



# Finance Act 1989

## 1989 CHAPTER 26

### PART I

#### CUSTOMS AND EXCISE, VALUE ADDED TAX AND CAR TAX

### CHAPTER I

#### CUSTOMS AND EXCISE

#### *Hydrocarbon oil duties*

### 1 Rates

- (1) In section 6 of the Hydrocarbon Oil Duties Act 1979 (duty on light oil and heavy oil)—
  - (a) in subsection (1), after “(2)” there shall be inserted “, (2A)”, and
  - (b) the following subsection shall be inserted after subsection (2)—

“(2A) The rate of duty for petrol which—

    - (a) has an anti-knock value below that specified as the minimum for 4 star petrol in the British Standard Specification BS 4040:1988, and
    - (b) is neither unleaded petrol (within the meaning of section 13A below) nor aviation gasoline,

shall be £0.2122 a litre.”
- (2) In section 13A of that Act (rebate on unleaded petrol), for “£0.0202” there shall be substituted “£0.0272”.
- (3) In Part I of Schedule 3 (regulations) to that Act, in paragraph 10A, after the word “Amending” there shall be inserted the words “the description of petrol falling within subsection (2A) of section 6 of this Act or” and for the words “section 6 of this Act” there shall be substituted the words “that section”.

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- (4) This section shall be deemed to have come into force at 6 o'clock in the evening of 14th March 1989.

## 2 Reliefs

- (1) The following section shall be inserted after section 20A of the Hydrocarbon Oil Duties Act 1979—

### “20AA Power to allow reliefs

- (1) The Commissioners may make regulations allowing reliefs as regards—
- (a) any duty of excise which has been charged in respect of hydrocarbon oil, petrol substitute, spirits used for making power methylated spirits, or road fuel gas;
  - (b) any amount which has been paid to the Commissioners under section 12(2) above;
  - (c) any amount which would (apart from the regulations) be payable to the Commissioners under section 12(2) above.
- (2) The regulations may include such provision as the Commissioners think fit in connection with allowing reliefs, and in particular may—
- (a) provide for relief to take the form of a repayment or remission;
  - (b) provide for relief to be allowed in cases or classes of case set out in the regulations;
  - (c) provide for relief to be allowed to the extent set out in the regulations;
  - (d) provide for relief to be allowed subject to conditions imposed by the regulations;
  - (e) provide for relief to be allowed subject to such conditions as the Commissioners may impose on the person claiming relief;
  - (f) provide for the taking of samples of hydrocarbon oil in order to ascertain whether relief should be allowed or has been properly allowed;
  - (g) make provision as to administration (which may include provision requiring the making of applications for relief);
  - (h) make different provision in relation to different cases or classes of case;
  - (i) include such supplementary, incidental, consequential or transitional provisions as appear to the Commissioners to be necessary or expedient.
- (3) The conditions which may be imposed as mentioned in subsection (2)(d) or (e) above may include conditions as to the physical security of premises, the provision (by bond or otherwise) of security for payment, or such other matters as the Commissioners think fit.
- (4) Where a person contravenes or fails to comply with any regulation made under this section or any condition imposed by or under such a regulation—
- (a) he shall be liable on summary conviction to a penalty of three times the value of any goods in respect of which the contravention or failure occurred or a penalty of an amount represented by level 3 on the standard scale, whichever is the greater, and

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- (b) any goods in respect of which the contravention or failure occurred shall be liable to forfeiture.
- (5) A reference in this section to a duty of excise includes a reference to any addition to such duty by virtue of section 1 of the (5)Excise Duties (Surcharges or Rebates) Act 1979.
- (6) Schedule 5 to this Act shall have effect with respect to any sample of hydrocarbon oil taken in pursuance of regulations made under this section.”
- (2) In consequence of subsection (1) above, in paragraph 6 of Schedule 5 to the (2)Hydrocarbon Oil Duties Act 1979 after “section” there shall be inserted “20AA or”.

#### *Alcoholic liquor duties*

### **3 Original gravity of beer**

- (1) In section 3(5) of the Alcoholic Liquor Duties Act 1979 (under which the gravity of worts as ascertained by the proper officer is relevant for certain purposes) for the words from “proper officer” to the end there shall be substituted the words “brewer in accordance with subsection (2) above and recorded by him in pursuance of regulations made under section 49 below.”
- (2) This section applies to worts if the brewer ascertains their gravity in accordance with section 3(2) of the Alcoholic Liquor Duties Act 1979, for the purpose of the record kept by him in pursuance of regulations under section 49 of that Act, on or after the day on which this Act is passed.

### **4 Blending made-wines etc**

- (1) Section 55 of the Alcoholic Liquor Duties Act 1979 (charge of excise duty on made-wine) shall be amended as follows.
- (2) In subsection (5) (which, where certain conditions are satisfied, lifts the requirement to hold a licence for premises where made-wine is produced), after paragraph (d) there shall be added “and
  - (e) he does not blend or otherwise mix—
    - (i) two or more made-wines, or
    - (ii) one or more made-wines and one or more wines,so as to produce made-wine the rate of duty applicable to which is higher than the rate applicable to at least one of the constituent liquors.”
- (3) After subsection (5) there shall be inserted—
  - “(5A) For the purposes of subsection (5) above—
    - (a) the rate of duty applicable to any made-wine is that which is or would be chargeable under subsection (1) above on its importation into the United Kingdom; and
    - (b) the rate of duty applicable to any wine is that which is or would be chargeable under subsection (1) of section 54 above on its importation into the United Kingdom.”

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- (4) This section shall have effect in relation to the blending or other mixing of made-wines, or of made-wines and wines, on or after the day on which this Act is passed.

## 5 Description as beer

Section 73 of the Alcoholic Liquor Duties Act 1979 (which prohibits anyone from describing as beer any substance on which beer duty has not been paid) shall cease to have effect.

### *Vehicles excise duty*

## 6 Rates

- (1) The Vehicles (Excise) Act 1971 (“the 1971 Act”) and the Vehicles (Excise) Act (Northern Ireland) 1972 (“the 1972 Act”) shall be amended as follows.
- (2) For the words—
- (a) “in the second column of” in paragraph 1 of Schedule 2 to the 1971 Act (rates of duty on hackney carriages), and
  - (b) “in column 2 of” in paragraph 1 of Schedule 2 to the 1972 Act,
- there shall be substituted the words “in relation to its seating capacity in the Table in”; and for the Table in Part II of each of those Schedules there shall be substituted the Table set out in Part I of Schedule 1 to this Act.
- (3) In Part II of Schedule 4 to the 1971 Act, for Tables A, A(1) and A(2) (rates for rigid goods vehicles having plated gross weight exceeding 12 tonnes) there shall be substituted the Tables set out in Part II of Schedule 1 to this Act.
- (4) The Tables set out in Part II of Schedule 1 to this Act shall also be substituted for Tables A, A(1) and A(2) in Part II of Schedule 4 to the 1972 Act, but modified for that purpose by the substitution for any reference to a plated gross weight of a reference to a relevant maximum weight.
- (5) In paragraph 2 of Schedule 4A to the 1971 Act and the 1972 Act (rates of duty for vehicles carrying or drawing exceptional loads) for “£1,600” there shall be substituted “£3,100”.
- (6) In—
- (a) subsection (5) of section 16 of the 1971 Act (rates of duty for trade licences), including that subsection as set out in paragraph 12 of Part I of Schedule 7 to that Act, and
  - (b) subsection (6) of section 16 of the 1972 Act, including that subsection as set out in paragraph 12 of Part I of Schedule 9 to that Act,
- for “£85” and “£17” there shall be substituted “£100” and “£20” respectively.
- (7) This section shall apply in relation to licences taken out after 14th March 1989.

## 7 Community buses

- (1) Section 38(1) of the Vehicles (Excise) Act 1971 shall be amended as follows.
- (2) Before the definition of “conditional sale agreement” there shall be inserted—

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““community bus” means a vehicle used on public roads solely in accordance with a community bus permit (within the meaning of section 22 of the Transport Act 1985), and not used for providing a service under an agreement providing for service subsidies (within the meaning of section 63(10)(b) of that Act);”.

- (3) In the definition of “hackney carriage”, there shall be added at the end the words “but does not include a community bus”.

## **8 Special machines**

- (1) The amendments of the Vehicles (Excise) Act 1971 and the Vehicles (Excise) Act (Northern Ireland) 1972 set out in Schedule 2 to this Act shall have effect for the purpose of, or in connection with, replacing certain existing classes of vehicles chargeable with duty under Schedule 3 to each of those Acts with a single class of vehicles, namely that of special machines; and shall so have effect in relation to licences taken out after 14th March 1989.
- (2) As from 15th March 1989, paragraph 2 of Schedule 1 to the Hydrocarbon Oil Duties Act 1979 (vehicles which are not road vehicles within the meaning of that Act) shall have effect with the substitution of the following sub-paragraph for sub-paragraph (b)

—  
“(b) a special machine within the meaning of Schedule 3 to that Act;”.

## **9 Recovery vehicles**

In paragraph 8(2)(d) of Part I of Schedule 3 to each of the Vehicles (Excise) Act 1971 and the Vehicles (Excise) Act (Northern Ireland) 1972 the words “any load other than” shall be omitted.

## **10 Powers of Secretary of State with respect to assignment of registration marks**

- (1) Section 19 of each of the Vehicles (Excise) Act 1971 and the Vehicles (Excise) Act (Northern Ireland) 1972 (registration and registration marks) shall be amended as follows.
- (2) After subsection (1) there shall be inserted—
- “(1A) The Secretary of State may, in such circumstances as he may determine—
- (a) assign a registration mark to a vehicle to which another registration mark has been previously assigned;
  - (b) assign to a vehicle (whether on its first registration or not) a registration mark previously assigned to another vehicle;
  - (c) (whether in connection with an assignment falling within either of the preceding paragraphs or not) withdraw any registration mark for the time being assigned to a vehicle;
  - (d) re-assign to a vehicle a registration mark previously assigned to it but subsequently withdrawn.”
- (3) In subsection (2), after the words “registration mark” there shall be inserted the words “for the time being”.
- (4) Nothing in this section shall be construed as affecting the operation of—

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- (a) either of the Acts referred to in subsection (1) above, or
  - (b) any regulations made under either of those Acts,
- in relation to any time before the day on which this Act is passed.

## **11 Retention of registration mark pending transfer to another vehicle**

- (1) The Secretary of State may by regulations provide for a person in whose name a vehicle is registered to be granted a right, exercisable on a single occasion falling within a specified period, to have the registration mark for the time being assigned to the vehicle assigned to some other vehicle, being a vehicle registered—
- (a) in that person's name, or
  - (b) in the name of some other person nominated by him in accordance with the regulations.
- (2) Regulations under this section may, in particular, make provision—
- (a) for the manner in which an application for the grant of such a right (referred to in the following provisions of this section as a “right of retention”) is to be made to the Secretary of State;
  - (b) for the payment of a specified fee on the making of such an application and for the whole or part of the fee to be retained whether or not the application is granted;
  - (c) for requiring the vehicle to which the registration mark in question is for the time being assigned to be made available for inspection at a place designated by or under the regulations;
  - (d) for authorising the Secretary of State to refuse such an application on such grounds as he thinks fit;
  - (e) with respect to the manner in which rights of retention are to be exercisable;
  - (f) for enabling the period referred to in subsection (1) above to be extended by the Secretary of State if he thinks fit in the circumstances of any particular case;
  - (g) for rights of retention to be non-transferable (but without prejudice to the vesting of any such right in a person by operation of law);
  - (h) with respect to the conditions which must be satisfied before a registration mark may be assigned to a vehicle in pursuance of a right of retention;
  - (i) for authorising the Secretary of State to revoke a right of retention—
    - (i) if it appears to him that there are special reasons for doing so, or
    - (ii) in any other specified circumstances;
  - (j) for the payment, in connection with the assignment of a registration mark in pursuance of a right of retention, of such charge as is for the time being prescribed by virtue of section 12(1) of the Finance Act 1976;
  - (k) with respect to such incidental, consequential or supplemental matters as appear to the Secretary of State to be necessary or expedient for the purposes of the regulations.
- (3) Regulations under this section may make different provision for different cases or circumstances.
- (4) The power to make regulations under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

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- (5) The assignment by the Secretary of State of any registration mark to a vehicle in pursuance of a right of retention shall be without prejudice to the subsequent exercise by him, in relation to the mark, of any of his powers under subsection (1A) of the principal section (as amended by section 10 above).
- (6) In this section—
- “the principal section” means—
    - (a) section 19 of the Vehicles (Excise) Act 1971, or
    - (b) in relation to Northern Ireland, section 19 of the Vehicles (Excise) Act (Northern Ireland) 1972;
  - “right of retention” means such a right as is mentioned in subsection (1) above; and
  - “specified” means specified in regulations under this section.
- (7) Expressions used in this section or in section 12 below which are also used in the principal section have the same meaning as in that section.

## **12 Sale by Secretary of State of rights to particular registration marks**

- (1) This section shall apply to such registration marks that either—
- (a) have never been assigned to a vehicle, or
  - (b) have been so assigned but (as a result of having been subsequently withdrawn) are not for the time being so assigned,
- as the Secretary of State may from time to time determine.
- (2) The Secretary of State may by regulations make a scheme providing for registration marks to which this section applies to be assigned to vehicles registered in the names of, or of the nominees of, persons who have acquired rights under the scheme to have the marks in question so assigned.
- (3) Regulations under this section may, in particular, make provision—
- (a) for a person to acquire a right under the scheme to have a particular registration mark to which this section applies assigned to a vehicle registered—
    - (i) in his name, or
    - (ii) in the name of some other person nominated by him in accordance with the scheme,on payment of such sum as is payable in accordance with the scheme in respect of the acquisition of that right;
  - (b) with respect to—
    - (i) the manner in which agreements for the sale of such rights (referred to in the following provisions of this section as “relevant rights”) may be effected,
    - (ii) the terms which may be contained in, or incorporated into, such agreements, and
    - (iii) rights and liabilities arising in connection with such agreements otherwise than under any such terms;
  - (c) for enabling the Secretary of State to determine as he thinks fit—
    - (i) the prices at which particular relevant rights are to be sold or (as the case may be) the reserve prices applicable to the sale of any such rights, or

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- (ii) the manner in which any such prices are to be determined;
  - (d) with respect to the manner in which relevant rights are to be exercisable;
  - (e) for relevant rights to be exercisable only on a single occasion falling within a specified period (subject to any provision made by virtue of paragraph (f) below);
  - (f) for enabling any such period to be extended by the Secretary of State if he thinks fit in the circumstances of any particular case;
  - (g) for relevant rights to be non-transferable (but without prejudice to the vesting of any such right in a person by operation of law);
  - (h) with respect to the conditions which must be satisfied before a registration mark may be assigned to a vehicle in pursuance of a relevant right;
  - (i) for authorising the Secretary of State to revoke a relevant right—
    - (i) if it appears to him that there are special reasons for doing so, or
    - (ii) in any other specified circumstances;
  - (j) for the payment, in connection with the assignment of a registration mark in pursuance of a relevant right, of such charge as is for the time being prescribed by virtue of section 12(1) of the Finance Act 1976;
  - (k) with respect to such incidental, consequential or supplemental matters as appear to the Secretary of State to be necessary or expedient for the purposes of a scheme under this section.
- (4) Without prejudice to the generality of subsection (3)(b) above, regulations under this section may make provision for authorising the Secretary of State to make arrangements with other persons whereby such persons—
- (a) are given authority (whether irrevocable or otherwise) to act on his behalf in offering for sale, and entering into agreements for the sale of, relevant rights in the case of such registration marks, and during such periods, as he may determine;
  - (b) are required to account to him for sums due to him under such agreements whether they have received any amounts due from the purchasers under the agreements or not; and
  - (c) may become entitled or subject to such rights or liabilities of the Secretary of State in connection with such agreements as may be specified.
- (5) Regulations under this section may make different provision for different cases or circumstances, and may, in particular, exempt assignments of any specified class or description from any charge payable by virtue of subsection (3)(j) above.
- (6) The power to make regulations under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) Any sums received by the Secretary of State in respect of the sale of relevant rights shall be paid into the Consolidated Fund.
- (8) Section 11(5) above shall apply for the purposes of this section as if the reference to a right of retention were a reference to a relevant right.
- (9) In this section—
- “relevant right” means such a right as is mentioned in subsection (3)(a) above; and
  - “specified” means specified in regulations under this section.



### 13 Registration documents

In section 23 of the Vehicles Excise Act 1971 as set out in paragraph 20 of Part I of Schedule 7 to that Act, in subsection (1)(d) and (e) (regulations about registration books), for the word “books”, in each place where it occurs, there shall be substituted the word “documents”.

### 14 Dishonoured cheques

(1) After section 26 of the Vehicles (Excise) Act 1971 there shall be inserted—

**“26A Dishonoured cheques: additional liability in certain cases**

- (1) Where a person has been convicted of an offence under section 102 of the Customs and Excise Management Act 1979 (payment for licence by dishonoured cheque) in relation to a licence issued under this Act, the court shall, in addition to any penalty which it may impose under that section, order him to pay an amount equal to one twelfth of the appropriate annual rate of duty for each month or part of a month in the relevant period.
- (2) The relevant period for the purposes of this section is the period which—
  - (a) begins with the first day of the period for which the licence was applied for or, if it is later, the day on which the licence first was to have effect, and
  - (b) ends with whichever is the earliest of the following, namely—
    - (i) the end of the month in which the order is made;
    - (ii) the date on which the licence was due to expire;
    - (iii) the end of the month during which the licence was delivered up; and
    - (iv) the end of the month preceding that in which a new licence for the licensed vehicle first had effect.
- (3) The appropriate annual rate of duty for the purposes of this section is the annual rate of duty which, at the beginning of the relevant period, was appropriate to a vehicle of the description specified in the application.
- (4) Where an order has previously been made against a person under section 9 of this Act to pay an amount for a month or part of a month in the case of a vehicle, the amount which he is ordered to pay under this section in the case of the vehicle shall be calculated as if no part of that month were comprised in the relevant period.”

(2) After section 26 of the Vehicles (Excise) Act (Northern Ireland) 1972 there shall be inserted the section set out in subsection (1) above, but with the substitution for the reference to section 102 of the Customs and Excise Management Act 1979 of a reference to section 10 of the Miscellaneous Transferred Excise Duties Act (Northern Ireland) 1972.

(3) In section 9 of the Vehicles (Excise) Act 1971 (additional liability for keeping unlicensed vehicle) after subsection (3) there shall be inserted—

“(3A) Where an order has previously been made against a person under section 26A of this Act to pay an amount for a month or part of a month in the case of a vehicle, the amount which he is ordered to pay under this section in the case

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of the vehicle shall be calculated as if no part of that month were comprised in the relevant period.”

- (4) In section 9 of the Vehicles (Excise) Act (Northern Ireland) 1972 (corresponding provision in Northern Ireland) after subsection (4) there shall be inserted—
- “(4A) Where an order has previously been made against a person under section 26A to pay an amount for a month or part of a month in the case of a vehicle, the amount which he is ordered to pay under this section in the case of the vehicle shall be calculated as if no part of that month were comprised in the relevant period.”
- (5) In section 34 of the Vehicles (Excise) Act 1971 (establishing amount of penalty on plea of guilty by absent accused)—
- (a) after the words “section 8 of this Act” there shall be inserted the words “, or under section 102 of the Customs and Excise Management Act 1979 in relation to a licence issued under this Act,”, and
- (b) after the words “section 9(1)” in each place where they occur there shall be inserted the words “or, as the case may be, 26A(1)”.
- (6) In section 32A of the Vehicles (Excise) Act (Northern Ireland) 1972 (corresponding provision in Northern Ireland)—
- (a) after the words “section 8” there shall be inserted the words “or under section 10 of the Miscellaneous Transferred Excise Duties Act (Northern Ireland) 1972 in relation to a licence issued under this Act”, and
- (b) after the words “section 9(1)” in each place where they occur there shall be inserted the words “or, as the case may be, section 26A(1)”.
- (7) This section shall apply in relation to licences taken out on or after the day on which this Act is passed.

### *General*

## **15 Estimation of excise duty**

- (1) Section 116A of the Customs and Excise Management Act 1979 (power to estimate excise duties) shall be amended as mentioned in subsections (2) and (3) below.
- (2) In subsection (1)—
- (a) after the words “excise duty” there shall be inserted “to which this section applies”, and
- (b) for “the occupier of an excise warehouse or a distiller” there shall be substituted “a revenue trader”.
- (3) The following subsection shall be inserted after subsection (2)—
- “(3) This section applies to any excise duty other than one in relation to which provision for estimation is made by the Betting and Gaming Duties Act 1981 (that is to say, general betting, gaming licence and bingo duties).”

## **16 Time limits for proceedings**

- (1) After section 146 of the Customs and Excise Management Act 1979 there shall be inserted—

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### **“146A Time limits for proceedings**

- (1) Except as otherwise provided in the customs and excise Acts, and notwithstanding anything in any other enactment, the following provisions shall apply in relation to proceedings for an offence under those Acts.
  - (2) Proceedings for an indictable offence shall not be commenced after the end of the period of 20 years beginning with the day on which the offence was committed.
  - (3) Proceedings for a summary offence shall not be commenced after the end of the period of 3 years beginning with that day but, subject to that, may be commenced at any time within 6 months from the date on which sufficient evidence to warrant the proceedings came to the knowledge of the prosecuting authority.
  - (4) For the purposes of subsection (3) above, a certificate of the prosecuting authority as to the date on which such evidence as is there mentioned came to that authority’s knowledge shall be conclusive evidence of that fact.
  - (5) In the application of this section to Scotland—
    - (a) in subsection (2), “proceedings for an indictable offence” means proceedings on indictment;
    - (b) in subsection (3), “proceedings for a summary offence” means summary proceedings.
  - (6) In the application of this section to Northern Ireland—
    - (a) “indictable offence” means an offence which, if committed by an adult, is punishable on conviction on indictment (whether only on conviction on indictment, or either on conviction on indictment or on summary conviction);
    - (b) “summary offence” means an offence which, if committed by an adult, is punishable only on summary conviction.
  - (7) In this section, “prosecuting authority” means the Commissioners and includes, in Scotland, the procurator fiscal.”
- (2) Section 147(1) of that Act shall cease to have effect.
  - (3) In section 28(5) of the Vehicles (Excise) Act 1971, for the words “section 147(1)” there shall be substituted the words “section 146A”.
  - (4) This section shall have effect in relation to offences committed on or after the day on which this Act is passed.

## **17 Disbursements in Port of London**

In section 17 of the Customs and Excise Management Act 1979 (general rule that customs and excise receipts, after deduction of disbursements, are to be paid into the Commissioners' General Account at the Bank of England) paragraph (a) of subsection (5) (special rule that disbursements in Port of London are to be paid out of that Account) shall cease to have effect.

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## 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—
 

*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;

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- (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;
  - (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;

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- (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.
  - (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—
      - (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.

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- (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.
- (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 subparagraph (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.”

## **CHAPTER III**

### **MISCELLANEOUS**

## **27 Relief where vehicle leased to the handicapped.**

(1) After section 5 of the Car Tax Act 1983 there shall be inserted the following section—

### **“5A Relief where vehicle leased to the handicapped.**

(1) This section applies where on the date when, apart from subsection (2)(a) below, tax on a chargeable vehicle would become due from a person registered under this Act, there is held by him or on his behalf a certificate of a person to whom the vehicle is sold (“the lessor”) that the lessor intends to supply the vehicle to another in such circumstances that the supply will be a zero-rated supply by virtue of item 12 of Group 14 (letting on hire of motor vehicles to the handicapped) of Schedule 5 to the Value Added Tax Act 1983.

(2) Tax on the vehicle—

- (a) shall not be payable by the registered person, but
- (b) if, within the period of three years beginning with that date, the lessor supplies the vehicle in any circumstances other than those mentioned in subsection (1) above, shall be payable by the lessor and shall become due and payable at the time of the supply.

(3) In this section—

“certificate” means a certificate in a form for the time being approved by the Commissioners, and

“supply” has the same meaning as in the Value Added Tax Act 1983.”

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- (2) In section 5 of the Car Tax Act 1983 (liability and payment), in subsection (1), at the end of paragraph (a), there shall be inserted the words “subject to section 5A below”.
- (3) The powers conferred by Schedule 1 to that Act to require accounts and records to be preserved and produced shall be exercisable also in relation to any certificate which has been held by or on behalf of a registered person for the purposes of section 5A of that Act.
- (4) In paragraph 13 of that Schedule (restriction on registration of chargeable vehicles), after sub-paragraph (c) there shall be inserted “or
  - (d) that, by virtue of section 5A of this Act, tax on it has not become due and payable.”

## **28 Reliefs from duties and taxes for persons enjoying certain immunities and privileges**

- (1) After section 13 of the Customs and Excise Duties (General Reliefs) Act 1979 there shall be inserted the following sections—

### **“13A Reliefs from duties and taxes for persons enjoying certain immunities and privileges**

- (1) The Commissioners may by order make provision for conferring in respect of any persons to whom this section applies reliefs, by way of remission or repayment, from payment by them or others of duties of customs or excise, value added tax or car tax.
- (2) An order under this section may make any relief for which it provides subject to such conditions binding the person in respect of whom the relief is conferred and, if different, the person liable apart from the relief for payment of the tax or duty (including conditions which are to be complied with after the time when, apart from the relief, the duty or tax would become payable) as may be imposed by or under the order.
- (3) An order under this section may include any of the provisions mentioned in subsection (4) below for cases where—
  - (a) relief from payment of any duty of customs or excise, value added tax or car tax chargeable on any goods, or on the supply of any goods or services or the importation of any goods has been conferred (whether by virtue of an order under this section or otherwise) in respect of any person to whom this section applies, and
  - (b) any condition required to be complied with in connection with the relief is not complied with.
- (4) The provisions referred to in subsection (3) above are—
  - (a) provision for payment to the Commissioners of the tax or duty by—
    - (i) the person liable, apart from the relief, for its payment, or
    - (ii) any person bound by the condition, or
    - (iii) any person who is or has been in possession of the goods or has received the benefit of the services,
 or for two or more of those persons to be jointly and severally liable for such payment, and

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- (b) in the case of goods, provision for forfeiture of the goods.
- (5) An order under this section—
  - (a) may contain such incidental and supplementary provisions as the Commissioners think necessary or expedient, and
  - (b) may make different provision for different cases.
- (6) In this section and section 13C of this Act—
  - “duty of customs” includes any agricultural levy within the meaning of section 6 of the European Communities Act 1972 chargeable on goods imported into the United Kingdom, and
  - “duty of excise” means any duty of excise chargeable on goods and includes any addition to excise duty by virtue of section 1 of the Excise Duties (Surcharges or Rebates) Act 1979.
- (7) For the purposes of this section and section 13C of this Act, where in respect of any person to whom this section applies relief is conferred (whether by virtue of an order under this section or otherwise) in relation to the use of goods by any persons or for any purposes, the relief is to be treated as conferred subject to a condition binding on him that the goods will be used only by those persons or for those purposes.
- (8) Nothing in any order under this section shall be construed as authorising a person to import any thing in contravention of any prohibition or restriction for the time being in force with respect to it under or by virtue of any enactment.

### **13B Persons to whom section 13A applies**

- (1) The persons to whom section 13A of this Act applies are—
  - (a) any person who, for the purposes of any provision of the Visiting Forces Act 1952 or the International Headquarters and Defence Organisations Act 1964 is—
    - (i) a member of a visiting force or of a civilian component of such a force or a dependant of such a member, or
    - (ii) a headquarters, a member of a headquarters or a dependant of such a member,
  - (b) any person enjoying any privileges or immunities under or by virtue of—
    - (i) the Diplomatic Privileges Act 1964,
    - (ii) the Commonwealth Secretariat Act 1966,
    - (iii) the Consular Relations Act 1968,
    - (iv) the International Organisations Act 1968, or
    - (v) the Overseas Development and Co-operation Act 1980,
  - (c) any person enjoying, under or by virtue of section 2 of the European Communities Act 1972, any privileges or immunities similar to those enjoyed under or by virtue of the enactments referred to in paragraph (b) above.
- (2) The Secretary of State may by order amend subsection (1) above to include any persons enjoying any privileges or immunities similar to those enjoyed under or by virtue of the enactments referred to in paragraph (b) of that subsection.

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- (3) No order shall be made under this section unless a draft of the order has been laid before and approved by resolution of each House of Parliament.

### **13C Offence where relieved goods used, etc., in breach of condition**

- (1) Subsection (2) below applies where—
- (a) any relief from payment of any duty of customs or excise, value added tax or car tax chargeable on, or on the supply or importation of, any goods has been conferred (whether by virtue of an order under section 13A of this Act or otherwise) in respect of any person to whom that section applies subject to any condition as to the persons by whom or the purposes for which the goods may be used, and
  - (b) if the tax or duty has subsequently become payable, it has not been paid.
- (2) If any person—
- (a) acquires the goods for his own use, where he is not permitted by the condition to use them, or for use for a purpose that is not permitted by the condition or uses them for such a purpose, or
  - (b) acquires the goods for use, or causes or permits them to be used, by a person not permitted by the condition to use them or by a person for a purpose that is not permitted by the condition or disposes of them to a person not permitted by the condition to use them,
- with intent to evade payment of any tax or duty that has become payable or that, by reason of the disposal, acquisition or use, becomes or will become payable, he is guilty of an offence.
- (3) For the purposes of this section—
- (a) in the case of a condition as to the persons by whom goods may be used, a person is not permitted by the condition to use them unless he is a person referred to in the condition as permitted to use them, and
  - (b) in relation to a condition as to the purposes for which goods may be used, a purpose is not permitted by the condition unless it is a purpose referred to in the condition as a permitted purpose,
- and in this section “dispose” includes “lend” and “let on hire”, and “acquire” shall be interpreted accordingly.
- (4) A person guilty of an offence under this section may be detained and shall be liable—
- (a) on summary conviction, to a penalty of the statutory maximum or of three times the value of the goods (whichever is the greater), or to imprisonment for a term not exceeding six months, or to both, or
  - (b) on conviction on indictment, to a penalty of any amount, or to imprisonment for a term not exceeding seven years, or to both.”
- (2) Section 13C of the Customs and Excise Duties (General Reliefs) Act 1979 inserted by subsection (1) above shall have effect where relief is conferred on or after the day on which this Act is passed.
- (3) In section 17 of the Customs and Excise Duties (General Reliefs) Act 1979, in subsection (3), for “or 13” there shall be substituted “13 or 13A” and, in subsection (4), for “or 13(1)” there shall be substituted “13(1) or 13A”.

## **29 Recovery of overpaid excise duty and car tax**

- (1) This section applies to proceedings for restitution of an amount paid to the Commissioners of Customs and Excise by way of excise duty or car tax.
- (2) Proceedings to which this section applies shall not be dismissed by reason only of the fact that the amount was paid by reason of a mistake of law.
- (3) In any proceedings to which this section applies it shall be a defence that repayment of an amount would unjustly enrich the claimant.
- (4) This section shall have effect in relation to proceedings commenced on or after the day on which this Act is passed.