (7A) or (7B)] above it shall, subject to the provisions of this Act as to appeals, be deemed to be an amount of VAT 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 section notification to a personal representative, trustee in bankruptcy, interim or permanent trustee, receiver, liquidator or person otherwise acting as aforesaid shall be treated as notification to the person in relation to whom he so acts.

#### Textual Amendments

**F125** Words in s. 73(3)(b) substituted (28.7.2000 with effect as mentioned in s. 136(10) of the amending Act) by 2000 c. 17, s. 136(4)

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**F126** S. 73(7A)(7B) 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. 10**; S.I. 1996/1249, **art. 2**

**F127** Words in s. 73(9) substituted (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**

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

**C11** S. 73 modified (20.10.1995) by S.I. 1995/2518, **regs. 181, 194**

**74 Interest on VAT recovered or recoverable by assessment.**

(1) Subject to section 76(8), where an assessment is made under any provision of section 73 and, in the case of an assessment under section 73(1) at least one of the following conditions is fulfilled, namely—

- (a) the assessment relates to a prescribed accounting period in respect of which either—
  - (i) a return has previously been made, or
  - (ii) an earlier assessment has already been notified to the person concerned,
- (b) the assessment relates to a prescribed accounting period which exceeds 3 months and begins on the date with effect from which the person concerned was, or was required to be, registered,
- (c) the assessment relates to a prescribed accounting period at the beginning of which the person concerned was, but should no longer have been, exempted from registration under paragraph 14(1) of Schedule 1 or <sup>[F128]</sup>, under paragraph 8 of Schedule 3 or under paragraph 7 of Schedule 3A],

the whole of the amount assessed shall, subject to subsection (3) below, carry interest at <sup>[F129]</sup>the rate applicable under section 197 of the Finance Act 1996] from the reckonable date until payment.

(2) In any case where—

- (a) the circumstances are such that an assessment falling within subsection (1) above could have been made, but
- (b) before such an assessment was made the VAT due or other amount concerned was paid (so that no such assessment was necessary),

the whole of the amount paid shall, subject to subsection (3) below, carry interest at <sup>[F130]</sup>the rate applicable under section 197 of the Finance Act 1996] from the reckonable date until the date on which it was paid.

(3) Where (apart from this subsection)—

- (a) the period before the assessment in question for which any amount would carry interest under subsection (1) above; or
- (b) the period for which any amount would carry interest under subsection (2) above,

would exceed 3 years, the part of that period for which that amount shall carry interest under that subsection shall be confined to the last 3 years of that period.

(4) Where an unauthorised person, as defined in section 67(2), issues an invoice showing an amount as being VAT or as including an amount attributable to VAT, the amount which is shown as VAT or, as the case may be, is to be taken as representing VAT shall

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carry interest at [<sup>F131</sup>the rate applicable under section 197 of the Finance Act 1996] from the date of the invoice until payment.

(5) The references in subsections (1) and (2) above to the reckonable date shall be construed as follows—

- (a) where the amount assessed or paid is such an amount as is referred to in section 73(2)(a) or (b), the reckonable date is the seventh day after the day on which a written instruction was issued by the Commissioners directing the making of the payment of the amount which ought not to have been repaid or paid to the person concerned; and
- (b) in all other cases the reckonable date is the latest date on which (in accordance with regulations under this Act) a return is required to be made for the prescribed accounting period to which the amount assessed or paid relates; and
- (c) in the case of an amount assessed under section 73(7) the sum assessed shall be taken for the purposes of paragraph (b) above to relate to the period for which the assessment was made;

and interest under this section shall run from the reckonable date even if that date is a non-business day, within the meaning of section 92 of the <sup>M28</sup>Bills of Exchange Act 1882.

<sup>F132</sup>(6) .....

(7) Interest under this section shall be paid without any deduction of income tax.

#### Textual Amendments

- F128** Words in s. 74(1)(c) substituted (28.7.2000 with effect as mentioned in s. 136(10) of the amending Act) by 2000 c. 17, s. 136(5)
- F129** Words in s. 74(1) substituted (1.4.1997 with effect as mentioned in s. 197(7) of the amending Act) by 1996 c. 8, s. 197(6)(d)(i)(7); S.I. 1997/1015, art. 2
- F130** Words in s. 74(2) substituted (1.4.1997 with effect as mentioned in s. 197(7) of the amending Act) by 1996 c. 8, s. 197(6)(d)(i)(7); S.I. 1997/1015, art. 2
- F131** Words in s. 74(4) substituted (1.4.1997 with effect as mentioned in s. 197(7) of the amending Act) by 1996 c. 8, s. 197(6)(d)(i)(7); S.I. 1997/1015, art. 2
- F132** S. 74(6) repealed (1.4.1997 with effect as mentioned in s. 197(7) of the amending Act) by 1996 c. 8, s. 205, Sch. 41 Pt. VIII Note; S.I. 1997/1015, art. 2

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

- C12** S. 74 modified (6.2.1996) by S.I. 1996/165, art. 2  
S. 74 power to amend (1.4.1997) by 1996 c. 8, s. 197(2)(c)(7); S.I. 1997/1015, art. 2

#### Marginal Citations

- M28** 1882 c. 61.

## 75 Assessments in cases of acquisitions of certain goods by non-taxable persons.

(1) Where a person who has, at a time when he was not a taxable person, acquired in the United Kingdom from another member State any goods subject to a duty of excise or consisting in a new means of transport and—

- (a) notification of that acquisition has not been given to the Commissioners by the person who is required to give one by regulations under paragraph 2(4) of Schedule 11 (whether before or after the commencement of this Act);

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- (b) the Commissioners are not satisfied that the particulars relating to the acquisition in any notification given to them are accurate and complete; or
  - (c) there has been a failure to supply the Commissioners with the information necessary to verify the particulars contained in any such notification,
- they may assess the amount of VAT due on the acquisition to the best of their judgment and notify their assessment to that person.
- (2) An assessment under this section must be made within the time limits provided for in section 77 and shall not be made after whichever is the later of the following—
- (a) 2 years after the time when a notification of the acquisition of the goods in question is given to the Commissioners by the person who is required to give one by regulations under paragraph 2(4) of Schedule 11;
  - (b) one year after evidence of the facts, sufficient in the opinion of the Commissioners to justify the making of the assessment, comes to their knowledge,
- but (subject to section 77) where further such evidence comes to the Commissioners' knowledge after the making of an assessment under this section, another assessment may be made under this section, in addition to any earlier assessment.
- (3) Where an amount has been assessed and notified to any person under this section, it shall, subject to the provisions of this Act as to appeals, be deemed to be an amount of VAT due from him and may be recovered accordingly, unless, or except to the extent that, the assessment has subsequently been withdrawn or reduced.
- (4) For the purposes of this section, notification to a personal representative, trustee in bankruptcy, interim or permanent trustee, 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.

## **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>F133</sup>or 59A], or
  - (b) to a penalty under any of sections 60 [<sup>F134</sup>to 69A], or
  - (c) for interest under section 74,
- 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>F134</sup>to 69A] 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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- (a) in the case of a surcharge under section 59 [<sup>F135</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; and
  - (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.
- (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) above and is also assessed under section 73(1), (2) [<sup>F136</sup>, (7), (7A) or (7B)] for the prescribed accounting period which is the relevant period under subsection (3) 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.
- (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.

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- (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, interim or permanent trustee, 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

- F133** Words in s. 76(1) inserted (29.4.1996 with effect as mentioned in s. 35(8) of the amending Act) by 1996 c. 8, s. 35(7)(8)
- F134** Words in s. 76(1) substituted (28.7.2000) by 2000 c. 17, s. 137(4)
- F135** 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)
- F136** 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

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

- C13** S. 76(10) amended (retrospectively) by 1997 c. 16, s. 45(6)

## 77 Assessments: time limits and supplementary assessments.

- (1) Subject to the following provisions of this section, an assessment under section 73, 75 or 76, shall not be made—
- more than [<sup>F137</sup>3 years] after the end of the prescribed accounting period or importation or acquisition concerned, or
  - in the case of an assessment under section 76 of an amount due by way of a penalty which is not among those referred to in subsection (3) of that section, [<sup>F137</sup>3 years] after the event giving rise to the penalty.
- <sup>F138</sup>[(2) Subject to subsection (5) below, an assessment under section 76 of an amount due by way of any penalty, interest or surcharge referred to in subsection (3) of that section may be made at any time before the expiry of the period of 2 years beginning with the time when the amount of VAT due for the prescribed accounting period concerned has been finally determined.
- (2A) Subject to subsection (5) below, an assessment under section 76 of a penalty under section 65 or 66 may be made at any time before the expiry of the period of 2 years beginning with the time when facts sufficient in the opinion of the Commissioners to indicate, as the case may be—
- that the statement in question contained a material inaccuracy, or
  - that there had been a default within the meaning of section 66(1), came to the Commissioners' knowledge.]
- (3) In relation to an assessment under section 76, any reference in subsection (1) or (2) above to the prescribed accounting period concerned is a reference to that period which, in the case of the penalty, interest or surcharge concerned, is the relevant period referred to in subsection (3) of that section.

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- (4) Subject to subsection (5) below, if VAT has been lost—
- (a) as a result of conduct falling within section 60(1) or for which a person has been convicted of fraud, or
  - (b) in circumstances giving rise to liability to a penalty under section 67,
- an assessment may be made as if, in subsection (1) above, each reference to [<sup>F137</sup>3 years] were a reference to 20 years.
- (5) Where, after a person's death, the Commissioners propose to assess a sum as due by reason of some conduct (howsoever described) of the deceased, including a sum due by way of penalty, interest or surcharge—
- (a) the assessment shall not be made more than 3 years after the death; and
  - (b) if the circumstances are as set out in subsection (4) above, the modification of subsection (1) above contained in that subsection shall not apply but any assessment which (from the point of view of time limits) could have been made immediately after the death may be made at any time within 3 years after it.
- (6) If, otherwise than in circumstances falling within section 73(6)(b) or 75(2)(b), it appears to the Commissioners that the amount which ought to have been assessed in an assessment under that section or under section 76 exceeds the amount which was so assessed, then—
- (a) under the like provision as that assessment was made, and
  - (b) on or before the last day on which that assessment could have been made,
- the Commissioners may make a supplementary assessment of the amount of the excess and shall notify the person concerned accordingly.

#### Textual Amendments

**F137** Words in s. 77(1)(4) substituted (with effect retrospectively as mentioned in s. 47(10) of the amending Act) by 1997 c. 16, s. 47(10)

**F138** S. 77(2)(2A) substituted (27.7.1999 with effect as mentioned in s. 18(2)) for s. 77(2) by 1999 c. 16, s. 18(1)(2)

#### *[<sup>F139</sup>Liability for unpaid VAT of another*

#### Textual Amendments

**F139** S. 77A and cross-heading inserted (retrospective to 10.4.2003) by Finance Act 2003 (c. 14), s. 18(1)(4)

### 77A Joint and several liability of traders in supply chain where tax unpaid

- (1) This section applies to goods of any of the following descriptions—
- (a) telephones and any other equipment, including parts and accessories, made or adapted for use in connection with telephones or telecommunication;
  - (b) computers and any other equipment, including parts, accessories and software, made or adapted for use in connection with computers or computer systems.
- (2) Where—



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- (a) a taxable supply of goods to which this section applies has been made to a taxable person, and
  - (b) at the time of the supply the person knew or had reasonable grounds to suspect that some or all of the VAT payable in respect of that supply, or on any previous or subsequent supply of those goods, would go unpaid,
- the Commissioners may serve on him a notice specifying the amount of the VAT so payable that is unpaid, and stating the effect of the notice.
- (3) The effect of a notice under this section is that—
    - (a) the person served with the notice, and
    - (b) the person liable, apart from this section, for the amount specified in the notice,are jointly and severally liable to the Commissioners for that amount.
  - (4) For the purposes of subsection (2) above the amount of VAT that is payable in respect of a supply is the lesser of—
    - (a) the amount chargeable on the supply, and
    - (b) the amount shown as due on the supplier's return for the prescribed accounting period in question (if he has made one) together with any amount assessed as due from him for that period (subject to any appeal by him).
  - (5) The reference in subsection (4)(b) above to assessing an amount as due from a person includes a reference to the case where, because it is impracticable to do so, the amount is not notified to him.
  - (6) For the purposes of subsection (2) above, a person shall be presumed to have reasonable grounds for suspecting matters to be as mentioned in paragraph (b) of that subsection if the price payable by him for the goods in question—
    - (a) was less than the lowest price that might reasonably be expected to be payable for them on the open market, or
    - (b) was less than the price payable on any previous supply of those goods.
  - (7) The presumption provided for by subsection (6) above is rebuttable on proof that the low price payable for the goods was due to circumstances unconnected with failure to pay VAT.
  - (8) Subsection (6) above is without prejudice to any other way of establishing reasonable grounds for suspicion.
  - (9) The Treasury may by order amend subsection (1) above; and any such order may make such incidental, supplemental, consequential or transitional provision as the Treasury think fit.
  - (10) For the purposes of this section—
    - (a) “goods” includes services;
    - (b) an amount of VAT counts as unpaid only to the extent that it exceeds the amount of any refund due.]

*Interest, repayment supplements etc. payable by Commissioners*

## **78 Interest in certain cases of official error.**

- (1) Where, due to an error on the part of the Commissioners, a person has—

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- (a) accounted to them for an amount by way of output tax which was not output tax due from him and which they are in consequence liable to repay to him, or
- (b) failed to claim credit under section 25 for an amount for which he was entitled so to claim credit and which they are in consequence liable to pay to him, or
- (c) (otherwise than in a case falling within paragraph (a) or (b) above) paid to them by way of VAT an amount that was not VAT due and which they are in consequence liable to repay to him, or
- (d) suffered delay in receiving payment of an amount due to him from them in connection with VAT,

then, if and to the extent that they would not be liable to do so apart from this section, they shall pay interest to him on that amount for the applicable period, but subject to the following provisions of this section.

[<sup>F140</sup>(1A) In subsection (1) above—

- (a) references to an amount which the Commissioners are liable in consequence of any matter to pay or repay to any person are references, where a claim for the payment or repayment has to be made, to only so much of that amount as is the subject of a claim that the Commissioners are required to satisfy or have satisfied; and
- (b) the amounts referred to in paragraph (d) do not include any amount payable under this section.]

- (2) Nothing in subsection (1) above requires the Commissioners to pay interest—
  - (a) on any amount which falls to be increased by a supplement under section 79; or
  - (b) where an amount is increased under that section, on so much of the increased amount as represents the supplement.
- (3) Interest under this section shall be payable at [<sup>F141</sup>the rate applicable under section 197 of the Finance Act 1996]. and the first such order may prescribe, for cases where interest runs from before the date on which that order is expressed to come into force, rates for periods ending before that date.
- (4) The “applicable period” in a case falling within subsection (1)(a) or (b) above is the period—
  - (a) beginning with the appropriate commencement date, and
  - (b) ending with the date on which the Commissioners authorise payment of the amount on which the interest is payable.
- (5) In subsection (4) above, the “appropriate commencement date”—
  - (a) in a case where an amount would have been due from the person by way of VAT in connection with the relevant return, had his input tax and output tax been as stated in that return, means the date on which the Commissioners received payment of that amount; and
  - (b) in a case where no such payment would have been due from him in connection with that return, means the date on which the Commissioners would, apart from the error, have authorised payment of the amount on which the interest is payable;

and in this subsection “the relevant return” means the return in which the person accounted for, or (as the case may be) ought to have claimed credit for, the amount on which the interest is payable.

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- (6) The “applicable period” in a case falling within subsection (1)(c) above is the period—
- (a) beginning with the date on which the payment is received by the Commissioners, and
  - (b) ending with the date on which they authorise payment of the amount on which the interest is payable.
- (7) The “applicable period” in a case falling within subsection (1)(d) above is the period—
- (a) beginning with the date on which, apart from the error, the Commissioners might reasonably have been expected to authorise payment of the amount on which the interest is payable, and
  - (b) ending with the date on which they in fact authorise payment of that amount.
- [<sup>F142</sup>(8) In determining in accordance with subsection (4), (6) or (7) above the applicable period for the purposes of subsection (1) above, there shall be left out of account any period by which the Commissioners’ authorisation of the payment of interest is delayed by the conduct of the person who claims the interest.
- (8A) The reference in subsection (8) above to a period by which the Commissioners’ authorisation of the payment of interest is delayed by the conduct of the person who claims it includes, in particular, any period which is referable to—
- (a) any unreasonable delay in the making of the claim for interest or in the making of any claim for the payment or repayment of the amount on which interest is claimed;
  - (b) any failure by that person or a person acting on his behalf or under his influence to provide the Commissioners—
    - (i) at or before the time of the making of a claim, or
    - (ii) subsequently in response to a request for information by the Commissioners,with all the information required by them to enable the existence and amount of the claimant’s entitlement to a payment or repayment, and to interest on that payment or repayment, to be determined; and
  - (c) the making, as part of or in association with either—
    - (i) the claim for interest, or
    - (ii) any claim for the payment or repayment of the amount on which interest is claimed,of a claim to anything to which the claimant was not entitled.
- (9) In determining for the purposes of subsection (8A) above whether any period of delay is referable to a failure by any person to provide information in response to a request by the Commissioners, there shall be taken to be so referable, except so far as may be prescribed, any period which—
- (a) begins with the date on which the Commissioners require that person to provide information which they reasonably consider relevant to the matter to be determined; and
  - (b) ends with the earliest date on which it would be reasonable for the Commissioners to conclude—
    - (i) that they have received a complete answer to their request for information;
    - (ii) that they have received all that they need in answer to that request; or

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- (iii) that it is unnecessary for them to be provided with any information in answer to that request.]
- (10) The Commissioners shall only be liable to pay interest under this section on a claim made in writing for that purpose.
- [<sup>F143</sup>(11) A claim under this section shall not be made more than three years after the end of the applicable period to which it relates.]
- (12) In this section—
- [<sup>F144</sup>(a) references to the authorisation by the Commissioners of the payment of any amount include references to the discharge by way of set-off (whether under section 81(3) or otherwise) of the Commissioners' liability to pay that amount; and]
- (b) any reference to a return is a reference to a return required to be made in accordance with paragraph 2 of Schedule 11.

#### Textual Amendments

- F140** S. 78(1A) inserted (retrospectively) by 1997 c. 16, s. 44(1)
- F141** Words in s. 78(3) substituted (1.4.1997 with effect as mentioned in s. 197(7) of the amending Act) by 1996 c. 8, s. 197(6)(d)(ii)(7); S.I. 1997/1015, art. 2
- F142** S. 78(8)(8A)(9) substituted for s. 78(8)(9) (19.3.1997 with effect as mentioned in s. 44(5) of the amending Act) by 1997 c. 16, s. 44(4)(5)
- F143** S. 78(11) substituted (with effect retrospectively as mentioned in s. 44(2) of the amending Act) by 1997 c. 16, s. 44(2)
- F144** S. 78(12)(a) substituted (with effect retrospectively as mentioned in s. 44(3) of the amending Act) by 1997 c. 16, s. 44(3)

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

- C14** S. 78 amended (with effect retrospectively as mentioned in s. 44(2)(6) of the amending Act) by 1997 c. 16, s. 44(2)(6)
- S. 78 power to amend (1.4.1997) by 1996 c. 8, s. 197(2)(c)(7); S.I. 1997/1015, art. 2

#### <sup>F145</sup>[78A Assessment for interest overpayments.

- (1) Where—
- (a) any amount has been paid to any person by way of interest under section 78, but
- (b) that person was not entitled to that amount under that section,
- the Commissioners may, to the best of their judgement, assess the amount so paid to which that person was not entitled and notify it to him.
- (2) An assessment made under subsection (1) above shall not be made more than two years after the time when evidence of facts sufficient in the opinion of the Commissioners to justify the making of the assessment comes to the knowledge of the Commissioners.
- (3) Where an amount has been assessed and notified to any person under subsection (1) above, that amount shall be deemed (subject to the provisions of this Act as to appeals) to be an amount of VAT due from him and may be recovered accordingly.
- (4) Subsection (3) above does not have effect if or to the extent that the assessment in question has been withdrawn or reduced.

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- (5) An assessment under subsection (1) above shall be a recovery assessment for the purposes of section 84(3A).
- (6) Sections 74 and 77(6) apply in relation to assessments under subsection (1) above as they apply in relation to assessments under section 73 but as if the reference in subsection (1) of section 74 to the reckonable date were a reference to the date on which the assessment is notified.
- (7) Where by virtue of subsection (6) above any person is liable to interest under section 74—
- (a) section 76 shall have effect in relation to that liability with the omission of subsections (2) to (6); and
  - (b) section 77, except subsection (6), shall not apply to an assessment of the amount due by way of interest;
- and (without prejudice to the power to make assessments for interest for later periods) the interest to which any assessment made under section 76 by virtue of paragraph (a) above may relate shall be confined to interest for a period of no more than two years ending with the time when the assessment to interest is made.
- (8) For the purposes of this section notification to a personal representative, trustee in bankruptcy, interim or permanent trustee, receiver, liquidator or person otherwise acting in a representative capacity in relation to another shall be treated as notification to the person in relation to whom he so acts.]

#### Textual Amendments

**F145** S. 78A inserted (retrospective to 4.12.1996 and with effect as mentioned in s. 45(4) of the amending Act) by 1997 c. 16, s. 45(1)(4)

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

**C15** S. 78A(2)-(4)(8) applied (1.4.2001) by S.I. 2001/759, reg. 4(3)

**C16** S. 78A(2)-(8) applied (4.12.1996 as mentioned in s. 49(8)(9) of the amending Act) by 1997 c. 16, s. 49(4)(8)

## 79 Repayment supplement in respect of certain delayed payments or refunds.

- (1) In any case where—
- (a) a person is entitled to a VAT credit, or
  - (b) a body which is registered and to which section 33 applies is entitled to a refund under that section <sup>F146</sup>, or
  - (c) a body which is registered and to which section 33A applies is entitled to a refund under that section,
- and the conditions mentioned in subsection (2) below are satisfied, the amount which, apart from this section, would be due by way of that payment or refund shall be increased by the addition of a supplement equal to 5 per cent. of that amount or £50, whichever is the greater.
- (2) The said conditions are—
- (a) that the requisite return or claim is received by the Commissioners not later than the last day on which it is required to be furnished or made, and

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- (b) that a written instruction directing the making of the payment or refund is not issued by the Commissioners within [<sup>F147</sup>the relevant period], and
  - (c) that the amount shown on that return or claim as due by way of payment or refund does not exceed the payment or refund which was in fact due by more than 5 per cent. of that payment or refund or £250, whichever is the greater.
- [<sup>F148</sup>(2A) The relevant period in relation to a return or claim is the period of 30 days beginning with the later of—
- (a) the day after the last day of the prescribed accounting period to which the return or claim relates, and
  - (b) the date of the receipt by the Commissioners of the return or claim.]
- (3) Regulations may provide that, in computing the period of 30 days referred to in [<sup>F149</sup>subsection (2A)] above, there shall be left out of account periods determined in accordance with the regulations and referable to—
- (a) the raising and answering of any reasonable inquiry relating to the requisite return or claim,
  - (b) the correction by the Commissioners of any errors or omissions in that return or claim, and
  - (c) in the case of a payment, the following matters, namely—
    - (i) any such continuing failure to submit returns as is referred to in section 25(5), and
    - (ii) compliance with any such condition as is referred to in paragraph 4(1) of Schedule 11.
- (4) In determining for the purposes of regulations under subsection (3) above whether any period is referable to the raising and answering of such an inquiry as is mentioned in that subsection, there shall be taken to be so referable any period which—
- (a) begins with the date on which the Commissioners first consider it necessary to make such an inquiry, and
  - (b) ends with the date on which the Commissioners—
    - (i) satisfy themselves that they have received a complete answer to the inquiry, or
    - (ii) determine not to make the inquiry or, if they have made it, not to pursue it further,
 but excluding so much of that period as may be prescribed; and it is immaterial whether any inquiry is in fact made or whether it is or might have been made of the person or body making the requisite return or claim or of an authorised person or of some other person.
- (5) Except for the purpose of determining the amount of the supplement—
- (a) a supplement paid to any person under subsection (1)(a) above shall be treated as an amount due to him by way of credit under section 25(3), and
  - (b) a supplement paid to any body under subsection (1)(b) above shall be treated as an amount due to it by way of refund under section 33 <sup>F150</sup>, and
  - (c) a supplement paid to any body under subsection (1)(c) shall be treated as an amount due to it by way of refund under section 33A.
- (6) In this section “requisite return or claim” means—

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- (a) in relation to a payment, the return for the prescribed accounting period concerned which is required to be furnished in accordance with regulations under this Act, and
  - (b) in relation to a refund, the claim for that refund which is required to be made in accordance with the Commissioners' determination under section 33<sup>F151</sup> or (as the case may be) the Commissioners' determination under, and the provisions of, section 33A.
- (7) If the Treasury by order so direct, any period specified in the order shall be disregarded for the purpose of calculating the period of 30 days referred to in [<sup>F149</sup>subsection (2A)] above.

#### Textual Amendments

- F146** S. 79(1)(c) and the preceding word “or” inserted (11.5.2001 for specified purposes otherwise 1.9.2001) by 2001 c. 9, s. 98(5)(10)(11)
- F147** Words in s. 79(2)(b) substituted (27.7.1999 with effect as mentioned in s. 19(5) of the amending Act) by 1999 c. 16, s. 19(2)
- F148** S. 79(2A) inserted (27.7.1999 with effect as mentioned in s. 19(5) of the amending Act) by 1999 c. 16, s. 19(3)
- F149** Words in s. 79(3)(7) substituted (27.7.1999 with effect as mentioned in s. 19(5) of the amending Act) by 1999 c. 16, s. 19(4)
- F150** S. 79(5)(c) and the preceding word “and” inserted (11.5.2001 for specified purposes otherwise 1.9.2001) by 2001 c. 9, s. 98(6)(10)(11)
- F151** Words in s. 79(6)(b) inserted (11.5.2001 for specified purposes otherwise 1.9.2001) by 2001 c. 9, s. 98(7)(10)(11)

## 80 Recovery of overpaid VAT.

- (1) Where a person has (whether before or after the commencement of this Act) paid an amount to the Commissioners by way of VAT which was not VAT due to them, they shall be liable to repay the amount to him.
  - (2) The Commissioners shall only be liable to repay an amount under this section on a claim being made for the purpose.
  - (3) It shall be a defence, in relation to a claim under this section, that repayment of an amount would unjustly enrich the claimant.
- [<sup>F152</sup>(3A) Subsection (3B) below applies for the purposes of subsection (3) above where—
- (a) there is an amount paid by way of VAT which (apart from subsection (3) above) would fall to be repaid under this section to any person (“the taxpayer”), and
  - (b) the whole or a part of the cost of the payment of that amount to the Commissioners has, for practical purposes, been borne by a person other than the taxpayer.
- (3B) Where, in a case to which this subsection applies, loss or damage has been or may be incurred by the taxpayer as a result of mistaken assumptions made in his case about the operation of any VAT provisions, that loss or damage shall be disregarded, except to the extent of the quantified amount, in the making of any determination—
- (a) of whether or to what extent the repayment of an amount to the taxpayer would enrich him; or

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(b) of whether or to what extent any enrichment of the taxpayer would be unjust.

(3C) In subsection (3B) above—

“ the quantified amount ” means the amount (if any) which is shown by the taxpayer to constitute the amount that would appropriately compensate him for loss or damage shown by him to have resulted, for any business carried on by him, from the making of the mistaken assumptions; and

“ VAT provisions ” means the provisions of—

- (a) any enactment, subordinate legislation or Community legislation (whether or not still in force) which relates to VAT or to any matter connected with VAT; or
- (b) any notice published by the Commissioners under or for the purposes of any such enactment or subordinate legislation.]

[<sup>F153</sup>(4) The Commissioners shall not be liable, on a claim made under this section, to repay any amount paid to them more than three years before the making of the claim.]

[<sup>F154</sup>(4A) Where—

- (a) any amount has been paid, at any time on or after 18th July 1996, to any person by way of a repayment under this section, and
- (b) the amount paid exceeded the Commissioners’ repayment liability to that person at that time,

the Commissioners may, to the best of their judgement, assess the excess paid to that person and notify it to him.

(4B) For the purposes of subsection (4A) above the Commissioners’ repayment liability to a person at any time is—

- (a) in a case where any provision affecting the amount which they were liable to repay to that person at that time is subsequently deemed to have been in force at that time, the amount which the Commissioners are to be treated, in accordance with that provision, as having been liable at that time to repay to that person; and
- (b) in any other case, the amount which they were liable at that time to repay to that person.

(4C) Subsections (2) to (8) of section 78A apply in the case of an assessment under subsection (4A) above as they apply in the case of an assessment under section 78A(1).]

(6) A claim under this section shall be made in such form and manner and shall be supported by such documentary evidence as the Commissioners prescribe by regulations; and regulations under this subsection may make different provision for different cases.

(7) Except as provided by this section, the Commissioners shall not be liable to repay an amount paid to them by way of VAT by virtue of the fact that it was not VAT due to them.

#### Textual Amendments

**F152** S. 80(3A)-(3C) inserted (19.3.1997) 1997 c. 16, s. 46(1)(4)

**F153** S. 80(4) substituted for s. 80(4)(5) (retrospective to 18.7.1996) by 1997 c. 16, s. 47(1)(2)-(5)

**F154** S. 80(4A)-(4C) inserted (retrospective to 4.12.1996) 1997 c. 16, s. 47(6)(9)



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

- C17 S. 80(4) excluded (19.3.1997) by [1997 c. 16, s. 47\(4\)](#)  
S. 80(4) extended (19.3.1997) by [1997 c. 16, s. 47\(12\)](#)

[<sup>F155</sup>**80A Arrangements for reimbursing customers.**

- (1) The Commissioners may by regulations make provision for reimbursement arrangements made by any person to be disregarded for the purposes of section 80(3) except where the arrangements—
  - (a) contain such provision as may be required by the regulations; and
  - (b) are supported by such undertakings to comply with the provisions of the arrangements as may be required by the regulations to be given to the Commissioners.
- (2) In this section “ reimbursement arrangements ” means any arrangements for the purposes of a claim under section 80 which—
  - (a) are made by any person for the purpose of securing that he is not unjustly enriched by the repayment of any amount in pursuance of the claim; and
  - (b) provide for the reimbursement of persons who have for practical purposes borne the whole or any part of the cost of the original payment of that amount to the Commissioners.
- (3) Without prejudice to the generality of subsection (1) above, the provision that may be required by regulations under this section to be contained in reimbursement arrangements includes—
  - (a) provision requiring a reimbursement for which the arrangements provide to be made within such period after the repayment to which it relates as may be specified in the regulations;
  - (b) provision for the repayment of amounts to the Commissioners where those amounts are not reimbursed in accordance with the arrangements;
  - (c) provision requiring interest paid by the Commissioners on any amount repaid by them to be treated in the same way as that amount for the purposes of any requirement under the arrangements to make reimbursement or to repay the Commissioners;
  - (d) provision requiring such records relating to the carrying out of the arrangements as may be described in the regulations to be kept and produced to the Commissioners, or to an officer of theirs.
- (4) Regulations under this section may impose obligations on such persons as may be specified in the regulations—
  - (a) to make the repayments to the Commissioners that they are required to make in pursuance of any provisions contained in any reimbursement arrangements by virtue of subsection (3)(b) or (c) above;
  - (b) to comply with any requirements contained in any such arrangements by virtue of subsection (3)(d) above.
- (5) Regulations under this section may make provision for the form and manner in which, and the times at which, undertakings are to be given to the Commissioners in accordance with the regulations; and any such provision may allow for those matters to be determined by the Commissioners in accordance with the regulations.
- (6) Regulations under this section may—

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- (a) contain any such incidental, supplementary, consequential or transitional provision as appears to the Commissioners to be necessary or expedient; and
  - (b) make different provision for different circumstances.
- (7) Regulations under this section may have effect (irrespective of when the claim for repayment was made) for the purposes of the making of any repayment by the Commissioners after the time when the regulations are made; and, accordingly, such regulations may apply to arrangements made before that time.]

#### Textual Amendments

**F155** Ss. 80A, 80B inserted (19.3.1997) by [1997 c. 16, s. 46\(2\)](#)

#### [<sup>F156</sup>**80B Assessments of amounts due under section 80A arrangements.**

- (1) Where any person is liable to pay any amount to the Commissioners in pursuance of an obligation imposed by virtue of section 80A(4)(a), the Commissioners may, to the best of their judgement, assess the amount due from that person and notify it to him.
- (2) Subsections (2) to (8) of section 78A apply in the case of an assessment under subsection (1) above as they apply in the case of an assessment under section 78A(1).]

#### Textual Amendments

**F156** Ss. 80A, 80B inserted (19.3.1997) by [1997 c. 16, s. 46\(2\)](#)

#### **81 Interest given by way of credit and set-off of credits.**

- (1) Any interest payable by the Commissioners (whether under an enactment or instrument or otherwise) to a person on a sum due to him under or by virtue of any provision of this Act shall be treated as an amount due by way of credit under section 25(3).
- (2) Subsection (1) above shall be disregarded for the purpose of determining a person's entitlement to interest or the amount of interest to which he is entitled.
- (3) Subject to subsection (1) above, in any case where—
  - (a) an amount is due from the Commissioners to any person under any provision of this Act, and
  - (b) that person is liable to pay a sum by way of VAT, penalty, interest or surcharge, the amount referred to in paragraph (a) above shall be set against the sum referred to in paragraph (b) above and, accordingly, to the extent of the set-off, the obligations of the Commissioners and the person concerned shall be discharged.

#### [<sup>F157</sup>(3A) Where—

- (a) the Commissioners are liable to pay or repay any amount to any person under this Act,
- (b) that amount falls to be paid or repaid in consequence of a mistake previously made about whether or to what extent amounts were payable under this Act to or by that person, and

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- (c) by reason of that mistake a liability of that person to pay a sum by way of VAT, penalty, interest or surcharge was not assessed, was not enforced or was not satisfied,

any limitation on the time within which the Commissioners are entitled to take steps for recovering that sum shall be disregarded in determining whether that sum is required by subsection (3) above to be set against the amount mentioned in paragraph (a) above.]

[<sup>F158</sup>(4A) Subsection (3) above shall not require any such amount as is mentioned in paragraph (a) of that subsection (“the credit”) to be set against any such sum as is mentioned in paragraph (b) of that subsection (“the debit”) in any case where—

- (a) an insolvency procedure has been applied to the person entitled to the credit;
- (b) the credit became due after that procedure was so applied; and
- (c) the liability to pay the debit either arose before that procedure was so applied or (having arisen afterwards) relates to, or to matters occurring in the course of, the carrying on of any business at times before the procedure was so applied.

(4B) Subject to subsection (4C) below, the following are the times when an insolvency procedure is to be taken, for the purposes of this section, to be applied to any person, that is to say—

- (a) when a bankruptcy order, winding-up order, administration order or award of sequestration is made in relation to that person;
- (b) when that person is put into administrative receivership;
- (c) when that person, being a corporation, passes a resolution for voluntary winding up;
- (d) when any voluntary arrangement approved in accordance with Part I or VIII of the Insolvency Act 1986, or Part II or Chapter II of Part VIII of the <sup>M29</sup>Insolvency (Northern Ireland) Order 1989, comes into force in relation to that person;
- (e) when a deed of arrangement registered in accordance with the <sup>M30</sup>Deeds of Arrangement Act 1914 or Chapter I of Part VIII of that Order of 1989 takes effect in relation to that person;
- (f) when that person’s estate becomes vested in any other person as that person’s trustee under a trust deed.

(4C) In this section references, in relation to any person, to the application of an insolvency procedure to that person shall not include—

- (a) the making of a bankruptcy order, winding-up order, administration order or award of sequestration at a time when any such arrangement or deed as is mentioned in subsection (4B)(d) to (f) above is in force in relation to that person;
- (b) the making of a winding-up order at any of the following times, that is to say—
  - (i) immediately upon the discharge of an administration order made in relation to that person;
  - (ii) when that person is being wound up voluntarily;
  - (iii) when that person is in administrative receivership;

or

- (c) the making of an administration order in relation to that person at any time when that person is in administrative receivership.

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(4D) For the purposes of this section a person shall be regarded as being in administrative receivership throughout any continuous period for which (disregarding any temporary vacancy in the office of receiver) there is an administrative receiver of that person, and the reference in subsection (4B) above to a person being put into administrative receivership shall be construed accordingly.]

(5) In [<sup>F159</sup>this section]—

- (a) “administration order” means an administration order under Part II of the <sup>M31</sup>Insolvency Act 1986 or an administration order within the meaning of Article 5(1) of the <sup>M32</sup>Insolvency (Northern Ireland) Order 1989;
- (b) “administrative receiver” means an administrative receiver within the meaning of section 251 of that Act of 1986 or Article 5(1) of that Order of 1989; and
- (c) “trust deed” has the same meaning as in the <sup>M33</sup>Bankruptcy (Scotland) Act 1985.

#### Textual Amendments

**F157** S. 81(3A) inserted (retrospective to 18.7.1996 with effect as mentioned in s. 48(2) of the amending Act) by 1997 c. 16, s. 48(1)(2)

**F158** S. 81(4A)-(4D) substituted for s. 81(4) (1.5.1995 with effect as mentioned in s. 27(4) of the amending Act) by 1995 c. 4, s. 27(2)

**F159** Words in s. 81(5) substituted (1.5.1995 with effect as mentioned in s. 27(4) of the amending Act) by 1995 c. 4, s. 27(3)

#### Marginal Citations

**M29** 1986 c. 45.

**M30** 1914 c. 47.

**M31** 1986 c. 45.

**M32** S.I.1989/2405 (N.I.19).

**M33** 1985 c. 66.

## PART V

### APPEALS

#### 82 Appeal tribunals.

- (1) Any reference in this Act to a tribunal is a reference to a tribunal constituted in accordance with Schedule 12, and that Schedule shall have effect generally with respect to appointments to and the procedure and administration of the tribunals.
- (2) The tribunals shall continue to have jurisdiction in relation to matters relating to VAT conferred upon them by this Part of this Act and jurisdiction in relation to matters relating to customs and excise conferred by Chapter II of Part I of the <sup>M34</sup>Finance Act 1994.
- (3) Officers and staff may be appointed under section 27 of the <sup>M35</sup>Courts Act 1971 (court staff) for carrying out the administrative work of the tribunals in England and Wales.

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- (4) The Secretary of State may make available such officers and staff as he may consider necessary for carrying out the administrative work of the tribunals in Scotland.

#### Marginal Citations

M34 1994 c. 9.

M35 1971 c. 23.

### 83 Appeals.

Subject to section 84, an appeal shall lie to a tribunal with respect to any of the following matters—

- (a) the registration or cancellation of registration of any person under this Act;
- (b) the VAT chargeable on the supply of any goods or services, on the acquisition of goods from another member State or, subject to section 84(9), on the importation of goods from a place outside the member States;
- (c) the amount of any input tax which may be credited to a person;
- (d) any claim for a refund under any regulations made by virtue of section 13(5);
- [<sup>F160</sup>(da) a decision of the Commissioners under section 18A—
  - (i) as to whether or not a person is to be approved as a fiscal warehousekeeper or the conditions from time to time subject to which he is so approved;
  - (ii) for the withdrawal of any such approval; or
  - (iii) for the withdrawal of fiscal warehouse status from any premises;]
- (e) the proportion of input tax allowable under section 26;
- (f) a claim by a taxable person under section 27;
- [<sup>F161</sup>(fza) a decision of the Commissioners—
  - (i) refusing or withdrawing authorisation for a person's liability to pay VAT (or entitlement to credit for VAT) to be determined as mentioned in subsection (1) of section 26B;
  - (ii) as to the appropriate percentage or percentages (within the meaning of that section) applicable in a person's case.]
- [<sup>F162</sup>(fa) a decision contained in a notification under paragraph (4) of article 12A of the Value Added Tax (Payments on Account) Order 1993 that an election under paragraph (1) of that article shall cease to have effect;]
- (g) the amount of any refunds under section 35;
- (h) a claim for a refund under section 36 or section 22 of the 1983 Act;
- (j) the amount of any refunds under section 40;
- [<sup>F163</sup>(k) the refusal of an application such as is mentioned in section 43B(1) or (2);
- (ka) the giving of a notice under section 43C(1) or (3);]
  - (l) the requirement of any security under section 48(7) or [<sup>F164</sup>paragraph 4(1A) or (2)] of Schedule 11;
- (m) any refusal or cancellation of certification under section 54 or any refusal to cancel such certification;
- (n) any liability to a penalty or surcharge by virtue of any of sections [<sup>F165</sup>59 to 69A];

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- (o) a decision of the Commissioners under section 61 (in accordance with section 61(5));
- (p) an assessment—
  - (i) under section 73(1) or (2) in respect of a period for which the appellant has made a return under this Act; or
  - (ii) under [<sup>F166</sup>subsections (7), (7A) or (7B)] of that section; or
  - (iii) under section 75;
 or the amount of such an assessment;
- (q) the amount of any penalty, interest or surcharge specified in an assessment under section 76;
- (r) the making of an assessment on the basis set out in section 77(4);
- [<sup>F167</sup>(ra) any liability arising by virtue of section 77A;]
- (s) any liability of the Commissioners to pay interest under section 78 or the amount of interest so payable;
- [<sup>F168</sup>(sa) an assessment under section 78A(1) or the amount of such an assessment]
- (t) a claim for the repayment of an amount under section 80 [<sup>F169</sup>an assessment under subsection (4A) of that section or the amount of such an assessment];
- [<sup>F170</sup>(ta) an assessment under section 80B(1) or the amount of such an assessment]
- (u) any direction or supplementary direction made under paragraph 2 of Schedule 1;
- (v) any direction under paragraph 1 or 2 of Schedule 6 or under paragraph 2 of Schedule 4 to the 1983 Act;
- (w) any direction under paragraph 1 of Schedule 7;
- [<sup>F171</sup>(wa) any direction or assessment under Schedule 9A;]
- (x) any refusal to permit the value of supplies to be determined by a method described in a notice published under paragraph 2(6) of Schedule 11;
- (y) any refusal of authorisation or termination of authorisation in connection with the scheme made under paragraph 2(7) of Schedule 11;
- (z) any requirements imposed by the Commissioners in a particular case under paragraph 3(2)(b) of Schedule 11.
- [<sup>F172</sup>(zz) a decision of the Commissioners on a review under regulation 16 of the Money Laundering Regulations 2001;]

### Textual Amendments

- F160** S. 83(da) 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. 12**; S.I. 1996/1249, **art. 2**
- F161** S. 83(fza) inserted (retrospective to 24.4.2002) by Finance Act 2002 (c. 23), s. 23(2)(4)
- F162** S. 83(fa) inserted (1.12.1997) by S.I. 1997/2542, **art 2**
- F163** S. 83(k)(ka) substituted (27.7.1999) for s. 83(k) by 1999 c. 16, s. 16, **Sch. 2 para. 3**
- F164** Words in s. 83(l) substituted (retrospective to 10.4.2003) by Finance Act 2003 (c. 14), s. 17(6)(8)
- F165** Words in s. 83(n) substituted (28.7.2000) by 2000 c. 17, s. 137(5)
- F166** Words in s. 83(p)(ii) substituted (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. 12**; S.I. 1996/1249, **art. 2**
- F167** S. 83(ra) inserted (retrospective to 10.4.2003) by Finance Act 2003 (c. 14), s. 18(2)(4)
- F168** S. 83(sa) inserted (retrospective to 4.12.1996) by 1997 c. 16, s. 45(2)(5)
- F169** Words in s. 83(t) inserted (retrospective to 4.12.1996) by 1997 c. 16, s. 47(7)(9)

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- F170** S. 83(ta) inserted (19.3.1997) by 1997 c. 16, s. 46(3)  
**F171** S. 83(wa) inserted (29.4.1996) by 1996 c. 8, s. 31(3)  
**F172** S. 83(zz) inserted (12.11.2001) by The Money Laundering Regulations 2001 (S.I. 2001/3641), regs. 1(2), 17

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

- C18** S. 83(c) modified (20.10.1995) by S.I. 1995/2518, regs. 182, 195

**84 Further provisions relating to appeals.**

- (1) References in this section to an appeal are references to an appeal under section 83.
  - (2) An appeal shall not be entertained unless the appellant has made all the returns which he was required to make under paragraph 2(1) of Schedule 11 and <sup>F173</sup> . . . has paid the amounts shown in those returns as payable by him.
  - (3) Where the appeal is against a decision with respect to any of the matters mentioned in section 83(b), (n), (p) <sup>F174</sup>, (q) or (ra)] it shall not be entertained unless—
    - (a) the amount which the Commissioners have determined to be payable as VAT has been paid or deposited with them; or
    - (b) on being satisfied that the appellant would otherwise suffer hardship the Commissioners agree or the tribunal decides that it should be entertained notwithstanding that that amount has not been so paid or deposited.
- <sup>F175</sup>(3A) An appeal against an assessment which is a recovery assessment for the purposes of this subsection, or against the amount of such an assessment, shall not be entertained unless—
- (a) the amount notified by the assessment has been paid or deposited with the Commissioners; or
  - (b) on being satisfied that the appellant would otherwise suffer hardship, the Commissioners agree, or the tribunal decides, that the appeal should be entertained notwithstanding that that amount has not been so paid or deposited.]
- (4) Subject to subsection (11) below, where—
    - (a) there is an appeal against a decision of the Commissioners with respect to, or to so much of any assessment as concerns, the amount of input tax that may be credited to any person or the proportion of input tax allowable under section 26, and
    - (b) that appeal relates, in whole or in part, to any determination by the Commissioners—
      - (i) as to the purposes for which any goods or services were or were to be used by any person, or
      - (ii) as to whether or to what extent the matters to which any input tax was attributable were or included matters other than the making of supplies within section 26(2), and
    - (c) VAT for which, in pursuance of that determination, there is no entitlement to a credit is VAT on the supply, acquisition or importation of something in the nature of a luxury, amusement or entertainment,the tribunal shall not allow the appeal or, as the case may be, so much of it as relates to that determination unless it considers that the determination is one which it was unreasonable to make or which it would have been unreasonable to make if

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information brought to the attention of the tribunal that could not have been brought to the attention of the Commissioners had been available to be taken into account when the determination was made.

[<sup>F176</sup>(4ZA) Where an appeal is brought—

- (a) against such a decision as is mentioned in section 83(fza), or
- (b) to the extent that it is based on such a decision, against an assessment,

the tribunal shall not allow the appeal unless it considers that the Commissioners could not reasonably have been satisfied that there were grounds for the decision.]

[<sup>F177</sup>(4A) Where an appeal is brought against the refusal of an application such as is mentioned in section 43B(1) or (2) on the grounds stated in section 43B(5)(c)—

- (a) the tribunal shall not allow the appeal unless it considers that the Commissioners could not reasonably have been satisfied that there were grounds for refusing the application,
- (b) the refusal shall have effect pending the determination of the appeal, and
- (c) if the appeal is allowed, the refusal shall be deemed not to have occurred.

(4B) Where an appeal is brought against the giving of a notice under section 43C(1) or (3)—

- (a) the notice shall have effect pending the determination of the appeal, and
- (b) if the appeal is allowed, the notice shall be deemed never to have had effect.

(4C) Where an appeal is brought against the giving of a notice under section 43C(1), the tribunal shall not allow the appeal unless it considers that the Commissioners could not reasonably have been satisfied that there were grounds for giving the notice.

(4D) Where—

- (a) an appeal is brought against the giving of a notice under section 43C(3), and
  - (b) the grounds of appeal relate wholly or partly to the date specified in the notice,
- the tribunal shall not allow the appeal in respect of the date unless it considers that the Commissioners could not reasonably have been satisfied that it was appropriate.]

[<sup>F178</sup>(4E) Where an appeal is brought against a requirement imposed under paragraph 4(2)(b) of Schedule 11 that a person give security, the tribunal shall allow the appeal unless the Commissioners satisfy the tribunal that—

- (a) there has been an evasion of, or an attempt to evade, VAT in relation to goods or services supplied to or by that person, or
- (b) it is likely, or without the requirement for security it is likely, that VAT in relation to such goods or services will be evaded.

(4F) A reference in subsection (4E) above to evading VAT includes a reference to obtaining a VAT credit that is not due or a VAT credit in excess of what is due. ]

(5) Where, on an appeal against a decision with respect to any of the matters mentioned in section 83(p)—

- (a) it is found that the amount specified in the assessment is less than it ought to have been, and
- (b) the tribunal gives a direction specifying the correct amount,

the assessment shall have effect as an assessment of the amount specified in the direction, and that amount shall be deemed to have been notified to the appellant.

(6) Without prejudice to section 70, nothing in section 83(q) shall be taken to confer on a tribunal any power to vary an amount assessed by way of penalty, interest or surcharge



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except in so far as it is necessary to reduce it to the amount which is appropriate under sections 59 to 70; and in this subsection “penalty” includes an amount assessed by virtue of section 61(3) or (4)(a).

- (7) Where there is an appeal against a decision to make such a direction as is mentioned in section 83(u), the tribunal shall not allow the appeal unless it considers that the Commissioners could not reasonably have been satisfied as to the matters in subparagraph (2)(a) to (d) of paragraph 2 of Schedule 1 or, as the case may be, [<sup>F179</sup>that there were grounds for making the direction.]

- [<sup>F180</sup>(7A) Where there is an appeal against a decision to make such a direction as is mentioned in section 83(wa), the cases in which the tribunal shall allow the appeal shall include (in addition to the case where the conditions for the making of the direction were not fulfilled) the case where the tribunal are satisfied, in relation to the relevant event by reference to which the direction was given, that—

- (a) the change in the treatment of the body corporate, or
- (b) the transaction in question,

had as its main purpose or, as the case may be, as each of its main purposes a genuine commercial purpose unconnected with the fulfilment of the condition specified in paragraph 1(3) of Schedule 9A.]

- (8) Where on an appeal it is found—
- (a) that the whole or part of any amount paid or deposited in pursuance of subsection (3) above is not due; or
  - (b) that the whole or part of any VAT credit due to the appellant has not been paid, so much of that amount as is found not to be due or not to have been paid shall be repaid (or, as the case may be, paid) with interest at such rate as the tribunal may determine; and where the appeal has been entertained notwithstanding that an amount determined by the Commissioners to be payable as VAT has not been paid or deposited and it is found on the appeal that that amount is due, the tribunal may, if it thinks fit, direct that that amount shall be paid with interest at such rate as may be specified in the direction.
- (9) No appeal shall lie under this section with respect to the subject-matter of any decision which by virtue of section 16 is a decision to which section 14 of the <sup>M36</sup>Finance Act 1994 (decisions subject to review) applies unless the decision—
- (a) relates exclusively to one or both of the following matters, namely whether or not section 30(3) applies in relation to the importation of the goods in question and (if it does not) the rate of tax charged on those goods; and
  - (b) is not one in respect of which notice has been given to the Commissioners under section 14 of that Act requiring them to review it.

- (10) Where an appeal is against a decision of the Commissioners which depended upon a prior decision taken by them in relation to the appellant, the fact that the prior decision is not within section 83 shall not prevent the tribunal from allowing the appeal on the ground that it would have allowed an appeal against the prior decision.

- (11) Subsection (4) above shall not apply in relation to any appeal relating to the input tax that may be credited to any person at the end of a prescribed accounting period beginning before 27th July 1993.

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### Textual Amendments

- F173** Words in s. 84(2) repealed (1.5.1995 with effect as mentioned in s. 31 of the amending Act) by 1995 c. 4, ss. 31, 162, **Sch. 29 Pt. VI(4)** Note
- F174** Words in s. 84(3) substituted (with application in accordance with s. 18(4) of the amending Act) by Finance Act 2003 (c. 14), s. 18(3)
- F175** S. 84(3A) inserted (retrospective to 4.12.1996) by 1997 c. 16, s. 45(3)(5)
- F176** S. 84(4ZA) inserted (retrospective to 24.4.2002) by Finance Act 2002 (c. 23), s. 23(3)(4)
- F177** S. 84(4A)-(4D) inserted (27.7.1999) by 1999 c. 16, s. 16, **Sch. 2 para. 4**
- F178** S. 84(4E)(4F) inserted (retrospective to 10.4.2003) by Finance Act 2003 (c. 14), s. 17(7)(8)
- F179** Words in s. 84(7) substituted (19.3.1997 with effect as mentioned in s. 31(4) of the amending Act) by 1997 c. 16, s. 31(3)(4)
- F180** S. 84(7A) inserted (29.4.1996) by 1996 c. 8, s. 31(4)

### Marginal Citations

- M36** 1994 c. 9.

## 85 Settling appeals by agreement.

- (1) Subject to the provisions of this section, where a person gives notice of appeal under section 83 and, before the appeal is determined by a tribunal, the Commissioners and the appellant come to an agreement (whether in writing or otherwise) under the terms of which the decision under appeal is to be treated—
- as upheld without variation, or
  - as varied in a particular manner, or
  - as discharged or cancelled,
- the like consequences shall ensue for all purposes as would have ensued if, at the time when the agreement was come to, a tribunal had determined the appeal in accordance with the terms of the agreement (including any terms as to costs).
- (2) Subsection (1) above shall not apply where, within 30 days from the date when the agreement was come to, the appellant gives notice in writing to the Commissioners that he desires to repudiate or resile for the agreement.
- (3) Where an agreement is not in writing—
- the preceding provisions of this section shall not apply unless the fact that an agreement was come to, and the terms agreed, are confirmed by notice in writing given by the Commissioners to the appellant or by the appellant to the Commissioners, and
  - references in those provisions to the time when the agreement was come to shall be construed as references to the time of the giving of that notice of confirmation.
- (4) Where—
- a person who has given a notice of appeal notifies the Commissioners, whether orally or in writing, that he desires not to proceed with the appeal; and
  - 30 days have elapsed since the giving of the notification without the Commissioners giving to the appellant notice in writing indicating that they are unwilling that the appeal should be treated as withdrawn,
- the preceding provisions of this section shall have effect as if, at the date of the appellant's notification, the appellant and the Commissioners had come to an

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agreement, orally or in writing, as the case may be, that the decision under appeal should be upheld without variation.

- (5) References in this section to an agreement being come to with an appellant and the giving of notice or notification to or by an appellant include references to an agreement being come to with, and the giving of notice or notification to or by, a person acting on behalf of the appellant in relation to the appeal.

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

**C19** S. 85 amended (28.7.2000) by 2000 c. 17, s. 30, Sch. 6 para. 123(7)

S. 85 amended (11.5.2001) by 2001 c. 9, s. 42(7)

**C20** S. 85 extended (29.4.1996) by 1996 c. 8, s. 57(a)

**86 Appeals to Court of Appeal.**

- (1) The Lord Chancellor may by order provide that—
- (a) in such classes of appeal as may be prescribed by the order, and
  - (b) subject to the consent of the parties and to such other conditions as may be so prescribed,
- an appeal from a tribunal shall lie to the Court of Appeal.
- (2) An order under this section may provide that section 11 of the <sup>M37</sup>Tribunals and Inquiries Act 1992 (which provides for appeals to the High Court from a tribunal) shall have effect, in relation to any appeal to which the order applies, with such modifications as may be specified in the order.
- (3) This section does not extend to Scotland.

**Marginal Citations**

**M37** 1992 c. 53.

**<sup>F181</sup>87 Enforcement of registered or recorded tribunal decisions etc.**

- (1) If the decision of a tribunal in England and Wales on an appeal under section 83 is registered by the Commissioners in accordance with rules of court, payment of—
- (a) any amount which, as a result of the decision, is, or is recoverable as, VAT due from any person, and
  - (b) any costs awarded to the Commissioners by the decision,
- may be enforced by the High Court as if that amount or, as the case may be, the amount of those costs were an amount due to the Commissioners in pursuance of a judgment or order of the High Court.
- (2) If the decision of a tribunal in Scotland on an appeal under section 83—
- (a) confirms or varies an amount which is, or is recoverable as, VAT due from any person, or
  - (b) awards costs to the Commissioners,
- the decision may be recorded for execution in the Books of Council and Session and shall be enforceable accordingly.

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- (3) Subsection (4) below shall apply in relation to the decision of a tribunal in Northern Ireland on an appeal under section 83 where—
- (a) any amount is, or is recoverable as, VAT due from any person, as a result of the decision, whether with or without an award of costs to the Commissioners; or
  - (b) any costs are awarded to the Commissioners by the decision.
- (4) Where this subsection applies—
- (a) payment of the amount mentioned in paragraph (a) of subsection (3) above or, as the case may be, the amount of the costs mentioned in paragraph (b) of that subsection may be enforced by the Enforcement of Judgments Office; and
  - (b) a sum equal to any such amount shall be deemed to be payable under a money judgment within the meaning of Article 2(2) of the <sup>M38</sup>Judgments Enforcement (Northern Ireland) Order 1981, and the provisions of that Order shall apply accordingly.
- (5) Any reference in this section to a decision of a tribunal includes a reference to an order (however described) made by a tribunal for giving effect to a decision.

#### Textual Amendments

**F181** S. 87 extended (29.4.1996) by 1996 c. 8, s. 57(b)

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

**C21** S. 87 amended (28.7.2000) by 2000 c. 17, s. 30, Sch. 6 para. 123(7)  
S. 87 amended (11.5.2001) by 2001 c. 9, s. 42(7)

#### Marginal Citations

**M38** S.I.1981/226 (N.I.6).

## PART VI

### SUPPLEMENTARY PROVISIONS

#### *Change in rate of VAT etc. and disclosure of information*

#### **88** Supplies spanning change of rate etc.

- (1) This section applies where there is a change in the rate of VAT in force under section 2<sup>F182</sup> or 29A] or in the descriptions of exempt<sup>F183</sup>, zero-rated or reduced-rate] supplies or exempt<sup>F183</sup>, zero-rated or reduced-rate] acquisitions.
- (2) Where—
- (a) a supply affected by the change would, apart from section 6(4), (5), (6) or (10), be treated under section 6(2) or (3) as made wholly or partly at a time when it would not have been affected by the change; or
  - (b) a supply not so affected would apart from section 6(4), (5), (6) or (10) be treated under section 6(2) or (3) as made wholly or partly at a time when it would have been so affected,

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the rate at which VAT is chargeable on the supply, or any question whether it is zero-rated or exempt<sup>F184</sup> or a reduced-rate supply], shall if the person making it so elects be determined without regard to section 6(4), (5), (6) or (10).

(3) Any power to make regulations under this Act with respect to the time when a supply is to be treated as taking place shall include power to provide for this section to apply as if the references in subsection (2) above to section 6(4), (5), (6) or (10) included references to specified provisions of the regulations.

(4) 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 VAT is chargeable on the acquisition, or any question whether it is zero-rated or exempt<sup>F185</sup> or a reduced-rate acquisition], shall, if the person making the acquisition so elects, be determined as at the time of that event.

(5) Regulations under paragraph 2 of Schedule 11 may make provision for the replacement or correction of any VAT invoice which—

(a) relates to a supply in respect of which an election is made under this section, but

(b) was issued before the election was made.

(6) No election may be made under this section in respect of a supply to which section 6(9) or paragraph 7 of Schedule 4 applies.

(7) 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 30(3) provides for no VAT to be chargeable.

<sup>F186</sup>(8) References in this section—

(a) to a supply being a reduced-rate supply, or

(b) to an acquisition being a reduced-rate acquisition,

are references to a supply, or (as the case may be) an acquisition, being one on which VAT is charged at the rate in force under section 29A.

#### Textual Amendments

**F182** Words in s. 88(1) inserted (11.5.2001) by 2001 c. 9, s. 99, **Sch. 31 para. 4(2)(a)**

**F183** Words in s. 88(1) substituted (11.5.2001) by 2001 c. 9, s. 99, **Sch. 31 para. 4(2)(b)**

**F184** Words in s. 88(2) inserted (11.5.2001) by 2001 c. 9, s. 99, **Sch. 31 para. 4(3)**

**F185** Words in s. 88(4) inserted (11.5.2001) by 2001 c. 9, s. 99, **Sch. 31 para. 4(4)**

**F186** S. 88(8) inserted (11.5.2001) by 2001 c. 9, s. 99, **Sch. 31 para. 4(5)**

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

**C22** S. 88(2) modified (20.10.1995) by S.I. 1995/2518, **reg. 95**

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*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Value Added Tax Act 1994. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## 89 Adjustments of contracts on changes in VAT.

- (1) Where, after the making of a contract for the supply of goods or services and before the goods or services are supplied, there is a change in the VAT charged on the supply, then, unless the contract otherwise provided, there shall be added to or deducted from the consideration for the supply an amount equal to the change.
- (2) Subsection (1) above shall apply in relation to a tenancy or lease as it applies in relation to a contract except that a term of a tenancy or lease shall not be taken to provide that the rule contained in that subsection is not to apply in the case of the tenancy or lease if the term does not specifically to VAT or this section.
- (3) References in this section to a change in the VAT charged on a supply include references to a change to or from no VAT being charged on the supply (including a change attributable to the making of an election under paragraph 2 of Schedule 10).

## 90 Failure of resolution under Provisional Collection of Taxes Act 1968.

- (1) Where—
  - (a) by virtue of a resolution having effect under the <sup>M39</sup>Provisional Collection of Taxes Act 1968 VAT has been paid at a rate specified in the resolution on the supply of any goods or services by reference to a value determined under section 19(2) or on the acquisition of goods from another member State by reference to a value determined under section 20(3), and
  - (b) by virtue of section 1(6) or (7) or 5(3) of that Act any of that VAT is repayable in consequence of the restoration in relation to that supply or acquisition of a lower rate,

the amount repayable shall be the difference between the VAT paid by reference to that value at the rate specified in the resolution and the VAT that would have been payable by reference to that value at the lower rate.
- (2) Where—
  - (a) by virtue of such a resolution VAT is chargeable at a rate specified in the resolution on the supply of any goods or services by reference to a value determined under section 19(2) or on the acquisition of goods from another member State by reference to a value determined under section 20(3), but
  - (b) before the VAT is paid it ceases to be chargeable at that rate in consequence of the restoration in relation to that supply or acquisition of a lower rate,

the VAT chargeable at the lower rate shall be charged by reference to the same value as that by reference to which VAT would have been chargeable at the rate specified in the resolution.
- (3) The VAT that may be credited as input tax under section 25 or refunded under section 33,<sup>F187</sup>33A,] 35 or 40 does not include VAT that has been repaid by virtue of any of the provisions mentioned in subsection (1)(b) above or that would be repayable by virtue of any of those provisions if it had been paid.

### Textual Amendments

**F187** Words in s. 90(3) inserted (11.5.2001 for specified purposes otherwise 1.9.2001) by 2001 c. 9, s. 98(8) (10)(11)

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*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Value Added Tax Act 1994. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

#### Marginal Citations

M39 1968 c. 2.

### 91 Disclosure of information for statistical purposes.

- (1) For the purpose of the compilation or maintenance by the Department of Trade and Industry or the [<sup>F188</sup>Office for National Statistics] of a central register of businesses, or for the purpose of any statistical survey conducted or to be conducted by that Department or Office, the Commissioners or an authorised officer of the Commissioners may disclose to an authorised officer of that Department or Office particulars of the following descriptions obtained or recorded by them in pursuance of this Act—
  - (a) numbers allocated by the Commissioners on the registration of persons under this Act and reference numbers for members of a group;
  - (b) names, trading styles and addresses of persons so registered or of members of groups and status and trade classifications of businesses; and
  - (c) actual or estimated value of supplies.
- (2) Subject to subsection (3) below, no information obtained by virtue of this section by an officer of the Department of Trade and Industry or the [<sup>F189</sup>Office for National Statistics] may be disclosed except to an officer of a Government department (including a Northern Ireland department) [<sup>F190</sup>or to a member of the staff of the Scottish Administration] for the purpose for which the information was obtained, or for a like purpose.
- (3) Subsection (2) above does not prevent the disclosure—
  - (a) of any information in the form of a summary so framed as not to enable particulars to be identified as particulars relating to a particular person or to the business carried on by a particular person; or
  - (b) with the consent of any person, of any information enabling particulars to be identified as particulars relating only to him or to a business carried on by him.
- (4) If any person who has obtained any information by virtue of this section discloses it in contravention of this section he shall be liable—
  - (a) on summary conviction to a fine not exceeding the statutory maximum; and
  - (b) on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine of any amount or to both.
- (5) In this section, references to the Department of Trade and Industry or the [<sup>F191</sup>Office for National Statistics] include references to any Northern Ireland department [<sup>F192</sup>or to any part of the Scottish Administration] carrying out similar functions.

#### Textual Amendments

**F188** Words in s. 91(1) substituted (1.4.1996) by S.I. 1996/273, art. 5(1), Sch. 2 para. 27(2)

**F189** Words in s. 91(2) substituted (1.4.1996) by S.I. 1996/273, art. 5(1), Sch. 2 para. 27(3)

**F190** Words in s. 91(2) inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 114(2)(a); S.I. 1998/3178, art. 3

**F191** Words in s. 91(5) substituted (1.4.1996) by S.I. 1996/273, art. 5(1), Sch. 2 para. 27(3)

**F192** Words in s. 91(5) inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 114(2)(b); S.I. 1998/3178, art. 3

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### *Interpretative provisions*

## **92 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 VAT.
- (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 VAT 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 VAT payable under the law of another member State has or has not been paid,

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 relevant information provisions, 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 VAT 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.



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- (7) The reference in subsection (6) above to the relevant information provisions is a reference to the provisions of section 73(7) and Schedule 11 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.

### **93 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 16, 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 Management Act.

### **94 Meaning of “business” etc.**

- (1) In this Act “business” includes any trade, profession or vocation.
- (2) Without prejudice to the generality of anything else in this Act, the following are deemed to be the carrying on of a business—
- (a) the provision by a club, association or organisation (for a subscription or other consideration) of the facilities or advantages available to its members; and
  - (b) the admission, for a consideration, of persons to any premises.

<sup>F193</sup>(3) . . . . .

- (4) Where a person, in the course or furtherance of a trade, profession or vocation, accepts any office, services supplied by him as the holder of that office are treated as supplied in the course or furtherance of the trade, profession or vocation.
- (5) Anything done in connection with the termination or intended termination of a business is treated as being done in the course or furtherance of that business.
- (6) The disposition of a business as a going concern, or of its assets or liabilities (whether or not in connection with its reorganisation or winding up), is a supply made in the course or furtherance of the business.

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#### Textual Amendments

**F193** S. 94(3) repealed (1.12.1999) by 1999 c. 16, ss. 20, 139, **Sch. 20 Pt. II(2)**, Note; S.I. 1999/2769, **art. 2**

### 95 Meaning of “new means of transport”.

- (1) In this Act “means of transport” in the expression “new means of transport” means, subject to subsection (2) below, 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—
    - (i) has an engine with a displacement or cylinder capacity exceeding 48 cubic centimetres; or
    - (ii) is constructed or adapted to be electrically propelled using more than 7.2 kilowatts.
- (2) A ship, aircraft or motorized land vehicle does not fall within subsection (1) above unless it is intended for the transport of persons or goods.
- [<sup>F194</sup>(3) For the purposes of this Act a means of transport shall be treated as new, in relation to any supply or any acquisition from another member State, at any time unless at that time—
- (a) the period that has elapsed since its first entry into service is—
    - (i) in the case of a ship or aircraft, a period of more than 3 months; and
    - (ii) in the case of a land vehicle, a period of more than 6 months;
 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 [<sup>F195</sup>6000 kilometres].
- (4) 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 (3) above for determining whether a means of transport is new.
- (5) 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.

#### Textual Amendments

**F194** Words in s. 95(3) substituted (1.1.1995 with effect as mentioned in art. 2(4) of the amending S.I.) by S.I. 1995/3128, **art. 2(2)**

**F195** Words in s. 95(3)(b)(iii) substituted (1.1.1995 with effect as mentioned in art. 2(4) of the amending S.I.) by S.I. 1994/3128, **art. 2(3)**

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## 96 Other interpretative provisions.

(1) In this Act—

“the 1983 Act” means the <sup>M40</sup>Value Added Tax Act 1983;

“another member State” means, subject to section 93(1), any member State other than the United Kingdom, and “other member States” shall be construed accordingly;

“assignment”, in relation to Scotland, means assignment;

“authorised person” means any person acting under the authority of the Commissioners;

“the Commissioners” means the Commissioners of Customs and Excise;

[<sup>F196</sup> “copy”, in relation to a document, means anything onto anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly. ]

[<sup>F197</sup> “document” means anything in which information of any description is recorded; and ]

“fee simple”—

(a) in relation to Scotland, means the estate or interest of the proprietor of the dominium utile or, in the case of land not held on feudal tenure, the estate or interest of the owner;

(b) in relation to Northern Ireland, includes the estate of a person who holds land under a fee farm grant;

“invoice” includes any document similar to an invoice;

“input tax” has the meaning given by section 24;

“interim trustee” has the same meaning as in the <sup>M41</sup>Bankruptcy (Scotland) Act 1985;

“local authority” has the meaning given by subsection (4) below;

“major interest”, in relation to land, means the fee simple or a tenancy for a term certain exceeding 21 years, and in relation to Scotland means—

(a) the estate or interest of the proprietor of the dominium utile; or

(b) in the case of land not held on feudal tenure, the estate or interest of the owner, or the lessee’s interest under a lease for a period [<sup>F198</sup>of not less than 20 years];

“the Management Act” means the <sup>M42</sup>Customs and Excise Management Act 1979;

“money” includes currencies other than sterling;

“output tax” has the meaning given by section 24;

“permanent trustee” has the same meaning as in the <sup>M43</sup>Bankruptcy (Scotland) Act 1985;

[<sup>F199</sup> “the Post Office company” has the same meaning as in Part IV of the Postal Services Act 2000; ]

“prescribed” means prescribed by regulations;

“prescribed accounting period” has the meaning given by section 25(1);

“quarter” means a period of 3 months ending at the end of March, June, September or December;

“regulations” means regulations made by the Commissioners under this Act;

“ship” includes hovercraft;

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“subordinate legislation” has the same meaning as in the <sup>M44</sup>Interpretation Act 1978;

“tax” means VAT;

“taxable acquisition” has the meaning given by section 10(2);

“taxable person” means a person who is a taxable person under section 3;

“taxable supply” has the meaning given by section 4(2);

“the Taxes Act” means the <sup>M45</sup>Income and Corporation Taxes Act 1988;

“tribunal” has the meaning given by section 82;

“VAT” means value added tax charged in accordance with this Act or, where the context requires, with the law of another member State;

“VAT credit” has the meaning given by section 25(3);

“VAT invoice” has the meaning given by section 6(15);

“VAT representative” has the meaning given by section 48;

and any reference to a particular section, Part or Schedule is a reference to that section or Part of, or Schedule to, this Act.

(2) Any reference in this Act to being registered shall be construed in accordance with section 3(3).

(3) Subject to section 93—

- (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
- (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.

(4) In this Act “local authority” means the council of a county, [<sup>F200</sup>county borough,] district, London borough, parish or group of parishes (or, in Wales, community or group of communities), the Common Council of the City of London, the Council of the Isles of Scilly, and any joint committee or joint board established by two or more of the foregoing and, in relation to Scotland, a [<sup>F201</sup>council constituted under section 2 of the Local Government etc. (Scotland) Act 1994, any two or more such councils and any joint committee or joint board within the meaning of section 235(1) of the Local Government (Scotland) Act 1973].

(5) 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 <sup>M46</sup>Excise Duties (Surcharges or Rebates) Act 1979.

<sup>F202</sup>(6) .....

<sup>F202</sup>(7) .....

(8) The question whether, in relation to any supply of services, the supplier or the recipient of the supply belongs in one country or another shall be determined (subject to any provision made under section 8(6)) in accordance with section 9.

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(9) Schedules<sup>[F203]</sup>7A,] 8 and 9 shall be interpreted in accordance with the notes contained in those Schedules; and accordingly the powers conferred by this Act to vary those Schedules include a power to add to, delete or vary those notes.

(10) The descriptions of Groups in those Schedules are for ease of reference only and shall not affect the interpretation of the descriptions of items in those Groups.

<sup>[F204]</sup>(10A) Where—

- (a) the grant of any interest, right, licence or facilities gives rise for the purposes of this Act to supplies made at different times after the making of the grant, and
- (b) a question whether any of those supplies is zero-rated or exempt falls to be determined according to whether or not the grant is a grant of a description specified in Schedule 8 or 9 or paragraph 2(2) or (3) of Schedule 10,

that question shall be determined according to whether the description is applicable as at the time of supply, rather than by reference to the time of the grant.]

<sup>[F205]</sup>(10B) Notwithstanding subsection (10A) above—

- (a) item 1 of Group 1 of Schedule 9 does not make exempt any supply that arises for the purposes of this Act from the prior grant of a fee simple falling within paragraph (a) of that item; and
- (b) that paragraph does not prevent the exemption of a supply that arises for the purposes of this Act from the prior grant of a fee simple not falling within that paragraph.]

(11) References in this Act to the United Kingdom include the territorial sea of the United Kingdom.

#### Extent Information

**E1** S. 96(6) does not extend to Scotland see s. 96(6).

#### Textual Amendments

**F196** S. 96(1): definition of “copy” inserted (31.1.1997) by 1995 c. 38, s. 15(1), **Sch. 1 para. 20** (with ss. 1(3), 6(4)(5), 14); S.I. 1996/3217, **art. 2**

**F197** S. 96(1): definition of “document” inserted (31.1.1997) by 1995 c. 38, s. 15(1), **Sch. 1 para. 20** (with ss. 1(3), 6(4)(5), 14); S.I. 1996/3217, **art. 2**

**F198** S. 96(1): words in para. (b) of the definition of “major interest” substituted (31.7.1998) by 1998 c. 36, s. 24

**F199** S. 96(1): Definition of “the Post Office company” inserted (26.3.2001) by S.I. 2001/1149, art. 3(1), **Sch. 1 para. 101**

**F200** S. 96(4): words in definition of “local authority” inserted (16.6.1995) by S.I. 1995/1510, **art. 2**

**F201** S. 96(4): words in definition of “local authority” substituted (1.4.1996) by S.I. 1996/739, art. 7(1), **Sch. 1 Pt. 1 para. 8**

**F202** S. 96(6)(7) repealed (31.1.1997) by 1995 c. 38, s. 15(2), **Sch. 2** (with ss. 1(3), 6(4)(5), 14); S.I. 1996/3217, **art. 2**

**F203** Words in s. 96(9) inserted (11.5.2001) by 2001 c. 9, s. 99, **Sch. 31 para. 5**

**F204** S. 96(10A) inserted (retrospectively) by 1997 c. 16, s. 35(1)(4)

**F205** S. 96(10B) inserted (with application in accordance with s. 20(2) of the amending Act) by Finance Act 2003 (c. 14), s. 20(1)

#### Marginal Citations

**M40** 1983 c. 55.

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**M41** 1985 c. 66.  
**M42** 1979 c. 2.  
**M43** 1985 c. 66.  
**M44** 1978 c. 30.  
**M45** 1988 c. 1.  
**M46** 1979 c. 8.

### Supplementary provisions

#### 97 Orders, rules and regulations.

- (1) Any order made by the Treasury or the Lord Chancellor under this Act and any regulations or rules under this Act shall be made by statutory instrument.
- (2) A statutory instrument containing an order under section 86 or rules under paragraph 9 of Schedule 12 shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) An order to which this subsection applies shall be laid before the House of Commons; and unless it is approved by that House before the expiration of a period of 28 days beginning with the date on which it was made, it shall cease to have effect on the expiration of that period, but without prejudice to anything previously done thereunder or to the making of a new order.

In reckoning any such period no account shall be taken of any time during which Parliament is dissolved or prorogued or during which the House of Commons is adjourned for more than 4 days.

- (4) Subject to section 53(4), subsection (3) above applies to—
  - <sup>F206</sup>(aa) .....
  - (a) an order under section 5(4) or 28;
  - <sup>F207</sup>(ab) an order under paragraph 5(7) of Schedule 4 substituting a lesser sum for the sum for the time being specified in paragraph 5(2)(a) of that Schedule;
  - (b) .....
  - (c) an order under this Act making provision—
    - (i) for increasing the rate of VAT in force<sup>F208</sup> under section 2] at the time of the making of the order;
    - (ii) for excluding any VAT from credit under section 25;
    - <sup>F209</sup>(ia) for varying Schedule 7A so as to cause VAT to be charged on a supply at the rate in force under section 2 instead of that in force under section 29A;
    - (iii) for varying Schedule 8 or 9 so as to abolish the zero-rating of a supply or to abolish the exemption of a supply without zero-rating it;
  - (d) an order under section 51, except one making only such amendments as are necessary or expedient in consequence of provisions of an order under this Act which—
    - (i) vary Schedule<sup>F210</sup> 7A,] 8 or 9; but
    - (ii) are not within paragraph (c) above;
  - (e) an order under section 54(4) or (8).
- (5) A statutory instrument made under any provision of this Act except—

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- (a) an order made under section 79, or
  - (b) an instrument as respects which any other Parliamentary procedure is expressly provided, or
  - (c) an instrument containing an order appointing a day for the purposes of any provision of this Act, being a day as from which the provision will have effect, with or without amendments, or will cease to have effect,
- shall be subject to annulment in pursuance of a resolution of the House of Commons.

#### Textual Amendments

- F206** S. 97(4)(aa) repealed (1.11.2001) by 2001 c. 9, s. 110, **Sch. 33 Pt. III(1)** note 1
- F207** S. 97(4)(ab) inserted (29.4.1996) by 1996 c. 8, s. 33(3)
- F208** Words in s. 97(4)(c)(i) inserted (11.5.2001 with effect as mentioned in s. 99(9)(a) of the amending Act) by 2001 c. 9, s. 99, **Sch. 31 para. 6(2)**
- F209** S. 97(4)(c)(iia) inserted (11.5.2001) by 2001 c. 9, s. 99, **Sch. 31 para. 6(3)**
- F210** Words in s. 97(4)(d)(i) inserted (11.5.2001) by 2001 c. 9, s. 99, **Sch. 31 para. 6(4)**

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

- C23** S. 97 extended (27.7.1999) by 1999 c. 16, s. 13(6)

### [<sup>F211</sup>97A Place of supply orders: transitional provision.

- (1) This section shall have effect for the purpose of giving effect to any order made on or after 17th March 1998 under section 7(11), if—
  - (a) the order provides for services of a description specified in the order to be treated as supplied in the United Kingdom;
  - (b) the services would not have fallen to be so treated apart from the order;
  - (c) the services are not services that would have fallen to be so treated under any provision re-enacted in the order; and
  - (d) the order is expressed to come into force in relation to services supplied on or after a date specified in the order (“the commencement date”).
- (2) Invoices and other documents provided to any person before the commencement date shall be disregarded in determining the time of the supply of any services which, if their time of supply were on or after the commencement date, would be treated by virtue of the order as supplied in the United Kingdom.
- (3) If there is a payment in respect of any services of the specified description that was received by the supplier before the commencement date, so much (if any) of that payment as relates to times on or after that date shall be treated as if it were a payment received on the commencement date.
- (4) If there is a payment in respect of services of the specified description that is or has been received by the supplier on or after the commencement date, so much (if any) of that payment as relates to times before that date shall be treated as if it were a payment received before that date.
- (5) Subject to subsection (6) below, a payment in respect of any services shall be taken for the purposes of this section to relate to the time of the performance of those services.

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- (6) Where a payment is received in respect of any services the performance of which takes place over a period a part of which falls before the commencement date and a part of which does not—
- (a) an apportionment shall be made, on a just and reasonable basis, of the extent to which the payment is attributable to so much of the performance of those services as took place before that date;
  - (b) the payment shall, to that extent, be taken for the purposes of this section to relate to a time before that date; and
  - (c) the remainder, if any, of the payment shall be taken for those purposes to relate to times on or after that date.]

#### Textual Amendments

**F211** S. 97A inserted (retrospective to 17.3.1998) by 1998 c. 36, s. 22(1)(3)

#### 98 Service of notices.

Any notice, notification, requirement or demand to be served on, given to or made of any person for the purposes of this Act may be served, given or made by sending it by post in a letter addressed to that person or his VAT representative at the last or usual residence or place of business of that person or representative.

#### 99 Refund of VAT to Government of Northern Ireland.

The Commissioners shall refund to the Government of Northern Ireland the amount of the VAT charged on the supply of goods or services to 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, after deducting therefrom so much of that amount as may be agreed between them and the Department of Finance and Personnel for Northern Ireland as attributable to supplies, acquisitions and importations for the purpose of a business carried on by the Government of Northern Ireland.

#### 100 Savings and transitional provisions, consequential amendments and repeals.

- (1) Schedule 13 (savings and transitional provisions) and Schedule 14 (consequential amendments) shall have effect.
- (2) The enactments and Orders specified in Schedule 15 are hereby repealed to the extent mentioned in the third column of that Schedule.
- (3) This section is without prejudice to the operation of sections 15 to 17 of the <sup>M47</sup>Interpretation Act 1978 (which relate to the effect of repeals).

#### Marginal Citations

**M47** 1978 c. 30.



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## **101 Commencement and extent.**

- (1) This Act shall come into force on 1st September 1994 and Part I shall have effect in relation to the charge to VAT on supplies, acquisitions and importations in prescribed accounting periods ending on or after that date.
- (2) Without prejudice to section 16 of the <sup>M48</sup> Interpretation Act 1978 (continuation of proceedings under repealed enactments) except in so far as it enables proceedings to be continued under repealed enactments, section 72 shall have effect on the commencement of this Act to the exclusion of section 39 of the 1983 Act.
- (3) This Act extends to Northern Ireland.
- (4) Paragraph 23 of Schedule 13 and paragraph 7 of Schedule 14 shall extend to the Isle of Man but no other provision of this Act shall extend there.

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### **Marginal Citations**

**M48** 1978 c. 30.

## **102 Short title.**

This Act may be cited as the Value Added Tax Act 1994.

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