

1989 No. 2355

VALUE ADDED TAX

**The Value Added Tax (General) (Amendment) (No.4)
Regulations 1989**

Made - - - - - 14th December 1989

*Laid before the House of
Commons 18th December 1989*

Coming into force 1st April 1990

The Commissioners of Customs and Excise, in exercise of the powers conferred on them by sections 15(3), 15(4) and 45(1) of, and paragraph 2(1) of Schedule 7 to, 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.4) Regulations 1989 and shall come into force on 1st April 1990.
2. In these Regulations—
“the principal Regulations” means the Value Added Tax (General) Regulations 1985(b).
3. For regulation 32(2) of the principal Regulations there shall be substituted the following—
“(2) In the application of paragraph (1) above to a longer period—
(a) any treatment of exempt input tax as attributable to taxable supplies in any prescribed accounting period shall be disregarded; and
(b) no account shall be taken of any amount or amounts which may be deductible or payable under regulation 37D.”.
4. After regulation 37 of the principal Regulations there shall be inserted the following Part—

“PART VA

**ADJUSTMENTS TO THE DEDUCTION OF INPUT TAX ON
CAPITAL ITEMS**

Interpretation

37A.—(1) Save that in this Part of these Regulations “tax year” shall include a “first tax year”, any expression used in this Part of these Regulations to which a meaning is given in Part V of these Regulations shall, unless the contrary intention appears, have the same meaning in this Part as it has in that Part.

(a) 1983 c. 55; section 15 was amended by section 12(1) of the Finance Act 1987 (c. 16) and by section 26 of the Finance Act 1989 (c. 26); section 48(1) defines “the Commissioners” as meaning the Commissioners of Customs and Excise.
(b) S.I. 1985/886; relevant amending instruments are S.I. 1987/510, 1989/1132, 1302.

(2) Any reference in this Part of these Regulations to a capital item shall be construed as a reference to a capital item to which this Part of these Regulations applies by virtue of regulation 37B, being an item which a person (hereinafter referred to as "the owner") uses in the course or furtherance of a business carried on by him, and for the purpose of that business, otherwise than solely for the purpose of selling the item.

Capital items to which this Part applies

37B. The capital items to which this Part of these Regulations applies are items of any of the following descriptions—

- (a) a computer or an item of computer equipment of a value of not less than £50,000 supplied to, or imported by, the owner;
- (b) land or a building or part of a building where the value of the interest therein supplied to the owner, by way of a taxable supply which is not a zero-rated supply, is not less than £250,000 excluding so much of that value as may consist of rent;
- (c) a building or part of a building where—
 - (i) the owner's interest in, right over or licence to occupy the building or part of the building is treated as supplied to him under paragraph 1(5) of Schedule 6A to the Act(a), and
 - (ii) the value of that supply, determined in accordance with paragraph 1(6)(b) of that Schedule, is not less than £250,000;
- (d) a building or part of a building where—
 - (i) the owner's interest in, right over or licence to occupy the building or part of the building is treated as supplied to him under paragraph 6(1) of Schedule 6A to the Act, and
 - (ii) the value of that supply, determined in accordance with paragraph 6(2) of that Schedule, is not less than £250,000;
- (e) a building other than one falling or capable of falling within paragraphs (c) or (d) above constructed by the owner and first brought into use by him on or after 1st April 1990 where the aggregate of—
 - (i) the value of taxable grants relating to the land on which the building is constructed made to the owner on or after 1st April 1990, and
 - (ii) the value of all the taxable supplies of goods and services, other than any that are zero-rated, made or to be made to him for or in connection with the construction of the building on or after 1st April 1990,is not less than £250,000;
- (f) a building which the owner alters, or an extension or an annex which he constructs, where—
 - (i) additional floor area is created in the altered building, extension or annex, of not less than ten per cent. of the floor area of the building before the alteration in question is carried out, or the extension or annex in question is constructed, and
 - (ii) the value of all the taxable supplies of goods and services, other than any that are zero-rated, made or to be made to the owner for or in connection with the alteration, extension or annex in question on or after 1st April 1990, is not less than £250,000.

Period of adjustment

37C.—(1) The proportion (if any) of the total input tax on a capital item which may be deducted under Part V of these Regulations shall be subject to adjustments in accordance with the provisions of this Part of these Regulations.

(2) Adjustments shall be made over a period determined in accordance with the following paragraphs of this regulation.

(3) The period of adjustment relating to a capital item of a description falling within—

(a) Schedule 6A was inserted by paragraph 6(2) of Schedule 3 to the Finance Act 1989 (c. 26).

- (a) regulation 37B(a) shall consist of five successive intervals,
- (b) regulation 37B(b), where the interest in the land, building or part of the building in question has less than ten years to run at the time it is supplied to the owner, shall consist of five successive intervals, and
- (c) any other description shall consist of ten successive intervals, determined in accordance with paragraphs (4) to (7) below.

(4) The first interval applicable to a capital item shall be determined as follows—

- (a) where the owner is a registered person when he is supplied with, or imports, the item as a capital item, the first interval shall commence on the day of the supply or of the importation and shall end on the day before the commencement of his tax year following that day;
- (b) where the owner is a registered person when he appropriates to use an item as a capital item, the first interval shall commence on the day he first so uses it and shall end on the day before the commencement of his tax year following that day;
- (c) where the capital item is of a description falling within regulation 37B(c), the first interval shall commence on the day the owner's interest in, right over or licence to occupy the building or part of the building is treated as supplied to him under paragraph 1(5) of Schedule 6A to the Act and shall end on the day before the commencement of his tax year following that day;
- (d) where the capital item is of a description falling within regulation 37B(d), the first interval shall commence on the later of the following days—
 - (i) 1st April 1990,
 - (ii) the day the owner first uses the building (or part), and shall end on the day before the commencement of his tax year following the day of commencement of the first interval;
- (e) where the capital item is of a description falling within regulation 37B(e) or (f), the first interval shall commence on the day the owner first uses the building or the altered building or the extension or annex in question, and shall end on the day before the commencement of his tax year following that day;
- (f) where the owner is not a registered person when he first uses an item as a capital item, and subsequently—
 - (i) becomes a registered person, the first interval shall correspond with his registration period, or
 - (ii) is included among bodies treated as members of a group under section 29 of the Act, the first interval shall correspond with, or that part still remaining of, the then current tax year of that group.

(5) Subject to paragraphs (6) and (7) below, each subsequent interval applicable to a capital item shall correspond with a longer period applicable to the owner, or if no longer period applies to him, a tax year of his.

(6) Where the owner of a capital item—

- (a) is a registered person and subsequently becomes included amongst bodies treated as members of a group under section 29 of the Act during the period of adjustment applicable to the capital item, the interval then applying to it shall end on the day before the owner is first so included and each subsequent interval (if any) applicable to the capital item shall end on the last day of a longer period applicable to that group, or if no longer period applies, shall end on the last day of a tax year of that group;
- (b) ceases to be a member of such a group during the period of adjustment applicable to the capital item, the interval then applying to it shall end on the day that the owner so ceases and the next interval (if any) applicable to the capital item shall correspond with the registration period of the owner and each subsequent interval thereafter (if any) shall correspond with a longer period applying to the owner, or if no longer period applies, shall correspond with a tax year of the owner;

Provided that if the owner of a capital item ceases to be a member of such a group (the first group) during the period of adjustment applicable to the capital item, and is immediately thereafter included in another such group (the second group), the interval

applying to the capital item immediately before the owner ceases to be a member of the first group shall end on the day that the owner so ceases and each subsequent interval (if any) shall end on the last day of a longer period applicable to the second group, or if no longer period applies, shall end on the last day of a tax year of the second group.

(7) Where the owner of a capital item transfers it during the period of adjustment applicable to it, in the course of the transfer of his business or of part of his business as a going concern, the interval then applying to the capital item shall end on the day of the transfer, and each subsequent interval (if any) applicable to the capital item shall end on the last day of a longer period applying to the new owner or, if no longer period applies, shall end on the day before the commencement of a tax year of the new owner:

Provided that where the new owner has, under regulation 4(5), been registered with the registration number of and in substitution for the transferor, the interval applying to the capital item at the time of the transfer shall not end on the day of the transfer (and shall accordingly end on the last day of the longer period applying to the new owner immediately after the transfer or, if no longer period then applies to him, shall end on the last day of his tax year following the day of the transfer).

Method of adjustment

37D.—(1) Where in a subsequent interval applicable to a capital item, the extent to which it is used in making taxable supplies increases from the extent to which it was so used in the first interval applicable to it, the owner may deduct for that subsequent interval an amount calculated as follows:

(a) where the capital item falls within regulation 37C(3)(a) or (b)—
$$\frac{\text{the total input tax on the capital item}}{5} \times \text{the adjustment percentage};$$

(b) where the capital item falls within regulation 37C(3)(c)—
$$\frac{\text{the total input tax on the capital item}}{10} \times \text{the adjustment percentage}.$$

(2) Where in a subsequent interval applicable to a capital item, the extent to which it is used in making taxable supplies decreases from the extent to which it was so used in the first interval applicable to it, the owner shall pay to the Commissioners for that subsequent interval an amount calculated in the manner described in paragraph (1) above.

(3) Where—

- (a) the whole of the owner's interest in a capital item is supplied by him, or
- (b) the owner is deemed to supply a capital item pursuant to paragraph 7(1) of Schedule 2 to the Act,

during an interval other than the last interval applicable to the capital item, then if the supply (or deemed supply) of the capital item is—

- (i) a taxable supply, the owner shall be treated as using the capital item for each of the remaining complete intervals applicable to it wholly in making taxable supplies, or
- (ii) an exempt supply, the owner shall be treated as not using the capital item for any of the remaining complete intervals applicable to it in making any taxable supplies,

and the owner shall calculate for each of the remaining complete intervals applicable to it, in accordance with paragraph (1) or (2) above, as the case may require, such amount as he may deduct or such amount as he shall be liable to pay to the Commissioners:

Provided that the aggregate of the amounts that he may deduct in relation to a capital item pursuant to this paragraph shall not exceed the output tax chargeable by him on the supply of that capital item.

(4) If a capital item is—

- (a) irretrievably lost or stolen or is totally destroyed, or
- (b) is of a kind falling within regulation 37C(3)(b) and the interest in question expires,

during the period of adjustment applicable to it, no further adjustment shall be made in respect of any remaining complete intervals applicable to it.

(5) For the purposes of this regulation—

“the total input tax on the capital item” means, in relation to a capital item falling within—

- (a) regulation 37B(a) or (b), the tax charged on the supply to, or on the importation by, the owner of the capital item, other than tax charged on rent (if any);**
- (b) regulation 37B(c) or (d), the tax charged on the supply which the owner is treated as making to himself under paragraph 1(5) or 6(1) of Schedule 6A to the Act, as the case may require;**
- (c) regulation 37B(e) or (f), the aggregate of the tax charged on the supplies described in regulation 37B(e) or (f), as the case may require, other than tax charged on rent (if any),**

and shall include in relation to any capital item, any tax treated as input tax under regulation 37 which relates to the capital item, other than such tax charged on rent (if any); and for the purposes of this paragraph references to the owner shall be construed as references to the person who incurred the total input tax on the capital item;

“the adjustment percentage” means the difference (if any) between the extent, expressed as a percentage, to which the capital item is used (or is regarded as being used) in making taxable supplies in the first interval applicable to it, and the extent to which it is so used or is treated under paragraph (3) above as being so used in the subsequent interval in question.

(6) A taxable person claiming any amount pursuant to paragraph (1) above, or liable to pay any amount pursuant to paragraph (2) above, shall include such amount in a return for the second prescribed accounting period next following the interval to which that amount relates, except where the Commissioners allow another return to be used for this purpose:

Provided that where an interval has come to an end under—

- (a) regulation 37C(6)(b) because the owner of the capital item has ceased to be a member of a group, any amount claimable from the Commissioners or payable to them (as the case may be) in respect of that interval shall be included in a return for that group for the second prescribed accounting period after the end of the tax year of the group in which the interval in question fell, or**
- (b) regulation 37C(7) because the owner has transferred part of his business as a going concern, and he remains a registered person after the transfer, any amount claimable from the Commissioners or payable to them (as the case may be) in respect of that interval shall be included in a return by him for the second prescribed accounting period after the end of his tax year in which the interval in question fell,**

except where the Commissioners allow another return to be used for this purpose.

(7) A taxable person claiming any amount or amounts, or liable to pay any amount or amounts, pursuant to paragraph (3) above, shall include such amount or amounts in a return for the second prescribed accounting period next following the interval in which the supply (or deemed supply) in question takes place except where the Commissioners allow another return to be used for this purpose.

Ascertainment of taxable use of a capital item

37E.—(1) Subject to regulation 37D(3) and paragraphs (2) and (3) below, in ascertaining the extent to which a capital item is used in making taxable supplies in any subsequent interval applicable to it, the same method shall be used as is used under Part V of these Regulations for the subsequent interval in question.

(2) In any particular case the Commissioners may allow another method by which, or may direct the manner in which, the extent to which a capital item is used in making taxable supplies in any subsequent interval applicable to it, is to be ascertained.

(3) Where the owner of a building which is a capital item of his grants or assigns a tenancy or lease in the whole or any part of that building and that grant or assignment is a zero-rated supply to the extent only as provided by—

- (a) note (8) to Group 8 of Schedule 5 to the Act(a), or
 - (b) that note as applied to Group 8A of that Schedule by note (1A) to Group 8A(b),
or
 - (c) paragraph 13(3)(a) or (b) of Schedule 3 to the Finance Act 1989(c),
- any subsequent exempt supply of his arising directly from that grant or assignment shall be disregarded in determining the extent to which the capital item is used in making taxable supplies in any interval applicable to it.”.

New King's Beam House,
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14th December 1989

P.G. Wilmott
Commissioner of Customs and Excise

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 1st April 1990, amend regulation 32(2) of the Value Added Tax (General) Regulations 1985 (“the principal Regulations”), and add a new Part VA to the principal Regulations. These provisions implement the requirements of Title XI, and in particular Article 20, of Council Directive No. 77/388/EEC (OJ No. L145, 17.5.77, pp 15–16).

Regulation 3 amends regulation 32(2) in Part V of the principal Regulations so that no account is to be taken of any amounts resulting from adjustments required under Part VA when applying the partial exemption de minimis limits.

Regulation 4 inserts Part VA into the principal Regulations. This new Part deals with adjustments to the initial deduction (if any) of input tax allowable under Part V on specified capital items, when the extent of the use of such items in making taxable supplies changes during the adjustment period applicable to them. The adjustment period consists of a series of either five or ten intervals, depending upon the description of the item. The main features are:

- the new regulation 37A adopts, with a modification, the same meaning for the purposes of this Part, any expression defined in Part V and used also in this Part. It also explains what is meant by a capital item and the owner of a capital item;
- the new regulation 37B specifies the capital items to which Part VA applies, and provides how the value of the capital items is to be determined;
- the new regulation 37C provides how the period of adjustment and the intervals are to be determined;
- the new regulation 37D provides the method for calculating an adjustment where—
 - (a) the use made of a capital item in making taxable supplies in any subsequent interval changes from such use made of it in the first interval,
 - (b) it is disposed of or otherwise becomes unavailable for use in the business during the period of adjustment, and provides for the method for claiming or accounting for any amounts where such adjustments are required;
- the new regulation 37E applies (subject to exceptions) the provisions of Part V of the principal Regulations for determining the extent to which a capital item is used in making taxable supplies.

(a) Group 8 was amended by paragraph 1 of Schedule 3 to the Finance Act 1989 (c. 26).
(b) Group 8A was amended by paragraph 2 of Schedule 3 to the Finance Act 1989.
(c) 1989 c. 26.