

2005 No. 2231

VALUE ADDED TAX

The Value Added Tax (Amendment) (No. 2) Regulations 2005

Made - - - - *9th August 2005*

Laid before the House of Commons *10th August 2005*

Coming into force - - *1st September 2005*

The Commissioners for Her Majesty's Revenue and Customs(a), in exercise of the powers conferred on them by sections 18(1A), 80(6) and 80A(1) and (3) to (7) of the Value Added Tax Act 1994(b), hereby make the following regulations:

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Value Added Tax (Amendment) (No. 2) Regulations 2005.

(2) Regulations 2 to 9 shall come into force on 1st September 2005 in relation to claims made under section 80 of the Value Added Tax Act 1994 on or after that date.

(3) Regulation 10 shall come into force on 1st September 2005.

(4) They amend the Value Added Tax Regulations 1995(c) as follows.

Credit for, or repayment of, overstated or overpaid VAT

2. For the heading to regulation 37 substitute “Claims for credit for, or repayment of, overstated or overpaid VAT”.

3. In regulation 43A—

(a) in the definition of “claim”—

(i) omit “(irrespective of when it was made)”;

(ii) for “repayment of an amount paid to the Commissioners by way of VAT which was not VAT due to them” substitute “credit of an amount accounted for to the Commissioners or assessed by them as output tax which was not output tax due to them”;

(b) in the definition of “reimbursement arrangements”—

(a) The functions of the Commissioners of Customs and Excise were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50(1) of that Act provides that a reference to the Commissioners of Customs and Excise shall be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs.

(b) 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 18(1A) was inserted by section 1 of the Finance (No. 2) Act 2005 (c. 22). Section 80 was amended by sections 46 and 47 of the Finance Act 1997 (c. 16) and by section 3 of the Finance (No. 2) Act 2005 (c. 22). Section 80A was inserted by section 46(2) of the Finance Act 1997 (c. 16) and was amended by section 4 of the Finance (No. 2) Act 2005 (c. 22).

(c) S.I.1995/2518; relevant amending instruments are S.I. 1996/1250, S.I.1998/59 and S.I.1999/438.

- (i) in paragraph (a), for “repayment” substitute “crediting”;
- (ii) in paragraph (b), for “cost of the original payment of that amount to the Commissioners” substitute “original amount brought into account as output tax that was not output tax due”.

4. In regulation 43B, for “repayment” substitute “crediting”.

5. In regulation 43C—

(a) in paragraph (a), for “repayment” substitute “crediting of the amount”;

(b) for paragraph (d) substitute—

“(d) any part of the relevant amount credited to the claimant that is not reimbursed by the time mentioned in paragraph (a) above will be notified by the claimant to the Commissioners;

(da) any part of the relevant amount paid (or repaid) to the claimant that is not reimbursed by the time mentioned in paragraph (a) above will be repaid by the claimant to the Commissioners;”;

(c) in paragraph (e), for “repaid” substitute “paid (or repaid)”.

6. For regulation 43D substitute—

“Notifications and repayments to the Commissioners

43D. The claimant shall give any notification to the Commissioners that he is required to give by virtue of regulation 43C(d) above and, without any prior demand, make any repayment to the Commissioners that he is required to make by virtue of regulation 43C(da) and (e) above within 14 days of the expiration of the 90 days referred to in regulation 43C(a) above.”.

7. In paragraph (2) of regulation 43F, for “paid” substitute “credited”.

8. In paragraph (2) of regulation 43G—

(a) in sub-paragraph (b), for “repaid” substitute “credited”;

(b) in sub-paragraph (c), for “repaid” substitute “paid (or repaid)”;

(c) for sub-paragraph (d) substitute—

“(d) he will notify the Commissioners of the whole or such part of the relevant amount credited to him as he fails to apply in accordance with the undertakings mentioned in sub-paragraphs (b) and (c) above;

(da) he will repay to the Commissioners without demand the whole or such part of the relevant amount paid (or 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;”.

9. Omit regulation 43H.

Goods subject to warehousing regime: place of supply

10. After regulation 145J(a), insert—

“Place of supply of goods subject to warehousing regime

145K.—(1) Section 18(1) (supply of goods subject to warehousing regime and before duty point treated as taking place outside the United Kingdom) shall not apply in the following prescribed circumstances.

(a) Part XVI(A) inserted by S.I. 1996/1250. Regulations 145A(1) and 2(1) of S.I. 1995/2518 define “section” for that Part.

- (2) The circumstances are—
- (a) that there is a supply of goods that would but for this regulation be treated for the purposes of the Act as taking place outside the United Kingdom by virtue of section 18(1);
 - (b) the whole or part of the business carried on by the supplier of those goods consists in supplying to a number of persons goods to be sold, by them or others, by retail;
 - (c) that supplier is a taxable person (or would be a taxable person but for section 18(1)); and
 - (d) that supply is to a person who is not a taxable person, and
 - (i) consists in a supply of goods to that person to be sold, by that person, by retail, or
 - (ii) consists in a supply of goods to that person by retail.”.

*Helen Ghosh
Paul R.C. Gray*

9th August 2005

Two of the Commissioners for Her Majesty’s Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 1 September 2005, amend Parts V (accounting and records), VA (reimbursement arrangements) and XVI(A) (fiscal and other warehousing regimes) of the Value Added Tax Regulations 1995 (S.I.1995/2518) (“the principal Regulations”).

Credit for, or repayment of, overstated or overpaid VAT

The amendments to the principal Regulations are consequential amendments arising from amendments made to section 80 and section 80A of the Value Added Tax Act 1994 by sections 3 and 4 of the Finance (No. 2) Act 2005 (c. 22).

Regulation 2 amends the heading to regulation 37 to reflect the changes from claims for recovery of overpaid VAT to claims for credit for, or repayment of, overstated or overpaid VAT.

Regulation 3 amends the definitions of “claims” and “reimbursement arrangements” in regulation 43A to reflect the change to claims for credit of output tax over-accounted for to the Commissioners or assessed by them as output tax that was not output tax due.

Regulation 4 amends regulation 43B to reflect the change to claims for credit of output tax over-accounted for or assessed by the Commissioners as output tax that was not output tax due.

Regulation 5 amends regulation 43C to reflect the change to claims for credit of output tax over-accounted for or assessed and substitutes a new paragraph (d). This provides for notification by the claimant to the Commissioners of any credit he has not reimbursed to consumers within 90 days. It also adds a new paragraph (da) that provides for the claimant to repay to the Commissioners any amount paid (or repaid) and not reimbursed.

Regulation 6 substitutes a new regulation 43D of the principal Regulations. The new regulation provides for notification to be given by the claimant to the Commissioners of any credit not reimbursed to consumers and for any amount paid (or repaid) to be repaid to the Commissioners within the respective time limits laid down.

Regulation 7 amends regulation 43F to reflect the change to claims for credit of output tax over-accounted for or assessed by the Commissioners as output tax that was not output tax due.

Regulation 8 amends regulation 43G to reflect the change to claims for credit of output tax over-accounted for or assessed and substitutes a new sub-paragraph (d). This provides for notification by the claimant to the Commissioners of any credit he has not reimbursed to consumers in accordance with the undertaking given by him. It also adds a new sub-paragraph (da) that provides for the claimant to repay to the Commissioners any amount paid (or repaid) and/or any interest that has not been reimbursed in accordance with the undertaking.

Regulation 9 deletes regulation 43H of the principal Regulations. This was a transitional provision which is no longer required.

Goods subject to warehousing regime: place of supply

Supplies of goods subject to a (customs) warehousing regime are not subject to VAT(a).

Regulation 10 provides(b) for those arrangements not to apply if a taxable person(c) supplies the goods to a non-taxable person by way of retail(d) or to be sold by the latter by retail, and the whole or part of the supplier's business consists in supplying to a number of persons goods to be sold, by them or others, by retail(e).

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- (a) There are a number of requirements, see sections 18(1), 18(6) and 18(7) of the Value Added Tax Act 1994 (c. 23).
 - (b) By inserting a new regulation 145K into the principal Regulations.
 - (c) Or someone who would be a taxable person but for section 18(1) of the Value Added Tax Act 1994 (c. 23).
 - (d) Despite Commission Regulation (EEC) No 2454/93 Article 527(2) (OJ No L 253, 11.10.93, p 1) (Article 527 substituted by Commission Regulation (EC) No 993/2001 (OJ L No 141, 28.5.01, p 1)) providing that customs warehousing authorisations shall not be granted if the premises of customs warehouses or the storage facilities are used for the purpose of retail sale.
 - (e) See the Value Added Tax Act 1994 (c. 23) Schedule 6 paragraph 2 (supply of goods by taxable person to non-taxable person for subsequent retail sale).

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