
STATUTORY INSTRUMENTS

1998 No. 59

VALUE ADDED TAX

The Value Added Tax (Amendment) Regulations 1998

Made - - - - 20th January 1998
Laid before the House of
Commons - - - - 21st January 1998
Coming into force - - 11th February 1998

The Commissioners of Customs and Excise, in exercise of the powers conferred on them by section 80A(1), (3), (4), (5), (6) and (7) of the Value Added Tax Act 1994⁽¹⁾ and of all other powers enabling them in that behalf, hereby make the following Regulations:

1. These Regulations may be cited as the Value Added Tax (Amendment) Regulations 1998 and shall come into force on 11th February 1998.

2. After Part V of the Value Added Tax Regulations 1995⁽²⁾ there shall be inserted the following—

“PART VA

REIMBURSEMENT ARRANGEMENTS

Interpretation of Part VA

37A. In this Part—

“claim” means a claim made (irrespective of when it was made) under section 80 of the Act for repayment of an amount paid to the Commissioners by way of VAT which was not VAT due to them; and “claimed” and “claimant” shall be construed accordingly;

“reimbursement arrangements” means any arrangements (whether made before, on or after 30th January 1998) for the purposes of a claim which—

(a) are made by a claimant for the purpose of securing that he is not unjustly enriched by the repayment of any amount in pursuance of the claim; and

(1) 1994 c. 23; section 96(1) defines “the Commissioners” as meaning the Commissioners of Customs and Excise and “regulations” as meaning regulations made by the Commissioners under the Act; section 80A was inserted by section 46(2) of the Finance Act 1997 (c. 16).
(2) S.I. 1995/2518, to which there are amendments not relevant to these Regulations.

- (b) provide for the reimbursement of persons (consumers) who have, for practical purposes, borne the whole or any part of the cost of the original payment of that amount to the Commissioners;

“relevant amount” means that part (which may be the whole) of the amount of a claim which the claimant has reimbursed or intends to reimburse to consumers.

Reimbursement arrangements—general

37B. Without prejudice to regulation 37H below, for the purposes of section 80(3) of the Act (defence by the Commissioners that repayment by them of an amount claimed would unjustly enrich the claimant) reimbursement arrangements made by a claimant shall be disregarded except where they—

- (a) include the provisions described in regulation 37C below; and
- (b) are supported by the undertakings described in regulation 37G below.

Reimbursement arrangements—provisions to be included

37C. The provisions referred to in regulation 37B(a) above are that—

- (a) reimbursement for which the arrangements provide will be completed by no later than 90 days after the repayment to which it relates;
- (b) no deduction will be made from the relevant amount by way of fee or charge (howsoever expressed or effected);
- (c) reimbursement will be made only in cash or by cheque;
- (d) any part of the relevant amount that is not reimbursed by the time mentioned in paragraph (a) above will be repaid by the claimant to the Commissioners;
- (e) any interest paid by the Commissioners on any relevant amount repaid by them will also be treated by the claimant in the same way as the relevant amount falls to be treated under paragraphs (a) and (b) above; and
- (f) the records described in regulation 37E below will be kept by the claimant and produced by him to the Commissioners, or to an officer of theirs in accordance with regulation 37F below.

Repayments to the Commissioners

37D. The claimant shall, without prior demand, make any repayment to the Commissioners that he is required to make by virtue of regulation 37C(d) and (e) above within 14 days of the expiration of the period of 90 days referred to in regulation 37C(a) above.

Records

37E. The claimant shall keep records of the following matters—

- (a) the names and addresses of those consumers whom he has reimbursed or whom he intends to reimburse;
- (b) the total amount reimbursed to each such consumer;
- (c) the amount of interest included in each total amount reimbursed to each consumer;
- (d) the date that each reimbursement is made.

Production of records

37F.—(1) Where a claimant is given notice in accordance with paragraph (2) below, he shall, in accordance with such notice produce to the Commissioners, or to an officer of theirs, the records that he is required to keep pursuant to regulation 37E above.

(2) A notice given for the purposes of paragraph (1) above shall—

- (a) be in writing;
- (b) state the place and time at which, and the date on which the records are to be produced; and
- (c) be signed and dated by the Commissioners, or by an officer of theirs,

and may be given before or after, or both before and after the Commissioners have paid the relevant amount to the claimant.

Undertakings

37G.—(1) Without prejudice to regulation 37H(b) below, the undertakings referred to in regulation 37B(b) above shall be given to the Commissioners by the claimant no later than the time at which he makes the claim for which the reimbursement arrangements have been made.

(2) The undertakings shall be in writing, shall be signed and dated by the claimant, and shall be to the effect that—

- (a) at the date of the undertakings he is able to identify the names and addresses of those consumers whom he has reimbursed or whom he intends to reimburse;
- (b) he will apply the whole of the relevant amount repaid to him, without any deduction by way of fee or charge or otherwise, to the reimbursement in cash or by cheque, of such consumers by no later than 90 days after his receipt of that amount (except insofar as he has already so reimbursed them);
- (c) he will apply any interest paid to him on the relevant amount repaid to him wholly to the reimbursement of such consumers by no later than 90 days after his receipt of that interest;
- (d) he will repay to the Commissioners without demand the whole or such part of the relevant amount repaid to him or of any interest paid to him as he fails to apply in accordance with the undertakings mentioned in sub-paragraphs (b) and (c) above;
- (e) he will keep the records described in regulation 37E above; and
- (f) he will comply with any notice given to him in accordance with regulation 37F above concerning the production of such records.

Reimbursement arrangements made before 11th February 1998

37H. Reimbursement arrangements made by a claimant before 11th February 1998 shall not be disregarded for the purposes of section 80(3) of the Act if, not later than 11th March 1998—

- (a) he includes in those arrangements (if they are not already included) the provisions described in regulation 37C above; and
- (b) gives the undertakings described in regulation 37G above.”.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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London
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20th January 1998

Martin Brown
Commissioner of Customs and Excise

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 11th February 1998, further amend the Value Added Tax Regulations 1995 (S.I. 1995/2518) (the principal Regulations) by inserting a new Part (Part VA) comprising new regulations 37A to 37H in the principal Regulations.

The new regulations describe the provisions that must be included in reimbursement arrangements made by a person making a claim under section 80 of the Value Added Tax Act 1994 (c. 23) (recovery of overpaid VAT), the undertakings that he must give and the other requirements with which he must comply, in order that his reimbursement arrangements are not to be disregarded for the purposes of determining whether he would be unjustly enriched if his claim is met.

Regulation 37A of the principal Regulations defines certain terms used in Part VA.

Regulation 37B of the principal Regulations describes, in general terms, the provisions which a claimant's reimbursement arrangements must include, and the undertakings which he must give, in order that his arrangements are not to be disregarded when determining whether he would be unjustly enriched if his claim is met.

Regulation 37C of the principal Regulations describes the detailed provisions that must be included in reimbursement arrangements, in order that the arrangements are not to be disregarded when determining whether a claimant would be unjustly enriched if his claim is met.

Regulation 37D of the principal Regulations requires a claimant to repay to the Commissioners of Customs and Excise any amount which he received in order to reimburse consumers, but which he had failed to apply to that purpose within 14 days of his receipt of that amount.

Regulation 37E of the principal Regulations describes the records that the claimant must keep relating to his reimbursement arrangements.

Regulation 37F of the principal Regulations provides for the production of such records.

Regulation 37G of the principal Regulations describes in detail the undertakings that the claimant must give to comply with his reimbursement arrangements.

Regulation 37H of the principal Regulations contains provisions relating to reimbursement arrangements made before these Regulations came into force.