

2019 No. 1048

VALUE ADDED TAX

The Value Added Tax (Amendment) Regulations 2019

Made - - - - 25th June 2019

Laid before the House of Commons 27th June 2019

Coming into force - - 1st September 2019

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by paragraph 2(10)(b) to (e) and (11) of Schedule 11 to the Value Added Tax Act 1994(a).

Citation, commencement and effect

1. These Regulations may be cited as the Value Added Tax (Amendment) Regulations 2019 and come into force on 1st September 2019.

2.—(1) The amendments made by these Regulations have effect in relation to supplies for which there is an increase or decrease in consideration that occurs on or after 1st September 2019.

(2) For the purposes of this regulation, an increase or decrease in consideration—

- (a) means an increase or decrease in consideration as described in regulation 24A of the Value Added Tax Regulations 1995(b) as inserted by regulation 6 of these Regulations, and
- (b) occurs at the time specified in regulation 24B of the Value Added Tax Regulations 1995 as inserted by regulation 6 of these Regulations.

Amendment of the Value Added Tax Regulations 1995

3. The Value Added Tax Regulations 1995 are amended as follows.

4. After regulation 15B insert—

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- (a) 1994 c. 23 (“the Act”). Section 96(1) of the Act defines “the Commissioners” as meaning “the Commissioners of Customs and Excise” and “regulations” as meaning regulations made by the Commissioners under the Act. The functions of the Commissioners of Customs and Excise were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(1) of the Commissioners for Revenue and Customs Act 2005 (c. 11), section 50(1) of which 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. Sub-paragraph (10)(d) and (e) of paragraph 2 of Schedule 11 was inserted by section 38(3) of the Finance Act 1996 (c. 8).
 - (b) S.I. 1995/2518. Relevant amendments to the Value Added Tax Regulations 1995 have been as follows. Regulation 15B was inserted by S.I. 2012/1899. Regulation 16A was inserted by S.I. 2012/2951. Regulation 24 was amended by S.I. 1999/3114, S.I. 2003/1485, S.I. 2003/2096 and S.I. 2018/261. Regulation 31 was amended by S.I. 1996/1250, S.I. 2003/3220 and S.I. 2018/261. Regulation 32 was amended by S.I. 2007/1418 and S.I. 2019/60. Regulation 34 was amended by S.I. 1997/1086, S.I. 2008/1482, S.I. 2009/586 and S.I. 2012/1899. Regulation 38 was amended by S.I. 1997/1086, S.I. 2007/1418 and S.I. 2009/586. Regulation 38ZA was inserted by S.I. 2014/548 and amended by paragraph 6 of Schedule 17 to the Finance Act 2019 (c. 1). Regulation 38A was inserted by S.I. 2007/1418 and amended by S.I. 2010/2240.

“Changes in consideration: debit notes and credit notes

15C.—(1) This regulation applies to increases and decreases in consideration as described in regulation 24A.

(2) Where there is an increase in consideration, the supplier must, no later than the end of the period of 14 days beginning with the day on which the increase occurs, provide to the recipient of the supply a debit note as specified in paragraph (3).

(3) For the purposes of this regulation, a “debit note” is a document which includes the following particulars—

- (a) the identifying number of the document,
- (b) the date of issue of the document,
- (c) the name, address and registration number of the supplier,
- (d) the name and address of the recipient of the supply,
- (e) the identifying number and date of issue of the VAT invoice or invoices relating to the supply for which there is an increase in consideration,
- (f) a description sufficient to identify the goods or services supplied,
- (g) the amount of the increase in consideration excluding VAT,
- (h) the rate and the amount (expressed in sterling) of the VAT chargeable in respect of the increase in consideration.

(4) The requirement in paragraph (2) to provide a debit note does not apply in cases where, in relation to the increase in consideration, a document having the same purpose as a debit note has been provided by the supplier to the recipient of the supply before 1st September 2019.

(5) Where there is a decrease in consideration, the supplier must, no later than the end of the period of 14 days beginning with the day on which the decrease occurs, provide to the recipient of the supply a credit note as specified in paragraph (6).

(6) For the purposes of this regulation, a “credit note” is a document which includes the following particulars—

- (a) the identifying number of the document,
- (b) the date of issue of the document,
- (c) the name, address and registration number of the supplier,
- (d) the name and address of the recipient of the supply,
- (e) the identifying number and date of issue of the VAT invoice or invoices relating to the supply for which there is a decrease in consideration,
- (f) a description sufficient to identify the goods or services supplied,
- (g) the amount of the decrease in consideration excluding VAT,
- (h) the rate and the amount (expressed in sterling) of the VAT credited in respect of the decrease in consideration.

(7) The requirement in paragraph (5) to provide a credit note does not apply in cases where, in relation to the decrease in consideration, a document having the same purpose as a credit note has been provided by the supplier to the recipient of the supply before 1st September 2019.

(8) In cases where a supplier was not required by these regulations to provide a VAT invoice in relation to the original supply, the requirement in paragraph (2) to provide a debit note and the requirement in paragraph (5) to provide a credit note do not apply unless the recipient of the supply is a taxable person and requests a debit note or a credit note (as the case may be) from the supplier.

(9) Where a request described in paragraph (8) has been made—

- (a) the period specified in paragraph (2) or (5) (as the case may be) begins with the day on which the request is made; and
- (b) paragraph (3)(e) or (6)(e) (as the case may be) does not apply.

(10) In relation to any increase or decrease in consideration for supplies to which regulation 16A applies, paragraph (3)(a), (d) and (e) or (6)(a), (d) and (e) (as the case may be) does not apply.

(11) Where there is a decrease in consideration to which regulation 38ZA applies—

- (a) paragraphs (5) to (10) do not apply; and
- (b) if the final consumer requests an accounting document in relation to the decrease in consideration, the first supplier must, no later than the end of the period of 14 days beginning with the day on which the request is made, provide to the final consumer a document which includes the following particulars—
 - (i) the date of issue of the document,
 - (ii) the name, address and registration number of the person issuing the document,
 - (iii) a description sufficient to identify the goods supplied,
 - (iv) the amount of the decrease in consideration excluding VAT,
 - (v) the rate and the amount (expressed in sterling) of the VAT credited in respect of the decrease in consideration.

(12) Where the recipient of the supply or, in cases where it is applicable, the final consumer agrees, the documents described in paragraphs (3), (6) and (11)(b) may be provided in electronic format.

(13) For the purposes of this regulation—

- (a) an increase or decrease in consideration occurs at the time specified in regulation 24B; and
- (b) “final consumer” and “first supplier” have the meanings given by regulation 38ZA(2).

(14) The Commissioners may, in such cases as they think fit, dispense with or relax the requirements in this regulation in such manner as they think fit.”.

5. In regulation 24 omit the definition of “increase in consideration” and “decrease in consideration”.

6. After regulation 24 insert—

“24A. For the purposes of this Part—

- (a) an increase in consideration is an increase in the consideration for a supply made by a taxable person in respect of which the recipient of the supply or another person acting on behalf of, or pursuant to an arrangement with, the recipient of the supply pays or becomes liable to pay the amount of the increase to the supplier;
- (b) a decrease in consideration is a decrease in the consideration for a supply made by a taxable person in respect of which the supplier pays the amount of the decrease to the recipient of the supply or to any other person entitled to receive the payment;
- (c) where there is a decrease in consideration in respect of which the supplier makes a part payment on account to the recipient of the supply (or to any other person entitled to receive the part payment)—
 - (i) the decrease is to be treated as a decrease in consideration only to the extent covered by the part payment; and
 - (ii) each part payment on account is to be treated as being made in relation to a separate decrease in consideration.

24B. For the purposes of this Part—

- (a) an increase in consideration occurs when it is agreed by the supplier and the recipient of the supply; and
- (b) a decrease in consideration occurs when the supplier pays the amount of the decrease to the recipient of the supply or to any other person who is entitled to receive the payment.

24C.—(1) For the purposes of regulations 24A and 24B, “payment”—

- (a) means a payment in money and “pay” and “pays” are to be construed accordingly; and
- (b) includes cases where a person—
 - (i) sets off an amount against a corresponding monetary liability of another person; or
 - (ii) makes a “relevant payment” as defined in regulation 38ZA(2).

(2) For the purposes of applying regulation 38ZA, the reference in regulation 24A(b) and (c) and in regulation 24B(b) to—

- (a) “the supplier” includes a reference to the “first supplier” as defined in regulation 38ZA(2); and
- (b) “the recipient of the supply” includes a reference to the “final consumer” as defined in regulation 38ZA(2).”.

7. In regulation 31(1)—

- (a) at the end of sub-paragraph (h) omit “and”; and
- (b) for sub-paragraph (i) substitute—
 - “(i) all documents received in accordance with regulation 15C and copies of such documents provided in accordance with that regulation,”.

8. In regulation 38—

- (a) after paragraph (4) insert—
 - “(4A) In the case of an increase in consideration, no entry may be made under paragraph (4) unless the recipient of the supply holds the debit note which the supplier is required to provide under regulation 15C(2).”;
- (b) for paragraph (5) substitute—
 - “(5) Every entry required by this regulation must be made in that part of the VAT account which relates to the prescribed accounting period in which the increase in consideration or decrease in consideration occurs.”;
- (c) omit paragraph (6);
- (d) at the end of paragraph (7), after “regulations 34 and 35”, insert “except insofar as there is an error arising from a failure to make any entry required by this regulation”; and
- (e) after paragraph (7) insert—
 - “(8) Paragraphs (4A) and (5) do not apply in cases where an adjustment in relation to an increase or decrease in consideration has been made in accordance with this regulation before 1st September 2019.”.

9. In regulation 38A—

- (a) in paragraph (2)—
 - (i) for “Paragraphs (5) and (6) of regulation 38 shall apply”, substitute “Paragraph (5) of regulation 38 applies”; and

- (ii) for “they apply” substitute “it applies”; and
- (b) at the end of paragraph (3), after “regulations 34 and 35”, insert “except insofar as there is an error arising from a failure to make any entry required by this regulation”.

*Jim Harra
Justin Holliday*

25th June 2019

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend Part 3 (VAT invoices and other invoicing requirements) and Part 5 (accounting, payment and records) of the Value Added Tax Regulations 1995 (S.I 1995/2518: “the Principal Regulations”).

VAT registered traders are required to account for VAT on supplies of goods and services calculated by reference to the price payable for those supplies. In cases where the price of the supply increases or decreases after the supply has been made, adjustments must be made under provisions in Part 5 of the Principal Regulations. These Regulations make changes in relation to such adjustments and introduce new rules in relation to the accounting documents that the supplier is required to provide to the recipient of a supply.

Regulations 1 and 2 provide for citation, commencement and effect.

Regulation 4 introduces new requirements for the provision by the supplier of debit notes and credit notes to the recipient of a supply when there are increases or decreases in consideration.

Regulations 5 and 6 make provision for the definition of increases and decreases in consideration and when they are to be treated as occurring for the purposes of the Principal Regulations.

Regulation 7 amends regulation 31 of the Principal Regulations to reflect the changes made by regulation 4.

Regulation 8 amends regulation 38 of the Principal Regulations to reflect the changes made by regulations 4 to 6 and to make it clear that, whilst making an adjustment for an increase or decrease in consideration is not, in itself, the correction of an error, any failure to make such an adjustment in the prescribed accounting period in which it is required to be made will result in an error which must then be corrected.

Regulation 9 amends regulation 38A of the Principal Regulations by making consequential amendments and by adding clarification in relation to error correction similar to that made by regulation 8.

A Tax Information and Impact Note was published on 19th March 2019 alongside the draft legislation and is available on the website at <https://www.gov.uk/government/consultations/amendment-to-vat-regulation-38-statutory-instrument-technical-consultation>. It remains an accurate summary of the impacts that apply to this instrument.

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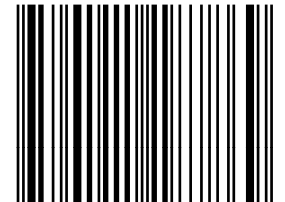
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