

2003 No. 1069

VALUE ADDED TAX

The Value Added Tax (Amendment) (No. 2) Regulations 2003

Made - - - - *8th April 2003*

Laid before the House of Commons *9th April 2003*

Coming into force - - *10th April 2003*

The Commissioners of Customs and Excise, in exercise of the powers conferred on them by sections 6(14), 25(1) and 26B of, and paragraph 2(1) and (11) of Schedule 11 to, the Value Added Tax Act 1994(a), and of all other powers enabling them in that behalf, hereby make the following regulations:

Citation and commencement

1.—(1) These Regulations may be cited as the Value Added Tax (Amendment) (No. 2) Regulations 2003 and come into force on 10th April 2003.

(2) Regulations 5 and 6 have effect on 1st May 2003.

(3) Regulations 8 and 9 have effect in relation to grants or assignments made on or after 10th April 2003.

Amendment

2. Amend the Value Added Tax Regulations 1995(b) as follows.

Annual Accounting

3. In regulation 52(1A) (admission to the scheme), for “£100,000” substitute “£150,000”.

4. In regulation 53(2)(a) (withdrawal from the scheme), for “transitional period” substitute “transitional accounting period”.

Flat-rate scheme for small businesses

5.—(1) In regulation 55A(1) (interpretation), immediately before the definition of “capital expenditure goods” insert—

“ “amendment date” has the meaning given in regulation 55JA(2);”

(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. Section 26B was added by section 23 of the Finance Act 2002. Paragraph 2(1) of Schedule 11 is amended by section 24(1)(b)(i) and (5) of the Finance Act 2002 with effect from such date as the Treasury may by statutory instrument appoint.

(b) S.I. 1995/2518; relevant amending instruments are S.I. 1996/542 and S.I. 2001/677 (annual accounting), S.I. 2002/1142 (annual accounting and flat-rate scheme for small businesses) and S.I. 2002/2918 (supplies of land - special cases).

(2) In regulation 55D (method of accounting), for “regulation 55J” substitute “regulations 55J and 55JA”.

(3) In regulation 55H (appropriate percentage), for “regulations 55J and 55K” substitute “regulations 55J to 55K”.

(4) Immediately after regulation 55J insert—

“**55JA.**—(1) This regulation applies where—

(a) the Table is amended, and

(b) the amendment date is not, in relation to a flat-rate trader—

(i) the first day of a prescribed accounting period current at an anniversary of his start date; or

(ii) a change date.

(2) The date with effect from which the Table is amended shall be known as “the amendment date”.

(3) For the remaining portion, the appropriate percentage shall be that specified in the Table for the category of business that he is expected, at the amendment date, on reasonable grounds, to carry on in that period.

(4) “Remaining portion” means that part of the prescribed accounting period in which the amendment date occurs starting with the amendment date and ending on the last day of that prescribed accounting period.

(5) For any prescribed accounting period that falls between the prescribed accounting period current at the amendment date and the prescribed accounting period current at the next anniversary of his start date, the appropriate percentage shall be that applicable for the remaining portion.

(6) The appropriate percentages specified in paragraphs (3) and (5) above shall be applied to the relevant turnover in the periods described.”

(5) In regulation 55K (category of business), immediately after sub-paragraph (c) of paragraph (2) insert—

“;

(d) for the purpose of regulation 55JA, the amendment date”.

6. In regulation 55K, for the Table substitute—

Table

<i>Category of business</i>	<i>Appropriate percentage</i>
Retail of food, confectionery, tobacco, newspapers or children’s clothing	5
Postal and courier services Public house	6
Agriculture not elsewhere listed	6.5
Membership organisation Retail of goods not elsewhere listed Wholesale of food or agricultural products	7
Retail of pharmaceuticals, medical goods, cosmetics or toiletries Sport or recreation Retail of vehicles or fuel Wholesale not elsewhere listed	8
Manufacture of food Library, archive, museum or other cultural activity Printing Vehicle repair	8.5

<i>Category of business</i>	<i>Appropriate percentage</i>
Packaging General building or construction services* Social work Agricultural services	9
Rental of machinery, equipment, personal or household goods Manufacture of textiles or clothing	9.5
Forestry or fishing Other manufacture not elsewhere listed Mining or quarrying Personal and household goods repair services Photography Publishing Transport, including freight, removals and taxis Travel agency	10
Hotels or accommodation	10.5
Advertising Animal husbandry Manufacture of fabricated metal products Investigation or security All other activity not elsewhere listed Veterinary medicine Waste and scrap dealing	11
Estate agency or property management Secretarial services	11.5
Entertainment, excluding television, video and film production Journalism Financial services Laundry services	12
Business services not elsewhere listed	12.5
Restaurants, takeaways or catering services Hairdressing or other beauty treatment services Real estate activity not elsewhere listed	13
Computer repair services Management consultancy Accountancy and book-keeping Architects Lawyers and legal services	13.5
Computer and IT consultancy or data processing Labour-only building or construction services*	14.5

* “Labour-only building or construction services” means building or construction services where the value of materials supplied is less than 10 per cent. of relevant turnover from such services; any other building or construction services are “general building or construction services”.

7.—(1) In regulation 55L(1)(a) (admission to the scheme)—

- (a) in paragraph (i) (value of taxable supplies), for “£100,000” substitute “£150,000”; and
- (b) in paragraph (ii) (total value of income), for “£125,000” substitute “£187,500”.

(2) In regulation 55M (withdrawal from the scheme)—

- (a) in sub-paragraphs (a) and (b) of paragraph (1) (total value of income), for “£150,000” substitute “£225,000”; and
- (b) in paragraph (2) (total value of income), for “£125,000” substitute “£187,500”.

Supplies of land – special cases

8. In regulation 84(2) for “Subject to paragraphs (3) to (9)” substitute “Subject to paragraphs (3) to (5)”.

9. For regulation 84(3) to (9) substitute—

“(3) Paragraph (2) above shall not apply in relation to a grant or assignment falling within item 1(a) of Group 1 of Schedule 9 to the Act where any of the persons specified in paragraph (4) below intend or expect to occupy the land on a date before a date ten years after completion of the building or civil engineering work on the land, without being in occupation of it wholly or mainly for eligible purposes.

(4) The persons referred to in paragraph (3) above are—

- (a) the grantor;
- (b) any person who, with the intention or in the expectation that occupation of the land on a date before a date ten years after completion of the building or civil engineering work would not be wholly or mainly for eligible purposes—
 - (i) provides finance for the grantor’s development of the land, or
 - (ii) has entered into any agreement arrangement or understanding (whether or not legally enforceable) to provide finance for the grantor’s development of the land;
- (c) any person who is connected with any person of a description within subparagraph (a) or (b) above.

(5) For the purposes of this regulation—

- (a) Note (2) to Group 1 of Schedule 9 to the Act shall apply in determining when a building or civil engineering work is completed;
- (b) paragraph 3A(8) to (13) of Schedule 10 to the Act shall have effect for determining the meaning of “eligible purposes” and “occupation”;
- (c) “the grantor’s development of the land” means any acquisition by the grantor of an interest in the land, building or civil engineering work and includes the construction of the building or civil engineering work;
- (d) “providing finance” has the same meaning as in paragraph 3A(4) of Schedule 10 to the Act, subject to any appropriate modifications, but does not include paying the consideration for the grantor’s grant or assignment within paragraph (3) above;
- (e) any question whether one person is connected with another shall be determined in accordance with section 839 of the Income and Corporation Taxes Act 1988(a).”.

New King’s Beam House
22 Upper Ground
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8th April 2003

MJ Eland
Commissioner of Customs and Excise

(a) 1988 c. 1.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 10th April 2003, further amend the Value Added Tax Regulations 1995 (S.I.1995/2518) (“the principal Regulations”).

Regulation 1 makes discrete provision in relation to commencement.

Regulations 3 and 4 amend regulations 52(1A) and 53(2)(a) respectively, of the principal Regulations, which relate to the annual accounting scheme. Regulation 3 increases the maximum turnover limit for immediate admission to the scheme from £100,000 to £150,000. Regulation 4 corrects a drafting error.

Regulations 5, 6 and 7 amend Part VIIA of the principal Regulations, which relates to the flat-rate scheme for small businesses (“FRS”).

Regulation 5 inserts a new regulation 55JA into the principal Regulations and makes consequential amendments. The new regulation 55JA provides for another exception to the general rule set out in regulation 55H, which sets out the basic rules regarding how a person operating the FRS must determine which appropriate percentage he must apply by reference to the Table set out in regulation 55K. Regulation 55JA sets out the rules that are to be applied when the Table is amended.

Regulation 6 substitutes a new Table of categories of business and appropriate percentages in regulation 55K of the principal Regulations. The categories of general building or construction services, mining or quarrying, journalism, hairdressing or other beauty treatment services and labour-only building or construction services differ from the categories set out in the previous Table.

Regulation 7 amends regulations 55L and 55M of the principal Regulations. The effect is to increase by one half the maximum turnover limits for eligibility to use the FRS.

A regulatory impact assessment on the changes to the flat rate and annual accounting schemes was published on 10th April 2003 and is available at www.hmce.gov.uk.

Regulations 8 and 9 redraft anti-avoidance legislation that took effect on 28th November 2002, in conjunction with changes which will be made to the Value Added Tax Act 1994 by the Finance Act 2003 and which will take effect from 9th April 2003 by virtue of a resolution under the Provisional Collection of Taxes Act 1968. As with the legislation they replace, they restrict the application of regulation 84(2) of the principal Regulations (“regulation 84(2)”) in order to prevent avoidance. Regulation 84(2) applies where the grant or assignment of the fee simple (the freehold) of land is made for a consideration the amount of which cannot be fully determined at the time the grant or assignment is completed.

Regulation 8 makes the application of regulation 84(2) subject to new paragraphs (3) to (5), replacing paragraphs (3) to (9) added to that regulation with effect from 28th November 2002.

Regulation 9 adds new paragraphs (3) to (5) to regulation 84 of the principal Regulations as follows.

Paragraph (3) prevents the regulation 84(2) treatment applying to standard-rated freehold sales of land including a new or incomplete commercial building or civil engineering work where certain persons will occupy the land within 10 years of completing the building or work, and that occupation is “not wholly or mainly for eligible purposes”. Broadly speaking, this means occupation in order to make exempt supplies, or occupation for non-business purposes (unless the occupier is a local authority or government department).

Paragraph (4) defines the persons whose occupation may cause regulation 84(2) treatment to be denied. These are the grantor, any person who provides finance for the grantor's development of the land, and any person connected to these people.

Paragraph (5) defines various terms used in the amended regulation 84.

Existing VAT definitions are used for determining when a building or a civil engineering work is "completed".

The "grantor's development of the land" means both acquiring an interest in the land and constructing a building or civil engineering work. Other terms are defined in the same way as they are for the option to tax anti-avoidance measures, with minor adaptations. In particular:-

"eligible purposes" means occupation by a taxable person (or a member of a VAT group) in order to make supplies which give an input tax credit, or occupation by a public body for non-business purposes;

"occupation" includes occupation with other persons;

"providing finance" to the grantor includes any direct or indirect method of funding him to meet the costs of acquiring or developing the land, including loans, guarantees, subscribing for shares or securities, or any other transfer of assets or value. However, the purchaser of the freehold grant whose treatment is in question is not providing finance simply by paying the consideration due under the grant;

the definition of "connected" is that used for other VAT purposes. Individuals are connected with spouses, close relatives, business partners and any company that they control. Companies are connected if they are under common control.

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