

2009 No. 586

VALUE ADDED TAX

The Value Added Tax (Amendment) Regulations 2009

Made 10th March 2009

Laid before the House of Commons 11th March 2009

Coming into force 1st April 2009

The Commissioners for Her Majesty's Revenue and Customs^(a) make the following Regulations in exercise of the powers conferred by sections 24(6), 25(1) and (6), 26(1), (3) and (4), 26B and 36(5) and (6) of, and paragraph 2(1), (10) and (11) of Schedule 11 to, the Value Added Tax Act 1994^(b):

Citation and commencement

1. These Regulations may be cited as the Value Added Tax (Amendment) Regulations 2009 and come into force on 1st April 2009.
2. The Value Added Tax Regulations 1995^(c) are amended as follows.

Claims for input tax

3. In regulation 29 (claims for input tax)—
 - (a) in paragraph (1) for “Subject to paragraphs (1A) and (2) below” substitute “Subject to paragraph (1A) below”,
 - (b) at the end of paragraph (1), after “chargeable” insert “save that, where he does not at that time hold the document or invoice required by paragraph (2) below, he shall make his claim on the return for the first prescribed accounting period in which he holds that document or invoice”,
 - (c) in paragraph (1A)—
 - (i) at the beginning insert “Subject to paragraph (1B)”,
 - (ii) for “3 years” substitute “4 years”,

(a) The functions of the Commissioners of Customs and Excise were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50(1) of that Act provides that a reference to the Commissioners of Customs and Excise shall be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs.

(b) 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 under the Act. Section 24(6) was amended by section 17(2) of the Finance Act 2003 (c. 14). Section 26B was inserted by section 23 of the Finance Act 2002 (c. 23). Section 36(5) was amended by section 23 of the Finance Act 1998 (c. 36), section 15 of the Finance Act 1999 (c. 16), and sections 22(2), (3) and 141 of and Schedule 40 Part 2(1) to the Finance Act 2002 (c. 23). Section 36(6) was amended by section 23 of the Finance Act 1998 (c. 36). Paragraph 2(1) of Schedule 11 was amended by section 24 of the Finance Act 2002 (c. 23). Paragraph 2(10) of Schedule 11 was amended by section 38 of the Finance Act 1996 (c. 8).

(c) S.I. 1995/2518; relevant amending instruments are S.I. 1997/1086, S.I. 1997/1614, S.I. 1999/599, S.I. 2000/258, S.I. 2002/1142, S.I. 2003/1069, S.I. 2003/1114, S.I. 2003/3220, S.I. 2004/767, S.I. 2007/1418, S.I. 2008/1482 and S.I. 2008/3021.

- (iii) for “the prescribed accounting period in which the VAT became chargeable” substitute “the first prescribed accounting period in which he was entitled to claim that input tax in accordance with paragraph (1) above”,
- (d) after paragraph (1A) insert—

“(1B) The Commissioners shall not allow or direct a person to make any claim for deduction of input tax where the return for the first prescribed accounting period in which the person was entitled to claim that input tax in accordance with paragraph (1) above was required to be made on or before 31st March 2006.”, and
- (e) after paragraph (3) insert—

“(4) Nothing in this regulation shall entitle a taxable person to deduct more than once input tax incurred on goods imported or acquired by him or on goods or services supplied to him.”.

Correction of errors

- 4. In regulation 34 (correction of errors)—
 - (a) in paragraph (1A) after “Subject to paragraph (1B)” insert “and (1C)”,
 - (b) in paragraph (1A)(a) for “3 years” substitute “4 years”,
 - (c) in paragraph (1A)(b) for “3 years” substitute “4 years”,
 - (d) after paragraph (1B) insert—

“(1C) Where paragraph (1B) above does not apply, any overstatement or understatement in a return shall be disregarded for the purposes of this regulation where the prescribed accounting period for which the return was made or required to be made ended on or before 31st March 2006.”, and
 - (e) in paragraph (3) for “unless the difference is less than £10,000” substitute “unless the difference is £10,000 or less”.

Adjustments in the course of business

- 5. In regulation 38 (adjustments in the course of business)—
 - (a) in paragraph (1) omit “Subject to paragraph (1A) below.”,
 - (b) omit paragraph (1A),
 - (c) omit paragraph (1B),
 - (d) for paragraph (2) substitute “Where this regulation applies, both the taxable person who makes the supply and a taxable person who receives the supply shall adjust their respective VAT accounts in accordance with the provisions of this regulation.”, and
 - (e) in paragraph (5) insert “relevant” before “taxable person”.

Flat-rate scheme for small businesses

- 6. In regulation 55L (admission to scheme)—
 - (a) omit paragraph (1)(a)(ii),
 - (b) in paragraph (2) omit “or income”.
- 7. In regulation 55M (withdrawal from the scheme) after paragraph (3) insert—

“(4) For the purposes of this regulation, “income” shall be calculated in accordance with the method specified in regulation 55G(1) (determining relevant turnover) used by the business to determine the value of its turnover whilst accounting for VAT under the scheme.

(5) Where a business has used more than one method to determine the value of its turnover whilst accounting for VAT under the scheme, the method referred to in paragraph (4) above shall be the most recent method used.”.

Input tax: exceptional claims for VAT relief

8. In regulation 111 (exceptional claims for VAT relief)—

(a) in paragraph (2)(b)—

(i) after “Subject to paragraph (2A)” insert “, (2C) and (2D)”,

(ii) for “3 years” substitute “4 years”,

(b) after paragraph (2B) insert—

“(2C) Where the relevant person was, or was required to be, registered on or before 1st April 2009, no VAT may be treated as if it were input tax under paragraph (1) above in respect of goods which were supplied to, or imported or acquired by the relevant person more than 3 years before the date with effect from which that person was, or was required to be, registered.

(2D) Where the relevant person was or was required to be registered on or before 31st March 2010 and paragraph (2C) above does not apply, no VAT may be treated as if it were input tax under paragraph (1) above in respect of goods which were supplied to, or imported or acquired by, the relevant person on or before 31st March 2006.”.

(c) in paragraph (3B)—

(i) at the beginning insert “Subject to paragraph (3C)”,

(ii) for “3 years” substitute “4 years”,

(d) after paragraph (3B) insert—

“(3C) The Commissioners shall not allow a person to make any claim under paragraph (3) above in the circumstances where the first return the taxable person was required to make was required to be made on or before 31st March 2006.”.

(e) in paragraph (6)—

(i) after “Subject to paragraph 7” insert “and (8)”,

(ii) for “3 years” substitute “4 years”, and

(f) after paragraph (7) insert—

“(8) No claim may be made under paragraph (5) above in relation to a supply of services which was made on or before 31st March 2006.”.

Input tax adjustments: capital items

9. In regulation 115 (method of adjustment) for paragraph (8) substitute—

“(8) For the purposes of paragraphs (9) and (10) below, a “specified return” means a return specified —

(a) in paragraph (6) above,

(b) in subparagraph (a) or (b) of that paragraph, or

(c) in paragraph (7) above.

(9) Subject to paragraph (10) below, the Commissioners shall not allow the taxable person to use a return other than a specified return unless it is the return for a prescribed accounting period commencing within 4 years of the end of the prescribed accounting period to which the specified return relates.

(10) The Commissioners shall not allow the taxable person to use a return other than a specified return where the specified return is the return for a prescribed accounting period finishing on or before 31st March 2006.”.

Bad debt relief

10. In regulation 165A (time within which a claim must be made)—

(a) in paragraph 1—

(i) after “Subject to paragraph (3)” insert “and (4)”,

(ii) for “3 years and 6 months” substitute “4 years and 6 months”, and

(b) after paragraph (3) insert—

“(4) A person shall be regarded for the purposes of this Part as having ceased to be entitled to a refund where the date mentioned at subparagraph (a) or (b) of paragraph (1) above, whichever is the later, is on or before 30th September 2005.”.

Dave Hartnett

Mike Eland

10th March 2009

Two of the Commissioners for Her Majesty’s Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 1st April 2009, amend Parts V (accounting, payment and records), VIIA (flat-rate scheme for small businesses), XV (adjustments to the deduction of input tax on capital items) and XIX (bad debt relief) of the Value Added Tax Regulations 1995 (S.I. 1995/2518).

Regulation 3 amends regulation 29 (claims for input tax). It provides that a taxable person cannot make a claim for input tax until he holds the evidence which is required to substantiate that claim and makes a consequential amendment to the capping provisions contained in that regulation as well as clarifying that a taxable person can only deduct a specific amount of input tax once. It also extends the time limit for making claims from 3 years to 4 years, but not retrospectively (i.e. it does not allow claims that are already out of time to be brought back within the time limit). The effect is that the extended time limit would not apply to a situation where the return for the first prescribed accounting period in which the person was entitled to claim the input tax was required to be made on or before 31st March 2006.

Regulation 4 amends regulation 34 (correction of errors) which allows a taxable person to correct specified overstatements or understatements of VAT due on a later VAT return. It extends the time limit for making such corrections from 3 years to 4 years, but not retrospectively (i.e. it does not allow corrections that are already out of time to be brought back within the time limit). The effect is that the extended time limit would not apply to a situation where the prescribed accounting period for which the return was made or required to be made ended on or before 31st March 2006. It also amends the figure specified in regulation 34.

Regulation 5 amends regulation 38 (adjustments in the course of business). It removes the existing time limit to allow adjustments to be made where an increase or decrease in consideration occurs more than three years after the end of the prescribed accounting period in which the original supply took place and clarifies the taxable persons who are required to make adjustments under that regulation.

Regulation 6 amends regulation 55L (admission to the flat rate scheme) to simplify the flat-rate scheme for small businesses by removing the joining test which requires a business to check that its total income is less than £187,500. The other joining test which requires a business to check that the value of its taxable supplies in the year will not exceed £150,000 is retained.

Regulation 7 amends regulation 55M (withdrawal from the flat rate scheme) to clarify that the “income” of a business should be calculated in relation to the leaving test for the flat rate scheme using the same method that the business used to calculate its turnover whilst using the flat rate scheme under regulation 55G (determining relevant turnover).

Regulation 8 amends the time limits in regulation 111 (exceptional claims for VAT relief) from 3 years to 4 years but not retrospectively (i.e. it does not allow claims that are already out of time to be brought back within the time limit). It applies to claims for pre-registration input tax incurred on goods and to post-deregistration input tax incurred on services. In the case of pre-registration input tax, the effect is that: (i) where the relevant person was, or was required to be, registered on or before 1st April 2009, no VAT may be treated as if it were input tax under regulation 111(1) in respect of goods which were supplied to, or imported or acquired by him more than 3 years before the date with effect from which he was, or was required to be, registered; and (ii) where the relevant person was or was required to be registered on or before 31 March 2010 and (i) (above) does not apply, no VAT may be treated as if it were input tax under regulation 111(1) in respect of goods which were supplied to, or imported or acquired by him on or before 31 March 2006. In the case of post-deregistration input tax, the effect is that the extended time limit would not apply where the claim was in relation to a supply of services made on or before 31st March 2006.

Regulation 9 amends regulation 115 (input tax on capital goods: method of adjustment) which deals with input tax adjustments required as a result of changes in the extent to which a capital item is used. Where the specified return is not used, another return may be used subject to specified conditions. It extends the time limit for using another return from 3 years to 4 years, but not retrospectively (i.e. it does not allow adjustments that are already out of time to be brought back within the time limit).

Regulation 10 amends regulation 165A (bad debt relief: time within which a claim must be made). It extends the time limit for claims from 3 years and 6 months to 4 years and 6 months, but not retrospectively (i.e. it does not allow claims that are already out of time to be brought back within the time limit). The effect is that there is no extension of the entitlement to a refund where the date specified in regulation 165A falls on or before 30th September 2005.

An Impact Assessment has not been produced for regulations 3 (other than the time limit changes), 5, 6 and 7 of this instrument as no impact on the private or voluntary sectors is foreseen.

An Impact Assessment covering the changes made by regulations 3 (time limits), 4, 8, 9 and 10 was published alongside the 2008 Finance Bill, and is available from HMRC's website at www.hmrc.gov.uk/ria/compliance-checks.pdf.

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STATUTORY INSTRUMENTS

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