



# Finance Act 2006

## 2006 CHAPTER 25

### PART 2

#### VALUE ADDED TAX

#### *Avoidance and fraud*

### 19 Missing trader intra-community fraud

- (1) After section 55 of VATA 1994 (customers to account for tax on supplies of gold etc) insert—

**“55A Customers to account for tax on supplies of goods of a kind used in missing trader intra-community fraud**

- (1) Subsection (3) applies if—
- (a) a taxable (but not a zero-rated) supply of goods (“the relevant supply”) is made to a person (“the recipient”),
  - (b) the relevant supply is of goods to which this section applies (see subsection (9)),
  - (c) the relevant supply is not an excepted supply (see subsection (10)), and
  - (d) the total value of the relevant supply, and of corresponding supplies made to the recipient in the month in which the relevant supply is made, exceeds £1,000 (“the disregarded amount”).
- (2) For this purpose a “corresponding supply” means a taxable (but not a zero-rated) supply of goods which—
- (a) is a supply of goods to which this section applies, and
  - (b) is not an excepted supply.

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- (3) The relevant supply, and the corresponding supplies made to the recipient in the month in which the relevant supply is made, are to be treated for the purposes of Schedule 1—
- (a) as taxable supplies of the recipient (as well as taxable supplies of the person making them), and
  - (b) in so far as the recipient is supplied in connection with the carrying on by him of any business, as supplies made by him in the course or furtherance of that business,
- but the relevant supply, and those corresponding supplies, are to be so treated only in so far as their total value exceeds the disregarded amount.
- (4) Nothing in subsection (3)(b) requires any supply to be disregarded for the purposes of Schedule 1 on the grounds that it is a supply of capital assets of the recipient's business.
- (5) For the purposes of subsections (1) and (3), the value of a supply is determined on the basis that no VAT is chargeable on the supply.
- (6) If—
- (a) a taxable person makes a supply of goods to a person (“the recipient”) at any time,
  - (b) the supply is of goods to which this section applies and is not an excepted supply, and
  - (c) the recipient is a taxable person at that time and is supplied in connection with the carrying on by him of any business,
- it is for the recipient, on the supplier's behalf, to account for and pay tax on the supply and not for the supplier.
- (7) The relevant enforcement provisions apply for the purposes of this section, in relation to any person required under subsection (6) to account for and pay any VAT, as if that VAT were VAT on a supply made by him.
- (8) For this purpose “the relevant enforcement provisions” means so much of—
- (a) this Act and any other enactment, and
  - (b) any subordinate legislation,
- as has effect for the purposes of, or in connection with the enforcement of, any obligation to account for and pay VAT.
- (9) For the purposes of this section, goods are goods to which this section applies if they are of a description specified in an order made by the Treasury.
- (10) For the purposes of this section, an “excepted supply” means a supply which is of a description specified in, or determined in accordance with, provision contained in an order made by the Treasury.
- (11) Any order made under subsection (10) may describe a supply of goods by reference to—
- (a) the use which has been made of the goods, or
  - (b) other matters unrelated to the characteristics of the goods themselves.
- (12) The Treasury may by order substitute for the sum for the time being specified in subsection (1)(d) such greater sum as they think fit.

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- (13) The Treasury may by order make such amendments of any provision of this Act as they consider necessary or expedient for the purposes of this section or in connection with this section.

An order under this subsection may confer power on the Commissioners to make regulations or exercise any other function, but no order may be made under this subsection on or after 22nd March 2009.

- (14) Any order made under this section (other than one under subsection (12)) may—
- (a) make different provision for different cases, and
  - (b) contain supplementary, incidental, consequential or transitional provisions.”.

- (2) After section 26A of VATA 1994 (disallowance of input tax where consideration not paid) insert—

**“26AB Adjustment of output tax in respect of supplies under section 55A**

- (1) This section applies if—
- (a) a person is, as a result of section 26A, taken not to have been entitled to any credit for input tax in respect of any supply, and
  - (b) the supply is one in respect of which the person is required under section 55A(6) to account for and pay VAT.
- (2) The person is entitled to make an adjustment to the amount of VAT which he is so required to account for and pay.
- (3) The amount of the adjustment is to be equal to the amount of the credit for the input tax to which the person is taken not to be entitled.
- (4) Regulations may make such supplementary, incidental, consequential or transitional provisions as appear to the Commissioners to be necessary or expedient for the purposes of this section.
- (5) Regulations under this section may in particular—
- (a) make provision for the manner in which, and the period for which, the adjustment is to be given effect,
  - (b) require the adjustment to be evidenced and quantified by reference to such records and other documents as may be specified by or under the regulations,
  - (c) require the person entitled to the adjustment to keep, for such period and in such form and manner as may be so specified, those records and documents,
  - (d) make provision for readjustments if any credit for input tax is restored under section 26A.
- (6) Regulations under this section may make different provision for different circumstances.”.
- (3) In section 65 of VATA 1994 (inaccuracies in EC sales statements)—
- (a) at the end insert—

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- “(7) This section applies in relation to a statement which is required to be submitted to the Commissioners in accordance with regulations under paragraph 2(3A) of Schedule 11 as it applies in relation to an EC sales statement.”, and
- (b) in consequence of the amendment made by paragraph (a) the heading becomes “Inaccuracies in EC sales statements or in statements relating to section 55A”.
- (4) In section 66 of VATA 1994 (failure to submit EC sales statements)—
- (a) at the end insert—
- “(10) This section applies in relation to a statement which is required to be submitted to the Commissioners in accordance with regulations under paragraph 2(3A) of Schedule 11 as it applies in relation to an EC sales statement.”, and
- (b) in consequence of the amendment made by paragraph (a) the heading becomes “Failure to submit EC sales statement or statement relating to section 55A”.
- (5) In section 69 of VATA 1994 (breaches of regulatory provisions), in subsection (1) (failure to comply with a requirement imposed under provisions mentioned in the paragraphs in that subsection), after paragraph (b) insert—
- “(ba) paragraph 2(3B) of Schedule 11; or”.
- (6) In section 97 of VATA 1994 (orders, rules and regulations), in subsection (4) (orders which cease to have effect unless approved by House of Commons), after paragraph (e) insert—
- “(ea) an order under section 55A(13);”.
- (7) In Schedule 11 to VATA 1994 (administration, collection and enforcement), in paragraph 2 (accounting for VAT and payment of VAT), after sub-paragraph (3) insert—
- “(3A) Regulations under this paragraph may require the submission to the Commissioners by taxable persons, at such times and intervals, in such cases and in such form and manner as may be—
- (a) specified in the regulations, or
- (b) determined by the Commissioners in accordance with powers conferred by the regulations,
- of statements containing such particulars of supplies to which section 55A(6) applies in which the taxable persons are concerned, and of the persons concerned in those supplies, as may be prescribed.
- (3B) Regulations under this paragraph may make provision, in relation to the first occasion on which a person makes a supply of goods to which section 55A(6) applies, for requiring the person to give to the Commissioners such notification of the supply at such time and in such form and manner as may be specified in the regulations.”.
- (8) The amendments made by this section have effect in relation to supplies made on or after such day as the Treasury may by order made by statutory instrument appoint.
- But no order may be made under this subsection on or after 22nd March 2009.
- (9) An order under subsection (8) may contain transitional provision and savings.

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### Subordinate Legislation Made

P1 S. 19(8) power fully exercised: 1.6.2007 appointed by {S.I. 2007/1419}, art. 2

## 20 Power to inspect goods

- (1) In Schedule 11 to VATA 1994 (administration, collection and enforcement), paragraph 10 (entry and search of premises and persons) is amended as follows.
- (2) After sub-paragraph (2) (power to inspect premises and goods found on them) insert—
  - “(2A) The power under sub-paragraph (2) above to inspect any goods includes, in particular,—
    - (a) power to mark the goods, or anything containing the goods, for the purpose of indicating that they have been inspected, and
    - (b) power to record any information (which may be obtained by electronic or any other means) relating to the goods that have been inspected.”.

## 21 Directions to keep records where belief VAT might not be paid

- (1) VATA 1994 is amended as follows.
- (2) After section 69A (breach of record-keeping requirements etc in relation to transactions in gold) insert—

### “69B Breach of record-keeping requirements imposed by directions

- (1) If any person fails to comply with a requirement imposed under paragraph 6A(1) of Schedule 11, the person is liable to a penalty.
- (2) The amount of the penalty is equal to £200 multiplied by the number of days on which the failure continues (up to a maximum of 30 days).
- (3) If any person fails to comply with a requirement to preserve records imposed under paragraph 6A(6) of Schedule 11, the person is liable to a penalty of £500.
- (4) If it appears to the Treasury that there has been a change in the value of money since—
  - (a) the day on which the Finance Act 2006 is passed, or
  - (b) (if later) the last occasion when the power conferred by this subsection was exercised,they may by order substitute for the sums for the time being specified in subsections (2) and (3) such other sums as appear to them to be justified by the change.
- (5) But any such order does not apply to a failure which began before the date on which the order comes into force.
- (6) A failure by any person to comply with any requirement mentioned in subsection (1) or (3) does not give rise to a liability to a penalty under this section if the person concerned satisfies—

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- (a) the Commissioners, or
  - (b) on appeal, a tribunal,

that there is a reasonable excuse for the failure.
- (7) If by reason of conduct falling within subsection (1) or (3) a person—
  - (a) is assessed to a penalty under section 60, or
  - (b) is convicted of an offence (whether under this Act or otherwise),

that conduct does not also give rise to a penalty under this section.”.
- (3) In section 76(1) (assessment of amounts due by way of penalty, interest or surcharge) for “69A”, in both places, substitute “ 69B ”.
- (4) In section 83 (appeals)—
  - (a) in paragraph (n) (penalties or surcharges by virtue of any of sections 59 to 69A) for “69A” substitute “ 69B ” and
  - (b) after paragraph (z) (conditions imposed by virtue of paragraph 2B(2)(c) or 3(1) of Schedule 11) insert—
    - “(zza) a direction under paragraph 6A of Schedule 11;”.
- (5) In section 84 (further provision relating to appeals) after subsection (7A) (appeals against directions mentioned in section 83(wa)) insert—
  - “(7B) Where there is an appeal against a decision to make such a direction as is mentioned in section 83(zza)—
    - (a) the tribunal shall not allow the appeal unless it considers that the Commissioners could not reasonably have been satisfied that there were grounds for making the direction;
    - (b) the direction shall have effect pending the determination of the appeal.”.
- (6) In Schedule 11 (administration, collection and enforcement), after paragraph 6 (duty to keep records) insert—
  - “6A (1) The Commissioners may direct any taxable person named in the direction to keep such records as they specify in the direction in relation to such goods as they so specify.
  - (2) A direction under this paragraph may require the records to be compiled by reference to VAT invoices or any other matter.
  - (3) The Commissioners may not make a direction under this paragraph unless they have reasonable grounds for believing that the records specified in the direction might assist in identifying taxable supplies in respect of which the VAT chargeable might not be paid.
  - (4) The taxable supplies in question may be supplies made by—
    - (a) the person named in the direction, or
    - (b) any other person.
  - (5) A direction under this paragraph—
    - (a) must be given by notice in writing to the person named in it,

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- (b) must warn that person of the consequences under section 69B of failing to comply with it, and
  - (c) remains in force until it is revoked or replaced by a further direction.
- (6) The Commissioners may require any records kept in pursuance of this paragraph to be preserved for such period not exceeding 6 years as they may require.
- (7) Sub-paragraphs (4) to (6) of paragraph 6 (preservation of information by means approved by the Commissioners) apply for the purposes of this paragraph as they apply for the purposes of that paragraph.
- (8) This paragraph is without prejudice to the power conferred by paragraph 6(1) to make regulations requiring records to be kept.
- (9) Any records required to be kept by virtue of this paragraph are in addition to any records required to be kept by virtue of paragraph 6.”.

## **22 Treatment of credit vouchers**

- (1) VATA 1994 is amended as follows.
- (2) In section 97 (orders, rules and regulations), in subsection (4) (orders which cease to have effect unless approved by House of Commons), after paragraph (f) insert—
- “(fa) an order under paragraph 3(4) of Schedule 10A;”.
- (3) In paragraph 3 of Schedule 10A (treatment of credit vouchers), after sub-paragraph (3) (circumstances in which consideration for supply of credit voucher not to be disregarded under sub-paragraph (2) for the purposes of Act) insert—
- “(4) The Treasury may by order specify other circumstances in which sub-paragraph (2) above does not apply.”.

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