



Finance Act 1997

1997 CHAPTER 16

PART IV

PAYMENTS AND OVERPAYMENTS IN RESPECT OF INDIRECT TAXES

Value added tax

44 Liability of Commissioners to interest

- (1) Section 78 of the Value Added Tax Act 1994 (interest) shall have effect, and be deemed always to have had effect, with the insertion of the following subsection after subsection (1)—

“(1A) In subsection (1) above—

- (a) references to an amount which the Commissioners are liable in consequence of any matter to pay or repay to any person are references, where a claim for the payment or repayment has to be made, to only so much of that amount as is the subject of a claim that the Commissioners are required to satisfy or have satisfied; and
 - (b) the amounts referred to in paragraph (d) do not include any amount payable under this section.”
- (2) That section shall have effect in relation to any claim made on or after 18th July 1996, and shall be deemed always to have had effect in relation to such a claim, with the substitution of the following subsection for subsection (11)—
- “(11) A claim under this section shall not be made more than three years after the end of the applicable period to which it relates.”
- (3) That section shall have effect, and be deemed always to have had effect, with the substitution of the following paragraph for paragraph (a) of subsection (12)—
- “(a) references to the authorisation by the Commissioners of the payment of any amount include references to the discharge by way of set-off

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(whether under section 81(3) or otherwise) of the Commissioners' liability to pay that amount; and”.

(4) For subsections (8) and (9) of that section (periods in respect of which the Commissioners are not liable to interest) there shall be substituted the following subsections—

“(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 by which the Commissioners' authorisation of the payment of interest is delayed by the conduct of the person who claims the interest.

(8A) The reference in subsection (8) above to a period by which the Commissioners' authorisation of the payment of interest is delayed by the conduct of the person who claims it includes, in particular, any period which is referable to—

- (a) any unreasonable delay in the making of the claim for interest or in the making of any claim for the payment or repayment of the amount on which interest is claimed;
- (b) any failure by that person or a person acting on his behalf or under his influence to provide the Commissioners—
 - (i) at or before the time of the making of a claim, or
 - (ii) subsequently in response to a request for information by the Commissioners,

with all the information required by them to enable the existence and amount of the claimant's entitlement to a payment or repayment, and to interest on that payment or repayment, to be determined; and

- (c) the making, as part of or in association with either—
 - (i) the claim for interest, or
 - (ii) any claim for the payment or repayment of the amount on which interest is claimed,

of a claim to anything to which the claimant was not entitled.

(9) In determining for the purposes of subsection (8A) above whether any period of delay is referable to a failure by any person to provide information in response to a request by the Commissioners, there shall be taken to be so referable, except so far as may be prescribed, any period which—

- (a) begins with the date on which the Commissioners require that person to provide information which they reasonably consider relevant to the matter to be determined; and
- (b) ends with the earliest date on which it would be reasonable for the Commissioners to conclude—
 - (i) that they have received a complete answer to their request for information;
 - (ii) that they have received all that they need in answer to that request; or
 - (iii) that it is unnecessary for them to be provided with any information in answer to that request.”

(5) Subsection (4) above shall have effect for the purposes of determining whether any period beginning on or after the day on which this Act is passed is left out of account.

- (6) Amendments corresponding to those made by subsections (1) and (3) above shall be deemed to have had effect, for the purposes of the cases to which the enactments applied, in relation to the enactments directly or indirectly re-enacted in section 78 of the Value Added Tax Act 1994.

45 Assessment for overpayments of interest

- (1) After section 78 of the Value Added Tax Act 1994 there shall be inserted the following section—

“78A Assessment for interest overpayments

- (1) Where—
- (a) any amount has been paid to any person by way of interest under section 78, but
 - (b) that person was not entitled to that amount under that section,
- the Commissioners may, to the best of their judgement, assess the amount so paid to which that person was not entitled and notify it to him.
- (2) An assessment made under subsection (1) above shall not be made more than two years after the time when evidence of facts sufficient in the opinion of the Commissioners to justify the making of the assessment comes to the knowledge of the Commissioners.
- (3) Where an amount has been assessed and notified to any person under subsection (1) above, that amount shall be deemed (subject to the provisions of this Act as to appeals) to be an amount of VAT due from him and may be recovered accordingly.
- (4) Subsection (3) above does not have effect if or to the extent that the assessment in question has been withdrawn or reduced.
- (5) An assessment under subsection (1) above shall be a recovery assessment for the purposes of section 84(3A).
- (6) Sections 74 and 77(6) apply in relation to assessments under subsection (1) above as they apply in relation to assessments under section 73 but as if the reference in subsection (1) of section 74 to the reckonable date were a reference to the date on which the assessment is notified.
- (7) Where by virtue of subsection (6) above any person is liable to interest under section 74—
- (a) section 76 shall have effect in relation to that liability with the omission of subsections (2) to (6); and
 - (b) section 77, except subsection (6), shall not apply to an assessment of the amount due by way of interest;
- and (without prejudice to the power to make assessments for interest for later periods) the interest to which any assessment made under section 76 by virtue of paragraph (a) above may relate shall be confined to interest for a period of no more than two years ending with the time when the assessment to interest is made.

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- (8) For the purposes of this section notification to a personal representative, trustee in bankruptcy, interim or permanent trustee, receiver, liquidator or person otherwise acting in a representative capacity in relation to another shall be treated as notification to the person in relation to whom he so acts.”
- (2) In section 83 of that Act (matters subject to appeal), after paragraph (s) there shall be inserted the following paragraph—
 - “(sa) an assessment under section 78A(1) or the amount of such an assessment;”.
- (3) In section 84 of that Act (further provisions as to appeals), after subsection (3) there shall be inserted the following subsection—
 - “(3A) An appeal against an assessment which is a recovery assessment for the purposes of this subsection, or against the amount of such an assessment, shall not be entertained unless—
 - (a) the amount notified by the assessment has been paid or deposited with the Commissioners; or
 - (b) on being satisfied that the appellant would otherwise suffer hardship, the Commissioners agree, or the tribunal decides, that the appeal should be entertained notwithstanding that that amount has not been so paid or deposited.”
- (4) Subsection (1) above shall be deemed to have come into force on 4th December 1996 in relation to amounts paid by way of interest at any time on or after 18th July 1996.
- (5) Subsections (2) and (3) above shall be deemed to have come into force on 4th December 1996 in relation to assessments made on or after that date.
- (6) Section 76(10) of the Value Added Tax Act 1994 (notification to representative of person who made acquisition) shall have effect, and be deemed always to have had effect, as if for “the person who made the acquisition in question” there were substituted “another”.

46 Repayments of overpayments: unjust enrichment

- (1) In section 80 of the Value Added Tax Act 1994, after subsection (3) (defence of unjust enrichment to claim for repayment of an overpayment) there shall be inserted the following subsections—
 - “(3A) Subsection (3B) below applies for the purposes of subsection (3) above where—
 - (a) there is an amount paid by way of VAT which (apart from subsection (3) above) would fall to be repaid under this section to any person (“the taxpayer”), and
 - (b) the whole or a part of the cost of the payment of that amount to the Commissioners has, for practical purposes, been borne by a person other than the taxpayer.
 - (3B) Where, in a case to which this subsection applies, loss or damage has been or may be incurred by the taxpayer as a result of mistaken assumptions made in his case about the operation of any VAT provisions, that loss or damage shall be disregarded, except to the extent of the quantified amount, in the making of any determination—

- (a) of whether or to what extent the repayment of an amount to the taxpayer would enrich him; or
- (b) of whether or to what extent any enrichment of the taxpayer would be unjust.

(3C) In subsection (3B) above—

“the quantified amount” means the amount (if any) which is shown by the taxpayer to constitute the amount that would appropriately compensate him for loss or damage shown by him to have resulted, for any business carried on by him, from the making of the mistaken assumptions; and

“VAT provisions” means the provisions of—

- (a) any enactment, subordinate legislation or Community legislation (whether or not still in force) which relates to VAT or to any matter connected with VAT; or
- (b) any notice published by the Commissioners under or for the purposes of any such enactment or subordinate legislation.”

(2) After section 80 of that Act there shall be inserted the following sections—

“80A Arrangements for reimbursing customers

- (1) The Commissioners may by regulations make provision for reimbursement arrangements made by any person to be disregarded for the purposes of section 80(3) except where the arrangements—
 - (a) contain such provision as may be required by the regulations; and
 - (b) are supported by such undertakings to comply with the provisions of the arrangements as may be required by the regulations to be given to the Commissioners.
- (2) In this section “reimbursement arrangements” means any arrangements for the purposes of a claim under section 80 which—
 - (a) are made by any person for the purpose of securing that he is not unjustly enriched by the repayment of any amount in pursuance of the claim; and
 - (b) provide for the reimbursement of persons who have for practical purposes borne the whole or any part of the cost of the original payment of that amount to the Commissioners.
- (3) Without prejudice to the generality of subsection (1) above, the provision that may be required by regulations under this section to be contained in reimbursement arrangements includes—
 - (a) provision requiring a reimbursement for which the arrangements provide to be made within such period after the repayment to which it relates as may be specified in the regulations;
 - (b) provision for the repayment of amounts to the Commissioners where those amounts are not reimbursed in accordance with the arrangements;
 - (c) provision requiring interest paid by the Commissioners on any amount repaid by them to be treated in the same way as that amount for the purposes of any requirement under the arrangements to make reimbursement or to repay the Commissioners;

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- (d) provision requiring such records relating to the carrying out of the arrangements as may be described in the regulations to be kept and produced to the Commissioners, or to an officer of theirs.
- (4) Regulations under this section may impose obligations on such persons as may be specified in the regulations—
 - (a) to make the repayments to the Commissioners that they are required to make in pursuance of any provisions contained in any reimbursement arrangements by virtue of subsection (3)(b) or (c) above;
 - (b) to comply with any requirements contained in any such arrangements by virtue of subsection (3)(d) above.
- (5) Regulations under this section may make provision for the form and manner in which, and the times at which, undertakings are to be given to the Commissioners in accordance with the regulations; and any such provision may allow for those matters to be determined by the Commissioners in accordance with the regulations.
- (6) Regulations under this section may—
 - (a) contain any such incidental, supplementary, consequential or transitional provision as appears to the Commissioners to be necessary or expedient; and
 - (b) make different provision for different circumstances.
- (7) Regulations under this section may have effect (irrespective of when the claim for repayment was made) for the purposes of the making of any repayment by the Commissioners after the time when the regulations are made; and, accordingly, such regulations may apply to arrangements made before that time.

80B Assessments of amounts due under section 80A arrangements

- (1) Where any person is liable to pay any amount to the Commissioners in pursuance of an obligation imposed by virtue of section 80A(4)(a), the Commissioners may, to the best of their judgement, assess the amount due from that person and notify it to him.
- (2) Subsections (2) to (8) of section 78A apply in the case of an assessment under subsection (1) above as they apply in the case of an assessment under section 78A(1)."
- (3) In section 83 of that Act (matters subject to appeal), after paragraph (t) there shall be inserted the following paragraph—
 - “(ta) an assessment under section 80B(1) or the amount of such an assessment;”.
- (4) Subsection (1) above has effect for the purposes of making any repayment on or after the day on which this Act is passed, even if the claim for that repayment was made before that day.

47 Repayments and assessments: time limits

- (1) For subsections (4) and (5) of section 80 of the Value Added Tax Act 1994 (time limit for making claim for a repayment of an overpayment) there shall be substituted the following subsection—

“(4) The Commissioners shall not be liable, on a claim made under this section, to repay any amount paid to them more than three years before the making of the claim.”

- (2) Subject to subsections (3) and (4) below, subsection (1) above shall be deemed to have come into force on 18th July 1996 as a provision applying, for the purposes of the making of any repayment on or after that date, to all claims under section 80 of the Value Added Tax Act 1994, including claims made before that date and claims relating to payments made before that date.

- (3) Subsection (4) below applies as respects the making of any repayment on or after 18th July 1996 on a claim under section 80 of the Value Added Tax Act 1994 if—

- (a) legal proceedings for questioning any decision (“the disputed decision”) of the Commissioners, or of an officer of the Commissioners, were brought by any person at any time before that date,
- (b) a determination has been or is made in those proceedings that the disputed decision was wrong or should be set aside,
- (c) the claim is one made by that person at a time after the proceedings were brought (whether before or after the making of the determination), and
- (d) the claim relates to—
 - (i) an amount paid by that person to the Commissioners on the basis of the disputed decision, or
 - (ii) an amount paid by that person to the Commissioners before the relevant date (including an amount paid before the making of the disputed decision) on grounds which, in all material respects, correspond to those on which that decision was made.

- (4) Where this subsection applies in the case of any claim—

- (a) subsection (4) of section 80 of the Value Added Tax Act 1994 (as inserted by this section) shall not apply, and shall be taken never to have applied, in relation to so much of that claim as relates to an amount falling within subsection (3)(d)(i) or (ii) above, but
- (b) the Commissioners shall not be liable on that claim, and shall be taken never to have been liable on that claim, to repay any amount so falling which was paid to them more than three years before the proceedings mentioned in subsection (3)(a) above were brought.

- (5) In subsection (3)(d) above—

- (a) the reference to the relevant date is a reference to whichever is the earlier of 18th July 1996 and the date of the making of the determination in question; and
- (b) the reference to an amount paid on the basis of a decision, or on any grounds, includes an amount so paid on terms (however expressed) which questioned the correctness of the decision or, as the case may be, of those grounds.

- (6) After the subsection (4) inserted in section 80 of the Value Added Tax Act 1994 by this section there shall be inserted the following subsections—

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“(4A) Where—

- (a) any amount has been paid, at any time on or after 18th July 1996, to any person by way of a repayment under this section, and
- (b) the amount paid exceeded the Commissioners' repayment liability to that person at that time,

the Commissioners may, to the best of their judgement, assess the excess paid to that person and notify it to him.

(4B) For the purposes of subsection (4A) above the Commissioners' repayment liability to a person at any time is—

- (a) in a case where any provision affecting the amount which they were liable to repay to that person at that time is subsequently deemed to have been in force at that time, the amount which the Commissioners are to be treated, in accordance with that provision, as having been liable at that time to repay to that person; and
- (b) in any other case, the amount which they were liable at that time to repay to that person.

(4C) Subsections (2) to (8) of section 78A apply in the case of an assessment under subsection (4A) above as they apply in the case of an assessment under section 78A(1).”

(7) In section 83 of that Act (matters subject to appeal), in paragraph (t), after “80” there shall be inserted “, an assessment under subsection (4A) of that section or the amount of such an assessment”.

(8) Nothing contained in—

- (a) any regulations under section 25(1) of, or paragraph 2 of Schedule 11 to, that Act relating to the correction of errors or the making of adjustments, or
- (b) any requirement imposed under any such regulations,

shall be taken, in relation to any time on or after 18th July 1996, to have conferred an entitlement on any person to receive, by way of repayment, any amount to which he would not have had any entitlement on a claim under section 80 of that Act.

(9) Subsections (6) to (8) above shall be deemed to have come into force on 4th December 1996.

(10) Section 77 of the Value Added Tax Act 1994 (time limits etc. for assessments) shall have effect, and be deemed in relation to any assessment made on or after 18th July 1996 to have had effect, with the substitution in subsections (1) and (4), for the words “6 years”, wherever they occur, of the words “3 years”.

(11) In this section—

“the Commissioners” means the Commissioners of Customs and Excise;
 and

“legal proceedings” means any proceedings before a court or tribunal.

(12) Without prejudice to the generality of paragraph 1(2) of Schedule 13 to the Value Added Tax Act 1994 (transitional provisions), the references in this section, and in subsection (4) of section 80 of that Act (as inserted by this section), to a claim under that section include references to a claim first made under section 24 of the Finance Act 1989 (which was re-enacted in section 80).

48 Set-off of credits and debits

- (1) In section 81 of the Value Added Tax Act 1994 (which makes provision for the set-off of credits and debits), after subsection (3) there shall be inserted the following subsection—

“(3A) Where—

- (a) the Commissioners are liable to pay or repay any amount to any person under this Act,
- (b) that amount falls to be paid or repaid in consequence of a mistake previously made about whether or to what extent amounts were payable under this Act to or by that person, and
- (c) by reason of that mistake a liability of that person to pay a sum by way of VAT, penalty, interest or surcharge was not assessed, was not enforced or was not satisfied,

any limitation on the time within which the Commissioners are entitled to take steps for recovering that sum shall be disregarded in determining whether that sum is required by subsection (3) above to be set against the amount mentioned in paragraph (a) above.”

- (2) Subsection (1) above shall be deemed to have come into force on 18th July 1996 as a provision applying for determining the amount of any payment or repayment by the Commissioners on or after that date, including a payment or repayment in respect of a liability arising before that date.

49 Transitional provision for set-offs etc

- (1) Where—

- (a) at any time before 4th December 1996, any person (“the taxpayer”) became liable to pay any sum (“the relevant sum”) to the Commissioners by way of VAT, penalty, interest or surcharge,
- (b) at any time on or after 18th July 1996 and before 4th December 1996 an amount was set against the whole or any part of the relevant sum,
- (c) the amount set against that sum was an amount which is treated under section 47 above as not having been due from the Commissioners at the time when it was set against that sum, and
- (d) as a consequence, the taxpayer’s liability to pay the whole or a part of the relevant sum falls to be treated as not having been discharged in accordance with section 81(3) of the 1994 Act,

the Commissioners may, to the best of their judgement, assess the amount of the continuing liability of the taxpayer and notify it to him.

- (2) In subsection (1) above the reference to the continuing liability of the taxpayer is a reference to so much of the liability to pay the relevant sum as—

- (a) would have been discharged if the amount mentioned in subsection (1)(b) above had been required to be set against the relevant sum in accordance with section 81(3) of the 1994 Act, but
- (b) falls, by virtue of section 47 above, to be treated as not having been discharged in accordance with section 81(3) of that Act.

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- (3) The taxpayer's only liabilities under the 1994 Act in respect of his failure, on or after the time mentioned in subsection (1)(b) above, to pay an amount assessable under this section shall be—
 - (a) his liability to be assessed for that amount under this section; and
 - (b) liabilities arising under the following provisions of this section.
- (4) Subsections (2) to (8) of section 78A of the 1994 Act apply in the case of an assessment under subsection (1) above as they apply in the case of an assessment under section 78A(1) of that Act.
- (5) The 1994 Act shall have effect as if the matters specified in section 83 of that Act (matters subject to appeal) included an assessment under this section and the amount of such an assessment.
- (6) Nothing contained in—
 - (a) any regulations under section 25(1) of, or paragraph 2 of Schedule 11 to, the 1994 Act relating to the correction of errors or the making of adjustments, or
 - (b) any requirement imposed under any such regulations,shall be taken, in relation to any time on or after 18th July 1996, to have conferred on any person any entitlement, otherwise than in accordance with section 81(3) of that Act, to set any amount, as an amount due from the Commissioners, against any sum which that person was liable to pay to the Commissioners by way of VAT, penalty, interest or surcharge.
- (7) In this section—
 - “the 1994 Act” means the Value Added Tax Act 1994; and
 - “the Commissioners” means the Commissioners of Customs and Excise.
- (8) This section shall be deemed to have come into force on 4th December 1996.
- (9) Where at any time on or after 4th December 1996 and before the day on which this Act is passed any assessment corresponding to an assessment under this section was made under a resolution of the House of Commons having effect in accordance with the provisions of the Provisional Collection of Taxes Act 1968, this section has effect, on and after the day on which this Act is passed, as if that assessment were an assessment under this section and as if any appeal brought under that resolution had been brought under this section.