

1999 No. 1374

VALUE ADDED TAX

**The Value Added Tax (Amendment) (No.3) Regulations
1999**

Made - - - - 18th May 1999
Laid before the House of Commons 18th May 1999
Coming into force 9th June 1999

The Commissioners of Customs and Excise, in exercise of the powers conferred on them by sections 6(14) and 8(4) of the Value Added Tax Act 1994(a) 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) (No.3) Regulations 1999 and shall come into force on 9th June 1999.
2. The Value Added Tax Regulations 1995(b) shall be amended by substituting for regulation 93(c) the following—

“93.—(1) Where services, or services together with goods, are supplied in the course of the construction, alteration, demolition, repair or maintenance of a building or any civil engineering work under a contract which provides for payment for such supplies to be made periodically or from time to time, those services or goods and services shall be treated as separately and successively supplied at the earliest of the following times—

- (a) each time that a payment is received by the supplier,
- (b) each time that the supplier issues a VAT invoice, or
- (c) where the services are services to which paragraph (2) below applies, to the extent that they have not already been treated as supplied by virtue of sub-paragraphs (a) and (b) above—
 - (i) if the services were performed on or after 9th December 1997 and before 9th June 1999, the day which falls eighteen months after the date on which those services were performed, or
 - (ii) if the services are performed on or after 9th June 1999, the day on which the services are performed.

(2) This paragraph applies if, at the time the services were, or as the case may require, are performed—

(a) 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.
(b) S.I. 1995/2518; relevant amending instrument is S.I. 1997/2887.
(c) Regulation 93 was substituted by regulation 5 of S.I. 1997/2887.

- (a) it was, or as the case may require, is the intention or expectation of–
 - (i) the supplier, or
 - (ii) a person responsible for financing the supplier’s cost of supplying the services or services together with goods,
 that relevant land would, or as the case may require, will become (whether immediately or eventually) exempt land or, as the case may be, continue (for a period at least) to be such land, or
- (b) the supplier had, or as the case may require, has received (and used in making his supply) any supply of services or of services together with goods the time of supply of which–
 - (i) was, or
 - (ii) but for the issue by the supplier of those services or services together with goods of a VAT invoice (other than one which has been paid in full), would have been,

determined by virtue of paragraph (1)(c) above.

(3) For the purposes of this regulation “relevant land” is land on which the building or civil engineering work to which the construction services relate is, or as the case may be, was situated.

(4) In this regulation references to a person’s being responsible for financing the supplier’s cost of supplying the services or goods and services are references to his being a person who, with the intention or in the expectation that relevant land will become, or continue (for a period at least) to be, exempt land–

- (a) has provided finance for the supplier’s cost of supplying the services or services together with goods, or
- (b) has entered into any agreement, arrangement or understanding (whether or not legally enforceable) to provide finance for the supplier’s cost of supplying the services or services together with goods.

(5) In this regulation references to providing finance for the supplier’s cost of supplying services or services together with goods are references to doing any one or more of the following, that is to say–

- (a) directly or indirectly providing funds for meeting the whole or any part of the supplier’s cost of supplying the services or services together with goods,
- (b) directly or indirectly procuring the provision of such funds by another,
- (c) directly or indirectly providing funds for discharging, in whole or in part any liability that has been or may be incurred by any person for or in connection with the raising of funds to meet the supplier’s cost of supplying the services or services together with goods,
- (d) directly or indirectly procuring that any such liability is or will be discharged, in whole or in part, by another.

(6) The references in paragraph (5) above to the provision of funds for a purpose referred to in that paragraph include references to–

- (a) the making of a loan of funds that are or are to be used for that purpose,
- (b) the provision of any guarantee or other security in relation to such a loan,
- (c) the provision of any of the consideration for the issue of any shares or other securities issued wholly or partly for raising those funds, or
- (d) any other transfer of assets or value as a consequence of which any of those funds are made available for that purpose,

but do not include references to funds made available to the supplier by paying to him the whole or any part of the consideration payable for the supply of the services or services together with goods.

(7) In this regulation references to the supplier’s cost of supplying the services or services together with goods are to–

- (a) amounts payable by the supplier for supplies to him of services or of goods used or to be used by him in making the supply of services or of services together with goods, and
 - (b) the supplier's staff and other internal costs of making the supply of services or of services together with goods.
- (8) For the purposes of this regulation relevant land is exempt land if–
- (a) the supplier,
 - (b) a person responsible for financing the supplier's cost of supplying the services or goods and services, or
 - (c) a person connected with the supplier or with a person responsible for financing the supplier's cost of supplying the services or goods and services,

is in occupation of the land without being in occupation of it wholly or mainly for eligible purposes.

(9) For the purposes of this regulation, but subject to paragraphs (11) and (13) below, a person's occupation at any time of any land is not capable of being occupation for eligible purposes unless he is a taxable person at that time.

(10) Subject to paragraphs (11) and (13) below, a taxable person in occupation of any land shall be taken for the purposes of this regulation to be in occupation of that land for eligible purposes to the extent only that his occupation of that land is for the purpose of making supplies which–

- (a) are or are to be made in the course or furtherance of a business carried on by him, and
 - (b) are supplies of such a description that any input tax of his which was wholly attributable to those supplies would be input tax for which he would be entitled to credit.
- (11) For the purposes of this regulation–
- (a) occupation of land by a body to which section 33 of the Act^(a) applies is occupation of the land for eligible purposes to the extent that the body occupies the land for purposes other than those of a business carried on by that body, and
 - (b) any occupation of land by a government department (within the meaning of section 41 of the Act) is occupation of the land for eligible purposes.

- (12) For the purposes of this regulation, where land of which a person is in occupation–
- (a) is being held by that person in order to be put to use by him for particular purposes, and
 - (b) is not land of which he is in occupation for any other purpose,

that person shall be deemed, for so long as the conditions in sub-paragraphs (a) and (b) above are satisfied, to be in occupation of the land for the purposes for which he proposes to use it.

(13) Paragraphs (9) to (12) above shall have effect where land is in the occupation of a person who–

- (a) is not a taxable person, but
- (b) is a person whose supplies are treated for the purposes of the Act as supplies made by another person who is a taxable person,

as if the person in occupation of the land and that other person were a single taxable person.

(14) For the purposes of this regulation a person shall be taken to be in occupation of any land whether he occupies it alone or together with one or more other persons and whether he occupies all of that land or only part of it.

(15) For the purposes of this regulation, any question as to whether one person is connected with another shall be determined in accordance with section 839 of the Taxes Act^(b). ”.

(a) “the Act” is defined in regulation 2(1) of the Value Added Tax Regulations (S.I. 1995/2518) as meaning the Value Added Tax Act 1994 (c. 23).

(b) Section 96(1) of the Value Added Tax Act 1994 (c. 23) defines “the Taxes Act” as meaning the Income and Corporation Taxes Act 1988 (c. 1).

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18th May 1999

D. J. Howard
Commissioner of Customs and Excise

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 9th June 1999, amend the rules governing the time when a VAT charge arises on supplies of construction services. The amendments alleviate the impact of the current provisions on situations which do not involve tax avoidance. The amendments also continue to prevent avoidance of VAT involving the deferral of a VAT charge under contrived contracts where payment for construction services is not due for many years.

Regulation 2 substitutes a revised regulation for construction services covered by stage payments. Under the old rules a VAT charge arose when a supplier received a payment, issued a VAT invoice, or 18 months after the services were performed. Under the revised rules a charge to VAT will continue to arise when a payment is received or a VAT invoice is issued. In addition, in defined circumstances, a charge to tax will arise on the day when the work is completed. (Under a transitional rule for services completed before 8th June 1999, this charge arises 18 months after the construction work was completed.)

The defined circumstances are that the supplier or someone directly or indirectly financing the supplier's costs expects the land to which the construction services relate to become exempt land. Financing includes giving loans, subscribing for share capital, giving guarantees and any other way of transferring assets or value to provide funds. Land can only be exempt land if the person occupying it (which includes occupying buildings on it) is the construction supplier himself, or the person financing him, or someone connected with either and the occupier is restricted in his ability to recover VAT on costs related to the land.

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