



Finance Act 1996

1996 CHAPTER 8

PART II

VALUE ADDED TAX

Payment and enforcement

35 Default surcharges

- (1) The Value Added Tax Act 1994 shall be amended as follows.
- (2) After section 59 (default surcharge) there shall be inserted the following section—

“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—

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- (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
- (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

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- 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 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

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- (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.”
- (3) In section 59, at the beginning of subsection (1) (circumstances amounting to a default in respect of any prescribed accounting period), there shall be inserted “Subject to subsection (1A) below”; and after that subsection there shall be inserted the following subsection—
- “(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.”
- (4) After subsection (10) of that section there shall be inserted the following subsection—
- “(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.”
- (5) After the section 59A inserted by subsection (2) above there shall be inserted the following section—

“59B Relationship between sections 59 and 59A

- (1) This section applies in each of the following cases, namely—

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- (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.
- (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.”
- (6) In section 69(4)(a) and (9)(b) (disregard in connection with penalties for breach of regulations of conduct giving rise to a surcharge), after the words “section 59”, in each case, there shall be inserted “or 59A”.

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- (7) In section 76(1) and (3)(a) (assessments for surcharges), after the words “section 59”, in each case, there shall be inserted “or 59A”.
- (8) This section applies in relation to any prescribed accounting period ending on or after 1st June 1996, but a liability to make a payment on account of VAT shall be disregarded for the purposes of the amendments made by this section if the payment is one becoming due before that date.