



Finance Act 1997

1997 CHAPTER 16

PART IV

PAYMENTS AND OVERPAYMENTS IN RESPECT OF INDIRECT TAXES

Value added tax

46 Repayments of overpayments: unjust enrichment.

- (1) In section 80 of the Value Added Tax Act 1994, after subsection (3) (defence of unjust enrichment to claim for repayment of an overpayment) there shall be inserted the following subsections—

“(3A) Subsection (3B) below applies for the purposes of subsection (3) above where—

- (a) there is an amount paid by way of VAT which (apart from subsection (3) above) would fall to be repaid under this section to any person (“the taxpayer”), and
- (b) the whole or a part of the cost of the payment of that amount to the Commissioners has, for practical purposes, been borne by a person other than the taxpayer.

(3B) Where, in a case to which this subsection applies, loss or damage has been or may be incurred by the taxpayer as a result of mistaken assumptions made in his case about the operation of any VAT provisions, that loss or damage shall be disregarded, except to the extent of the quantified amount, in the making of any determination—

- (a) of whether or to what extent the repayment of an amount to the taxpayer would enrich him; or
- (b) of whether or to what extent any enrichment of the taxpayer would be unjust.

(3C) In subsection (3B) above—

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for the Finance Act 1997, Section 46. (See end of Document for details)*

“the quantified amount” means the amount (if any) which is shown by the taxpayer to constitute the amount that would appropriately compensate him for loss or damage shown by him to have resulted, for any business carried on by him, from the making of the mistaken assumptions; and

“VAT provisions” means the provisions of—

- (a) any enactment, subordinate legislation or [F¹EU] legislation (whether or not still in force) which relates to VAT or to any matter connected with VAT; or
- (b) any notice published by the Commissioners under or for the purposes of any such enactment or subordinate legislation.”

(2) After section 80 of that Act there shall be inserted the following sections—

“80A Arrangements for reimbursing customers.

- (1) The Commissioners may by regulations make provision for reimbursement arrangements made by any person to be disregarded for the purposes of section 80(3) except where the arrangements—
 - (a) contain such provision as may be required by the regulations; and
 - (b) are supported by such undertakings to comply with the provisions of the arrangements as may be required by the regulations to be given to the Commissioners.
- (2) In this section “reimbursement arrangements” means any arrangements for the purposes of a claim under section 80 which—
 - (a) are made by any person for the purpose of securing that he is not unjustly enriched by the repayment of any amount in pursuance of the claim; and
 - (b) provide for the reimbursement of persons who have for practical purposes borne the whole or any part of the cost of the original payment of that amount to the Commissioners.
- (3) Without prejudice to the generality of subsection (1) above, the provision that may be required by regulations under this section to be contained in reimbursement arrangements includes—
 - (a) provision requiring a reimbursement for which the arrangements provide to be made within such period after the repayment to which it relates as may be specified in the regulations;
 - (b) provision for the repayment of amounts to the Commissioners where those amounts are not reimbursed in accordance with the arrangements;
 - (c) provision requiring interest paid by the Commissioners on any amount repaid by them to be treated in the same way as that amount for the purposes of any requirement under the arrangements to make reimbursement or to repay the Commissioners;
 - (d) provision requiring such records relating to the carrying out of the arrangements as may be described in the regulations to be kept and produced to the Commissioners, or to an officer of theirs.
- (4) Regulations under this section may impose obligations on such persons as may be specified in the regulations—

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- (a) to make the repayments to the Commissioners that they are required to make in pursuance of any provisions contained in any reimbursement arrangements by virtue of subsection (3)(b) or (c) above;
 - (b) to comply with any requirements contained in any such arrangements by virtue of subsection (3)(d) above.
- (5) Regulations under this section may make provision for the form and manner in which, and the times at which, undertakings are to be given to the Commissioners in accordance with the regulations; and any such provision may allow for those matters to be determined by the Commissioners in accordance with the regulations.
- (6) Regulations under this section may—
- (a) contain any such incidental, supplementary, consequential or transitional provision as appears to the Commissioners to be necessary or expedient; and
 - (b) make different provision for different circumstances.
- (7) Regulations under this section may have effect (irrespective of when the claim for repayment was made) for the purposes of the making of any repayment by the Commissioners after the time when the regulations are made; and, accordingly, such regulations may apply to arrangements made before that time.

80B Assessments of amounts due under section 80A arrangements.

- (1) Where any person is liable to pay any amount to the Commissioners in pursuance of an obligation imposed by virtue of section 80A(4)(a), the Commissioners may, to the best of their judgement, assess the amount due from that person and notify it to him.
- (2) Subsections (2) to (8) of section 78A apply in the case of an assessment under subsection (1) above as they apply in the case of an assessment under section 78A(1).”
- (3) In section 83 of that Act (matters subject to appeal), after paragraph (t) there shall be inserted the following paragraph—
- “(ta) an assessment under section 80B(1) or the amount of such an assessment;”.
- (4) Subsection (1) above has effect for the purposes of making any repayment on or after the day on which this Act is passed, even if the claim for that repayment was made before that day.

Textual Amendments

F1 Word in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 2, 3, 6 (with art. 3(2)(3), 4(2), 6(4)(5))

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