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## STATUTORY INSTRUMENTS

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# 1995 No. 2518

## The Value Added Tax Regulations 1995

### 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<sup>(1)</sup> 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—

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(1) 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substituted by section 32(1) of the Finance Act 1985 (c. 54) and, in relation to supplies made after 26th July 1990, repealed by Part III of Schedule 19 to the Finance Act 1990 (c. 29) .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.

- (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—
  - (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 (2) 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—

(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<sup>(3)</sup> to divide the insolvent estate of the deceased debtor among that debtor’s creditors, he claims upon respectively the trustee

(3) 1889 c. 39.

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.