



Finance Act 1989

1989 CHAPTER 26

PART I

CUSTOMS AND EXCISE, VALUE ADDED TAX AND CAR TAX

CHAPTER II

VALUE ADDED TAX

Zero-rating etc.

18 Buildings and land

Schedule 3 to this Act (which makes provision about value added tax on supplies relating to buildings and land) shall have effect.

19 Sewerage services and water

- (1) Group 2 (sewerage services and water) of Schedule 5 (zero-rating) to the Value Added Tax Act 1983 shall be amended as follows.
- (2) In item 1, there shall be substituted for paragraph (b)—
 - “(b) emptying of any cesspools, septic tanks or similar receptacles which are used otherwise than in connection with the carrying on in the course of a business of a relevant industrial activity.”
- (3) In item 2, there shall be inserted at the beginning the words “The supply, for use otherwise than in connection with the carrying on in the course of a business of a relevant industrial activity, of”.
- (4) The following shall be inserted at the end—

Status: This is the original version (as it was originally enacted).

“Note: “Relevant industrial activity” means any activity described in any of Divisions 1 to 5 of the 1980 edition of the publication prepared by the Central Statistical Office and known as the Standard Industrial Classification.”

(5) This section shall have effect in relation to supplies made on or after 1st July 1990.

20 News services

(1) In Schedule 5 to the Value Added Tax Act 1983 Group 6 (news services) shall be omitted.

(2) This section shall have effect in relation to supplies made on or after 1st April 1989.

21 Fuel and power

(1) For Group 7 (fuel and power) of Schedule 5 to the Value Added Tax Act 1983 there shall be substituted—

“GROUP 7—FUEL AND POWER FOR DOMESTIC OR CHARITY USE

Item No.

1. Supplies for qualifying use of—
 - (a) coal, coke or other solid substances held out for sale solely as fuel;
 - (b) coal gas, water gas, producer gases or similar gases;
 - (c) petroleum gases, or other gaseous hydrocarbons, whether in a gaseous or liquid state;
 - (d) fuel oil, gas oil or kerosene; or
 - (e) electricity, heat or air-conditioning.

Notes:

- (1) “Qualifying use” means—
 - (a) domestic use; or
 - (b) use by a charity otherwise than in the course or furtherance of a business.
- (2) The following supplies are always for domestic use—
 - (a) a supply of not more than one tonne of coal or coke held out for sale as domestic fuel;
 - (b) a supply of wood, peat or charcoal not intended for sale by the recipient;
 - (c) a supply to a person at any premises of piped gas (that is, gas within paragraph (b) of item 1, or petroleum gas in a gaseous state, provided through pipes) where the gas (together with any other piped gas provided to him at the premises by the same supplier) was not provided at a rate exceeding 150 therms a month;
 - (d) a supply of petroleum gas in a liquid state where the gas is supplied in cylinders the net weight of each of which is less than 50 kilogrammes and either the number of cylinders supplied is 20 or fewer or the gas is not intended for sale by the recipient;

Status: This is the original version (as it was originally enacted).

- (e) a supply of petroleum gas in a liquid state, otherwise than in cylinders, to a person at any premises at which he is not able to store more than two tonnes of such gas;
 - (f) a supply of not more than 2,300 litres of fuel oil, gas oil or kerosene;
 - (g) a supply of electricity to a person at any premises where the electricity (together with any other electricity provided to him at the premises by the same supplier) was not provided at a rate exceeding 1000 kilowatt hours a month.
- (3) Supplies not within Note (2) are for domestic use if and only if the goods supplied are for use in—
- (a) a building, or part of a building, which consists of a dwelling or number of dwellings;
 - (b) a building, or part of a building, used for a relevant residential purpose;
 - (c) self-catering holiday accommodation;
 - (d) a caravan; or
 - (e) a houseboat.
- (4) Use for a relevant residential purpose means use as—
- (a) a home or other institution providing residential accommodation for children;
 - (b) a home or other institution providing residential accommodation with personal care for persons in need of personal care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder;
 - (c) a hospice;
 - (d) residential accommodation for students or school pupils;
 - (e) residential accommodation for members of any of the armed forces;
 - (f) a monastery, nunnery or similar establishment; or
 - (g) an institution which is the sole or main residence of at least 90 per cent. of its residents,
- except use as a hospital, a prison or similar institution or an hotel or inn or similar establishment.
- (5) Self-catering holiday accommodation includes any accommodation advertised or held out as such.
- (6) “Houseboat” means a boat or other floating decked structure designed or adapted for use solely as a place of permanent habitation and not having means of, or capable of being readily adapted for, self-propulsion.
- (7) Where there is a supply of goods partly for qualifying use and partly not—
- (a) if at least 60 per cent. of the goods are supplied for qualifying use, the whole supply shall be treated as a supply for qualifying use; and
 - (b) in any other case, an apportionment shall be made to determine the extent to which the supply is a supply for qualifying use.

Status: This is the original version (as it was originally enacted).

- (8) Paragraph (a) of item 1 shall be deemed to include combustible materials put up for sale for kindling fires but shall not include matches upon which a duty of customs or excise has been or is to be charged.
- (9) Paragraphs (b) and (c) of item 1 do not include any road fuel gas (within the meaning of the Hydrocarbon Oil Duties Act 1979) on which a duty of excise has been charged or is chargeable.
- (10) Paragraph (d) of item 1 does not include hydrocarbon oil on which a duty of excise has been or is to be charged without relief from, or rebate of, such duty by virtue of the provisions of the Hydrocarbon Oil Duties Act 1979.
- (11) “Fuel oil” means heavy oil which contains in solution an amount of asphaltenes of not less than 0.5 per cent. or which contains less than 0.5 per cent. but not less than 0.1 per cent. of asphaltenes and has a closed flash point not exceeding 150°C.
- (12) “Gas oil” means heavy oil of which not more than 50 per cent. by volume distils at a temperature not exceeding 240°C and of which more than 50 per cent. by volume distils at a temperature not exceeding 340°C.
- (13) “Kerosene” means heavy oil of which more than 50 per cent. by volume distils at a temperature not exceeding 240°C.
- (14) “Heavy oil” shall have the same meaning as in the Hydrocarbon Oil Duties Act 1979.”

(2) This section shall have effect in relation to supplies made on or after 1st July 1990.

22 Protective boots and helmets

- (1) In item 2 of Group 17 (protective boots and helmets) of Schedule 5 to the Value Added Tax Act 1983 there shall be inserted at the beginning the words “The supply to a person for use otherwise than by employees of his of”.
- (2) In Note (5) to that Group (supply of certain goods to include supply of certain services in respect of such goods) there shall be inserted at the end the words “, but, in the case of goods comprised in item 2, only if the goods are for use otherwise than by employees of the person to whom the services are supplied.”
- (3) This section shall have effect in relation to supplies made on or after 1st April 1989.

23 Incorrect certificates

(1) The following section shall be inserted in the Finance Act 1985 after section 13—

“13A Incorrect certificates as to zero-rating etc

- (1) Subject to subsections (3) and (4) below, where—
 - (a) a person to whom one or more supplies are, or are to be, made gives to the supplier—

Status: This is the original version (as it was originally enacted).

- (i) a certificate that the supply or supplies fall, or will fall, wholly or partly within Group 7, 8 or 8A of Schedule 5, or Group 1 of Schedule 6, to the principal Act; or
 - (ii) a certificate such as is mentioned in paragraph 13(4)(f) of Schedule 3 to the Finance Act 1989 relating to the supply or supplies; and
 - (b) the certificate is incorrect,
the person giving the certificate shall be liable to a penalty.
 - (2) The amount of the penalty shall be equal to the difference between the amount of the tax which would have been chargeable on the supply or supplies if the certificate had been correct and the amount of tax actually so chargeable.
 - (3) The giving of a certificate shall not give rise to a penalty under this section if the person who gave it satisfies the Commissioners or, on appeal, a value added tax tribunal that there is a reasonable excuse for his having given it.
 - (4) Where by reason of giving a certificate a person is convicted of an offence (whether under the principal Act or otherwise), the giving of the certificate shall not also give rise to a penalty under this section.”
- (2) This section shall have effect in relation to certificates given on or after the day on which this Act is passed.

Other provisions

24 Recovery of overpaid VAT

- (1) Where a person has paid an amount to the Commissioners by way of value added tax which was not tax due to them, they shall be liable to repay the amount to him.
- (2) The Commissioners shall only be liable to repay an amount under this section on a claim being made for the purpose.
- (3) It shall be a defence, in relation to a claim under this section, that repayment of an amount would unjustly enrich the claimant.
- (4) No amount may be claimed under this section after the expiry of 6 years from the date on which it was paid, except where subsection (5) below applies.
- (5) Where an amount has been paid to the Commissioners by reason of a mistake, a claim for the repayment of the amount under this section may be made at any time before the expiry of 6 years from the date on which the claimant discovered the mistake or could with reasonable diligence have discovered it.
- (6) A claim under this section shall be made in such form and manner and shall be supported by such documentary evidence as the Commissioners prescribe by regulations; and regulations under this subsection may make different provision for different cases.
- (7) Except as provided by this section, the Commissioners shall not be liable to repay an amount paid to them by way of value added tax by virtue of the fact that it was not tax due to them.

Status: This is the original version (as it was originally enacted).

- (8) The preceding provisions of this section apply to an amount paid before, as well as to an amount paid after, the day on which this section comes into force, except where the Commissioners have received a claim for repayment of the amount before that day.
- (9) The following paragraph shall be inserted at the end of section 40(1) of the Value Added Tax Act 1983 (appeals)—
 - “(s) a claim for the repayment of an amount under section 24 of the Finance Act 1989 (recovery of overpaid tax).”
- (10) This section shall come into force on such day as the Treasury may by order made by statutory instrument appoint.
- (11) Section 45 of the Value Added Tax Act 1983 (orders) shall not apply to subsection (10) above.

25 Administration etc.

- (1) Schedule 7 to the Value Added Tax Act 1983 (administration, collection and enforcement) shall be amended as follows.
- (2) In paragraph 2 (accounting for and payment of tax) for paragraphs (b) and (c) of sub-paragraph (4) there shall be substituted—
 - “(b) with respect to the making of entries in accounts for the purpose of making adjustments, whether for the correction of errors or otherwise; and
 - (c) for the making of financial adjustments in connection with the making of entries in accounts for the purpose mentioned in paragraph (b) above.”
- (3) In paragraph 7(1) (power to require the keeping of records) after the word “may” there shall be inserted the words “by regulations”.
- (4) After paragraph 7(1) there shall be inserted—
 - “(1A) Regulations under sub-paragraph (1) above may make different provision for different cases and may be framed by reference to such records as may be specified in any notice published by the Commissioners in pursuance of the regulations and not withdrawn by a further notice.”
- (5) This section shall come into force on such day as the Treasury may by order made by statutory instrument appoint.
- (6) Section 45 of the Value Added Tax Act 1983 (orders) shall not apply to subsection (5) above.

26 Input tax on self-supplies

At the end of subsection (3) of section 15 of the Value Added Tax Act 1983 (input tax allowable under section 14) there shall be added—

- “(d) preventing input tax on a supply which, under or by virtue of any provision of this Act, a person makes to himself from being allowable as attributable to that supply.”