
STATUTORY INSTRUMENTS

2002 No. 1074

VALUE ADDED TAX

The Value Added Tax (Amendment) Regulations 2002

<i>Made</i>	- - - -	<i>16th April 2002</i>
<i>Laid before the House of Commons</i>	- - - -	<i>17th April 2002</i>
<i>Coming into force</i>	- -	<i>18th April 2002</i>

The Commissioners of Customs and Excise, in exercise of the powers conferred on them by section 26(1), (3) and (4) of the Value Added Tax Act 1994⁽¹⁾ 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 (Amendment) Regulations 2002 and come into force on 18th April 2002 in relation to input tax incurred by a taxable person on goods imported or acquired by, or goods or services supplied to, him on or after that date.

2. The Value Added Tax Regulations 1995⁽²⁾ are amended as follows.

3. For regulation 99(1)(a) substitute—

“(a) “exempt input tax” means input tax incurred by a taxable person on goods imported or acquired by, or goods or services supplied to, him in so far as they are used by him or are to be used by him, or a successor of his, in making exempt supplies, or supplies outside the United Kingdom which would be exempt if made in the United Kingdom, other than any input tax which is allowable under regulation 103 or 103A; and “successor” in this paragraph has the same meaning as in regulation 107D;”.

4. For regulation 106 substitute—

“**106.**—(1) Subject to regulation 106A, where relevant input tax—

(a) in any prescribed accounting period, or

(b) in the case of a longer period, taken together with the amount of any adjustment in respect of that period under regulation 107B—

(i) does not amount to more than £625 per month on average, and

(ii) does not exceed one half of all his input tax for the period concerned,

(1) 1994 c. 23; section 96(1) defines “the Commissioners” as meaning the Commissioners of Customs and Excise and “regulations” as meaning regulations made by the Commissioners.

(2) S.I. 1995/2518; relevant amending instruments are S.I. 1996/1250; 1999/599; 1999/3114.

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

- (2) In the application of paragraph (1) above to a longer period—
- (a) any treatment of relevant 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 115.

(3) For the purposes of this regulation, relevant input tax is input tax attributed under regulations 101, 102, 103, 103A and, where the case arises, regulation 107, to exempt supplies or to supplies outside the United Kingdom which would be exempt if made in the United Kingdom (not being supplies specified in an Order made under section 26(2)(c) of the Act).”.

5. After regulation 106 insert—

“**106A.**—(1) This regulation applies where regulation 107A applies.

(2) Where, taken together with the amount of any adjustment under regulation 107A, input tax attributed under regulations 101, 103 and 103A to exempt supplies, or to supplies outside the United Kingdom which would be exempt if made in the United Kingdom (in each case not being supplies specified in an Order made under section 26(2)(c) of the Act)—

- (a) does not amount to more than £625 per month on average, and
- (b) does not exceed one half of all his input tax for the period concerned,

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

(3) Where, in accordance with regulations 101, 103 and 103A, a taxable person has attributed an amount of input tax to exempt supplies, or to supplies outside the United Kingdom which would be exempt if made in the United Kingdom (in each case not being supplies specified in an Order made under section 26(2)(c) of the Act) and, after applying regulation 107A, he is entitled to treat all his input tax as attributable to taxable supplies under paragraph (2) above, he shall—

- (a) calculate the difference between—
 - (i) the total amount of input tax for that prescribed accounting period, and
 - (ii) the amount of input tax deducted in that prescribed accounting period, taken together with the amount of any adjustment under regulation 107A, and
- (b) include this difference as an under-deduction in a return for the first prescribed accounting period next following the prescribed accounting period referred to in regulation 107A(1), except where the Commissioners allow another return to be used for this purpose.

(4) Where in a prescribed accounting period a taxable person has treated input tax as attributable to taxable supplies under regulation 106(1) but is not entitled to do so because of the operation of paragraph (2) above, he shall include the amount so treated as an over-deduction in a return for the first prescribed accounting period next following the prescribed accounting period referred to in regulation 107A(1), except where the Commissioners allow another return to be used for this purpose.

(5) But where a registered person has his registration cancelled at or before the end of the prescribed accounting period referred to in regulation 107A(1), he shall account for any adjustment under this regulation on his final return.”.

6. After regulation 107(2) insert—

“(3) But where a registered person has his registration cancelled at or before the end of a longer period, he shall account for any adjustment under this regulation on his final return.”.

7. After regulation 107 insert the following regulations—

107A.—(1) This regulation applies where a taxable person has made an attribution under regulation 101(2)(b) and (d) and the prescribed accounting period does not form part of a longer period, and the attribution differs substantially from one which represents the extent to which the goods or services are used by him or are to be used by him, or a successor of his, in making taxable supplies.

(2) Where this regulation applies, the taxable person shall calculate the difference and account for it on the return for the first prescribed accounting period next following the prescribed accounting period referred to in paragraph (1) above, except where the Commissioners allow another return to be used for this purpose.

(3) But where a registered person has his registration cancelled at or before the end of the prescribed accounting period referred to in paragraph (1) above, he shall account for any adjustment under this regulation on his final return.

107B.—(1) This regulation applies where a taxable person has made an attribution under regulation 107(1)(a) according to the method specified in regulation 101 and that attribution differs substantially from one which represents the extent to which the goods or services are used by him or are to be used by him, or a successor of his, in making taxable supplies.

(2) Where this regulation applies the taxable person shall—

(a) calculate the difference, and

(b) in addition to any amount required to be included under regulation 107(1)(c), account for the amount so calculated on the 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.

(3) But where a registered person has his registration cancelled at or before the end of a longer period, he shall account for any adjustment under this regulation on his final return.

107C. For the purposes of regulations 107A and 107B, a difference is substantial if it exceeds—

(a) £50,000; or

(b) 50% of the amount of input tax falling to be apportioned under regulation 101(2)(d) within the prescribed accounting period referred to in regulation 107A(1), or longer period, as the case may be, but is not less than £25,000.

107D. For the purposes of regulations 107A and 107B a person is the successor of another if he is a person to whom that other person has—

(a) transferred assets of his business by a transfer of that business, or part of it, as a going concern; and

(b) the transfer of the assets is one falling by virtue of an Order under section 5(3) of the Act to be treated as neither a supply of goods nor a supply of services;

and the reference in this regulation to a person’s successor includes references to the successors of his successors through any number of transfers.

107E.—(1) Regulations 107A and 107B shall not apply where the amount of input tax falling to be apportioned under regulation 101(2)(d) within the prescribed accounting period referred to in regulation 107A(1), or longer period, as the case may be, does not exceed—

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- (a) in the case of a person who is a group undertaking in relation to one or more other undertakings (other than undertakings which are treated under sections 43A to 43C of the Act as members of the same group as the person), £25,000 per annum, adjusted in proportion for a period that is not 12 months; or
 - (b) in the case of any other person, £50,000 per annum, adjusted in proportion for a period that is not 12 months.
- (2) For the purposes of paragraph (1) above, “undertaking” and “group undertaking” have the same meaning as in section 259 of the Companies Act 1985⁽³⁾.”.

New King’s Beam House,
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16th April 2002

M. J. Eland
Commissioner of Customs and Excise

(3) 1985 c. 6; section 259 was inserted by section 22 of the Companies Act 1989 (c. 40).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 18th April 2002, further amend the Value Added Tax Regulations 1995 (S.I.1995/2518) (“the principal Regulations”) in order to counter avoidance schemes based on the partial exemption method specified in regulation 101 of the principal Regulations and to deal with situations where the result of the method is clearly unreasonable.

Regulation 1 deals with commencement and the application of the Regulations to input tax incurred on or after 18th April 2002.

Regulation 3 substitutes a new definition of “exempt input tax” in regulation 99(1)(a). The new definition provides for exempt input tax to be that incurred on goods and services used, or to be used, to make exempt supplies rather than an amount of input tax attributed to exempt supplies. Intended use by successors is also included where such an intention exists at the time the input tax is incurred.

Regulation 4 substitutes regulation 106 to amend the partial exemption “de minimis” rules in respect of the change of definition of exempt input tax and to take into account any adjustment made under new regulation 107B (see below).

Regulation 5 inserts new regulation 106A which provides for any adjustment made under new regulation 107A (see below) to be taken into account in the partial exemption “de minimis” rules.

Regulation 6 adds to regulation 107 a new paragraph (3) which specifies that, in the case of cancellation of registration, the longer period adjustment is to be accounted for on the final return.

Regulation 7 inserts new regulations 107A to 107E.

New regulation 107A applies where no longer period is applicable to the taxable person.

New regulation 107B applies where a longer period is applicable to the taxable person. Both regulations 107A and 107B provide for an adjustment to be made where the input tax attributed to taxable supplies under the method specified in regulation 101 differs substantially from an attribution based on the use or intended use of the input goods and services.

New regulation 107C defines “substantial” in relation to the difference referred to in new regulations 107A and 107B.

New regulation 107D defines “successor” for the purposes of substituted regulation 99(1)(a) and new regulations 107A and 107B.

New regulation 107E provides for a threshold which is the amount of residual input tax incurred by a taxable person below which new regulations 107A and 107B shall not apply. This regulation also contains a provision whereby this threshold is halved in the case of group undertakings other than members of the same VAT group.