



# Value Added Tax Act 1994

## 1994 CHAPTER 23

### 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.

##### *[<sup>F1</sup>Disclosure of avoidance schemes*

#### **Textual Amendments**

**F1** S. 58A and cross-heading inserted (22.7.2004 for specified purposes, 1.8.2004 in so far as not already in force) by Finance Act 2004 (c. 12), s. 19(2), Sch. 2 para. 1; S.I. 2004/1934, art. 2

#### **58A Disclosure of avoidance schemes**

Schedule 11A (which imposes disclosure requirements relating to the use of schemes for avoiding VAT) shall have effect.]

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

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

- (1) [<sup>F2</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>F3</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>F4</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

- F2** 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)
- F3** 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)
- F4** 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)

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

- C1** S. 59 modified by S.I. 1995/2518, reg. 40(5) (as inserted (22.7.2004) by The Value Added Tax (Amendment) (No. 3) Regulations 2004 (S.I. 2004/1675), regs. 1(1), 5)

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**[<sup>F5</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

- F5** 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>F6</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**

- F6** 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>F7</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>F8</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>F9</sup>or preparing] of a certificate shall not give rise to a penalty under this section if the person who gave [<sup>F10</sup>or prepared] it satisfies the Commissioners or, on appeal, a tribunal that there is a reasonable excuse for his having given [<sup>F10</sup>or prepared] it.
- (4) Where by reason of giving [<sup>F9</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

- F7** 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)
- F8** 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**
- F9** 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**
- F10** 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.

*Status: Point in time view as at 01/09/2006.*

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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>F11</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

**F11** 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;

*Status: Point in time view as at 01/09/2006.*

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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>F12</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

- F12** 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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*Status: Point in time view as at 01/09/2006.*

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

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**65 [F13] Inaccuracies in EC sales statements or in statements relating to section 55A.]**

(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.

[<sup>F14</sup>(7) This section applies in relation to a statement which is required to be submitted to the Commissioners in accordance with regulations under paragraph 2(3A) of Schedule 11 as it applies in relation to an EC sales statement.]

#### Textual Amendments

**F13** S. 65 heading substituted (with effect in accordance with s. 19(8) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 19\(3\)\(b\)](#)

**F14** S. 65(7) inserted (with effect in accordance with s. 19(8) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 19\(3\)\(a\)](#)

#### 66 [<sup>F15</sup>Failure to submit EC sales statement or statement relating to section 55A.]

- (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—

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- (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—
- (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.



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(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.

[<sup>F16</sup>(10) This section applies in relation to a statement which is required to be submitted to the Commissioners in accordance with regulations under paragraph 2(3A) of Schedule 11 as it applies in relation to an EC sales statement.]

#### Textual Amendments

- F15** S. 66 heading substituted (with effect in accordance with s. 19(8) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 19\(4\)\(b\)](#)
- F16** S. 66(10) inserted (with effect in accordance with s. 19(8) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 19\(4\)\(a\)](#)

### 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>F17</sup>, 7] and 14(2) and (3) of Schedule 1 with paragraph 3 of Schedule 2 [<sup>F18</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
- (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>F19</sup>, 6 or 7] of Schedule 1, paragraph 3 of Schedule 2 [<sup>F20</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>F21</sup>, with sub-paragraph (2) of paragraph 8 of

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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>F225</sup> 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>F23</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 continued for more than 3 months but did not continue for more than 6 months; and
  - (c) [<sup>F24</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

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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.
- (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

- F17** 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)
- F18** 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)
- F19** 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)
- F20** 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)
- F21** 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)
- F22** 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)
- F23** 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)
- F24** 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)

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

**C2** S. 67 amended (29.4.1996) by 1996 c. 8, s. 37(3)

### **68 Breaches of walking possession agreements.**

- (1) This section applies where—
  - (a) in accordance with regulations under [<sup>F25</sup>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
  - (b) 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—
  - (a) acknowledges that the property specified in the agreement is under distraint and held in walking possession; and
  - (b) 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.
- (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**

**F25** 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>F26</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
  - [<sup>F27</sup>(ba) paragraph 2(3B) of Schedule 11; 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

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- (f) any regulations made under the <sup>M1</sup>European Communities Act 1972 and relating to VAT, [<sup>F28</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—
  - (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 [<sup>F29</sup> 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).

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- (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 person is convicted of an offence (whether under this Act or otherwise), or
  - a person is assessed to a surcharge under section 59 [<sup>F30</sup>or 59A], or
  - 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 Act includes a reference to the corresponding provision of the enactments repealed by this Act.

#### Textual Amendments

- F26** 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)
- F27** S. 69(1)(ba) inserted (1.6.2007) by Finance Act 2006 (c. 25), s. 19(5)(8); S.I. 2007/1419, art. 2
- F28** 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
- F29** 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)
- F30** 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

- M1** 1972 c. 68.

### [<sup>F31</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>M2</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.

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- (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—
  - (a) to indicate that there had been a failure to comply with any such requirement as is referred to in subsection (1) above, and
  - (b) 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—
  - (a) is assessed to a penalty under section 60, or
  - (b) is convicted of an offence (whether under this Act or otherwise),that conduct shall not also give rise to a penalty under this section.]

#### Textual Amendments

**F31** S. 69A inserted (28.7.2000) by [2000 c. 17, s. 137\(2\)](#)

#### Marginal Citations

**M2** [1999 c. 16.](#)

### [<sup>F32</sup>**69B Breach of record-keeping requirements imposed by directions**

- (1) If any person fails to comply with a requirement imposed under paragraph 6A(1) of Schedule 11, the person is liable to a penalty.
- (2) The amount of the penalty is equal to £200 multiplied by the number of days on which the failure continues (up to a maximum of 30 days).
- (3) If any person fails to comply with a requirement to preserve records imposed under paragraph 6A(6) of Schedule 11, the person is liable to a penalty of £500.
- (4) If it appears to the Treasury that there has been a change in the value of money since—
  - (a) the day on which the Finance Act 2006 is passed, or
  - (b) (if later) 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) such other sums as appear to them to be justified by the change.
- (5) But any such order does not apply to a failure which began before the date on which the order comes into force.

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- (6) A failure by any person to comply with any requirement mentioned in subsection (1) or (3) does not give rise to a liability to a penalty under this section if the person concerned satisfies—
- (a) the Commissioners, or
  - (b) on appeal, a tribunal,
- that there is a reasonable excuse for the failure.
- (7) If by reason of conduct falling within subsection (1) or (3) a person—
- (a) is assessed to a penalty under section 60, or
  - (b) is convicted of an offence (whether under this Act or otherwise),
- that conduct does not also give rise to a penalty under this section.]

#### Textual Amendments

**F32** S. 69B inserted (19.7.2006) by [Finance Act 2006 \(c. 25\)](#), **s. 21(2)**

### 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>F33</sup>, 67 or 69A][<sup>F34</sup> or under paragraph 10 of Schedule 11A], 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

**F33** Words in s. 70(1) substituted (28.7.2000) by [2000 c. 17](#), **s. 137(3)**

**F34** Words in s. 70(1) inserted (22.7.2004 for specified purposes, 1.8.2004 in so far as not already in force) by [Finance Act 2004 \(c. 12\)](#), **s. 19(2)**, **Sch. 2 para. 3**; [S.I. 2004/1934](#), **art. 2**

### 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



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- (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—
- (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

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- (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,  
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>F35</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

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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**

**F35** Words in s. 72(11) inserted (retrospective to 10.4.2003) by [Finance Act 2003 \(c. 14\), s. 17\(5\)\(8\)](#)

### *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>[F36]</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.

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- (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
  - (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>F37</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.

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- (9) Where an amount has been assessed and notified to any person under subsection (1), (2), (3) [<sup>F38</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

- F36** 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)
- F37** 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
- F38** 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)

- C3** 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—
- the assessment relates to a prescribed accounting period in respect of which either—
    - a return has previously been made, or
    - an earlier assessment has already been notified to the person concerned,
  - 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,
  - 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>F39</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>F40</sup>the rate applicable under section 197 of the Finance Act 1996] from the reckonable date until payment.
- (2) In any case where—
- the circumstances are such that an assessment falling within subsection (1) above could have been made, but

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- (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>F41</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 carry interest at [<sup>F42</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>M3</sup>Bills of Exchange Act 1882.
- <sup>F43</sup>(6) .....
- (7) Interest under this section shall be paid without any deduction of income tax.

#### Textual Amendments

- F39** 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)
- F40** 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
- F41** 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
- F42** 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

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**F43** 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)**

**C4** 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**

**M3** 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);
  - (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>F44</sup>or 59A], or

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- (b) to a penalty under any of sections 60 [F45 to F46/69B], 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 [F45 to F46/69B] 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”—
  - (a) in the case of a surcharge under section 59 [F47 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) [F48, (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.



*Status: Point in time view as at 01/09/2006.*

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- (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.
- (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

- F44** 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)
- F45** Words in s. 76(1) substituted (28.7.2000) by 2000 c. 17, s. 137(4)
- F46** Word in s. 76(1) substituted (19.7.2006) by Finance Act 2006 (c. 25), s. 21(3)
- F47** 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)
- F48** 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)

- C5** S. 76(1)-(8) excluded (1.4.2004) by The Recovery of Duties and Taxes Etc. Due in Other Member States (Corresponding UK Claims, Procedure and Supplementary) Regulations 2004 (S.I. 2004/674), reg. 1, Sch. 2 para. 3(1)
- C6** S. 76(9) applied (with modifications) (1.4.2004) by The Recovery of Duties and Taxes Etc. Due in Other Member States (Corresponding UK Claims, Procedure and Supplementary) Regulations 2004 (S.I. 2004/674), reg. 1, Sch. 2 para. 3(2)
- C7** S. 76(9) restricted (1.4.2004) by The Recovery of Duties and Taxes Etc. Due in Other Member States (Corresponding UK Claims, Procedure and Supplementary) Regulations 2004 (S.I. 2004/674), reg. 1, Sch. 2 para. 3(1)
- C8** S. 76(10) amended (retrospectively) by 1997 c. 16, s. 45(6)
- C9** S. 76(10) excluded (1.4.2004) by The Recovery of Duties and Taxes Etc. Due in Other Member States (Corresponding UK Claims, Procedure and Supplementary) Regulations 2004 (S.I. 2004/674), reg. 1, Sch. 2 para. 3(1)

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## 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—
- (a) more than [<sup>F49</sup>3 years] after the end of the prescribed accounting period or importation or acquisition concerned, or
  - (b) 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>F49</sup>3 years] after the event giving rise to the penalty.
- <sup>F50</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—
- (a) that the statement in question contained a material inaccuracy, or
  - (b) 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.
- (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>F49</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,

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the Commissioners may make a supplementary assessment of the amount of the excess and shall notify the person concerned accordingly.

#### Textual Amendments

- F49** 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)
- F50** 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>F51</sup>Liability for unpaid VAT of another*

#### Textual Amendments

- F51** 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—
- telephones and any other equipment, including parts and accessories, made or adapted for use in connection with telephones or telecommunication;
  - computers and any other equipment, including parts, accessories and software, made or adapted for use in connection with computers or computer systems.
- (2) Where—
- a taxable supply of goods to which this section applies has been made to a taxable person, and
  - 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—
- the person served with the notice, and
  - 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—
- the amount chargeable on the supply, and
  - 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.

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- (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—
- (a) accounted to them for an amount by way of output tax which was not output tax due from him [<sup>F52</sup>and, as a result, they are liable under section 80(2A) to pay (or repay) an amount 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>F53</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—

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- (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>F54</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.
- (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>F55</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;

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- (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
  - (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>F56</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>F57</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

- F52** Words in s. 78(1)(a) substituted (with effect in accordance with s. 4(6) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\), s. 4\(2\)](#)
- F53** S. 78(1A) inserted (retrospectively) by [1997 c. 16, s. 44\(1\)](#)
- F54** 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](#)

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- F55** 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)
- F56** S. 78(11) substituted (with effect retrospectively as mentioned in s. 44(2) of the amending Act) by 1997 c. 16, s. 44(2)
- F57** 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)**

- C10** 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>F58</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.
- (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

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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

**F58** 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)

**C11** S. 78A(2)-(4)(8) applied (1.4.2001) by S.I. 2001/759, reg. 4(3)

**C12** 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>F59</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
- (b) that a written instruction directing the making of the payment or refund is not issued by the Commissioners within [<sup>F60</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>F61</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>F62</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—



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- (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>F63</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—
- (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>F64</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 [F62 subsection (2A)] above.

#### Textual Amendments

- F59** 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)
- F60** 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)
- F61** 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)
- F62** 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)

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- F63** 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)
- F64** 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 [F65] Credit for, or repayment of, overstated or overpaid VAT

[F66] (1) Where a person—

- (a) has accounted to the Commissioners for VAT for a prescribed accounting period (whenever ended), and
- (b) in doing so, has brought into account as output tax an amount that was not output tax due,

the Commissioners shall be liable to credit the person with that amount.

(1A) Where the Commissioners—

- (a) have assessed a person to VAT for a prescribed accounting period (whenever ended), and
- (b) in doing so, have brought into account as output tax an amount that was not output tax due,

they shall be liable to credit the person with that amount.

(1B) Where a person has for a prescribed accounting period (whenever ended) paid to the Commissioners an amount by way of VAT that was not VAT due to them, otherwise than as a result of—

- (a) an amount that was not output tax due being brought into account as output tax, or
- (b) an amount of input tax allowable under section 26 not being brought into account,

the Commissioners shall be liable to repay to that person the amount so paid.]

(2) The Commissioners shall only be liable to [F67] credit or] repay an amount under this section on a claim being made for the purpose.

[F68] (2A) Where—

- (a) as a result of a claim under this section by virtue of subsection (1) or (1A) above an amount falls to be credited to a person, and
- (b) after setting any sums against it under or by virtue of this Act, some or all of that amount remains to his credit,

the Commissioners shall be liable to pay (or repay) to him so much of that amount as so remains.]

(3) It shall be a defence, in relation to a claim [F69] under this section by virtue of subsection (1) or (1A) above, that the crediting] of an amount would unjustly enrich the claimant.

[F70] (3A) Subsection (3B) below applies for the purposes of subsection (3) above where—

- (a) an amount would (apart from subsection (3) above) fall to be credited under subsection (1) or (1A) above to any person (“the taxpayer”), and
- (b) the whole or a part of the amount brought into account as mentioned in paragraph (b) of that subsection has, for practical purposes, been borne by a person other than the taxpayer.]

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- (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 [<sup>F71</sup>crediting] of an amount to the taxpayer would enrich him; or
  - (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>F72</sup>(4) The Commissioners shall not be liable on a claim under this section—

- (a) to credit an amount to a person under subsection (1) or (1A) above, or
  - (b) to repay an amount to a person under subsection (1B) above,
- if the claim is made more than 3 years after the relevant date.

(4ZA) The relevant date is—

- (a) in the case of a claim by virtue of subsection (1) above, the end of the prescribed accounting period mentioned in that subsection, unless paragraph (b) below applies;
- (b) in the case of a claim by virtue of subsection (1) above in respect of an erroneous voluntary disclosure, the end of the prescribed accounting period in which the disclosure was made;
- (c) in the case of a claim by virtue of subsection (1A) above in respect of an assessment issued on the basis of an erroneous voluntary disclosure, the end of the prescribed accounting period in which the disclosure was made;
- (d) in the case of a claim by virtue of subsection (1A) above in any other case, the end of the prescribed accounting period in which the assessment was made;
- (e) in the case of a claim by virtue of subsection (1B) above, the date on which the payment was made.

In the case of a person who has ceased to be registered under this Act, any reference in paragraphs (b) to (d) above to a prescribed accounting period includes a reference to a period that would have been a prescribed accounting period had the person continued to be registered under this Act.

(4ZB) For the purposes of this section the cases where there is an erroneous voluntary disclosure are those cases where—

- (a) a person discloses to the Commissioners that he has not brought into account for a prescribed accounting period (whenever ended) an amount of output tax due for the period;

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- (b) the disclosure is made in a later prescribed accounting period (whenever ended); and
- (c) some or all of the amount is not output tax due.]

[<sup>F73</sup>(4A) Where—

- (a) an amount has been credited under subsection (1) or (1A) above to any person at any time on or after 26th May 2005, and
- (b) the amount so credited exceeded the amount which the Commissioners were liable at that time to credit to that person,

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

(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.

[<sup>F74</sup>(7) Except as provided by this section, the Commissioners shall not be liable to credit or repay any amount accounted for or paid to them by way of VAT that was not VAT due to them.]

#### Textual Amendments

- F65** S. 80 side-note substituted (with effect in accordance with s. 4(6) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\), s. 3\(11\)](#)
- F66** S. 80(1)-(1B) substituted for s. 80(1) (with effect in accordance with s. 4(6) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\), s. 3\(2\)](#)
- F67** Words in s. 80(2) inserted (with effect in accordance with s. 4(6) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\), s. 3\(3\)](#)
- F68** S. 80(2A) inserted (with effect in accordance with s. 4(6) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\), s. 3\(4\)](#)
- F69** Words in s. 80(3) substituted (with effect in accordance with s. 4(6) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\), s. 3\(5\)](#)
- F70** S. 80(3A) substituted (with effect in accordance with s. 4(6) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\), s. 3\(6\)](#)
- F71** Word in s. 80(3B)(a) substituted (with effect in accordance with s. 4(6) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\), s. 3\(7\)](#)
- F72** S. 80(4)(4ZA)(4ZB) substituted for s. 80(4) (with effect in accordance with s. 4(6) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\), s. 3\(8\)](#)
- F73** S. 80(4A) substituted for s. 80(4A)(4B) (with effect in accordance with s. 4(6) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\), s. 3\(9\)](#)
- F74** S. 80(7) substituted (with effect in accordance with s. 4(6) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\), s. 3\(10\)](#)

[<sup>F75</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—

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- (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 [<sup>F76</sup>crediting] 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 [<sup>F77</sup>the amount brought into account as mentioned in paragraph (b) of subsection (1) or (1A) of that section] .
- (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 [<sup>F78</sup>crediting of the amount] to which it relates as may be specified in the regulations;
  - [<sup>F79</sup>(b) provision for cases where an amount is credited but an equal amount is not reimbursed in accordance with the arrangements;]
  - (c) provision requiring interest paid by the Commissioners on any amount [<sup>F80</sup>paid (or 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) [<sup>F81</sup>to make the repayments, or give the notifications, to the Commissioners that they are required to make or give] 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—
- (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 [<sup>F82</sup>credit] was made) for the purposes of [<sup>F83</sup>the crediting of any amount] by the Commissioners after the time when the regulations are made; and, accordingly, such regulations may apply to arrangements made before that time.]

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### Textual Amendments

- F75** Ss. 80A, 80B inserted (19.3.1997) by 1997 c. 16, s. 46(2)
- F76** Word in s. 80A(2)(a) substituted (with effect in accordance with s. 4(6) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), s. 4(3)(a)
- F77** Words in s. 80A(2)(b) substituted (with effect in accordance with s. 4(6) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), s. 4(3)(b)
- F78** Words in s. 80A(3)(a) substituted (with effect in accordance with s. 4(6) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), s. 4(3)(c)
- F79** S. 80A(3)(b) substituted (with effect in accordance with s. 4(6) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), s. 4(3)(d)
- F80** Words in s. 80A(3)(c) substituted (with effect in accordance with s. 4(6) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), s. 4(3)(e)
- F81** Words in s. 80A(4)(a) substituted (with effect in accordance with s. 4(6) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), s. 4(3)(f)
- F82** Word in s. 80A(7) substituted (with effect in accordance with s. 4(6) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), s. 4(3)(g)(i)
- F83** Words in s. 80A(7) substituted (with effect in accordance with s. 4(6) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), s. 4(3)(g)(ii)

### [<sup>F84</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.

[ Where—

- <sup>F85</sup>(1A) (a) an amount (“the gross credit”) has been credited to any person under subsection (1) or (1A) of section 80,  
(b) any sums were set against that amount, in accordance with subsection (2A) of that section, and  
(c) the amount reimbursed in accordance with the reimbursement arrangements was less than the gross credit,  
subsection (1B) below applies.

(1B) In any such case—

- (a) the person shall cease to be entitled to so much of the gross credit as exceeds the amount so reimbursed, and  
(b) the Commissioners may, to the best of their judgement, assess the amount due from that person and notify it to him,

but an amount shall not be assessed under this subsection to the extent that the person is liable to pay it to the Commissioners as mentioned in subsection (1) above.

(1C) In determining the amount that a person is liable to pay as mentioned in subsection (1) above, any amount reimbursed in accordance with the reimbursement arrangements shall be regarded as first reducing so far as possible the amount that he would have been liable so to pay, but for the reimbursement of that amount.

(1D) For the purposes of this section, nil is an amount.

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- (1E) Any reference in any other provision of this Act to an assessment under subsection (1) above includes, if the context so admits, a reference to an assessment under subsection (1B) above.]
- (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

**F84** Ss. 80A, 80B inserted (19.3.1997) by 1997 c. 16, s. 46(2)

**F85** Ss. 80B(1A)-(1E) inserted (with effect in accordance with s. 4(6) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), s. 4(4)

### 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—
- an amount is due from the Commissioners to any person under any provision of this Act, and
  - 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>F86</sup>(3A) Where—

- the Commissioners are liable to pay or repay any amount to any person under this Act,
- 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
- 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>F87</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—

- an insolvency procedure has been applied to the person entitled to the credit;
- the credit became due after that procedure was so applied; and

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- (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—
- [<sup>F88</sup>(a) when a bankruptcy order or winding-up order or award of sequestration is made or an administrator is appointed 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>M4</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>M5</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<sup>F89</sup>... or award of sequestration [<sup>F90</sup>or the appointment of an administrator] 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—
- [<sup>F91</sup>(i) immediately upon the appointment of an administrator in respect of the person ceasing to have effect;]
- (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.
- (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>F92</sup>this section]—
- (a) “administration order” means an administration order under Part II of the <sup>M6</sup>Insolvency Act 1986 or an administration order within the meaning of Article 5(1) of the <sup>M7</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



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- (c) “trust deed” has the same meaning as in the <sup>M8</sup>Bankruptcy (Scotland) Act 1985.

#### Textual Amendments

- F86** 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)
- F87** 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)
- F88** S. 81(4B)(a) substituted (15.9.2003) by Enterprise Act 2002 (Insolvency) Order 2003 (S.I. 2003/2096), art. 1(1), Sch. para. 26(a) (with art. 6)
- F89** Words in s. 81(4C)(a) omitted (15.9.2003) by virtue of Enterprise Act 2002 (Insolvency) Order 2003 (S.I. 2003/2096), art. 1(1), Sch. para. 26(b)(i) (with art. 6)
- F90** Words in s. 81(4C)(a) inserted (15.9.2003) by Enterprise Act 2002 (Insolvency) Order 2003 (S.I. 2003/2096), art. 1(1), Sch. para. 26(b)(ii) (with art. 6)
- F91** S. 81(4C)(b)(i) substituted (15.9.2003) by Enterprise Act 2002 (Insolvency) Order 2003 (S.I. 2003/2096), art. 1(1), Sch. para. 26(b)(iii) (with art. 6)
- F92** 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

- M4** 1986 c. 45.
- M5** 1914 c. 47.
- M6** 1986 c. 45.
- M7** S.I.1989/2405 (N.I.19).
- M8** 1985 c. 66.

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