
STATUTORY INSTRUMENTS

1997 No. 1614

VALUE ADDED TAX

The Value Added Tax (Amendment) (No.3) Regulations 1997

<i>Made</i>	- - - -	<i>2nd July 1997</i>
<i>Laid before the House of Commons</i>	- - - -	<i>2nd July 1997</i>
<i>Coming into force</i>	- -	<i>3rd July 1997</i>

The Commissioners of Customs and Excise, in exercise of the powers conferred on them by sections 25(1), 26(1), (3) and (4) and 58 of, and paragraph 2(7) 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) (No. 3) Regulations 1997 and shall come into force on 3rd July 1997.

2. The Value Added Tax Regulations 1995⁽²⁾ shall be amended as follows.

3. For regulation 58 there shall be substituted—

“58.—(1) Without prejudice to paragraph (4) below, a taxable person shall be eligible to begin to operate the scheme from the beginning of any prescribed accounting period if—

(a) he has reasonable grounds for believing that the value of taxable supplies to be made by him in the period of one year then beginning will not exceed £350,000,

(b) he has made all returns which he is required to make, and has—

(i) paid to the Commissioners all such sums shown as due on those returns and on any assessments made either under section 76 of, or Schedule 11 to, the Act, or

(ii) agreed an arrangement with the Commissioners for any outstanding amount of such sums as are referred to in sub-paragraph (i) above to be paid in instalments over a specific period, and

(c) he has not in the period of one year preceding that time—

(i) been convicted of any offence in connection with VAT,

(1) 1994 c. 23; 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; to which there are amendments not relevant to these Regulations.

- (ii) made any payment to compound proceedings in respect of VAT under section 152 of the Customs and Excise Management Act 1979(3),
- (iii) been assessed to a penalty under section 60 of the Act, or
- (iv) by virtue of regulation 64(1), ceased to be entitled to continue to operate the scheme.

(2) The scheme shall not apply to—

- (a) lease purchase agreements;
- (b) hire purchase agreements;
- (c) conditional sale agreements;
- (d) credit sale agreements;
- (e) supplies where a VAT invoice is issued and full payment of the amount shown on the invoice is not due for a period in excess of 6 months from the date of the issue of the invoice; or
- (f) supplies of goods or services in respect of which a VAT invoice is issued in advance of the delivery or making available of the goods or the performance of the services as the case may be.

(3) Sub-paragraph (2) (f) above shall not apply where goods have been delivered or made available in part or where services have been performed in part and the VAT invoice in question relates solely to that part of the goods which have been delivered or made available or that part of the services which have been performed.

(4) A person shall not be entitled to begin to operate the scheme if the Commissioners consider it is necessary for the protection of the revenue that he shall not be so entitled.”.

4. In regulation 59 after the words “by publishing a fresh notice” there shall be inserted “or publishing a notice which amends an existing notice”.

5. For regulation 60 there shall be substituted—

“60.—(1) Without prejudice to regulation 64 below, a person shall withdraw from the scheme immediately at the end of a prescribed accounting period of his if the value of taxable supplies made by him in the period of one year ending at the end of the prescribed accounting period in question has exceeded £437,500.

(2) Subject to regulations 61 to 63 below a person may withdraw from the scheme at the end of any prescribed accounting period.

(3) The requirement in paragraph (1) above shall not apply where the Commissioners allow or direct otherwise.”.

6. For regulation 61 there shall be substituted—

“61. A person who ceases to operate the scheme either of his own volition or because the value of taxable supplies made by him exceeds the level provided for in regulation 60(1), shall account for and pay on a return made for the prescribed accounting period in which he ceased to operate the scheme—

- (a) all VAT which he would have been required to pay to the Commissioners during the time when he operated the scheme, if he had not then been operating the scheme, less
- (b) all VAT accounted for and paid to the Commissioners in accordance with the scheme, subject to any adjustment for credit for input tax.”.

(3) 1979 c. 2; section 152 is applied to all offences relating to VAT by section 72(12) of the Value Added Tax Act 1994 (c. 23).

7. For regulation 62 there shall be substituted—

“62. Where a person operating the scheme becomes insolvent he shall within 2 months of the date of insolvency account for VAT due on all supplies made and received up to the date of insolvency which has not otherwise been accounted for, subject to any credit for input tax.”.

8. In regulation 63—

(a) for paragraph (1) there shall be substituted—

“(1) Where a person operating the scheme ceases business or ceases to be registered he shall within 2 months or such longer period as the Commissioners may allow, make a return accounting for, and pay, VAT due on all supplies made and received up to the date of cessation which has not otherwise been accounted for, subject to any adjustment for credit for input tax.”;

(b) for paragraph (2) there shall be substituted—

“(2) Where a business or part of a business carried on by a person operating the scheme is transferred as a going concern and regulation 6(1) does not apply, the transferor shall within 2 months or such longer period as the Commissioners may allow, make a return accounting for, and pay, VAT due on all supplies made and received which has not otherwise been accounted for, subject to credit for input tax.”; and

(c) in paragraph 3 for “6(2)” there shall be substituted “6(1)”.

9. For regulation 64 there shall be substituted—

“64.—(1) A person shall not be entitled to continue to operate the scheme where—

- (a) he has, while operating the scheme, been convicted of an offence in connection with VAT or has made a payment to compound such proceedings under section 152 of the Customs and Excise Management Act 1979,
- (b) he has while operating the scheme been assessed to a penalty under section 60 of the Act,
- (c) he has failed to leave the scheme as required by regulation 60(1) above, or
- (d) the Commissioners consider it necessary for the protection of the revenue that he shall not be so entitled.

(2) A person who, by virtue of paragraph (1) above, ceases to be entitled to continue to operate the scheme shall account for and pay on a return made for the prescribed accounting period in which he ceased to be so entitled—

- (a) all VAT which he would have been required to pay to the Commissioners during the time when he operated the scheme, if he had not then been operating the scheme, less
- (b) all VAT accounted for and paid to the Commissioners in accordance with the scheme, subject to any adjustment for credit for input tax.”.

10. Regulation 113 shall be amended as follows—

(a) in sub-paragraph (b)—

- (i) for the words “land or a building or part of a building” there shall be substituted “land, a building or part of a building or a civil engineering work or part of a civil engineering work”; and
- (ii) after the words “consist of rent” there shall be added “(including charges reserved as rent) which is neither payable nor paid more than 12 months in advance nor invoiced for a period in excess of 12 months”;

- (b) in sub-paragraph (d) (i) for the words “is treated” there shall be substituted “was, on or before 1st March 1997, treated”;
- (c) in sub-paragraph (d) (ii) for the word “is” there shall be substituted “was”;
- (d) the word “and” at the end of sub-paragraph (e) shall be omitted; and
- (e) after sub-paragraph (f) there shall be added—

“

- (g) a civil engineering work constructed by the owner and first brought into use by him on or after 3rd July 1997 where the aggregate of—
 - (i) the value of the taxable grants relating to the land on which the civil engineering work is constructed made to the owner on or after 3rd July 1997, and
 - (ii) the value of all the taxable supplies of goods and services, other than any that are zero-rated, made or to be made to him for or in connection with the construction of the civil engineering work on or after 3rd July 1997, is not less than £250,000, and
- (h) a building which the owner refurbishes or fits out where the value of capital expenditure on the taxable supplies of services and of goods affixed to the building, other than any that are zero-rated, made or to be made to the owner for or in connection with the refurbishment or fitting out in question on or after 3rd July 1997 is not less than £250,000”.

11. Regulation 114 shall be amended as follows—

- (a) in paragraph (3)—
 - (i) in sub-paragraph (b) after the words “part of the building” there shall be inserted “or civil engineering work or part of the civil engineering work”; and
 - (ii) for the words “paragraphs (4) to (7)” there shall be substituted “paragraphs (4) to (5B) and (7)”;
- (b) in paragraph (4)—
 - (i) for the words “paragraphs (6) and (7)” there shall be substituted “paragraphs (5A), (5B) and (7)”;
 - (ii) in sub-paragraph (e) for the words “(e) or (f)” there shall be substituted “(e), (f), (g) or (h)” and after the words “the building or the altered building or the extension or annex” there shall be inserted “or the civil engineering work or the building which has been refurbished or fitted out”;
- (c) in paragraph (5) for the words “paragraphs (6) and (7)” there shall be substituted “paragraphs (5A), (5B) and (7)”;
- (d) after paragraph (5) there shall be inserted—

“(5A) On the first occasion during the period of adjustment applicable to a capital item that the owner of the item—

 - (a) being a registered person subsequently becomes a member of a group under section 43 of the Act;
 - (b) being a member of a group under section 43 ceases to be a member of that group (whether or not he becomes a member of another such group immediately thereafter); or
 - (c) transfers the item in the course of the transfer of his business or part of his business as a going concern (the item therefore not being treated as supplied)

in circumstances where the new owner is not, under regulation 6(1) above, registered with the registration number of and in substitution for the transferor, the interval then applying shall end on the day before he becomes a member of a group or the day that he ceases to be a member of the group or transfers the business or part of the business (as the case may require) and thereafter each subsequent interval (if any) applicable to the capital item shall end on the successive anniversaries of that day.

(5B) Where the extent to which a capital item is used in making taxable supplies does not change between what would, but for this paragraph, have been the first interval and the first subsequent interval applicable to it and the length of the two intervals taken together does not exceed 12 months the first interval applicable to the capital item shall end on what would have been the day that the first subsequent interval expired.”;

- (e) paragraph (6) shall be omitted; and
- (f) for paragraph (7) there shall be substituted—

“(7) Where the owner of a capital item transfers it during the period of adjustment applicable to it in the course of the transfer of his business or a part of his business as a going concern (the item therefore not being treated as supplied) and the new owner is, under regulation 6(1) above, registered with the registration number of, and in substitution for the transferor, the interval applying to the capital item at the time of the transfer shall end on the last day of the longer period applying to the new owner immediately after the transfer or, if no longer period then applies to him, shall end on the last day of his tax year following the day of transfer.”.

12. Regulation 115 shall be amended as follows—

- (a) in paragraph (3) between the words “and the owner shall” and “calculate for each” there shall be inserted “, except where paragraph (3A) below applies,”;
- (b) after paragraph (3) there shall be inserted—

“(3A) This paragraph applies if the total amount of input tax deducted or deductible by the owner of a capital item as a result of the initial deduction, any adjustments made under paragraph (1) or (2) above and the adjustment which would apart from this paragraph fall to be made under paragraph (3) above would exceed the output tax chargeable by him on the supply of that capital item.

(3B) Save as the Commissioners may otherwise allow, where paragraph (3A) above applies the owner may deduct, or as the case may require, shall pay to the Commissioners such amount as results in the total amount of input tax deducted or deductible being equal to the output tax chargeable by him on the supply of the capital item.”;

- (c) in paragraph (5)—
 - (i) in sub-paragraph (a) before the words “(if any)” there shall be inserted “(including charges reserved as rent) which is neither payable nor paid more than 12 months in advance nor invoiced for a period in excess of 12 months”; and
 - (ii) in sub-paragraph (c) for the words “(e) and (f)” in both places that they appear there shall be substituted “(e), (f), (g) or (h)”;
- (d) in paragraph (6)—
 - (i) after the words “to an end under” there shall be inserted “regulation 114(5A)”;
 - (ii) in sub-paragraph (a) the words “regulation 114(6)(b)” shall be omitted; and
 - (iii) in sub-paragraph (b) the words “regulation 114(7)” shall be omitted.

13. Regulation 116 shall be amended as follows—

- (a) in paragraph (1)—

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- (i) after the words “regulation 115(3)” there shall be inserted “and (3B)”; and
- (ii) after the words “paragraphs (2)” there shall be inserted “, (A2)”; and
- (b) after paragraph (1) there shall be inserted—
 - “(A2) Subject to paragraph (2) below, the attribution of the total input tax on a capital item for subsequent intervals determined in accordance with regulation 114(5A) above shall be determined by such method as is agreed with the Commissioners.”.

New King’s Beam House 22 Upper Ground
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2nd July 1997

D. J. Howard
Commissioner of Customs and Excise

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 3rd July 1997, amend Parts VIII (Cash Accounting) and XV (Adjustments to the Deduction of Input Tax on Capital Items) of the Value Added Tax Regulations 1995 (S.I.1995/2518) (the “principal Regulations”). Regulations 3 to 9 amend Part VIII and regulations 10 to 13 amend Part XV of the principal Regulations.

Regulation 1 deals with commencement.

Regulation 3 amends regulation 58 of the principal Regulations to exclude from the scheme supplies where full payment of the amount shown on the invoice is not due for more than 6 months from the date of issue of the invoice, and to exclude supplies where invoices are issued in advance of those supplies taking place. The regulation also inserts in regulation 58 a new provision allowing the Commissioners of Customs and Excise to withdraw entitlement to begin to use the scheme if they consider it necessary for the protection of the revenue.

Regulation 4 amends regulation 59 of the principal Regulations to permit the scheme to be varied by publication of a notice which amends an existing notice.

Regulation 5 amends regulation 60 of the principal Regulations to require a person to leave the scheme at the end of any prescribed accounting period in which their annual taxable turnover exceeds the tolerance limit of £437,500, unless the Commissioners allow or direct otherwise.

Regulation 6 amends regulation 61 of the principal Regulations to require a person leaving the scheme, for whatever reason, to account for outstanding tax on the VAT return for the prescribed accounting period in which they cease to use the scheme.

Regulations 7 and 8 make amendments to the principal Regulations for greater clarity and consistency. Regulation 8 also corrects an incorrect reference in the principal Regulations.

Regulation 9 amends regulation 64 of the principal Regulations to remove disqualification from use of the scheme where, while using the scheme, a person has been assessed to a penalty under section 63, 67 or 69 of the Value Added Tax Act 1994 or to a surcharge under section 59 of that Act, or has claimed input tax as though he has not been operating the scheme.

Regulation 10 amends regulation 113 of the principal Regulations to include as capital items both civil engineering works and refurbishment and fitting out costs for existing properties where their value is not less than £250,000 and to provide for the taxable value of rent which is payable or paid more than 12 months in advance or is invoiced for a period in excess of 12 months to be included in the value of the taxable interest supplied to the owner when determining, for the purposes of regulation 113(b), whether its value is £250,000 or more. The regulation also makes consequential amendments to regulation 113 of the principal Regulations arising from abolition of the developer’s self-supply.

Regulation 11 amends regulation 114 of the principal Regulations to provide that where the owner of a capital item moves into or out of a VAT group, or transfers the capital item in the course of transferring his business or part of his business as a going concern (except where the new owner is registered with the registration number of, and in substitution for, the transferor), each subsequent interval applicable to the item under the scheme will be a whole year. It also provides that where the first and second intervals applicable to a capital item would not exceed 12 months and there has been no change in the extent to which the capital item is used to make taxable supplies in that time, the two intervals are combined to become the first interval. The regulation also makes consequential amendments to regulation 114 of the principal Regulations arising from the amendments made by

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regulation 10, in particular to provide for the adjustment period for the new capital items added by that regulation to be ten years.

Regulation 12 amends regulation 115 of the principal Regulations to restrict the total amount of input tax deducted in respect of a capital item which is disposed of during the period of adjustment applicable to it under the scheme. The owner is required to compare the total input tax deducted or deductible (including the amount initially deducted and all subsequent adjustments, including the adjustment which would apply on disposal) to the output tax chargeable on the disposal of the capital item. If the total input tax exceeds the output tax chargeable on the disposal the owner is required to pay to the Commissioners, or restrict the input tax deductible on the final adjustment to, an amount which ensures that the two totals are equal. The regulation also makes consequential amendments to regulation 115 of the principal Regulations arising from the amendments made by regulations 10 and 11.

Regulation 13 amends regulation 116 of the principal Regulations as a consequence of the amendment made by regulation 11 regarding the movement of owners of capital items into or out of VAT groups and the transfer of capital items in the course of the transfer of a business or part of a business as a going concern. It provides that the method of ascertaining the extent of taxable use of a capital item for subsequent intervals determined in accordance with that amendment must be agreed with the Commissioners.