
S T A T U T O R Y I N S T R U M E N T S

1986 No. 335

VALUE ADDED TAX

The Value Added Tax (Bad Debt Relief) Regulations 1986

Made - - - - - 27th February 1986

Laid before the House of Commons 7th March 1986

Coming into Operation - - 1st April 1986

The Commissioners of Customs and Excise, in exercise of the powers conferred on them by section 22(6) and (7) of the Value Added Tax Act 1983(a) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Value Added Tax (Bad Debt Relief) Regulations 1986 and shall come into operation on 1st April 1986.

Interpretation

2. In these Regulations—

“claimant” means a person who makes a claim in accordance with regulation 4 of these Regulations for a refund of tax to which he is entitled by virtue of section 22 of the Principal Act;

“debtor” means the individual, or company, mentioned in subsection (2) or subsection (3) of section 22 of the Principal Act who, or which, has become insolvent within the meaning of either of the said subsections;

“purchaser” means a person (whether or not he is the debtor) to whom the claimant made a supply or supplies for consideration in money which the debtor is liable to pay;

the “Principal Act” means the Value Added Tax Act 1983;

the “Principal Regulations” means the Value Added Tax (General) Regulations 1985(b);

“refund” means a refund of tax to which the claimant is entitled by virtue of section 22 of the Principal Act.

(a) 1983 c. 55; section 22 was substituted by the Finance Act 1985 (c. 54), section 32.
(b) S.I. 1985/886; relevant amending instrument is S.I. 1986/71.

Revocations and savings

3.— (1) The Value Added Tax (Bad Debt Relief) Regulations 1978(a) and the Value Added Tax (General and Bad Debt Relief) (Amendment) Regulations 1981(b) are hereby revoked.

(2) Anything begun under or for the purpose of any Regulations revoked by these Regulations may be continued under or, as the case may be, for the purpose of the corresponding provision of these Regulations.

(3) Where any document used or required for the purpose of the tax refers to a provision of a regulation revoked by these Regulations, such reference shall, unless the contrary intention appears, be construed as referring to the corresponding provision of these Regulations.

The making of a claim to the Commissioners

4.— (1) Save as the Commissioners may otherwise allow or direct, the claimant shall make a claim to the Commissioners by including the correct amount of the refund in the box opposite the legend “Overdeclarations of VAT made on previous returns” on the return prescribed in paragraph (2) below.

(2) The claimant shall make a claim on the return which he is required to furnish in accordance with regulation 58 of the Principal Regulations, for the prescribed accounting period during which he received the document mentioned in either paragraph (a) of regulation 5 below or paragraph (1) of regulation 6 below, as the case may be; except that, in the case of an award of sequestration mentioned in sub-paragraph (a)(ii) of regulation 11 below, it shall be made on the next return which the claimant is required to furnish upon the expiration of the 3 months mentioned therein.

Evidence required of the claimant in support of his claim

5. Save as the Commissioners may otherwise allow, the claimant, before he makes a claim, shall hold—

- (a) except as provided in regulation 6 below, a document issued to him by the person with whom he proves in the insolvency of the debtor which specifies the total amount for which he has so proved; and
- (b) (i) a copy of the tax invoice which was provided in accordance with Part III of the Principal Regulations in respect of each taxable supply upon which the claim for the refund is based; or
(ii) in cases where there was no obligation to provide a tax invoice, a document which shows the time and nature of and the consideration in money for each taxable supply upon which the claim for the refund is based; and
- (c) records, or other documents, showing that he has accounted for and paid the tax on each taxable supply upon which the claim for a refund of tax is based.

(a) S.I. 1978/1129.

(b) S.I. 1981/1080.

6.— (1) In the case of the appointment of a person to act as the administrator or administrative receiver of a company, paragraph (a) of regulation 5 above shall have effect as if for the reference to the document therein prescribed there was substituted a reference to the document giving notice of the issue, pursuant to rules made under paragraph 23(d) of Schedule 5 to the Insolvency Act 1985(a), of the certificate mentioned in section 22(3)(b) of the Principal Act.

(2) In the case of an award of sequestration mentioned in sub-paragraph (a)(ii) of regulation 11 below, the requirement to hold the document prescribed in paragraph (a) of regulation 5 above shall not apply.

Preservation of documents and records and duty to produce

7.— (1) Save as the Commissioners may otherwise allow, the claimant shall preserve the documents, invoices and records which he holds in accordance with regulations 5 and 6 above for a period of 6 years from the making of the claim; and for the purpose of this regulation a claim made by way of a return prescribed in paragraph (2) of regulation 4 above is made on the day when the particular return is furnished.

(2) Upon demand made by an authorised person the claimant shall produce or cause to be produced any such documents, invoices and records for inspection by the authorised person and permit him to remove them at a reasonable time and for a reasonable period.

Set-off of amounts between the claimant and the debtor

8. Save as the Commissioners may otherwise allow, where the claimant owed an amount to the debtor when the debtor became insolvent which—

(a) under the law governing the insolvency of the debtor can be set off;

or

(b) cannot be so set off, but in respect of which payment can be lawfully demanded of the claimant by the person with whom the claimant proves in the insolvency of the debtor and which is not so paid at the time the claimant makes his claim to the Commissioners;

and—

(i) the claimant made only one supply to the purchaser, then the outstanding amount of the consideration in money for that supply shall be reduced by the amount which the claimant owed the debtor;

or

(ii) the claimant made more than one supply to the purchaser and no part of the total amount of the consideration in money for those supplies was paid, then the outstanding amount of the consideration in money for each supply upon which tax was accounted for and paid shall be reduced to an amount obtained by dividing the consideration in money for such supply by the total amount of the

(a) 1985 c. 65.

consideration in money for all supplies (whether taxable or otherwise) and multiplying this by such total amount less the amount which the claimant owed the debtor;

and any refund shall be calculated from such reduced outstanding amount of the consideration in money.

Determination of outstanding amount of consideration in money

9.— (1) Where, before the debtor became insolvent—

- (a) the claimant made more than one supply to the purchaser,
- (b) such supplies were at differing rates of tax (including the zero rate) or at least one supply was exempt, and
- (c) part of the total amount of the consideration in money for such supplies was paid,

then, for the purpose of calculating any refund, the outstanding amount of the consideration in money for each supply upon which tax was accounted for and paid shall be taken to be such part of the debt as is attributed to such supply in accordance with the rules, set out in paragraph (3) below, for attributing the debt to supplies (whether taxable or otherwise) referred to in that paragraph.

(2) In this regulation “the debt” means the amount of the consideration in money or supplies made to the purchaser and owed by the debtor when he became insolvent less, save as the Commissioners may otherwise allow, any amount owed by the claimant to the debtor at the time he became insolvent which—

- (a) under the law governing the insolvency of the debtor can be set off;

or

- (b) cannot be so set off but in respect of which payment can be lawfully demanded of the claimant by the person with whom the claimant proves in the insolvency of the debtor and which is not so paid at the time the claimant makes his claim to the Commissioners.

(3) The debt shall be attributed to the supply which is the most recent in time before the debtor became insolvent and, if not wholly attributed to that supply, thereafter to supplies in the reverse order to the dates on which they were made, except that attribution shall not be made to any supply where the consideration in money for that supply was paid in full and the payment was allocated to that supply by the debtor at the time of payment, and, where—

- (a) the most recent supply and other supplies to which the whole of the debt could be attributed under this paragraph occur on one day, or
- (b) the supplies to which the balance of the debt could be attributed under this paragraph occur on one day,

attribution shall be made to those supplies by dividing the consideration in money for each such supply upon which tax was accounted for and paid by the total amount of the consideration in money for those supplies (whether taxable or otherwise) and multiplying by the debt or the balance of it as the case may be.

Repayment of a refund

10.— (1) Where the claimant fails to comply with regulation 7 above he shall repay to the Commissioners the amount of the refund by including that amount in the box opposite the legend “Underdeclarations of VAT made on previous returns” on his return for a prescribed accounting period which the Commissioners designate for that purpose.

(2) Where the claimant proves subsequently in the insolvency of the debtor for—

(a) an amount consisting of the consideration, or of a portion thereof, for a taxable supply or supplies made by the claimant,

which, taken together with—

(b) the amount for which he has proved in the insolvency for the purpose of obtaining a refund of tax,

exceeds—

(c) the outstanding amount of the consideration for a taxable supply or, as the case may be, for all of the taxable supplies made by the claimant, less the amount of the refund received by him;

he shall repay to the Commissioners the amount of the refund by including that amount in the box opposite the legend “Underdeclarations of VAT made on previous returns” on the return for the prescribed accounting period in which he so proves subsequently in the insolvency.

(3) If at the time the claimant is required to repay any refund by virtue of the preceding paragraphs of this regulation he is no longer required to furnish returns to the Commissioners he shall repay such refund to the Commissioners at such time and in such form and manner as they may direct.

Proving in the insolvency in Scotland

11. For the purpose of subsection (5) of section 22 of the Principal Act, a claimant shall be taken to have proved in the insolvency if, in the case of—

(a) an award of sequestration of the estate of a debtor where—

(i) a person has been appointed a trustee, he lodges a claim with the trustee for the amount of the debt less the amount of the refund which he proposes to claim from the Commissioners, or

(ii) no person is appointed trustee within 3 months of the making of the award, he notifies the Commissioners in writing, at least 1 month before he makes his claim to them, of the amount of the refund which he proposes to claim, of the name and address of the debtor and of the number and date of the Edinburgh Gazette in which is intimated the sequestration of the estate of the debtor; or

(b) the debtor executing a trust deed for his creditors or a judicial factor being appointed under section 11A of the Judicial Factors (Scotland) Act 1889(a) to divide the insolvent estate of the deceased debtor among that debtor’s creditors, he claims upon respectively the trustee

(a) 1889 c. 39; section 11A was inserted by paragraph 4 of Schedule 7 to the Bankruptcy (Scotland) Act 1985 (c. 66).

or the judicial factor for the amount of the debt less the amount of the refund which proposes to claim from the Commissioners; or

- (c) a company registered in Scotland which goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up, he lodges a claim with the liquidator for the amount of the debt less the amount of the refund which he proposes to claim from the Commissioners.

D. J. Howard,
Commissioner of Customs and Excise.

27th February 1986

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EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations replace, with certain amendments, the Value Added Tax (Bad Debt Relief) Regulations 1978, as amended by regulation 4 of the Value Added Tax (General and Bad Debt Relief) (Amendment) Regulations 1981, which are revoked. They regulate generally the administration of relief for the value added tax element of the outstanding consideration for bad debts incurred on supplies where the debtor becomes formally insolvent on or after 1st April 1986. They complement the extended class of qualifying insolvencies provided from that date under the new section 22 of the Value Added Tax Act 1983 which was substituted by section 32(1) of the Finance Act 1985.

Regulations 3(2) and 3(3) are new, and provide respectively for the continuity under these Regulations of anything begun under the former Regulations, and for the substitution in any document used for value added tax purposes of a reference to a provision of these Regulations for a reference to the corresponding provision of the former Regulations.

Regulations 4, 5 and 6 replace the former regulations 3 and 4 and describe the procedure for claiming relief and the evidence to be held in support of a claim. Regulation 6(1) is new and prescribes the evidence to be held in cases where an administrator or administrative receiver of a company has been appointed and the assets are insufficient to permit any payment to the ordinary unsecured creditors.

Regulation 7 replaces the former regulation 5 and prescribes the minimum period for the retention of evidence. The regulation has been amended to increase this period from 3 to 6 years, in common with the requirements for other value added tax records.

Regulations 8 and 9 replace the former regulations 6 and 7 and prescribe the method to be used for the calculation of the outstanding consideration in cases of mutual debts and part payments respectively.

Regulation 10 replaces the former regulation 8 and provides for the repayment of relief by the claimant where certain conditions are breached.

Regulation 11 replaces the former regulation 9 and defines how a claimant shall be taken to have proved in an insolvency in Scotland.

Certain other minor amendments have been made throughout the Regulations for greater clarity or for consistency with other statutory provisions.

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