

1987 No. 510

VALUE ADDED TAX

**The Value Added Tax (General) (Amendment) (No. 2)
Regulations 1987**

Made - - - - - *24th March 1987*

*Laid before the
House of Commons* - *24th March 1987*

Coming into force - *1st April 1987*

The Commissioners of Customs and Excise, in exercise of the powers conferred on them by sections 14(9) and 15 of the Value Added Tax Act 1983(a) and of all other powers enabling them in that behalf, hereby make the following Regulations:

1. These Regulations may be cited as the Value Added Tax (General) (Amendment) (No. 2) Regulations 1987 and shall come into force on 1st April 1987.

2. For PART V of the Value Added Tax (General) Regulations 1985(b) there shall be substituted the following—

“PART V

INPUT TAX AND PARTIAL EXEMPTION

Interpretation and longer periods

29.—(1) In this Part of these Regulations—

- (a) “exempt input tax” means input tax which is attributable wholly or partly to an exempt supply;
- (b) the “first tax year” of a taxable person means a period of 12 calendar months commencing on the 1st day of April, May or June, according to the prescribed accounting periods allocated to him, or on such other date as the Commissioners may approve or direct, next following his effective date of registration determined in accordance with Schedule 1 to the Act;
- (c) the “tax year” of a taxable person means any period of 12 calendar months commencing on the day following the end of his first tax year or any succeeding period of 12 calendar months;

(a) 1983 c.55. As from 1st April 1987 section 15 is amended by a resolution passed by the House of Commons on 23rd March 1987 under the Provisional Collection of Taxes Act 1968(c.2), section 1. This resolution has statutory effect but will cease to have effect on 5th August 1987 unless re-enacted in the Finance Act 1987.

(b) S.I. 1985/886, to which there are amendments not relevant to these Regulations.

(d) the "registration period" of a taxable person means the period commencing on his effective date of registration determined in accordance with Schedule 1 to the Act and ending on the day before the beginning of his first tax year.

(2) The provisions of paragraphs (3), (4), (5) and (6) of this regulation shall be used for determining the longer period applicable to taxable persons under this Part.

(3) A taxable person who incurs exempt input tax during his first or any other tax year shall have applied to him a longer period which shall correspond with that tax year unless he did not incur exempt input tax during his immediately preceding tax year or registration period, in which case his longer period shall—

(a) begin on the first day of the first prescribed accounting period in which he incurs exempt input tax; and

(b) end on the last day of his tax year,

except where he only incurs exempt input tax in the last prescribed accounting period of his tax year, in which case no longer period shall be applied to him in respect of that tax year.

(4) A taxable person who incurs exempt input tax during his registration period shall have applied to him a longer period which shall begin on the first day on which he incurs exempt input tax, and end on the day before the commencement of his first tax year.

(5) In the case of a taxable person ceasing to be taxable during a longer period applicable to him, that longer period shall end on the day when he ceases to be taxable.

(6) The Commissioners may approve different provisions for different circumstances and in particular may approve, in the case of a taxable person who incurs exempt input tax, or a class of such persons, that a longer period shall apply which need not correspond with a tax year.

Attribution of input tax to taxable supplies

30.—(1) Subject to paragraphs (2), (3), (4) and (5) of this regulation, the amount of input tax to be provisionally attributed to taxable supplies by a taxable person shall be determined in any prescribed accounting period by the following method:

(a) importations by and supplies to the taxable person in the period shall be identified;

(b) the input tax on such importations and supplies as are wholly used or to be used by him in making taxable supplies may be deducted;

(c) the input tax on such importations and supplies as are wholly used or to be used by him in making exempt supplies or in carrying on any activity other than the making of taxable supplies may not be deducted;

(d) the deductible proportion of any remaining input tax shall be provisionally calculated as follows:

(i) importations by and supplies to the taxable person in the period which are partly used or to be used by him in making taxable supplies shall be identified;

(ii) the extent to which the above importations and supplies are used or to be used by him in making taxable supplies shall be ascertained, and expressed as a proportion of the whole use made or to be made by him of such importations and supplies;

(iii) there may be deducted such proportion of the remaining input tax as corresponds with the proportion ascertained above.

(2) The Commissioners may in the case of a taxable person who incurs exempt input tax allow that paragraph (1)(d) of this regulation shall not apply, in which case the deductible proportion of any remaining input tax may be provisionally calculated as follows:

Subject to paragraph (3) of this regulation, there may be deducted such proportion of any remaining input tax as bears the same ratio to the total

remaining input tax of the taxable person as the value of taxable supplies by him bears to the value of all supplies by him.

(3) In calculating the proportion under paragraph (2) of this regulation there shall be excluded:

- (a) any sum receivable by the taxable person in respect of any supply of capital goods used by him for the purposes of his business;
- (b) any sum receivable by the taxable person which is incidental to one or more of his business activities and which is in respect of—
 - (i) any supply comprised in Groups 1 or 5 of Schedule 6 to the Act;
 - (ii) any supply comprised in item 1 of Group 8 or item 1 of Group 8A of Schedule 5 to the Act;
 - (iii) any supply of financial services comprised in items 5 or 6 of Group 9 of Schedule 5 to the Act;
- (c) that part of the value of any supply of goods on which output tax is not chargeable by virtue of any order made by the Treasury under section 14(10) of the Act unless the taxable person acquired or imported the goods for the purpose of selling them.

(4) Where the Commissioners consider it necessary in order to secure a fair and reasonable attribution of input tax to taxable supplies, they may, in the case of any taxable person or class of such persons, direct the manner in which the extent of use of importations and supplies is to be ascertained under paragraph (1)(d) of this regulation.

(5) The Commissioners may allow the use of a method other than that specified in this regulation.

Attribution of input tax to foreign and warehouse supplies

30A. Input tax incurred by a taxable person in any prescribed accounting period on importations by or supplies to him which are used or to be used by him in whole or in part in making—

- (a) supplies outside the United Kingdom which would be taxable supplies if made in the United Kingdom, or
- (b) supplies which section 35 of the Act provides are to be disregarded for the purposes of the Act and which would otherwise be taxable supplies,

may be attributed to taxable supplies to the extent that the importations or supplies are so used or to be used.

Treatment of input tax attributable to exempt supplies as being attributable to taxable supplies

31.—(1) Subject to paragraph (2) of this regulation, there shall be treated as attributable to taxable supplies any input tax attributable to exempt supplies of the following descriptions—

- (a) any deposit of money;
- (b) the granting of any lease or tenancy of or any licence to occupy any premises where in any longer period—
 - (i) the input tax attributable to all such supplies by the grantor is less than £1,000; and
 - (ii) no exempt input tax is incurred by the grantor in respect of any exempt supply other than a supply of a description specified in this regulation;
- (c) any services comprised in item 3 of Group 2 of Schedule 6 to the Act;
- (d) services of arranging—
 - (i) any mortgage;
 - (ii) any hire purchase, credit sale, or conditional sale transaction;
- (e) the assignment of any debt due to the assignor in respect of a supply of goods or a supply of services by him.

(2) This regulation shall not apply in the case of a taxable person who carries on the business of, or a business similar to, any of the following:

- (a) a bank or licensed deposit taker;
- (b) an accepting house;
- (c) an insurance company, agent or broker;
- (d) an investment trust or unit trust;
- (e) an investment company;
- (f) a Stock Exchange broker/dealer or share dealing company;
- (g) a trustee of a pension fund;
- (h) a unit trust management company;
- (i) a building society;
- (j) a discount house;
- (k) a finance house;
- (l) a friendly society;
- (m) a money lender or money broker;
- (n) a mortgage broker;
- (o) a pawnbroker;
- (p) a debt factor;
- (q) a credit or charge card company.

32.—(1) Where in any prescribed accounting period or in any longer period the exempt input tax of a taxable person amounts to less than any of the following—

- (a) £100 per month on average; or
- (b) both £250 per month on average and 50% of all his input tax; or
- (c) both £500 per month on average and 25% of all his input tax

all such input tax in that period shall be treated as attributable to taxable supplies.

(2) In the application of this regulation to a longer period any treatment of exempt input tax as attributable to taxable supplies in any prescribed accounting period shall be disregarded.

Adjustment of attribution

33.—(1) Where a taxable person to whom a longer period is applicable has provisionally attributed an amount of input tax to taxable supplies in accordance with a method, and where all his exempt input tax in that longer period cannot be treated as attributable to taxable supplies under regulation 32, and save as the Commissioners may dispense with the following requirement to adjust, he shall:

- (a) determine for the longer period the amount of input tax which is attributable to taxable supplies according to the method used in the prescribed accounting periods; and
- (b) ascertain whether there has been, overall, an over-deduction or an under-deduction of input tax, having regard to the above-mentioned determination and to the sum of the amounts of input tax, if any, which were deducted in the returns for the prescribed accounting periods; and
- (c) include any such amount of over-deduction or under-deduction in a return for the first prescribed accounting period next following the longer period, except where the Commissioners allow another return to be used for this purpose.

(2) Where a taxable person to whom a longer period is applicable has provisionally attributed an amount of input tax to taxable supplies in accordance with a method, and where all his exempt input tax in that longer period can be treated as applicable to taxable supplies under regulation 32, he shall:

- (a) calculate the difference between the total amount of his input tax for that longer period and the sum of the amounts of input tax deducted in the returns for the prescribed accounting periods; and
- (b) include any such amount of under-deduction in a return for the first prescribed accounting period next following the longer period, except where the Commissioners allow another return to be used for this purpose.

34.—(1) This regulation applies where—

- (a) a taxable person has been credited with an amount of input tax in respect of any importation or supply which has been attributed to an intended taxable supply; and
- (b) during a period of 6 years commencing on the first day of the prescribed accounting period in which the attribution was determined, he uses or appropriates for use any such importation or supply in making an exempt supply or in carrying on an activity other than the making of taxable supplies before the intended taxable supply is made.

(2) Save as the Commissioners otherwise allow, where this regulation applies the taxable person shall on the return next following the date on which the use or appropriation for use occurs account for such proportion of the input tax credited as is attributable to the exempt supply or other activity in accordance with the method which he was required to use when the input tax was credited, and he shall repay the said proportion of input tax to the Commissioners.

(3) For the purposes of this regulation any question as to the nature of any supply shall be determined in accordance with the provisions of the Act and any Regulations made thereunder in force at the time when the input tax was first attributed.

35.—(1) This regulation applies where—

- (a) a taxable person has incurred input tax in respect of any importation or supply which has been attributed to an intended exempt supply or to his carrying on an activity other than the making of taxable supplies; and
- (b) during a period of 6 years commencing on the first day of the prescribed accounting period in which the attribution was determined, he uses or appropriates for use any such importation or supply in making a taxable supply before the intended exempt supply is made or the intended activity is carried on.

(2) Where this regulation applies, the Commissioners shall on receipt of an application made by the taxable person in such form and manner and containing such particulars as they may direct, pay to him a sum equal to the amount of input tax which is attributable to the taxable supply in accordance with the method which he was required to use when the input tax was first attributed.

(3) For the purposes of this regulation any question as to the nature of any supply shall be determined in accordance with the provisions of the Act and any Regulations made thereunder in force at the time when the input tax was first attributed.

Termination and duration of use of a method

36.—(1) Save as the Commissioners may otherwise allow or direct and subject to paragraph (2) of this regulation a taxable person using any method shall use it for at least two tax years.

(2) The Commissioners may at any time notify a taxable person that the use of any method allowed under regulation 30(5) is terminated, or any allowance given under regulation 30(2) is withdrawn, from such future date as may be specified in the notice.

Exceptional claims for tax relief

37.—(1) Subject to paragraphs (2) and (4) of this regulation, on a claim made in accordance with paragraph (3) of this regulation, the Commissioners may authorise a taxable person to treat as if it were input tax—

- (a) tax on the supply of goods or services to the taxable person before the date with effect from which he was, or was required to be, registered, or paid by him on imported goods before that date, for the purpose of a business which either was carried on or was to be carried on by him at the time of such supply or payment; and

- (b) in the case of a body corporate, tax on the supply or importation of goods acquired for it before its incorporation, or on the supply of services before that time for its benefit or in connection with its incorporation, provided that the person to whom the supply was made or who paid tax on the importation—
 - (i) became a member, officer or employee of the body and was reimbursed, or has received an undertaking to be reimbursed, by the body for the whole amount of the price paid for the goods or services,
 - (ii) was not at the time of the supply or importation a taxable person, and
 - (iii) acquired the goods or services for the purpose of a business to be carried on by the body and has not used them for any purpose other than such business.
- (2) No tax may be treated as input tax under paragraph (1) of this regulation—
- (a) in respect of goods or services which had been supplied, or, in respect of goods, save as the Commissioners may otherwise allow, consumed—
 - (i) by the taxable person, or
 - (ii) in the case of paragraph (1)(b) of this regulation, by the person who acquired the goods or services,
before the date with effect from which the taxable person was, or was required to be, registered; or
 - (b) in respect of services performed upon goods to which sub-paragraph (a) above applies; or
 - (c) in respect of services which had been supplied—
 - (i) to the taxable person, or
 - (ii) in the case of paragraph (1)(b) of this regulation, to the person who acquired the services,
more than 6 months before the date of the taxable person's registration; or
 - (d) otherwise than is prescribed in this Part of these Regulations.
- (3) A claim under paragraph (1) of this Regulation shall, save as the Commissioners may otherwise allow, be made on the first return the taxable person furnishes pursuant to regulation 58(1) and, as the Commissioners may require, be supported by invoices and other evidence.
- (4) A taxable person making a claim under paragraph (1) of this regulation shall compile and preserve for such period as the Commissioners may require—
- (a) in respect of goods, a stock account showing separately quantities purchased, quantities used in the making of other goods, date of purchase and date and manner of subsequent disposals of both such quantities; and
 - (b) in respect of services, a list showing their description, date of purchase and date of disposal, if any.
- (5) If a person who has been, but is no longer, a taxable person makes a claim in such manner and supported by such evidence as the Commissioners may require, they may pay to him the amount of any tax on the supply of services to him after the date with effect from which he ceased to be or to be required to be registered and which was attributable to any taxable supply made by him in the course or furtherance of any business carried on by him when he was or was required to be registered.”.

King's Beam House
 Mark Lane
 London EC3R 7HE
 24th March 1987

Peter Jefferson Smith
 Commissioner of Customs and Excise

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations delete Part V of the Value Added Tax (General) Regulations 1985 (the "principal Regulations"), and substitute a new Part V. The provisions reflect the requirements of Title XI of Council Directive No. 77/388/EEC (O.J. No. L145, 17.5.77, pp. 13-16).

Under regulation 1 these Regulations become effective on 1st April 1987.

Regulation 2 amends Part V of the principal Regulations. This Part deals with the allowance of input tax and the rules governing partial exemption. The main amendments are:

the new regulation 29 defines the terms "exempt input tax" and "tax year". The terms "first tax year" and "registration period" are introduced in order to define accurately the longer period in which newly registered persons may be required to make input tax adjustments;

the new regulation 30 prescribes the rules under which all taxable persons are required to attribute input tax to taxable supplies and in particular:

regulation 30(1) prescribes the only method of attribution which may be used by taxable persons without the prior approval of the Commissioners

regulation 30(2) allows the Commissioners to authorise the use by taxable persons of a pro rata calculation based on output values to determine the deductible proportion of their non-attributable input tax

regulation 30(3) imposes conditions on the use of the pro rata calculation under regulation 30(2)

regulation 30(4) authorises the Commissioners to direct the manner in which use of importations and supplies is to be ascertained in determining the deductible proportion of non-attributable input tax under the method described in regulation 30(1)

regulation 30(5) authorises the Commissioners to permit the use of special methods for determining the deductible proportion of input tax;

the new regulation 30A provides for input tax which is attributable to certain supplies made outside the United Kingdom and supplies of goods in warehouse to be treated as attributable to taxable supplies;

the new regulation 31(1) lists certain exempt supplies to which input tax may be attributed as if they were taxable supplies;

the new regulation 31(2) lists businesses which cannot benefit from the provisions of regulation 31(1);

the new regulation 32 introduces new input tax based de minimis rules;

the new regulation 33 provides for adjustment of provisionally attributed input tax;

the new regulations 34 and 35 provide for adjustments where input tax has been attributed to a future taxable supply that is replaced by an exempt supply or vice versa;

the new regulation 36 covers the duration of use of a method and empowers the Commissioners to terminate methods or approvals from a specified future date;

the new regulation 37 provides for exceptional claims for tax relief.