
STATUTORY INSTRUMENTS

1995 No. 2518

The Value Added Tax Regulations 1995

PART I

PRELIMINARY

Citation and commencement

1. These Regulations may be cited as the Value Added Tax Regulations 1995 and shall come into force on 20th October 1995.

Interpretation—general

2. —

(1) In these Regulations unless the context otherwise requires—

“the Act” means the Value Added Tax Act 1994 and any reference to a Schedule to the Act includes a reference to a Schedule as amended from time to time by Order of the Treasury;

“alphabetical code” means the alphabetical prefix as set out below which shall be used to identify the member State—

Austria—AT

Belgium—BE

Denmark—DK

Finland—FI

France—FR

Germany—DE

Greece—EL

Ireland—IE

Italy—IT

Luxembourg—LU

Netherlands—NL

Portugal—PT

Spain—ES

Sweden—SE

United Kingdom—GB;

“Collector” includes Deputy Collector and Assistant Collector;

“the Community” means the European Community;

“continental shelf” means a designated area within the meaning of the Continental Shelf Act 1964(1);

“Controller” means the Controller, Customs and Excise Value Added Tax Central Unit;

“datapost packet” means a postal packet containing goods which is posted in the United Kingdom as a datapost packet for transmission to a place outside the United Kingdom in accordance with the terms of a contract entered into between the Post Office and the sender of the packet; or which is received at a post office in the United Kingdom from a place outside the United Kingdom for transmission and delivery in the United Kingdom as if it were a datapost packet;

“prescribed accounting period”, subject to regulation 99(1), means a period such as is referred to in regulation 25;

“proper officer” means the person appointed or authorised by the Commissioners to act in respect of any matter in the course of his duties;

“registered person” means a person registered by the Commissioners under Schedule 1, 2 or 3 to the Act;

“registration number” means the number allocated by the Commissioners to a taxable person in the certificate of registration issued to him;

“return” means a return which is required to be made in accordance with regulation 25;

“specified date” means the date specified in a person’s application for registration for the purpose of VAT as that on which he expects to make his first taxable supply.

(2) A reference in these Regulations to “this Part” is a reference to the Part of these Regulations in which that reference is made.

(3) In these Regulations any reference to a form prescribed in Schedule 1 to these Regulations shall include a reference to a form which the Commissioners are satisfied is a form to the like effect.

Revocations and savings

3. —

(1) The Regulations described in Schedule 2 to these Regulations are hereby revoked.

(2) Anything begun under or for the purpose of any Regulations revoked by these Regulations shall be continued under or, as the case may be, for the purpose of the corresponding provision of these Regulations.

(3) Where any document used or required for the purpose of VAT refers to a provision of a regulation revoked by these Regulations, such reference shall, unless the context otherwise requires, be construed as a reference to the corresponding provision of these Regulations.

Requirement, direction, demand or permission

4. Any requirement, direction, demand or permission by the Commissioners, under or for the purposes of these Regulations, may be made or given by a notice in writing, or otherwise.

(1) 1964 c. 29.

PART II

REGISTRATION AND PROVISIONS FOR SPECIAL CASES

Registration and notification

5. —

(1) Where any person is required under paragraph 5(1) or 6(1) of Schedule 1, paragraph 3(1) of Schedule 2, or paragraph 3(1) of Schedule 3 to the Act to notify the Commissioners of his liability to be registered, the notification shall contain the particulars (including the declaration) set out in the forms numbered 1, 6 and 7 respectively in Schedule 1 to these Regulations and shall be made in those forms;

provided that, where the notification is made by a partnership, the notification shall also contain the particulars set out in the form numbered 2 in that Schedule.

(2) Every registered person except one to whom paragraph 11, 12, 13(1), (2) or (3) of Schedule 1, paragraph 5 of Schedule 2, or paragraph 5 of Schedule 3 to the Act applies shall, within 30 days of any changes being made in the name, constitution or ownership of his business, or of any other event occurring which may necessitate the variation of the register or cancellation of his registration, notify the Commissioners in writing of such change or event and furnish them with full particulars thereof.

(3) Every notification by a registered person under paragraph 11 or 12 of Schedule 1, paragraph 5 of Schedule 2, or paragraph 5 of Schedule 3 to the Act shall be made in writing to the Commissioners and shall state—

- (a) the date on which he ceased to make, or have the intention of making, taxable supplies; or
- (b) where paragraph 12(a) of Schedule 1 to the Act applies, the date on which he ceased to make, or have the intention of making, supplies within paragraph 10(2) of that Schedule; or
- (c) where paragraph 12(b) of Schedule 1 to the Act applies, the date on which he made, or formed the intention of making, taxable supplies; or
- (d) where paragraph 5(1) of Schedule 2 to the Act applies, the date on which he ceased to make, or have the intention of making, supplies; or
- (e) where paragraph 5(1) of Schedule 3 to the Act applies, the date on which he ceased to make, or have the intention of making, a relevant acquisition within paragraph 6(2) of that Schedule.

Transfer of a going concern

6. —

(1) Where—

- (a) a business is transferred as a going concern,
- (b) the registration under Schedule 1 to the Act of the transferor has not already been cancelled,
- (c) on the transfer of the business the registration of the transferor under that Schedule is to be cancelled and either the transferee becomes liable to be registered under that Schedule or the Commissioners agree to register him under paragraph 9 of that Schedule, and
- (d) an application is made in the form numbered 3 in Schedule 1 to these Regulations by or on behalf of both the transferor and the transferee of that business,

the Commissioners may as from the date of the said transfer cancel the registration under Schedule 1 to the Act of the transferor and register the transferee under that Schedule with the registration number previously allocated to the transferor.

(2) An application under paragraph (1) above shall constitute notification for the purposes of paragraph 11 of Schedule 1 to the Act.

(3) Where the transferee of a business has under paragraph (1) above been registered under Schedule 1 to the Act in substitution for the transferor of that business, and with the transferor's registration number—

- (a) any liability of the transferor existing at the date of the transfer to make a return or to account for or pay VAT under regulation 25 or 41 shall become the liability of the transferee,
- (b) any right of the transferor, whether or not existing at the date of the transfer, to credit for, or to repayment of, input tax shall become the right of the transferee, and
- (c) any right of either the transferor, whether or not existing at the date of the transfer, or the transferee to payment by the Commissioners under section 25(3) of the Act shall be satisfied by payment to either of them.

(4) In addition to the provisions set out in paragraph (3) above, where the transferee of a business has been registered in substitution for, and with the registration number of, the transferor during a prescribed accounting period subsequent to that in which the transfer of the business took place but with effect from the date of the transfer of the business, and any—

- (a) return has been made,
- (b) VAT has been accounted for and paid, or
- (c) right to credit for input tax has been claimed,

either by or in the name of the transferee or the transferor, it shall be treated as having been done by the transferee.

Notice by partnership

7. —

(1) Where any notice is required to be given for the purposes of the Act or these Regulations by a partnership, it shall be the joint and several liability of all the partners to give such notice, provided that a notice given by one partner shall be a sufficient compliance with any such requirement.

(2) Where, in Scotland, a body of persons carrying on a business which includes the making of taxable supplies is a partnership required to be registered, any notice shall be given and signed in the manner indicated in section 6 of the Partnership Act 1890(2).

Representation of club, association or organisation

8. Anything required to be done by or under the Act, these Regulations or otherwise by or on behalf of a club, association or organisation, the affairs of which are managed by its members or a committee or committees of its members, shall be the joint and several responsibility of—

- (a) every member holding office as president, chairman, treasurer, secretary or any similar office; or in default of any thereof,
- (b) every member holding office as a member of a committee; or in default of any thereof,
- (c) every member,

provided that if it is done by any official, committee member or member referred to above, that shall be sufficient compliance with any such requirement.

Death, bankruptcy or incapacity of taxable person

9. —

(1) If a taxable person dies or becomes bankrupt or incapacitated, the Commissioners may, from the date on which he died or became bankrupt or incapacitated treat as a taxable person any person carrying on that business until some other person is registered in respect of the taxable supplies made or intended to be made by that taxable person in the course or furtherance of his business or the incapacity ceases, as the case may be; and the provisions of the Act and of any Regulations made thereunder shall apply to any person so treated as though he were a registered person.

(2) Any person carrying on such business shall, within 21 days of commencing to do so, inform the Commissioners in writing of that fact and of the date of the death, or of the nature of the incapacity and the date on which it began.

(3) In relation to a company which is a taxable person, the references in paragraph (1) above to the taxable person becoming bankrupt or incapacitated shall be construed as references to the company going into liquidation or receivership or to an administration order being made in relation to it.

VAT representatives

10. —

(1) Where any person is appointed by virtue of section 48 of the Act to be the VAT representative of another (in this regulation referred to as “his principal”), the VAT representative shall notify the Commissioners of his appointment on the form numbered 8 in Schedule 1 to these Regulations within 30 days of the date on which his appointment became effective and the notification shall contain the particulars (including the declaration) set out in that form.

(2) The notification referred to in this regulation shall be accompanied by evidence of the VAT representative’s appointment.

(3) Where a person is appointed by virtue of section 48 of the Act to be a VAT representative, the Commissioners shall register the name of that VAT representative against the name of his principal in the register kept for the purposes of the Act.

(4) Every VAT representative who is registered in accordance with this regulation shall, within 30 days of any changes being made in the name, constitution or ownership of his business or of his ceasing to be a person’s VAT representative, or of any other event occurring which may necessitate the variation of the register, notify the Commissioners in writing of such change, cessation or event and furnish them with full particulars thereof.

(5) For the purposes of this regulation the date upon which the appointment of a VAT representative (“the first VAT representative”) shall be regarded as having ceased shall be treated as being whichever is the earliest of the following times—

- (a) when the Commissioners receive any notification in accordance with regulation 5(2), or
- (b) when the Commissioners receive a notification of appointment in accordance with paragraph (1) above of a person other than the first VAT representative, or
- (c) when the Commissioners receive a notification of cessation in accordance with regulation 5(2), or
- (d) when the Commissioners receive a notification of cessation in accordance with paragraph (4) above, or
- (e) when a VAT representative dies, becomes insolvent or becomes incapacitated,

provided that if the Commissioners have not received a notification such as is mentioned in all or any of sub-paragraphs (a), (c) or (d) above and another person has been appointed as a VAT representative by virtue of section 48 of the Act, the Commissioners may treat the date of cessation as the date of appointment of that other person.

(6) In relation to a company which is a VAT representative, the references in paragraph (5)(e) above to the VAT representative becoming insolvent or incapacitated shall be construed as references to its going into liquidation or receivership or to an administration order being made in relation to it.

Notification of intended section 14(1) supplies by intermediate suppliers

11. —

(1) An intermediate supplier who has made or intends to make a supply to which he wishes section 14(1) of the Act to apply shall notify the Commissioners and the customer in writing of his intention to do so.

(2) A notification under this regulation shall contain the following particulars—

- (a) the name and address of the intermediate supplier,
- (b) the number including the alphabetical code, by which the intermediate supplier is identified for VAT purposes, which was used or is to be used for the purpose of the supply to him by the original supplier,
- (c) the date upon which the goods were first delivered or are intended to be first delivered, and
- (d) the name, address and registration number of the customer to whom the goods have been supplied or are to be supplied.

(3) A notification under this regulation shall be made no later than the provision, in accordance with regulation 18, of the first invoice in relation to the supply to which it relates, and sent to—

- (a) the office designated by the Commissioners for the receipt of such notifications, and
- (b) the customer.

(4) Notifications under this regulation shall be made separately in relation to each customer to whom it is intended to make supplies to which the intermediate supplier wishes section 14(1) of the Act to apply.

(5) Where an intermediate supplier has complied with the requirements of this regulation in relation to the first supply to a customer to which section 14(1) of the Act applies, those requirements shall be deemed to have been satisfied in relation to all subsequent supplies to that customer while the intermediate supplier continues to belong in another member State.

Notification of intended section 14(2) supplies by persons belonging in other member States

12. —

(1) A person belonging in another member State who has made or who intends to make a supply to which he wishes section 14(2) of the Act to apply shall notify the Commissioners and the registered person in writing of his intention to do so.

(2) A notification under this regulation shall contain the following particulars—

- (a) the name and address of the person belonging in another member State,
- (b) the number including the alphabetical code by which the person belonging in another member State is identified for VAT purposes in the member State in which he belongs,
- (c) the date upon which the installation or assembly of the goods was commenced or is intended to commence, and
- (d) the name, address and registration number of the registered person to whom the goods have been supplied or are to be supplied.

(3) A notification under this regulation shall be made no later than the provision, in accordance with regulation 19, of the first invoice in relation to the supply to which it relates, and sent to—

- (a) the office designated by the Commissioners for the receipt of such notifications, and

(b) the registered person to whom the goods are to be supplied.

(4) Notifications under this regulation shall be made separately in relation to each registered person to whom it is intended to make supplies to which the person belonging in another member State wishes section 14(2) of the Act to apply.

(5) Where a person belonging in another member State has complied with the requirements of this regulation in relation to the first supply to a registered person to which section 14(2) of the Act applies, those requirements shall be deemed to have been satisfied in relation to all subsequent supplies to that registered person while the person making the supply continues to belong in another member State.

PART III

VAT INVOICES AND OTHER INVOICING REQUIREMENTS

Obligation to provide a VAT invoice

13. —

(1) Save as otherwise provided in these Regulations, where a registered person—

- (a) makes a taxable supply in the United Kingdom to a taxable person, or
- (b) makes a supply of goods or services other than an exempt supply to a person in another member State, or
- (c) receives a payment on account in respect of a supply he has made or intends to make from a person in another member State,

he shall provide such persons as are mentioned above with a VAT invoice.

(2) The particulars of the VAT chargeable on a supply of goods described in paragraph 7 of Schedule 4 to the Act shall be provided, on a sale by auction, by the auctioneer, and, where the sale is otherwise than by auction, by the person selling the goods, on a document containing the particulars prescribed in regulation 14(1); and such a document issued to the buyer shall be treated for the purposes of paragraph (1)(a) above as a VAT invoice provided by the person by whom the goods are deemed to be supplied in accordance with the said paragraph 7.

(3) Where a registered person provides a document to himself which purports to be a VAT invoice in respect of a supply of goods or services to him by another taxable person registered in the United Kingdom, that document may, with the approval of the Commissioners, be treated as the VAT invoice required to be provided by the supplier under paragraph (1)(a) above.

(4) Where the person who makes a supply to which regulation 93 relates gives an authenticated receipt containing the particulars required under regulation 14(1) to be specified in a VAT invoice in respect of that supply, that document shall be treated as the VAT invoice required to be provided under paragraph (1)(a) above on condition that no VAT invoice or similar document which was intended to be or could be construed as being a VAT invoice for the supply to which the receipt relates is issued.

(5) The documents specified in paragraphs (1), (2), (3) and (4) above shall be provided within 30 days of the time when the supply is treated as taking place under section 6 of the Act, or within such longer period as the Commissioners may allow in general or special directions.

Contents of VAT invoice

14. —

(1) Subject to paragraph (2) below and regulation 16, a registered person providing a VAT invoice in accordance with regulation 13 shall state thereon the following particulars—

- (a) an identifying number,
 - (b) the time of the supply,
 - (c) the date of the issue of the document,
 - (d) the name, address and registration number of the supplier,
 - (e) the name and address of the person to whom the goods or services are supplied,
 - (f) the type of supply by reference to the following categories—
 - (i) a supply by sale,
 - (ii) a supply on hire purchase or any similar transaction,
 - (iii) a supply by loan,
 - (iv) a supply by way of exchange,
 - (v) a supply on hire, lease or rental,
 - (vi) a supply of goods made from the customer's materials,
 - (vii) a supply by sale on commission,
 - (viii) a supply on sale or return or similar terms, or
 - (ix) any other type of supply which the Commissioners may at any time by notice specify,
 - (g) a description sufficient to identify the goods or services supplied,
 - (h) for each description, the quantity of the goods or the extent of the services, and the rate of VAT and the amount payable, excluding VAT, expressed in sterling,
 - (i) the gross total amount payable, excluding VAT, expressed in sterling,
 - (j) the rate of any cash discount offered,
 - (k) each rate of VAT chargeable and the amount of VAT chargeable, expressed in sterling, at each such rate, and
 - (l) the total amount of VAT chargeable, expressed in sterling.
- (2) Where a registered person provides to a person in another member State a VAT invoice, he shall state thereon the following particulars—
- (a) the information specified in sub-paragraphs (a) to (g) and (j) of paragraph (1) above,
 - (b) the letters “GB” as a prefix to his registration number,
 - (c) the registration number, if any, of the recipient of the supply of goods or services and which registration number, if any, shall contain the alphabetical code of the member State in which that recipient is registered,
 - (d) the gross amount payable, excluding VAT,
 - (e) where the supply is of a new means of transport (as defined in section 95 of the Act) a description sufficient to identify it as such,
 - (f) for each description, the quantity of the goods or the extent of the services, and where a positive rate of VAT is chargeable, the rate of VAT and the amount payable, excluding VAT, expressed in sterling, and
 - (g) where the supply of goods is a taxable supply, the information as specified in sub-paragraphs (k) and (l) of paragraph (1) above.
- (3) Where a taxable supply takes place as described in section 6(2)(c) or section 6(5) of the Act, any consignment or delivery note or similar document or any copy thereof issued by the supplier before the time of supply shall not, notwithstanding that it may contain all the particulars set out in paragraph (1) above, be treated as a VAT invoice provided it is endorsed “This is not a VAT invoice”.

(4) Where a registered person provides an invoice containing the particulars specified in paragraphs (1) and (3) above, and specifies thereon any goods or services which are the subject of an exempt or zero-rated supply, he shall distinguish on the invoice between the goods or services which are the subject of an exempt, zero-rated or other supply and state separately the gross total amount payable in respect of each supply and rate.

(5) Where a registered person provides a VAT invoice relating in whole or in part to a supply the VAT upon which is required to be accounted for and paid by the person supplied, on the supplier's behalf, the supplier shall state that fact, and the amount of VAT so to be accounted for and paid, on the VAT invoice.

Change of rate, credit notes

15. Where there is a change in the rate of VAT in force under section 2 of the Act or in the descriptions of exempt or zero-rated supplies, and a VAT invoice which relates to a supply in respect of which an election is made under section 88 of the Act was issued before the election was made, the person making the supply shall, within 14 days after any such change, provide the person to whom the supply was made with a credit note headed "Credit note-change of VAT rate" and containing the following particulars—

- (a) the identifying number and date of issue of the credit note,
- (b) the name, address and registration number of the supplier,
- (c) the name and address of the person to whom the supply is made,
- (d) the identifying number and date of issue of the VAT invoice,
- (e) a description sufficient to identify the goods or services supplied, and
- (f) the amount being credited in respect of VAT.

Retailers' invoices

16. —

(1) Subject to paragraph (2) below, a registered person who is a retailer shall not be required to provide a VAT invoice, except that he shall provide such an invoice at the request of a customer who is a taxable person in respect of any supply to him; but, in that event, if, but only if, the consideration for the supply does not exceed £100 and the supply is other than to a person in another member State, the VAT invoice need contain only the following particulars—

- (a) the name, address and registration number of the retailer,
- (b) the time of the supply,
- (c) a description sufficient to identify the goods or services supplied,
- (d) the total amount payable including VAT, and
- (e) for each rate of VAT chargeable, the gross amount payable including VAT, and the VAT rate applicable.

(2) Where a registered person provides an invoice in accordance with this regulation, the invoice shall not contain any reference to any exempt supply.

Section 14(6) supplies to persons belonging in other member States

17. —

(1) Where a registered person makes a supply such as is mentioned in section 14(6) of the Act he shall provide the person supplied with an invoice in respect of that supply.

(2) An invoice provided under this regulation shall—

- (a) comply with the requirements of regulations 13 and 14, and
- (b) bear the legend “VAT: EC ARTICLE 28 SIMPLIFICATION INVOICE”.

Section 14(1) supplies by intermediate suppliers

18. —

(1) On each occasion that an intermediate supplier makes or intends to make a supply to which he wishes section 14(1) of the Act to apply he shall, subject to paragraph (3) below, provide the customer with an invoice.

(2) An invoice provided under this regulation by an intermediate supplier shall—

- (a) comply with the provisions of the law corresponding, in relation to the member State which provided the intermediate supplier with the identification number for VAT purposes used or to be used by him for the purpose of the supply to him by the original supplier of the goods which were subsequently removed to the United Kingdom, to regulation 17,
- (b) be provided no later than 15 days after the time that the supply of the goods would, but for section 14(1) of the Act, have been treated as having taken place by or under section 6 of the Act,
- (c) cover no less than the extent of the supply which would, but for section 14(1) of the Act, have been treated as having taken place by or under section 6 of the Act at the time that such an invoice is provided, and
- (d) bear the legend “VAT: EC ARTICLE 28 SIMPLIFICATION INVOICE”.

(3) Where an intermediate supplier makes a supply such as is mentioned in paragraph (1) above, and he has already provided the customer with an invoice that complies with the requirements of subparagraphs (a), (c) and (d) of paragraph (2) above, he shall not be required to provide the customer with a further invoice in relation to that supply.

(4) Where an intermediate supplier makes a supply such as is mentioned in paragraph (1) above and he provides the customer with an invoice such as is described in paragraphs (2) and (3) above, that invoice shall be treated as if it were an invoice for the purpose of regulation 83.

(5) Where an intermediate supplier makes a supply such as is mentioned in paragraph (1) above and he provides the customer with an invoice that complies only with the requirements of paragraph (2)(a) above, that invoice shall, for the purposes of this regulation only, be treated as if it were a VAT invoice.

Section 14(2) supplies by persons belonging in other member States

19. —

(1) On each occasion that a person belonging in another member State makes or intends to make a supply to which he wishes section 14(2) of the Act to apply he shall, subject to paragraph (3) below, provide the registered person with an invoice.

(2) An invoice provided under this regulation by a person belonging in another member State shall—

- (a) comply with the provisions of the law of the member State in which he belongs corresponding in relation to that member State to the provisions of regulation 14,
- (b) be provided no later than 15 days after the time that the supply of the goods would, but for section 14(2) of the Act, have been treated as having taken place by or under section 6 of the Act,

(c) cover no less than the extent of the supply which would, but for section 14(2) of the Act, have been treated as having taken place by or under section 6 of the Act at the time that such an invoice is provided, and

(d) bear the legend “SECTION 14(2) VATA INVOICE”.

(3) Where a person belonging in another member State makes a supply such as is mentioned in paragraph (1) above, and he has already provided the registered person with an invoice that complies with the requirements of sub-paragraphs (a), (c) and (d) of paragraph (2) above, he shall not be required to provide the registered person with a further invoice in relation to that supply.

(4) Where a person belonging in another member State makes a supply such as is mentioned in paragraph (1) above and he provides the registered person with an invoice such as is described in paragraphs (2) and (3) above, that invoice shall be treated as if it were an invoice for the purpose of regulation 83.

(5) Where a person belonging in another member State makes a supply such as is mentioned in paragraph (1) above, and he provides the registered person with an invoice that complies only with the requirements of paragraph (2)(a) above, that invoice shall, for the purposes of this regulation only, be treated as if it were a VAT invoice.

General

20. Regulations 13, 14, 15, 16, 17, 18 and 19 shall not apply to the following supplies made in the United Kingdom—

- (a) any zero-rated supply other than a supply for the purposes of an acquisition in another member State,
- (b) any supply to which an order made under section 25(7) of the Act applies,
- (c) any supply on which VAT is charged although it is not made for consideration, or
- (d) any supply to which an order made under section 32 of the Act applies.

PART IV

EC SALES STATEMENTS

Interpretation of Part IV

21. In this Part—

“contract work” means contract work as referred to in Article 5.5(a) of Council Directive No. [77/388/EEC](#)(3);

“form” means the form numbered 12 in Schedule 1 to these Regulations;

“processing work” means any processing operation, including the supply of any goods or services carried out on any goods dispatched or transported from one member State to another member State for the performance of contract work;

“registered in another member State” means registered in accordance with the measures adopted by the competent authority in another member State for the purposes of the common system of VAT and “registered” shall be construed accordingly;

“relevant figure” means the sum of the amount mentioned in paragraph 1(1)(a) of Schedule 1 to the Act and £25,500;

(3) OJ No. L145, 13.6.1977, p.1.

“statement” means the statement which a taxable person is required to submit in accordance with this Part of these Regulations;

“total value” means the consideration for the supply including the costs of any freight transport services and services ancillary to the transport of goods charged by the supplier of the goods to the customer.

Submission of statements

22. —

(1) Subject to paragraph (6) below and save as the Commissioners may otherwise allow or direct, every taxable person who in any period of a quarter has made a supply of, or has dispatched, or has transported, or has transferred, goods to a person who is or was registered in another member State shall in relation to that period submit to the Commissioners, no later than 42 days after the end of that period, a statement in the form numbered 12 in Schedule 1 to these Regulations containing full information as specified in paragraph (3), (4) or (5) below, as the case may require and a declaration signed by him that the statement is true and complete;

provided that—

- (a) the Commissioners may allow a taxable person to submit those statements in respect of periods of one month;
- (b) where a taxable person satisfies the Commissioners either that—
 - (i) at the end of any month, the value of his taxable supplies in the period of one year then ending is less than the relevant figure, or
 - (ii) at any time, there are reasonable grounds for believing that the value of his taxable supplies in the period of one year beginning at that or any later time will not exceed the relevant figure,

and either that—

- (iii) at the end of any month, the value of his supplies to persons registered in other member States in the period of one year then ending is less than £11,000, or
- (iv) at any time, there are reasonable grounds for believing that the value of his supplies to persons registered in other member States in the period of one year beginning at that or any later time will not exceed £11,000,

the Commissioners may allow that person to submit a statement which relates to the period of the year mentioned in sub-paragraphs (i) to (iv) above and which contains full information as specified in paragraph (3)(a) to (d) below and a declaration signed by him that the statement is true and complete;

- (c) where the Commissioners have allowed a taxable person under regulation 25 to make returns in respect of periods longer than 3 months and that person satisfies the Commissioners either that—
 - (i) at the end of any month, the value of his taxable supplies in the period of one year then ending is less than £145,000, or
 - (ii) at any time, there are reasonable grounds for believing that the value of his taxable supplies in the period of one year beginning at that or any later time will not exceed £145,000,

and either that—

- (iii) at the end of any month, the value of his supplies to persons registered in other member States in the period of one year then ending is less than £11,000, or

- (iv) at any time, there are reasonable grounds for believing that the value of his supplies to persons registered in other member States in the period of one year beginning at that or any later time will not exceed £11,000,
the Commissioners may allow that person to submit statements in respect of periods identical to those that have been allowed for the making of his returns and each statement shall contain full information as specified in paragraphs (3), (4) and (5) below, as the case may require, and a declaration signed by him that the statement is true and complete; and
 - (d) where the Commissioners consider it necessary in a particular case, they may allow or direct a taxable person to submit statements to a specified address.
- (2) Where the Commissioners allow a statement to be submitted as is mentioned in the proviso to paragraph (1) above, that statement shall be submitted—
- (a) where sub-paragraph (a) of the proviso applies, no later than 42 days after the end of the quarter in which the month in question occurs;
 - (b) where sub-paragraph (b) of the proviso applies, no later than 42 days after the end of the period of the year to which the statement relates; and
 - (c) where sub-paragraph (c) of the proviso applies, no later than 42 days after the end of the period in respect of which the Commissioners have allowed a return to be furnished.
- (3) Save as the Commissioners may otherwise allow or direct, a taxable person shall in any statement such as is mentioned in paragraph (1) above specify—
- (a) his name, address and registration number which number shall include the prefix GB,
 - (b) the date of the submission of the statement,
 - (c) the date of the last day of the period to which the statement refers,
 - (d) the registration number of each person acquiring or deemed to have acquired goods in the period, including the alphabetical code of the member State in which each such person is registered, and
 - (e) the total value of the goods supplied in the period to each person mentioned in sub-paragraph (d) above, which value shall include any amount such as is mentioned in paragraph (4)(c) below.
- (4) Where goods are dispatched or transported from one member State to another member State for the performance of contract work and the goods are to be returned, the taxable person shall specify in the statement required under paragraph (1) above the following—
- (a) the information mentioned in paragraph (3) above,
 - (b) the figure “1” in the box marked “indicator” on the form numbered 12 in Schedule 1 to these Regulations in each case where the goods have been dispatched, transported or returned, and
 - (c) the total value of any processing work carried out upon the goods by the taxable person.
- (5) Where a taxable person makes a supply such as is mentioned in regulation 18(1), he shall specify in the statement required under paragraph (1) above the following—
- (a) the information mentioned in paragraph (3) above,
 - (b) the figure “2” in the box marked “indicator” on the form numbered 12 in Schedule 1 to these Regulations, and
 - (c) the total value of the goods supplied by him.
- (6) Every taxable person who in any period of a quarter has made a supply of a new means of transport to a person for the purpose of acquisition by him in another member State shall in relation to that period submit to the Commissioners no later than 42 days after the end of that period a statement

containing the particulars (including the declaration made by him) set out in the form numbered 13 in Schedule 1 to these Regulations,

provided that where the Commissioners consider it necessary in a particular case, they may allow or direct a taxable person to submit the statement to a specified address.

Final statements

23. Any taxable person who ceases to be registered under Schedule 1 to the Act shall, unless another person has been registered with the registration number of and in substitution for him under regulation 6(3), submit to the Commissioners a final statement on either of the forms in Schedule 1 to these Regulations numbered 12 or 13 or both, as the case may require, and unless the Commissioners in any case otherwise allow or direct, any such statement shall contain—

- (a) the information specified in paragraphs (3), (4) and (5) of regulation 22, or the full information required by the form numbered 13 in Schedule 1 to these Regulations or both, as the case may require, and
- (b) a declaration signed by him that the statement is true and complete,

and the statement shall be submitted no later than 42 days after the date with effect from which his registration has been cancelled.

PART V

ACCOUNTING, PAYMENT AND RECORDS

Interpretation of Part V

24. In this Part—

“increase in consideration” means an increase in the consideration due on a supply made by a taxable person which is evidenced by a credit or debit note or any other document having the same effect and “decrease in consideration” is to be interpreted accordingly;

“insolvent person” means—

- (a) an individual who has been adjudged bankrupt;
- (b) a company in relation to which—
 - (i) a voluntary arrangement under Part I of the Insolvency Act 1986⁽⁴⁾ has been approved,
 - (ii) an administration order has been made,
 - (iii) an administrative receiver has been appointed,
 - (iv) a resolution for voluntary winding up has been passed, or
 - (v) an order for its winding-up has been made by the court at a time when it had not already gone into liquidation by passing a resolution for voluntary winding-up;

“negative entry” means an amount entered into the VAT account as a negative amount;

“positive entry” means an amount entered into the VAT account as a positive amount;

“VAT allowable portion”, “VAT payable portion” and “VAT account” have the meanings given in regulation 33;

(4) 1986 c. 45.

“the Removal Order” means the Value Added Tax (Removal of Goods) Order 1992⁽⁵⁾;

“the owner” has the same meaning as in article 2 of the Removal Order.

Making of returns

25. —

(1) Every person who is registered or was or is required to be registered shall, in respect of every period of a quarter or in the case of a person who is registered, every period of 3 months ending on the dates notified either in the certificate of registration issued to him or otherwise, not later than the last day of the month next following the end of the period to which it relates, make to the Controller a return on the form numbered 4 in Schedule 1 to these Regulations showing the amount of VAT payable by or to him and containing full information in respect of the other matters specified in the form and a declaration, signed by him, that the return is true and complete;

provided that—

- (a) the Commissioners may allow or direct a person to make returns in respect of periods of one month and to make those returns within one month of the periods to which they relate;
- (b) the first return shall be for the period which includes the effective date determined in accordance with Schedules 1, 2 and 3 to the Act upon which the person was or should have been registered, and the said period shall begin on that date;
- (c) where the Commissioners consider it necessary in any particular case to vary the length of any period or the date on which any period begins or ends or by which any return shall be made, they may allow or direct any person to make returns accordingly, whether or not the period so varied has ended;
- (d) where the Commissioners consider it necessary in any particular case, they may allow or direct a person to make returns to a specified address.

(2) Any person to whom the Commissioners give any direction in pursuance of the proviso to paragraph (1) above shall comply therewith.

(3) Where for the purposes of this Part the Commissioners have made a requirement of any person pursuant to regulation 30—

- (a) the period in respect of which taxable supplies were being made by the person who died or became incapacitated shall end on the day previous to the date when death or incapacity took place; and
- (b) subject to sub-paragraph (1)(c) above, a return made on his behalf shall be made in respect of that period no later than the last day of the month next following the end of that period; and
- (c) the next period shall start on the day following the aforesaid period and it shall end, and all subsequent periods shall begin and end, on the dates previously determined under paragraph (1) above.

(4) Any person who—

- (a) ceases to be liable to be registered, or
- (b) ceases to be entitled to be registered under either or both of paragraphs 9 and 10 of Schedule 1 to the Act,

shall, unless another person has been registered with his registration number in substitution for him under regulation 6, make to the Controller a final return on the form numbered 5 in Schedule 1 to these Regulations and any such return shall contain full information in respect of the matters specified in the form and a declaration, signed by him, that the return is true and complete and shall

(5) [S.I. 1992/3111](#).

be made, in the case of a person who was or is registered, within one month of the effective date for cancellation of his registration, and in the case of any other person, within one month of the date upon which he ceases to be liable to be registered, and in either case shall be in respect of the final period ending on the date aforementioned and be in substitution for the return for the period in which such date occurs.

(5) The Commissioners may allow VAT chargeable in any period to be treated as being chargeable in such later period as they may specify.

Accounting for VAT on an acquisition by reference to the value shown on an invoice

26. Where the time of the acquisition of any goods from another member State is determined by reference to the issue of an invoice such as is described in regulation 83, VAT shall be accounted for and paid in respect of the acquisition only on so much of its value as is shown on that invoice.

Supplies under Schedule 4, paragraph 7

27. Where goods are deemed to be supplied by a taxable person by virtue of paragraph 7 of Schedule 4 to the Act, the auctioneer on a sale by auction or, where the sale is otherwise than by auction, the person selling the goods, shall, whether or not registered under the Act, within 21 days of the sale—

- (a) furnish to the Controller a statement showing—
 - (i) his name and address and, if registered, his registration number,
 - (ii) the name, address and registration number of the person whose goods were sold,
 - (iii) the date of the sale,
 - (iv) the description and quantity of goods sold at each rate of VAT, and
 - (v) the amount for which they were sold and the amount of VAT charged at each rate,
- (b) pay the amount of VAT due, and
- (c) send to the person whose goods were sold a copy of the statement referred to in subparagraph (a) above, and the auctioneer or person selling the goods, as the case may be, and the person whose goods were sold shall exclude the VAT chargeable on that supply of those goods from any return made under these Regulations.

Estimation of output tax

28. Where the Commissioners are satisfied that a person is not able to account for the exact amount of output tax chargeable in any period, he may estimate a part of his output tax for that period, provided that any such estimated amount shall be adjusted and exactly accounted for as VAT chargeable in the next prescribed accounting period or, if the exact amount is still not known and the Commissioners are satisfied that it could not with due diligence be ascertained, in the next but one prescribed accounting period.

Claims for input tax

29. —

(1) Subject to paragraph (2) below, and save as the Commissioners may otherwise allow or direct either generally or specially, a person claiming deduction of input tax under section 25(2) of the Act shall do so on a return made by him for the prescribed accounting period in which the VAT became chargeable.

(2) At the time of claiming deduction of input tax in accordance with paragraph (1) above, a person shall, if the claim is in respect of—

- (a) a supply from another taxable person, hold the document which is required to be provided under regulation 13;
- (b) a supply under section 8(1) of the Act, hold the relative invoice from the supplier;
- (c) an importation of goods, hold a document authenticated or issued by the proper officer, showing the claimant as importer, consignee or owner and showing the amount of VAT charged on the goods;
- (d) goods which have been removed from warehouse, hold a document authenticated or issued by the proper officer showing the claimant's particulars and the amount of VAT charged on the goods;
- (e) an acquisition by him from another member State of any goods other than a new means of transport, hold a document required by the authority in that other member State to be issued showing his registration number including the prefix "GB", the registration number of the supplier including the alphabetical code of the member State in which the supplier is registered, the consideration for the supply exclusive of VAT, the date of issue of the document and description sufficient to identify the goods supplied; or
- (f) an acquisition by him from another member State of a new means of transport, hold a document required by the authority in that other member State to be issued showing his registration number including the prefix "GB", the registration number of the supplier including the alphabetical code of the member State in which the supplier is registered, the consideration for the supply exclusive of VAT, the date of issue of the document and description sufficient to identify the acquisition as a new means of transport as specified in section 95 of the Act;

provided that where the Commissioners so direct, either generally or in relation to particular cases or classes of cases, a claimant shall hold, instead of the document or invoice (as the case may require) specified in sub-paragraph (a), (b), (c), (d), (e) or (f) above, such other documentary evidence of the charge to VAT as the Commissioners may direct.

(3) Where the Commissioners are satisfied that a person is not able to claim the exact amount of input tax to be deducted by him in any period, he may estimate a part of his input tax for that period, provided that any such estimated amount shall be adjusted and exactly accounted for as VAT deductible in the next prescribed accounting period or, if the exact amount is still not known and the Commissioners are satisfied that it could not with due diligence be ascertained, in the next but one prescribed accounting period.

Persons acting in a representative capacity

30. Where any person subject to any requirements under this Part dies or becomes incapacitated and control of his assets passes to another person, being a personal representative, trustee in bankruptcy, receiver, liquidator or person otherwise acting in a representative capacity, that other person shall, if the Commissioners so require and so long as he has such control, comply with these requirements, provided that any requirement to pay VAT shall only apply to that other person to the extent of the assets of the deceased or incapacitated person over which he has control; and save to the extent aforesaid this Part shall apply to such a person, so acting, in the same way as it would have applied to the deceased or incapacitated person had that person not been deceased or incapacitated.

Records

31. —

(1) Every taxable person shall, for the purpose of accounting for VAT, keep the following records—

- (a) his business and accounting records,

- (b) his VAT account,
 - (c) copies of all VAT invoices issued by him,
 - (d) all VAT invoices received by him,
 - (e) documentation received by him relating to acquisitions by him of any goods from other member States,
 - (f) copy documentation issued by him relating to the transfer, dispatch or transportation of goods by him to other member States,
 - (g) documentation received by him relating to the transfer, dispatch or transportation of goods by him to other member States,
 - (h) documentation relating to importations and exportations by him, and
 - (i) all credit notes, debit notes, or other documents which evidence an increase or decrease in consideration that are received, and copies of all such documents that are issued by him.
- (2) The Commissioners may—
- (a) in relation to a trade or business of a description specified by them, or
 - (b) for the purposes of any scheme established by, or under, Regulations made under the Act,
- supplement the list of records required in paragraph (1) above by a notice published by them for that purpose.
- (3) Every person who, at a time when he is not a taxable person, acquires in the United Kingdom from another member State any goods which are subject to a duty of excise or consist of a new means of transport shall, for the purposes of accounting for VAT, keep such records with respect to the acquisition as may be specified in any notice published by the Commissioners in pursuance of this regulation.

The VAT account

32. —

- (1) Every taxable person shall keep and maintain, in accordance with this regulation, an account to be known as the VAT account.
- (2) The VAT account shall be divided into separate parts relating to the prescribed accounting periods of the taxable person and each such part shall be further divided into 2 portions to be known as “the VAT payable portion” and “the VAT allowable portion”.
- (3) The VAT payable portion for each prescribed accounting period shall comprise—
- (a) a total of the output tax due from the taxable person for that period,
 - (b) a total of the output tax due on acquisitions from other member States by the taxable person for that period,
 - (c) every correction or adjustment to the VAT payable portion which is required or allowed by regulation 34, 35 or 38, and
 - (d) every adjustment to the amount of VAT payable by the taxable person for that period which is required, or allowed, by or under any Regulations made under the Act.
- (4) The VAT allowable portion for each prescribed period shall comprise—
- (a) a total of the input tax allowable to the taxable person for that period by virtue of section 26 of the Act,
 - (b) a total of the input tax allowable in respect of acquisitions from other member States by the taxable person for that period by virtue of section 26 of the Act,

- (c) every correction or adjustment to the VAT allowable portion which is required or allowed by regulation 34, 35 or 38, and
- (d) every adjustment to the amount of input tax allowable to the taxable person for that period which is required, or allowed, by or under any Regulations made under the Act.

The register of temporary movement of goods to and from other member States

33. —

(1) Every taxable person shall keep and maintain, in accordance with this regulation, a register to be known as the register of temporary movement of goods to and from other member States.

(2) Where goods have been moved to or received from another member State and they are to be returned within a period of 2 years of the date of their first removal or receipt, as the case may be, the register shall contain the following information—

- (a) the date of removal of goods to another member State,
- (b) the date of receipt of the goods mentioned in sub-paragraph (a) above when they are returned from the member State mentioned in that sub-paragraph or another member State,
- (c) the date of receipt of goods from another member State,
- (d) the date of removal of the goods mentioned in sub-paragraph (c) above when they are returned to the member State mentioned in that sub-paragraph or another member State,
- (e) a description of the goods sufficient to identify them,
- (f) a description of any process, work or other operation carried out on the goods either in the United Kingdom or in another member State,
- (g) the consideration for the supply of the goods, and
- (h) the consideration for the supply of any processing, work or other operation carried out on the goods either in the United Kingdom or another member State.

(3) The Commissioners may in relation to a trade or business of a description specified by them supplement the list of information required in paragraph (2) above by a notice published by them for that purpose.

Correction of errors

34. —

(1) This regulation applies where a taxable person has made a return, or returns, to the Controller which overstated or understated his liability to VAT or his entitlement to a payment under section 25(3) of the Act.

(2) In this regulation—

- (a) “under-declarations of liability” means the aggregate of—
 - (i) the amount (if any) by which credit for input tax was overstated in any return, and
 - (ii) the amount (if any) by which output tax was understated in any return;
- (b) “over-declarations of liability” means the aggregate of—
 - (i) the amount (if any) by which credit for input tax was understated in any return, and
 - (ii) the amount (if any) by which output tax was overstated in any return.

(3) Where, in relation to all such overstatements or understatements discovered by the taxable person during a prescribed accounting period, the difference between—

- (a) under-declarations of liability, and

- (b) over-declarations of liability,

does not exceed £2,000, the taxable person may correct his VAT account in accordance with this regulation.

- (4) In the VAT payable portion—

- (a) where the amount of any overstatements of output tax is greater than the amount of any understatements of output tax a negative entry shall be made for the amount of the excess; or

- (b) where the amount of any understatements of output tax is greater than the amount of any overstatements of output tax a positive entry shall be made for the amount of the excess.

- (5) In the VAT allowable portion—

- (a) where the amount of any overstatements of credit for input tax is greater than the amount of any understatements of credit for input tax a negative entry shall be made for the amount of the excess; or

- (b) where the amount of any understatements of credit for input tax is greater than the amount of any overstatements of credit for input tax a positive entry shall be made for the amount of the excess.

- (6) Every entry required by this regulation shall—

- (a) be made in that part of the VAT account which relates to the prescribed accounting period in which the overstatements or understatements in any earlier returns were discovered,

- (b) make reference to the returns to which it applies, and

- (c) make reference to any documentation relating to the overstatements or understatements.

(7) Where the conditions referred to in paragraph (3) above do not apply, the VAT account may not be corrected by virtue of this regulation.

- 35.** Where a taxable person has made an error—

- (a) in accounting for VAT, or

- (b) in any return made by him,

then, unless he corrects that error in accordance with regulation 34, he shall correct it in such manner and within such time as the Commissioners may require.

Notification of acquisition of goods subject to excise duty by non-taxable persons and payment of VAT

- 36.** —

- (1) Where—

- (a) a taxable acquisition of goods subject to excise duty takes place in the United Kingdom,

- (b) the acquisition is not in pursuance of a taxable supply, and

- (c) the person acquiring the goods is not a taxable person at the time of the acquisition,

the person acquiring the goods shall notify the Commissioners of the acquisition at the time of the acquisition or the arrival of the goods in the United Kingdom, whichever is the later.

(2) The notification shall be in writing in the English language and shall contain the following particulars—

- (a) the name and current address of the person acquiring the goods,

- (b) the time of the acquisition,

- (c) the date when the goods arrived in the United Kingdom,

- (d) the value of the goods including any excise duty payable, and
- (e) the VAT due upon the acquisition.

(3) The notification shall include a declaration, signed by the person who is required to make the notification, that all the information entered in it is true and complete.

(4) Any person required to notify the Commissioners of an acquisition of goods subject to excise duty shall pay the VAT due upon the acquisition at the time of notification and, in any event, no later than the last day on which he is required by this regulation to make such notification.

(5) Where a person required to make notification dies or becomes incapacitated and control of his assets passes to another person, being a personal representative, trustee in bankruptcy, receiver, liquidator or person otherwise acting in a representative capacity, that other person shall, so long as he has such control, be required to make the notification referred to in this regulation, provided that the requirement to pay the VAT due upon the acquisition shall apply to that other person only to the extent of the assets of the deceased or incapacitated person over which he has control and, save to the extent aforesaid, this regulation shall apply to such person so acting in the same way as it would have applied to the deceased or incapacitated person had that person not been deceased or incapacitated.

Claims for recovery of overpaid VAT

37. Any claim under section 80 of the Act shall be made in writing to the Commissioners and shall, by reference to such documentary evidence as is in the possession of the claimant, state the amount of the claim and the method by which that amount was calculated.

Adjustments in the course of business

38. —

(1) This regulation applies where—

- (a) there is an increase in consideration for a supply, or
- (b) there is a decrease in consideration for a supply,

which includes an amount of VAT and the increase or decrease occurs after the end of the prescribed accounting period in which the original supply took place.

(2) Where this regulation applies, the taxable person shall adjust his VAT account in accordance with the provisions of this regulation.

(3) The maker of the supply shall—

- (a) in the case of an increase in consideration, make a positive entry; or
- (b) in the case of a decrease in consideration, make a negative entry,

for the relevant amount of VAT in the VAT payable portion of his VAT account.

(4) The recipient of the supply, if he is a taxable person, shall—

- (a) in the case of an increase in consideration, make a positive entry; or
- (b) in the case of a decrease in consideration, make a negative entry,

for the relevant amount of VAT in the VAT allowable portion of his VAT account.

(5) Every entry required by this regulation shall, except where paragraph (6) below applies, be made in that part of the VAT account which relates to the prescribed accounting period in which the increase or decrease is given effect in the business accounts of the taxable person.

(6) Any entry required by this regulation to be made in the VAT account of an insolvent person shall be made in that part of the VAT account which relates to the prescribed accounting period in which the supply was made or received.

(7) None of the circumstances to which this regulation applies is to be regarded as giving rise to any application of regulations 34 and 35.

Calculation of returns

39. —

(1) Where a person is required by regulations made under the Act to make a return to the Controller, the amounts to be entered on that return shall be determined in accordance with this regulation.

(2) In the box opposite the legend “VAT due in this period on sales and other outputs” shall be entered the aggregate of all the entries in the VAT payable portion of that part of the VAT account which relates to the prescribed accounting period for which the return is made, except that the total of the output tax due in that period on acquisitions from other member States shall be entered instead in the box opposite the legend “VAT due in this period on acquisitions from other EC member States”.

(3) In the box opposite the legend “VAT reclaimed in this period on purchases and other inputs” (including acquisitions from other member States) shall be entered the aggregate of all the entries in the VAT allowable portion of that part of the VAT account which relates to the prescribed accounting period for which the return is made.

(4) Where any correction has been made and a return calculated in accordance with these Regulations then any such return shall be regarded as correcting any earlier returns to which regulations 34 and 35 apply.

VAT to be accounted for on returns and payment of VAT

40. Save as the Commissioners may otherwise allow or direct—

- (a) any person making a return shall account therein for all his output tax and all VAT for which he is accountable by virtue of Part XVI of these Regulations in respect of the period to which the return relates, and the amounts to be entered on that return shall be determined in accordance with these Regulations; and
- (b) any person required to make a return shall pay to the Controller such amount of VAT as is payable by him in respect of the period to which the return relates not later than the last day on which he is required to make that return.

Accounting etc. by reference to the duty point, and prescribed accounting period in which VAT on certain supplies is to be treated as being chargeable

41. —

(1) Where in respect of—

- (a) any supply by a taxable person of dutiable goods, or
- (b) an acquisition by any person from another member State of dutiable goods,

the time of supply or acquisition, as the case may be, precedes the duty point in relation to those goods, the VAT in respect of that supply or acquisition shall be accounted for and paid, and any question as to the inclusion of any duty in the value of the supply or acquisition shall be determined, by reference to the duty point or by reference to such later time as the Commissioners may allow.

(2) Any VAT chargeable on a supply of goods or services by one member of a group to another to which section 43(1)(a) of the Act does not apply because the person making the supply and the person supplied do not continue to be members of that group until the time specified in paragraph (3) below shall be treated as chargeable (if it would otherwise be chargeable in an earlier period) in the first prescribed accounting period in which either the body making the supply or the body supplied (or both) no longer continue to be members of that group.

- (3) The time referred to in paragraph (2) above is—
- (a) in the case of a supply of goods which are to be removed in pursuance of the supply, a time after the removal,
 - (b) in the case of any other supply of goods, a time after the goods have been made available, in pursuance to the supply, to the body supplied, or
 - (c) in the case of a supply of services, a time after the services have been performed.

Accounting for VAT on the removal of goods

42. —

(1) This regulation applies where goods have been removed from a member State to a place in any other member State, and that removal falls within any of paragraphs (d), (f) or (g) of article 4 of the Removal Order.

(2) Except where paragraph (3) below applies in respect of the same prescribed accounting period, the owner shall not make any entry in the VAT payable portion of that part of his VAT account which relates to the prescribed accounting period in which he would be liable to account for any VAT chargeable in respect of the removal.

(3) Where—

- (a) the condition described in article 5 of the Removal Order has not been complied with, and
- (b) an amount of VAT has become payable,

the owner shall make a positive entry for the relevant amount of VAT in the VAT payable portion of that part of his VAT account which relates to the prescribed accounting period in which the condition was not complied with.

Goods removed from warehousing regime

43. —

(1) This regulation applies to a registered person who is an approved person within the meaning of the Excise Duties (Deferred Payment) Regulations 1992⁽⁶⁾ in respect of goods which are at a specified warehouse.

(2) Where a person to whom this regulation applies is the person who is liable under section 18(4)(b) of the Act to pay VAT on a supply of goods while the goods are subject to a warehousing regime, he may pay that VAT at or before the relevant time determined in accordance with paragraph (3) below instead of at the time provided for by the said section 18(4)(b).

(3) For the purposes of paragraph (2) above the relevant time means—

- (a) in relation to hydrocarbon oils, the 15th day of the month immediately following the month in which the hydrocarbon oils were removed from the warehousing regime;
- (b) in relation to any other goods subject to a duty of excise, the day (payment day) on which the registered person is required to pay the excise duty on the goods in accordance with regulation 5 of the Excise Duties (Deferred Payment) Regulations 1992.

(4) Where any goods of a kind chargeable to a duty of excise qualify for any relief of that duty, that relief shall be disregarded for the purposes of determining the relevant time under paragraph (3) above.

(6) [S.I. 1992/3152](#).

PART VI

PAYMENTS ON ACCOUNT

Interpretation of Part VI

44. In this Part—

“body corporate” means a body corporate which is under a duty to make payments on account by virtue of the Value Added Tax (Payments on Account) Order 1993(7) and “relevant division” means a division of a body corporate by reference to the business of which that body corporate is under such a duty;

“payments on account” has the same meaning as in the Value Added Tax (Payments on Account) Order 1993.

Payments on Account

45. Save in a case to which regulation 48 applies, the Commissioners shall give to a taxable person who is under a duty to make payments on account notification in writing of—

- (a) the amounts that he is under a duty to pay,
- (b) how those amounts have been calculated, and
- (c) the times for payment of those amounts.

46. Save in a case to which regulation 48 applies, if in respect of a prescribed accounting period the total amount of the payment on account made by the taxable person exceeds the amount of VAT due from him in respect of that period, the amount of excess shall be paid to him by the Commissioners if and to the extent that it is not required by section 81 of the Act to be set against any sum which he is liable to pay to them.

47. Where a taxable person fails to make a payment on account by the last day by which he is required to make it, that payment on account shall be recoverable as if it were VAT due from him.

48. —

(1) The Commissioners shall notify a relevant division in writing of—

- (a) the amounts of the payments on account that the body corporate is under a duty to make by reference to the business of that division,
- (b) how those amounts have been calculated, and
- (c) the times for payment of those amounts.

(2) If in respect of a prescribed accounting period the total amount of the payments on account made by a body corporate by reference to the business of a particular relevant division exceeds the amount of VAT due from the body corporate in respect of that period by reference to that business, the amount of the excess shall be paid to the body corporate through that division by the Commissioners if and to the extent that it is not required by section 81 of the Act to be set against any sum which the body corporate is liable to pay to them.

(3) Section 81 of the Act shall not require any amount which is due to be paid by the Commissioners to a body corporate under paragraph (2) above by reference to the business of a particular relevant division to be set against any sum due from the body corporate otherwise than by reference to that business or to the liabilities of the body corporate arising in connection with that division.

(7) [S.I. 1993/2001](#).

PART VII

ANNUAL ACCOUNTING

Interpretation of Part VII

49. In this Part—

“authorised person” means a person who has been authorised by the Commissioners in accordance with regulation 50, and “authorised” and “authorisation” shall be construed accordingly;

“current accounting year” means the period of 12 months commencing at the date of authorisation by the Commissioners set out in regulation 50 or, while a person remains authorised, the most recent anniversary thereof, and is a prescribed accounting period within the meaning of section 25(1) of the Act.

Annual accounting scheme

50. The Commissioners may, subject to this Part, authorise a taxable person to account for VAT in accordance with a scheme (hereinafter referred to in this Part as “the scheme”) by which he—

- (a) pays by direct debit on his bank account in 9 equal monthly instalments commencing on the last day of the fourth month of his current accounting year 90 per cent. of his liability for VAT as estimated by the Commissioners for that current accounting year, and
- (b) makes by the last day of the second month following the end of that current accounting year a return in respect of that year, together with any outstanding payment due to the Commissioners in respect of his liability for VAT declared on that return.

Admission to the scheme

51. —

(1) A taxable person shall be eligible to apply for authorisation under regulation 50 if—

- (a) he has been registered for at least one year at the date of his application for authorisation,
- (b) he has reasonable grounds for believing that the value of taxable supplies made or to be made by him in the period of one year beginning on the date of his application for authorisation will not exceed £300,000,
- (c) he has made all the returns which he is required to make,
- (d) his total credits for input tax did not exceed his total output tax in the year prior to his application for authorisation,
- (e) his registration is not in the name of a group under section 43(1) of the Act,
- (f) his registration is not in the name of a division under section 46(1) of the Act, and
- (g) he has not in the 3 years preceding the date of his application for authorisation had his authorisation terminated under regulation 55(1).

(2) The Commissioners may refuse to authorise a person under regulation 50 where they consider it necessary to do so for the protection of the revenue.

52. —

(1) An authorised person may start to use the scheme at the beginning of the current accounting year indicated in the notification of that authorisation.

(2) An authorised person may remain in the scheme unless—

- (a) at the end of any current accounting year the value of taxable supplies made by him in that year has exceeded by 25 per cent. or more the figure of £300,000, in which case his authorisation shall terminate forthwith;
- (b) at any time there is reason to believe that the value of taxable supplies made by him in a current accounting year will exceed by 25 per cent. or more the figure of £300,000, in which case he shall within 30 days notify the Commissioners, who may terminate his authorisation; or
- (c) his authorisation is terminated in accordance with regulation 55.

53. An authorised person who ceases to operate the scheme either of his own volition or because the value of taxable supplies made by him exceeds the level provided for in regulation 52 shall account for and pay VAT as provided for otherwise than under this Part.

54. Where an authorised person becomes insolvent and ceases to trade, other than for the purpose of disposing of stocks and assets, or where such person ceases business or ceases to be registered or dies or becomes bankrupt or incapacitated, his authorisation shall terminate forthwith and he or his representative shall within 2 months make a return as provided for otherwise than under this Part accounting for and paying VAT in respect of supplies made during his current accounting year, subject to any adjustment for credit for input tax.

Expulsion from the scheme

55. —

(1) The Commissioners may terminate an authorisation in any case where—

- (a) a false statement has been made by or on behalf of an authorised person in relation to his application for authorisation, or
- (b) an authorised person fails to make by the due date his return in respect of the current accounting year, or
- (c) an authorised person fails to make any payment prescribed in regulation 50, or
- (d) an authorised person has failed to leave the scheme as provided for in regulation 52(2), or
- (e) it is necessary to do so for the protection of the revenue, or
- (f) an authorised person has not, in relation to a return made by him prior to authorisation, paid to the Commissioners all such sums shown as due thereon, or
- (g) an authorised person has not, in relation to any assessment made either under section 73 or section 76 of the Act, paid to the Commissioners all such sums shown as due thereon.

(2) A person whose authorisation has been terminated under paragraph (1) above shall account for and pay VAT as provided for otherwise than under this Part.

PART VIII

CASH ACCOUNTING

Interpretation of Part VIII

56. In this Part—

“money” means banknotes or coins;

“notice” means any notice published pursuant to this Part.

Cash accounting scheme

57. A taxable person may, subject to this Part and to such conditions as are described in a notice published by the Commissioners, account for VAT in accordance with a scheme (hereinafter referred to in this Part as “the scheme”) by which the operative dates for VAT accounting purposes shall be—

- (a) for output tax, the day on which payment or other consideration is received or the date of any cheque, if later; and
- (b) for input tax, the date on which payment is made or other consideration is given, or the date of any cheque, if later.

Admission to the scheme

58. —

(1) A taxable person shall be eligible to begin to operate the scheme if—

- (a) at any time, he has reasonable grounds for believing that the value of taxable supplies made or to be made by him in the period of one year then beginning will not exceed £350,000,
- (b) he has made all returns which he is required to make, and has—
 - (i) paid to the Commissioners all such sums shown as due on those returns and on any assessments made either under section 76 of, or Schedule 11 to, the Act, or
 - (ii) agreed an arrangement with the Commissioners for any outstanding amount of such sums as are referred to in sub-paragraph (i) above to be paid in instalments over a specified period, and
- (c) he has not in the period of one year preceding that time—
 - (i) been convicted of any offence in connection with VAT,
 - (ii) made any payment to compound proceedings in respect of VAT under section 152 of the Customs and Excise Management Act 1979⁽⁸⁾,
 - (iii) been assessed to a penalty under section 60 of the Act, or
 - (iv) by virtue of regulation 64(1), ceased to be entitled to continue to operate the scheme.

(2) The scheme shall not apply to lease purchase agreements, hire purchase agreements, conditional sale agreements, credit sale agreements or supplies where a VAT invoice is issued and full payment of the amount shown on the invoice is not due for a period in excess of 12 months from the date of the issue of the invoice.

59. Without prejudice to the right of a person to withdraw from the scheme, the Commissioners may vary the terms of the scheme by publishing a fresh notice.

60. —

(1) A person who becomes eligible to begin to operate the scheme may do so at the beginning of his next prescribed accounting period.

(2) A person may, subject to regulation 64, remain in the scheme unless at the end of one of his prescribed accounting periods the value of taxable supplies made by him in a period of one year then ending has exceeded £437,500 and the value of the taxable supplies made by him in the period of one year then beginning has exceeded £350,000, in which case he shall cease to operate the scheme with effect from the end of the second mentioned period of one year.

(3) A person may withdraw from the scheme at the end of one of his prescribed accounting periods where—

- (a) he derives no benefit from remaining in the scheme, or

(8) 1979 c. 2 ; section 152 is applied to all offences relating to VAT by section 72(12) of the Value Added Tax Act 1994 (c. 23) .

- (b) he is unable, by reason of his accounting system, to comply with the requirements of the scheme.

61. A person who ceases to operate the scheme either of his own volition or because the value of taxable supplies made by him exceeds the level provided for in regulation 60 may continue to use the scheme for supplies made and received while he operated the scheme, but shall not otherwise account for and pay VAT under this Part.

62. Where a person operating the scheme becomes insolvent and ceases to trade, other than for the purpose of disposing of stocks and assets, he shall within 2 months account for VAT on supplies made and received in the previous 6 months which has not otherwise been accounted for, subject to any adjustment for credit for input tax.

63. —

(1) Where a person operating the scheme ceases business or ceases to be registered, or dies or becomes bankrupt or incapacitated, he or his representative shall within 2 months or such longer period as the Commissioners may allow make a return accounting for, and pay, VAT on supplies made and received during the previous 6 months which has not otherwise been accounted for, subject to any adjustment for credit for input tax, and VAT in respect of any payment or other consideration received for earlier supplies must be accounted for and paid when received.

(2) Where a business or part of a business carried on by a person operating the scheme is transferred as a going concern and regulation 6(1) does not apply, the transferor shall within 2 months make a return accounting for, and pay, VAT on supplies made and received during the previous 6 months which has not otherwise been accounted for, subject to any adjustment for credit for input tax, and VAT in respect of any payment or other consideration received for earlier supplies must be accounted for and paid when received.

(3) Where a business carried on by a person operating the scheme is transferred in circumstances where regulation 6(2) applies, the transferee shall continue to account for and pay VAT as if he were a person operating the scheme on supplies made and received by the transferor prior to the date of transfer.

Withdrawal from the scheme

64. —

(1) A person shall not be entitled to continue to operate the scheme where—

- (a) he has, while operating the scheme, been convicted of an offence in connection with VAT or has made a payment to compound such proceedings under section 152 of the Customs and Excise Management Act 1979,
- (b) he has while operating the scheme been assessed to a penalty under section 60, 63, 67 or 69 of the Act or to a surcharge under section 59 of the Act,
- (c) he has failed to leave the scheme as required by regulation 60(2),
- (d) he has claimed input tax as though he had not been operating the scheme, or
- (e) the Commissioners consider it is necessary for the protection of the revenue that he shall not be so entitled.

(2) A person who, by virtue of paragraph (1) above, ceases to be entitled to continue to operate the scheme shall account for and pay on a return made for the prescribed accounting period in which he ceased to be so entitled—

- (a) all VAT which he would have been required to pay to the Commissioners during the time when he operated the scheme, if he had not then been operating the scheme, less
- (b) all VAT accounted for and paid to the Commissioners in accordance with the scheme,

subject to any adjustment for credit for input tax.

(3) A person who ceases to operate the scheme may be required to account for and pay on a return made for the prescribed accounting period in which he ceased to operate the scheme—

(a) all VAT which he would have been required to pay to the Commissioners during the time when he operated the scheme, if he had not then been operating the scheme, less

(b) all VAT accounted for and paid to the Commissioners in accordance with the scheme,

subject to any adjustment for credit for input tax, notwithstanding that he has already withdrawn from the scheme of his own volition.

Accounting

65. —

(1) Except in the circumstances set out in regulations 61 to 63, VAT shall be accounted for and paid to the Commissioners by the due date prescribed for the accounting period in which payment or other consideration for the supply is received.

(2) Input tax may be credited either in the prescribed accounting period in which payment or consideration for a supply is given, or in such later period as may be agreed with the Commissioners.

(3) A person operating the scheme shall obtain and keep for a period of 6 years, or such lesser period as the Commissioners may allow, a receipted and dated VAT invoice from any taxable person to whom he has made a payment in money in respect of a taxable supply, and in such circumstances a taxable person must on request provide such a receipted and dated VAT invoice.

(4) A person operating the scheme shall keep for a period of 6 years, or such lesser period as the Commissioners may allow, a copy of any receipt which he gives under paragraph (3) above.

PART IX

SUPPLIES BY RETAILERS

Interpretation of Part IX

66. In this Part—

“notice” means any notice or leaflet published by the Commissioners pursuant to this Part;

“scheme” means a method as referred to in regulation 67.

Retail schemes

67. —

(1) The Commissioners may permit the value which is to be taken as the value, in any prescribed accounting period or part thereof, of supplies by a retailer which are taxable at other than the zero rate to be determined by a method agreed with that retailer or by any method described in a notice published by the Commissioners for that purpose; and they may publish any notice accordingly.

(2) The Commissioners may vary the terms of any method by—

(a) publishing a fresh notice,

(b) publishing a notice which amends an existing notice, or

(c) adapting any method by agreement with any retailer.

68. The Commissioners may refuse to permit the value of taxable supplies to be determined in accordance with a scheme if it appears to them—

- (a) that the use of any particular scheme does not produce a fair and reasonable valuation during any period,
- (b) that it is necessary to do so for the protection of the revenue, or
- (c) that the retailer could reasonably be expected to account for VAT in accordance with regulations made under paragraph 2(1) of Schedule 11 to the Act.

69. No retailer may at any time use more than one scheme except as provided for in any notice or as the Commissioners may otherwise allow.

Notification of use of a scheme

70. Any retailer using any scheme shall notify the Commissioners in writing on every return made by him which scheme he is using.

Changing schemes

71. Save as the Commissioners may otherwise allow, a retailer who accounts for VAT on the basis of taxable supplies valued in accordance with any scheme shall, so long as he remains a taxable person, continue to do so for a period of not less than one year from the adoption of that scheme by him, and any change by a retailer from one scheme to another shall be made at the end of any complete year reckoned from the beginning of the prescribed accounting period in which he first adopted the scheme.

Ceasing to use a scheme

72. —

(1) A retailer shall notify the Commissioners before ceasing to account for VAT on the basis of taxable supplies valued in accordance with these regulations.

(2) A retailer may be required to pay VAT on such proportion as the Commissioners may consider fair and reasonable of any sums due to him at the end of the prescribed accounting period in which he last used a scheme.

Supplies under Schedule 8, Group 1

73. —

(1) Where the supplies by any retailer include both supplies of food which are zero-rated under Group 1 of Schedule 8 to the Act and supplies of food in the course of catering, he shall either—

- (a) keep such records as will enable the proportion of the value of such supplies which is to be attributed to zero-rated and all other supplies to be determined to the satisfaction of the Commissioners; or
- (b) where he can satisfy the Commissioners that it is impracticable to keep such records, make an estimate of the proportion of the value of such supplies which is to be attributed to zero-rated and all other supplies.

(2) Where any retailer makes an estimate in accordance with paragraph (1)(b) above, VAT shall be accounted for on the basis of that estimate; but, if at any time he has evidence, or the Commissioners are satisfied, that the estimate is no longer accurate, he shall thereupon make a further estimate in accordance with paragraph (1)(b) above and shall inform the Commissioners accordingly, and VAT shall be accounted for on the basis of such further estimate from such date as the Commissioners may direct.

(3) Where the Commissioners are not satisfied with any further estimate made under paragraph (2) above, they may determine the proportion of the value of supplies which is to be

attributed to the various descriptions of supplies and VAT shall be accounted for in accordance with such determination from such date as the Commissioners shall direct.

Supplies under Schedule 8, Group 12

74. —

(1) A retailer who makes supplies of a description for the time being specified in Group 12 of Schedule 8 to the Act shall, in making any calculations in order to use any scheme, make an adjustment to those calculations in the manner prescribed by a notice published by the Commissioners for that purpose or in accordance with any agreement made by them with any such retailer.

(2) The Commissioners may vary the manner of adjustment of such calculations either by publishing a fresh notice or by agreement with any retailer.

Change in VAT

75. Where pursuant to any enactment there is a change in the VAT charged on any supply, including a change to or from no VAT being charged on such supply, a retailer using any scheme shall take such steps relating to that scheme as are directed in any notice applicable to him or as may be agreed between him and the Commissioners.

PART X

TRADING STAMPS

Interpretation of Part X

76. In this Part, “promoter”, “trading stamp” and “trading stamp scheme” have the same meanings respectively as in the Trading Stamps Act 1964⁽⁹⁾ or, as the case may require, the Trading Stamps Act (Northern Ireland) 1965⁽¹⁰⁾.

Trading stamp scheme

77. Section 19(5) of the Act, in its application to a supply of goods in exchange for trading stamps under a trading stamp scheme, shall be modified by the substitution, for the reference to the amount there specified, of a reference to the amount that would fall to be taken as the value of any such supply under subsection (2) of that section if it were for a consideration in money calculated by the method prescribed in regulation 78.

78. The method of calculating the consideration referred to in regulation 77 shall be as follows—

(a) there shall be ascertained—

- (i) the total amount of money charged by the promoter, over such period as may be appropriate, to persons to whom he makes deliveries of trading stamps which are, under any Order made under section 5(3) of the Act, to be treated as neither supplies of goods nor supplies of services; plus
- (ii) the total of all charges made by the promoter in connection with supplies of goods made in exchange for trading stamps in that period; less

⁽⁹⁾ 1964 c. 71 .

⁽¹⁰⁾ 1965 c. 6 .

- (iii) the total amount paid in that period by the promoter to persons in respect of trading stamps redeemed for cash; less
- (iv) if the amount charged includes consideration for the supply by the promoter of goods or services other than those which he undertakes to supply in exchange for trading stamps, such amount as fairly represents the value of the supply of those other goods or services;
- (b) there shall also be ascertained the total number of trading stamps delivered by the promoter in the same period reduced by—
 - (i) the total number of trading stamps redeemed for cash in that period, and
 - (ii) the number of trading stamps that fairly represents, for that period, the average number of trading stamps not redeemed;
- (c) the average amount charged for each trading stamp, according to its denomination, delivered by the promoter in the same period shall be calculated by reference to the amount of money ascertained in accordance with paragraph (a) above and to the number of trading stamps ascertained in accordance with paragraph (b) above,

and accordingly the consideration for the supply of any goods in exchange for trading stamps shall be deemed to be an amount equal to the amount, calculated in accordance with this regulation, charged for the trading stamps required in exchange for such supply.

79. For the purposes of regulation 78, any amount charged by a promoter to a person to whom he makes deliveries of trading stamps and determined by reference to the number of trading stamps delivered shall be deemed to be charged for trading stamps.

80. This Part shall not apply in any case where a promoter makes a charge for any supply of goods or services to a person to whom he delivers trading stamps which is not determined by reference to the number of trading stamps delivered.

PART XI

TIME OF SUPPLY AND TIME OF ACQUISITION

Goods for private use and free supplies of services

81. —

(1) Where the services referred to in paragraph 5(4) of Schedule 4 to the Act are supplied for any period, they shall be treated as being supplied on the last day of the supplier's prescribed accounting period, or of each such accounting period, in which the goods are made available or used.

(2) Where services specified in an order made by the Treasury under section 5(4) of the Act are supplied for any period, they shall be treated as being supplied on the last day of the supplier's prescribed accounting period, or of each such accounting period, in which the services are performed.

Services from outside the United Kingdom

82. Services which are treated as made by a taxable person under section 8(1) of the Act shall be treated as being supplied when the supplies are paid for or, if the consideration is not in money, on the last day of the prescribed accounting period in which the services are performed.

Time of acquisition

83. Where the time that goods are acquired from another member State falls to be determined in accordance with section 12(1)(b) of the Act by reference to the day of the issue, in respect of the transaction in pursuance of which the goods are acquired, of an invoice of such description as the Commissioners may by regulations prescribe, the invoice shall be one which is issued by the supplier under the provisions of the law of the member State where the goods were supplied, corresponding in relation to that member State, to the provisions of regulations 13 and 14.

Supplies of land—special cases**84. —**

(1) Where by or under any enactment an interest in, or right over, land is compulsorily purchased and, at the time determined in accordance with section 6(2) or (3) of the Act, the person (the grantor) from whom it is purchased does not know the amount of payment that he is to receive in respect of the purchase then goods or, as the case may require, services shall be treated as supplied each time the grantor receives any payment for the purchase.

(2) Where a person (the grantor) grants or assigns the fee simple in any land, and at the time of the grant or assignment, the total consideration for it is not determinable, then goods shall be treated as separately and successively supplied at the following times—

- (a) the time determined in accordance with section 6(2), (4), (5), (6), (9) or (10) of the Act, as the case may require, and
- (b) the earlier of the following times—
 - (i) each time that any part of the consideration which was not determinable at the time mentioned in sub-paragraph (a) above is received by the grantor, or
 - (ii) each time that the grantor issues a VAT invoice in respect of such a part.

Leases treated as supplies of goods**85. —**

(1) Subject to paragraph (2) below, where the grant of a tenancy or lease is a supply of goods by virtue of paragraph 4 of Schedule 4 to the Act, and the whole or part of the consideration for that grant is payable periodically or from time to time, goods shall be treated as separately and successively supplied at the earlier of the following times—

- (a) each time that a part of the consideration is received by the supplier, or
- (b) each time that the supplier issues a VAT invoice relating to the grant.

(2) Where in respect of the grant of a tenancy or lease such as is mentioned in paragraph (1) above the supplier, at or about the beginning of any period not exceeding one year, issues a VAT invoice containing, in addition to the particulars specified in regulation 14, the following particulars—

- (a) the dates on which any parts of the consideration are to become due for payment in the period,
- (b) the amount payable (excluding VAT) on each such date, and
- (c) the rate of VAT in force at the time of the issue of the VAT invoice and the amount of VAT chargeable in accordance with that rate on each of such payments,

goods shall be treated as separately and successively supplied each time that a payment in respect of the tenancy or lease becomes due or is received by the supplier, whichever is the earlier.

(3) Where, on or before any of the dates that a payment is due as stated on an invoice issued as described in paragraph (2) above, there is a change in the VAT chargeable on supplies of the description to which the invoice relates, that invoice shall cease to be treated as a VAT invoice in

respect of any such supplies for which payments are due after the change (and not received before the change).

Supplies of water, gas or any form of power, heat, refrigeration or ventilation

86. —

(1) Except in relation to a supply to which subsections (7) and (8) of section 6 of the Act apply, and subject to paragraphs (2) and (3) below, a supply of—

- (a) water other than—
 - (i) distilled water, deionised water and water of similar purity, and
 - (ii) water comprised in any of the excepted items set out in Group 1 of Schedule 8 to the Act, or
- (b) coal gas, water gas, producer gases or similar gases, or
- (c) petroleum gases, or other gaseous hydrocarbons, in a gaseous state, or
- (d) any form of power, heat, refrigeration or ventilation,

shall be treated as taking place each time that a payment in respect of the supply is received by the supplier, or a VAT invoice relating to the supply is issued by the supplier, whichever is the earlier.

(2) Subject to paragraph (3) below, where the whole or part of the consideration for a supply such as is described in paragraph (1)(a), (b) or (c) above or of power in the form of electricity is determined or payable periodically or from time to time, goods shall be treated as separately and successively supplied at the earlier of the following times—

- (a) each time that a part of the consideration is received by the supplier, or
- (b) each time that the supplier issues a VAT invoice relating to the supply.

(3) Where separate and successive supplies as described in paragraph (2) above are made under an agreement which provides for successive payments, and the supplier at or about the beginning of any period not exceeding one year, issues a VAT invoice containing, in addition to the particulars specified in regulation 14, the following particulars—

- (a) the dates on which payments under the agreement are to become due in the period,
- (b) the amount payable (excluding VAT) on each such date, and
- (c) the rate of VAT in force at the time of issue of the VAT invoice and the amount of VAT chargeable in accordance with that rate on each of such payments,

goods shall be treated as separately and successively supplied each time that payment in respect of the supply becomes due or is received by the supplier, whichever is the earlier.

(4) Where, on or before any of the dates that a payment is due as stated on an invoice issued as described in paragraph (3) above, there is a change in the VAT chargeable on supplies of the description to which the invoice relates, that invoice shall cease to be treated as a VAT invoice in respect of any such supplies for which payments are due after the change (and not received before the change).

(5) A supply mentioned in paragraph (1)(a), (b), (c) or (d) above to which subsections (7) and (8) of section 6 of the Act apply shall be treated as taking place on the day of the issue of a VAT invoice in respect of the supply.

Acquisitions of water, gas or any form of power, heat, refrigeration or ventilation

87. Where goods described in regulation 86(1)(a), (b), (c) or (d) are acquired from another member State and the whole or part of any consideration comprised in the transaction in pursuance of which the goods are acquired is payable periodically, or from time to time, goods shall be treated

as separately and successively acquired on each occasion that the supplier issues, in respect of the transaction, an invoice such as is described in regulation 83.

Supplier's goods in possession of buyer

88. —

(1) Except in relation to a supply mentioned in section 6(2)(c) of the Act, or to a supply to which subsections (7) and (8) of section 6 of the Act apply, where goods are supplied under an agreement whereby the supplier retains the property therein until the goods or part of them are appropriated under the agreement by the buyer and in circumstances where the whole or part of the consideration is determined at that time, a supply of any of the goods shall be treated as taking place at the earliest of the following dates—

- (a) the date of appropriation by the buyer,
- (b) the date when a VAT invoice is issued by the supplier, or
- (c) the date when a payment is received by the supplier.

(2) If, within 14 days after appropriation of the goods or part of them by the buyer as mentioned in paragraph (1) above, the supplier issues a VAT invoice in respect of goods appropriated, the provisions of section 6(5) of the Act shall apply to that supply.

Retention payments

89. Where any contract for the supply of goods (other than for a supply to which subsections (7) and (8) of section 6 of the Act apply) or for the supply of services provides for the retention of any part of the consideration by a person pending full and satisfactory performance of the contract, or any part of it, by the supplier, goods or services (as the case may require) shall be treated as separately and successively supplied at the following times—

- (a) the time determined in accordance with section 6(2), (3), (4), (5), (6), (9), (10) or (13) of the Act, as the case may require, and
- (b) the earlier of the following times—
 - (i) the time that a payment in respect of any part of the consideration which has been retained, pursuant to the terms of the contract, is received by the supplier, or
 - (ii) the time that the supplier issues a VAT invoice relating to any such part.

Continuous supplies of services

90. —

(1) Subject to paragraph (2) below, where services are supplied for a period for a consideration the whole or part of which is determined or payable periodically or from time to time, they shall be treated as separately and successively supplied at the earlier of the following times—

- (a) each time that a payment in respect of the supplies is received by the supplier, or
- (b) each time that the supplier issues a VAT invoice relating to the supplies.

(2) Where separate and successive supplies of services as described in paragraph (1) above are made under an agreement which provides for successive payments, and the supplier at or about the beginning of any period not exceeding one year, issues a VAT invoice containing, in addition to the particulars specified in regulation 14, the following particulars—

- (a) the dates on which payments under the agreement are to become due in the period,
- (b) the amount payable (excluding VAT) on each such date, and

(c) the rate of VAT in force at the time of issue of the VAT invoice and the amount of VAT chargeable in accordance with that rate on each of such payments,

services shall be treated as separately and successively supplied each time that a payment in respect of them becomes due or is received by the supplier, whichever is the earlier.

(3) Where, on or before any of the dates that a payment is due as stated on an invoice issued as described in paragraph (2) above, there is a change in the VAT chargeable on supplies of the description to which the invoice relates, that invoice shall cease to be treated as a VAT invoice in respect of any such supplies for which payments are due after the change (and not received before the change).

Royalties and similar payments

91. Where the whole amount of the consideration for a supply of services was not ascertainable at the time when the services were performed and subsequently the use of the benefit of those services by a person other than the supplier gives rise to any payment of consideration for that supply which is—

- (a) in whole or in part determined or payable periodically or from time to time or at the end of any period,
- (b) additional to the amount, if any, already payable for the supply, and
- (c) not a payment to which regulation 90 applies,

a further supply shall be treated as taking place each time that a payment in respect of the use of the benefit of those services is received by the supplier or a VAT invoice is issued by the supplier, whichever is the earlier.

Supplies of services by barristers and advocates

92. Services supplied by a barrister, or in Scotland, by an advocate, acting in that capacity, shall be treated as taking place at whichever is the earliest of the following times—

- (a) when the fee in respect of those services is received by the barrister or advocate,
- (b) when the barrister or advocate issues a VAT invoice in respect of them, or
- (c) the day when the barrister or advocate ceases to practise as such.

Supplies in the construction industry

93. Where services, or services together with goods, are supplied in the course of the construction, alteration, demolition, repair or maintenance of a building or of any civil engineering work under a contract which provides for payment for such supplies to be made periodically or from time to time, a supply shall be treated as taking place at the earlier of the following times—

- (a) each time that a payment is received by the supplier where the consideration for the contract is wholly in money, or
- (b) each time that the supplier issues a VAT invoice.

General

94. Where under this Part of these Regulations a supply is treated as taking place each time that a payment (however expressed) is received or an invoice is issued, the supply is to be treated as taking place only to the extent covered by the payment or invoice.

Supplies spanning change of rate etc.

95. Section 88 of the Act shall apply as if the references in subsection (2) of that section to section 6(4), (5), (6) and (10) of the Act included references to regulations 81, 82, 84, 85, 86(1) to (4) and 88 to 93 of these Regulations.

PART XII

VALUATION OF ACQUISITIONS

Interpretation of Part XII

96. In this Part—

“relevant transaction”, in relation to any acquisition of goods from another member State, and “relevant time” in relation to any such acquisition, have the meanings given in paragraph 5 of Schedule 7 to the Act.

Valuation of acquisitions

97. —

(1) Subject to paragraph (2) below, the value of the relevant transaction in relation to any goods acquired in the United Kingdom from another member State where—

- (a) the goods are charged in connection with their removal to the United Kingdom with a duty of excise; or
- (b) on that removal are subject, in accordance with any provision for the time being having effect for transitional purposes in connection with the accession of any State to the European Communities, to any Community customs duty or agricultural levy of the Economic Community,

shall be taken, for the purposes of the Act, to be the sum of its value apart from paragraph 2 of Schedule 7 to the Act and the amount, so far as not already included in that value, of the excise duty, Community customs duty or, as the case may be, agricultural levy which has been or is to be paid in respect of those goods.

(2) Paragraph (1) above does not apply to a transaction in pursuance of which there is an acquisition of goods which, under subsection (4) of section 18 of the Act, is treated as taking place before the duty point within the meaning of that section.

PART XIII

PLACE OF SUPPLY

Distance sales from the United Kingdom

98. —

(1) Where a person has exercised an option in the United Kingdom corresponding to an option mentioned in paragraph 1(2) of Schedule 2 to the Act, in respect of supplies involving the removal of goods to another member State, he shall notify the Commissioners in writing of the exercise of that option not less than 30 days before the date on which the first supply to which the option relates is made.

(2) The notification referred to in paragraph (1) above shall contain the name of the member State to which the goods have been, or are to be, removed under the direction or control of the person making the supply.

(3) Any person who has notified the Commissioners in accordance with paragraph (1) above shall within 30 days of the date of the first supply as is mentioned in that paragraph furnish to the Commissioners documentary evidence that he has notified the member State of the exercise of his option.

(4) Where a person has notified the Commissioners in accordance with paragraph (1) above he may withdraw his notification by giving a further written notification but that further notification must specify the date upon which the first notification is to be withdrawn, which date must not be earlier than—

(a) the 1st January which is, or next follows, the second anniversary of the date of the making of the first supply mentioned above to which the option relates, and

(b) the day 30 days after the receipt by the Commissioners of the further notification,

and not later than 30 days before the date of the first supply which he intends to make after the withdrawal.

PART XIV

INPUT TAX AND PARTIAL EXEMPTION

Interpretation of Part XIV and longer periods

99. —

(1) In this Part—

(a) “exempt input tax” means—

(i) input tax, or a proportion of input tax, which is attributable to exempt supplies in accordance with the method used under regulation 101, or a method approved or directed to be used under regulation 102 as the case may be, and

(ii) input tax, or a proportion of input tax, which is attributable to supplies outside the United Kingdom which would be exempt if made in the United Kingdom, not being supplies specified in an order under section 26(2)(c) of the Act, according to the extent to which the goods or services on which the input tax was incurred are used or to be used in making such supplies or in accordance with a method approved or directed to be used under regulation 102, as the case may be;

(b) “prescribed accounting period” means—

(i) a prescribed accounting period such as is referred to in regulation 25, or

(ii) a special accounting period, where the first prescribed accounting period would otherwise be 6 months or longer, save that this paragraph shall not apply where the reference to the prescribed accounting period is used solely in order to identify a particular return;

(c) “special accounting period” means each of a succession of periods of the same length as the next prescribed accounting period which does not exceed 3 months, and—

(i) the last such period shall end on the day before the commencement of that next prescribed accounting period, and

- (ii) the first such period shall commence on the effective date of registration determined in accordance with Schedule 1 to the Act and end on the day before the commencement of the second such period;
- (d) the “tax year” of a taxable person means—
 - (i) the first period of 12 calendar months commencing on the first day of April, May or June, according to the prescribed accounting periods allocated to him, next following his effective date of registration determined in accordance with Schedule 1 to the Act, or
 - (ii) any subsequent period of 12 calendar months commencing on the day following the end of his first, or any subsequent, tax year,
 save that the Commissioners may approve or direct that a tax year shall be a period of other than 12 calendar months or that it shall commence on a date other than that determined in accordance with paragraph (i) or (ii) above;
- (e) the “registration period” of a taxable person means the period commencing on his effective date of registration determined in accordance with Schedule 1 to the Act and ending on the day before the commencement of his first tax year.

(2) In this Part, any reference to goods or services shall be construed as including a reference to anything which is supplied by way of a supply of goods or a supply of services respectively.

(3) The provisions of paragraphs (4), (5), (6) and (7) below shall be used for determining the longer period applicable to taxable persons under this Part.

(4) A taxable person who incurs exempt input tax during any tax year shall have applied to him a longer period which shall correspond with that tax year unless he did not incur exempt input tax during his immediately preceding tax year or registration period, in which case his longer period shall—

- (a) begin on the first day of the first prescribed accounting period in which he incurs exempt input tax, and
- (b) end on the last day of that tax year,

except where he incurs exempt input tax only in the last prescribed accounting period of his tax year, in which case no longer period shall be applied to him in respect of that tax year.

(5) A taxable person who incurs exempt input tax during his registration period shall have applied to him a longer period which shall begin on the first day on which he incurs exempt input tax and end on the day before the commencement of his first tax year.

(6) In the case of a taxable person ceasing to be taxable during a longer period applicable to him, that longer period shall end on the day when he ceases to be taxable.

(7) The Commissioners may approve in the case of a taxable person who incurs exempt input tax, or a class of such persons, that a longer period shall apply which need not correspond with a tax year.

100. Nothing in this Part shall be construed as allowing a taxable person to deduct the whole or any part of VAT on the importation or acquisition by him of goods or the supply to him of goods or services where those goods or services are not used or to be used by him in making supplies in the course or furtherance of a business carried on by him.

Attribution of input tax to taxable supplies

101. —

(1) Subject to regulation 102, the amount of input tax which a taxable person shall be entitled to deduct provisionally shall be that amount which is attributable to taxable supplies in accordance with this regulation.

- (2) In respect of each prescribed accounting period—
- (a) goods imported or acquired by and, subject to paragraph (5) below, goods or services supplied to, the taxable person in the period shall be identified,
 - (b) there shall be attributed to taxable supplies the whole of the input tax on such of those goods or services as are used or to be used by him exclusively in making taxable supplies,
 - (c) no part of the input tax on such of those goods or services as are used or to be used by him exclusively in making exempt supplies, or in carrying on any activity other than the making of taxable supplies, shall be attributed to taxable supplies, and
 - (d) there shall be attributed to taxable supplies such proportion of the input tax on such of those goods or services as are used or to be used by him in making both taxable and exempt supplies as bears the same ratio to the total of such input tax as the value of taxable supplies made by him bears to the value of all supplies made by him in the period.
- (3) In calculating the proportion under paragraph (2)(d) above, there shall be excluded—
- (a) any sum receivable by the taxable person in respect of any supply of capital goods used by him for the purposes of his business,
 - (b) any sum receivable by the taxable person in respect of any of the following descriptions of supplies made by him, where such supplies are incidental to one or more of his business activities—
 - (i) any supply which falls within item 1 of Group 5, or item 1 of Group 6, of Schedule 8 to the Act,
 - (ii) any grant which falls within item 1 of Group 1 of Schedule 9 to the Act,
 - (iii) any grant which falls within paragraph (a) of item 1 of Group 1 of Schedule 9 to the Act,
 - (iv) any grant which would fall within item 1 of Group 1 of Schedule 9 to the Act but for an election having effect under paragraph 2 of Schedule 10 to the Act, and
 - (v) any supply which falls within Group 5 of Schedule 9 to the Act,
 - (c) that part of the value of any supply of goods on which output tax is not chargeable by virtue of any order made by the Treasury under section 25(7) of the Act unless the taxable person has imported, acquired or been supplied with the goods for the purpose of selling them, and
 - (d) the value of any supply which, under or by virtue of any provision of the Act, the taxable person makes to himself.
- (4) The ratio calculated for the purpose of paragraph (2)(d) above shall be expressed as a percentage and, if that percentage is not a whole number, it shall be rounded up to the next whole number.
- (5) For the purposes of paragraph (2)(a) above, supplies of goods or services to which regulation 42(2) applies shall be treated as supplied in the period in which the VAT on those supplies is treated by virtue of that regulation as being chargeable.

Use of other methods

102. —

- (1) Subject to paragraph (2) below and regulation 103, the Commissioners may approve or direct the use by a taxable person of a method other than that specified in regulation 101, save that where the use of a method was allowed prior to 1st August 1989 there shall not be included in the calculation (if the method in question would otherwise allow it)—

(a) the value of any supply which, under or by virtue of any provision of the Act, the taxable person makes to himself, and

(b) the input tax on such a supply.

(2) Notwithstanding any provision of any method approved or directed to be used under this regulation which purports to have the contrary effect, in calculating the proportion of any input tax on goods or services used or to be used by the taxable person in making both taxable and exempt supplies which is to be treated as attributable to taxable supplies, the value of any supply within regulation 101(3) shall be excluded.

(3) A taxable person using a method as approved or directed to be used by the Commissioners under paragraph (1) above shall continue to use that method unless the Commissioners approve or direct the termination of its use.

(4) Any direction under paragraph (1) or (3) above shall take effect from the date upon which the Commissioners give such direction or from such later date as they may specify.

Attribution of input tax to foreign and specified supplies

103. —

(1) Input tax incurred by a taxable person in any prescribed accounting period on goods imported or acquired by, or goods or services supplied to, him which are used or to be used by him in whole or in part in making—

(a) supplies outside the United Kingdom which would be taxable supplies if made in the United Kingdom, or

(b) supplies specified in an Order under section 26(2)(c) of the Act,

shall be attributed to taxable supplies to the extent that the goods or services are so used or to be used expressed as a proportion of the whole use or intended use.

(2) Where—

(a) input tax of the description in paragraph (1) above has been incurred on goods or services which are used or to be used in making both—

(i) a supply within item 1 or 6 of Group 5 of Schedule 9 to the Act, and

(ii) any other supply, and

(b) the supply mentioned in sub-paragraph (a)(i) above is incidental to one or more of the taxable person's business activities,

that input tax shall be attributed to taxable supplies in accordance with paragraph (1) above notwithstanding any provision of any method that the taxable person is required or allowed to use under this Part of these Regulations which purports to have the contrary effect.

(3) For the purpose of attributing to taxable supplies any input tax of the description in paragraph (2) above, it shall be deemed to be the only input tax incurred by the taxable person in the prescribed accounting period concerned.

Attribution of input tax on self-supplies

104. Where under or by virtue of any provision of the Act a person makes a supply to himself, the input tax on that supply shall not be allowable as attributable to that supply.

Treatment of input tax attributable to exempt supplies as being attributable to taxable supplies

105. —

(1) Subject to paragraphs (2) and (4) below, there shall be treated as attributable to taxable supplies any exempt input tax attributable to supplies of the following descriptions—

- (a) any deposit of money,
- (b) the grant of any lease or tenancy of, or any licence to occupy, any land where in any longer period—
 - (i) the input tax attributable to all such supplies by the grantor is less than £1,000, and
 - (ii) no exempt input tax is incurred by the grantor in respect of any exempt supply other than a supply of a description specified in this regulation,
- (c) any services comprised in item 3 of Group 2 of Schedule 9 to the Act,
- (d) services of arranging—
 - (i) any mortgage, or
 - (ii) any hire purchase, credit sale or conditional sale transaction, and
- (e) the assignment of any debt due to the assignor in respect of a supply of goods or services made by him.

(2) Paragraph (1) above shall not apply where the supply is made by the taxable person in the course of carrying on a business of, or a business similar to, any of the following—

- (a) a bank,
- (b) an accepting house,
- (c) an insurance company, agent or broker,
- (d) an investment trust or unit trust,
- (e) an investment company,
- (f) a Stock Exchange broker/dealer or share dealing company,
- (g) a trustee of a pension fund,
- (h) a unit trust management company,
- (i) a building society,
- (j) a discount house,
- (k) a finance house,
- (l) a friendly society,
- (m) a money lender,
- (n) a money broker,
- (o) a mortgage broker,
- (p) a pawnbroker,
- (q) a debt factor, or
- (r) a credit or charge card company.

(3) For the purpose of paragraph (2) above, a taxable person who carries on one or more of the businesses specified in that paragraph shall not be treated as having made the supply in the course of carrying on such a business if he made the supply exclusively in the course of carrying on a business which is not so specified.

(4) Paragraph (1) above shall not apply where the exempt input tax of the taxable person, excluding any exempt input tax attributable to supplies of the descriptions specified in that paragraph, cannot be treated as attributable to taxable supplies under regulation 106.

(5) In this regulation—

“supplies”, except in the expression “taxable supplies”, shall be construed as including supplies outside the United Kingdom which would be exempt if made in the United Kingdom, other than supplies specified in an Order under section 26(2)(c) of the Act, and “supply” shall be construed accordingly.

106. —

(1) Where in any prescribed accounting period or in any longer period the exempt input tax of a taxable person—

- (a) does not amount to more than £625 per month on average, and
- (b) does not exceed one half of all his input tax for the period concerned,

all such input tax in that period shall be treated as attributable to taxable supplies.

(2) In the application of paragraph (1) above to a longer period—

- (a) any treatment of exempt input tax as attributable to taxable supplies in any prescribed accounting period shall be disregarded, and
- (b) no account shall be taken of any amount or amounts which may be deductible or payable under regulation 115.

Adjustment of attribution

107. —

(1) Where a taxable person to whom a longer period is applicable has provisionally attributed an amount of input tax to taxable supplies in accordance with a method, and where all his exempt input tax in that longer period cannot be treated as attributable to taxable supplies under regulation 105 or 106, and save as the Commissioners may dispense with the following requirement to adjust, he shall—

- (a) determine for the longer period the amount of input tax which is attributable to taxable supplies according to the method used in the prescribed accounting periods,
- (b) ascertain whether there has been, overall, an over-deduction or an under-deduction of input tax, having regard to the above-mentioned determination and to the sum of the amounts of input tax, if any, which were deducted in the returns for the prescribed accounting periods, and
- (c) include any such amount of over-deduction or under-deduction in a return for the first prescribed accounting period next following the longer period, except where the Commissioners allow another return to be used for this purpose.

(2) Where a taxable person to whom a longer period is applicable has provisionally attributed an amount of input tax to taxable supplies in accordance with a method, and where all his exempt input tax in that longer period can be treated as attributable to taxable supplies under regulation 105 or 106, he shall—

- (a) calculate the difference between the total amount of his input tax for that longer period and the sum of the amounts of input tax deducted in the returns for the prescribed accounting periods, and
- (b) include any such amount of under-deduction in a return for the first prescribed accounting period next following the longer period, except where the Commissioners allow another return to be used for this purpose.

108. —

(1) This regulation applies where a taxable person has deducted an amount of input tax which has been attributed to taxable supplies because he intended to use the goods or services in making either—

- (a) taxable supplies, or
- (b) both taxable and exempt supplies,

and during a period of 6 years commencing on the first day of the prescribed accounting period in which the attribution was determined and before that intention is fulfilled, he uses or forms an intention to use the goods or services concerned in making exempt supplies or, in the case of an attribution within sub-paragraph (a) above, in making both taxable and exempt supplies.

(2) Subject to regulation 110 and save as the Commissioners otherwise allow, where this regulation applies the taxable person shall on the return for the prescribed accounting period in which the use occurs or the intention is formed, as the case may be, account for an amount equal to the input tax which has ceased to be attributable to taxable supplies in accordance with the method which he was required to use when the input tax was first attributed and he shall repay the said amount to the Commissioners.

(3) For the purposes of this regulation any question as to the nature of any supply shall be determined in accordance with the provisions of the Act and any Regulations or Orders made thereunder in force at the time when the input tax was first attributed.

109. —

(1) This regulation applies where a taxable person has incurred an amount of input tax which has not been attributed to taxable supplies because he intended to use the goods or services in making either—

- (a) exempt supplies, or
- (b) both taxable and exempt supplies,

and during a period of 6 years commencing on the first day of the prescribed accounting period in which the attribution was determined and before that intention is fulfilled, he uses or forms an intention to use the goods or services concerned in making taxable supplies or, in the case of an attribution within sub-paragraph (a) above, in making both taxable and exempt supplies.

(2) Subject to regulation 110 and where this regulation applies, the Commissioners shall, on receipt of an application made by the taxable person in such form and manner and containing such particulars as they may direct, pay to him an amount equal to the input tax which has become attributable to taxable supplies in accordance with the method which he was required to use when the input tax was first attributed.

(3) For the purposes of this regulation any question as to the nature of any supply shall be determined in accordance with the provisions of the Act and any Regulations or Orders made thereunder in force at the time when the input tax was first attributed.

110. —

(1) In this regulation and regulations 108 and 109—

- (a) “exempt supplies” includes supplies outside the United Kingdom which would be exempt if made in the United Kingdom, other than supplies within sub-paragraph (b) below, and
- (b) “taxable supplies” includes the supplies referred to in regulation 103.

(2) Subject to regulation 103, where—

- (a) regulation 108 or 109 applies,
- (b) the use to which the goods or services concerned are put or to which they are intended to be put includes the making of any supplies outside the United Kingdom, and
- (c) at the time when the taxable person was first required to attribute the input tax he was not required to use a method approved or directed under regulation 102 or that method did not provide expressly for the attribution of input tax attributable to supplies outside the United Kingdom,

the amount for which the taxable person shall be liable to account under regulation 108 or the amount which he is entitled to be paid under regulation 109, as the case may be, shall be calculated by reference to the extent to which the goods or services concerned are used or intended to be used in making taxable supplies, expressed as a proportion of the whole use or intended use.

Exceptional claims for VAT relief

111. —

(1) Subject to paragraphs (2) and (4) below, on a claim made in accordance with paragraph (3) below, the Commissioners may authorise a taxable person to treat as if it were input tax—

- (a) VAT on the supply of goods or services to the taxable person before the date with effect from which he was, or was required to be, registered, or paid by him on the importation or acquisition of goods before that date, for the purpose of a business which either was carried on or was to be carried on by him at the time of such supply or payment, and
- (b) in the case of a body corporate, VAT on goods obtained for it before its incorporation, or on the supply of services before that time for its benefit or in connection with its incorporation, provided that the person to whom the supply was made or who paid VAT on the importation or acquisition—
 - (i) became a member, officer or employee of the body and was reimbursed, or has received an undertaking to be reimbursed, by the body for the whole amount of the price paid for the goods or services,
 - (ii) was not at the time of the importation, acquisition or supply a taxable person, and
 - (iii) imported, acquired or was supplied with the goods, or received the services, for the purpose of a business to be carried on by the body and has not used them for any purpose other than such a business.

(2) No VAT may be treated as input tax under paragraph (1) above—

- (a) in respect of goods or services which had been supplied, or, in respect of goods, save as the Commissioners may otherwise allow, consumed—
 - (i) by the taxable person, or
 - (ii) in the case of paragraph (1)(b) above, by the person who imported, acquired or was supplied with the goods or services,before the date with effect from which the taxable person was, or was required to be, registered,
- (b) in respect of services performed upon goods to which sub-paragraph (a) above applies, or
- (c) in respect of services which had been supplied—
 - (i) to the taxable person, or
 - (ii) in the case of paragraph (1)(b) above, to the person who received the services, more than 6 months before the date of the taxable person's registration.

(3) A claim under paragraph (1) above shall, save as the Commissioners may otherwise allow, be made on the first return the taxable person makes and, as the Commissioners may require, be supported by invoices and other evidence.

(4) A taxable person making a claim under paragraph (1) above shall compile and preserve for such period as the Commissioners may require—

- (a) in respect of goods, a stock account showing separately quantities purchased, quantities used in the making of other goods, date of purchase and date and manner of subsequent disposals of both such quantities, and

- (b) in respect of services, a list showing their description, date of purchase and date of disposal, if any.

(5) If a person who has been, but is no longer, a taxable person makes a claim in such manner and supported by such evidence as the Commissioners may require, they may pay to him the amount of any VAT on the supply of services to him after the date with effect from which he ceased to be, or to be required to be, registered and which was attributable to any taxable supply made by him in the course or furtherance of any business carried on by him when he was, or was required to be, registered.

PART XV

ADJUSTMENTS TO THE DEDUCTION OF INPUT TAX ON CAPITAL ITEMS

Interpretation of Part XV

112. —

(1) Any expression used in this Part to which a meaning is given in Part XIV of these Regulations shall, unless the contrary intention appears, have the same meaning in this Part as it has in that Part.

(2) Any reference in this Part to a capital item shall be construed as a reference to a capital item to which this Part applies by virtue of regulation 113, being an item which a person (hereinafter referred to as “the owner”) uses in the course or furtherance of a business carried on by him, and for the purpose of that business, otherwise than solely for the purpose of selling the item.

Capital items to which this Part applies

113. The capital items to which this Part applies are items of any of the following descriptions—

- (a) a computer or an item of computer equipment of a value of not less than £50,000 supplied to, or imported or acquired by, the owner,
- (b) land or a building or part of a building where the value of the interest therein supplied to the owner, by way of a taxable supply which is not a zero-rated supply, is not less than £250,000 excluding so much of that value as may consist of rent,
- (c) a building or part of a building where—
 - (i) the owner’s interest in, right over, or licence to occupy, the building or part of the building is treated as supplied to him under paragraph 1(5) of Schedule 10 to the Act, and
 - (ii) the value of that supply, determined in accordance with paragraph 1(6)(b) of that Schedule, is not less than £250,000,
- (d) a building or part of a building where—
 - (i) the owner’s interest in, right over, or licence to occupy, the building or part of the building is treated as supplied to him under paragraph 6(1) of Schedule 10 to the Act, and
 - (ii) the value of that supply, determined in accordance with paragraph 6(2) of that Schedule, is not less than £250,000,
- (e) a building other than one falling or capable of falling within paragraphs (c) or (d) above constructed by the owner and first brought into use by him on or after 1st April 1990 where the aggregate of—
 - (i) the value of taxable grants relating to the land on which the building is constructed made to the owner on or after 1st April 1990, and

- (ii) the value of all the taxable supplies of goods and services, other than any that are zero-rated, made or to be made to him for or in connection with the construction of the building on or after 1st April 1990,
- is not less than £250,000, and
- (f) a building which the owner alters, or an extension or an annex which he constructs, where—
 - (i) additional floor area is created in the altered building, extension or annex, of not less than 10 per cent. of the floor area of the building before the alteration in question is carried out, or the extension or annex in question is constructed, and
 - (ii) the value of all the taxable supplies of goods and services, other than any that are zero-rated, made or to be made to the owner for or in connection with the alteration, extension or annex in question on or after 1st April 1990, is not less than £250,000.

Period of adjustment

114. —

(1) The proportion (if any) of the total input tax on a capital item which may be deducted under Part XIV shall be subject to adjustments in accordance with the provisions of this Part.

(2) Adjustments shall be made over a period determined in accordance with the following paragraphs of this regulation.

(3) The period of adjustment relating to a capital item of a description falling within—

- (a) regulation 113(a) shall consist of 5 successive intervals,
- (b) regulation 113(b), where the interest in the land, building or part of the building in question has less than 10 years to run at the time it is supplied to the owner, shall consist of 5 successive intervals, and
- (c) any other description shall consist of 10 successive intervals,

determined in accordance with paragraphs (4) to (7) below.

(4) Subject to paragraphs (6) and (7) below, the first interval applicable to a capital item shall be determined as follows—

- (a) where the owner is a registered person when he imports, acquires or is supplied with the item as a capital item, the first interval shall commence on the day of the importation, acquisition or supply and shall end on the day before the commencement of his tax year following that day;
- (b) where the owner is a registered person when he appropriates to use an item as a capital item, the first interval shall commence on the day he first so uses it and shall end on the day before the commencement of his tax year following that day;
- (c) where the capital item is of a description falling within regulation 113(c), the first interval shall commence on the day the owner's interest in, right over, or licence to occupy, the building or part of the building is treated as supplied to him under paragraph 1(5) of Schedule 10 to the Act and shall end on the day before the commencement of his tax year following that day;
- (d) where the capital item is of a description falling within regulation 113(d), the first interval shall commence on the later of the following days—
 - (i) 1st April 1990,
 - (ii) the day the owner first uses the building (or part of the building),

and shall end on the day before the commencement of his tax year following the day of commencement of the first interval;

- (e) where the capital item is of a description falling within regulation 113(e) or (f), the first interval shall commence on the day the owner first uses the building or the altered building or the extension or annex in question, and shall end on the day before the commencement of his tax year following that day;
- (f) where the owner is not a registered person when he first uses an item as a capital item, and subsequently—
 - (i) becomes a registered person, the first interval shall correspond with his registration period, or
 - (ii) is included among bodies treated as members of a group under section 43 of the Act, the first interval shall correspond with, or be that part still remaining of, the then current tax year of that group.

(5) Subject to paragraphs (6) and (7) below, each subsequent interval applicable to a capital item shall correspond with a longer period applicable to the owner, or if no longer period applies to him, a tax year of his.

(6) Where the owner of a capital item—

- (a) is a registered person and subsequently becomes a member of a group under section 43 of the Act during the period of adjustment applicable to the capital item, the interval then applying to it shall end on the day before the owner is first so included and each subsequent interval (if any) applicable to the capital item shall end on the last day of a longer period applicable to that group, or if no longer period applies, shall end on the last day of a tax year of that group;
- (b) ceases to be a member of such a group during the period of adjustment applicable to the capital item, the interval then applying to it shall end on the day that the owner so ceases and the next interval (if any) applicable to the capital item shall correspond with the registration period of the owner and each subsequent interval thereafter (if any) shall correspond with a longer period applying to the owner, or if no longer period applies, shall correspond with a tax year of the owner,

provided that if the owner of a capital item ceases to be a member of such a group (the first group) during the period of adjustment applicable to the capital item, and is immediately thereafter included in another such group (the second group), the interval applying to the capital item immediately before the owner ceases to be a member of the first group shall end on the day that the owner so ceases and each subsequent interval (if any) shall end on the last day of a longer period applicable to the second group, or if no longer period applies, shall end on the last day of a tax year of the second group.

(7) Where the owner of a capital item transfers it during the period of adjustment applicable to it, in the course of the transfer of his business or of part of his business as a going concern, the interval then applying to the capital item shall end on the day of the transfer, and each subsequent interval (if any) applicable to the capital item shall end on the last day of a longer period applying to the new owner or, if no longer period applies, shall end on the day before the commencement of a tax year of the new owner,

provided that where the new owner has, under regulation 6(1), been registered with the registration number of and in substitution for the transferor, the interval applying to the capital item at the time of the transfer shall not end on the day of the transfer (and shall accordingly end on the last day of the longer period applying to the new owner immediately after the transfer or, if no longer period then applies to him, shall end on the last day of his tax year following the day of the transfer).

Method of adjustment**115. —**

(1) Where in a subsequent interval applicable to a capital item, the extent to which it is used in making taxable supplies increases from the extent to which it was so used in the first interval applicable to it, the owner may deduct for that subsequent interval an amount calculated as follows—

- (a) where the capital item falls within regulation 114(3)(a) or (b)—

$$\frac{\text{the total input tax on the capital item}}{5} \times \text{the adjustment percentage};$$

- (b) where the capital item falls within regulation 114(3)(c)—

$$\frac{\text{the total input tax on the capital item}}{10} \times \text{the adjustment percentage}.$$

(2) Where in a subsequent interval applicable to a capital item, the extent to which it is used in making taxable supplies decreases from the extent to which it was so used in the first interval applicable to it, the owner shall pay to the Commissioners for that subsequent interval an amount calculated in the manner described in paragraph (1) above.

(3) Where the whole of the owner's interest in a capital item is supplied by him, or the owner is deemed or, but for the fact that the VAT on the deemed supply (whether by virtue of its value or because it is zero-rated or exempt) would have been not more than £250, would have been deemed to supply a capital item pursuant to paragraph 8(1) of Schedule 4 to the Act during an interval other than the last interval applicable to the capital item, then if the supply (or deemed supply) of the capital item is—

- (a) a taxable supply, the owner shall be treated as using the capital item for each of the remaining complete intervals applicable to it wholly in making taxable supplies, or
- (b) an exempt supply, the owner shall be treated as not using the capital item for any of the remaining complete intervals applicable to it in making any taxable supplies,

and the owner shall calculate for each of the remaining complete intervals applicable to it, in accordance with paragraph (1) or (2) above, as the case may require, such amount as he may deduct or such amount as he shall be liable to pay to the Commissioners,

provided that the aggregate of the amounts that he may deduct in relation to a capital item pursuant to this paragraph shall not exceed the output tax chargeable by him on the supply of that capital item.

- (4) If a capital item is—

- (a) irretrievably lost or stolen or is totally destroyed, or
- (b) is of a kind falling within regulation 114(3)(b) and the interest in question expires,

during the period of adjustment applicable to it, no further adjustment shall be made in respect of any remaining complete intervals applicable to it.

- (5) For the purposes of this regulation—

“the total input tax on the capital item” means, in relation to a capital item falling within—

- (a) regulation 113(a) or (b), the VAT charged on the supply to, or on the importation or acquisition by, the owner of the capital item, other than VAT charged on rent (if any),
- (b) regulation 113(c) or (d), the VAT charged on the supply which the owner is treated as making to himself under paragraph 1(5) or 6(1) of Schedule 10 to the Act, as the case may require,
- (c) regulation 113(e) or (f), the aggregate of the VAT charged on the supplies described in regulation 113(e) or (f), as the case may require, other than VAT charged on rent (if any),

and shall include, in relation to any capital item, any VAT treated as input tax under regulation 111 which relates to the capital item, other than such VAT charged on rent (if any); and for the purposes of this paragraph references to the owner shall be construed as references to the person who incurred the total input tax on the capital item;

“the adjustment percentage” means the difference (if any) between the extent, expressed as a percentage, to which the capital item is used (or is regarded as being used) in making taxable supplies in the first interval applicable to it, and the extent to which it is so used or is treated under paragraph (3) above as being so used in the subsequent interval in question.

(6) A taxable person claiming any amount pursuant to paragraph (1) above, or liable to pay any amount pursuant to paragraph (2) above, shall include such amount in a return for the second prescribed accounting period next following the interval to which that amount relates, except where the Commissioners allow another return to be used for this purpose,

provided that where an interval has come to an end under—

- (a) regulation 114(6)(b) because the owner of the capital item has ceased to be a member of a group under section 43 of the Act, any amount claimable from the Commissioners or payable to them (as the case may be) in respect of that interval shall be included in a return for that group for the second prescribed accounting period after the end of the tax year of the group in which the interval in question fell, or
- (b) regulation 114(7) because the owner has transferred part of his business as a going concern, and he remains a registered person after the transfer, any amount claimable from the Commissioners or payable to them (as the case may be) in respect of that interval shall be included in a return by him for the second prescribed accounting period after the end of his tax year in which the interval in question fell,

except where the Commissioners allow another return to be used for this purpose.

(7) A taxable person claiming any amount or amounts, or liable to pay any amount or amounts, pursuant to paragraph (3) above, shall include such amount or amounts in a return for the second prescribed accounting period next following the interval in which the supply (or deemed supply) in question takes place except where the Commissioners allow another return to be used for this purpose.

Ascertainment of taxable use of a capital item

116. —

(1) Subject to regulation 115(3) and paragraphs (2) and (3) below, for the purposes of this Part, an attribution of the total input tax on the capital item shall be determined for each subsequent interval applicable to it in accordance with the method used under Part XIV for that interval and the proportion of the input tax thereby determined to be attributable to taxable supplies shall be treated as being the extent to which the capital item is used in making taxable supplies in that subsequent interval.

(2) In any particular case the Commissioners may allow another method by which, or may direct the manner in which, the extent to which a capital item is used in making taxable supplies in any subsequent interval applicable to it is to be ascertained.

(3) Where the owner of a building which is a capital item of his grants or assigns a tenancy or lease in the whole or any part of that building and that grant or assignment is a zero-rated supply to the extent only as provided by—

- (a) note (8) to Group 5 of Schedule 8 to the Act, or
- (b) that note as applied to Group 6 of that Schedule by note (2) to Group 6, or
- (c) paragraph 8 of Schedule 13 to the Act,

any subsequent exempt supply of his arising directly from that grant or assignment shall be disregarded in determining the extent to which the capital item is used in making taxable supplies in any interval applicable to it.

PART XVI

IMPORTATIONS, EXPORTATIONS AND REMOVALS

Interpretation of Part XVI

117. —

(1) In regulation 127 “approved inland clearance depot” means any inland premises approved by the Commissioners for the clearance of goods for customs and excise purposes.

(2) For the purposes of regulation 128 “container” means an article of transport equipment (lift-van, moveable tank or other similar structure)—

- (a) fully or partially enclosed to constitute a compartment intended for containing goods,
- (b) of a permanent character and accordingly strong enough to be suitable for repeated use,
- (c) specially designed to facilitate the carriage of goods, by one or more modes of transport, without intermediate reloading,
- (d) designed for ready handling, particularly when being transferred from one mode of transport to another,
- (e) designed to be easy to fill and to empty, and
- (f) having an internal volume of one cubic metre or more,

and the term “container” shall include the accessories and equipment of the container, appropriate for the type concerned, provided that such accessories and equipment are carried with the container, but shall not include vehicles, accessories or spare parts of vehicles, or packaging.

(3) In regulation 127 “export house” means any person registered in the United Kingdom who in the course of his business in the United Kingdom arranges or finances the export of goods from the United Kingdom to a place outside the member States.

(4) In regulation 129 “goods” does not include a motor car, motor cycle, motor scooter or motor caravan which has been registered under the Vehicle (Excise) Act 1971⁽¹¹⁾ or any corresponding enactment for the time being in force of the Parliament of Northern Ireland or of Tynwald respectively and in regulations 130 and 131 “goods” does not include—

- (a) a motor vehicle, or
- (b) a boat intended to be exported under its own power.

(5) In paragraph (4) above “motor car” means any motor vehicle of a kind normally used on public roads which has three or more wheels and either—

- (a) is constructed or adapted solely or mainly for the carriage of passengers, or
- (b) has to the rear of the driver’s seat roofed accommodation which is fitted with side windows or which is constructed or adapted for the fitting of side windows.

(6) The following are not included in the definition of “motor car”—

- (a) vehicles capable of accommodating only one person or suitable for carrying 12 or more persons,
- (b) vehicles of not less than 3 tonnes unladen weight,

(11) 1971 c. 10.

- (c) caravans, ambulances and prison vans,
- (d) vehicles of a type approved by the Assistant Commissioner of Police of the Metropolis as conforming to the conditions of fitness for the time being laid down by him for the purposes of the London Cab Order 1934⁽¹²⁾, and
- (e) vehicles constructed for a special purpose other than the carriage of persons and having no other accommodation for carrying persons other than such as is incidental to that special purpose.

(7) For the purposes of regulation 129 “overseas authority” means any country other than the United Kingdom or any part of or place in such a country or the government of any such country, part or place.

(8) In this Part of these Regulations “overseas visitor” means a person who, during the 2 years immediately preceding the date of the supply mentioned in regulations 130 and 131 or the date of the application mentioned in regulation 132, has not been in the member States for more than 365 days, or who, for the purposes of regulation 132, during the 6 years immediately preceding the date of the application has not been in the member States for more than 1,095 days.

(9) In regulations 130 and 131 “ship” includes a hovercraft within the meaning of the Hovercraft Act 1968⁽¹³⁾.

(10) In regulations 140 and 144 “customs territory of the Community” has the same meaning as it has for the purposes of Council Regulation (EEC) No. 2913/92⁽¹⁴⁾.

Enactments excepted

118. There shall be excepted from the enactments which are to apply as mentioned in section 16(1) of the Act—

- (a) the Alcoholic Liquor Duties Act 1979⁽¹⁵⁾—
 - (i) section 7 (exemption from duty on spirits in articles used for medical purposes),
 - (ii) section 8 (repayment of duty on spirits for medical or scientific purposes),
 - (iii) section 9 (remission of duty on spirits for methylation),
 - (iv) section 10 (remission of duty on spirits for use in art or manufacture),
 - (v) section 22(4) (drawback on exportation of tinctures or spirits of wine), and
 - (vi) sections 42 and 43 (drawback on exportation and warehousing of beer),
- (b) the Hydrocarbon Oil Duties Act 1979⁽¹⁶⁾—
 - (i) section 9 (relief for certain industrial uses),
 - (ii) section 15 (drawback of duty on exportation etc. of certain goods),
 - (iii) section 16 (drawback of duty on exportation etc. of power methylated spirits),
 - (iv) section 17 (repayment of duty on heavy oil used by horticultural producers),
 - (v) section 18 (repayment of duty on fuel for ships in home waters),
 - (vi) section 19 (repayment of duty on fuel used in fishing boats etc.),

⁽¹²⁾ S.R. & O. 1934/1346.

⁽¹³⁾ 1968 c. 59.

⁽¹⁴⁾ OJ No. L302, 19.10.92, p. 1; the territories comprising the customs territory of the Community are defined in Article 3 of Council Regulation (EEC) No. 2913/92 as amended by virtue of the treaty concerning the accession of Austria, Finland and Sweden to the European Union (OJ No. C. 241, 29.8.94, p. 9) and as adjusted by paragraph A1(a) of Part XIII of Annex 1 to Council Decision 95/1/EC, Euratom, ECSC (OJ No. L1, 1.1.95, p. 1).

⁽¹⁵⁾ 1979 c. 4; section 8 was substituted by section 6(1) of the Finance Act 1988 (c. 39).

⁽¹⁶⁾ 1979 c. 5.

- (vii) section 20 (relief from duty on oil contaminated or accidentally mixed in warehouse), and
- (viii) section 20AA (power to allow reliefs),
- (c) the Customs and Excise Management Act 1979⁽¹⁷⁾—
 - (i) section 43(5) (provisions as to duty on re-imported goods),
 - (ii) section 125(1) and (2) (valuation of goods for the purpose of ad valorem duties),
 - (iii) section 126 (charge of excise duty on manufactured or composite imported articles), and
 - (iv) section 127(1)(b) (determination of disputes as to duties on imported goods),
- (d) the Customs and Excise Duties (General Reliefs) Act 1979⁽¹⁸⁾ other than sections 8 and 9(b),
- (e) the Isle of Man Act 1979⁽¹⁹⁾, sections 8 and 9 (removal of goods from Isle of Man to United Kingdom), and
- (f) the Tobacco Products Duty Act 1979⁽²⁰⁾, section 2(2) (remission or repayment of duty on tobacco products).

Regulations excepted

119. Regulations 16(4) and (5) and 19(1)(b) of the Excise Warehousing (Etc.) Regulations 1988⁽²¹⁾ shall be excepted from the subordinate legislation which is to apply as mentioned in section 16(1) of the Act.

Community legislation excepted

120. —

(1) Council Regulation (EEC) No. 918/83⁽²²⁾ on conditional reliefs from duty on the final importation of goods, and any implementing Regulations made thereunder shall be excepted from the Community legislation which is to apply as mentioned in section 16(1) of the Act.

(2) The following Articles shall be excepted from the Community legislation which is to apply as mentioned in section 16(1) of the Act—

- (a) in Council Regulation (EEC) No. 2913/92⁽²³⁾ establishing the Community Customs Code—
 - (i) Articles 126 to 128 (drawback system of inward processing relief),
 - (ii) Articles 130 to 136 (processing for free circulation),
 - (iii) Article 137 so far as it relates to partial relief on temporary importation, and Article 142,
 - (iv) Articles 145 to 160 (outward processing),
 - (v) Articles 185 to 187 (returned goods), and
 - (vi) Article 229(b) (interest payable on a customs debt),

⁽¹⁷⁾ 1979 c. 2.

⁽¹⁸⁾ 1979 c. 3.

⁽¹⁹⁾ 1979 c. 58.

⁽²⁰⁾ 1979 c. 7.

⁽²¹⁾ S.I. 1988/809.

⁽²²⁾ OJ No. L 105, 23.4.83, p. 1; implementing Regulations are Commission Regulations (EEC) Numbers 2288/83 OJ No. L 220, 11.8.83, p. 13; 2289/83 OJ No. L 220, 11.8.83, p. 15 and 2290/83 OJ No. L 220, 11.8.83, p. 20.

⁽²³⁾ OJ No. L 302, 19.10.92, p. 1.

(b) in Commission Regulation (EEC) No. 2454/93⁽²⁴⁾ which contains provisions implementing the Community Customs Code—

- (i) Articles 624 to 647 (drawback system of inward processing relief),
- (ii) Articles 650 to 669 (processing for free circulation),
- (iii) Article 690 (partial relief on temporary importation),
- (iv) Articles 748 to 787 (outward processing), and
- (v) Articles 844 to 856 and 882 (returned goods).

(3) Council Regulation (EEC) No. 2658/87⁽²⁵⁾ on the tariff and statistical nomenclature and on the Common Customs Tariff and implementing Regulations made thereunder (end use relief), save and in so far as the said Regulations apply to goods admitted into territorial waters—

- (a) in order to be incorporated into drilling or production platforms, for purposes of the construction, repair, maintenance, alteration or fitting-out of such platforms, or to link such drilling or production platforms to the mainland of the United Kingdom, or
- (b) for the fuelling and provisioning of drilling or production platforms,

shall be excepted from the Community legislation which is to apply as mentioned in section 16(1) of the Act.

Adaptations

121. Section 125(3) of the Customs and Excise Management Act 1979 shall have effect in its application by virtue of section 16(1) of the Act as if the reference to the preceding subsections of that section included a reference to section 21 of the Act.

Postal importations by registered persons in the course of business

122. Goods imported by post from places outside the member States, other than by datapost packet, not exceeding £2,000 in value, or such greater sum as is determined for the time being by the Commissioners, by a registered person in the course of a business carried on by him may, with the authority of the proper officer, be delivered without payment of VAT if—

- (a) the registered person has given such security as the Commissioners may require, and
- (b) his registration number is shown on the customs declaration attached to or accompanying the package,

and save as the Commissioners may otherwise allow he shall account for VAT chargeable on the goods on their importation together with any VAT chargeable on the supply of goods or services by him or on the acquisition of goods by him from another member State in a return furnished by him in accordance with these Regulations for the prescribed accounting period during which the goods were imported.

Temporary importations

123. —

(1) Subject to such conditions as the Commissioners may impose, the VAT chargeable on the importation of goods from a place outside the member States shall not be payable where—

- (a) a taxable person makes a supply of goods which is to be zero-rated in accordance with sub-paragraphs (a)(i) and (ii), and (b) of section 30(8) of the Act,

⁽²⁴⁾ OJ No. L 253, 11.10.93, p. 1.

⁽²⁵⁾ OJ No. L 256, 7.9.87, p. 1.

- (b) the goods so imported are the subject of that supply, and
- (c) the Commissioners are satisfied that—
 - (i) the importer intends to remove the goods to another member State, and
 - (ii) the importer is importing the goods in the course of a supply by him of those goods in accordance with the provisions of sub-paragraphs (a)(i) and (ii), and (b) of section 30(8) of the Act and any Regulations made thereunder.
- (2) As a condition of granting the relief afforded by paragraph (1) above the Commissioners may require the deposit of security, the amount of which shall not exceed the amount of VAT chargeable on the importation.
- (3) The relief afforded by paragraph (1) above shall continue to apply provided that the importer—
 - (a) removes the goods to another member State within one month of the date of importation or within such longer period as the Commissioners may allow, and
 - (b) supplies the goods in accordance with sub-paragraphs (a)(i) and (ii), and (b) of section 30(8) of the Act and any Regulations made thereunder.

Reimportation of certain goods by non-taxable persons

124. Subject to such conditions as the Commissioners may impose, the VAT chargeable on the importation of goods from a place outside the member States which have been previously exported from the member States shall not be payable if the Commissioners are satisfied that—

- (a) the importer is not a taxable person or, if he is, the goods are imported otherwise than in the course of his business,
- (b) the goods were last exported from the member States by him or on his behalf,
- (c) the goods—
 - (i) were supplied, acquired in or imported into a member State before their export, and any VAT or other tax due on that supply, acquisition or importation was paid and neither has been, nor will be, refunded, or
 - (ii) are imported by the person who made them,
- (d) the goods were not exported free of VAT by reason of the zero-rating provisions of subsection (6) or (8) of section 30 of the Act or Regulations made thereunder or free of purchase tax or by reason of the provisions of the law of another member State corresponding, in relation to that member State, to those provisions,
- (e) the goods have not been subject to process or repair outside the member States other than necessary running repairs which did not result in any increase in the value of the goods, and
- (f) the goods—
 - (i) were at the time of exportation intended to be reimported, or
 - (ii) have been returned for repair or replacement, or after rejection by a customer outside the member States, or because it was not possible to deliver them to such customer, or
 - (iii) were prior to the time of exportation in private use and possession in the member States.

Reimportation of certain goods by taxable persons

125. Subject to such conditions as the Commissioners may impose, the VAT chargeable on the importation of goods from a place outside the member States which have been previously exported from the member States shall not be payable if the Commissioners are satisfied that—

- (a) the importer is a taxable person importing the goods in the course of his business,
- (b) the goods were last exported from the member States by him or on his behalf,
- (c) the goods have not been subject to process or repair outside the member States other than necessary running repairs which did not result in any increase in the value of the goods,
- (d) the goods—
 - (i) were owned by him at the time of exportation and have remained his property, or
 - (ii) were owned by him at the time of exportation and have been returned after rejection by a customer outside the member States or because it was not possible to deliver them to such a customer, or
 - (iii) have been returned from the continental shelf, and
- (e) if the goods were supplied in, acquired in or imported into a member State before their export, any VAT or other tax chargeable on that supply, acquisition or importation was accounted for or paid and neither has been, nor will be, refunded.

Reimportation of goods exported for treatment or process

126. Subject to such conditions as the Commissioners may impose, VAT chargeable on the importation of goods from a place outside the member States which have been temporarily exported from the member States and are reimported after having undergone repair, process or adaptation outside the member States, or after having been made up or reworked outside the member States, shall be payable as if such treatment or process had been carried out in the United Kingdom, if the Commissioners are satisfied that—

- (a) at the time of exportation the goods were intended to be reimported after completion of the treatment or process outside the member States, and
- (b) the ownership in the goods was not transferred to any other person at exportation or during the time they were abroad.

Supplies to export houses

127. Where goods are supplied to an export house but are not at any time delivered to the export house in the United Kingdom and—

- (a) the goods are delivered by the supplier direct to a port, customs and excise airport or approved inland clearance depot for immediate shipment or to an export packer for delivery direct to a port, customs and excise airport or approved inland clearance depot for immediate shipment to the order of the export house, and
- (b) the goods are exported to a place outside the member States,

the supply, subject to such conditions as the Commissioners may impose, shall be zero-rated.

Export of freight containers

128. Where the Commissioners are satisfied that a container is to be exported to a place outside the member States, its supply, subject to such conditions as they may impose, shall be zero-rated.

Supplies to overseas persons

129. —

- (1) Where the Commissioners are satisfied that—

- (a) goods intended for export to a place outside the member States have been supplied, otherwise than to a taxable person, to—

- (i) a person not resident in the United Kingdom,
 - (ii) a trader who has no business establishment in the United Kingdom from which taxable supplies are made, or
 - (iii) an overseas authority, and
- (b) the goods were exported to a place outside the member States,
- the supply, subject to such conditions as they may impose, shall be zero-rated.

(2) This regulation shall not apply in the case of a supply to any person who is a member of the crew of any ship or aircraft departing from the United Kingdom or the Isle of Man.

Supplies to persons departing from the member States

130. Where the Commissioners are satisfied that—

- (a) goods have been supplied to, and delivered direct to, a ship or aircraft on behalf of—
 - (i) a member, being an overseas visitor, of the crew of any ship or aircraft departing from the United Kingdom or the Isle of Man to an immediate destination outside the member States, or
 - (ii) a person who is not an overseas visitor, who has been resident in the member States for at least 365 days in the last 2 years immediately preceding the date of the supply of the said goods and who, at the time of the said supply, intends to depart from the United Kingdom or the Isle of Man for an immediate destination outside the member States and remain outside the member States for a period of at least 12 months, and
- (b) save as they may allow, the goods were produced to the proper officer on exportation, and
- (c) the goods were exported in that ship or aircraft or in such other ship or aircraft as the Commissioners may allow,

the supply, subject to such conditions as they may impose, shall be zero-rated.

131. —

(1) Where the Commissioners are satisfied that—

- (a) goods have been supplied to a person who is an overseas visitor and who, at the time of the supply, intended to depart from the member States within 3 months from that date and that the goods should accompany him,
- (b) save as they may allow, the goods were produced to the competent authorities for the purposes of the common system of VAT in the member State from which the goods were finally exported to a place outside the member States, and
- (c) the goods were exported to a place outside the member States,

the supply, subject to such conditions as they may impose, shall be zero-rated.

(2) This regulation shall not apply in the case of a supply to any person who is a member of the crew of any ship or aircraft departing from the member States.

132. The Commissioners may, on application by an overseas visitor who intends to depart from the member States within 15 months and remain outside the member States for a period of at least 6 months, permit him within 12 months of his intended departure to purchase, from a registered person, a new motor vehicle without payment of VAT, for subsequent export, and its supply, subject to such conditions as they may impose, shall be zero-rated.

133. The Commissioners may, on application by any person who intends to depart from the member States within 9 months and remain outside the member States for a period of at least 6 months, permit him within 6 months of his intended departure to purchase, from a registered person,

a new motor vehicle without payment of VAT, for subsequent export, and its supply, subject to such conditions as they may impose, shall be zero-rated.

Supplies to persons taxable in another member State

134. Where the Commissioners are satisfied that—

- (a) a supply of goods by a taxable person involves their removal from the United Kingdom,
- (b) the supply is to a person taxable in another member State,
- (c) the goods have been removed to another member State, and
- (d) the goods are not goods in relation to whose supply the taxable person has opted, pursuant to section 50A⁽²⁶⁾ of the Act, for VAT to be charged by reference to the profit margin on the supply,

the supply, subject to such conditions as they may impose, shall be zero-rated.

Supplies of goods subject to excise duty to persons who are not taxable in another member State

135. Where the Commissioners are satisfied that—

- (a) a supply by a taxable person of goods subject to excise duty involves their removal from the United Kingdom to another member State,
- (b) that supply is other than to a person taxable in another member State and the place of supply is not, by virtue of section 7(5) of the Act, treated as outside the United Kingdom,
- (c) the goods have been removed to another member State in accordance with the provisions of the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992⁽²⁷⁾, and
- (d) the goods are not goods in relation to whose supply the taxable person has opted, pursuant to section 50A of the Act, for VAT to be charged by reference to the profit margin on the supply,

the supply, subject to such conditions as they may impose, shall be zero-rated.

Territories to be treated as excluded from or included in the territory of the Community and of the member States

136. For the purposes of the Act the following territories shall be treated as excluded from the territory of the Community—

- (a) the Channel Islands,
- (b) Andorra,
- (c) San Marino, and
- (d) the Aland Islands.

137. For the purposes of the Act the following territories shall be treated as excluded from the territory of the member States and the territory of the Community—

- (a) the Canary Islands (Kingdom of Spain),
- (b) the overseas departments of the French Republic (Guadeloupe, Martinique, Réunion, St. Pierre and Miquelon and French Guiana), and

⁽²⁶⁾ Section 50A was inserted by section 24 of the Finance Act 1995 (c. 4) .

⁽²⁷⁾ S.I. 1992/3135.

(c) Mount Athos (Hellenic Republic).

138. —

(1) For the purposes of the Act the territory of the Community shall be treated as excluding Austria, Finland and Sweden (the acceding States) in relation to goods to which this regulation applies.

(2) Subject to paragraph (4) below, the goods to which this regulation applies are—

- (a) goods which are the subject of a supply made in an acceding State before 1st January 1995 and which in pursuance of that supply are removed to the United Kingdom on or after 20th October 1995 being goods in the case of which provisions of the law of the acceding State in question having effect for purposes corresponding to those of subsection (6)(a) or (so far as it applies to exportations) subsection (8) of section 30 of the Act have prevented VAT from being charged on that supply, and
- (b) goods which were subject to a suspension regime before 1st January 1995, which by virtue of any Community legislation were to remain, for VAT purposes only, subject to that regime for a period beginning with that date and which cease to be subject to that regime on or after 20th October 1995.

(3) For the purposes of paragraph (2)(b) above, goods shall be treated as having become subject to a suspension regime if—

- (a) on their entry into the territory of the Community—
 - (i) they were placed under a temporary admission procedure with full exemption from import duties, in temporary storage, in a free zone, or under customs warehousing arrangements or inward processing arrangements, or
 - (ii) they were admitted into the territorial waters of the United Kingdom for the purpose of being incorporated into drilling or production platforms, for the purposes of the construction, repair, maintenance, alteration or fitting-out of such platforms, for the purpose of linking such platforms to the mainland of the United Kingdom, or for the purpose of fuelling or provisioning such platforms, or
- (b) they were placed under any customs transit procedure in pursuance of a supply made in the course of a business,

and (in the case in question) the time that any Community customs debt in relation to the goods would be incurred in the United Kingdom if the accession to the European Union of the acceding States were disregarded would fall to be determined by reference to the matters mentioned in sub-paragraph (a) or (b) above.

(4) This regulation does not apply to the following goods—

- (a) goods which are exported on or after 20th October 1995 to a place outside the member States,
- (b) goods which are not means of transport and are removed on or after 20th October 1995 from a temporary admission procedure such as is referred to in paragraph (3)(a)(i) above, in order to be returned to the person in an acceding State who had exported them from that State,
- (c) means of transport which are removed on or after 20th October 1995 from a temporary admission procedure such as is referred to in paragraph (3)(a)(i) above and which—
 - (i) were first brought into service before 1st January 1987, or
 - (ii) have a value not exceeding £4,000, or
 - (iii) have been charged in an acceding State with VAT which has not been remitted or refunded by reason of their exportation and to such other tax (if any) to which means of transport of that class or description are normally chargeable.

139. For the purposes of the Act the following territories shall be treated as included in the territory of the member States and the territory of the Community—

- (i) the Principality of Monaco (French Republic), and
- (ii) the Isle of Man (United Kingdom).

Entry and exit formalities

140. —

(1) Where goods enter the United Kingdom from the territories prescribed in regulation 136 or 137 the formalities relating to the entry of goods into the customs territory of the Community contained in Council Regulation (EEC) No. 2913/92⁽²⁸⁾, Commission Regulation (EEC) No. 2454/93⁽²⁹⁾ and the Customs Controls on Importation of Goods Regulations 1991⁽³⁰⁾, shall be completed.

(2) Where goods are exported from the United Kingdom to the territories prescribed in regulation 136 or 137 the formalities relating to the export of goods to a place outside the customs territory of the Community contained in Council Regulation (EEC) No. 2913/92 and Commission Regulation (EEC) No. 2454/93 shall be completed.

Use of the internal Community transit procedure

141. Where goods enter the United Kingdom from the territories prescribed in regulation 136 or 137 and the said goods are intended for another member State, or other destination outside the United Kingdom transport of the goods to which destination involves their passage through another member State, the internal Community transit procedure described in Council Regulation (EEC) No. 2913/92 and Commission Regulation (EEC) No. 2454/93 shall apply.

Customs and excise legislation to be applied

142. Subject to regulation 143, where goods are imported into the United Kingdom from the territories prescribed in regulation 136 or 137 customs and excise legislation shall apply (so far as relevant) in relation to any VAT chargeable upon such importation with the same exceptions and adaptations as are prescribed in regulations 118, 119, 120 and 121 in relation to the application of section 16(1) of the Act.

143. Where goods are imported into the United Kingdom from the territories prescribed in regulation 137, section 4 of the Finance (No. 2) Act 1992⁽³¹⁾ (enforcement powers) shall apply in relation to any VAT chargeable upon such importation as if references in that section to “member States” excluded the territories prescribed in regulation 137.

144. Where goods are exported from the United Kingdom to the territories prescribed in regulation 136 or 137 the provisions relating to the export of goods to a place outside the customs territory of the Community contained in Council Regulation (EEC) No. 2913/92 and Commission Regulation (EEC) No. 2454/93 shall apply for the purpose of ensuring the correct application of the zero rate of VAT to such goods.

145. —

⁽²⁸⁾ OJ No. L 302, 19.10.92, p. 1.

⁽²⁹⁾ OJ No. L 253, 11.10.93, p. 1; this Regulation has been amended by Commission Regulation (EC) No. 3665/93 (OJ No. L 335, 31.12.93, p. 1), Commission Regulation (EC) No. 655/94 (OJ No. L 82, 25.3.94, p. 15), Council Regulation (EC) No. 1500/94 (OJ No. L 162, 30.6.94, p. 1), Commission Regulation (EC) No. 2193/94 (OJ No. L 235, 9.9.94, p. 6) and Commission Regulation (EC) No. 3254/94 (OJ No. L 346, 31.12.94, p. 1).

⁽³⁰⁾ S.I. 1991/2724, amended by S.I. 1993/3014.

⁽³¹⁾ 1992 c. 48.

(1) Subject to paragraph (2) below, where goods are exported from the United Kingdom to the territories prescribed in regulation 136 or 137 the provisions made by or under the Customs and Excise Management Act 1979⁽³²⁾ in relation to the exportation of goods to places outside the member States shall apply (so far as relevant) for the purpose of ensuring the correct application of the zero rate of VAT to such goods.

(2) Where goods are being exported from the United Kingdom to the territories prescribed in regulation 137, section 4 of the Finance (No. 2) Act 1992 (enforcement powers) shall apply to such goods as if references in that section to “member States” excluded the territories prescribed in regulation 137.

PART XVII

NEW MEANS OF TRANSPORT

Interpretation of Part XVII

146. In this Part—

“claim” means a claim for a refund of VAT made pursuant to section 40 of the Act and “claimant” shall be construed accordingly;

“competent authority” means an authority having powers under the laws in force in any member State to register a vehicle for road use in that member State;

“first entry into service” in relation to a new means of transport means the time determined in relation to that means of transport under regulation 147;

“registration” means registration for road use in a member State corresponding in relation to that member State to registration in accordance with the Vehicles Excise and Registration Act 1994⁽³³⁾.

First entry into service of a means of transport

147. —

(1) For the purposes of section 95 of the Act a means of transport is to be treated as having first entered into service—

(a) in the case of a ship or aircraft—

- (i) when it is delivered from its manufacturer to its first purchaser or owner, or on its first being made available to its first purchaser or owner, whichever is the earlier, or
- (ii) if its manufacturer takes it into use for demonstration purposes, on its being first taken into such use, and

(b) in the case of a motorised land vehicle—

- (i) on its first registration for road use by the competent authority in the member State of its manufacture or when a liability to register for road use is first incurred in the member State of its manufacture, whichever is the earlier,
- (ii) if it is not liable to be registered for road use in the member State of its manufacture, on its removal by its first purchaser or owner, or on its first delivery or on its being made available to its first purchaser, whichever is the earliest, or

⁽³²⁾ 1979 c. 2 .

⁽³³⁾ 1994 c. 22 .

(iii) if its manufacturer takes it into use for demonstration purposes, on its first being taken into such use.

(2) Where the times specified in paragraph (1) above cannot be established to the Commissioners' satisfaction, a means of transport is to be treated as having first entered into service on the issue of an invoice relating to the first supply of the means of transport.

Notification of acquisition of new means of transport by non-taxable persons and payment of VAT

148. —

(1) Where—

- (a) a taxable acquisition of a new means of transport takes place in the United Kingdom,
- (b) the acquisition is not in pursuance of a taxable supply, and
- (c) the person acquiring the goods is not a taxable person at the time of the acquisition,

the person acquiring the goods shall notify the Commissioners of the acquisition within 7 days of the time of the acquisition or the arrival of the goods in the United Kingdom, whichever is the later.

(2) The notification shall be in writing in the English language and shall contain the following particulars—

- (a) the name and current address of the person acquiring the new means of transport,
- (b) the time of the acquisition,
- (c) the date when the new means of transport arrived in the United Kingdom,
- (d) a full description of the new means of transport which shall include any registration mark allocated to it by any competent authority in another member State prior to its arrival in the United Kingdom and any chassis, hull or airframe identification number and engine number,
- (e) the consideration for the transaction in pursuance of which the new means of transport was acquired,
- (f) the name and address of the supplier in the member State from which the new means of transport was acquired,
- (g) the place where the new means of transport can be inspected, and
- (h) the date of notification.

(3) The notification shall include a declaration, signed by the person who is required to make the notification or a person authorised in that behalf in writing, that all the information entered in it is true and complete.

(4) The notification shall be made at, or sent to, any office designated by the Commissioners for the receipt of such notifications.

(5) Any person required to notify the Commissioners of an acquisition of a new means of transport shall pay the VAT due upon the acquisition at the time of notification or within 30 days of the Commissioners issuing a written demand to him detailing the VAT due and requesting payment.

Refunds in relation to new means of transport

149. A claimant shall make his claim in writing no earlier than one month and no later than 14 days prior to making the supply of the new means of transport by virtue of which the claim arises.

150. The claim shall be made at, or sent to, any office designated by the Commissioners for the receipt of such claims.

151. The claim shall contain the following information—

- (a) the name, current address and telephone number of the claimant,
- (b) the place where the new means of transport is kept and the times when it may be inspected,
- (c) the name and address of the person who supplied the new means of transport to the claimant,
- (d) the price paid by the claimant for the supply to him of the new means of transport excluding any VAT,
- (e) the amount of any VAT paid by the claimant on the supply to him of the new means of transport,
- (f) the amount of any VAT paid by the claimant on the acquisition of the new means of transport from another member State or on its importation from a place outside the member States,
- (g) the name and address of the proposed purchaser, the member State to which the new means of transport is to be removed, and the date of the proposed purchase,
- (h) the price to be paid by the proposed purchaser,
- (i) a full description of the new means of transport including, in the case of motorised land vehicles, its mileage since its first entry into service and, in the case of ships and aircraft, its hours of use since its first entry into service,
- (j) in the case of a ship, its length in metres,
- (k) in the case of an aircraft, its take-off weight in kilograms,
- (l) in the case of a motorised land vehicle powered by a combustion engine, its displacement or cylinder capacity in cubic centimetres, and in the case of an electrically propelled motorised land vehicle, its maximum power output in kilowatts, described to the nearest tenth of a kilowatt, and
- (m) the amount of the refund being claimed.

152. The claim shall be accompanied by the following documents—

- (a) the invoice issued by the person who supplied the new means of transport to the claimant or such other documentary evidence of purchase as is satisfactory to the Commissioners,
- (b) in respect of a new means of transport imported from a place outside the member States by the claimant, documentary evidence of its importation and of the VAT paid thereon, and
- (c) in respect of a new means of transport acquired by the claimant from another member State, documentary evidence of the VAT paid thereon.

153. The claim shall include a declaration, signed by the claimant or a person authorised by him in that behalf in writing, that all the information entered in or accompanying it is true and complete.

154. The claim shall be completed by the submission to the Commissioners of—

- (a) the sales invoice or similar document identifying the new means of transport and showing the price paid by the claimant's customer, and
- (b) documentary evidence that the new means of transport has been removed to another member State.

Supplies of new means of transport to persons departing to another member State

155. The Commissioners may, on application by a person who is not taxable in another member State and who intends—

- (a) to purchase a new means of transport in the United Kingdom, and

(b) to remove that new means of transport to another member State, permit that person to purchase a new means of transport without payment of VAT, for subsequent removal to another member State within 2 months of the date of supply and its supply, subject to such conditions as they may impose, shall be zero-rated.

PART XVIII

BAD DEBT RELIEF (THE OLD SCHEME)

Interpretation of Part XVIII

156. In this Part—

“claim” means a claim in accordance with regulations 157 and 158 for a refund of VAT to which a person is entitled by virtue of section 22 of the Value Added Tax Act 1983⁽³⁴⁾ and “claimant” shall be construed accordingly;

“debtor” means the individual, or company, mentioned in subsection (2) or (3) of section 22 of the Value Added Tax Act 1983 who, or which, has become insolvent within the meaning of either of the said subsections;

“purchaser” means a person (whether or not he is the debtor) to whom the claimant made a supply or supplies for consideration in money which the debtor is liable to pay;

“refund” means a refund of VAT to which the claimant is entitled by virtue of section 22 of the Value Added Tax Act 1983.

The making of a claim to the Commissioners

157. —

(1) Save as the Commissioners may otherwise allow or direct, the claimant shall make a claim to the Commissioners by including the correct amount of the refund in the box opposite the legend “VAT reclaimed in this period on purchases and other inputs” on the return prescribed in paragraph (2) below.

(2) The claimant shall make a claim on the return which he is required to make in accordance with regulation 25 for the prescribed accounting period during which he received the document mentioned in either paragraph (a) of regulation 158 or paragraph (1) of regulation 159, as the case may be; except that, in the case of an award of sequestration mentioned in sub-paragraph (a)(ii) of regulation 164, it shall be made on the next return which the claimant is required to make upon the expiration of the 3 months mentioned therein.

Evidence required of the claimant in support of the claim

158. Save as the Commissioners may otherwise allow, the claimant, before he makes a claim, shall hold—

- (a) except as provided in regulation 159, a document issued to him by the person with whom he proves in the insolvency of the debtor which specifies the total amount for which he has so proved,
- (b) either—

(34) 1983 c. 55 ; section 22 was substituted by section 32(1) of the Finance Act 1985 (c. 54) and, in relation to supplies made after 26th July 1990, repealed by Part III of Schedule 19 to the Finance Act 1990 (c. 29) . Paragraph 9(1) of Schedule 13 to the Value Added Tax Act 1994 (c. 23) preserves the right to make claims under section 22 of the 1983 Act.

- (i) a copy of the VAT invoice which was provided in accordance with Part III of these Regulations in respect of each taxable supply upon which the claim for the refund is based, or
- (ii) in cases where there was no obligation to provide a VAT invoice, a document which shows the time and nature of, and the consideration in money for, each taxable supply upon which the claim for the refund is based, and
- (c) records or other documents showing that he has accounted for and paid the VAT on each taxable supply upon which the claim for a refund of VAT is based.

159. —

(1) In the case of the appointment of a person to act as the administrator or administrative receiver of a company, paragraph (a) of regulation 158 shall have effect as if for the reference to the document therein prescribed there was substituted a reference to the document giving notice of the issue, pursuant to rules made under the Insolvency Act 1986 **(35)** of the certificate mentioned in section 22(3)(b) of the Value Added Tax Act 1983.

(2) In the case of an award of sequestration mentioned in sub-paragraph (a)(ii) of regulation 164, the requirement to hold the document prescribed in paragraph (a) of regulation 158 shall not apply.

Preservation of documents and records and duty to produce

160. —

(1) Save as the Commissioners may otherwise allow, the claimant shall preserve the documents, invoices and records which he holds in accordance with regulations 158 and 159 for a period of 6 years from the making of the claim; and for the purpose of this regulation a claim made by way of a return prescribed in paragraph (2) of regulation 157 is made on the day when the particular return is made.

(2) Upon demand made by an authorised person the claimant shall produce or cause to be produced any such documents, invoices and records for inspection by the authorised person and permit him to remove them at a reasonable time and for a reasonable period.

Set-off of amounts between the claimant and the debtor

161. —

(1) Save as the Commissioners may otherwise allow, where the claimant owed an amount to the debtor when the debtor became insolvent which—

- (a) either—
 - (i) under the law governing the insolvency of the debtor can be set off, or
 - (ii) cannot be so set off but in respect of which payment can be lawfully demanded of the claimant by the person with whom the claimant proves in the insolvency of the debtor, and which is not so paid at the time the claimant makes his claim to the Commissioners, and

(b) the claimant made only one supply to the purchaser,
the outstanding amount of the consideration in money for that supply shall be reduced by the amount which the claimant owed the debtor and any refund shall be calculated from such reduced outstanding amount of the consideration in money.

(2) Save as the Commissioners may otherwise allow, where the claimant owed an amount to the debtor when the debtor became insolvent which—

(35) 1986 c. 45.

- (a) either—
 - (i) under the law governing the insolvency of the debtor can be set off, or
 - (ii) cannot be so set off but in respect of which payment can be lawfully demanded of the claimant by the person with whom the claimant proves in the insolvency of the debtor, and which is not so paid at the time the claimant makes his claim to the Commissioners, and
- (b) the claimant made more than one supply to the purchaser and no part of the total amount of the consideration in money for those supplies was paid,

the outstanding amount of the consideration in money for each supply upon which VAT was accounted for and paid shall be reduced to an amount obtained by dividing the consideration in money for such supply by the total amount of the consideration in money for all supplies (whether taxable or otherwise) and multiplying this by such total amount less the amount which the claimant owed the debtor, and any refund shall be calculated from such reduced outstanding amount of the consideration in money.

Determination of outstanding amount of consideration in money

162. —

- (1) Where, before the debtor became insolvent—
 - (a) the claimant made more than one supply to the purchaser,
 - (b) such supplies were at differing rates of VAT (including the zero rate) or at least one supply was exempt, and
 - (c) part of the total amount of the consideration in money for such supplies was paid,

then, for the purpose of calculating any refund, the outstanding amount of the consideration in money for each supply upon which VAT was accounted for and paid shall be taken to be such part of the debt as is attributed to such supply in accordance with the rules set out in paragraph (3) below for attributing the debt to supplies (whether taxable or otherwise) referred to in that paragraph.

(2) In this regulation “the debt” means the amount of the consideration in money for supplies made to the purchaser and owed by the debtor when he became insolvent less, save as the Commissioners may otherwise allow, any amount owed by the claimant to the debtor at the time he became insolvent which—

- (a) under the law governing the insolvency of the debtor can be set off, or
- (b) cannot be so set off but in respect of which payment can be lawfully demanded of the claimant by the person with whom the claimant proves in the insolvency of the debtor and which is not so paid at the time the claimant makes his claim to the Commissioners.

(3) The debt shall be attributed to the supply which is most recent in time before the debtor became insolvent and, if not wholly attributed to that supply, thereafter to supplies in the reverse order to the date on which they were made, except that attribution shall not be made to any supply where the consideration in money for that supply was paid in full and the payment was allocated to that supply by the debtor at the time of payment, and where—

- (a) the most recent supply and other supplies to which the whole of the debt could be attributed under this paragraph occur on one day, or
- (b) the supplies to which the balance of the debt could be attributed under this paragraph occur on one day,

attribution shall be made to those supplies by dividing the consideration in money for each such supply upon which VAT was accounted for and paid by the total amount of the consideration in money for those supplies (whether taxable or otherwise) and multiplying by the debt or the balance of it as the case may be.

Repayment of a refund

163. —

(1) Where the claimant fails to comply with regulation 160 he shall repay to the Commissioners the amount of the refund by including that amount in the box opposite the legend “VAT due in this period on sales and other outputs” on his return for a prescribed accounting period which the Commissioners designate for that purpose.

(2) Where the claimant proves subsequently in the insolvency of the debtor for—

- (a) an amount consisting of the consideration, or of a portion thereof, for a taxable supply or supplies made by the claimant,

which, taken together with—

- (b) the amount for which he has proved in the insolvency for the purpose of obtaining a refund of VAT,

exceeds—

- (c) the outstanding amount of the consideration for a taxable supply or, as the case may be, for all of the taxable supplies made by the claimant, less the amount of the refund received by him,

he shall repay to the Commissioners the amount of the refund by including that amount in the box opposite the legend “VAT due in this period on sales and other outputs” on the return for the prescribed accounting period in which he so proves subsequently in the insolvency.

(3) If at the time the claimant is required to repay any amount he is no longer required to make returns to the Commissioners, he shall repay such refund to the Commissioners at such time and in such form and manner as they may direct.

Proving in the insolvency in Scotland

164. For the purpose of section 22(5) of the Value Added Tax Act 1983, a claimant shall be taken to have proved in the insolvency if, in the case of—

- (a) an award of sequestration of the estate of a debtor where—

- (i) a person has been appointed a trustee, he lodges a claim with the trustee for the amount of the debt less the amount of the refund which he proposes to claim from the Commissioners, or

- (ii) no person is appointed trustee within 3 months of the making of the award, he notifies the Commissioners in writing, at least one month before he makes his claim to them, of the amount of the refund which he proposes to claim, of the name and address of the debtor and of the number and date of the Edinburgh Gazette in which is intimated the sequestration of the estate of the debtor; or

- (b) the debtor executing a trust deed for his creditors or a judicial factor being appointed under section 11A of the Judicial Factors (Scotland) Act 1889⁽³⁶⁾ to divide the insolvent estate of the deceased debtor among that debtor’s creditors, he claims upon respectively the trustee or the judicial factor for the amount of the debt less the amount of the refund which he proposes to claim from the Commissioners; or

- (c) a company registered in Scotland which goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up, he lodges a claim with the liquidator for the amount of the debt less the amount of the refund which he proposes to claim from the Commissioners.

(36) 1889 c. 39.

PART XIX

BAD DEBT RELIEF (THE NEW SCHEME)

Interpretation of Part XIX

165. In this Part—

“claim” means a claim in accordance with regulations 166 and 167 for a refund of VAT to which a person is entitled by virtue of section 36 of the Act and “claimant” shall be construed accordingly;

“payment” means any payment or part-payment which is made by any person to the claimant by way of consideration for a supply regardless of whether such payment extinguishes the purchaser’s debt to the claimant or not;

“purchaser” means a person to whom the claimant made a relevant supply;

“refunds for bad debts account” has the meaning given in regulation 168;

“relevant supply” means any taxable supply upon which a claim is based;

“return” means the return which the claimant is required to make in accordance with regulation 25;

“security” means—

- (a) in relation to England, Wales and Northern Ireland, any mortgage, charge, lien or other security, and
- (b) in relation to Scotland, any security (whether heritable or moveable), any floating charge and any right of lien or preference and right of retention (other than a right of compensation or set-off).

The making of a claim to the Commissioners

166. —

(1) Save as the Commissioners may otherwise allow or direct, the claimant shall make a claim to the Commissioners by including the correct amount of the refund in the box opposite the legend “VAT reclaimed in this period on purchases and other inputs” on his return.

(2) If at a time the claimant becomes entitled to a refund he is no longer required to make returns to the Commissioners he shall make a claim to the Commissioners in such form and manner as they may direct.

Evidence required of the claimant in support of the claim

167. Save as the Commissioners may otherwise allow, the claimant, before he makes a claim, shall hold in respect of each relevant supply—

(a) either—

- (i) a copy of any VAT invoice which was provided in accordance with Part III of these Regulations, or
- (ii) where there was no obligation to provide a VAT invoice, a document which shows the time, nature and purchaser of the relevant goods and services, and the consideration therefor,

(b) records or any other documents showing that he has accounted for and paid the VAT thereon, and

- (c) records or any other documents showing that the consideration has been written off in his accounts as a bad debt.

Records required to be kept by the claimant

168. —

- (1) Any person who makes a claim to the Commissioners shall keep a record of that claim.
- (2) Save as the Commissioners may otherwise allow, the record referred to in paragraph (1) above shall consist of the following information in respect of each claim made—
 - (a) in respect of each relevant supply for that claim—
 - (i) the amount of VAT chargeable,
 - (ii) the prescribed accounting period in which the VAT chargeable was accounted for and paid to the Commissioners,
 - (iii) the date and number of any invoice issued in relation thereto or, where there is no such invoice, such information as is necessary to identify the time, nature and purchaser thereof, and
 - (iv) any payment received therefor,
 - (b) the outstanding amount to which the claim relates,
 - (c) the amount of the claim, and
 - (d) the prescribed accounting period in which the claim was made.
- (3) Any records created in pursuance of this regulation shall be kept in a single account to be known as the “refunds for bad debts account”.

Preservation of documents and records and duty to produce

169. —

- (1) Save as the Commissioners may otherwise allow, the claimant shall preserve the documents, invoices and records which he holds in accordance with regulations 167 and 168 for a period of 4 years from the date of the making of the claim.
- (2) Upon demand made by an authorised person the claimant shall produce or cause to be produced any such documents, invoices and records for inspection by the authorised person and permit him to remove them at a reasonable time and for a reasonable period.

Attribution of payments

170. —

- (1) Where—
 - (a) the claimant made more than one supply (whether taxable or otherwise) to the purchaser, and
 - (b) a payment is received in relation to those supplies,the payment shall be attributed to each such supply in accordance with the rules set out in paragraphs (2) and (3) below.
- (2) The payment shall be attributed to the supply which is the earliest in time and, if not wholly attributed to that supply, thereafter to supplies in the order of the dates on which they were made, except that attribution under this paragraph shall not be made to any supply if the payment was allocated to that supply by the purchaser at the time of payment and the consideration for that supply was paid in full.

(3) Where—

- (a) the earliest supply and other supplies to which the whole of the payment could be attributed under this regulation occur on one day, or
- (b) the supplies to which the balance of the payment could be attributed under this regulation occur on one day,

the payment shall be attributed to those supplies by multiplying, for each such supply, the payment received by a fraction of which the numerator is the outstanding consideration for that supply and the denominator is the total outstanding consideration for those supplies.

Repayment of a refund**171. —**

(1) Where a claimant—

- (a) has received a refund upon a claim, and
- (b) either—
 - (i) a payment for the relevant supply is subsequently received, or
 - (ii) a payment is, by virtue of regulation 170, treated as attributed to the relevant supply, he shall repay to the Commissioners such an amount as equals the amount of the refund, or the balance thereof, multiplied by a fraction of which the numerator is the amount so received or attributed, and the denominator is the amount of the outstanding consideration.

(2) The claimant shall repay to the Commissioners the amount referred to in paragraph (1) above by including that amount in the box opposite the legend “VAT due in this period on sales and other outputs” on his return for the prescribed accounting period in which the payment is received.

(3) Save as the Commissioners may otherwise allow, where the claimant fails to comply with the requirements of regulation 167, 168, 169 or 170 he shall repay to the Commissioners the amount of the refund obtained by the claim to which the failure to comply relates; and he shall repay the amount by including that amount in the box opposite the legend “VAT due in this period on sales and other outputs” on his return for the prescribed accounting period which the Commissioners shall designate for that purpose.

(4) If at the time the claimant is required to repay any amount, he is no longer required to make returns to the Commissioners, he shall repay such amount to the Commissioners at such time and in such form and manner as they may direct.

Writing off debts**172. —**

(1) This regulation shall apply for the purpose of ascertaining whether, and to what extent, the consideration is to be taken to have been written off as a bad debt.

(2) The whole or any part of the consideration for a supply shall be taken to have been written off as a bad debt when an entry is made in relation to that supply in the refunds for bad debts account in accordance with regulation 168; and this shall have effect regardless of whether a claim can be made in relation to that supply at that time.

(3) Where the claimant owes an amount of money to the purchaser which can be set off, the consideration written off in the accounts shall be reduced by the amount so owed.

(4) Where the claimant holds in relation to the purchaser an enforceable security, the consideration written off in the accounts of the claimant shall be reduced by the value of that security.

PART XX

REPAYMENTS TO COMMUNITY TRADERS

Interpretation of Part XX

173. —

(1) In this Part—

“calendar year” means the period of 12 months beginning with the first day of January in any year;

“claimant” means a person making a claim under this Part or a person on whose behalf such a claim is made;

“official authority” means the authority in a member State designated to issue the certificate referred to in regulation 178(1)(b)(i).

(2) For the purposes of this Part, a person is treated as being established in a country if—

(a) he has there an establishment from which business transactions are effected, or

(b) he has no such establishment (there or elsewhere) but his usual place of residence is there.

(3) For the purposes of this Part—

(a) a person carrying on business through a branch or agency in any country is treated as having there an establishment from which business transactions are effected, and

(b) “usual place of residence”, in relation to a body corporate, means the place where it is legally constituted.

Repayment of VAT

174. Subject to the other provisions of this Part a person to whom this Part applies shall be entitled to be repaid VAT charged on goods imported by him from a place outside the member States in respect of which no other relief is available or on supplies made to him in the United Kingdom if that VAT would be input tax of his were he a taxable person in the United Kingdom.

Persons to whom this Part applies

175. This Part applies to a person carrying on business in a member State other than the United Kingdom but does not apply to such a person in any period referred to in regulation 179 if during that period—

(a) he was established in the United Kingdom, or

(b) he made supplies in the United Kingdom of goods or services other than—

(i) transport of freight outside the United Kingdom or to or from a place outside the United Kingdom or services ancillary thereto,

(ii) services where the VAT on the supply is payable solely by the person to whom the services are supplied in accordance with the provisions of section 8 of the Act, and

(iii) goods where the VAT on the supply is payable solely by the person to whom they are supplied as provided for in section 14 of the Act.

Supplies and importations to which this Part applies

176. This Part applies to any supply of goods or services made in the United Kingdom or to any importation of goods from a place outside the member States but does not apply to—

- (a) a supply or importation of goods or a supply of services which the claimant has used or intends to use for the purpose of any supply by him in the United Kingdom, or
- (b) a supply or importation of goods which the claimant has removed or intends to remove to another member State, or which he has exported or intends to export to a place outside the member States.

VAT which will not be repaid

177. —

(1) The following VAT shall not be repaid—

- (a) VAT charged on a supply which if made to a taxable person would be excluded from any credit under section 25 of the Act,
- (b) VAT charged on a supply to a travel agent which is for the direct benefit of a traveller other than the travel agent or his employee.

(2) In this regulation a travel agent includes a tour operator and any person who purchases and resupplies services of a kind enjoyed by travellers.

Method of claiming

178. —

(1) A person claiming a repayment of VAT under this Part shall—

- (a) complete in the English language and send to the Commissioners either the form numbered 15 in Schedule 1 to these Regulations, or a form designed for the purpose by any official authority, containing full information in respect of all the matters specified in the said form and a declaration as therein set out, and
- (b) at the same time furnish—
 - (i) a certificate of status issued by the official authority of the member State in which the claimant is established either on the form numbered 16 in Schedule 1 to these Regulations or on the form designed by the official authority for the purpose, and
 - (ii) such documentary evidence of an entitlement to deduct VAT as may be required of a taxable person claiming a deduction of input tax in accordance with the provisions of regulation 29.

(2) Where the Commissioners are in possession of a certificate of status issued not more than 12 months before the date of the claim, the claimant shall not be required to furnish a further certificate.

(3) The Commissioners shall refuse to accept any document referred to in paragraph (1)(b)(ii) above if it bears an official stamp indicating that it had been furnished in support of an earlier claim.

Time within which a claim must be made

179. —

(1) A claim shall be made not later than 6 months after the end of the calendar year in which the VAT claimed was charged and shall be in respect of VAT charged on supplies or on importations from a place outside the member States made during a period of not less than 3 months and not more than one calendar year, provided that a claim may be in respect of VAT charged on supplies or on importations from a place outside the member States made during a period of less than 3 months where that period represents the final part of a calendar year.

(2) No claim shall be made for less than £16.

(3) No claim shall be made for less than £130 in respect of VAT charged on supplies or on importations from a place outside the member States made during a period of less than one calendar year except where that period represents the final part of a calendar year.

Deduction of bank charges

180. Where any repayment is to be made to a claimant in the country in which he is established, the Commissioners may reduce the amount of the repayment by the amount of any bank charges or costs incurred as a result thereof.

Treatment of claim and repayment claimed

181. For the purposes of section 73 of the Act any claim made under this Part shall be treated as a return required under paragraph 2 of Schedule 11 to the Act.

182. For the purpose of section 83(c) of the Act repayments claimed under this Part shall be treated as the amount of any input tax which may be credited to a person.

False, altered or incorrect claims

183. If any claimant furnishes or sends to the Commissioners for the purposes of this Part any document which is false or which has been altered after issue to that person, the Commissioners may refuse to repay any VAT claimed by that claimant for the period of 2 years from the date when the claim, in respect of which the false or altered document was furnished or sent, was made.

184. Where any sum has been repaid to a claimant as a result of an incorrect claim, the amount of any subsequent repayment to that claimant may be reduced by the said sum.

PART XXI

REPAYMENTS TO THIRD COUNTRY TRADERS

Interpretation of Part XXI

185. —

(1) In this Part—

“claimant” means a person making a claim under this Part or a person on whose behalf a claim is made and any agent acting on his behalf as his VAT representative;

“official authority” means any government body or agency in any country which is recognised by the Commissioners as having authority to act for the purposes of this Part;

“prescribed year” means the period of 12 months beginning on the first day of July in any year;

“VAT representative” means any person established in the United Kingdom and registered for VAT purposes in accordance with the provisions of Schedule 1 to the Act who acts as agent on behalf of a claimant;

“third country” means a country other than those comprising the member States of the European Community;

“trader” means a person carrying on a business who is established in a third country and who is not a taxable person in the United Kingdom.

(2) For the purposes of this Part, a person is treated as being established in a country if—

(a) he has there a business establishment, or

- (b) he has no such establishment (there or elsewhere) but his permanent address or usual place of residence is there.
- (3) For the purposes of this Part—
 - (a) a person carrying on business through a branch or agency in any country is treated as being established there, and
 - (b) where the person is a body corporate its usual place of residence shall be the place where it is legally constituted.

Repayments of VAT

186. Subject to the other provisions of this Part a trader shall be entitled to be repaid VAT charged on goods imported by him into the United Kingdom in respect of which no other relief is available or on supplies made to him in the United Kingdom if that VAT would be input tax of his were he a taxable person in the United Kingdom.

VAT representatives

187. The Commissioners may, as a condition of allowing a repayment under this Part, require a trader to appoint a VAT representative to act on his behalf.

Persons to whom this Part applies

188. —

(1) Save as the Commissioners may otherwise allow, a trader to whom this Part applies who is established in a third country having a comparable system of turnover taxes will not be entitled to any refunds under this Part unless that country provides reciprocal arrangements for refunds to be made to taxable persons who are established in the United Kingdom.

(2) This Part shall apply to any trader but not if during any period determined under regulation 192—

- (a) he was established in any of the member States of the European Community, or
- (b) he made supplies in the United Kingdom of goods or services other than—
 - (i) transport of freight outside the United Kingdom to or from a place outside the United Kingdom or services ancillary thereto,
 - (ii) services where the VAT on the supply is payable solely by the person to whom they are supplied in accordance with the provisions of section 8 of the Act, and
 - (iii) goods where the VAT on the supply is payable solely by the person to whom they are supplied.

Supplies and importations to which this Part applies

189. This Part applies to any supply of goods or services made in the United Kingdom or to any importation of goods into the United Kingdom on or after 1st July 1994 but does not apply to any supply or importation which—

- (a) the trader has used or intends to use for the purpose of any supply by him in the United Kingdom, or
- (b) has been exported or is intended for exportation from the United Kingdom by or on behalf of the trader.

VAT which will not be repaid

190. —

- (1) The following VAT shall not be repaid—
 - (a) VAT charged on a supply which if made to a taxable person would be excluded from any credit under section 25 of the Act,
 - (b) VAT charged on a supply to a travel agent which is for the direct benefit of a traveller other than the travel agent or his employee.
- (2) In this regulation a travel agent includes a tour operator or any person who purchases and resupplies services of a kind enjoyed by travellers.

Method of claiming

191. —

- (1) A person claiming a repayment of VAT under this Part shall—
 - (a) complete in the English language and send to the Commissioners either the form numbered 9 in Schedule 1 to these Regulations, or a like form produced by any official authority, containing full information in respect of all the matters specified in the said form and a declaration as therein set out, and
 - (b) at the same time furnish—
 - (i) a certificate of status issued by the official authority of the third country in which the trader is established either on the form numbered 10 in Schedule 1 to these Regulations or on a like form produced by the official authority, and
 - (ii) such documentary evidence of an entitlement to deduct input tax as may be required of a taxable person claiming a deduction of input tax in accordance with the provisions of regulation 29.
- (2) Where the Commissioners are in possession of a certificate of status issued not more than 12 months before the date of the claim, the claimant shall not be required to furnish a further such certificate.
- (3) The Commissioners shall refuse to accept any document referred to in paragraph (1)(b)(ii) above if it bears an official stamp indicating that it had been furnished in support of an earlier claim.

Time within which a claim must be made

192. —

- (1) A claim shall be made not later than 6 months after the end of the prescribed year in which the VAT claimed was charged and shall be in respect of VAT charged on supplies or on importations made during a period of not less than 3 months and not more than 12 months, provided that a claim may be made in respect of VAT charged on supplies or on importations made during a period of less than 3 months where that period represents the final part of the prescribed year.
- (2) No claim shall be made for less than £16.
- (3) No claim shall be made for less than £130 in respect of VAT charged on supplies or on importations made during a period of less than the prescribed year except where that period represents the final part of the prescribed year.

Deduction of bank charges

193. Where any repayment is to be made to a claimant in the country in which he is established, the Commissioners may reduce the amount of the repayment by the amount of any bank charges or costs incurred as a result thereof.

Treatment of claim and repayment claimed

194. For the purposes of section 73 of the Act any claim made under this Part shall be treated as a return required under paragraph 2 of Schedule 11 to the Act.

195. For the purpose of section 83(c) of the Act repayments claimed under this Part shall be treated as the amount of any input tax which may be credited to a person.

False, altered or incorrect claims

196. If any claimant furnishes or sends to the Commissioners for the purposes of this Part any document which is false or which has been altered after issue to that person, the Commissioners may refuse to repay any VAT claimed by that claimant for the period of 2 years from the date when the claim, in respect of which the false or altered documents were furnished or sent, was made.

197. Where any sum has been repaid to a claimant as a result of an incorrect claim, the amount of any subsequent repayment to that claimant may be reduced by the said sum.

PART XXII

REPAYMENT SUPPLEMENT

Computation of period

198. In computing the period of 30 days referred to in section 79(2)(b) of the Act, periods referable to the following matters shall be left out of account—

- (a) the raising and answering of any reasonable inquiry relating to the requisite return or claim,
- (b) the correction by the Commissioners of any errors or omissions in that requisite return or claim, and
- (c) in any case to which section 79(1)(a) of the Act applies, the following matters, namely—
 - (i) any such continuing failure to submit returns as is referred to in section 25(5) of the Act, and
 - (ii) compliance with any such condition as is referred to in paragraph 4(1) of Schedule 11 to the Act.

Duration of period

199. For the purpose of determining the duration of the periods referred to in regulation 198, the following rules shall apply—

- (a) in the case of the period mentioned in regulation 198(a), it shall be taken to have begun on the date when the Commissioners first raised the inquiry and it shall be taken to have ended on the date when they received a complete answer to their inquiry;
- (b) in the case of the period mentioned in regulation 198(b), it shall be taken to have begun on the date when the error or omission first came to the notice of the Commissioners and it shall be taken to have ended on the date when the error or omission was corrected by them;

- (c) in the case of the period mentioned in regulation 198(c)(i), it shall be determined in accordance with a certificate of the Commissioners under paragraph 14(1)(b) of Schedule 11 to the Act;
- (d) in the case of the period mentioned in regulation 198(c)(ii), it shall be taken to have begun on the date of the service of the written notice of the Commissioners which required the production of documents or the giving of security, and it shall be taken to have ended on the date when they received the required documents or the required security.

PART XXIII

REFUNDS TO “DO-IT-YOURSELF” BUILDERS

Interpretation of Part XXIII

200. In this Part—

“claim” means a claim for refund of VAT made pursuant to section 35 of the Act, and
“claimant” shall be construed accordingly;

“relevant building” means a building in respect of which a claimant makes a claim.

Method and time for making claim

201. A claimant shall make his claim in respect of a relevant building by—

- (a) furnishing to the Commissioners no later than 3 months after the completion of the building the form numbered 11 in Schedule 1 to these Regulations containing the full particulars required therein, and
- (b) at the same time furnishing to them—
 - (i) a certificate of completion obtained from a local authority or such other documentary evidence of completion of the building as is satisfactory to the Commissioners,
 - (ii) an invoice showing the registration number of the person supplying the goods, whether or not such an invoice is a VAT invoice, in respect of each supply of goods on which VAT has been paid which have been incorporated into the building or its site,
 - (iii) in respect of imported goods which have been incorporated into the building or its site, documentary evidence of their importation and of the VAT paid thereon,
 - (iv) documentary evidence that planning permission for the building had been granted, and
 - (v) a certificate signed by a quantity surveyor or architect that the goods shown in the claim were or, in his judgement, were likely to have been, incorporated into the building or its site.

PART XXIV

FLAT-RATE SCHEME FOR FARMERS

Interpretation of Part XXIV

202. In this Part—

“certified person” means a person certified as a flat-rate farmer for the purposes of the flat-rate scheme under regulation 203 and “certified” and “certification” shall be construed accordingly.

Flat-rate scheme

203. —

(1) The Commissioners shall, if the conditions mentioned in regulation 204 are satisfied, certify that a person is a flat-rate farmer for the purposes of the flat-rate scheme (hereinafter in this Part referred to as “the scheme”).

(2) Where a person is for the time being certified in accordance with this regulation, then (whether or not that person is a taxable person) any supply of goods or services made by him in the course or furtherance of the relevant part of his business shall be disregarded for the purpose of determining whether he is, has become or has ceased to be liable or entitled to be registered under Schedule 1 to the Act.

Admission to the scheme

204. The conditions mentioned in regulation 203 are that—

- (a) the person satisfies the Commissioners that he is carrying on a business involving one or more designated activities,
- (b) he has not in the 3 years preceding the date of his application for certification—
 - (i) been convicted of any offence in connection with VAT,
 - (ii) made any payment to compound proceedings in respect of VAT under section 152 of the Customs and Excise Management Act 1979⁽³⁷⁾ as applied by section 72(12) of the Act,
 - (iii) been assessed to a penalty under section 60 of the Act,
- (c) he makes an application for certification on the form numbered 14 in Schedule 1 to these Regulations, and
- (d) he satisfies the Commissioners that he is a person in respect of whom the total of the amounts as are mentioned in regulation 209 relating to supplies made in the year following the date of his certification will not exceed by £3,000 or more the amount of input tax to which he would otherwise be entitled to credit in that year.

Certification

205. Where the Commissioners certify that a person is a flat-rate farmer for the purposes of the scheme, the certificate issued by the Commissioners shall be effective from—

- (a) the date on which the application for certification is received by the Commissioners,
- (b) with the agreement of the Commissioners, an earlier date to that mentioned in sub-paragraph (a) above, or
- (c) if the person so requests, a later date which is no more than 30 days after the date mentioned in sub-paragraph (a) above,

provided that any certificate shall not be effective from a date before the date when the person’s registration under Schedule 1 or 3 to the Act is cancelled and a certificate shall not be effective from a date earlier than 1st January 1993.

(37) 1979 c. 2.

Cancellation of certificates

206. —

- (1) The Commissioners may cancel a person's certificate in any case where—
- (a) a statement false in a material particular was made by him or on his behalf in relation to his application for certification,
 - (b) he has been convicted of an offence in connection with VAT or has made a payment to compound such proceedings under section 152 of the Customs and Excise Management Act 1979 as applied by section 72(12) of the Act,
 - (c) he has been assessed to a penalty under section 60 of the Act,
 - (d) he ceases to be involved in designated activities,
 - (e) he dies, becomes bankrupt or incapacitated,
 - (f) he is liable to be registered under Schedule 1 or 3 to the Act,
 - (g) he makes an application in writing for cancellation,
 - (h) he makes an application in writing for registration under Schedule 1 or 3 to the Act, and such application shall be deemed to be an application for cancellation of his certificate,
 - (i) they consider it is necessary to do so for the protection of the revenue, or
 - (j) they are not satisfied that any of the grounds for cancellation of a certificate mentioned in sub-paragraphs (a) to (h) above do not apply.
- (2) Where the Commissioners cancel a person's certificate in accordance with paragraph (1) above, the effective date of the cancellation shall be for each of the cases mentioned respectively in that paragraph as follows—
- (a) the date when the Commissioners discover that such a statement has been made,
 - (b) the date of his conviction or the date on which a sum is paid to compound proceedings,
 - (c) 30 days after the date when the assessment is notified,
 - (d) the date of the cessation of designated activities,
 - (e) the date on which he died, became bankrupt or incapacitated,
 - (f) the effective date of registration,
 - (g) not less than one year after the effective date of his certificate or such earlier date as the Commissioners may agree,
 - (h) not less than one year after the effective date of his certificate or such earlier date as the Commissioners may agree,
 - (i) the date on which the Commissioners consider a risk to the revenue arises, or
 - (j) the date mentioned in sub-paragraphs (a) to (h) above as appropriate.

Death, bankruptcy or incapacity of certified person

207. —

- (1) If a certified person dies or becomes bankrupt or incapacitated, the Commissioners may, from the date on which he died or became bankrupt or incapacitated treat as a certified person any person carrying on those designated activities until some other person is certified in respect of the designated activities or the incapacity ceases, as the case may be; and the provisions of the Act and of any Regulations made thereunder shall apply to any person so treated as though he were a certified person.

(2) Any person carrying on such designated activities shall, within 30 days of commencing to do so, inform the Commissioners in writing of that fact and of the date of the death, or of the nature of the incapacity and the date on which it began.

(3) In relation to a company which is a certified person, the references in regulation 206(1)(e) and (2)(e) and in paragraph (1) above to the certified person becoming bankrupt or incapacitated shall be construed as references to its going into liquidation or receivership or to an administration order being made in relation to it.

Further certification

208. Where a person who has been certified and is no longer so certified makes a further application under regulation 204, that person shall not be certified for a period of 3 years from the date of the cancellation of his previous certificate except—

- (a) the Commissioners may certify from the date of his further application a person who has not been registered under Schedule 1 or 3 to the Act at any time since the cancellation of his previous certificate; and
- (b) where the circumstances as are mentioned in paragraph 8(1)(c) of Schedule 4 to the Act apply, the Commissioners may certify the person mentioned in that paragraph on a date after the expiry of one year from the date of the cancellation of his previous certificate.

Claims by taxable persons for amounts to be treated as credits for input tax

209. —

(1) The amount referred to in section 54(4) of the Act and included in the consideration for any taxable supply which is made—

- (a) in the course or furtherance of the relevant part of his business by a person who is for the time being certified under this part,
- (b) at a time when that person is not a taxable person, and
- (c) to a taxable person,

shall be treated, for the purpose of determining the entitlement of the person supplied to credit under sections 25 and 26 of the Act, as VAT on a supply to that person.

(2) Subject to paragraph (3) below and save as the Commissioners may otherwise allow or direct generally or specially, a taxable person claiming entitlement to a credit of an amount as is mentioned in paragraph (1) above shall do so on the return made by him for the prescribed accounting period in which the invoice specified in paragraph (3) below is issued by a certified person.

(3) A taxable person shall not be entitled to credit as is mentioned in paragraph (1) above unless there has been issued an invoice containing the following particulars—

- (a) an identifying number,
- (b) the name, address and certificate number of the certified person by whom the invoice is issued,
- (c) the name and address of the person to whom the goods or services are supplied,
- (d) the time of the supply,
- (e) a description of the goods or services supplied,
- (f) the consideration for the supply or, in the case of any increase or decrease in the consideration, the amount of that increase or decrease excluding the amount as is mentioned in paragraph (1) above, and

- (g) the amount as is mentioned in paragraph (1) above which amount shall be entitled “Flat-rate Addition” or “FRA”.

Duty to keep records

210. —

(1) Every certified person shall, for the purposes of the scheme, keep and preserve the following records—

- (a) his business and accounting records, and
- (b) copies of all invoices specified in regulation 209(3) issued by him or on his behalf.

(2) Every certified person shall comply with such requirements with respect to the keeping, preservation and production of records as the Commissioners may notify to him.

(3) Every certified person shall keep and preserve such records as are required by paragraph (1) above or by notification for a period of 6 years or such lesser period as the Commissioners may allow.

Production of records

211. —

(1) Every certified person shall—

- (a) upon demand made by an authorised person, produce or cause to be produced for inspection by that person—
 - (i) at the principal place of business of the person upon whom the demand is made or at such other place as the authorised person may reasonably require, and
 - (ii) at such time as the authorised person may reasonably require,any documents specified in regulation 210(1), and
- (b) permit an authorised person to take copies of, or make extracts from, or remove at a reasonable time and for a reasonable period, any document produced under paragraph (1) (a) above.

(2) Where a document removed by an authorised person under paragraph (1)(b) above is reasonably required for the proper conduct of a business, he shall, as soon as practicable, provide a copy of that document, free of charge, to the person by whom it was produced or caused to be produced.

(3) Where any documents removed under paragraph (1)(b) above are lost or damaged, the Commissioners shall be liable to compensate their owner for any expenses reasonably incurred by him in replacing or repairing the documents.

PART XXV

DISTRESS AND DILIGENCE

Distress

212. —

(1) If upon written demand a person neglects or refuses to pay VAT which he is required to pay under the Act or any Order or any Regulations made thereunder or to pay any amount recoverable as if it were VAT, a Collector or an officer of rank not below that of Higher Executive Officer may distrain on the goods and chattels of that person and by warrant signed by him direct any authorised person to levy such distress, provided that where an amount of VAT is due under section 73(9) of the

Act (other than an amount assessed as due under section 73(1) of the Act upon failure by a person to make a return) no distress shall be levied until 30 days after that amount became due.

(2) A levy shall be executed by or under the direction of, and in the presence of, the authorised person.

(3) A person in respect of whose goods and chattels a warrant has been signed shall be liable for all costs and charges in connection with anything done under this regulation.

(4) If the person aforesaid does not pay the sum due together with the costs and charges within 5 days of a levy, the distress shall be sold by the authorised person for payment of the sums due and all costs and charges; and costs and charges of taking, keeping and selling the distress shall be retained by the authorised person and any surplus remaining after the deduction of the costs and charges and of the sum due shall be restored to the owner of the goods distrained.

Diligence

213. In Scotland, the following provisions shall have effect—

- (a) where the Commissioners are empowered to apply to the Sheriff for a warrant to authorise a Sheriff Officer to recover any amount of VAT or any sum recoverable as if it were VAT remaining due and unpaid, any application, and any certificate required to accompany that application, may be made on their behalf by a Collector of Customs and Excise or an officer of rank not below that of Higher Executive Officer;
- (b) where, during the course of a poinding and sale in accordance with Schedule 5 to the Debtors (Scotland) Act 1987⁽³⁸⁾ the Commissioners are entitled as a creditor to do any acts, then any such acts, with the exception of the exercise of the power contained in paragraph 18(3) of that Schedule, may be done on their behalf by a Collector of Customs and Excise or an officer of rank not below that of Higher Executive Officer.

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27th September 1995

Leonard Harris
Commissioner of Customs and Excise

(38) 1987 c. 18.