



# Finance Act 1988

## 1988 CHAPTER 39

### PART II

#### VALUE ADDED TAX

##### *Exemptions*

### 13 Medical services and goods

(1) In Schedule 6 to the Value Added Tax Act 1983 (exemptions), Group 7 (health and welfare) shall be amended as follows.

(2) For items 1, 1A and 2 there shall be substituted—

“1 The supply of services by a person registered or enrolled in any of the following—

- (a) the register of medical practitioners or the register of medical practitioners with limited registration;
- (b) either of the registers of ophthalmic opticians or the register of dispensing opticians kept under the Opticians Act 1958 or either of the lists kept under section 4 of that Act of bodies corporate carrying on business as ophthalmic opticians or as dispensing opticians;
- (c) any register kept under the Professions Supplementary to Medicine Act 1960;
- (d) the register of qualified nurses, midwives and health visitors kept under section 10 of the Nurses, Midwives and Health Visitors Act 1979;
- (e) the register of dispensers of hearing aids or the register of persons employing such dispensers maintained under section 2 of the Hearing Aid Council Act 1968.

2 The supply of any services or dental prostheses by—

- (a) a person registered in the dentists' register;

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- (b) a person enrolled in any roll of dental auxiliaries having effect under section 45 of the Dentists Act 1984; or
  - (c) a dental technician.”
- (3) In note (2), for the words “Paragraphs (a) to (f) of item 1 includes supplies” there shall be substituted the words “Paragraphs (a) to (d) of item 1 and paragraphs (a) and (b) of item 2 include supplies of services”.
- (4) This section shall have effect in relation to supplies made on or after 1st September 1988.

### *Administration*

## 14 Registration

- (1) Schedule 1 to the Value Added Tax Act 1983 (registration) shall be amended in accordance with subsections (2) to (7) below.
- (2) In paragraphs 1(5) and 2(3) (capital assets of business to be disregarded), after the word “goods” there shall be inserted the words “or services”.
- (3) In paragraph 4(3) (registration with effect from beginning of period where taxable supplies for the first thirty days exceed specified amount), for “£21,300” there shall be substituted “£22,100”.
- (4) For paragraph 5 there shall be substituted—

### *“Entitlement to be registered*

- 5 Where a person who is not liable to be registered satisfies the Commissioners that he—
- (a) makes taxable supplies; or
  - (b) is carrying on a business and intends to make such supplies in the course or furtherance of that business,
- they shall, if he so requests, register him with effect from the day on which the request is made or from such earlier date as may be agreed between them and him.
- 5A (1) Where a person who is not liable to be registered satisfies the Commissioners that he—
- (a) makes supplies within sub-paragraph (2) below; or
  - (b) is carrying on a business and intends to make such supplies in the course or furtherance of that business,
- and (in either case) is within sub-paragraph (3) below, they shall, if he so requests, register him with effect from the day on which the request is made or from such earlier date as may be agreed between them and him.
- (2) A supply is within this sub-paragraph if—
- (a) it is made outside the United Kingdom but would be a taxable supply if made in the United Kingdom; or
  - (b) section 35 of this Act provides that it is to be disregarded for the purposes of this Act, and it would otherwise be a taxable supply.

- (3) A person is within this sub-paragraph if—
- (a) he has a business establishment in the United Kingdom or his usual place of residence is in the United Kingdom; and
  - (b) he does not make and does not intend to make taxable supplies.
- (4) For the purposes of this paragraph—
- (a) a person carrying on a business through a branch or agency in the United Kingdom shall be treated as having a business establishment in the United Kingdom; and
  - (b) “usual place of residence”, in relation to a body corporate, means the place where it is legally constituted.”
- (5) For paragraph 7 and the heading preceding that paragraph there shall be substituted—

*“Notification of end of liability or entitlement etc.*

- 7 A person registered under paragraph 3, 4 or 5 above who ceases to make or have the intention of making taxable supplies shall notify the Commissioners of that fact within thirty days of the day on which he does so.
- 7A A person registered under paragraph 5A above who—
- (a) ceases to make or have the intention of making supplies within sub-paragraph (2) of that paragraph; or
  - (b) makes or forms the intention of making taxable supplies,
- shall notify the Commissioners of that fact within thirty days of the day on which he does so.”

- (6) For paragraphs 9 and 10 there shall be substituted—

*“Cancellation of registration*

- 8A (1) Where a registered person satisfies the Commissioners that he is not liable to be registered, they shall, if he so requests, cancel his registration with effect from the day on which the request is made or from such later date as may be agreed between them and him.
- (2) In this paragraph and paragraphs 9 and 10 below, any reference to a registered person includes a reference to a person registered before their coming into force.
- 9 (1) Where the Commissioners are satisfied that a registered person has ceased to be registrable, they may cancel his registration with effect from the day on which he so ceased or from such later date as may be agreed between them and him.
- (2) In this paragraph and paragraph 10 below, “registrable” means liable or entitled to be registered.
- 10 Where the Commissioners are satisfied that on the day on which a registered person was registered he was not registrable, they may cancel his registration with effect from that day.”

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- (7) For paragraphs 11, 11A and 12 and the heading preceding paragraph 11 there shall be substituted—

*“Exemption from registration*

- 11 (1) Notwithstanding the preceding provisions of this Schedule, where a person who makes or intends to make taxable supplies satisfies the Commissioners that any such supply is zero-rated or would be zero-rated if he were a taxable person, they may, if he so requests and they think fit, exempt him from registration until it appears to them that the request should no longer be acted upon or is withdrawn.
- (2) Where there is a material change in the nature of the supplies made by a person exempted from registration under this paragraph, he shall notify the Commissioners of the change—
- (a) within thirty days of the date on which it occurred; or
  - (b) if no particular day is identifiable as the day on which it occurred, within thirty days of the end of the quarter in which it occurred.
- (3) Where there is a material alteration in any quarter in the proportion of taxable supplies of such a person that are zero-rated, he shall notify the Commissioners of the alteration within thirty days of the end of the quarter.

*Power to vary specified sums by order*

- 12 The Treasury may by order substitute for any of the sums for the time being specified in this Schedule such greater sums as they think fit.”
- (8) In consequence of the foregoing provisions of this section—
- (a) in section 2(5) of the Value Added Tax Act 1983, for the words “paragraph 11A” there shall be substituted the words “paragraph 5A”; and
  - (b) in section 18(1)(c) of the Finance Act 1985, for the words “paragraph 11(1)(a)” there shall be substituted the words “paragraph 11(1)”.

**15 Assessment of tax due**

- (1) Paragraph 4 of Schedule 7 to the Value Added Tax Act 1983 (assessment of tax due) shall be amended as follows.
- (2) For sub-paragraph (2) there shall be substituted—
- “(2) In any case where, for any prescribed accounting period, there has been paid or credited to any person—
- (a) as being a repayment or refund of tax, or
  - (b) as being due to him under section 14(5) of this Act,
- an amount which ought not to have been so paid or credited, the Commissioners may assess that amount as being tax due from him for that period and notify it to him accordingly.
- (2A) An amount—
- (a) which has been paid to any person as being due to him under section 14(5) of this Act; and

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- (b) which, by reason of the cancellation of that person's registration under paragraph 9 or 10 of Schedule 1 to this Act, ought not to have been so paid,  
may be assessed under sub-paragraph (2) above notwithstanding that cancellation.”
- (3) In sub-paragraph (5), for the words “(1) or (2)” there shall be substituted the words “(1), (2) or (2A)”.
- (4) In sub-paragraph (9), for the words “(1), (2) or (6)” there shall be substituted the words “(1), (2), (2A) or (6)”.

### *Civil penalties*

## **16 Serious misdeclaration or neglect resulting in understatements or overclaims**

- (1) Section 14 of the Finance Act 1985 (serious misdeclaration or neglect resulting in understatements or overclaims) shall be amended as follows.
- (2) For subsections (2) and (3) there shall be substituted—
  - “(2) The circumstances referred to in subsection (1) above are that the tax for the period concerned which would have been lost if the inaccuracy had not been discovered—
    - (a) equals or exceeds 30 per cent. of the true amount of tax for that period, or
    - (b) equals or exceeds whichever is the greater of £10,000 and 5 per cent. of the true amount of tax for that period.”
- (3) In subsection (4) for the words “The references in subsections (1) to (3) above” there shall be substituted the words “Any reference in this section”.
- (4) In subsection (5) for the words “subsections (2)(a) and (3) above” there shall be substituted the words “this section”.
- (5) After that subsection there shall be inserted—
  - “(5A) Where—
    - (a) a return for any prescribed accounting period overstates or understates to any extent a person's liability to tax or his entitlement to a payment under section 14(5) of the principal Act, and
    - (b) that return is corrected, in such circumstances and in accordance with such conditions as may be prescribed, by a return for a later such period which understates or overstates, to the corresponding extent, that liability or entitlement,it shall be assumed for the purposes of subsection (5) above that the statement made by each of those returns is a correct statement for the accounting period to which it relates.
  - (5B) This section shall have effect in relation to a body which is registered and to which section 20 of the principal Act applies as if—
    - (a) any reference to a payment under section 14(5) of that Act included a reference to a refund under the said section 20, and

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- (b) any reference to credit for input tax included a reference to tax chargeable on supplies or importations which were not for the purposes of any business carried on by the body.”

## 17 Persistent misdeclaration resulting in understatements or overclaims

After section 14 of the Finance Act 1985 there shall be inserted—

### “14A Persistent misdeclaration resulting in understatements or overclaims

- (1) In any case where—
  - (a) for a prescribed accounting period (including one beginning before the commencement of this section), a return has been made which understates a person’s liability to tax or overstates his entitlement to a payment under section 14(5) of the principal Act; and
  - (b) the tax for that period which would have been lost if the inaccuracy had not been discovered equals or exceeds whichever is the greater of £100 and 1 per cent. of the true amount of tax for that period,
 the inaccuracy shall be regarded, subject to subsections (5) and (6) below, as material for the purposes of this section.
- (2) Subsection (3) below applies in any case where—
  - (a) there is a material inaccuracy in respect of any two prescribed accounting periods; and
  - (b) the last day of the later one of those periods falls on or before the second anniversary of the last day of the earlier one; and
  - (c) after the coming into operation of this section, the Commissioners serve notice on the person concerned (in this section referred to as “a penalty liability notice”) specifying as a penalty period for the purposes of this section a period beginning on the date of the notice and ending on the second anniversary of that date.
- (3) If there is a material inaccuracy in respect of a prescribed accounting period ending within the penalty period specified in a penalty liability notice served on the person concerned, that person shall be liable to a penalty equal to 15 per cent. of the tax for that period which would have been lost if the inaccuracy had not been discovered.
- (4) Subsections (4) to (5B) of section 14 above shall apply for the purposes of this section as they apply for the purposes of that section.
- (5) An inaccuracy shall not be regarded as material for the purposes of this section if—
  - (a) the person concerned satisfies the Commissioners or, on appeal, a value added tax tribunal that there is a reasonable excuse for the inaccuracy; or
  - (b) at a time when he had no reason to believe that enquiries were being made by the Commissioners into his affairs, so far as they relate to tax, the person concerned furnished to the Commissioners full information with respect to the inaccuracy.
- (6) Where by reason of conduct falling within subsection (1) above—

- (a) a person is convicted of an offence (whether under the principal Act or otherwise); or
  - (b) a person is assessed to a penalty under section 13 or 14 above,
- the inaccuracy concerned shall not be regarded as material for the purposes of this section.

(7) In any case where subsection (5) or (6) above applies, any penalty liability notice the service of which depended upon the inaccuracy concerned shall be deemed not to have been served.”

## **18 Failures to notify and unauthorised issue of invoices**

(1) In subsection (1) of section 15 of the Finance Act 1985 (failures to notify and unauthorised issue of invoices)—

- (a) in paragraph (a), after the words “paragraphs 3, 4 and 11(2)” there shall be inserted the words “and (3)”;
- (b) in paragraph (b), for the words “an invoice” there shall be substituted the words “one or more invoices”; and
- (c) for the words “30 per cent.” there shall be substituted the words “the specified percentage”.

(2) In subsection (3) of that section—

- (a) in paragraph (a), for the word “discovered” there shall be substituted the words “became fully aware of”;
- (b) in paragraph (b), after the words “sub-paragraph (2)” there shall be inserted the words “or (3)” and for the word “discovered” there shall be substituted the words “became fully aware of”; and
- (c) in paragraph (c), for the words “such an invoice as is” there shall be substituted the words “one or more such invoices as are” and for the words from “the amount” onwards there shall be substituted the words “the amount which is, or the aggregate of the amounts which are—
  - (i) shown on the invoice or invoices as tax, or
  - (ii) to be taken as representing tax”.

(3) After that subsection there shall be inserted—

“(3A) For the purposes of subsection (1) above the specified percentage is—

- (a) 10 per cent. where the relevant tax is given by paragraph (a) or (b) of subsection (3) above and the period referred to in that paragraph does not exceed nine months;
- (b) 20 per cent. where that tax is so given and the period so referred to exceeds nine months but does not exceed eighteen months; and
- (c) 30 per cent. in any other case.”

(4) In section 18 of that Act—

- (a) subsection (2) (which provides for tax to carry interest in certain cases of conduct falling within section 15(1)(a) of that Act) shall cease to have effect; and
- (b) in subsection (3), for the words “If, in a case where subsection (2) does not apply” there shall be substituted the words “In any case where”.

(5) Where—

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- (a) a person is liable to a penalty for conduct falling within paragraph (a) of subsection (1) of section 15 of that Act; and
- (b) any relevant tax by reference to which that penalty is to be assessed is payable for a period before 16th March 1988,

that subsection shall apply without the amendment made by subsection (1)(c) above in relation to so much of the assessment as is to be made by reference to that tax.

- (6) Subsections (1)(b) and (c), (2)(c) and (3) above shall be deemed to have come into force on 16th March 1988.

## 19 Breaches of regulatory provisions

- (1) In subsection (1) of section 17 of the Finance Act 1985 (breaches of regulatory provisions)—

- (a) after the words “paragraph 7” there shall be inserted the words “or 7A” and for the words “(notification of cessation of taxable supplies)” there shall be substituted the words “(notification of end of liability or entitlement to be registered etc.)”; and
- (b) for the words from “to a daily penalty” to the end there shall be substituted the words “to a penalty equal to the prescribed rate multiplied by the number of days on which the failure continues (up to a maximum of 100) or, if it is greater, to a penalty of £50.”

- (2) In subsection (3) of that section, for “£10”, “£20” and “£30” there shall be substituted “£5”, “£10” and “£15” respectively.

- (3) In subsection (1) of section 21 of that Act (assessment of amounts due by way of penalty, interest or surcharge), after the words “the Commissioners may” there shall be inserted the words “subject to subsection (1A) below” and after that subsection there shall be inserted—

“(1A) Where a person is liable to a penalty under section 17 above for any failure to comply with such a requirement as is referred to in subsection (1)(b) to (e) of that section, no assessment shall be made under this section of the amount due from him by way of such penalty unless, within the period of two years preceding the assessment, the Commissioners have issued him with a written warning of the consequences of a continuing failure to comply with that requirement.”

- (4) Where—

- (a) a person is liable to a penalty for any failure to comply with such a requirement as is referred to in subsection (1) of section 17 of that Act; and
- (b) any of the days by reference to which that penalty is to be assessed fall before 16th March 1988,

subsection (3) of that section shall apply without the amendments made by subsection (2) above in relation to so much of the assessment as is to be made by reference to those days.

- (5) Subsections (1)(b), (2) and (3) above shall be deemed to have come into force on 16th March 1988.



*Miscellaneous*

**20 Repayment supplement**

For section 20 of the Finance Act 1985 there shall be substituted—

**“20 Repayment supplement in respect of certain delayed payments or refunds**

- (1) In any case where—
- (a) a person is entitled to a payment under section 14(5) of the principal Act, or
  - (b) a body which is registered and to which section 20 of that Act applies is entitled to a refund under that section,
- and the conditions mentioned in subsection (2) below are satisfied, the amount which, apart from this section, would be due by way of that payment or refund shall be increased by the addition of a supplement equal to 5 per cent. of that amount or £30, whichever is the greater.
- (2) The said conditions are—
- (a) that the requisite return or claim is received by the Commissioners not later than one month after the last day on which it is required to be furnished or made, and
  - (b) that a written instruction directing the making of the payment or refund is not issued by the Commissioners within the period of thirty days beginning on the date of the receipt by the Commissioners of that return or claim, and
  - (c) that the amount shown on that return or claim as due by way of payment or refund does not exceed the payment or refund which was in fact due by more than 5 per cent. of that payment or refund or £250, whichever is the greater.
- (3) Regulations may provide that, in computing the period of thirty days referred to in subsection (2)(b) above, there shall be left out of account periods determined in accordance with the regulations and referable to—
- (a) the raising and answering of any reasonable inquiry relating to the requisite return or claim,
  - (b) the correction by the Commissioners of any errors or omissions in that return or claim, and
  - (c) in the case of a payment, the following matters, namely—
    - (i) any such continuing failure to submit returns as is referred to in section 14(7) of the principal Act, and
    - (ii) compliance with any such condition as is referred to in paragraph 5(1) of Schedule 7 to that Act (production of documents or giving of security as a condition of payment).
- (4) Except for the purpose of determining the amount of the supplement—
- (a) a supplement paid to any person under subsection (1)(a) above shall be treated as an amount due to him by way of credit under section 14(5) of the principal Act, and

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- (b) a supplement paid to any body under subsection (1)(b) above shall be treated as an amount due to it by way of refund under section 20 of that Act.
- (5) In this section “requisite return or claim” means—
- (a) in relation to a payment, the return for the prescribed accounting period concerned which is required to be furnished in accordance with regulations under the principal Act, and
  - (b) in relation to a refund, the claim for that refund which is required to be made in accordance with the Commissioners' determination under section 20 of that Act.
- (6) Subsection (1)(a) above shall have effect with respect to any prescribed accounting period ending, and subsection (1)(b) above shall have effect with respect to any claim made, on or after such day as the Treasury may by order made by statutory instrument appoint.
- (7) If the Treasury by order made by statutory instrument so direct, any period specified in the order shall be disregarded for the purpose of calculating the period of thirty days referred to in subsection (2)(b) above.”

## **21 Set-off of credits**

In any case where—

- (a) an amount is due from the Commissioners to any person under the Value Added Tax Act 1983 or Chapter II of Part I of the Finance Act 1985; and
- (b) that person is liable to pay a sum by way of tax, penalty, interest or surcharge, the amount referred to in paragraph (a) above shall be set against the sum referred to in paragraph (b) above and, accordingly, to the extent of the set-off, the obligations of the Commissioners and the person concerned shall be discharged.

## **22 Invoices provided by recipients of goods or services**

Where—

- (a) a taxable person (in this section referred to as “the recipient”) provides a document to himself which purports to be an invoice in respect of a taxable supply of goods or services to him by another taxable person; and
  - (b) that document understates the tax chargeable on the supply,
- the Commissioners may, by notice served on the recipient and on the supplier, elect that the amount of tax understated by the document shall be regarded for all purposes as tax due from the recipient and not from the supplier.