

*Status: Point in time view as at 30/07/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 2005, SCHEDULE 1. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 1

Section 6

#### DISCLOSURE OF VALUE ADDED TAX AVOIDANCE SCHEMES

##### *Introduction*

- 1 Schedule 11A to VATA 1994 (disclosure of avoidance schemes) is amended in accordance with this Schedule.

##### **Commencement Information**

- I1** Sch. 1 para. 1 in force at 1.8.2005 by S.I. 2005/2010, art. 2 (with art. 4)

##### *Interpretative provisions*

- 2 In paragraph 1 (interpretation), after the definition of “designated scheme” insert—  
““non-deductible tax”, in relation to a taxable person, has the meaning given by paragraph 2A;”.

##### **Commencement Information**

- I2** Sch. 1 para. 2 in force at 1.8.2005 by S.I. 2005/2010, art. 2 (with art. 4)

- 3 For paragraph 2 substitute—
- “2 (1) For the purposes of this Schedule, a taxable person obtains a tax advantage if—
- (a) in any prescribed accounting period, the amount by which the output tax accounted for by him exceeds the input tax deducted by him is less than it would otherwise be,
  - (b) he obtains a VAT credit when he would not otherwise do so, or obtains a larger VAT credit or obtains a VAT credit earlier than would otherwise be the case,
  - (c) in a case where he recovers input tax as a recipient of a supply before the supplier accounts for the output tax, the period between the time when the input tax is recovered and the time when the output tax is accounted for is greater than would otherwise be the case, or
  - (d) in any prescribed accounting period, the amount of his non-deductible tax is less than it would otherwise be.
- (2) For the purposes of this Schedule, a person who is not a taxable person obtains a tax advantage if his non-refundable tax is less than it would otherwise be.

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- (3) In sub-paragraph (2), “non-refundable tax”, in relation to a person who is not a taxable person, means—
- (a) VAT on the supply to him of any goods or services,
  - (b) VAT on the acquisition by him from another member State of any goods, and
  - (c) VAT paid or payable by him on the importation of any goods from a place outside the member States,
- but excluding (in each case) any VAT in respect of which he is entitled to a refund from the Commissioners by virtue of any provision of this Act.”

**Commencement Information**

**I3** Sch. 1 para. 3 in force at 1.8.2005 by S.I. 2005/2010, art. 2 (with art. 4)

- 4 After paragraph 2 insert—

*“Meaning of “non-deductible tax”*

- 2A (1) In this Schedule “non-deductible tax”, in relation to a taxable person, means—
- (a) input tax for which he is not entitled to credit under section 25, and
  - (b) any VAT incurred by him which is not input tax and in respect of which he is not entitled to a refund from the Commissioners by virtue of any provision of this Act.
- (2) For the purposes of sub-paragraph (1)(b), the VAT “incurred” by a taxable person is—
- (a) VAT on the supply to him of any goods or services,
  - (b) VAT on the acquisition by him from another member State of any goods, and
  - (c) VAT paid or payable by him on the importation of any goods from a place outside the member States.”

**Commencement Information**

**I4** Sch. 1 para. 4 in force at 1.8.2005 by S.I. 2005/2010, art. 2 (with art. 4)

*Duty to notify Commissioners*

- 5 (1) Paragraph 6 (duty to notify Commissioners) is amended as follows.
- (2) In sub-paragraph (1)—
- (a) omit the word “or” at the end of paragraph (a), and
  - (b) after paragraph (b) insert “, or
  - (c) the amount of his non-deductible tax in respect of any prescribed accounting period is less than it would be but for such a scheme.”
- (3) After sub-paragraph (2) insert—

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“(2A) Sub-paragraph (2) does not apply to a taxable person in relation to any scheme if he has on a previous occasion—

- (a) notified the Commissioners under that sub-paragraph in relation to the scheme, or
- (b) provided the Commissioners with prescribed information under sub-paragraph (3) (as it applied before the scheme became a designated scheme) in relation to the scheme.”

(4) For sub-paragraph (5) substitute—

“(5) Sub-paragraph (3) also does not apply where the scheme is one in respect of which the taxable person has on a previous occasion provided the Commissioners with prescribed information under that sub-paragraph.”

**Commencement Information**

**I5** Sch. 1 para. 5 in force at 1.8.2005 by S.I. 2005/2010, art. 2 (with arts. 3, 4)

6 In paragraph 7 (exemptions from duty to notify) in the definition of “relevant period” in sub-paragraph (9) for “6(1)(a) or (b)” substitute “6(1)(a), (b) or (c)”.

**Commencement Information**

**I6** Sch. 1 para. 6 in force at 1.8.2005 by S.I. 2005/2010, art. 2 (with art. 4)

*Amount of penalty*

7 (1) Paragraph 11 (amount of penalty) is amended as follows.

(2) In sub-paragraph (3)—

- (a) omit the word “and” at the end of paragraph (a), and
- (b) after paragraph (b) insert “, and
- (c) to the extent that—
  - (i) the case falls within paragraph 6(1)(c), and
  - (ii) the excess of the notional non-deductible tax of the taxable person for the relevant periods over his non-deductible tax for those periods is not represented by a corresponding amount which by virtue of paragraph (a) or (b) is part of the VAT saving,the amount of the excess.”

(3) In sub-paragraph (4), after “(3)(a)” insert “ and (c) ”.

(4) After sub-paragraph (4) insert—

“(5) In sub-paragraph (3)(c), “notional non-deductible tax”, in relation to a taxable person, means the amount that would, but for the scheme, have been the amount of his non-deductible tax.”

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**Commencement Information**

**I7** Sch. 1 para. 7 in force at 1.8.2005 by S.I. 2005/2010, art. 2 (with art. 4)

*Penalty assessments*

8 In paragraph 12 (penalty assessments) for sub-paragraph (3) substitute—

“(3) In a case where—

- (a) the penalty falls to be calculated by reference to the VAT saving as determined under paragraph 11(3), and
- (b) the notional tax cannot readily be attributed to any one or more prescribed accounting periods,

the notional tax shall be treated for the purposes of this Schedule as attributable to such period or periods as the Commissioners may determine to the best of their judgment and notify to the person liable for the penalty.

(3A) In sub-paragraph (3) “the notional tax” means—

- (a) the VAT that would, but for the scheme, have been shown in returns as payable by or to the taxable person, or
- (b) any amount that would, but for the scheme, have been the amount of the non-deductible tax of the taxable person.”

**Commencement Information**

**I8** Sch. 1 para. 8 in force at 1.8.2005 by S.I. 2005/2010, art. 2 (with art. 4)

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