

2009 No. 820

VALUE ADDED TAX

The Value Added Tax (Amendment) (No. 2) Regulations 2009

Made - - - - 31st March 2009

Laid before the House of Commons 31st March 2009

Coming into force in accordance with regulation 1

The Commissioners for Her Majesty's Revenue and Customs^(a) make the following Regulations in exercise of the powers conferred by section 26(1), (3) and (4) of the Value Added Tax Act 1994^(b):

Citation and commencement

1.—(1) These Regulations may be cited as the Value Added Tax (Amendment) (No. 2) Regulations 2009 and, subject to paragraph (2) below, come into force on 1st April 2009 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) Where 31st March 2009 falls within the prescribed accounting period of a taxable person, the amendments made by these regulations shall not, in relation to that taxable person, have effect until the day after the end of that prescribed accounting period.

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

3. In regulation 99(1)(a) (definition of exempt input tax), after “regulation” insert “101,”.

4. In regulation 101 (attribution of input tax to taxable supplies)—

(a) in paragraph (1) for “103B” substitute “103A”,

(b) at the beginning of paragraph (2) insert “Subject to paragraph (8) below and regulation 107(1)(g)(ii),”,

(c) at the end of paragraph (2)(c) omit “and”,

(d) in paragraph (2)(d)—

(i) at the beginning, insert “where a taxable person does not have an immediately preceding longer period and subject to subparagraph (e) below,”,

(ii) for “input tax on such of those goods or services as are used or to be used by him in making both taxable and exempt supplies” substitute “residual input tax”,

(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.

(c) S.I. 1995/2518; relevant amending instruments are S.I. 1996/1250, S.I. 1999/599, S.I. 1999/3114, S.I. 2000/794, S.I. 2002/1074, S.I. 2004/3140, S.I. 2005/762 and S.I. 2007/768.

- (e) after paragraph (2)(d), insert—
 - “(e) the attribution required by subparagraph (d) above may be made on the basis of the extent to which the goods or services are used or to be used by him in making taxable supplies,
 - (f) where a taxable person has an immediately preceding longer period and subject to subparagraph (g) below, his residual input tax shall be attributed to taxable supplies by reference to the percentage recovery rate for that immediately preceding longer period, and
 - (g) the attribution required by subparagraph (f) above may be made using the calculation specified in subparagraph (d) above provided that that calculation is used for all the prescribed accounting periods which fall within any longer period applicable to a taxable person.”,
- (f) in paragraph (3), after “(2)(d)” insert “or (g)”,
- (g) after paragraph (3)(c), omit “and”,
- (h) at the end of paragraph (3)(d), insert “and”,
- (i) after paragraph (3)(d) insert—
 - “(e) supplies of a description falling within paragraph (8) below.”,
- (j) in paragraph (4), after “(2)(d)” insert “, (e) or (g)”,
- (k) in paragraph (5), after “(2)(d)” insert “, (e) or (g)”, and
- (l) after paragraph (6), insert—
 - “(7) In this regulation “taxable supplies” include supplies of a description falling within regulation 103.
 - (8) Input tax incurred on goods or services acquired by or supplied to a taxable person which are used or to be used by him in whole or in part in making—
 - (a) supplies falling within either item 1 or item 6 of Group 5 of Schedule 9 to the Act; or
 - (b) supplies made from an establishment situated outside the United Kingdom,
 shall, whether the supply in question is made within or outside the United Kingdom, be attributed to taxable supplies on the basis of the extent to which the goods or services are used or to be used by him in making taxable supplies.
 - (9) For the purposes of this regulation in relation to a taxable person—
 - (a) “immediately preceding longer period” means the longer period applicable to him which ends immediately before the longer period in which the prescribed accounting period in respect of which he is making the attribution required by paragraph (2)(d) to (g) above falls;
 - (b) “percentage recovery rate” means the amount of relevant residual input tax which he was entitled to attribute to taxable supplies under regulation 107(1)(a) to (d), expressed as a percentage of the total amount of the residual input tax which fell to be so attributed and rounded up in accordance with paragraphs (4) and (5) above;
 - (c) “relevant residual input tax” means all residual input tax other than that which falls to be attributed under paragraph (8) above.
 - (10) In this regulation “residual input tax” means input tax incurred by a taxable person on goods or services which are used or to be used by him in making both taxable and exempt supplies.”.

5. In regulation 102 (use of other methods), in paragraph (2) for “101(3)” substitute “101(3)(a) to (d)”.

6. In regulation 103 (attribution of input tax to foreign and specified supplies), after “Other than where it falls to be attributed under” insert “regulation 101 or”.

7. In regulation 103B (attribution of input tax incurred on services and related goods used to make financial supplies), at the beginning of paragraph (2) insert “Other than where it falls to be attributed under regulation 101,”.

8. In regulation 107 (adjustment of attribution)—

- (a) in paragraph (1) omit “, and where all his exempt input tax in that longer period cannot be treated as attributable to taxable supplies under regulation 106,”,
- (b) at the end of paragraph (1) omit “shall”,
- (c) for subparagraphs (a) to (c) substitute—
 - “(a) shall, subject to subparagraphs (b), (c) and (d) below, determine for the longer period the amount of input tax which is attributable to taxable supplies according to the method used in the prescribed accounting periods,
 - (b) shall, where he has provisionally attributed input tax in accordance with regulation 101(2)(e) in any prescribed accounting period, determine for the longer period the amount of residual input tax which is attributable to taxable supplies on the basis of the extent to which the goods or services are used or to be used by him in making taxable supplies,
 - (c) may, where he has not provisionally attributed input tax in accordance with regulation 101(2)(e) but was nevertheless entitled to do so, determine for the longer period the amount of residual input tax which is attributable to taxable supplies on the basis of the extent to which the goods or services are used or to be used by him in making taxable supplies,
 - (d) shall, where he has provisionally attributed residual input tax under regulation 101(2)(f), determine for the longer period the amount of residual input tax which is attributable to taxable supplies using the calculation specified in regulation 101(2)(d) subject to the provisions of regulation 101(3) to (5),
 - (e) shall apply the tests set out in regulation 106 to determine whether all input tax in the longer period in question shall be treated as attributable to taxable supplies,
 - (f) shall calculate the difference between the amount of input tax determined to be attributable to taxable supplies under subparagraphs (a) to (e) above and the amounts of input tax, if any, which were deducted in the returns for the prescribed accounting periods, and
 - (g) shall include any such amount of over-deduction or under-deduction in a return for—
 - (i) the first prescribed accounting period next following the longer period, or
 - (ii) the last prescribed accounting period in the longer period,except where the Commissioners allow another return to be used.”,

(d) for paragraph (2), substitute—

“(2) Where a taxable person makes no adjustment as required by paragraph (1) above, the requirement shall be that the adjustment is made in the return for the first prescribed accounting period next following the longer period.”, and

(e) after paragraph (3) insert—

“(4) In this regulation “residual input tax” has the same meaning as in regulation 101(10).”.

9. In regulation 107B—

(a) in paragraph (1)—

- (i) at the beginning insert “Other than where input tax falls to be attributed under regulation 101(8) or regulation 107(1)(b) or (c),”,
- (ii) for “regulation 107(1)(a)” substitute “regulation 107(1)(a) or (d)”, and

(b) in paragraph (2)(b)—

- (i) for “regulation 107(1)(c)” substitute “regulation 107(1)(g)”,
- (ii) after “longer period” insert “or the return for the last prescribed accounting period in the longer period if applicable”.

10. After regulation 107E insert—

“**107F.** The references in regulations 107C and 107E to an apportionment under regulation 101(2)(d) in relation to a longer period include cases where the apportionment is made under regulation 107(1)(a) or (d) using the calculation specified in regulation 101(2)(d).”.

Steve Lamey
Dave Hartnett

31st 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 in accordance with regulation 1, amend Part XIV (input tax and partial exemption) of the Value Added Tax Regulations 1995 (S.I. 1995/2518).

Regulation 3 amends regulation 99 (interpretation of Part XIV and longer periods) to add a reference to regulation 101 into the definition of “exempt input tax”.

Regulation 4 amends regulation 101 (attribution of input tax to taxable supplies). It revises the method of calculating input tax which is to be attributed to taxable supplies in any prescribed accounting period, allowing attribution to be made on the basis of use or by reference to the recovery rate which applied for the immediately preceding longer period in specified circumstances and subject to specified conditions. It also clarifies the meaning of “taxable supplies” in regulation 101, makes provision to avoid distortion and sets out some new definitions.

Regulation 5 makes a minor consequential amendment to regulation 102 (use of other methods).

Regulations 6 and 7 amend regulations 103 (attribution of input tax to foreign and specified supplies) and 103B (attribution of input tax incurred on services and related goods used to make financial supplies) to make it clear that they no longer apply to input tax attributed under regulation 101.

Regulation 8 amends regulation 107 (adjustment of attribution). It revises the method of calculating any adjustment which is required to be made to the amount of input tax provisionally deducted in any longer period to ensure consistency with the changes made to regulation 101. It also allows any over-declaration or under-declaration to be included in the last prescribed accounting period of a longer period as an alternative to the first prescribed accounting period next following a longer period and makes provision as to the period in which the adjustment is required to be made where no adjustment is made.

Regulation 9 amends regulation 107B to make it clear that it no longer applies to input tax attributed under regulations 101(8) or 107(1)(b) and (c). It also makes amendments consequential on the changes made to regulation 107.

Regulation 10 adds a new regulation 107F to clarify what the references to an apportionment under regulation 101(2)(d) in relation to a longer period include.

A full Impact Assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from H M Revenue and Customs, 100 Parliament Street, London SW1A 2BQ and is annexed to the Explanatory Memorandum which is available alongside the instrument on the website of the Office of Public Information at www.opsi.gov.uk.

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£4.00