
EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision in respect of late payment interest on sums due to HMRC (under section 101 of the Finance Act 2009 (c. 10)) and repayment interest on sums to be paid by HMRC (under section 102 of the Finance Act 2009) in relation to value added tax, including penalties assessed in relation to that tax. The Order specifies amounts to which section 102 does not apply and makes supplemental and consequential provision in connection with sections 101 and 102.

1st January 2023 is the date appointed for the coming into force of sections 101 and 102 for the purposes of value added tax, including any penalties assessed in relation to that tax (see the Finance Act 2009, Finance (No. 3) Act 2010 and Finance Act 2021 (Value Added Tax) (Interest) (Appointed Days) Regulations 2022 (S.I. 2022/1277)).

Article 1(2) commences Parts 1 and 2 of the Order and certain consequential provisions in Part 3 on 1st January 2023.

Part 1 makes general provision in relation to citation, commencement, effect and interpretation.

Part 2 specifies amounts of value added tax of certain descriptions to which section 102 of the Finance Act 2009 does not apply. This exclusion applies where amounts referred to in article 2(1) and (2) are payable by HMRC to any person otherwise than in consequence of that person making a return in accordance with regulation 25 of the Value Added Tax Regulations 1995 (S.I. 1995/2518) (“the VAT Regulations”).

Article 1(3)(a) provides that the remaining provisions of Part 3 come into force immediately after the coming into force of paragraphs 15 to 29 and 35 to 38 of Schedule 27 to the Finance Act 2021 (c. 26); these paragraphs come into force for certain purposes on 1st January 2003 (see the Finance Act 2021 (Value Added Tax) (Penalties) (Appointed Day) Regulations 2022 (S.I. 2022/1278)). Certain amendments in Part 3 build on the amendments made by Schedule 27.

Article 1(3)(b) provides that the remaining provisions of Part 3 have effect only in respect of amounts payable by reference to prescribed accounting periods beginning on or after 1st January 2023, amounts assessed under sections 80(4A) and 80B of the Value Added Tax Act 1994 (c. 23) (“VATA 1994”) which relate to value added tax payable by reference to prescribed accounting periods beginning on or after 1st January 2023 and amounts recoverable under paragraph 5(2) of Schedule 11 to VATA 1994 in relation to amounts shown on invoices issued on or after 1st January 2023.

These remaining consequential provisions essentially remove the existing interest regime (and update references) for the purposes specified in Article 1(3)(b), but leave it in place for other purposes such as those specified in article 2 and earlier periods.

Article 3 amends VATA 1994. It omits existing provisions which provide HMRC with the power to charge and assess for interest to be paid to HMRC in relation to value added tax. It also omits existing provisions which oblige HMRC to pay interest and repayment supplement in respect of certain delayed payments or refunds in relation to value added tax. It makes further amendments consequential on those omissions.

Article 4 amends the Income Tax (Trading and other Income) Act 2005 (c. 5) and article 5 amends the Corporation Tax Act 2009 (c. 4). These amendments substitute references to section 101 of the Finance Act 2009 for existing provisions in VATA 1994 that charge interest in relation to value added tax. Also references to repayment supplement are omitted in consequence of the omission by this Instrument of the requirement in VATA 1994 to pay a repayment supplement.

Changes to legislation: *There are currently no known outstanding effects for the The Finance Act 2009, Sections 101 and 102 (Value Added Tax) (Late Payment Interest and Repayment Interest) (Exceptions and Consequential Amendments) Order 2022. (See end of Document for details)*

Article 6 amends the VAT Regulations by omitting regulations which determine how the repayment supplement is to be calculated. It also inserts new regulations 184KA and 184KB into Part 20A of the VAT Regulations with the effect that the interest rate on late payments by HMRC is aligned to the interest rate set under section 102(3) of the Finance Act 2009.

Article 7 amends the Value Added Tax (Accounting Procedures for Import VAT for VAT Registered Persons and Amendment) (EU Exit) Regulations 2019 (S.I. 2019/60) and article 8 amends the Value Added Tax (Miscellaneous and Transitional Provisions, Amendment and Revocation) (EU Exit) Regulations 2020 (S.I. 2020/1495) by omitting regulations in respect of interest in cases of official error.

A Tax Information and Impact Note covering this policy was published on 3rd March 2021 alongside Budget 2021 and is available on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>. It remains an accurate summary of the impacts that apply to this policy.

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