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STATUTORY INSTRUMENTS

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**1991 No. 371**

**VALUE ADDED TAX**

**The Value Added Tax (Refunds  
for Bad Depts) Regulations 1991**

<i>Made</i>	- - - -	<i>28th February 1991</i>
<i>Laid before Parliament</i>		<i>7th March 1991</i>
<i>Coming into force</i>	- -	<i>1st april 1991</i>

The Commissioners of Customs and Excise, in exercise of the powers conferred on them by sections 11(5), (6), (7) and 131(2) of the Finance Act 1990<sup>(1)</sup> and section 48(1) of the Value Added Tax Act 1983<sup>(2)</sup> and of all other powers enabling them in that behalf, hereby make the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Value Added Tax (Refunds for Bad Debts) Regulations 1991 and shall come into force on 1st April 1991.

**Interpretation**

2. In these Regulations—

“claim” means a claim in accordance with regulations 3 and 4 of these Regulations for the refund of tax to which a person is entitled by virtue of section 11 of the Finance Act 1990;

“claimant” means the person who makes a claim;

“payment” means any payment or part-payment which is made by any person to the claimant by way of consideration for a supply regardless of whether such payment extinguishes the purchaser’s debt to the claimant or not;

“purchaser” means a person to whom the claimant made a relevant supply;

“refunds for bad debts account” has the meaning given in regulation 5;

“relevant supply” means any taxable supply upon which a claim is based;

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(1) 1990 c. 29.

(2) 1983 c. 55; section 48(1) defines “the Commissioners” as meaning the Commissioners of Customs and Excise and “regulations” as meaning regulations made by the commissioners.

“return” means the return which the claimant is required to make in accordance with regulation 58 of the Value Added Tax (General) Regulations 1985(3); and

“security” means—

- (a) in relation to England, Wales and Northern Ireland, any mortgage, charge, lien or other security, and
- (b) in relation to Scotland, any security (whether heritable or moveable), any floating charge and any right of lien or preference and right of retention (other than a right of compensation or set-off).

### **The making of a claim to the Commissioners**

3.—(1) Save as the Commissioners may otherwise allow or direct, the claimant shall make a claim to the Commissioners by including the correct amount of the refund in the box opposite the legend “VAT reclaimed in this period on purchases and other inputs” on his return.

(2) If at any time the claimant becomes entitled to a refund he is no longer required to make returns to the Commissioners he shall make a claim to the Commissioners in such form and manner as they may direct.

### **Evidence required of the claimant in support of the claim**

4. Save as the Commissioners may otherwise allow, the claimant, before he makes a claim, shall hold in respect of each relevant supply—

- (a) (i) a copy of any tax invoice which was provided in accordance with Part III of the Value Added Tax (general) Regulations 1985; or
- (ii) where there was no obligation to provide a tax invoice, a document which shows the time, nature and purchaser thereof, and the consideration therefor,
- (b) records or any other documents showing that he has accounted for and paid the tax thereon, and
- (c) records or any other documents showing that the consideration has been written off in his accounts as a bad debt.

### **Records required to be kept by the claimant**

5.—(1) Any person who makes a claim to the Commissioners shall keep a record of that claim.

(2) Save as the Commissioners may otherwise allow, the record referred to in paragraph (1) above shall consist of the following information in respect of each claim made—

- (a) in respect of each relevant supply for that claim—
  - (i) the amount of tax chargeable;
  - (ii) the prescribed accounting period in which the tax chargeable was accounted for and paid to the Commissioners;
  - (iii) the date and number of any invoice issued in relation thereto or, where there is no such invoice, such information as is necessary to identify the time, nature and purchaser thereof; and
  - (iv) any payment received therefor,
- (b) the outstanding amount to which the claim relates,

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(3) S.I.No.1985/886; form 4 in the Schedule thereto is the return referred to and has been amended by regulation 5 of the Value Added Tax (General) (Amendment) (No. 3) Regulations 1989 (S.I. 1989/2256).

- (c) the amount of the claim, and
- (d) the prescribed accounting period in which the claim was made.

(3) Any records created in pursuance of this regulation shall be kept in a single account to be known as the “refunds for bad debts account”.

### **Preservation of documents and records and duty to produce**

6.—(1) Save as the Commissioners may otherwise allow, the claimant shall preserve the documents, invoices and records which he holds in accordance with regulations 4 and 5 for a period of four years from the date of the making of the claim.

(2) Upon demand made by an authorised person the claimant shall produce or cause to be produced any such documents, invoices and records for inspection by the authorised person and permit him to remove them at a reasonable time and for a reasonable period.

### **Attribution of payments**

7.—(1) Where—

- (a) the claimant made more than one supply (whether taxable or otherwise) to the purchaser, and
- (b) a payment is received in relation to those supplies,

the payments shall be attributed to each supply in accordance with the rules set out in paragraphs (2) and (3) below.

(2) The payment shall be attributed to the supply which is the earliest in time and, if not wholly attributed to that supply, thereafter to supplies in the order of the dates on which they were made, except that attribution under this paragraph shall not be made to any supply if the payment was allocated to that supply by the purchaser at the time of payment and the consideration for that supply was paid in full.

(3) Where—

- (a) the earliest supply and other supplies to which the whole of the payment could be attributed under this regulation occur on one day, or
- (b) the supplies to which the balance of the payment could be attributed under this regulation occur on one day,

the payment shall be attributed to those supplies by multiplying, for each such supply, the payment received by a fraction of which the numerator is the outstanding consideration for those supplies.

### **Repayment of a refund**

8.—(1) Where a claimant—

- (a) has received a refund upon a claim, and
  - (b) (i) a payment for the relevant supply is subsequently received; or  
(ii) a payment is, by virtue of regulation 7, treated as attributed to the relevant supply,
- he shall repay to the Commissioners such an amount as equals the amount of the refund, or the balance thereof, multiplied by a fraction of which the numerator is the amount so received or attributed, and the denominator is the amount of the outstanding consideration.

(2) The claimant shall repay to the Commissioners the amount referred to in paragraph (1) above by including that amount in the box opposite the legend “VAT due in this period on sales and other outputs” on his return for the prescribed accounting period in which the payment is received.

(3) Save as the Commissioners may otherwise allow, where the claimant fails to comply with the requirements of regulation 4, 5, 6 or 7 he shall repay to the Commissioners the amount of the refund obtained by the claim to which the failure to comply relates; and he shall repay the amount by including that amount in the box opposite the legend “VAT due in this period on sales and other outputs” on his return for a prescribed accounting period which the Commissioners shall designate for that purpose.

(4) If at the time the claimant is required to repay any amount he is no longer required to make returns to the Commissioners he shall repay such amount to the Commissioners at such time and in such form and manner as they may direct.

### **Writing off debts**

9.—(1) This regulation shall apply for the purpose of ascertaining whether, and to what extent, the consideration is to be taken to have been written off as a bad debt.

(2) The whole or any part of the consideration for a supply shall be taken to have been written off as a bad debt when an entry is made in relation to that supply in the refunds for bad debts account in accordance with regulation 5; and this shall have effect regardless of whether a claim can be made in relation to that supply at that time.

(3) Where the claimant owes an amount of money to the purchaser which can be set-off, the consideration written off in the accounts shall be reduced by the amount so owed.

(4) Where the claimant holds in relation to the purchaser an enforceable security, the consideration written off in the accounts of the claimant shall be reduced by the value of that security.

New King’s Beam House 22 Upper Ground  
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28th February 1991

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Commissioner of Customs and Excise

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations, which are made under section 11 of the Finance Act 1990, regulate the administration of relief for VAT included in bad debts.

Regulations 3 and 4 specify the procedure for claiming relief and the evidence to be held in support of a claim.

Regulation 5 prescribes the records required to be kept by the claimant.

Regulation 6 provides for the preservation and production of documents and records.

Regulation 7 provides for the attribution of a payment received in relation to more than one supply.

Regulation 8 deals with the circumstances in which refunds are repayable by the claimant.

Regulation 9 deals with the writing off of debts.