

## **FINANCE (NO. 2) ACT 2010**

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### **EXPLANATORY NOTES**

#### ***Section 3 Schedule 2: Vat: Increase in Standard Rate and Anti-Avoidance Provision***

##### **Summary**

1. **Section 3** provides for the standard rate of VAT to increase to 20 per cent on 4 January 2011. Section 3 and Schedule 2 introduce a supplementary charge to VAT of 2.5 per cent on certain supplies that span the date on which the standard rate of VAT changes from 17.5 per cent to 20 per cent.

##### **Details of the Section**

2. Subsection (1) amends section 2(1) of the VAT Act 1994 (VATA) to increase the standard rate of VAT from 17.5 per cent to 20 per cent.
3. Subsection (2) substitutes in section 21(4) of VATA 25 per cent for 28.58 per cent. This preserves the effective 5 per cent VAT rate on imports of goods defined in section 21(5) of VATA (works of art, certain antiques, collections and collector's pieces).
4. Subsection (3) provides for the amendment in subsection (1) to have effect in relation to any supply made on or after 4 January 2011 and any acquisition or importation taking place on or after that date.
5. Subsection (4) provides for the amendment made by subsection (2) to have effect in relation to goods imported on or after 4 January 2011.

##### **Details of the Schedule**

6. Paragraph 1 introduces a supplementary charge to VAT on supplies of goods and services, subject to the standard rate of VAT, which take place on or after 22 June 2010. The supplementary charge is payable where:
  - the supply spans the date on which the standard rate increases to 20 per cent (4 January 2011 – the “date of the VAT change”);
  - the customer is not entitled to recover all of the VAT on the supply; and
  - at least one of the relevant conditions laid down in paragraphs 2 or 3 is met.
7. Paragraph 2 provides that a supply of goods or services (other than a grant covered by paragraph 3) spans the date of the VAT change where the supplier raises a VAT invoice or receives payment (or both) prior to the VAT rate change and the basic time of supply takes place on or after the date of the change.
8. The supplementary charge will apply where at least one of the following relevant conditions is met:
  - Condition A - the supplier and the customer are connected with each other at any time during the period from the date of the supply to the date of the VAT change;

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(c.31) which received Royal Assent on 27 July 2010*

- Condition B - the relevant consideration for the supply and any related supply of goods or services amounts to more than £100,000;
  - Condition C - the supplier or a person connected with him finances a prepayment by the customer; and
  - Condition D - the supplier raises a VAT invoice where payment is not due until at least six months from the date of the invoice.
9. Paragraph 3 applies to the supply of the grant of a right to receive goods or services at a discount or free of charge where the grant is supplied before the date of the VAT change but the basic time of supply of some or all of the goods or services takes place on or after that date. A right for this purpose includes an option or an interest deriving from a right (or option). The supplementary charge will apply where at least one of the following relevant conditions is met:
- Condition A - the grantor and the customer are connected with each other at any time during the period from the date of the supply to the date of the VAT change;
  - Condition B - the relevant consideration for the grant of the right and any related supply of goods or services amounts to more than £100,000; and
  - Condition C - the supplier or a person connected with him finances the customer's payment for the grant of the right.
10. Paragraph 4 defines the basic time of supply by reference to section 6 of VATA, as the time that goods are delivered or made available, or that services are performed. This is subject to a special rule for listed supplies in paragraphs 18 and 19 of this Schedule.
11. Paragraph 5 extends the connected persons condition in paragraphs 2 and 3. It applies where there is a series of supplies of, or a series of grants of, the right to receive, the same or substantially the same, goods or services. In these circumstances, if any supplier or grantor in the series is connected to the customer, the supplementary charge will apply to the supply to the customer.
12. Paragraph 6 defines "relevant consideration" and "related" supply for the purpose of Condition B in paragraphs 2 and 3.
13. Relevant consideration in relation to the supply of goods or services consists of the amount shown on a VAT invoice or the amount of payment received. Relevant consideration in relation to the grant of a right consists of the consideration for the grant of the right. In all cases it is net of VAT.
14. A supply of goods or services or a grant of a right is related to another such supply or grant where they are both made as part of the same scheme. "Scheme" includes any arrangements, transaction or series of transactions.
15. Paragraph 7 sets out the circumstances in which a supplier or a person connected with the supplier is treated as financing the payment for a supply of goods or services or the grant of a right to receive goods or services, for the purposes of condition C in paragraphs 2 and 3.
16. Paragraph 8 provides that section 1122 of the Corporation Tax Act 2010 applies for the purpose of defining "connected persons". Individuals are connected to spouses or civil partners, certain relatives, persons with whom they are in partnership, and companies they control (on their own or in conjunction with other persons). Companies are connected to other companies under the same control. Trustees are connected with trust settlors (if individuals) and close companies controlled by the trust.
17. Paragraph 9 provides that receipt of payment by a supplier includes receipt of payment by a person to whom the right to receive that payment has been assigned.

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18. Paragraph 10 provides powers for HM Treasury to amend the relevant conditions and make other incidental or consequential amendments to the Schedule by order.
19. Paragraph 11 provides for exceptions to the application of the supplementary charge. Where a supply consists of the lease, hire or rent of any asset, a supplementary charge will not apply if the VAT invoice or payment covers a period of up to one year and this accords with normal commercial practice, as defined in paragraph 14.
20. Paragraph 12 provides that the supplementary charge will not apply to a supply that meets only condition B in paragraph 2 or 3, if it is made in accordance with normal commercial practice.
21. Paragraph 13 provides that the supplementary charge will not apply to a supply that meets only condition D in paragraph 2, if the VAT invoice relates to hire purchase, conditional sale or credit sale of goods, and the basic time of supply is intended or expected to be within six months of the VAT invoice.
22. Paragraph 14 defines “normal commercial practice”.
23. Paragraph 15 provides powers for HM Treasury to introduce further exceptions to the application of the supplementary charge by order. Such exceptions may remove supplementary charges falling before or after the order comes into effect, if the supplies concerned were made at any time from 22 June 2010 onwards.
24. Paragraph 16 provides that the supplier of, or the grantor of a right to receive, goods or services is liable to account for the supplementary charge. Where the supplier or grantor is a member of a VAT group, the representative member of that group is liable to account for it. In the case of goods and services, payment is due on the date of the VAT change. In the case of the grant of a right covered by paragraph 3, payment is due on the date that the right is first exercised on or after the date of the VAT change.
25. Paragraph 17 provides that the rate of the supplementary charge is the difference between the VAT charged on the supply of goods or services or of a grant (i.e. 17.5 per cent) and the rate in force after the rate change (i.e. 20 per cent).
26. Paragraphs 17(3)-(4) provide that where, under the terms of a grant of a right, some goods or services are supplied before the rate change and some are supplied after it, the consideration should be apportioned to ascertain the amount that is properly subject to the supplementary charge.
27. Paragraph 18(1) defines a “listed supply”, for the purposes of the Schedule, as ones which are:
  - listed in paragraph 18(2); and
  - are supplies of goods or services where payment is made periodically or from time to time and which are treated as having taken place by virtue of either the issue of a VAT invoice by the supplier or receipt of payment.
28. Paragraph 18(3) provides powers for HM Treasury to amend the list by order.
29. Paragraph 19 provides that, for the purposes of listed supplies in paragraph 18, the basic time of supply occurs at the end of the period for which a VAT invoice is raised or payment is received.
30. However, under paragraph 19(2), where a supplier has raised a VAT invoice or received payment in respect of a listed supply which is still continuing and issues an invoice for a “billing period” that ends before the end of the period covered by the VAT invoice or payment, the end of the billing period becomes the basic time of supply for that part of the supply. In such cases, paragraph 19(3) provides that the consideration for the listed supply must be apportioned between the periods on a just and reasonable basis.

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31. Paragraph 19(4) provides that, where a listed supply arises in relation to a premium for the grant of a tenancy or a lease, the basic time of supply is the date of the grant.
32. Paragraph 20 provides that, where a person is required to account for a supplementary charge but deregisters for VAT before the supplementary charge becomes payable, he is required to account for it in his final return. However, any interest that arises on an assessment in relation to the supplementary charge will run from the date when the supplementary charge is due rather than the date when the final return is due.
33. Paragraph 21 provides for adjustment of contracts where a contract is made for the supply of goods or services before the rate change and a supplementary charge is due on the supply. In such cases, unless the contract provides otherwise, the consideration due under the contract will be increased by the amount of any supplementary charge.
34. Paragraph 22 permits HM Revenue & Customs to make regulations concerning the provision, replacement or correction of VAT invoices when a supplementary charge applies, to ensure that the supplier and customer correctly account for VAT.
35. Paragraph 23 provides that orders made under the provisions of the Schedule are subject to the negative resolution procedure apart from those made (at least in part) under paragraph 10 which extend the scope of the supplementary charge, which require House of Commons approval within 28 days of being made.

**Background Note**

36. In his Budget Statement of 22 June 2010, the Chancellor announced an increase in the standard rate of VAT from 17.5 per cent to 20 per cent. On 22 June 2010 the Exchequer Secretary to the Treasury, in a Written Ministerial Statement, explained that the Government would introduce anti-forestalling legislation to prevent artificial avoidance seeking to exploit the change in VAT rate. The statement can be seen at [www.hmrc.gov.uk](http://www.hmrc.gov.uk)