



# Finance (No. 2) Act 2005

## 2005 CHAPTER 22

### PART 1

#### VALUE ADDED TAX

#### **1 Goods subject to warehousing regime: place of acquisition or supply**

In section 18 of VATA 1994 (goods subject to warehousing regime: place and time of acquisition or supply), after subsection (1) insert—

“(1A) The Commissioners may by regulations prescribe circumstances in which subsection (1) above shall not apply.”

#### **2 Cars: determination of consideration for fuel supplied for private use**

(1) Section 57 of VATA 1994 (determination of consideration for fuel supplied for private use) is amended as follows.

(2) After subsection (4) (power of Treasury by order to substitute a different Table for Table A) insert—

“(4A) The power conferred by subsection (4) above includes power to substitute for Table A a Table (whether or not of the same or a similar configuration) where any description of vehicle may be by reference to any one or more of the following—

- (a) the CO<sub>2</sub> emissions figure for the vehicle;
- (b) the type or types of fuel or power by which the vehicle is, or is capable of being, propelled;
- (c) the cylinder capacity of the engine in cubic centimetres.

(4B) The provision that may be included in any such Table includes provision for the purpose of enabling the consideration to be determined by reference to the Table—

- (a) by applying a percentage specified in the Table to a monetary amount specified in the Table, or

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- (b) by any other method.
- (4C) Table A, as from time to time substituted by virtue of subsection (4A) above, may be implemented or supplemented by either or both of the following—
  - (a) provision in Rules inserted before the Table, prescribing how the consideration is to be determined by reference to the Table;
  - (b) provision in Notes inserted after the Table in accordance with the following provisions of this section.
- (4D) The provision that may be made in Notes includes provision—
  - (a) with respect to the interpretation or application of the Table or any Rules or Notes;
  - (b) with respect to the figure that is to be regarded as the CO<sub>2</sub> emissions figure for any vehicle or any particular description of vehicle;
  - (c) for treating a vehicle as a vehicle with a particular CO<sub>2</sub> emissions figure;
  - (d) for treating a vehicle with a CO<sub>2</sub> emissions figure as a vehicle with a different CO<sub>2</sub> emissions figure;
  - (e) for or in connection with determining the consideration appropriate to vehicles of any particular description (in particular, vehicles falling within any one or more of the descriptions in subsection (4E) below).
- (4E) The descriptions are—
  - (a) vehicles capable of being propelled by any particular type or types of fuel or power;
  - (b) vehicles first registered before 1st January 1998;
  - (c) vehicles first registered on or after that date which satisfy the condition in subsection (4F) below (registration without a CO<sub>2</sub> emissions figure).
- (4F) The condition is that the vehicle is not one which, when it is first registered, is so registered on the basis of—
  - (a) an EC certificate of conformity that specifies a CO<sub>2</sub> emissions figure, or
  - (b) a UK approval certificate that specifies such a figure.
- (4G) Any Rules or Notes do not form part of the Table, but the Treasury, by order taking effect from the beginning of any prescribed accounting period beginning after the order is made, may—
  - (a) insert Rules or Notes,
  - (b) vary or remove Rules or Notes, or
  - (c) substitute any or all Rules or Notes.”.
- (3) In subsection (5) (fuel supplied for 2 or more vehicles)—
  - (a) in paragraph (a), for “Table A above, that Table” substitute “Table A above or any Notes, that Table and those Notes”;
  - (b) in paragraph (b), after “that Table”, in both places, insert “or those Notes”.
- (4) In subsection (7) (cubic capacity of internal combustion engine with reciprocating pistons) after “for the purposes of Table A above” insert “and any Notes”.

(5) In subsection (8) (cubic capacity in other cases) after “for the purposes of Table A above” insert “and any Notes”.

(6) After subsection (8) insert—

“(9) In this section—

“CO<sub>2</sub> emissions figure” means a CO<sub>2</sub> emissions figure expressed in grams per kilometre driven;

“EC certificate of conformity” means a certificate of conformity issued by a manufacturer under any provision of the law of a Member State implementing Article 6 of Council Directive 70/156/EEC, as from time to time amended;

“Notes” means Notes inserted by virtue of subsection (4C)(b) above;

“Rules” means Rules inserted by virtue of subsection (4C)(a) above;

“UK approval certificate” means a certificate issued under—

(a) section 58(1) or (4) of the Road Traffic Act 1988, or

(b) Article 31A(4) or (5) of the Road Traffic (Northern Ireland) Order 1981.

(10) If the Treasury consider it necessary or expedient to do so in consequence of—

(a) the form or content of any Table substituted or to be substituted by virtue of subsection (4A) above, or

(b) any provision included or to be included in Rules or Notes,

they may by order amend, repeal or replace so much of this section as for the time being follows subsection (1) and precedes Table A and relates to the use of that Table.”.

(7) The amendments made by this section come into force on such day or days as the Treasury may appoint by order made by statutory instrument; and different days may be so appointed for different purposes.

### **3 Credit for, or repayment of, overstated or overpaid VAT**

(1) Section 80 of VATA 1994 (recovery of overpaid VAT) is amended as follows.

(2) For subsection (1) (liability of Commissioners to repay overpaid VAT) substitute—

“(1) Where a person—

(a) has accounted to the Commissioners for VAT for a prescribed accounting period (whenever ended), and

(b) in doing so, has brought into account as output tax an amount that was not output tax due,

the Commissioners shall be liable to credit the person with that amount.

(1A) Where the Commissioners—

(a) have assessed a person to VAT for a prescribed accounting period (whenever ended), and

(b) in doing so, have brought into account as output tax an amount that was not output tax due,

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they shall be liable to credit the person with that amount.

(1B) Where a person has for a prescribed accounting period (whenever ended) paid to the Commissioners an amount by way of VAT that was not VAT due to them, otherwise than as a result of—

- (a) an amount that was not output tax due being brought into account as output tax, or
- (b) an amount of input tax allowable under section 26 not being brought into account,

the Commissioners shall be liable to repay to that person the amount so paid.”.

(3) In subsection (2) (Commissioners only liable to repay an amount on a claim) before “repay” insert “credit or”.

(4) After subsection (2) insert—

“(2A) Where—

- (a) as a result of a claim under this section by virtue of subsection (1) or (1A) above an amount falls to be credited to a person, and
- (b) after setting any sums against it under or by virtue of this Act, some or all of that amount remains to his credit,

the Commissioners shall be liable to pay (or repay) to him so much of that amount as so remains.”.

(5) In subsection (3) (defence of unjust enrichment) for “under this section, that repayment” substitute “under this section by virtue of subsection (1) or (1A) above, that the crediting”.

(6) For subsection (3A) (cost of payment borne for practical purposes by third party) substitute—

“(3A) Subsection (3B) below applies for the purposes of subsection (3) above where—

- (a) an amount would (apart from subsection (3) above) fall to be credited under subsection (1) or (1A) above to any person (“the taxpayer”), and
- (b) the whole or a part of the amount brought into account as mentioned in paragraph (b) of that subsection has, for practical purposes, been borne by a person other than the taxpayer.”.

(7) In subsection (3B) (loss or damage to be disregarded) in paragraph (a), for “repayment” substitute “crediting”.

(8) For subsection (4) (time limit on claims) substitute—

“(4) The Commissioners shall not be liable on a claim under this section—

- (a) to credit an amount to a person under subsection (1) or (1A) above, or
- (b) to repay an amount to a person under subsection (1B) above,

if the claim is made more than 3 years after the relevant date.

(4ZA) The relevant date is—

- (a) in the case of a claim by virtue of subsection (1) above, the end of the prescribed accounting period mentioned in that subsection, unless paragraph (b) below applies;

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- (b) in the case of a claim by virtue of subsection (1) above in respect of an erroneous voluntary disclosure, the end of the prescribed accounting period in which the disclosure was made;
- (c) in the case of a claim by virtue of subsection (1A) above in respect of an assessment issued on the basis of an erroneous voluntary disclosure, the end of the prescribed accounting period in which the disclosure was made;
- (d) in the case of a claim by virtue of subsection (1A) above in any other case, the end of the prescribed accounting period in which the assessment was made;
- (e) in the case of a claim by virtue of subsection (1B) above, the date on which the payment was made.

In the case of a person who has ceased to be registered under this Act, any reference in paragraphs (b) to (d) above to a prescribed accounting period includes a reference to a period that would have been a prescribed accounting period had the person continued to be registered under this Act.

(4ZB) For the purposes of this section the cases where there is an erroneous voluntary disclosure are those cases where—

- (a) a person discloses to the Commissioners that he has not brought into account for a prescribed accounting period (whenever ended) an amount of output tax due for the period;
- (b) the disclosure is made in a later prescribed accounting period (whenever ended); and
- (c) some or all of the amount is not output tax due.”.

(9) For subsections (4A) and (4B) (recovery of excess repayments) substitute—

“(4A) Where—

- (a) an amount has been credited under subsection (1) or (1A) above to any person at any time on or after 26th May 2005, and
- (b) the amount so credited exceeded the amount which the Commissioners were liable at that time to credit to that person,

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

(10) For subsection (7) (no other liability of Commissioners to repay VAT not due) substitute—

“(7) Except as provided by this section, the Commissioners shall not be liable to credit or repay any amount accounted for or paid to them by way of VAT that was not VAT due to them.”.

(11) The side-note to the section accordingly becomes “Credit for, or repayment of, overstated or overpaid VAT”.

(12) Section 4 contains consequential and supplementary provision.

#### **4 Section 3: consequential and supplementary provision**

(1) In consequence of the amendments made by section 3, VATA 1994 is amended as follows.

- (2) In section 78 (interest in certain cases of official error) in subsection (1)(a) (overstated output tax) for “and which they are in consequence liable to repay to him” substitute “and, as a result, they are liable under section 80(2A) to pay (or repay) an amount to him.”.
- (3) In section 80A (arrangements for reimbursing customers)—
- (a) in subsection (2)(a), for “repayment” substitute “crediting”;
  - (b) in subsection (2)(b), for “the cost of the original payment of that amount to the Commissioners” substitute “the amount brought into account as mentioned in paragraph (b) of subsection (1) or (1A) of that section”;
  - (c) in subsection (3)(a), for “repayment” substitute “crediting of the amount”;
  - (d) for subsection (3)(b) substitute—
    - “(b) provision for cases where an amount is credited but an equal amount is not reimbursed in accordance with the arrangements;”;
  - (e) in subsection (3)(c), for “repaid” substitute “paid (or repaid)”;
  - (f) in subsection (4)(a), for “to make the repayments to the Commissioners that they are required to make” substitute “to make the repayments, or give the notifications, to the Commissioners that they are required to make or give”;
  - (g) in subsection (7)—
    - (i) for “repayment”, in the first place, substitute “credit”;
    - (ii) for “the making of any repayment” substitute “the crediting of any amount”.
- (4) In section 80B (assessment of amounts due under section 80A arrangements) after subsection (1) (person liable to pay an amount) insert—
- “(1A) Where—
- (a) an amount (“the gross credit”) has been credited to any person under subsection (1) or (1A) of section 80,
  - (b) any sums were set against that amount, in accordance with subsection (2A) of that section, and
  - (c) the amount reimbursed in accordance with the reimbursement arrangements was less than the gross credit,
- subsection (1B) below applies.
- (1B) In any such case—
- (a) the person shall cease to be entitled to so much of the gross credit as exceeds the amount so reimbursed, and
  - (b) the Commissioners may, to the best of their judgement, assess the amount due from that person and notify it to him,
- but an amount shall not be assessed under this subsection to the extent that the person is liable to pay it to the Commissioners as mentioned in subsection (1) above.
- (1C) In determining the amount that a person is liable to pay as mentioned in subsection (1) above, any amount reimbursed in accordance with the reimbursement arrangements shall be regarded as first reducing so far as possible the amount that he would have been liable so to pay, but for the reimbursement of that amount.

(1D) For the purposes of this section, nil is an amount.

(1E) Any reference in any other provision of this Act to an assessment under subsection (1) above includes, if the context so admits, a reference to an assessment under subsection (1B) above.”.

(5) In section 83 (appeals)—

- (a) in paragraph (t) (repayment of amounts under section 80 etc) before “repayment” insert “crediting or”;
- (b) in paragraph (ta) (assessments under section 80B(1) etc) after “80B(1)” insert “or (1B)”.

(6) The amendments made by section 3 and this section have effect in any case where a claim under section 80(2) of VATA 1994 is made on or after 26th May 2005, whenever the event occurred in respect of which the claim is made.

## **5 Reverse charge: gas and electricity valuation**

(1) In paragraph 8 of Schedule 6 to VATA 1994 (valuation in case of reverse charge)—

- (a) after “8” insert “, or any supply of goods is treated by virtue of section 9A,”, and
- (b) after “the services” insert “or goods”.

(2) This section has effect in relation to supplies made on or after 17th March 2005.

## **6 Disclosure of value added tax avoidance schemes**

(1) Schedule 1 (which contains amendments of Schedule 11A to VATA 1994) has effect.

(2) Subsection (1) and Schedule 1 shall come into force on such day as the Treasury may by order made by statutory instrument appoint.

(3) An order under subsection (2) may—

- (a) appoint different days for different purposes, and
- (b) contain transitional provisions and savings.