



Value Added Tax Act 1994

1994 CHAPTER 23

PART IV

ADMINISTRATION, COLLECTION AND ENFORCEMENT

[^{F1}Default surcharges and other] penalties and criminal offences

[^{F1}59 The default surcharge.

- (1) [^{F2}Subject to subsection (1A) below] if, by the last day on which a taxable person is required in accordance with regulations under this Act to furnish a return for a prescribed accounting period—
- the Commissioners have not received that return, or
 - the Commissioners have received that return but have not received the amount of VAT shown on the return as payable by him in respect of that period,
- then that person shall be regarded for the purposes of this section as being in default in respect of that period.

[^{F3}(1A) A person shall not be regarded for the purposes of this section as being in default in respect of any prescribed accounting period if that period is one in respect of which he is required by virtue of any order under section 28 to make any payment on account of VAT.]

- (2) Subject to subsections (9) and (10) below, subsection (4) below applies in any case where—
- a taxable person is in default in respect of a prescribed accounting period; and
 - the Commissioners serve notice on the taxable person (a “surcharge liability notice”) specifying as a surcharge period for the purposes of this section a period ending on the first anniversary of the last day of the period referred to in paragraph (a) above and beginning, subject to subsection (3) below, on the date of the notice.
- (3) If a surcharge liability notice is served by reason of a default in respect of a prescribed accounting period and that period ends at or before the expiry of an existing surcharge

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period already notified to the taxable person concerned, the surcharge period specified in that notice shall be expressed as a continuation of the existing surcharge period and, accordingly, for the purposes of this section, that existing period and its extension shall be regarded as a single surcharge period.

(4) Subject to subsections (7) to (10) below, if a taxable person on whom a surcharge liability notice has been served—

- (a) is in default in respect of a prescribed accounting period ending within the surcharge period specified in (or extended by) that notice, and
- (b) has outstanding VAT for that prescribed accounting period,

he shall be liable to a surcharge equal to whichever is the greater of the following, namely, the specified percentage of his outstanding VAT for that prescribed accounting period and £30.

(5) Subject to subsections (7) to (10) below, the specified percentage referred to in subsection (4) above shall be determined in relation to a prescribed accounting period by reference to the number of such periods in respect of which the taxable person is in default during the surcharge period and for which he has outstanding VAT, so that—

- (a) in relation to the first such prescribed accounting period, the specified percentage is 2 per cent;
- (b) in relation to the second such period, the specified percentage is 5 per cent;
- (c) in relation to the third such period, the specified percentage is 10 per cent; and
- (d) in relation to each such period after the third, the specified percentage is 15 per cent.

(6) For the purposes of subsections (4) and (5) above a person has outstanding VAT for a prescribed accounting period if some or all of the VAT for which he is liable in respect of that period has not been paid by the last day on which he is required (as mentioned in subsection (1) above) to make a return for that period; and the reference in subsection (4) above to a person's outstanding VAT for a prescribed accounting period is to so much of the VAT for which he is so liable as has not been paid by that day.

(7) If a person who, apart from this subsection, would be liable to a surcharge under subsection (4) above satisfies the Commissioners or, on appeal, a tribunal that, in the case of a default which is material to the surcharge—

- (a) the return or, as the case may be, the VAT shown on the return was despatched at such a time and in such a manner that it was reasonable to expect that it would be received by the Commissioners within the appropriate time limit, or
- (b) there is a reasonable excuse for the return or VAT not having been so despatched,

he shall not be liable to the surcharge and for the purposes of the preceding provisions of this section he shall be treated as not having been in default in respect of the prescribed accounting period in question (and, accordingly, any surcharge liability notice the service of which depended upon that default shall be deemed not to have been served).

(8) For the purposes of subsection (7) above, a default is material to a surcharge if—

- (a) it is the default which, by virtue of subsection (4) above, gives rise to the surcharge; or
- (b) it is a default which was taken into account in the service of the surcharge liability notice upon which the surcharge depends and the person concerned

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has not previously been liable to a surcharge in respect of a prescribed accounting period ending within the surcharge period specified in or extended by that notice.

(9) In any case where—

- (a) the conduct by virtue of which a person is in default in respect of a prescribed accounting period is also conduct falling within section 69(1), and
- (b) by reason of that conduct, the person concerned is assessed to a penalty under that section,

the default shall be left out of account for the purposes of subsections (2) to (5) above.

(10) If the Commissioners, after consultation with the Treasury, so direct, a default in respect of a prescribed accounting period specified in the direction shall be left out of account for the purposes of subsections (2) to (5) above.

[^{F4}(11) For the purposes of this section references to a thing's being done by any day include references to its being done on that day.]]

Textual Amendments

- F1** Ss. 59-59B omitted (1.1.2023 for specified purposes, 6.4.2024 for specified purposes) by virtue of Finance Act 2021 (c. 26), s. 118(2), **Sch. 27 para. 17**; S.I. 2022/1278, reg. 2(3)(4)(a); S.I. 2024/440, reg. 2
- F2** Words in s. 59(1) inserted (29.4.1996 with effect as mentioned in s. 35(8) of the amending Act) by 1996 c. 8, s. 35(3)
- F3** S. 59(1A) inserted (29.4.1996 with effect as mentioned in s. 35(8) of the amending Act) by 1996 c. 8, s. 35(3)
- F4** S. 59(11) inserted (29.4.1996 with effect as mentioned in s. 35(8) of the amending Act) by 1996 c. 8, s. 35(4)

Modifications etc. (not altering text)

- C1** S. 59 modified by S.I. 1995/2518, reg. 40(5) (as inserted (22.7.2004) by The Value Added Tax (Amendment) (No. 3) Regulations 2004 (S.I. 2004/1675), regs. 1(1), 5)
- C2** S. 59 restricted (9.3.2021) by Finance Act 2021 (c. 26), s. 99(2), **Sch. 19 para. 3**

Changes to legislation:

There are currently no known outstanding effects for the Value Added Tax Act 1994, Section 59.