



Value Added Tax Act 1994

1994 CHAPTER 23

PART IV

ADMINISTRATION, COLLECTION AND ENFORCEMENT

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- (1) Where a person has failed to make any returns required under this Act (or under any provision repealed by this Act) or to keep any documents and afford the facilities necessary to verify such returns or where it appears to the Commissioners that such returns are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 ^[F1], 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.

Status: Point in time view as at 19/07/2007.

Changes to legislation: There are currently no known outstanding effects for the Value Added Tax Act 1994, Cross Heading: Assessments of VAT and other payments due. (See end of Document for details)

- (4) Where a person is assessed under subsections (1) and (2) above in respect of the same prescribed accounting period the assessments may be combined and notified to him as one assessment.
- (5) Where the person failing to make a return, or making a return which appears to the Commissioners to be incomplete or incorrect, was required to make the return as a personal representative, trustee in bankruptcy, interim or permanent trustee, receiver, liquidator or person otherwise acting in a representative capacity in relation to another person, subsection (1) above shall apply as if the reference to VAT due from him included a reference to VAT due from that other person.
- (6) An assessment under subsection (1), (2) or (3) above of an amount of VAT due for any prescribed accounting period must be made within the time limits provided for in section 77 and shall not be made after the later of the following—
- (a) 2 years after the end of the prescribed accounting period; or
 - (b) one year after evidence of facts, sufficient in the opinion of the Commissioners to justify the making of the assessment, comes to their knowledge,
- but (subject to that section) where further such evidence comes to the Commissioners' knowledge after the making of an assessment under subsection (1), (2) or (3) above, another assessment may be made under that subsection, in addition to any earlier assessment.
- (7) Where a taxable person—
- (a) has in the course or furtherance of a business carried on by him, been supplied with any goods, acquired any goods from another member State or otherwise obtained possession or control of any goods, or
 - (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.
- [^{F2}(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

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- (c) as a result of a failure to make a return for a later prescribed accounting period, being a failure by a person referred to in paragraph (a) above or a person acting in a representative capacity in relation to him, as mentioned in subsection (5) above, the Commissioners find it necessary to make another assessment under subsection (1) above,

then, if the Commissioners think fit, having regard to the failure referred to in paragraph (a) above, they may specify in the assessment referred to in paragraph (c) above an amount of VAT greater than that which they would otherwise have considered to be appropriate.

- (9) Where an amount has been assessed and notified to any person under subsection (1), (2), (3) [^{F3}, (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

- F1** 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)
- F2** 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
- F3** 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)

- C1** S. 73 modified (20.10.1995) by S.I. 1995/2518, regs. 181, 194

74 Interest on VAT recovered or recoverable by assessment.

- (1) Subject to section 76(8), where an assessment is made under any provision of section 73 and, in the case of an assessment under section 73(1) at least one of the following conditions is fulfilled, namely—
- (a) the assessment relates to a prescribed accounting period in respect of which either—
- (i) a return has previously been made, or
- (ii) an earlier assessment has already been notified to the person concerned,
- (b) the assessment relates to a prescribed accounting period which exceeds 3 months and begins on the date with effect from which the person concerned was, or was required to be, registered,
- (c) the assessment relates to a prescribed accounting period at the beginning of which the person concerned was, but should no longer have been, exempted

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from registration under paragraph 14(1) of Schedule 1 or [^{F4}, 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 [^{F5}the rate applicable under section 197 of the Finance Act 1996] from the reckonable date until payment.

(2) In any case where—

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

the whole of the amount paid shall, subject to subsection (3) below, carry interest at [^{F6}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 [^{F7}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 ^{M1}Bills of Exchange Act 1882.

^{F8}(6)

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

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Textual Amendments

- F4** 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)
- F5** 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
- F6** 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
- F7** 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
- F8** 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)

- C2** 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

- M1** 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—
- 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);
 - the Commissioners are not satisfied that the particulars relating to the acquisition in any notification given to them are accurate and complete; or
 - 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—
- 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;
 - 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.

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- (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 [^{F9} or 59A], or
 - (b) to a penalty under any of sections 60 [^{F10} to [^{F11}69B]], or
 - (c) for interest under section 74, [^{F12} or
 - (d) a penalty under regulations made under section 135 of the Finance Act 2002 (mandatory electronic filing of returns) in connection with VAT,]
- the Commissioners may, subject to subsection (2) below, assess the amount due by way of penalty, interest or surcharge, as the case may be, and notify it to him accordingly; and the fact that any conduct giving rise to a penalty under any of sections 60 [^{F10} to [^{F11}69B]] [^{F13} or the regulations] may have ceased before an assessment is made under this section shall not affect the power of the Commissioners to make such an assessment.
- (2) Where a person is liable to a penalty under section 69 for any failure to comply with such a requirement as is referred to in subsection (1)(c) to (f) of that section, no assessment shall be made under this section of the amount due from him by way of such penalty unless, within the period of 2 years preceding the assessment, the Commissioners have issued him with a written warning of the consequences of a continuing failure to comply with that requirement.
- (3) In the case of the penalties, interest and surcharge referred to in the following paragraphs, the assessment under this section shall be of an amount due in respect of the prescribed accounting period which in the paragraph concerned is referred to as “the relevant period”—
- (a) in the case of a surcharge under section 59 [^{F14} 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; ^{F15}...
 - (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 [^{F16}; and
 - (f) in the case of a penalty under regulations made under section 135 of the Finance Act 2002, the relevant period is the prescribed accounting period in respect of which the contravention of, or failure to comply with, the regulations occurred].

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- (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) [^{F17}, (7), (7A) or (7B)] for the prescribed accounting period which is the relevant period under subsection (3) above, the assessments may be combined and notified to him as one assessment, but the amount of the penalty, interest or surcharge shall be separately identified in the notice.
- (6) An assessment to a penalty under section 67 by virtue of subsection (1)(b) of that section may be combined with an assessment under section 75 and the 2 assessments notified together but the amount of the penalty shall be separately identified in the notice.
- (7) In the case of an amount due by way of penalty under section 66 or 69 or interest under section 74—
 - (a) a notice of assessment under this section shall specify a date, being not later than the date of the notice, to which the aggregate amount of the penalty which is assessed or, as the case may be, the amount of interest is calculated; and
 - (b) if the penalty or interest continues to accrue after that date, a further assessment or assessments may be made under this section in respect of amounts which so accrue.
- (8) If, within such period as may be notified by the Commissioners to the person liable to a penalty under section 66 or 69 or for interest under section 74—
 - (a) a failure or default falling within section 66(1) or 69(1) is remedied, or
 - (b) the VAT or other amount referred to in section 74(1) is paid,it shall be treated for the purposes of section 66 or 69 or, as the case may be, section 74 as paid or remedied on the date specified as mentioned in subsection (7)(a) above.
- (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

- F9** 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)
- F10** Words in s. 76(1) substituted (28.7.2000) by 2000 c. 17, s. 137(4)
- F11** Word in s. 76(1) substituted (19.7.2006) by Finance Act 2006 (c. 25), s. 21(3)
- F12** S. 76(1)(d) and word inserted (19.7.2007) by Finance Act 2007 (c. 11), s. 93(5)
- F13** Words in s. 76(1) inserted (19.7.2007) by Finance Act 2007 (c. 11), s. 93(6)

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- F14** 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)
- F15** Word in s. 76(3)(d) repealed (19.7.2007) by Finance Act 2007 (c. 11), Sch. 27 Pt. 5(4)
- F16** S. 76(3)(f) and word inserted (19.7.2007) by Finance Act 2007 (c. 11), s. 93(7)
- F17** 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)

- C3** 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)
- C4** 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)
- C5** 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)
- C6** S. 76(10) amended (retrospectively) by 1997 c. 16, s. 45(6)
- C7** 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)

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 [^{F18}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, [^{F18}3 years] after the event giving rise to the penalty.
- ^{F19}[(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.

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- (4) Subject to subsection (5) below, if VAT has been lost—
- (a) as a result of conduct falling within section 60(1) or for which a person has been convicted of fraud, or
 - (b) in circumstances giving rise to liability to a penalty under section 67,
- an assessment may be made as if, in subsection (1) above, each reference to [^{F18}3 years] were a reference to 20 years.
- (5) Where, after a person's death, the Commissioners propose to assess a sum as due by reason of some conduct (howsoever described) of the deceased, including a sum due by way of penalty, interest or surcharge—
- (a) the assessment shall not be made more than 3 years after the death; and
 - (b) if the circumstances are as set out in subsection (4) above, the modification of subsection (1) above contained in that subsection shall not apply but any assessment which (from the point of view of time limits) could have been made immediately after the death may be made at any time within 3 years after it.
- (6) If, otherwise than in circumstances falling within section 73(6)(b) or 75(2)(b), it appears to the Commissioners that the amount which ought to have been assessed in an assessment under that section or under section 76 exceeds the amount which was so assessed, then—
- (a) under the like provision as that assessment was made, and
 - (b) on or before the last day on which that assessment could have been made,
- the Commissioners may make a supplementary assessment of the amount of the excess and shall notify the person concerned accordingly.

Textual Amendments

F18 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)

F19 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)

Status:

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