

2004 No. 3140

VALUE ADDED TAX

The Value Added Tax (Amendment) (No. 4) Regulations 2004

Made - - - - 30th November 2004

Laid before the House of Commons 2nd December 2004

Coming into force in accordance with regulation 2

The Commissioners of Customs and Excise, in exercise of the powers conferred upon them by sections 9A(4), 26(1), (3) and (4), 39 and 88(3) of the Value Added Tax Act 1994(a) hereby make the following regulations:

PART 1

PRELIMINARY

1. These Regulations may be cited as the Value Added Tax (Amendment) (No. 4) Regulations 2004 and come into force in accordance with regulation 2.

2.—(1) Regulations 4, 5 and 6 shall come into force on 1st January 2005 in relation to supplies made on or after that date.

(2) Regulation 8 shall come into force on 3rd December 2004 in relation to input tax incurred by a taxable person on goods imported or acquired by, or goods and services supplied to, him on or after that date.

(3) Regulations 7, 9, 10, 11, 12, 13 and 14 shall come into force on 3rd December 2004.

(4) Regulation 15 shall come into force on 3rd December 2004 in relation to VAT charged on or after that date.

3. The Value Added Tax Regulations 1995(b) are amended in accordance with the following Parts.

PART 2

GAS AND ELECTRICITY

4. After regulation 82 insert—

(a) 1994 c.23; section 3(1) defines “taxable person” and section 96(1) defines “the Commissioners” as meaning the Commissioners of Customs and Excise, “regulations” as meaning regulations made by the Commissioners under the Act and “another member State” as meaning any member State other than the United Kingdom; section 9A was inserted by section 21 of the Finance Act 2004 (c.12) and has effect in relation to supplies made on or after 1st January 2005.

(b) S.I. 1995/2518 amended by S.I. 1996/1250, S.I. 1999/3114, S.I. 2000/794, and S.I. 2002/1074; there are other amending instruments but none is relevant.

“Goods supplied by persons outside the United Kingdom

82A. Goods which are treated as supplied by a person under section 9A of the Act shall be treated as being supplied when the goods are paid for or, if the consideration is not in money, on the last day of the prescribed accounting period in which the goods are removed or made available.”.

5. In regulation 95 after “82,” insert “82A,”.
6. In regulation 175(b)(iii) after “section” insert “9A or”.

PART 3

PARTIAL EXEMPTION

7. In regulation 103, delete “(1)” and paragraphs (2) and (3).
8. After regulation 103A insert—

“Attribution of input tax incurred on services and related goods used to make financial supplies

103B.—(1) This regulation applies to a taxable person who incurs input tax in the circumstances specified in paragraph (2) below.

(2) Where—

- (a) input tax has been incurred by a taxable person in any prescribed accounting period on supplies to him of any of the services specified in paragraph (4) below and of any related goods, and
- (b) those services and related goods are used or to be used by the taxable person in making both a relevant supply and any other supply, and
- (c) the relevant supply is incidental to one or more of the taxable person’s business activities,

that input tax shall be attributed to taxable supplies to the extent that the services or related goods are so used or to be used expressed as a proportion of the whole use or intended use, notwithstanding any provision of any input tax attribution method that the taxable person is required or allowed to use which purports to have the contrary effect.

(3) In this regulation—

- (a) “relevant supply” means a supply of a description falling within item 1 or 6 of Group 5 of Schedule 9 to the Act and any supply of the same description which is made in another member State; and
- (b) “taxable supplies” includes supplies of a description falling within regulation 103.

(4) The services referred to in paragraph (2)(a) above are services supplied by—

- (a) accountants;
- (b) advertising agencies;
- (c) bodies which provide listing and registration services;
- (d) financial advisers;
- (e) lawyers;
- (f) marketing consultants;
- (g) persons who prepare and design documentation; and
- (h) any person or body which provides similar services to those specified in subparagraphs (a) to (g) above.”.

9. In regulation 99(1)(a), for “103 or 103A” substitute “103, 103A or 103B”.

10. In regulation 101(1), after “102” insert “and 103B”.
11. In regulation 102(1), for “regulation 103” substitute “regulations 103, 103A and 103B”.
12. In regulation 106(3), after “103A” insert “, 103B”.
13. In regulation 106A(2) and (3), for “and 103A” substitute “, 103A and 103B”.
- 14.—(1) In regulation 110(1), before “108” insert “103B,”.
- (2) In regulation 110(1)(b), for “103(1)” substitute “103”.
- (3) In regulation 110(4), for “regulation 103” substitute “regulations 103 and 103B”.

PART 4

REPAYMENTS TO THIRD COUNTRY TRADERS

15. After regulation 190(1)(b) add —
 - “(c) VAT charged on a supply used or to be used in making supplies of a description falling within article 3 of the Value Added Tax (Input Tax) (Specified Supplies) Order 1999.”(a).

New King’s Beam House
22 Upper Ground
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30th November 2004

Michael Hanson
Commissioner of Customs and Excise

(a) S.I. 1999/3121.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force in accordance with regulation 2, further amend the Value Added Tax Regulations 1995 (S.I. 1995/2518) (“the principal Regulations”).

Natural gas and electricity

Part 2 of these regulations makes amendments to the principal Regulations as a consequence of the implementation of Council Directive 2003/92/EC (OJ L260, 11.10.03 p.8). This has required a package of new measures which apply to supplies of natural gas and electricity. A transposition note in respect of this implementation is available at www.hmce.gov.uk.

Regulation 4 inserts a new regulation 82A in the principal Regulations. This establishes the time of supply for supplies of gas through the natural gas distribution network and of electricity, in circumstances where such supplies are treated, under section 9A of the Value Added Tax Act 1994, as being made in the UK by the recipient of the supply.

Regulation 5 makes a consequential amendment to regulation 95 of the principal Regulations to bring regulation 82A within the scope of section 88 of the Value Added Tax Act 1994.

Regulation 6 makes a consequential amendment to regulation 175(b)(iii) of the principal Regulations. This is to ensure that a supplier, in the case of a supply subject to section 9A of the Value Added Tax Act 1994, remains eligible for the refund procedure for community traders in Part XX of the principal Regulations.

A full regulatory impact assessment of the effect that Part 2 of this instrument will have on the costs of businesses is available at www.hmce.gov.uk.

Partial exemption

Part 3 of these Regulations makes amendments to the principal Regulations in respect of partial exemption.

Regulation 7 amends regulation 103 of the principal Regulations by removing paragraphs (2) and (3).

Regulation 8 inserts a new regulation 103B into the principal Regulations to replace the old regulation 103(2) and (3). The previous provisions dealt only with the attribution of input tax where certain supplies of financial services (for example share issues) were made outside the EU. The new regulation deals with the attribution of input tax on certain costs as specified which are used partly to make incidental financial supplies within the EU and partly to make other supplies. In such cases, attribution is to be based solely on the use or intended use of the costs concerned.

Regulations 9 to 14 provide for consequential amendments which result from the amendments made by regulations 7 and 8.

A full regulatory impact assessment has not been produced for Part 3 of this instrument as it has no impact on the costs of businesses, charities or voluntary bodies.

Repayments to third country traders

Part 4 of these Regulations completes the implementation of Council Directive 86/560/EEC (OJ L326, 21.11.86, p 40.) (the Thirteenth VAT Directive), giving effect to Article 2. A transposition note is available at www.hmce.gov.uk.

The right to recover VAT on expenses is extended to businesses established outside the EU who make no supplies within the EU (other than some supplies for which output tax is accounted using the reverse charge), by the Thirteenth Directive. This defines the VAT which can be reclaimed by

such businesses by cross-reference to Article 17(3) of the Sixth Directive (Council Directive 77/388/EEC).

Though input tax on expenses relating to exempt supplies cannot usually be recovered, there is a special rule in Art 17(3)(c) of the Sixth Directive that allows such tax to be deducted when it is incurred on expenses relating to the supply of certain financial and insurance services by a supplier within the EU to a customer located outside the EU, or to the supply of such services when they directly relate to exports from the EU. This means that suppliers of such financial and insurance services within the EU do not bear irrecoverable VAT on the supply of these “exported” services. Article 17(3)(c) of the Sixth Directive is enacted in UK law by article 3 of the Value Added Tax (Input Tax) (Specified Supplies) Order 1999 (S.I. 1999/3121).

However, the Thirteenth Directive defines the categories of tax to be refunded to non-EU established businesses in Article 2, by reference to Article 17(3) of the Sixth Directive, and it does not include the right to recover tax on supplies used in making the supplies described in Article 17(3)(c).

Regulation 15 amends regulation 190(1) of the principal Regulations. It adds a new category of expenditure to those already listed in that regulation, in respect of which refunds will not be made to businesses established outside the EU. The new category is that of VAT on expenses used in making supplies of the financial and insurance services described article 3 of the Value Added Tax (Input Tax) (Specified Supplies) Order 1999, which are those described in Article 17(3)(c) of the Sixth Directive.

A full regulatory impact assessment has not been produced for Part 4 of this instrument, as it has no impact on the costs of UK business, charities or voluntary bodies.

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