
STATUTORY INSTRUMENTS

2009 No. 2978

The Value Added Tax (Amendment) (No. 4) Regulations 2009

4. After regulation 25, insert—

“**25A.**—(1) Where a person makes a return required by regulation 25 using electronic communications, such a method of making a return shall be referred to in this Part as an “electronic return system”.

(2) Where a person makes a return on the form numbered 4 in Schedule 1 to these Regulations (“Form 4”) or, in the case of a final return, on the form numbered 5 in Schedule 1 to these Regulations (“Form 5”), such a method of making a return shall be referred to in this Part as a “paper return system”.

(3) A specified person must make a specified return using an electronic return system.

(4) In any case where an electronic return system is not used, a return must be made using a paper return system.

(5) In this regulation a “specified person” means a person who—

(a) is registered for VAT with an effective date of registration on or after 1st April 2010 whether or not such a person is registered in substitution for another person under regulation 6 (transfer of a going concern), or

(b) is registered for VAT with an effective date of registration on or before 31st March 2010 and has as at 31st December 2009 or any date thereafter an annual VAT exclusive turnover of £100,000 or more whether or not that person’s turnover subsequently falls below this level,

provided that, in each case, that person has been notified as required by paragraph (7) below.

(6) However a person—

(a) who the Commissioners are satisfied is a practising member of a religious society or order whose beliefs are incompatible with the use of electronic communications, or

(b) to whom an insolvency procedure as described in any of paragraphs (a) to (f) of section 81(4B) of the Act⁽¹⁾ is applied at the time when he would otherwise be notified under paragraph (7) below

is not a specified person for the purposes of this regulation.

(7) Where the Commissioners consider that a person is a specified person, they shall notify that person of that fact in writing.

(8) Where an electronic return system is used, it must take a form approved by the Commissioners in a specific or general direction.

(9) Where a paper return system is used, a return required by regulation 25(1) must be made on Form 4 and a return required by regulation 25(4) must be made on Form 5.

(10) A direction under paragraph (8) above may in particular—

⁽¹⁾ Section 81(4B) was inserted by section 27 of the Finance Act 1995 (c. 4); section 81(4B)(a) was substituted by S.I. 2003/2096.

- (a) modify or dispense with any requirement of Form 4 or Form 5 (as appropriate),
- (b) specify circumstances in which the electronic return system may be used, or not used, by or on behalf of the person required to make the return.

For the purposes of sub-paragraph (b), the direction may specify different circumstances for different cases.

(11) An electronic return system shall incorporate an electronic validation process.

(12) Subject to paragraph (13) below and unless the contrary is proved—

- (a) the use of an electronic return system shall be proved to have resulted in the making of the return to the Controller only if this has been successfully recorded as such by the relevant electronic validation process,
- (b) the time of making the return to the Controller using an electronic return system shall be conclusively presumed to be the time recorded as such by the relevant electronic validation process, and
- (c) the person delivering the return to the Controller shall be presumed to be the person identified as such by any relevant feature of the electronic return system.

(13) No return shall be treated as having been made using an electronic return system unless it is in the form required by paragraph (8) above.

The requirement in paragraph (8) above incorporates the matters mentioned in paragraph (10) above.

(14) A return made using an electronic return system carries the same consequences as a return made using a paper return system, except in relation to any matter for which alternative or additional provision is made by or under this regulation.

(15) In relation to returns made for prescribed accounting periods which end on or after 31 March 2011, a specified person who fails to comply with paragraph (3) above is liable to a penalty.

(16) But a specified person who has a reasonable excuse for so failing to comply is not liable to a penalty.

(17) The table below sets out the penalties depending on the level of turnover.

<i>Annual VAT exclusive turnover</i>	<i>Penalty</i>
<i>£22,800,001 and above</i>	<i>£400</i>
<i>£5,600,001 to £22,800,000</i>	<i>£300</i>
<i>£100,001 to £5,600,000</i>	<i>£200</i>
<i>£100,000 and under</i>	<i>£100</i>

(18) A person may appeal against the Commissioners' decision to impose a penalty only on the ground that—

- (a) that person is not a specified person,
- (b) the amount of the penalty is incorrect,
- (c) paragraph (3) above was complied with, or
- (d) paragraph (16) above applies.

(19) In calculating a person's annual VAT exclusive turnover for the purposes of paragraph (5)(b) above and the table in paragraph (17) above, the Commissioners shall use

any available figures which they determine to be fair and reasonable in the circumstances and such figures shall be taken to be the correct figures for the purposes of the calculation.

(20) Additional time is allowed to make—

- (a) a return using an electronic return system or a paper return system for which any related payment is made solely by means of electronic communications (see regulation 25(1) – time for making return, and regulations 40(2) to 40(4) – payment of VAT), or
- (b) a return using an electronic return system for which no payment is required to be made.

That additional time is only as the Commissioners may allow in a specific or general direction, and such a direction may allow different times for different means of payment.

The Commissioners need not give a direction pursuant to this paragraph.

(21) Where a corporate body is registered in the names of its divisions pursuant to section 46(1) of the Act, each such separately registered division is “a person” for the purposes of paragraphs (5), (12) and (19) above.

(22) In this regulation—

- (a) a “specified return” is a return required by regulation 25 submitted for any accounting period which commences on or after 1st April 2010,
- (b) a reference to an appeal is a reference to an appeal made under section 83(1)(zc) of the Act⁽²⁾,
- (c) “reasonable excuse” shall have the same limitation as it does in section 71(1)(b) of the Act.

(23) In paragraphs (8) and (20) above “direction” and “direct” refer only to a current direction, and a direction is not current to the extent that it is varied, replaced or revoked by another Commissioners’ direction.”.

(2) Section 83(zc) was inserted by section 93(8) of the Finance Act 2007 (c. 11) with effect from 19 July 2007; subsection (1) was added by S.I. 2009/56 with effect from 1 April 2009.