



# Value Added Tax Act 1994

## 1994 CHAPTER 23

### PART IV

#### ADMINISTRATION, COLLECTION AND ENFORCEMENT

##### *Interest, repayment supplements etc. payable by Commissioners*

#### **81 Interest given by way of credit and set-off of credits.**

- (1) Any interest payable by the Commissioners (whether under an enactment or instrument or otherwise) to a person on a sum due to him under or by virtue of any provision of this Act shall be treated as an amount due by way of credit under section 25(3).
- (2) Subsection (1) above shall be disregarded for the purpose of determining a person's entitlement to interest or the amount of interest to which he is entitled.
- (3) Subject to subsection (1) above, in any case where—
  - (a) an amount is due from the Commissioners to any person under any provision of this Act, and
  - (b) that person is liable to pay a sum by way of VAT, [<sup>F1</sup>penalty or interest],the amount referred to in paragraph (a) above shall be set against the sum referred to in paragraph (b) above and, accordingly, to the extent of the set-off, the obligations of the Commissioners and the person concerned shall be discharged.

[<sup>F2</sup>(3A) Where—

- (a) the Commissioners are liable to pay or repay any amount to any person under this Act,
- (b) that amount falls to be paid or repaid in consequence of a mistake previously made about whether or to what extent amounts were payable under this Act to or by that person, and
- (c) by reason of that mistake a liability of that person to pay a sum by way of VAT, [<sup>F3</sup>penalty or interest] was not assessed, was not enforced or was not satisfied,

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any limitation on the time within which the Commissioners are entitled to take steps for recovering that sum shall be disregarded in determining whether that sum is required by subsection (3) above to be set against the amount mentioned in paragraph (a) above.]

[<sup>F4</sup>(4A) Subsection (3) above shall not require any such amount as is mentioned in paragraph (a) of that subsection (“the credit”) to be set against any such sum as is mentioned in paragraph (b) of that subsection (“the debit”) in any case where—

- (a) an insolvency procedure has been applied to the person entitled to the credit;
- (b) the credit became due after that procedure was so applied; and
- (c) the liability to pay the debit either arose before that procedure was so applied or (having arisen afterwards) relates to, or to matters occurring in the course of, the carrying on of any business at times before the procedure was so applied.

(4B) Subject to subsection (4C) below, the following are the times when an insolvency procedure is to be taken, for the purposes of this section, to be applied to any person, that is to say—

- [<sup>F5</sup>(a) when a bankruptcy order or winding-up order or award of sequestration is made or an administrator is appointed in relation to that person;]
- (b) when that person is put into administrative receivership;
- (c) when that person, being a corporation, passes a resolution for voluntary winding up;
- (d) when any voluntary arrangement approved in accordance with Part I or VIII of the Insolvency Act 1986, or Part II or Chapter II of Part VIII of the <sup>M1</sup> Insolvency (Northern Ireland) Order 1989, comes into force in relation to that person;
- (e) when a deed of arrangement registered in accordance with <sup>F6</sup>... Chapter I of Part VIII of that Order of 1989 takes effect in relation to that person;
- (f) when that person’s estate becomes vested in any other person as that person’s trustee under a trust deed.

[<sup>F7</sup>(4C) In this section, references to the application of an insolvency procedure to a person do not include—

- (a) the application of an insolvency procedure to a person at a time when another insolvency procedure applies to the person, or
- (b) the application of an insolvency procedure to a person immediately upon another insolvency procedure ceasing to have effect.]

(4D) For the purposes of this section a person shall be regarded as being in administrative receivership throughout any continuous period for which (disregarding any temporary vacancy in the office of receiver) there is an administrative receiver of that person, and the reference in subsection (4B) above to a person being put into administrative receivership shall be construed accordingly.]

(5) In [<sup>F8</sup>this section]—

- <sup>F9</sup>(a) .....
- (b) “administrative receiver” means an administrative receiver within the meaning of section 251 of [<sup>F10</sup>the Insolvency Act 1986] or Article 5(1) of [<sup>F11</sup>the Insolvency (Northern Ireland) Order 1989];
- [<sup>F12</sup>(ba) “administrator” means a person appointed to manage the affairs, business and property of another person under Schedule B1 to that Act or to that Order;] and

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- (c) “trust deed” has the same meaning as in the <sup>M2</sup>Bankruptcy (Scotland) Act [F132016].

#### Textual Amendments

- F1** Words in s. 81(3)(b) substituted (1.1.2023 for specified purposes) by [Finance Act 2021 \(c. 26\), s. 118\(2\), Sch. 27 para. 22](#); S.I. 2022/1278, reg. 2(3)(4)(a)
- F2** S. 81(3A) inserted (retrospective to 18.7.1996 with effect as mentioned in s. 48(2) of the amending Act) by [1997 c. 16, s. 48\(1\)\(2\)](#)
- F3** Words in s. 81(3A)(c) substituted (1.1.2023 for specified purposes) by [Finance Act 2021 \(c. 26\), s. 118\(2\), Sch. 27 para. 22](#); S.I. 2022/1278, reg. 2(3)(4)(a)
- F4** S. 81(4A)-(4D) substituted for s. 81(4) (1.5.1995 with effect as mentioned in s. 27(4) of the amending Act) by [1995 c. 4, s. 27\(2\)](#)
- F5** S. 81(4B)(a) substituted (15.9.2003) by [Enterprise Act 2002 \(Insolvency\) Order 2003 \(S.I. 2003/2096\), art. 1\(1\), Sch. para. 26\(a\)](#) (with art. 6)
- F6** Words in s. 81(4B)(e) omitted (1.10.2015) by virtue of [Deregulation Act 2015 \(c. 20\), s. 115\(7\), Sch. 6 para. 2\(13\)](#) (with [Sch. 6 para. 3](#)); S.I. 2015/1732, art. 2(e)(i)
- F7** S. 81(4C) substituted (21.7.2008) by [Finance Act 2008 \(c. 9\), s. 132\(2\)](#)
- F8** Words in s. 81(5) substituted (1.5.1995 with effect as mentioned in s. 27(4) of the amending Act) by [1995 c. 4, s. 27\(3\)](#)
- F9** S. 81(5)(a) omitted (21.7.2008) by virtue of [Finance Act 2008 \(c. 9\), s. 132\(3\)\(a\)](#)
- F10** Words in s. 81(5)(b) substituted (21.7.2008) by [Finance Act 2008 \(c. 9\), s. 132\(3\)\(b\)\(i\)](#)
- F11** Words in s. 81(5)(b) substituted (21.7.2008) by [Finance Act 2008 \(c. 9\), s. 132\(3\)\(b\)\(ii\)](#)
- F12** S. 81(5)(ba) inserted (21.7.2008) by [Finance Act 2008 \(c. 9\), s. 132\(3\)\(c\)](#)
- F13** Word in s. 81(5)(c) substituted (30.11.2016) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\), art. 1, Sch. 1 para. 12\(6\)](#)

#### Marginal Citations

- M1** [1986 c. 45.](#)
- M2** [1985 c. 66.](#)

**Changes to legislation:**

There are currently no known outstanding effects for the Value Added Tax Act 1994, Section 81.