

2014 No. 2430

VALUE ADDED TAX

The Value Added Tax (Amendment) (No.3) Regulations 2014

Made - - - - *10th September 2014*

Laid before the House of Commons *10th September 2014*

Coming into force in accordance with regulation 1

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by sections 36(5)(a), (c), (f) and (7)(b), 39(1) and (3), 80(6) and 80A(1) and (3) to (7) of, paragraphs 4(5)(a) and (b), 7(3), 12(4), 16C(4)(a) and (b), 16J(1), 16K(5)(a) and (b) and 16L of Schedule 3B to, and paragraphs 5(5)(a) and (b), 6(2), 10(3)(b), 17(4), 19, 23(4)(a) and (b), 30(1), 31(5)(a) and (b) and 32 of Schedule 3BA to, the Value Added Tax Act 1994(a):

Citation and commencement

1.—(1) These Regulations may be cited as the Value Added Tax (Amendment) (No.3) Regulations 2014.

(2) This regulation and regulations 2 and 9 come into force on 1st October 2014.

(3) The remaining regulations come into force on 1st January 2015.

Amendment of the Value Added Tax Regulations 1995

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

3. In regulation 43A (reimbursement arrangements: interpretation of Part 5A) for the definition of “claim” substitute—

““claim” means—

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- (a) 1994 c.23. Section 96(1) of the Act defines “the Commissioners” to mean “the Commissioners of Customs and Excise” and “regulations” as meaning regulations made by the Commissioners under the Act. The functions of the Commissioners of Customs and Excise were transferred to the Commissioners for Revenue and Customs by section 5(1) 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. 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 section 22(2) and (3) of the Finance Act 2002 (c.23). Section 39 was amended by section 77 of the Finance Act 2009 (c.10) and section 204 of the Finance Act 2012 (c.14). Section 80A was inserted by section 46(2) of the Finance Act 2007 (c.11) and was amended by section 4 of the Finance (No 2) Act 2005 (c. 22). Schedule 3B was inserted by section 23 of and paragraph 1 and 4 of Schedule 2 to the Finance Act 2003 (c.14) and was amended by section 103 of and paragraphs 3 to 10 of Schedule 22 to the Finance Act 2014 (c. 26). Schedule 3BA was inserted by section 103 of and paragraph 1 of Schedule 22 to the Finance Act 2014.
- (b) S.I. 1995/2518 to which relevant amendments were made by S.I. 1991/371, S.I. 1996/2960, S.I. 1997/1086, S.I. 1998/59, S.I. 1999/438, S.I. 1999/3029, S.I. 2002/3027, S.I. 2003/3220, S.I. 2004/3140, S.I. 2005/2231, S.I. 2007/313, S.I. 2009/586, S.I. 2009/3241 and S.I. 2010/2940.

- (a) a claim made under section 80 of the Act for credit of an amount accounted for to the Commissioners or assessed by them as output tax which was not output tax due to them; or
 - (b) a claim made under paragraph 16I of Schedule 3B, or paragraph 29 of Schedule 3BA, to the Act (claims which have effect for the purpose of section 80(3) of the Act as if they were section 80 claims),
- and “claimed” and “claimant” are to be construed accordingly;”.

4. In regulation 165 (bad debt relief: interpretation of Part 19)—

- (a) in the definition of “claim”, after “166” insert “or 166AA,”,
- (b) in the definition of “return”, after “25” insert “but “relevant non-UK return” has the meaning given by paragraph 20(3) of Schedule 3BA to the Act and “relevant special scheme return” has the meaning given by paragraph 16(3) of Schedule 3B to the Act”,
- (c) after the definition of “security” insert—
 - ““tax period” has the meaning given by paragraph 23(1) of Schedule 3B or paragraph 38(1) of Schedule 3BA (as the case may require) to the Act.”.

5.—(1) At the start of paragraph (1) of regulation 166 (bad debt relief: the making of a claim to the Commissioners) insert “Subject to regulation 166AA, and”.

(2) After regulation 166 insert—

“The making of a claim to the Commissioners: special accounting schemes

166AA.—(1) This regulation applies where the VAT on the relevant supply was accounted for on a relevant non-UK return or a relevant special scheme return.

(2) Where this regulation applies, the claimant must make the claim by—

- (a) amending, in accordance with Article 61 of the Implementing Regulation^(a), that relevant non-UK return or relevant special scheme return; or
- (b) (where the period during which a person is entitled to make such an amendment has expired) notifying the Commissioners of the claim in writing in the English language.”.

6. In regulation 168 (bad debt relief: records to be kept by the claimant) insert after paragraph (3)—

“(4) Where regulation 166AA applies, “prescribed accounting period” in this regulation is to be read as “tax period”.”.

7.—(1) At the start of paragraph (1) of regulation 171 (bad debt relief: repayment of a refund) insert “Subject to regulation 171A,”.

(2) At the start of paragraph (2) of regulation 171 insert “Subject to regulation 171B,”.

(3) At the start of paragraph (3) of regulation 171 insert “Subject to regulation 171B and,”.

(4) After regulation 171 insert—

“Calculation of repayment where reduction in consideration: special accounting schemes

171A.—In a case falling within sub-paragraph (b)(iii) of regulation 171(1) where the VAT on the relevant supply was accounted for on a relevant non-UK return or a relevant special scheme return, the amount to be repaid is such an amount as is equal to the amount by which the VAT chargeable on the relevant supply is reduced.

(a) Council Implementing Regulation (EU) No 282/2011, OJ No L 77, 23.3.11, p. 1, to which relevant amendments are made by Council Regulation (EU) No 967/2012, OJ No L 290, 20.10.12, p. 1 with effect from 1st January 2015.

Timing and method of repayments: special accounting schemes

171B.—(1) Where—

- (a) the VAT on the relevant supply was accounted for on a relevant non-UK return or a relevant special scheme return, and
- (b) a repayment is required by regulation 171(1),

that repayment must be made no later than twenty days after the end of the tax period in which the payment for the relevant supply is received or the reduction in consideration is accounted for in the claimant's business accounts.

(2) Where—

- (a) the VAT on the relevant supply was accounted for on a relevant non-UK return or a relevant special scheme return, and
- (b) a repayment is required by regulation 171(3),

that repayment must be made no later than twenty days after the end of the tax period in which the failure to comply first occurred.

(3) In either case the repayment must be made by—

- (a) amending (in accordance with Article 61 of the Implementing Regulation) the relevant non-UK return or the relevant special scheme return for the tax period in which the VAT on the relevant supply was brought into account, or
- (b) (where the period during which a person is entitled to make such an amendment has expired) sending the sum due to the Commissioners.”.

8.—(1) In—

- (a) paragraph (2)(c) of regulation 173B (repayments to Community traders: repayments of VAT); and
- (b) paragraph (2) of regulation 173L (repayments to Community traders: contents of a repayment application),

for “or (iii)” substitute “, (iii) or (iv)”.

(2) In regulation 173E (repayments to Community traders: persons to whom this Part applies) after paragraph (b)(iii) insert—

- “(iv) scheme services within paragraph 2 of Schedule 3BA to the Act supplied by a person who—
 - (a) is required to account for the VAT on those supplies on a non-UK return; and
 - (b) is not a registered person.”.

9. After Part 25 (distress and diligence) insert—

“PART 26

UK UNION AND NON-UNION SPECIAL ACCOUNTING SCHEMES: REGISTRATION

Interpretation

214.—(1) In this Part—

“applicant” means a person making a registration request under paragraph 4 of Schedule 3B or paragraph 5 of Schedule 3BA to the Act;

“principal VAT Directive” means Council Directive 2006/112/EC(a).

(2) In regulations 215 and 216, references to a number allocated under Article 362(b) of the principal VAT Directive mean a number allocated at any time under that Article.

Registration requests: Non-Union scheme

215. A registration request under paragraph 4 of Schedule 3B to the Act must contain details of—

- (a) any VAT identification number or tax reference number by which the applicant is identified for VAT purposes by any member State in accordance with Article 214(c), Article 239 or Article 240 of the principal VAT Directive, and the name of that member State;
- (b) any number previously allocated to the applicant by any member State under Article 362 of the principal VAT Directive, or otherwise for the purposes of Article 369d(d) of the principal VAT Directive, and the name of that member State.

Registration requests: Union scheme

216. A registration request under paragraph 5 of Schedule 3BA to the Act must contain the following information—

- (a) any VAT identification number or tax reference number by which the applicant is identified for VAT purposes by any member State in accordance with Article 214, Article 239 or Article 240 of the principal VAT Directive, and the name of that member State;
- (b) any number previously allocated to the applicant by any member State under Article 362 of the principal VAT Directive, or otherwise for the purposes of Article 369d of the principal VAT Directive, and the name of that member State;
- (c) where the applicant has previously been identified under a non-UK special scheme, the date the applicant ceased to be so identified;
- (d) whether the applicant is treated as a member of a group under any of sections 43A to 43D of the Act(e); and
- (e) the name of any member States in which the applicant has a fixed establishment, and the address of each such fixed establishment.

Registration requests: declaration

217. A registration request under paragraph 4 of Schedule 3B or paragraph 5 of Schedule 3BA to the Act must also contain a declaration by the applicant that the information the applicant has provided in the registration request is accurate and complete to the best of the applicant’s knowledge.

(a) OJ L No 347, 11.12.06, p. 1. Sections 1 and 2 of Chapter 6 of Title XII are amended by Article 5(6) to (14) of Council Directive 2008/08/EC amending Directive 2006/112/EC as regards the place of supply of services, OJ L No 44, 20.2.08, p. 11. Section 3 of Chapter 6 of Title XII is inserted by Article 5(15) of that Directive. Both amendments take effect from 1st January 2015. However, Article 2 of Council Regulation (EU) No 967/2012, OJ L No 290, 20.10.12, p. 1, requires member States to allow persons to make registration requests in respect of both Union and amended Non-Union schemes with effect from 1st October 2014.

(b) Article 362 is substituted by Article 5(11) of Council Directive 2008/08/EC with effect from 1st January 2015.

(c) Article 214 was amended by Council Directive 2008/08/EC with effect from 1 January 2010.

(d) Article 369d is inserted by Article 5(15) of Council Directive 2008/08/EC with effect from 1st January 2015.

(e) Sections 43A to 43C were inserted by section 16 of, and paragraph 2 of Schedule 2 to, the Finance Act 1999 (c. 16). Section 43A was amended by S.I. 2009/1890. Section 43AA was inserted by section 20(1) of the Finance Act 2004 (c.12). Sections 43B and 43C were amended by section 20(4) of the Finance Act 2004. Section 43D was inserted by section 20(2) of the Finance Act 2004.

Communications with the Commissioners

218. A registration request under paragraph 4 of Schedule 3B or paragraph 5 of Schedule 3BA to the Act must be made by using the electronic portal set up by the Commissioners for the purpose of implementing Sections 2 and 3 of Chapter 6 of Title XII to the principal VAT Directive.”.

10.—(1) In Part 26 (UK Union and Non-Union Special Accounting Schemes: Registration), as inserted by regulation 9, for regulation 218 substitute—

“**218.** The following communications must be made by using the electronic portal set up by the Commissioners for the purpose of implementing Sections 2 and 3 of Chapter 6 of Title XII to the principal VAT Directive —

- (a) a registration request under paragraph 4 of Schedule 3B or paragraph 5 of Schedule 3BA to the Act;
- (b) the information required by paragraph 7 of Schedule 3B or paragraph 6 of Schedule 3BA to the Act;
- (c) a return required under paragraph 11 of Schedule 3B or paragraph 9 of Schedule 3BA to the Act.”.

(2) For the heading of Part 26, substitute “UK Union and Non-Union Special Accounting Schemes: Registration, Notification of Changes, and Returns”.

11. After Part 26 (UK Union and Non-Union Special Accounting Schemes: Registration) insert—

“PART 27

NON-UK UNION AND NON-UNION SPECIAL ACCOUNTING SCHEMES: ADJUSTMENTS, CLAIMS AND ERROR CORRECTION

219. In this Part, “tax period” has the meaning given by paragraph 23(1) of Schedule 3B or paragraph 38(1) of Schedule 3BA (as the case may require) to the Act.

Correction of errors on non-UK and special scheme returns more than 3 years after the date the original return was required to be made

220.—(1) In this regulation “notice” means a notice given under paragraph 16C(3) of Schedule 3B or paragraph 23(3) of Schedule 3BA to the Act.

(2) A person giving a notice (P) must do so—

- (a) no later than 4 years after the end of the tax period in respect of which the return identified in the notice was required to be made; and
- (b) in writing in the English language.

(3) P must also provide such documentary evidence in support of the notice as P possesses.

Claims in respect of overpaid VAT

221.—(1) A person making a claim under paragraph 16I(1) of Schedule 3B, or paragraph 29(1) of Schedule 3BA, to the Act must provide to the Commissioners at the time of making the claim a statement in writing in the English language explaining how the claim is calculated.

(2) A person making a claim under any other provision of paragraph 16I of Schedule 3B, or paragraph 29 of Schedule 3BA, to the Act must-

- (i) make that claim to the Commissioners; and

- (ii) provide to the Commissioners at the time of making the claim a statement in writing in the English language explaining how the claim is calculated.

Increases or decreases in consideration occurring more than 3 years after the end of the affected tax period

222.—(1) A claim or other notice made under paragraph 16K(2)(b) of Schedule 3B or paragraph 31(2)(b) of Schedule 3BA to the Act must be made in writing in the English language.

(2) A person making a payment—

- (a) under paragraph 16K(3) of Schedule 3B to the Act in a case falling within paragraph 16K(2)(b) of that Schedule; or
- (b) under paragraph 31(3) of Schedule 3BA to the Act in a case falling within paragraph 31(2)(b) of that Schedule,

must do so no later than twenty days after the end of the tax period in which the increase in consideration is accounted for in the person’s business accounts.

Scheme participants who are also taxable persons: disapplication of paragraph 17(1)

223.—(1) Paragraph 17(1) of Schedule 3BA to the Act is not to apply in the case of an input tax obligation.

(2) In this regulation “input tax obligation” means an obligation imposed on a taxable person relating to a claim to deduction under section 25(2) of the Act or to payment of a VAT credit.”.

*Jim Harra
Edward Troup*

10th September 2014

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations come into force on 1st January 2015 with the exception of regulations 1, 2 and 9, which come into force on 1st October 2014. They amend the Value Added Tax Regulations 1995 (S.I. 1995/2518) (“the Principal Regulations”).

Council Directive 2006/112/EC(a) (“the Principal VAT Directive”) establishes a common system of value added tax applicable throughout the European Union. Council Directive 2008/08/EU(b) (“the 2008 Directive”) amended Chapter 6 of Title XII of the Principal VAT Directive (the special scheme for non-established taxable persons supplying electronic services to non-taxable persons; “the Non-Union Scheme”). The main change was to extend the Non-Union Scheme to include supplies of telecommunications services and radio and television broadcasting services. The 2008 Directive also inserted a new Section 3 of Chapter 6 into the Principal VAT Directive to create the special scheme for telecommunications, broadcasting or electronic services supplied by taxable persons established within the Community but not in the member State of consumption (“the Union Scheme”).

As a result of these amendments, changes are made to the Principal Regulations to prescribe the form and manner of making registration applications and communicating other information to the Commissioners in relation to the Union and Non-Union schemes. The changes also prescribe how certain adjustments are to be made, how certain repayments of relief are to be made, ensure that a

(a) OJ No L 347, 11.12.06, p. 1.
(b) OJ No L 44, 20.2.08, p. 11.

person using the Union Scheme in another member State can recover VAT incurred in the United Kingdom and make other consequential changes.

Regulation 3 amends the definition of “claim” in Part 5A (reimbursement arrangements) of the Principal Regulations.

Regulations 4 to 7 amend Part 19 (bad debt relief) of the Principal Regulations.

Regulation 5 inserts a new regulation 166AA into the Principal Regulations to prescribe the manner of making a claim under section 36 of the Value Added Tax Act 1994 (c. 23) (“the Act”) where the VAT on the relevant supply has been accounted for by a person using the Union Scheme in another member State or by a person using the Non-Union Scheme (whether in the United Kingdom or in another member State).

Regulation 6 amends regulation 168 (records to be kept by claimant) to provide that the reference to “prescribed accounting period” in that regulation is to be read as “tax period” where new regulation 166AA applies.

Regulation 7 inserts new regulations 171A and 171B. New regulation 171A prescribes the method of calculation of a repayment required by regulation 171(1) where there is a reduction in consideration for a supply and where the VAT has been accounted for on a relevant special scheme return or a relevant non-UK return. New regulation 171B prescribes the timing and method of making a repayment required by regulation 171(1) or (3) of the Principal Regulations where the VAT on the relevant supply has been accounted for on a relevant special scheme return or a relevant non-UK return.

Regulation 8 amends Part 20 (repayment to Community traders) of the Principal Regulations to permit a person who uses a Union Scheme in another member State and who is not registered for VAT in the United Kingdom to make a claim to repayment under Part 20.

Regulation 9 inserts a new Part 26 into the Principal Regulations. Part 26 prescribes how registration requests are to be made to the Commissioners under both the Union and Non-Union Scheme (including the requirement to make a declaration in relation to information in a registration request).

Regulation 10 amends Part 26, as inserted by regulation 9, with effect from 1st January 2015, to prescribe additionally how returns and notification of changes of information are to be made to the Commissioners.

Regulation 11 inserts a new Part 27 into the Principal Regulations. Part 27 prescribes how certain errors are to be corrected and how certain claims are to be made in relation to UK VAT on returns made by those using a Union Scheme in another member State or by those using the Non-Union Scheme (whether in the United Kingdom or in another member State). Part 27 also disapplies paragraph 17(1) of Schedule 3BA to the Act (scheme participants who are also registered under the Act not to be subject to obligations in relation to relevant supplies) in relation to an input tax obligation.

A Tax Information and Impact Note covering this instrument was published at Autumn Statement 2013 and is available on the HMRC website at HM Revenue & Customs: Tax Information and Impact Notes (TIINs). It remains an accurate summary of the impacts that apply to this instrument.

A transposition note setting out how the Government has implemented the main provisions of the 2008 Directive, which take effect from 1st January 2015, is annexed to the Explanatory Memorandum which is available alongside these Regulations on the National Archives website <http://www.legislation.gov.uk>.

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