



Finance Act 1996

1996 CHAPTER 8

PART II

VALUE ADDED TAX

EC Second VAT Simplification Directive

25 EC Second VAT Simplification Directive

Sections 26 to 29 of and Schedule 3 to this Act are for the purpose of giving effect to requirements of the directive of the Council of the European Communities dated 17th May 1977 No. [77/388/EEC](#) and the amendments of that directive by the directive of that Council dated 10th April 1995 No. [95/7/EC](#) (amendments with a view to introducing new simplification measures with regard to value added tax).

26 Fiscal and other warehousing

- (1) The provisions of Schedule 3 to this Act shall have effect.
- (2) Subject to subsection (3) below, this section and Schedule 3 to this Act shall come into force on such day as the Commissioners of Customs and Excise may by order made by statutory instrument appoint, and shall apply to any acquisition of goods from another member State and any supply taking place on or after that day.
- (3) In so far as the provisions inserted by Schedule 3 to this Act confer power to make regulations they shall come into force on the day this Act is passed.

27 Value of imported goods

- (1) Section 21 of the Value Added Tax Act 1994 (value of imported goods) shall be amended as follows.
- (2) In subsection (2) of that section at the end of paragraph (a) the word “and” shall be omitted.

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- (3) For paragraph (b) of that subsection there shall be substituted—
- “(b) all incidental expenses, such as commission, packing, transport and insurance costs, up to the goods' first destination in the United Kingdom; and
 - (c) if at the time of the importation of the goods from a place outside the member States a further destination for the goods is known, and that destination is within the United Kingdom or another member State, all such incidental expenses in so far as they result from the transport of the goods to that other destination;

and in this subsection “the goods' first destination” means the place mentioned on the consignment note or any other document by means of which the goods are imported into the United Kingdom, or in the absence of such documentation it means the place of the first transfer of cargo in the United Kingdom.”

- (4) This section shall have effect in relation to goods imported on or after 1st January 1996.

28 Adaptation of aircraft and hovercraft

- (1) Section 22 of the Value Added Tax Act 1994 shall be omitted.
- (2) This section shall apply to supplies made on or after 1st January 1996.

29 Work on materials

- (1) The Value Added Tax Act 1994 shall be amended as follows.
- (2) After subsection (2) of section 30 there shall be inserted the following subsection—
 - “(2A) A supply by a person of services which consist of applying a treatment or process to another person's goods is zero-rated by virtue of this subsection if by doing so he produces goods, and either—
 - (a) those goods are of a description for the time being specified in Schedule 8; or
 - (b) a supply by him of those goods to the person to whom he supplies the services would be of a description so specified.”
- (3) In subsection (5) of section 55 (supplies of gold), after paragraph (b) there shall be inserted the following—

“; or

- (c) any supply of services consisting in the application to another person's goods of a treatment or process which produces goods a supply of which would fall within paragraph (a) above.”;

and the word “or” at the end of paragraph (a) shall be omitted.

- (4) Paragraph 2 of Schedule 4 (which provides that the treatment or processing of another person's goods shall in certain circumstances be a supply of goods) shall be omitted.
- (5) This section shall apply to supplies made on or after 1st January 1996.

Other provisions relating to charges to VAT

30 Refunds in connection with construction and conversion

(1) For subsection (1) of section 35 of the Value Added Tax Act 1994 (refund of VAT to persons constructing certain buildings) there shall be substituted the following subsections—

“(1) Where—

- (a) a person carries out works to which this section applies,
- (b) his carrying out of the works is lawful and otherwise than in the course or furtherance of any business, and
- (c) VAT is chargeable on the supply, acquisition or importation of any goods used by him for the purposes of the works,

the Commissioners shall, on a claim made in that behalf, refund to that person the amount of VAT so chargeable.

(1A) The works to which this section applies are—

- (a) the construction of a building designed as a dwelling or number of dwellings;
- (b) the construction of a building for use solely for a relevant residential purpose or relevant charitable purpose; and
- (c) a residential conversion.

(1B) For the purposes of this section goods shall be treated as used for the purposes of works to which this section applies by the person carrying out the works in so far only as they are building materials which, in the course of the works, are incorporated in the building in question or its site.

(1C) Where—

- (a) a person (“the relevant person”) carries out a residential conversion by arranging for any of the work of the conversion to be done by another (“a contractor”),
- (b) the relevant person’s carrying out of the conversion is lawful and otherwise than in the course or furtherance of any business,
- (c) the contractor is not acting as an architect, surveyor or consultant or in a supervisory capacity, and
- (d) VAT is chargeable on services consisting in the work done by the contractor,

the Commissioners shall, on a claim made in that behalf, refund to the relevant person the amount of VAT so chargeable.

(1D) For the purposes of this section works constitute a residential conversion to the extent that they consist in the conversion of a non-residential building, or a non-residential part of a building, into—

- (a) a building designed as a dwelling or a number of dwellings;
- (b) a building intended for use solely for a relevant residential purpose; or
- (c) anything which would fall within paragraph (a) or (b) above if different parts of a building were treated as separate buildings.”

Status: This is the original version (as it was originally enacted).

- (2) In subsection (2) of that section (method of making claim), after “may by regulations prescribe” there shall be inserted “or, in the case of documents, as the Commissioners may determine in accordance with the regulations”.
- (3) After subsection (3) of that section there shall be inserted the following subsections—
 - “(4) The notes to Group 5 of Schedule 8 shall apply for construing this section as they apply for construing that Group.
 - (5) The power of the Treasury by order under section 30 to vary Schedule 8 shall include—
 - (a) power to apply any variation made by the order for the purposes of this section; and
 - (b) power to make such consequential modifications of this section as they may think fit.”
- (4) This section applies in relation to any case in which a claim for repayment under section 35 of the Value Added Tax Act 1994 is made at any time on or after the day on which this Act is passed.

31 Groups: anti-avoidance

- (1) In section 43 of the Value Added Tax Act 1994 (groups of companies), after subsection (8) there shall be inserted the following subsection—
 - “(9) Schedule 9A (which makes provision for ensuring that this section is not used for tax avoidance) shall have effect.”
- (2) After Schedule 9 to that Act there shall be inserted the Schedule set out in Schedule 4 to this Act.
- (3) In section 83 of that Act (appeals), after paragraph (w) there shall be inserted the following paragraph—
 - “(wa) any direction or assessment under Schedule 9A;”.
- (4) In section 84 of that Act (further provisions relating to appeals), after subsection (7) there shall be inserted the following subsection—
 - “(7A) Where there is an appeal against a decision to make such a direction as is mentioned in section 83(wa), the cases in which the tribunal shall allow the appeal shall include (in addition to the case where the conditions for the making of the direction were not fulfilled) the case where the tribunal are satisfied, in relation to the relevant event by reference to which the direction was given, that—
 - (a) the change in the treatment of the body corporate, or
 - (b) the transaction in question,
 had as its main purpose or, as the case may be, as each of its main purposes a genuine commercial purpose unconnected with the fulfilment of the condition specified in paragraph 1(3) of Schedule 9A.”
- (5) Subsection (1A) of section 43 of that Act shall not have effect in relation to supplies on or after the day on which this Act is passed.

32 Supplies of gold etc

(1) In section 55 of the Value Added Tax Act 1994 (supplies of gold), for paragraph (a) of subsection (5) there shall be substituted the following paragraph—

“(a) any supply of goods consisting in fine gold, in gold grain of any purity or in gold coins of any purity; or”.

(2) This section applies in relation to any supply after 28th November 1995.

33 Small gifts

(1) In Schedule 4 to the Value Added Tax Act 1994 (matters to be treated as supply of goods or services), in paragraph 5(2)(a) (gift of goods in the course or furtherance of a business not a supply if cost to donor is not more than £10), for “£10” there shall be substituted “£15”.

(2) At the end of paragraph 5 of Schedule 4 to that Act there shall be inserted the following sub-paragraph—

“(7) The Treasury may by order substitute for the sum for the time being specified in sub-paragraph (2)(a) above such sum, not being less than £10, as they think fit.”

(3) In section 97(4) of that Act (orders which are subject to affirmative procedure), after paragraph (a) there shall be inserted the following paragraph—

“(ab) an order under paragraph 5(7) of Schedule 4 substituting a lesser sum for the sum for the time being specified in paragraph 5(2)(a) of that Schedule;”.

(4) Subsection (1) above shall apply where a gift is made after 28th November 1995.

Payment and enforcement

34 Method of making payments on account

In section 28 of the Value Added Tax Act 1994 (payments on account of VAT), after subsection (2) there shall be inserted the following subsection—

“(2A) The Commissioners may give directions, to persons who are or may become liable by virtue of any order under this section to make payments on account of VAT, about the manner in which they are to make such payments; and where such a direction has been given to any person and has not subsequently been withdrawn, any duty of that person by virtue of such an order to make such a payment shall have effect as if it included a requirement for the payment to be made in the manner directed.”

35 Default surcharges

(1) The Value Added Tax Act 1994 shall be amended as follows.

(2) After section 59 (default surcharge) there shall be inserted the following section—

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“59A Default surcharge: payments on account

- (1) For the purposes of this section a taxable person shall be regarded as in default in respect of any prescribed accounting period if the period is one in respect of which he is required, by virtue of an order under section 28, to make any payment on account of VAT and either—
- (a) a payment which he is so required to make in respect of that period has not been received in full by the Commissioners by the day on which it became due; or
 - (b) he would, but for section 59(1A), be in default in respect of that period for the purposes of section 59.
- (2) Subject to subsections (10) and (11) below, subsection (4) below applies in any case where—
- (a) a taxable person is in default in respect of a prescribed accounting period; and
 - (b) 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 which—
 - (i) begins, subject to subsection (3) below, on the date of the notice; and
 - (ii) ends on the first anniversary of the last day of the period referred to in paragraph (a) above.
- (3) If—
- (a) a surcharge liability notice is served by reason of a default in respect of a prescribed accounting period, and
 - (b) that period ends at or before the expiry of an existing surcharge 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, the existing period and its extension shall be regarded as a single surcharge period.
- (4) Subject to subsections (7) to (11) below, if—
- (a) a taxable person on whom a surcharge liability notice has been served is in default in respect of a prescribed accounting period,
 - (b) that prescribed accounting period is one ending within the surcharge period specified in (or extended by) that notice, and
 - (c) the aggregate value of his defaults in respect of that prescribed accounting period is more than nil,
- that person shall be liable to a surcharge equal to whichever is the greater of £30 and the specified percentage of the aggregate value of his defaults in respect of that prescribed accounting period.
- (5) Subject to subsections (7) to (11) 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 during the surcharge period which are periods in respect of which the taxable person is in default and in respect of which the value of his defaults is more than nil, so that—

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- (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 this section the aggregate value of a person's defaults in respect of a prescribed accounting period shall be calculated as follows—
- (a) where the whole or any part of a payment in respect of that period on account of VAT was not received by the Commissioners by the day on which it became due, an amount equal to that payment or, as the case may be, to that part of it shall be taken to be the value of the default relating to that payment;
 - (b) if there is more than one default with a value given by paragraph (a) above, those values shall be aggregated;
 - (c) the total given by paragraph (b) above, or (where there is only one default) the value of the default under paragraph (a) above, shall be taken to be the value for that period of that person's defaults on payments on account;
 - (d) the value of any default by that person which is a default falling within subsection (1)(b) above shall be taken to be equal to the amount of any outstanding VAT less the amount of unpaid payments on account; and
 - (e) the aggregate value of a person's defaults in respect of that period shall be taken to be the aggregate of—
 - (i) the value for that period of that person's defaults (if any) on payments on account; and
 - (ii) the value of any default of his in respect of that period that falls within subsection (1)(b) above.
- (7) In the application of subsection (6) above for the calculation of the aggregate value of a person's defaults in respect of a prescribed accounting period—
- (a) the amount of outstanding VAT referred to in paragraph (d) of that subsection is the amount (if any) which would be the amount of that person's outstanding VAT for that period for the purposes of section 59(4); and
 - (b) the amount of unpaid payments on account referred to in that paragraph is the amount (if any) equal to so much of any payments on account of VAT (being payments in respect of that period) as has not been received by the Commissioners by the last day on which that person is required (as mentioned in section 59(1)) to make a return for that period.
- (8) 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—
- (a) in the case of a default that is material for the purposes of the surcharge and falls within subsection (1)(a) above—

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- (i) that the payment on account of VAT 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 by the day on which it became due, or
 - (ii) that there is a reasonable excuse for the payment not having been so despatched,
- or
- (b) in the case of a default that is material for the purposes of the surcharge and falls within subsection (1)(b) above, that the condition specified in section 59(7)(a) or (b) is satisfied as respects the default, 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).
- (9) For the purposes of subsection (8) 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 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.
- (10) 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 section 69,
- the default shall be left out of account for the purposes of subsections (2) to (5) above.
- (11) 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.
- (12) For the purposes of this section the Commissioners shall be taken not to receive a payment by the day on which it becomes due unless it is made in such a manner as secures (in a case where the payment is made otherwise than in cash) that, by the last day for the payment of that amount, all the transactions can be completed that need to be completed before the whole amount of the payment becomes available to the Commissioners.
- (13) In determining for the purposes of this section whether any person would, but for section 59(1A), be in default in respect of any period for the purposes of section 59, subsection (12) above shall be deemed to apply for the purposes of section 59 as it applies for the purposes of this section.
- (14) 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."

- (3) In section 59, at the beginning of subsection (1) (circumstances amounting to a default in respect of any prescribed accounting period), there shall be inserted “Subject to subsection (1A) below”; and after that subsection there shall be inserted the following subsection—

“(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.”

- (4) After subsection (10) of that section there shall be inserted the following subsection—

“(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.”

- (5) After the section 59A inserted by subsection (2) above there shall be inserted the following section—

“59B Relationship between sections 59 and 59A

- (1) This section applies in each of the following cases, namely—
- (a) where a section 28 accounting period ends within a surcharge period begun or extended by the service on a taxable person (whether before or after the coming into force of section 59A) of a surcharge liability notice under section 59; and
 - (b) where a prescribed accounting period which is not a section 28 accounting period ends within a surcharge period begun or extended by the service on a taxable person of a surcharge liability notice under section 59A.
- (2) In a case falling within subsection (1)(a) above section 59A shall have effect as if—
- (a) subject to paragraph (b) below, the section 28 accounting period were deemed to be a period ending within a surcharge period begun or, as the case may be, extended by a notice served under section 59A; but
 - (b) any question—
 - (i) whether a surcharge period was begun or extended by the notice, or
 - (ii) whether the taxable person was in default in respect of any prescribed accounting period which was not a section 28 accounting period but ended within the surcharge period begun or extended by that notice,were to be determined as it would be determined for the purposes of section 59.
- (3) In a case falling within subsection (1)(b) above section 59 shall have effect as if—
- (a) subject to paragraph (b) below, the prescribed accounting period that is not a section 28 accounting period were deemed to be a period ending within a surcharge period begun or, as the case may be, extended by a notice served under section 59;
 - (b) any question—

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- (i) whether a surcharge period was begun or extended by the notice, or
 - (ii) whether the taxable person was in default in respect of any prescribed accounting period which was a section 28 accounting period but ended within the surcharge period begun or extended by that notice,
- were to be determined as it would be determined for the purposes of section 59A; and
- (c) that person were to be treated as having had outstanding VAT for a section 28 accounting period in any case where the aggregate value of his defaults in respect of that period was, for the purposes of section 59A, more than nil.
- (4) In this section “a section 28 accounting period”, in relation to a taxable person, means any prescribed accounting period ending on or after the day on which the Finance Act 1996 was passed in respect of which that person is liable by virtue of an order under section 28 to make any payment on account of VAT.”
- (6) In section 69(4)(a) and (9)(b) (disregard in connection with penalties for breach of regulations of conduct giving rise to a surcharge), after the words “section 59”, in each case, there shall be inserted “or 59A”.
- (7) In section 76(1) and (3)(a) (assessments for surcharges), after the words “section 59”, in each case, there shall be inserted “or 59A”.
- (8) This section applies in relation to any prescribed accounting period ending on or after 1st June 1996, but a liability to make a payment on account of VAT shall be disregarded for the purposes of the amendments made by this section if the payment is one becoming due before that date.

36 Repeated misdeclaration penalty

- (1) In section 64 of the Value Added Tax Act 1994 (repeated misdeclaration penalty), the following subsections shall be substituted for subsections (6) and (7) (inaccuracies treated as not material)—
- “(6) Subject to subsection (6A) below, where by reason of conduct falling within subsection (1) above—
 - (a) a person is convicted of an offence (whether under this Act or otherwise), or
 - (b) a person is assessed to a penalty under section 60 or 63,
 the inaccuracy concerned shall not be regarded as material for the purposes of this section.
 - (6A) Subsection (6) above shall not prevent an inaccuracy by reason of which a person has been assessed to a penalty under section 63—
 - (a) from being regarded as a material inaccuracy in respect of which the Commissioners may serve a penalty liability notice under subsection (2) above; or
 - (b) from being regarded for the purposes of subsection (3) above as a material inaccuracy by reference to which any prescribed accounting period falling within the penalty period is to be treated as the first

prescribed accounting period so falling in respect of which there is a material inaccuracy.

(7) Where subsection (5) or (6) above requires any inaccuracy to be regarded as not material for the purposes of the serving of a penalty liability notice, any such notice served in respect of that inaccuracy shall be deemed not to have been served.”

(2) This section has effect in relation to inaccuracies contained in returns made on or after the day on which this Act is passed.

37 Penalties for failure to notify

(1) In section 67 of the Value Added Tax Act 1994 (penalty for failure to notify liability to be registered under Schedule 1, etc.)—

- (a) in subsection (1)(a), after “6” there shall be inserted “, 7”; and
- (b) in subsection (3)(a), for “or 6” there shall be substituted “, 6 or 7”.

(2) Subject to subsection (3) below, subsection (1) above shall apply in relation to—

- (a) any person becoming liable to be registered by virtue of sub-paragraph (2) of paragraph 1 of Schedule 1 to the Value Added Tax Act 1994 on or after 1st January 1996; and
- (b) any person who became liable to be registered by virtue of that sub-paragraph before that date but who had not notified the Commissioners of the liability before that date.

(3) In relation to a person falling within subsection (2)(b) above, section 67 of the Value Added Tax Act 1994 shall have effect as if in subsection (3)(a) for the words “the date with effect from which he is, in accordance with that paragraph, required to be registered” there were substituted “1st January 1996”.

38 VAT invoices and accounting

(1) Paragraph 2 of Schedule 11 to the Value Added Tax Act 1994 (regulations about accounting for VAT, VAT invoices etc.) shall be amended as follows.

(2) After sub-paragraph (2) there shall be inserted the following sub-paragraph—

“(2A) Regulations under this paragraph may confer power on the Commissioners to allow the requirements of any regulations as to the statements and other matters to be contained in a VAT invoice to be relaxed or dispensed with.”

(3) In sub-paragraph (10) (adjustments of VAT accounts), at the end of paragraph (c) there shall be inserted “and

- (d) for a person, for purposes connected with the making of any such entry or financial adjustment, to be required to provide to any prescribed person, or to retain, a document in the prescribed form containing prescribed particulars of the matters to which the entry or adjustment relates; and
- (e) for enabling the Commissioners, in such cases as they may think fit, to dispense with or relax a requirement imposed by regulations made by virtue of paragraph (d) above.”