

**2007 No. 1418**

**VALUE ADDED TAX**

**The Value Added Tax (Amendment) (No.3) Regulations 2007**

*Made* - - - - *9th May 2007*

*Laid before the House of Commons* *10th May 2007*

*Coming into force* - - *1st June 2007*

The Commissioners for Her Majesty's Revenue and Customs<sup>(a)</sup> make the following regulations in exercise of the powers conferred by sections 26AB (4), (5) and (6), 26B (1), (4) and (9) and 58 of, and paragraph 2 (1), (3A), (3B), (7) and (10) of Schedule 11 to, the Value Added Tax Act 1994<sup>(b)</sup>:

1. These Regulations may be cited as the Value Added Tax (Amendment) (No.3) Regulations 2007 and come into force on 1st June 2007.
2. The Value Added Tax Regulations 1995<sup>(c)</sup> are amended as follows.
3. After Part 4 (EC Sales Statements) insert—

**“PART 4A**

**REVERSE CHARGE SALES STATEMENTS**

**Interpretation of Part 4A**

**23A.** In this Part—

“relevant supply” means a supply of goods to which section 55A(6)<sup>(d)</sup> of the Act applies (customers to account for tax on supplies of goods of a kind used in missing trader intra-community fraud);

“statement” means the statement which a taxable person is required to submit in accordance with this Part of these Regulations.

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(a) The functions of the Commissioners of Customs and Excise were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005 (c.11). Section 50(1) of that Act provides that a reference to the Commissioners of Customs and Excise shall be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs.

(b) 1994 c.23; section 26B was inserted by section 23(1) of the Finance Act 2002 (c.23). Section 26AB and paragraph 2(3A) and (3B) of Schedule 11 were inserted by section 19(2) and (7) of the Finance Act 2006 (c.25).

(c) S.I. 1995/2518; relevant amending instruments are 2002/1142, 2002/3027, 2003/532, 2003/1069, 2003/3220.

(d) Section 55A was inserted by section 19(1) of the Finance Act 2006.

### **Notification of first relevant supply**

**23B.**—(1) On the first occasion on which a person makes a relevant supply, he must notify the Commissioners of that fact within 30 days of the day on which the supply is made.

(2) The notification referred to in paragraph (1) must be made on-line by using a portal provided by the Commissioners.

(3) If the portal referred to in paragraph (2) is unavailable for any reason, the Commissioners may allow the notification to be made by email.

### **Submission of Statements**

**23C.**—(1) Every taxable person who, in any prescribed accounting period, has made a relevant supply must, in relation to that period, submit to the Commissioners, no later than the day by which he is required to make a return for that period and in such a form and manner as may be determined by the Commissioners in a notice published by them (or otherwise), a statement containing the following prescribed particulars—

- (a) his registration number;
- (b) the registration number of each person to whom he has made a relevant supply; and
- (c) for each month falling within the prescribed accounting period, the total value of the relevant supplies made to each person mentioned in sub-paragraph (b).

(2) If, in any prescribed accounting period, no relevant supplies are made, a statement to that effect must be submitted to the Commissioners in such form and manner as may be determined by them in a notice published by them (or otherwise).

(3) Sub-paragraph (2) does not apply where a taxable person has notified the Commissioners that he has ceased making relevant supplies without intending subsequently to make such supplies.

(4) A statement must contain a declaration made by the taxable person that it is true and complete.”.

#### **4. In Part 5 (accounting, payment and records)—**

(a) in regulation 32(3)—

(i) after sub-paragraph (b), insert—

“(ba) a total of the tax which the taxable person is required to account for and pay on behalf of the supplier.”;

(ii) in sub-paragraph (c), for “or 38” substitute “,38 or 38A”.

(b) in regulation 38—

(i) after paragraph (1B) insert—

“(1C) Where an increase or decrease in consideration relates to a supply in respect of which it is for the recipient, on the supplier’s behalf, to account for and pay the tax, the prescribed accounting period referred to in paragraph (1) is that of the recipient, and not the maker, of the supply.

But this paragraph does not apply to the circumstances referred to in regulation 38A.”.

(ii) at the beginning of paragraph (3) insert “Subject to paragraph (3A) below.”;

(iii) after paragraph (3) insert—

“(3A) Where an increase or decrease in consideration relates to a supply on which the VAT has been accounted for and paid by the recipient of the supply, any entry required to be made under paragraph (3) shall be made in the recipient’s VAT account and not that of the supplier.”;

(c) after regulation 38 insert—

**“Adjustments where a supply becomes, or ceases to be, a supply to which section 55A(6) of the Act applies (customers to account for tax on supplies of goods of a kind used in missing trader intra-community fraud)**

**38A.**—(1) Where regulation 38 applies and—

- (a) as a result of an increase in consideration for a supply it becomes one to which section 55A(6) of the Act applies; or
- (b) as a result of a decrease in consideration for a supply it ceases to be one to which that section applies,

both the maker, and the recipient, of the supply shall make such entries in the VAT payable portion of their VAT accounts as are necessary to account for that fact.

(2) Paragraphs (5) and (6) of regulation 38 shall apply to any entry required by this regulation as they apply to any entry required by that regulation.

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

(d) in regulation 40(1), after sub-paragraph (a), insert—

“(aa) all VAT which he is required to pay on behalf of the supplier.”.

**5.** In Part 7A (flat rate scheme for small businesses), in regulation 55C—

- (a) in paragraph (1), for “and (5)” substitute “,(5) and (6)”;
- (b) in paragraph (3), for “paragraph (4)” substitute “paragraphs (4) and (6)”;
- (c) after paragraph (5) insert—

“(6) Where a supply of goods to which section 55A(6) of the Act applies (customers to account for tax on supplies of goods of a kind used in missing trader intra-community fraud) is made to, or made by, a flat rate trader, that supply is neither a relevant purchase nor a relevant supply of his.”.

**6.** In Part 8 (cash accounting), in regulation 58(2) omit “or” at the end of sub-paragraph (e) and, after sub-paragraph (f), insert—

“; or

- (g) supplies of goods in respect of which it is for the recipient, on the supplier’s behalf, to account for and pay the VAT.”.

**7.** After Part 19B (Repayment of input tax where consideration not paid), insert—

## “PART 19C

### ADJUSTMENT OF OUTPUT TAX IN RESPECT OF SUPPLIES TO WHICH SECTION 55A (6) OF THE ACT APPLIES

**172K.** This Part applies where a person is entitled, by virtue of section 26AB(2) of the Act, to make an adjustment to the amount of VAT which he is required to account for and pay under section 55A(6) of the Act (“the adjustment”).

#### **Adjustment of output tax**

**172L.**—(1) The person must make the adjustment by making a negative entry in the VAT payable portion of that part of his VAT account which relates to the same prescribed accounting period of his as that in which he is required to make an entry in accordance with regulation 172H(2).

(2) The amount of the negative entry referred to in paragraph (1) above must be equal to the amount of the entry that is required to be made in accordance with regulation 172H(2).

### **Readjustment of output tax**

**172M.**—(1) Where a person—

- (a) has made an entry in his VAT account in accordance with regulation 172L; and
- (b) in relation to the same supply, he subsequently makes an entry in his VAT account in accordance with regulation 172I,

he must make an entry in his VAT account in accordance with paragraphs (2) and (3) below.

(2) The person must make a positive entry in the VAT payable portion of that part of his VAT account which relates to the same prescribed accounting period of his as that in which he makes an entry in accordance with regulation 172I.

(3) The amount of the positive entry referred to in paragraph (2) above must be equal to the amount of the entry he makes in accordance with regulation 172I.

**172N.** None of the circumstances to which this Part applies is to be regarded as giving rise to any application of regulations 34 and 35.”.

*Paul Gray*  
*Mike Eland*

9th May 2007

Two of the Commissioners for Her Majesty’s Revenue and Customs

## **EXPLANATORY NOTE**

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

These Regulations, which come into force on 1st June 2007, amend the Value Added Tax Regulations 1995 (S.I.1995/2518) (“the principal Regulations”).

Regulation 3 inserts a new Part 4A into the principal Regulations. This Part contains new regulations 23A to 23C. These provide for the notification to the Commissioners of the first occasion on which a person makes a supply to which section 55A(6) of the Value Added Tax Act 1994 (“the Act”) applies (customers to account for tax on supplies of goods of a kind used in missing trader intra-community fraud) (“relevant supplies”) and for the submission of statements to the Commissioners containing prescribed particulars about such supplies.

Regulation 4 amends regulations 32(3), 38 and 40(1), and inserts a new regulation 38A, in Part 5 of the principal Regulations (accounting, payment and records), as a consequence of the introduction of section 55A of the Act.

Regulation 5 amends regulation 55C in Part 7A of the principal Regulations (flat rate scheme for small businesses) to exclude relevant supplies from the scheme.

Regulation 6 amends regulation 58(2) in Part 8 of the principal Regulations (cash accounting) to exclude relevant supplies from the cash accounting scheme.

Regulation 7 inserts a new Part 19C into the principal Regulations. This Part contains new regulations 172K to 172N. These provide for the making of adjustments and readjustments to the amount of tax which a person is required to account for and pay under section 55A(6) of the Act if, as a result of section 26A of the Act, he is taken not to have been entitled to any credit for input tax in relation to the supply or any credit for input tax is restored under section 26A.

A full regulatory impact assessment of the effect that section 55A and this instrument will have on the costs of business and the voluntary sector is available at [www.hmrc.gsi.gov.uk](http://www.hmrc.gsi.gov.uk) and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.

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