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STATUTORY INSTRUMENTS

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**2018 No. 261**

**The Value Added Tax (Amendment) Regulations 2018**

**Citation, commencement and effect**

1.—(1) These Regulations may be cited as the Value Added Tax (Amendment) Regulations 2018 and come into force on 1st April 2019.

(2) The amendments made by these regulations have effect from 1st April 2019 where a taxpayer has a prescribed accounting period which begins on that date and otherwise from the first day of a taxpayer's first prescribed accounting period beginning after the 1st April 2019.

**Amendment of the Value Added Tax Regulations 1995**

2. Part 5 of the Value Added Tax Regulations 1995 (accounting payment and records)(1) is amended as follows.

3. In regulation 24 before “increase in consideration” insert—

“ “API platform” means the application programming interface that enables electronic communication with HMRC, as specified by the Commissioners in a specific or general direction;

“functional compatible software” means a software program or set of compatible software programs the functions of which include—

- (a) recording and preserving electronic records in an electronic form;
- (b) providing information to HMRC from the electronic records and returns in an electronic form and by using the API platform; and
- (c) receiving information from HMRC using the API platform in relation to a person's compliance with obligations under these Regulations which are required to be met by use of the software;”.

4. In regulation 25A—

(a) before paragraph (1) insert—

“(A1) Where a person makes a return required by regulation 25 by means of electronic communications using functional compatible software, such a method of making a return shall be referred to in this Part as a “compatible software return system.”;

(b) in paragraph (1) after “electronic communications” insert “other than functional compatible software”;

(c) after paragraph (2) insert—

“(2A) A person who is subject to the requirements of regulation 32A, including by virtue of an election in accordance with regulation 32C, must make a return required by regulation 25 using a compatible software return system.”;

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(1) S.I. 1995/2518; relevant amending instruments are S.I. 1996/1250, 1999/3114, 2000/258, 2003/1485, 2003/2096, 2003/3220, 2004/1675, 2007/1418, 2009/2978, 2010/559, 2012/33, 2012/1899 and 2014/1497.

- (d) in paragraph (3) for “paragraph (6) below” substitute “paragraphs (2A) above and (6) below”;
  - (e) in paragraphs (4), (8), (10)(b), (11), (12)(a) to (c), (13), (14), (18)(a), and (20)(b) after “electronic return system” insert in each case “or a compatible software return system”;
  - (f) in paragraph (15) before “(3)” insert “(2A) or”;
  - (g) in paragraph 20(a) after “electronic return system,” insert “, a compatible software return system”.
5. After regulation 31(1)(k) insert—
- “(l) where the taxable person is subject to the requirements of regulation 32A, the electronic account required by that regulation.”
6. After regulation 31 insert—

**“31AA Preservation of records**

- (1) Subject to paragraph (2) the electronic account required to be kept pursuant to regulation 31(1)(l) must be preserved using functional compatible software.
- (2) The obligation under paragraph (1) does not apply to a person to whom the requirements of regulation 32A have ceased to apply.
- (3) Subject to paragraph (1) the duty to preserve records required to be kept pursuant to regulations 31 and 31A may be discharged by—
  - (a) preserving them in any form or by any means; or
  - (b) preserving the information in them by any means,
 subject to any conditions or exceptions specified in writing by the Commissioners.
- (4) The functional compatible software must take a form approved by the Commissioners in a specific or general direction.
- (5) A direction under paragraph (4) may also specify the circumstances in which functional compatible software may be used or not used.”

7. After regulation 32 insert—

**“32A Recording and keeping of information in electronic form**

- (1) Subject to regulation 32B a taxable person shall keep and maintain the information specified in paragraphs (2) and (3) in an electronic form (“the electronic account”).
- (2) The information specified for the purposes of paragraph (1) is—
  - (a) the name of the taxable person;
  - (b) the address of the taxable person’s principal place of business;
  - (c) the taxable person’s VAT registration number; and
  - (d) any VAT accounting schemes used by the taxable person.
- (3) Subject to paragraph (4) the information specified for the purposes of paragraph (1) for each accounting period is—
  - (a) subject to sub-paragraph (c), for each supply made within the period—
    - (i) the time of supply,
    - (ii) the value of the supply, and
    - (iii) the rate of VAT charged;

- (b) subject to sub-paragraph (c), for each supply received within the period—
    - (i) the time of supply,
    - (ii) the value of the supply, and
    - (iii) the total amount of input tax for which credit is allowable under section 26 of the Act<sup>(2)</sup>;
  - (c) where more than one supply is recorded on a tax invoice and those supplies are either—
    - (i) supplies made which are required to be accounted for in respect of the same prescribed accounting period and are subject to the same rate of VAT, or
    - (ii) supplies received for which credit is allowable in the same prescribed accounting period,they may be treated as a single supply for the purposes of either sub-paragraph (a) or (b), whichever is relevant;
  - (d) the information specified in each sub-paragraph of paragraphs (3) and (4) of regulation 32;
  - (e) where adjustment or correction is made to the VAT account which is required or allowed by any provision of the Act, or any regulations made under the Act, the total amount adjusted or corrected for the period pursuant to that provision or those regulations;
  - (f) the proportions of the total of the VAT exclusive value of all outputs for the period which are attributable in each case to standard rated, reduced rated, zero-rated, exempt or outside the scope outputs.
- (4) The information specified in paragraph (3) may be varied by direction of the Commissioners to make provision about—
- (a) supplies of investment gold which are subject to the provisions of regulation 31A;
  - (b) the operation of the flat-rate scheme under Part 7A of these Regulations (flat-rate scheme for small businesses);
  - (c) the operation of retail schemes under Part 9 of these Regulations (supplies by retailers);
  - (d) cases where the Commissioners are satisfied that keeping and maintaining information as specified in this regulation is likely to be impossible, impractical or unduly onerous.
- (5) The electronic account must be kept and maintained using functional compatible software.
- (6) The functional compatible software must take a form approved by the Commissioners in a specific or general direction.
- (7) A direction under paragraph (6) may also specify the circumstances in which functional compatible software may be used or not used.
- (8) The information specified in paragraph (3) must be entered in the electronic account for the relevant prescribed accounting period no later than the earlier of the date by which the taxable person is required to make the return or the date the return is made for that prescribed accounting period.

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(2) “the Act” is defined for the purposes of the Value Added Tax Regulations 1995 (S.I. 1995/251) by article 2(1) of those Regulations as “the Value Added Tax Act 1994”

(9) Changes to the information specified in paragraph (2) must be made no later than the end of the prescribed accounting period in which those changes occur.

(10) Where a taxable person discovers an error or omission in the electronic account that person must correct the electronic account as soon as possible but in any event no later than the end of the prescribed accounting period in which the error is discovered.

### **32B Exemption from the electronic recording requirements**

(1) The requirements imposed by regulation 32A do not apply to a person—

- (a) who the Commissioners are satisfied is a practising member of a religious society or order whose beliefs are incompatible with the use of electronic communications, or
- (b) for whom an insolvency procedure as described in any of paragraphs (a) to (f) of section 81(4B) of the Act is applied, or
- (c) for whom the Commissioners are satisfied that it is not reasonably practicable to make a return using a compatible software return system for reasons of disability, age, remoteness of location or any other reason.

(2) This paragraph applies if, for any month (“the current month”), the value of a taxable person’s taxable supplies, in the period of one year ending with the month before the current month, was less than the VAT threshold. The “VAT threshold” has the meaning given in paragraph 6(9) of Schedule 11 to the Act<sup>(3)</sup>.

(3) Where paragraph (2) applies to a taxable person for the current month and has not ceased to apply for any month prior to the current month then the requirements of regulation 32A shall not apply to that person.

(4) In a case where paragraph (2) ceases to apply to a taxable person, the requirements of regulation 32A shall apply from the beginning of that person’s next taxable period falling on or after the day on which that application ceases.

(5) Where a business or a part of a business carried on by a taxable person is transferred to another person as a going concern then, for the purposes of determining whether paragraph (2) applies to the transferee, the transferee shall be treated as having carried on the business or part of the business before as well as after the transfer and the supplies by the transferor shall be treated accordingly.

(6) The exemptions under paragraphs (1)(b) and (3) do not apply if a person has elected not to be exempt in accordance with regulation 32C.

### **32C Election not to be exempt**

(1) An election not to be exempt under regulation 32B must—

- (a) be made before the start of the next prescribed accounting period (“the period”) in which the exemption would otherwise apply, and
- (b) specify the date that the next period begins.

(2) An election has effect for the next period referred to in paragraph (1)(b) and for subsequent periods in which the exemption would otherwise apply.

(3) An election may be withdrawn and the withdrawal shall have effect for the period which immediately follows the period in which it is notified and for subsequent periods.

(4) An election and withdrawal of an election must be made by notice to the Commissioners.”

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(3) Paragraph 6(9) of Schedule 11 was inserted by section 62(3)(b) of the Finance (No.2) Act 2017 (c.32).

8. In paragraph 40(2A) after “electronic return system” insert “or a compatible software return system”.

27th February 2018

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