



Value Added Tax Act 1994

1994 CHAPTER 23

PART IV

ADMINISTRATION, COLLECTION AND ENFORCEMENT

Interest, repayment supplements etc. payable by Commissioners

78 Interest in certain cases of official error

- (1) Where, due to an error on the part of the Commissioners, a person has—
- accounted to them for an amount by way of output tax which was not output tax due from him and which they are in consequence liable to repay to him, or
 - failed to claim credit under section 25 for an amount for which he was entitled so to claim credit and which they are in consequence liable to pay to him, or
 - (otherwise than in a case falling within paragraph (a) or (b) above) paid to them by way of VAT an amount that was not VAT due and which they are in consequence liable to repay to him, or
 - suffered delay in receiving payment of an amount due to him from them in connection with VAT,
- then, if and to the extent that they would not be liable to do so apart from this section, they shall pay interest to him on that amount for the applicable period, but subject to the following provisions of this section.
- (2) Nothing in subsection (1) above requires the Commissioners to pay interest—
- on any amount which falls to be increased by a supplement under section 79; or
 - where an amount is increased under that section, on so much of the increased amount as represents the supplement.
- (3) Interest under this section shall be payable at such rates as may from time to time be prescribed by order made by the Treasury; and any such order—
- may prescribe different rates for different purposes; and

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- (b) shall apply to interest for periods beginning on or after the date on which the order is expressed to come into force, whether or not interest runs from before that date;
- and the first such order may prescribe, for cases where interest runs from before the date on which that order is expressed to come into force, rates for periods ending before that date.
- (4) The “applicable period” in a case falling within subsection (1)(a) or (b) above is the period—
- (a) beginning with the appropriate commencement date, and
 - (b) ending with the date on which the Commissioners authorise payment of the amount on which the interest is payable.
- (5) In subsection (4) above, the “appropriate commencement date”—
- (a) in a case where an amount would have been due from the person by way of VAT in connection with the relevant return, had his input tax and output tax been as stated in that return, means the date on which the Commissioners received payment of that amount; and
 - (b) in a case where no such payment would have been due from him in connection with that return, means the date on which the Commissioners would, apart from the error, have authorised payment of the amount on which the interest is payable;
- and in this subsection “the relevant return” means the return in which the person accounted for, or (as the case may be) ought to have claimed credit for, the amount on which the interest is payable.
- (6) The “applicable period” in a case falling within subsection (1)(c) above is the period—
- (a) beginning with the date on which the payment is received by the Commissioners, and
 - (b) ending with the date on which they authorise payment of the amount on which the interest is payable.
- (7) The “applicable period” in a case falling within subsection (1)(d) above is the period—
- (a) beginning with the date on which, apart from the error, the Commissioners might reasonably have been expected to authorise payment of the amount on which the interest is payable, and
 - (b) ending with the date on which they in fact authorise payment of that amount.
- (8) In determining in accordance with subsection (4), (6) or (7) above the applicable period for the purposes of subsection (1) above, there shall be left out of account any period referable to the raising and answering of any reasonable inquiry relating to any matter giving rise to, or otherwise connected with, the person’s entitlement to interest under this section.
- (9) In determining for the purposes of subsection (8) above whether any period is referable to the raising and answering of such an inquiry as is there mentioned, there shall be taken to be so referable any period which—
- (a) begins with the date on which the Commissioners first consider it necessary to make such an inquiry, and
 - (b) ends with the date on which the Commissioners—
 - (i) satisfy themselves that they have received a complete answer to the inquiry, or

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- (ii) determine not to make the inquiry or, if they have made it, not to pursue it further,
but excluding so much of that period as may be prescribed; and it is immaterial whether any inquiry is in fact made or whether it is or might have been made of the person referred to in subsection (1) above or of an authorised person or of some other person.
- (10) The Commissioners shall only be liable to pay interest under this section on a claim made in writing for that purpose.
- (11) No claim shall be made under this section after the expiry of 6 years from the date on which the claimant discovered the error or could with reasonable diligence have discovered it.
- (12) In this section—
 - (a) any reference to receiving a payment from the Commissioners includes a reference to the discharge, by way of set-off, of their liability to make it; and
 - (b) any reference to a return is a reference to a return required to be made in accordance with paragraph 2 of Schedule 11.

79 Repayment supplement in respect of certain delayed payments or refunds

- (1) In any case where—
 - (a) a person is entitled to a VAT credit, or
 - (b) a body which is registered and to which section 33 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 £50, whichever is the greater.
- (2) The said conditions are—
 - (a) that the requisite return or claim is received by the Commissioners not later than 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 30 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 30 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 25(5), and
 - (ii) compliance with any such condition as is referred to in paragraph 4(1) of Schedule 11.

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- (4) In determining for the purposes of regulations under subsection (3) above whether any period is referable to the raising and answering of such an inquiry as is mentioned in that subsection, there shall be taken to be so referable any period which—
- (a) begins with the date on which the Commissioners first consider it necessary to make such an inquiry, and
 - (b) ends with the date on which the Commissioners—
 - (i) satisfy themselves that they have received a complete answer to the inquiry, or
 - (ii) determine not to make the inquiry or, if they have made it, not to pursue it further,
 but excluding so much of that period as may be prescribed; and it is immaterial whether any inquiry is in fact made or whether it is or might have been made of the person or body making the requisite return or claim or of an authorised person or of some other person.
- (5) 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 25(3), and
 - (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 33.
- (6) 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 this 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 33.
- (7) If the Treasury by order so direct, any period specified in the order shall be disregarded for the purpose of calculating the period of 30 days referred to in subsection (2)(b) above.

80 Recovery of overpaid VAT

- (1) Where a person has (whether before or after the commencement of this Act) paid an amount to the Commissioners by way of VAT which was not VAT 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 VAT by virtue of the fact that it was not VAT due to them.

81 Interest given by way of credit and set-off of credits

- (1) Any interest payable by the Commissioners (whether under an enactment or instrument or otherwise) to a person on a sum due to him under or by virtue of any provision of this Act shall be treated as an amount due by way of credit under section 25(3).
- (2) Subsection (1) above shall be disregarded for the purpose of determining a person's entitlement to interest or the amount of interest to which he is entitled.
- (3) Subject to subsection (1) above, in any case where—
 - (a) an amount is due from the Commissioners to any person under any provision of this Act, and
 - (b) that person is liable to pay a sum by way of VAT, 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.
- (4) Subsection (3) above shall not apply in the case of any such amount as is mentioned in paragraph (a) of that subsection where that amount became due to the person in question—
 - (a) at a time when that person's estate was vested in any other person as that person's trustee in bankruptcy;
 - (b) at a time when that person's estate was vested in any other person as that person's interim trustee or permanent trustee;
 - (c) at a time, other than a time before the appointment of a liquidator, when that person was being wound up, either voluntarily or by the court;
 - (d) at a time when an administration order was in force in relation to that person;
 - (e) at a time when there was an administrative receiver of that person;
 - (f) at a time when—
 - (i) a voluntary arrangement approved in accordance with Part I or VIII of the Insolvency Act 1986, or Part II or Chapter II of Part VIII of the Insolvency (Northern Ireland) Order 1989, or
 - (ii) a deed of arrangement registered in accordance with the Deeds of Arrangement Act 1914 or Chapter I of Part VIII of that Order of 1989, was in force in relation to that person; or
 - (g) at a time when that person's estate was vested in any other person as that person's trustee under a trust deed.
- (5) In subsection (4) above—

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- (a) “administration order” means an administration order under Part II of the Insolvency Act 1986 or an administration order within the meaning of Article 5(1) of the Insolvency (Northern Ireland) Order 1989;
- (b) “administrative receiver” means an administrative receiver within the meaning of section 251 of that Act of 1986 or Article 5(1) of that Order of 1989; and
- (c) “trust deed” has the same meaning as in the Bankruptcy (Scotland) Act 1985.