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STATUTORY INSTRUMENTS

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**2002 No. 1142**

**The Value Added Tax (Amendment) (No. 2) Regulations 2002**

**PART II**

**FLAT-RATE SCHEME FOR SMALL BUSINESSES**

7. Immediately after Part VII (annual accounting) of the Value Added Tax Regulations 1995<sup>(1)</sup> insert a Part to be known as “Part VIIA—Flat-Rate Scheme For Small Businesses” as follows—

**“PART VIIA**

**FLAT-RATE SCHEME FOR SMALL BUSINESSES**

**Interpretation of Part VIIA**

**55A.**—(1) In this Part—

“capital expenditure goods” means any goods of a capital nature but does not include any goods acquired by a flat-rate trader (whether before he is a flat-rate trader or not)—

- (a) for the purpose of resale or incorporation into goods supplied by him,
- (b) for consumption by him within one year, or
- (c) to generate income by being leased, let or hired;

“change date” has the meaning given in regulation 55J(2);

“end date” has the meaning given in regulation 55Q(2);

“flat-rate trader” means a person who is, for the time being, authorised by the Commissioners in accordance with regulation 55B(1);

“relevant purchase” has the meaning given in regulation 55C;

“start date” has the meaning given in regulation 55B(2);

“the scheme” means the flat-rate scheme for small businesses established by this Part;

“the Table” means the table set out in regulation 55K.

(2) For the purposes of this Part, a person is associated with another person at any time if that other person makes supplies in the course or furtherance of a business carried on by him, and—

- (a) the business of one is under the dominant influence of the other, or
- (b) the persons are closely bound to one another by financial, economic and organisational links.

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<sup>(1)</sup> S.I.1995/2518; relevant amending instruments are S.I. 1997/1614 and S.I. 2001/677, which amended Part VIII (cash accounting), S.I. 1997/2437, which amended Part IX (supplies by retailers) and S.I. 1996/2960, S.I. 1997/1086 and S.I. 1999/3029, which amended Part XIX (bad debt relief).

### **Flat-rate scheme for small businesses**

**55B.**—(1) The Commissioners may, subject to the requirements of this Part, authorise a taxable person to account for and pay VAT in respect of his relevant supplies in accordance with the scheme with effect from—

- (a) the beginning of his next prescribed accounting period after the date on which the Commissioners are notified in writing of his desire to be so authorised, or
- (b) such earlier or later date as may be agreed between him and the Commissioners.

(2) The date with effect from which a person is so authorised shall be known as his start date.

(3) The Commissioners may refuse to so authorise a person if they consider it is necessary for the protection of the revenue that he is not so authorised.

(4) A flat-rate trader shall continue to account for VAT in accordance with the scheme until his end date.

### **Relevant supplies and purchases**

**55C.**—(1) Subject to paragraphs (3) and (5), any—

- (a) supply of any goods or services to,
- (b) acquisition of any goods from another member State by, or
- (c) importation of any goods from a place outside the member States by,

a flat-rate trader is a relevant purchase of his.

(2) Subject to the following provisions of this regulation, any supply made by a person when he is not a flat-rate trader is not a relevant supply of his.

(3) Subject to paragraph (4) below, where—

- (a) a supply is made to, or made by, a person at a time when he is not a flat-rate trader, and
- (b) the operative date for VAT accounting purposes is, by virtue of regulation 57 (cash accounting scheme), a date when he is a flat-rate trader,

that supply is a relevant supply or a relevant purchase of his, as the case may be, if otherwise it would not be by virtue of paragraph (2) above.

(4) Where a person—

- (a) is entitled to any credit for input tax in respect of the supply to, or acquisition or importation by, him of capital expenditure goods,
- (b) claims any such credit, and
- (c) makes a supply of those capital expenditure goods,

the supply made by him is not a relevant supply of his, if otherwise it would be.

(5) Where by virtue of any provision of, or made under, the Act a supply is treated as made by a flat-rate trader, whether to himself or otherwise, that supply is neither a relevant supply nor a relevant purchase of his.

### **Method of accounting**

**55D.** Subject to regulation 55J below, for any prescribed accounting period of a flat-rate trader, the output tax due from him in respect of his relevant supplies shall be deemed to be the appropriate percentage of his relevant turnover for that period.

### **Input tax**

**55E.**—(1) For any prescribed accounting period of a flat-rate trader, he is entitled to credit for input tax in respect of any relevant purchase of his of capital expenditure goods with a value, together with the VAT chargeable, of more than £2,000.

(2) Where paragraph (1) above applies, the whole of the input tax on the goods concerned shall be regarded as used or to be used by the flat-rate trader exclusively in making taxable supplies.

(3) Section 26B(5) of the Act shall not apply to prevent a taxable person from being entitled to credit for input tax in respect of any supply, acquisition or importation by him that is not a relevant purchase of his.

(4) Nothing in this regulation gives an entitlement to credit for input tax where such entitlement is excluded by virtue of any order made under section 25(7) of the Act.

### **Exceptional claims for VAT relief**

**55F.**—(1) This regulation applies where—

- (a) the first prescribed accounting period for which a taxable person is authorised to account for and pay VAT in accordance with the scheme is the first prescribed accounting period for which he is, or is required to be, registered under the Act, and
- (b) the taxable person makes a claim in accordance with regulation 111 (exceptional claims for VAT relief).

(2) Where this regulation applies, section 26B(5) of the Act shall not apply to prevent the taxable person from being entitled to credit for input tax in relation to the matters for which he makes the claim described in paragraph (1)(b) above.

(3) Where—

- (a) this regulation applies, and
- (b) the Commissioners authorise the claim described in paragraph (1)(b) above,

the whole of the input tax on the goods or services concerned shall be regarded as used or to be used by the taxable person exclusively in making taxable supplies.

### **Determining relevant turnover**

**55G.**—(1) The Commissioners shall prescribe, in a notice published by them, three methods to determine when supplies are to be treated as taking place for the purpose of ascertaining the relevant turnover of a flat-rate trader for a particular period, as follows—

- (a) “the basic turnover method”, which shall be a method based on consideration for supplies taking place in a period;
- (b) “the cash turnover method”, which shall be a method based on the actual consideration received in a period;
- (c) “the retailer’s turnover method”, which shall be a method based on the daily gross takings of a retailer.

(2) When exercising their power to prescribe these methods, the Commissioners shall prescribe what rules are to apply when a flat-rate trader ceases to use one of the methods and begins to use a different method.

(3) In any prescribed accounting period, a flat-rate trader must use one of the methods to determine the value of his relevant turnover.

### **Appropriate percentage**

**55H.**—(1) The appropriate percentage to be applied by a flat-rate trader for any prescribed accounting period, or part of a prescribed accounting period (as the case may be), shall be determined in accordance with paragraphs (2) to (4) below and regulations 55J and 55K.

(2) For the prescribed accounting period current at his start date, the appropriate percentage shall be that specified in the Table for the category of business that he is expected, at his start date, on reasonable grounds, to carry on—

- (a) in that period, or
- (b) if his start date is not the first day of the period, in the remainder of the period.

(3) For any subsequent prescribed accounting period current at an anniversary of his start date, the appropriate percentage shall be that specified in the Table for the category of business that he is expected, on the first day of that prescribed accounting period, on reasonable grounds, to carry on in the period.

(4) For any other prescribed accounting period, if any, the appropriate percentage shall be the same as that applicable for the prescribed accounting period that was current at—

- (a) his start date, or
- (b) the most recent anniversary of his start date,

whichever is the later.

**55J.**—(1) This regulation applies where a flat-rate trader—

- (a) begins to carry on a new business activity, or
- (b) ceases to carry on an existing business activity.

(2) The first day on which he—

- (a) carries on the new business activity, or
- (b) no longer carries on the existing business activity,

shall be known as “the change date”.

(3) For the unelapsed portion, the appropriate percentage shall be that specified in the Table for the category of business that he is expected, at the change date, on reasonable grounds, to carry on in that period.

(4) “Unelapsed portion” means that part of the prescribed accounting period in which the change date occurs starting with the change date and ending on the last day of that prescribed accounting period.

(5) For any prescribed accounting period that falls between the prescribed accounting period current at the change date and the prescribed accounting period current at the next anniversary of his start date, the appropriate percentage shall be that applicable for the unelapsed portion.

(6) The appropriate percentages specified in paragraphs (3) and (5) above shall be applied to the relevant turnover in the periods described.

### **Category of business**

**55K.**—(1) Where, at a relevant date, a flat-rate trader is expected, on reasonable grounds, to carry on business in more than one category in the period concerned, paragraph (3) below shall apply.

(2) The following are relevant dates—

- (a) for the purpose of regulation 55H(2) above, his start date;
- (b) for the purpose of regulation 55H(3) above, the first day of a prescribed accounting period current at an anniversary of his start date;
- (c) for the purpose of regulation 55J, the change date.

(3) He shall be regarded as being expected, on reasonable grounds, to carry on that category of business which is expected, on reasonable grounds, to be his main business activity in that period.

(4) In paragraph (3) above, his main business activity in a period is to be determined by reference to the respective proportions of his relevant turnover expected, on reasonable grounds, to be generated by each business activity expected, on reasonable grounds, to be carried on in the period.

TABLE

<i>Category of business</i>	<i>Appropriate percentage</i>
Retail of food, confectionery, tobacco, newspapers or children's clothing	5
Postal and courier services	6
Public house	
Agriculture not elsewhere listed	6.5
Membership organisation	7
Retail of goods not elsewhere listed	
Wholesale of food or agricultural products	
Retail of pharmaceuticals, medical goods, cosmetics or toiletries	8
Sport or recreation	
Retail of vehicles or fuel	
Wholesale not elsewhere listed	
Manufacture of food	8.5
Library, archive, museum or other cultural activity	
Printing	
Vehicle repair	
Packaging	9
Building or construction services where materials supplied	
Social work	
Agricultural services	
Rental of machinery, equipment, personal or household goods	9.5
Manufacture of textiles or clothing	

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*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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<i>Category of business</i>	<i>Appropriate percentage</i>
Forestry or fishing	10
Other manufacture not elsewhere listed	
Mining	
Personal and household goods repair services	
Photography	
Publishing	
Transport, including freight, removals and taxis	
Travel agency	
Hotels or accommodation	10.5
Advertising	11
Animal husbandry	
Manufacturers of fabricated metal products	
Investigation or security	
All other activity not elsewhere listed	
Veterinary medicine	
Waste and scrap dealing	
Estate agency or property management	11.5
Secretarial services	
Entertainment, excluding television, video and film production	
Financial services	
Laundry services	
Business services not elsewhere listed	12.5
Restaurants, takeaways or catering services	13
Hairdressing	
Real estate activity not elsewhere listed	
Computer repair services	13.5
Management consultancy	
Accountancy and book-keeping	
Architects	
Lawyers and legal services	
Computer and IT consultancy or data processing	14.5
Building or construction services where primarily only labour supplied	

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### Admission to scheme

**55L.**—(1) A taxable person shall be eligible to be authorised to account for VAT in accordance with the scheme at any time if—

- (a) there are reasonable grounds for believing that—
  - (i) the value of taxable supplies to be made by him in the period of one year then beginning will not exceed £100,000, and
  - (ii) the total value of his income in the period of one year then beginning will not exceed £125,000,
- (b) he—
  - (i) is not a tour operator,
  - (ii) is not required to carry out adjustments in relation to a capital item under Part XV, or
  - (iii) does not intend to opt to account for the VAT chargeable on a supply made by him by reference to the profit margin on the supply, in accordance with the provisions of any Order made under section 50A of the Act<sup>(2)</sup>,
- (c) he has not, in the period of one year preceding that time—
  - (i) been convicted of any offence in connection with VAT,
  - (ii) made any payment to compound proceedings in respect of VAT under section 152 of the Customs and Excise Management Act 1979<sup>(3)</sup>,
  - (iii) been assessed to a penalty under section 60 of the Act, or
  - (iv) ceased to operate the scheme, and
- (d) he is not, and has not been within the past 24 months—
  - (i) eligible to be registered for VAT in the name of a group under section 43A of the Act,
  - (ii) registered for VAT in the name of a division under section 46(1) of the Act, or
  - (iii) associated with another person.

(2) In determining the value of a person's taxable supplies or income for the purposes of paragraph (1)(a)—

- (a) any supply of goods or services that are capital assets of the business in the course or furtherance of which they are supplied, and
- (b) any supply of services treated as made by the recipient by virtue of section 8 of the Act (reverse charge on supplies from abroad),

shall be disregarded.

- (3) Notwithstanding the above, where a person has been—
  - (a) eligible to be registered for VAT in the name of a group under section 43A of the Act,
  - (b) registered for VAT in the name of a division under section 46(1) of the Act, or
  - (c) associated with another person,

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<sup>(2)</sup> Section 50A was inserted by the Finance Act 1995 (c. 4), section 24.

<sup>(3)</sup> 1979 c. 2.

in the period of 24 months before the date of his application, he shall not be eligible to be authorised, unless the Commissioners are satisfied that such authorisation poses no risk to the revenue.

### **Withdrawal from the scheme**

**55M.**—(1) Subject to paragraph (2) below, a flat-rate trader ceases to be eligible to be authorised to account for VAT in accordance with the scheme where—

- (a) at any anniversary of his start date, the total value of his income in the period of one year then ending is more than £150,000,
- (b) there are reasonable grounds to believe that the total value of his income in the period of 30 days then beginning will exceed £150,000,
- (c) he becomes a tour operator,
- (d) he intends to acquire, construct or otherwise obtain a capital item within the meaning of regulation 112(2),
- (e) he opts to account for the VAT chargeable on a supply made by him by reference to the profit margin on the supply, in accordance with the provisions of any Order made under section 50A of the Act,
- (f) he becomes—
  - (i) eligible to be registered for VAT in the name of a group under section 43A of the Act,
  - (ii) registered for VAT in the name of a division under section 46(1) of the Act, or
  - (iii) associated with another person,
- (g) he opts to withdraw from the scheme, or
- (h) his authorisation is terminated in accordance with regulation 55P below.

(2) A flat-rate trader does not cease to be eligible to be authorised by virtue of paragraph (1)(a) above if the Commissioners are satisfied that the total value of his income in the period of one year then beginning will not exceed £125,000.

(3) In determining the value of a flat-rate trader's income for the purposes of paragraphs (1)(a) and (b) and (2) above, any supply of goods or services that are capital assets of the business in the course or furtherance of which they are supplied, shall be disregarded.

### **Notification**

**55N.**—(1) Where for any prescribed accounting period the appropriate percentage to be applied by a flat-rate trader in accordance with regulation 55H(3) differs from that applicable for the previous prescribed accounting period, he shall notify the Commissioners of that fact within 30 days of the first day of the prescribed accounting period current at the anniversary of his start date.

(2) Where regulation 55J applies to a flat-rate trader he shall notify the Commissioners of—

- (a) that fact,
- (b) the change date, and
- (c) the appropriate percentages to be applied in each respective part of the prescribed accounting period current at the change date,

within 30 days of the change date.



(3) Where any of sub-paragraphs (a) to (g) of regulation 55M(1) apply, the flat-rate trader shall notify the Commissioners of that fact within 30 days.

(4) Any notification required by this regulation shall be given in writing.

#### **Termination by the Commissioners**

**55P.** The Commissioners may terminate the authorisation of a flat-rate trader at any time if—

- (a) they consider it necessary to do so for the protection of the revenue, or
- (b) a false statement was made by, or on behalf of, him in relation to his application for authorisation.

#### **Date of withdrawal from the scheme**

**55Q.—**(1) The date on which a flat-rate trader ceases to be authorised to account for VAT in accordance with the scheme shall be—

- (a) where regulation 55M(1)(a) applies—
  - (i) in the case of a person who is authorised in accordance with regulation 50(1) (annual accounting scheme), the end of the prescribed accounting period in which the relevant anniversary occurred, or the end of the month next following, whichever is the earlier, or
  - (ii) in all other cases, the end of the prescribed accounting period in which the relevant anniversary occurred,
- (b) where regulation 55M(1)(b) applies, the beginning of the period of 30 days in question,
- (c) where regulation 55M(1)(c), (d), or (f) applies, the date the event occurred,
- (d) where regulation 55M(1)(e) applies, the beginning of the prescribed accounting period for which he makes the election described by that provision,
- (e) where regulation 55M(1)(g) applies, the date on which the Commissioners are notified in writing of his decision to cease using the scheme, or such earlier or later date as may be agreed between them and him, and
- (f) where regulation 55M(1)(h) applies, the date of issue of a notice of termination by the Commissioners or such earlier or later date as may be directed in the notification.

(2) The date with effect from which a person ceases to be so authorised shall be known as his end date.

#### **Self-supply on withdrawal from scheme**

**55R.—**(1) This regulation applies where—

- (a) a person continues to be a taxable person after his end date,
- (b) for any prescribed accounting period for which he was a flat-rate trader, he was entitled to, and claimed, credit for input tax in respect of any capital expenditure goods, and
- (c) he did not, whilst he was a flat-rate trader, make a supply of those goods.

(2) Where this regulation applies, those goods shall be treated for the purposes of the Act as being, on the day after his end date, both supplied to him for the purpose of his business and supplied by him in the course or furtherance of his business.

(3) The value of a supply of goods treated under paragraph (2) above as made to or by a person shall be determined as though it were a supply falling within paragraph 6(1) of Schedule 6 to the Act.

### **Adjustments in respect of stock on hand at withdrawal from scheme**

**55S.**—(1) This regulation applies where—

- (a) a person continues to be a taxable person after his end date,
- (b) at his end date, he has stock on hand in respect of which he is not entitled to credit for input tax, and
- (c) the value of the stock on hand referred to in sub-paragraph (b) above exceeds the value of his stock on hand in respect of which he was entitled to credit for input tax, at his start date.

(2) Where this regulation applies, the taxable person, for the prescribed accounting period following that in which his end date falls, is entitled to credit for input tax in respect of his stock on hand in such amount as may be determined in accordance with a notice published by the Commissioners.

### **Amendment by notice**

**55T.** The Commissioners may vary the terms of any method prescribed by them for the purposes of regulations 55G or 55S by publishing a fresh notice or publishing a notice that amends an existing notice.

### **Reverse charges**

**55U.** Section 8 of the Act (reverse charge on supplies from abroad) shall not apply to any relevant supply or relevant purchase of a flat-rate trader.

### **Bad debt relief**

**55V.**—(1) This regulation applies where—

- (a) a person has made a relevant supply,
- (b) he has used the cash turnover method to determine the value of his relevant turnover for the prescribed accounting period in which the relevant supply was made,
- (c) he has not accounted for and paid VAT on the supply,
- (d) the whole or any part of the consideration for the supply has been written off in his accounts as a bad debt, and
- (e) a period of 6 months (beginning with the date of the supply) has elapsed.

(2) Where this regulation applies—

- (a) section 36 of the Act<sup>(4)</sup> (bad debts) and any regulations made thereunder shall apply as if the conditions set out in subsection (1) of that section are satisfied, and
- (b) the amount of refund of VAT to which the person is entitled under that section shall be the VAT chargeable on the relevant supply described in paragraph (1) above less the flat-rate amount.

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(4) Section 36 was amended by the Finance Act 1997 (c. 16), section 39 and Schedule 18, Part IV, the Finance Act 1998 (c. 36) section 23 and Schedule 27, Part II and the Finance Act 1999 (c. 16) section 15.

(3) In paragraph (2)(b) above, the flat-rate amount is—

$$A \times B$$

where—

A is the appropriate percentage applicable for the prescribed accounting period, or part thereof, in which the relevant supply was made, and

B is the value of the relevant supply together with the VAT chargeable thereon.”.

8. In Part VIII of the Value Added Tax Regulations 1995 (cash accounting), immediately after regulation 57 insert—

“**57A.**—(1) A person shall not account for VAT in accordance with the scheme in respect of any relevant supplies or relevant purchases of his.

(2) In this regulation, “relevant supplies” and “relevant purchases” have the same meanings as in Part VIIA (flat-rate scheme for small businesses).”.

9. In Part IX of the Value Added Tax Regulations 1995 (supplies by retailers)—

(a) immediately before the definition of “notice” insert—

““flat-rate trader” has the meaning given in regulation 55A;”;

(b) immediately after regulation 69, insert-

“**69A.** No retailer may use a scheme at any time for which he is a flat-rate trader.”; and

(c) in regulation 71, make the existing provision paragraph (1) and after it insert—

“(2) Paragraph (1) shall not apply where a retailer ceases to operate a scheme solely because he becomes a flat-rate trader.”.