

**2022 No. 1298**

**VALUE ADDED TAX**

**The Finance Act 2009, Sections 101 and 102 (Value Added Tax)  
(Late Payment Interest and Repayment Interest) (Exceptions and  
Consequential Amendments) Order 2022**

*Made* - - - - *7th December 2022*

*Laid before the House of Commons* *9th December 2022*

*Coming into force in accordance with article 1(2) and (3)*

The Treasury make this Order in exercise of the powers conferred by section 39 of the Value Added Tax Act 1994(a) and sections 102(2)(c) and 104(5) to (7) of the Finance Act 2009(b).

**PART 1**

**Introduction**

**Citation, commencement, effect and interpretation**

**1.**—(1) This Order may be cited as the Finance Act 2009, Sections 101 and 102 (Value Added Tax) (Late Payment Interest and Repayment Interest) (Exceptions and Consequential Amendments) Order 2022.

(2) This Part, Part 2, article 3(5) and article 6(1) to (3) come into force on 1st January 2023.

(3) The remaining provisions of Part 3—

(a) 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 (Schedules 24 to 26: consequential provision)(c) in accordance with regulation 2(3) and (4) of the Finance Act 2021 (Value Added Tax) (Penalties) (Appointed Day) Regulations 2022(d), and

(b) have effect only—

(i) in respect of amounts of value added tax payable by reference to prescribed accounting periods beginning on or after 1st January 2023;

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(a) 1994 c. 23. Section 39(1) was amended by paragraph 41 of Schedule 8 to the Taxation (Cross-border Trade) Act 2018 (c. 22). Subsection (3)(ba) was inserted by section 77(2)(c) of the Finance Act 2009 (c. 10).

(b) 2009 c. 10. S.I. 2022/1277 appoints 6th December 2022 as the day on which section 102(2)(c) comes into force for the purposes of making an order under that provision for the purposes of value added tax.

(c) 2021 c. 26.

(d) S.I. 2022/1278. Those Regulations appoint 1st January 2023 as the day on which the provisions of Schedule 27 of the Finance Act 2021 referred to in article 1(3)(a) of this Order come into force for the purposes of regulation 2(3) of those Regulations.

- (ii) in respect of amounts assessed under sections 80(4A) and 80B of VATA 1994 (recovery of excess credit)(a) which relate to value added tax payable by reference to prescribed accounting periods beginning on or after 1st January 2023;
- (iii) in respect of amounts recoverable under paragraph 5(2) of Schedule 11 to VATA 1994 (amounts shown on invoices as VAT), in relation to amounts shown on invoices issued on or after 1st January 2023.

(4) In this Order—

- “prescribed accounting periods” has the same meaning as in VATA 1994(b);
- “the VAT Regulations” means the Value Added Tax Regulations 1995(c);
- “VATA 1994” means the Value Added Tax Act 1994.

## PART 2

### Exceptions

#### **Exceptions from section 102 of the Finance Act 2009 - repayment interest**

2.—(1) Section 102 of the Finance Act 2009 (repayment interest on sums to be paid by HMRC)(d) does not apply to an amount that is payable by HMRC to any person under the provisions listed in paragraph (2) if the amount is payable otherwise than in consequence of a return made by the person in accordance with regulation 25 of the VAT Regulations (making of returns)(e).

(2) The provisions referred to in paragraph (1) are—

- (a) section 33 of VATA 1994 (refunds of VAT in certain cases)(f);
- (b) section 33A of VATA 1994 (refunds of VAT to museums and galleries)(g);
- (c) section 33B of VATA 1994 (refunds of VAT to academies)(h);
- (d) section 33C of VATA 1994 (refunds of VAT to charities within section 33D)(i);
- (e) section 33E(2) of VATA 1994 (power to extend refunds of VAT to a specified person)(j);
- (f) section 35 of VATA 1994 (refunds of VAT to persons constructing certain buildings)(k);
- (g) section 36 of VATA 1994 (bad debts)(a) in circumstances where the person is making the claim in accordance with regulation 166(2) of the VAT Regulations (the making of a claim to the Commissioners);

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(a) Section 80(4A) was inserted by section 47(6) of the Finance Act 1997 (c. 16) and substituted by section 3(9) of the Finance (No. 2) Act 2005 (c. 22). Section 80B was inserted by section 46(2) of the Finance Act 1997 and amended by section 4(4) of the Finance (No.2) Act 2005.

(b) See section 25(1) of the Value Added Tax Act 1994.

(c) S.I. 1995/2518.

(d) S.I. 2022/1277 appoints 1st January 2023 as the day on which section 102 comes into force for the purposes of value added tax and commences amendments made to that section by paragraph 2 of Schedule 29 to the Finance Act 2021.

(e) Regulation 25 was amended by S.I. 2000/258, S.I. 2000/794, S.I. 2004/1675, S.I. 2009/2978, S.I. 2012/1899, S.I. 2020/1545 and S.I. 2021/715.

(f) Section 33 was amended by paragraph 95 of Schedule 13 to the Merchant Shipping Act 1995 (c. 21), paragraph 129(2) of Schedule 17 to the Communications Act 2003 (c. 21), Part 1 of Schedule 3 to the Public Health etc. (Scotland) Act 2008 (asp 5), paragraph 59(2) of Schedule 4 to the Local Transport Act 2008 (c. 26), paragraph 217 of Schedule 16 to the Police Reform and Social Responsibility Act 2011 (c. 13), section 39 of the Finance Act 2018 (c. 3), paragraph 31 of Schedule 8 to the Taxation (Cross-border Trade) Act 2018 (c. 22) and section 100 of the Finance Act 2021.

(g) Section 33A was inserted by section 98(2) of the Finance Act 2001 (c. 9) and amended by paragraph 33 of Schedule 39 to the Finance Act 2008 (c. 9) and paragraph 32 of Schedule 8 to the Taxation (Cross-border Trade) Act 2018.

(h) Section 33B was inserted by section 76(1) of the Finance Act 2011 (c. 11) and amended by paragraph 33 of Schedule 8 to the Taxation (Cross-border Trade) Act 2018.

(i) Section 33C was inserted by section 66(1) of the Finance Act 2015 (c. 11) and amended by paragraph 34 of Schedule 8 to the Taxation (Cross-border Trade) Act 2018.

(j) Section 33E was inserted by section 122 of the Finance Act 2016 (c. 24) and amended by paragraph 35 of Schedule 8 to the Taxation (Cross-border Trade) Act 2018.

(k) Section 35 was amended by section 30 of the Finance Act 1996 (c. 8), paragraph 4 of Schedule 29 to the Finance Act 2012 (c. 14), paragraph 37 of Schedule 8 to the Taxation (Cross-border Trade) Act 2018 and S.I. 2001/2305.

- (h) section 39 of VATA 1994 (repayment of VAT to those in business overseas)(b);
- (i) paragraph 19 of Schedule 9ZA to VATA 1994 (refunds in relation to new means of transport supplied to member States)(c);
- (j) regulation 111(5) of the VAT Regulations (exceptional claims for VAT relief)(d).

## PART 3

### Consequential amendments

#### Value Added Tax Act 1994

- 3.**—(1) VATA 1994 is amended as follows.
- (2) Omit section 74 (interest on VAT recovered or recoverable by assessment).
  - (3) In section 76 (assessment of amounts due by way of penalty or interest)(e)—
    - (a) in the heading, omit “or interest”;
    - (b) in subsection (1)—
      - (i) omit paragraph (c) and the “or” at the end of that paragraph;
      - (ii) in the words after paragraph (d), omit “or interest”;
    - (c) in subsection (3)—
      - (i) in the opening words, omit “and interest”;
      - (ii) omit paragraph (e) and the “and” at the end of that paragraph;
    - (d) in subsection (4), omit “or interest” in both places;
    - (e) in subsection (5), omit “or interest” in both places;
    - (f) in subsection (7)—
      - (i) in the words before paragraph (a), omit “or interest under section 74”;
      - (ii) in paragraph (a), omit “or, as the case may be, the amount of interest”;
      - (iii) in paragraph (b), omit “or interest”;
    - (g) in subsection (8)—
      - (i) in the words before paragraph (a), omit “or for interest under section 74”;
      - (ii) omit paragraph (b) and the “or” before that paragraph;
      - (iii) in the words after paragraph (b), omit “or, as the case may be, section 74”.
  - (4) In section 77 (assessments: time limits and supplementary assessments)(f), in each of subsections (2), (3) and (5), omit “or interest”.
  - (5) After section 77 insert—

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- (a) Section 36 was amended by Part IV(3) of Schedule 18 to the Finance Act 1997, section 23 and Part II of Schedule 27 to the Finance Act 1998 (c. 36), section 15 of the Finance Act 1999 (c. 15) and section 22(2) and Part 2(1) of Schedule 40 to the Finance Act 2002 (c. 23).
  - (b) Section 39 was amended by section 77(2) of the Finance Act 2009, paragraph 5 of Schedule 29 to the Finance Act 2012 and paragraph 41 of Schedule 8 to the Taxation (Cross-border Trade) Act 2018.
  - (c) Schedule 9ZA was inserted by paragraph 2 of Schedule 2(1) to the Taxation (Post-transition Period) Act 2020 (c. 26).
  - (d) Regulation 111(5) was amended by S.I. 1997/1086.
  - (e) Section 76 was relevantly amended by paragraph 11 of Schedule 3 to the Finance Act 1996, section 93(5) and (7) of the Finance Act 2007 (c. 11), paragraph 67(4) of Schedule 8 to the Taxation (Cross-border Trade) Act 2018 and paragraph 20 of Schedule 27 to the Finance Act 2021 (coming into force on 1st January 2023. See S.I. 2022/1278).
  - (f) Section 77 was relevantly amended by section 18(1) of the Finance Act 1999, paragraph 34(4) of Schedule 39 to the Finance Act 2008, paragraph 15 of Schedule 22 to the Finance Act 2014 (c. 26) and paragraph 69 of Schedule 8 to the Taxation (Cross-border Trade) Act 2018.

### **“77ZA Late payment interest on amounts of VAT due**

Interest charged under section 101 of the Finance Act 2009 on an amount of VAT (or an amount enforceable as if it were VAT) may be enforced as if it were an amount of VAT due from the person liable for the amount on which the interest is charged.”.

- (6) Omit section 77D (joint and several liability under section 77B or section 77BA: interest).
- (7) Omit section 78 (interest in certain cases of official error).
- (8) Omit section 78A (assessment for interest overpayments).
- (9) Omit section 79 (repayment supplement in respect of certain delayed payments or refunds).
- (10) In section 80 (credit for, or repayment of, overstated or overpaid VAT)(a), omit subsection (4C).
- (11) In section 80B (assessments of amounts due under section 80A arrangements)—
  - (a) omit subsection (2);
  - (b) at the end insert—

“(3) An assessment made under subsection (1) above may not be made more than two years after the time when evidence of facts sufficient in the opinion of the Commissioners to justify the making of the assessment comes to the knowledge of the Commissioners.”.
- (12) After section 80B insert—

### **“80C Assessed amounts of overpayments etc deemed to be amounts of VAT**

(1) Where an amount has been assessed and notified to a person under section 80(4A) or 80B(1), that amount is deemed (subject to the provisions of this Act as to appeals) to be an amount of VAT due from that person and may be recovered accordingly.

(2) Subsection (1) does not have effect if or to the extent that the assessment in question has been withdrawn or reduced.

(3) An assessment under section 80(4A) or 80B(1) is a recovery assessment for the purposes of section 84(3A)(b).

(4) Section 77(6) applies in relation to an assessment under section 80(4A) or 80B(1) as it applies in relation to an assessment under section 73(c) or 76.

(5) For the purposes of an assessment under section 80(4A) or 80B(1), notification to a person mentioned in subsection (6) (a “relevant person”) is treated as notification to the person in relation to whom the relevant person acts.

(6) The persons mentioned in this subsection are—

- (a) a personal representative;
- (b) a trustee in bankruptcy;
- (c) a trustee in sequestration;
- (d) a receiver;
- (e) a liquidator;
- (f) a person otherwise acting in a representative capacity in relation to another.”.

(13) In section 83 (appeals)(d), in subsection (1)—

- (a) in paragraph (q), omit “or interest”;

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(a) Section 80(4C) was inserted by section 47(6) of the Finance Act 1997 and amended by section 120(4) of the Finance Act 2008.

(b) Section 84(3A) was inserted by section 45(3) of the Finance Act 1997 and substituted by S.I. 2009/56.

(c) Section 73 was amended by paragraphs 10 and 11 of Schedule 3 to the Finance Act 1996, section 136(4) of the Finance Act 2000 (c. 17), section 120(1) of the Finance Act 2008, paragraph 8 of Schedule 28 to the Finance Act 2012, paragraph 64 of Schedule 8 to the Taxation (Cross-border Trade) Act 2018 and S.I. 2016/1034.

(d) Section 83(1)(q) was amended by paragraph 23(b) of Schedule 27 to the Finance Act 2021 (coming into force on 1st January 2023. See S.I. 2022/1278).

- (b) omit paragraphs (s) and (sa).
- (14) In section 85A (payment of tax on determination of appeal)(a)—
  - (a) in subsection (2), in the words after paragraph (b), omit the words from “with interest” to the end of that subsection;
  - (b) in subsection (3), in the words after paragraph (b), omit the words from “with interest” to the end of that subsection;
  - (c) omit subsections (4) and (5).
- (15) In section 97 (orders, rules and regulations), in subsection (5), omit paragraph (a) and the “or” at the end of that paragraph.
- (16) In Schedule 9ZA (VAT on acquisitions in Northern Ireland from member States), omit paragraph 30 (interest on VAT).
- (17) In Schedule 9A (anti-avoidance provisions: groups)(b), in paragraph 6 (assessment in consequence of a direction)—
  - (a) for sub-paragraph (9) substitute—
    - “(9) Section 77(6) applies in relation to an assessment under this paragraph as it applies in relation to an assessment under section 73 or 76.”;
  - (b) omit sub-paragraph (10).

#### **Income Tax (Trading and Other Income) Act 2005**

- 4.—(1) The Income Tax (Trading and Other Income) Act 2005(c) is amended as follows.
- (2) In section 54 (penalties and interest)(d), in the table in subsection (2), in the entry for interest under section 74 or 85A of VATA 1994, for the first column substitute “Interest under section 101 of FA 2009 in respect of an amount of value added tax”.
- (3) Omit section 777 (VAT repayment supplements).
- (4) In section 869 (penalties and interest: non-trades etc)(e), in the table in subsection (4), in the entry for interest under section 74 or 85A of VATA 1994, for the first column substitute “Interest under section 101 of FA 2009 in respect of an amount of value added tax”.

#### **Corporation Tax Act 2009**

- 5.—(1) The Corporation Tax Act 2009(f) is amended as follows.
- (2) Omit section 1286 (VAT repayment supplements).
- (3) In section 1303 (penalties and interest)(g), in the table in subsection (2), in the entry for interest under section 74 of VATA 1994, for the first column substitute “Interest under section 101 of FA 2009 in respect of an amount of value added tax”.

#### **Value Added Tax Regulations 1995**

- 6.—(1) The VAT Regulations are amended as follows.
- (2) In regulation 184A (application of Part 20A)(h), for “184K” substitute “184KB”.

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(a) Section 85A was inserted by S.I. 2009/56.  
 (b) Schedule 9A was inserted by Schedule 4 to the Finance Act 1996.  
 (c) 2005 c. 5.  
 (d) Section 54 was relevantly amended by paragraph 31 of Schedule 27 to the Finance Act 2021 (coming into force on 1st January 2023. See S.I. 2022/1278) and S.I. 2009/56.  
 (e) Section 869 was relevantly amended by paragraph 35 of Schedule 27 to the Finance Act 2021 (coming into force on 1st January 2023. See S.I. 2022/1278) and S.I. 2009/56.  
 (f) 2009 c. 4.  
 (g) The heading to section 1303 was amended by paragraph 36(a) of Schedule 27 to the Finance Act 2021 (coming into force on 1st January 2023. See S.I. 2022/1278).  
 (h) Regulation 184A was inserted by S.I. 2020/1545.

(3) After regulation 184K (modification of regulation 173O)(a), insert—

“**184KA.** In regulation 173W(3)(b), for “section 78 of the Act” read “section 102(3) of the Finance Act 2009”.

**184KB.** For regulation 173X(c) read—

“**173X.**—(1) Where—

(a) any amount has been paid to any person by way of interest under regulation 173W, but

(b) that person was not entitled to that amount under that regulation,

the amount to which the person was not entitled shall be treated as if it were an amount of repayment interest recoverable as late payment interest under paragraph 6 of Schedule 54A to the Finance Act 2009 (certain amounts of repayment interest recoverable as late payment interest)(d).

(2) For the purpose of this regulation the requirement to meet Conditions A to C in paragraph 7 of Schedule 54A is to be treated as met.”

(4) Omit regulations 198 (computation of period) and 199 (duration of period).

#### **The Value Added Tax (Accounting Procedures for Import VAT for VAT Registered Persons and Amendment) (EU Exit) Regulations 2019**

7.—(1) The Value Added Tax (Accounting Procedures for Import VAT for VAT Registered Persons and Amendment) (EU Exit) Regulations 2019(e) are amended as follows.

(2) Omit regulation 8 (interest in cases of official error).

(3) In regulation 10(1) (appeals), omit sub-paragraph (a).

#### **The Value Added Tax (Miscellaneous and Transitional Provisions, Amendment and Revocation) (EU Exit) Regulations 2020**

8.—(1) The Value Added Tax (Miscellaneous and Transitional Provisions, Amendment and Revocation) (EU Exit) Regulations 2020(f) is amended as follows.

(2) In regulation 8 (application with modifications of the Value Added Tax (Accounting Procedures for Import VAT for VAT Registered Persons and Amendment) (EU Exit) Regulations 2019)—

(a) omit sub-paragraph (a);

(b) in sub-paragraph (b), for “regulation 10(1)(a) and (2)” substitute “regulation 10(2)”.

*Steve Double*  
*Andrew Stephenson*

7th December 2022

Two of the Lords Commissioners of His Majesty's Treasury

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(a) Regulation 184K was inserted by S.I. 2020/1545.

(b) Regulation 173W was inserted by S.I. 2009/3241 and was revoked by S.I. 2019/59 subject to saving and transitional provision specified in S.I. 2020/1495.

(c) Regulation 173X was inserted by S.I. 2009/3241 and was revoked by S.I. 2019/59 subject to saving and transitional provision specified in S.I. 2020/1495.

(d) Schedule 54A was inserted by paragraph 12 of Schedule 9 to the Finance (No. 3) Act 2010 (c. 33) (coming into force for the purposes of value added tax on 1st January 2023. See S.I. 2022/1277) and was amended by paragraph 4 of Schedule 29 to the Finance Act 2021 (coming into force on 1st January 2023. See S.I. 2022/1277).

(e) S.I. 2019/60.

(f) S.I. 2020/1495.

## 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.

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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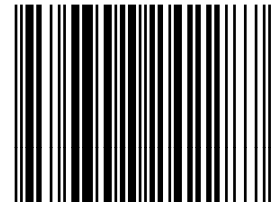
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