

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012, SCHEDULE 28. (See end of Document for details)

SCHEDULES

SCHEDULE 28 U.K.

Section 203

NON-ESTABLISHED TAXABLE PERSONS

New Schedule 1A

1 In VATA 1994, after Schedule 1 insert—

“SCHEDULE 1A U.K.”

REGISTRATION IN RESPECT OF TAXABLE SUPPLIES: NON-UK ESTABLISHMENT

Liability to be registered

- 1 (1) A person becomes liable to be registered under this Schedule at any time if conditions A to D are met.
 - (2) Condition A is that—
 - (a) the person makes taxable supplies, or
 - (b) there are reasonable grounds for believing that the person will make taxable supplies in the period of 30 days then beginning.
 - (3) Condition B is that those supplies (or any of them) are or will be made in the course or furtherance of a business carried on by the person.
 - (4) Condition C is that the person has no business establishment, or other fixed establishment, in the United Kingdom in relation to any business carried on by the person.
 - (5) Condition D is that the person is not registered under this Act.
- 2 (1) A person does not become liable to be registered by virtue of paragraph 1(2)
 - (b) if the reason for believing that taxable supplies will be made in the 30-day period mentioned there is that a business, or part of a business, carried on by a taxable person is to be transferred to the person as a going concern in that period.
 - (2) But if the transfer takes place, the transferee becomes liable to be registered under this Schedule at the time of the transfer if conditions A to D in paragraph 1 are met in relation to the transferee at that time.
 - (3) In determining for the purposes of sub-paragraph (2) whether condition B is met, the reference in paragraph 1(3) to a business is to be read as a reference to the business, or part of the business, that is transferred to the transferee.
- 3 A person is treated as having become liable to be registered under this Schedule at any time when the person would have become so liable under

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paragraph 1 or 2 but for any registration that is subsequently cancelled under—

- (a) paragraph 11,
 - (b) paragraph 13(3) of Schedule 1,
 - (c) paragraph 6(2) of Schedule 2,
 - (d) paragraph 6(3) of Schedule 3, or
 - (e) paragraph 6(2) of Schedule 3A.
- 4 (1) A person does not cease to be liable to be registered under this Schedule except in accordance with sub-paragraph (2).
- (2) A person who has become liable to be registered under this Schedule ceases to be so liable at any time if the Commissioners are satisfied that—
- (a) the person has ceased to make taxable supplies in the course or furtherance of a business carried on by the person, or
 - (b) the person is no longer a person in relation to whom condition C in paragraph 1 is met.

Notification of liability and registration

- 5 (1) A person who becomes liable to be registered by virtue of paragraph 1(2)(a) or 2(2) must notify the Commissioners of the liability before the end of the period of 30 days beginning with the day on which the liability arises.
- (2) The Commissioners must register any such person (whether or not the person so notifies them) with effect from the beginning of the day on which the liability arises.
- 6 (1) A person who becomes liable to be registered by virtue of paragraph 1(2)(b) must notify the Commissioners of the liability before the end of the period by reference to which the liability arises.
- (2) The Commissioners must register any such person (whether or not the person so notifies them) with effect from the beginning of the period by reference to which the liability arises.

Notification of end of liability

- 7 (1) A person registered under paragraph 5 or 6 who, on any day, ceases to make or have the intention of making taxable supplies in the course or furtherance of a business carried on by that person must notify the Commissioners of that fact within 30 days beginning with that day.
- (2) But the person need not notify the Commissioners if on that day the person would otherwise be liable or entitled to be registered under this Act (disregarding for this purpose the person's registration under this Schedule and any enactment that prevents a person from being liable to be registered under different provisions at the same time).

Cancellation of registration

- 8 (1) The Commissioners must cancel a person's registration under this Schedule if—

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- (a) the person satisfies them that the person is not liable to be registered under this Schedule, and
 - (b) the person requests the cancellation.
 - (2) The cancellation is to be made with effect from—
 - (a) the day on which the request is made, or
 - (b) such later day as may be agreed between the Commissioners and the person.
 - (3) But the Commissioners must not cancel the registration with effect from any time unless they are satisfied that it is not a time when the person would be subject to a requirement to be registered under this Act.
- 9
 - (1) The Commissioners may cancel a person's registration under this Schedule if they are satisfied that the person has ceased to be liable to be registered under this Schedule.
 - (2) The cancellation is to be made with effect from—
 - (a) the day on which the person ceased to be so liable, or
 - (b) such later day as may be agreed between the Commissioners and the person.
 - (3) But the Commissioners must not cancel the registration with effect from any time unless they are satisfied that it is not a time when the person would be subject to a requirement, or entitled, to be registered under this Act.
- 10 In determining for the purposes of paragraphs 8 and 9 whether a time is a time when a person would be subject to a requirement, or entitled, to be registered under this Act, so much of any provision of this Act as prevents a person from becoming liable or entitled to be registered when the person is already registered or when the person is so liable under any other provision must be disregarded.
- 11
 - (1) The Commissioners may cancel a person's registration under this Schedule if they are satisfied that the person was not liable to be registered under this Schedule on the day on which the person was registered.
 - (2) The cancellation is to be made with effect from the day on which the person was registered.
- 12 Paragraphs 8 to 11 are subject to paragraph 18 of Schedule 3B (cancellation of registration under this Schedule of persons seeking to be registered under that Schedule etc).

Exemption from registration

- 13
 - (1) The Commissioners may exempt a person from registration under this Schedule if the person satisfies them that the taxable supplies that the person makes or intends to make—
 - (a) are all zero-rated, or
 - (b) would all be zero-rated if the person were a taxable person.
 - (2) The power in sub-paragraph (1) is exercisable only if the person so requests and the Commissioners think fit.

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- (3) If there is a material change in the nature of the supplies made by a person exempted under this paragraph, the person must notify the Commissioners of the change—
- (a) within 30 days beginning with the day on which the change occurred, or
 - (b) if no particular day is identifiable as that day, within 30 days of the end of the quarter in which the change occurred.
- (4) If it appears to the Commissioners that a request under this paragraph should no longer be acted upon on or after any day or has been withdrawn on any day, they must register the person who made the request with effect from that day.
- (5) A reference in this paragraph to supplies is to supplies made in the course or furtherance of a business carried on by the person.

Supplementary

- 14 Any notification required under this Schedule must be made in such form and manner and must contain such particulars as may be specified in regulations or by the Commissioners in accordance with regulations.”

Other amendments of VATA 1994

- 2 VATA 1994 is amended as follows.
- 3 In section 7 (place of supply of goods), in subsection (4)(c)(ii), after “Schedule 1” insert “ or 1A ”.
- 4 In section 54 (farmers etc), in subsection (2), after “Schedule 1” insert “ or is, has become or has ceased to be liable to be registered under Schedule 1A ”.
- 5 In section 55 (customers to account for tax on supplies of gold etc), in subsection (1)
- (a) for “Schedule 1” substitute “ Schedules 1 and 1A ”, and
 - (b) for “that Schedule” substitute “ Schedule 1 ”.
- 6 In section 55A (customers to account for tax on supplies of goods or services of a kind used in missing trader intra-community fraud), in subsection (3), for “Schedule 1” substitute “ Schedules 1 and 1A ”.
- 7 In section 69 (breaches of regulatory provisions), in subsection (1)(a), after “Schedule 1,” insert “ paragraph 7 of Schedule 1A, ”.
- 8 In section 73 (failure to make returns etc), in subsection (3)(b), after “Schedule 1,” insert “ paragraph 9 or 11 of Schedule 1A, ”.
- 9 In section 74 (interest on VAT recovered or recoverable by assessment), in subsection (1)(c), after “Schedule 1,” insert “ under paragraph 13 of Schedule 1A, ”.
- 10 In section 77 (assessments: time limits and supplementary assessments), in subsection (4C), after paragraph (a) insert—
- “(aa) paragraph 5, 6 or 13(3) of Schedule 1A.”
- 11 (1) Paragraph 1 of Schedule 1 (registration in respect of taxable supplies) is amended as follows.

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- (2) In sub-paragraph (1)—
 - (a) in paragraph (a), after “if” insert “ the person is UK-established and ”, and
 - (b) in paragraph (b), after “if” insert “ the person is UK-established and ”.
 - (3) In sub-paragraph (2), for “and the transferee is not registered under this Act at the time of the transfer” substitute “ , the transferee is UK-established at the time of the transfer and the transferee is not registered under this Act at that time ”.
 - (4) After sub-paragraph (2) insert—
 - “(2A) In determining the value of a person's supplies for the purposes of sub-paragraph (1)(a) or (2)(a), supplies are to be taken into account (subject to sub-paragraphs (3) to (7)) whether or not the person was UK-established when they were made.”
 - (5) In sub-paragraph (4)(a), after “below,” insert “ paragraph 11 of Schedule 1A, ”.
 - (6) In sub-paragraph (5), after “below,” insert “ paragraph 11 of Schedule 1A, ”.
 - (7) At the end insert—
 - “(10) A person is “UK-established” if the person has a business establishment, or some other fixed establishment, in the United Kingdom in relation to a business carried on by the person.”
- 12 In paragraph 3 of that Schedule, at the end of paragraph (b) insert “; or
(c) is not at that time UK-established (see paragraph 1(10)).”
- 13 Accordingly, in the heading of that Schedule, at the end insert “ : UK ESTABLISHMENT ”.
- F114

Textual Amendments
F1 Sch. 28 para. 14 repealed (31.12.2020) by [Taxation \(Cross-border Trade\) Act 2018 \(c. 22\), s. 57\(3\), Sch. 8 para. 132\(j\)\(i\)](#) (with savings and transitional provisions in [S.I. 2019/105](#) (as amended by [S.I. 2020/1495](#), regs. 1(2), 21), [S.I. 2020/1545](#), Pt. 4 and [2020 c. 26](#), Sch. 2 para. 7(7)-(9)); [S.I. 2020/1642](#), reg. 4(b) (with reg. 7)

F215

Textual Amendments
F2 Sch. 28 para. 15 repealed (31.12.2020) by [Taxation \(Cross-border Trade\) Act 2018 \(c. 22\), s. 57\(3\), Sch. 8 para. 132\(j\)\(i\)](#) (with savings and transitional provisions in [S.I. 2019/105](#) (as amended by [S.I. 2020/1495](#), regs. 1(2), 21), [S.I. 2020/1545](#), Pt. 4 and [2020 c. 26](#), Sch. 2 para. 7(7)-(9)); [S.I. 2020/1642](#), reg. 4(b) (with reg. 7)

- 16 In paragraph 1 of Schedule 3A (registration in respect of disposals of assets for which a VAT repayment is claimed)—
 - (a) in sub-paragraph (1), after “Schedule 1,” insert “ 1A, ”, and
 - (b) in sub-paragraph (2), after “Schedule 1,” insert “ paragraph 11 of Schedule 1A, ”.

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F3 17

Textual Amendments

F3 Sch. 28 para. 17 repealed (31.12.2020) by [Taxation \(Cross-border Trade\) Act 2018 \(c. 22\)](#), s. 57(3), [Sch. 8 para. 132\(j\)\(i\)](#) (with savings and transitional provisions in [S.I. 2019/105](#) (as amended by [S.I. 2020/1495](#), regs. 1(2), 21), [S.I. 2020/1545](#), Pt. 4 and [2020 c. 26](#), Sch. 2 para. 7(7)-(9)); [S.I. 2020/1642](#), reg. 4(b) (with reg. 7)

Amendments of other Acts

18 In Schedule 41 to FA 2008 (penalties: failure to notify and certain VAT and excise wrongdoing), in the Table in paragraph 1, after the entry for the obligations under Schedule 1 to VATA 1994 insert the following entry—

“Value added tax	Obligations under paragraphs 5, 6 and 13(3) of Schedule 1A to VATA 1994 (obligations to notify liability to register and notify material change in nature of supplies made by person exempted from registration).”
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Application

19 The amendments made by this Schedule have effect in relation to supplies made or to be made on or after 1 December 2012.

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