



# Finance (No. 2) Act 2005

## 2005 CHAPTER 22

### PART 1

#### VALUE ADDED TAX

### **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,

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.”.

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*Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 2005, Section 3. (See end of Document for details)*

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- (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;
- (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;

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- (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.

**Changes to legislation:**

There are currently no known outstanding effects for the Finance (No. 2) Act 2005, Section 3.