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STATUTORY INSTRUMENTS

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**1997 No. 1086**

**VALUE ADDED TAX**

**The Value Added Tax (Amendment) Regulations 1997**

<i>Made</i>	- - - -	<i>25th March 1997</i>
<i>Laid before the House of Commons</i>	- - - -	<i>26th March 1997</i>
<i>Coming into force</i>	- -	<i>1st May 1997</i>

The Commissioners of Customs and Excise, in exercise of the powers conferred on them by sections 24(6), 25(1) and (6), 26(1), (3) and (4), 36(5) and (6) and 49(2) and (3) of, and paragraph 2(1), (10) and (11) of Schedule 11 to, the Value Added Tax Act 1994(1) and of all other powers enabling them in that behalf, hereby make the following Regulations:

1. These Regulations may be cited as the Value Added Tax (Amendment) Regulations 1997 and shall come into force on 1st May 1997.

2. The Value Added Tax Regulations 1995(2) shall be amended in accordance with these Regulations.

3. Regulation 6(3) shall be amended as follows—

- (a) the word “and” at the end of sub-paragraph (b) shall be omitted; and
- (b) after sub-paragraph (c) there shall be added—

“

(d) any right of the transferor, whether or not existing at the date of the transfer, to claim a refund under section 36 of the Act shall become the right of the transferee, and

(e) any liability of the transferor, whether or not existing at the date of the transfer, to account for an amount under Part XIXA of these Regulations, shall become that of the transferee”.

4. In regulation 29—

- (a) in paragraph (1) for the words “Subject to paragraph (2) below” there shall be substituted the words “Subject to paragraphs (1A) and (2) below”; and
- (b) after paragraph (1) there shall be inserted the following—

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(1) 1994 c. 23; section 36(5) was amended by section 39(4) of the Finance Act 1997 (c. 16); section 96(1) defines “the Commissioners” as meaning the Commissioners of Customs and Excise and “regulations” as meaning regulations made by the Commissioners.

(2) S.I.1995/2518.

“(1A) The Commissioners shall not allow or direct a person to make any claim for deduction of input tax in terms such that the deduction would fall to be claimed more than 3 years after the date by which the return for the prescribed accounting period in which the VAT became chargeable is required to be made.”.

5. In regulation 34—

- (a) at the beginning of paragraph (1) there shall be inserted the words “Subject to paragraph (1A) below,”; and
- (b) after paragraph (1) there shall be inserted the following—

“(1A) Subject to paragraph (1B) below, any overstatement or understatement in a return where—

- (a) a period of 3 years has elapsed since the end of the prescribed accounting period for which the return was made; and
- (b) the taxable person has not (in relation to that overstatement or understatement) corrected his VAT account in accordance with this regulation before the end of the prescribed accounting period during which that period of 3 years has elapsed,

shall be disregarded for the purposes of this regulation; and in paragraphs (2) to (6) of this regulation “overstatement”, “understatement” and related expressions shall be construed accordingly.

(1B) Paragraph (1A) above does not apply where—

- (a) the overstatement or understatement is discovered in a prescribed accounting period which begins before 1st May 1997; and
- (b) the return for that prescribed accounting period has not been made, and was not required to have been made, before that date.”.

6. In regulation 38—

- (a) at the beginning of paragraph (1) there shall be inserted the words “Subject to paragraph (1A) below,”; and
- (b) after paragraph (1) there shall be inserted the following—

“(1A) Subject to paragraph (1B) below, this regulation does not apply to any increase or decrease in consideration which occurs more than 3 years after the end of the prescribed accounting period in which the original supply took place.

(1B) Paragraph (1A) above does not apply where—

- (a) the increase or decrease takes place during a prescribed accounting period beginning before 1st May 1997; and
- (b) the return for the prescribed accounting period in which effect is given to the increase or decrease in the business records of the taxable person has not been made, and was not required to have been made, before that date.”.

7. In regulation 111—

- (a) for paragraph (2) there shall be substituted the following—

“(2) No VAT may be treated as if it were input tax under paragraph (1) above—

- (a) in respect of—
  - (i) goods or services which had been supplied, or
  - (ii) save as the Commissioners may otherwise allow, goods which had been consumed,

- by the relevant person before the date with effect from which the taxable person was, or was required to be, registered;
- (b) subject to paragraph (2A) below, in respect of goods which had been supplied to, or imported or acquired by, the relevant person more than 3 years before the date with effect from which the taxable person was, or was required to be, registered;
  - (c) in respect of services performed upon goods to which sub-paragraph (a) or (b) above applies; or
  - (d) in respect of services which had been supplied to the relevant person more than 6 months before the date with effect from which the taxable person was, or was required to be, registered.”;
- (b) after paragraph (2) there shall be inserted the following—
- “(2A) Paragraph (2)(b) above does not apply where—
    - (a) the taxable person was registered before 1st May 1997; and
    - (b) he did not make any returns before that date.
  - (2B) In paragraph (2) above references to the relevant person are references to—
    - (a) the taxable person; or
    - (b) in the case of paragraph (1)(b) above, the person to whom the supply had been made, or who had imported or acquired the goods, as the case may be.”;
- (c) at the beginning of paragraph (3) there shall be inserted the words “Subject to paragraphs (3A) and (3B) below,”;
- (d) in paragraph (3) for the words “the first return the taxable person makes” there shall be substituted “the first return the taxable person is required to make”;
- (e) after paragraph (3) there shall be inserted the following—
- “(3A) Where the taxable person was registered before 1st May 1997 and has not made any returns before that date paragraph (3) above shall have effect as if for the words “the first return the taxable person is required to make” there were substituted the words “the first return the taxable person makes”.
  - (3B) The Commissioners shall not allow a person to make any claim under paragraph (3) above in terms such that the VAT concerned would fall to be claimed as if it were input tax more than 3 years after the date by which the first return he is required to make is required to be made.”;
- (f) at the beginning of paragraph (5) there shall be inserted the words “Subject to paragraph (6) below,”; and
- (g) after paragraph (5) there shall be inserted the following—
- “(6) Subject to paragraph (7) below, no claim under paragraph (5) above may be made more than 3 years after the date on which the supply of services was made.
  - (7) Paragraph (6) above does not apply where—
    - (a) the person ceased to be, or ceased to be required to be, registered before 1st May 1997; and
    - (b) the supply was made before that date.”.
- 8.** In regulation 115—
- (a) at the beginning of each of paragraphs (6) and (7) there shall be inserted the words “Subject to paragraph (8) below”; and
  - (b) after paragraph (7) there shall be added the following—

“(8) The Commissioners shall not allow the taxable person to use a return other than that specified in paragraph (6) above, paragraph (a) or (b) of that paragraph or paragraph (7) above (in each case, “the specified return”), as the case may be, unless it is the return for a prescribed accounting period commencing within 3 years of the end of the prescribed accounting period to which the specified return relates.”.

9. Part XVIII (Regulations 156 to 164) shall be omitted.

10. After regulation 165 there shall be inserted the following regulation—

**“Time within which a claim must be made**

**165A.**—(1) Subject to paragraph (3) below, a claim shall be made within the period of 3 years and 6 months following the later of—

- (a) the date on which the consideration (or part) which has been written off as a bad debt becomes due and payable to or to the order of the person who made the relevant supply; and
- (b) the date of the supply.

(2) A person who is entitled to a refund by virtue of section 36 of the Act, but has not made a claim within the period specified in paragraph (1) shall be regarded for the purposes of this Part as having ceased to be entitled to a refund accordingly.

(3) This regulation does not apply insofar as the date mentioned at sub-paragraph (a) or (b) of paragraph (1) above, whichever is the later, falls before 1st May 1997.”.

11. In regulation 166(1), after the words “on his return”, there shall be added the following “for the prescribed accounting period in which he becomes entitled to make the claim or, subject to regulation 165A, any later return”.

12. After regulation 166 there shall be inserted the following regulation—

**“Notice to purchaser of claim**

**166A.** Where the purchaser is a taxable person the claimant shall not before, but within 7 days from, the day he makes a claim give to the purchaser a notice in writing containing the following information—

- (a) the date of issue of the notice;
- (b) the date of the claim;
- (c) the date and number of any VAT invoice issued in relation to each relevant supply;
- (d) the amount of the consideration for each relevant supply which the claimant has written off as a bad debt;
- (e) the amount of the claim.”.

13. Regulation 168(2) shall be amended as follows—

- (a) the word “and” at the end of sub-paragraph (c) shall be omitted; and
- (b) after sub-paragraph (d) there shall be added—
  - “, and
  - (e) a copy of the notice required to be given in accordance with regulation 166A”.

14. Regulation 172(3) shall be amended as follows—

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(3) Paragraph (1A) of regulation 172 was inserted, and paragraph (2) substituted, by S.I. 1996/2960.

- (a) for the words “supply in question” in paragraph (1A) there shall be substituted the words “relevant supply”; and
- (b) for the word “supply” where it first appears in paragraph (2) there shall be substituted the words “relevant supply”.

15. After regulation 172 there shall be inserted the following regulations—

**“Writing off debts—margin schemes**

**172A.**—(1) This regulation applies where, by virtue of the claimant’s having exercised an option under an order made under section 50A(4) of the Act, the VAT chargeable on the relevant supply is charged by reference to the profit margin.

(2) Where this regulation applies the consideration for the relevant supply which is to be taken to have been written off as a bad debt shall not exceed the relevant amount.

(3) For the purposes of paragraph (2) above the relevant amount is—

(a) where either—

- (i) no payment has been received in relation to the relevant supply, or
- (ii) the total of such payments as have been received does not exceed the non-profit element,

the profit margin; or

(b) where the total of such payments as have been received exceeds the non-profit element, the amount (if any) by which the consideration for the relevant supply exceeds that total.

(4) In paragraph (3) above—

“non-profit element” means the consideration for the relevant supply less the profit margin.

**Writing off debts—tour operators margin scheme**

**172B.**—(1) This regulation applies where, by virtue of an order under section 53 of the Act, the value of the relevant supply falls to be determined otherwise than in accordance with section 19 of the Act.

(2) Where this regulation applies the consideration for the relevant supply which is to be taken to have been written off as a bad debt shall not exceed the relevant amount.

(3) For the purposes of paragraph (2) above the relevant amount is—

(a) where either—

- (i) no payment has been received in relation to the relevant supply, or
- (ii) the total of any such payments as have been received does not exceed the non-profit element,

the profit element; or

(b) where the total of such payments as have been received exceeds the non-profit element, the amount (if any) by which the consideration for the relevant supply exceeds that total.

(4) In this regulation—

“non-profit element” means the consideration for the relevant supply less the profit element;

“profit element” means the sum of—

- (a) the value of the relevant supply; and
- (b) the VAT chargeable on the relevant supply.”.

16. Immediately after Part XIX there shall be inserted the following—

## “PART XIXA

### REPAYMENT OF INPUT TAX WHERE CLAIM MADE UNDER PART XIX

#### **Interpretation of Part XIXA**

**172C.** Any expression used in this Part to which a meaning is given in Part XIX of these Regulations shall, unless the contrary intention appears, have the same meaning in this Part as it has in that Part.

#### **Repayment of input tax**

**172D.**—(1) Where—

- (a) a claim has been made; and
- (b) the purchaser has claimed deduction of the whole or part of the VAT on the relevant supply as input tax (“the deduction”),

the purchaser shall make an entry in his VAT account in accordance with paragraphs (2) and (3) below.

(2) The purchaser shall make a negative entry in the VAT allowable portion of that part of his VAT account which relates to the prescribed accounting period of his in which the claim has been made.

(3) The amount of the negative entry referred to in paragraph (2) above shall be such amount as is found by multiplying the amount of the deduction by a fraction of which the numerator is the amount of the claim and the denominator is the total VAT chargeable on the relevant supply.

(4) None of the circumstances to which this regulation applies is to be regarded as giving rise to any application of regulations 34 and 35.

#### **Restoration of an entitlement to credit for input tax**

**172E.**—(1) Where—

- (a) the purchaser has made an entry in his VAT account in accordance with regulation 172D (“the input tax repayment”);
- (b) he has made the return for the prescribed accounting period concerned, and has paid any VAT payable by him in respect of that period; and
- (c) the claimant has made a repayment in accordance with regulation 171 in relation to the claim concerned,

the purchaser shall make an entry in his VAT account in accordance with paragraphs (2) and (3) below.

(2) The purchaser shall make a positive entry in the VAT allowable portion of that part of his VAT account which relates to the prescribed accounting period of his in which the repayment has been made.

(3) The amount of the positive entry referred to in paragraph (2) above shall be such amount as is found by multiplying the amount of the input tax repayment by a fraction of which the numerator is the amount repaid by the claimant and the denominator is the total amount of the claim.

(4) None of the circumstances to which this regulation applies is to be regarded as giving rise to any application of regulations 34 and 35.”

New King’s Beam House 22 Upper Ground  
London SE1 9PJ  
25th March 1997

*Martin Brown*  
Commissioner of Customs and Excise

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## EXPLANATORY NOTE

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

These Regulations, which come into force on 1st May 1997, amend the Value Added Tax Regulations 1995 (“the principal Regulations”). The amendments consist of two discrete packages of measures: (i) they introduce a 3 year time limit for correction of errors and other adjustments, and (ii) they modify the operation of the provisions governing refunds of VAT relating to bad debts (“the bad debt relief scheme”). Regulations 4 to 8 and 10 belong in the first package and 3, 9 and 11 to 16 in the second. Certain of the first package of changes are subject to transitional provisions.

Regulation 3 amends regulation 6 of the principal Regulations so that, in certain cases where a business is transferred as a going concern, any entitlement to bad debt relief will be the transferee’s. Also, any liability to make repayment of input tax to the Commissioners (in cases to which the new Part XIXA applies) will be that of the transferee.

Regulation 4 amends regulation 29(1) of the principal Regulations so that where input tax has not been claimed in the prescribed accounting period in which the VAT became chargeable, the Commissioners cannot allow or direct a claim to be made more than 3 years after the date by which it should have been made.

Regulation 5 amends regulation 34 of the principal Regulations so that a taxable person will no longer be able to correct errors made on past VAT returns when more than 3 years have elapsed since the accounting period in which the error occurred.

Regulation 6 amends regulation 38 of the principal Regulations so that where there has been an increase or decrease in the consideration for a supply, a taxable person is not to adjust his VAT account more than 3 years after the period in which the original supply was made.

Regulation 7 amends regulation 111 of the principal Regulations, which covers exceptional claims for VAT relief in connection with tax incurred before and after VAT registration. VAT will not be deductible where goods were purchased more than 3 years before the effective date of registration and will not be allowed by the Commissioners on a claim which is more than 3 years late. The regulation also limits to 3 years (from the date of supply) the period in which a claim can be made for VAT deduction on supplies of services received after de-registration for VAT.

Regulation 8 amends regulation 115 of the principal Regulations so that an adjustment relating to input tax incurred on capital items (under what is known as the capital goods scheme) cannot be allowed by the Commissioners to be made in a return for a prescribed accounting period beginning later than 3 years after the end of the period in which the adjustment should have been made.

Regulation 9 omits regulations 156 to 164 of the principal Regulations. These regulations concern the “old scheme” for bad debt relief which has effectively been repealed by section 39(5) of the Finance Act 1997 (c. 16).

Regulation 10 inserts a new regulation 165A in the principal Regulations. Claims for bad debt relief must be made within 3 years 6 months of the time when the consideration for the supply was due or the date of supply, whichever was the later. Although this regulation affects bad debt relief, it also falls within the package of changes which introduces the 3 year time limit.

Regulation 11 amends regulation 166(1) of the principal Regulations so that a claim for bad debt relief cannot be made on a return for an accounting period prior to that in which the taxable person becomes entitled to relief.



Regulation 12 inserts a new regulation 166A in the principal Regulations. A person who has claimed bad debt relief is required to notify his claim, in writing within 7 days, to the purchaser of the supply, provided the purchaser is a taxable person.

Regulation 13 amends regulation 168(2) of the principal Regulations so that persons are required additionally to keep copies of any notices provided to purchasers under the new regulation 166A.

Regulation 14 amends regulation 172 to ensure that the wording is consistent with that used in the rest of Part XIX of the principal Regulations.

Regulation 15 inserts new regulations 172A and 172B in the principal Regulations. These make special provision regarding the amounts to be treated as written off as bad debts in cases where VAT is not accounted for by reference to the full consideration for the supply (“margin schemes”).

Regulation 16 inserts a new Part XIXA containing regulations 172C to 172E in the principal Regulations. Regulation 172D makes provision for certain entries to be made in their VAT accounts by purchasers. These are necessary where a bad debt relief claim has been made by the supplier and the purchaser’s input tax entitlement is consequently removed by operation of the new section 36(4A) of the Value Added Tax Act 1994 (which was inserted by section 39(2) of the Finance Act 1997). Regulation 172E operates where there is a repayment of the bad debt relief claim by the supplier and the purchaser is entitled to recovery of the amount paid by him under regulation 172D.