

2006 No. 587

VALUE ADDED TAX

The Value Added Tax (Amendment) Regulations 2006

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| <i>Made</i> | - - - - | <i>7th March 2006</i> |
| <i>Laid before the House of Commons</i> | | <i>7th March 2006</i> |
| <i>Coming into force</i> | | |
| | <i>for the purposes of regulations 2 & 3</i> | <i>1st April 2006</i> |
| | <i>for the purposes of regulations 4 & 5</i> | <i>6th April 2006</i> |

The Commissioners for Her Majesty's Revenue and Customs(a) make the following Regulations in exercise of the powers conferred by sections 16(1), 25(1) and 37(3) of, and paragraph 2(1) and (11) of Schedule 11 to, the Value Added Tax Act 1994(b):

Citation and commencement

1.—(1) These Regulations may be cited as the Value Added Tax (Amendment) Regulations 2006.

(2) They come into force for the purposes of regulations 2 and 3 on 1st April 2006.

(3) They come into force for the purposes of regulations 4 and 5 on 6th April 2006.

(4) Regulation 4 applies to any reimportation of goods occurring once it is in force.

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

Annual accounting scheme

2. In regulation 52 (admission to annual accounting scheme)—

(a) omit sub-paragraph (1)(a) and paragraph (1A), and

(b) in sub-paragraph (1)(b), for “£660,000” substitute “£1,350,000”.

3. In regulations 53(2)(a) and 54(1)(e) and (2) (exit), for “£825,000” substitute “£1,600,000”.

Returned goods relief

4. After regulation 121C, insert—

(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. Schedule 11 paragraph 2(1) was amended by section 24 of the Finance Act 2002 (c.23).

(c) S.I. 1995/2518; relevant amending instruments are S.I. 1996/542, 2000/634, 2001/630, 2001/677, 2002/1142, 2003/1069, 2003/2318, 2004/767.

“Adaptations and exceptions for the application of returned goods relief

121D.—(1) The application of Council Regulation (EEC) No 2913/92(a) (Community Customs Code) and Commission Regulation (EEC) No 2454/93(b) (implementation Regulation) in relation to any VAT chargeable on the importation of goods from places outside the member States is subject to the following prescribed adaptations.

(2) Regard—

- (a) Articles 185 to 187 of the Community Customs Code (returned Community goods and returned compensating products), and
- (b) Articles 844 to 856 and Article 882 of the implementation Regulation (returned Community goods and returned compensating products),

as only applying in the case and to the extent of a reimportation to the United Kingdom by the person who originally exported or re-exported the relevant Community goods or compensating products from the VAT territory of the Community.

That VAT territory(c) is the territorial application of Council Directive 77/388/EEC in accordance with Title III of that Directive(d) (territorial application).

(3) Regard the amount of the relief mentioned in Article 186 of the Community Customs Code (returned Community goods) as reduced by the amount of any unpaid VAT.

(4) Regard the amount legally owed in Article 187 of the Community Customs Code (returned compensating products) as reduced by the amount of any paid VAT.

(5) For the purposes of paragraphs (3) and (4)—

- (a) “VAT” includes value added tax charged in accordance with the law of another member State (see sections 92(1), 92(2) and 96(1) of the Act(e));
- (b) “unpaid” refers to any part of the VAT charged and due on—
 - (i) a supply or acquisition of the goods in a member State before the reimportation, or
 - (ii) an importation of the goods from outside the member States before the reimportation,but repaid, remitted or otherwise not paid;
- (c) “paid” refers to any part of the VAT charged, due and paid on—
 - (i) a supply or acquisition of the goods in a member State before the reimportation, or
 - (ii) an importation of the goods from outside the member States before the reimportation,and without any actual, or prospect of, repayment or remission;

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- (a) OJ No L 302, 19.10.92, p 1 to which there are amendments not relevant to these Regulations.
 - (b) OJ No L 253, 11.10.93, p 1; relevant amendments made by Commission Regulation (EC) 75/98 (OJ No L 7, 13.1.98, p 3), Commission Regulation (EC) No 1677/98 (OJ No L 212, 30.7.98, p 18) and the 1994 Act of Accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden (OJ No C 241, 29.8.94, p 21) as adjusted by Council Decision 95/1/EC (OJ No L 1, 1.1.95, p 1).
 - (c) On the date these Regulations are made, the VAT territory is described in HM Customs & Excise (now HM Revenue & Customs) Notice 703 “VAT: Export of goods from the United Kingdom”, April 2005, paragraphs 2.8 and 2.9. The Notice is available at <http://www.hmrc.gov.uk> (in VAT – Library section – VAT, Customs, Excise and international trade duties – Public Notices & Information Sheets – VAT Public Notices).
 - (d) OJ No L 145, 13.6.77, p 1; relevant amendments made by Council Directive 91/680/EEC (OJ No L 376, 31.12.91, p 1), Council Directive 92/111/EEC (OJ No L 384, 30.12.92, p 47) and Protocol No 3, Article 2(2), Annex, Part Two to the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia, and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ No L 236, 23.9.03, p 940).
 - (e) Regulation 2(1) of S.I. 1995/2518 defines “the Act” as the Value Added Tax Act 1994. Section 96(1) of that Act defines “VAT” as value added tax charged in accordance with the Act or, where the context requires, with the law of another member State. Regulation 121D(5)(a) ensures that the latter is properly taken into account for the purposes of returned goods relief.

(d) a sum for which there is or was under the law of a member State an entitlement or right to a deduction or refund within Article 17 of Council Directive 77/388/EEC(a) (origin and scope of the right to deduct) is neither “unpaid” nor “paid”.

(6) In the circumstances described by paragraph (7) or (8)—

- (a) Articles 185 to 187 of the Community Customs Code (returned goods), and
- (b) Articles 844 to 856 and Article 882 of the implementation Regulation (returned goods),

are excepted from the Community legislation which is to apply as mentioned in section 16(1) of the Act (application of customs legislation in relation to import VAT).

(7) These circumstances are that—

- (a) the reimporter contemplated by those Articles makes a supply of, or concerning, the goods whilst under the inward processing procedure or in the course of, or after, the relevant exportation, re-exportation or reimportation,
- (b) the place of that supply for the purposes of VAT is determined by or under section 7 of the Act (place of supply) as being outside the United Kingdom, and
- (c) the goods nevertheless are or may be stored or physically used in the United Kingdom by or under the direction of that reimporter or the person to whom that supply is made (“recipient”).

For these purposes, “reimporter” and “recipient” include someone connected with either person or both persons as determined in accordance with section 839 of the Taxes Act(b).

(8) These circumstances are that the goods in question were supplied at any time to any person pursuant to regulations 131 to 133 (supplies to persons departing from the member States) or pursuant to any corresponding provision of the Isle of Man(c).

(9) For the purposes of the Articles of the Community Customs Code and implementation Regulation mentioned in paragraph (2)—

- (a) regard the description of the customs territory of the Community in Article 3 of the Community Customs Code as being substituted with a description of the VAT territory (see paragraph (2));
- (b) regard the following references as including a reference to the completion of the formalities referred to in Article 33a(1)(a) of Council Directive 77/388/EEC(d) (formalities relating to entry of goods into VAT territory from territory considered a third territory)—
 - (i) “released for free circulation” in the definition of “Community goods” in Article 4(7), second indent and Article 185(1) of the Community Customs Code;
 - (ii) “entered” and “declared” for “release for free circulation” in, or for the purposes of, Articles 844(4), 848(1), 848(2), 849(1) and 849(5) of the implementation Regulation;

(a) OJ No L 145, 13.6.77, p 1; relevant amendments made by Council Directive 91/680/EEC (OJ No L 376, 31.12.91, p 1), Council Directive 92/111/EEC (OJ No L 384, 30.12.92, p 47), Council Directive 95/7/EC (OJ No L 102, 5.5.95, p 18), Council Directive 2000/65/EC (OJ No L 269, 21.10.00, p 44), Protocol No 3, Article 2(2), Annex, Part Two to the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia, and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ No L 236, 23.9.03, p 33) and Article 1 of and Annex V, paragraph 1(c) to Council Directive 2004/66/EC (OJ No L 168, 1.5.04, p 35).

(b) The Income and Corporation Taxes Act 1988 c.1, following the definition in section 96(1) of the Value Added Tax Act 1994 (c.23).

(c) On the date these Regulations are made the corresponding Isle of Man provisions are regulations 131 to 133 of the Value Added Tax Regulations 1996, Statutory Document No 194/96.

(d) OJ No L 145, 16.6.77, p 1; relevant amendments in relation to Article 33a made by Council Directive 92/111/EEC (OJ No L 384, 30.12.92, p 47).

- (c) regard the following references as including a reference to the completion of the formalities referred to in Article 33a(2)(a) of Council Directive 77/388/EEC (or to a declaration under those formalities) (formalities relating to dispatch or transport of goods from Member State to territory considered a third territory)—
 - (i) “customs export formalities” in Articles 844(1), 849(1), 849(2) and 849(3) of the implementation Regulation;
 - (ii) “export declaration” in Article 848(1) of that Regulation;
 - (iii) “customs formalities relating to their exportation” in Articles 844(4) and 849(1) of that Regulation;
- (d) regard—
 - (i) the definition of “import duties” in Article 4(10) of the Community Customs Code as defining instead VAT charged on the importation of goods from places outside the member States in accordance with the Act(a); and
 - (ii) the references to “import duty” and “duty” in Article 185(1), second subparagraph, second indent and Article 187 of the Community Customs Code as references to such VAT.

(10) The references to Council Directive 77/388/EEC in paragraphs (2), (5)(d), (9)(b) and (9)(c) embrace relevant amendments up to and including 6th April 2006 only.”.

5. Regulations 120(2)(a)(v), 120(2)(b)(iv), 124 and 125 are revoked (exceptions for customs returned goods relief and former provisions for VAT returned goods relief).

David Varney
Paul Gray

7th March 2006

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

(a) See section 1(1)(c) of the Value Added Tax Act 1994 (c.23).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 1st April 2006 for the purposes of the VAT annual accounting scheme and on 6th April 2006 for the purposes of VAT returned goods relief, further amend the Value Added Tax Regulations 1995 (S.I. 1995/2518).

Annual accounting scheme

Regulation 2 increases the maximum turnover limit for entrants to the VAT annual accounting scheme from £660,000 to £1,350,000. It also removes the requirement that a taxable person with a turnover above £150,000 must have been registered for VAT for 12 months before he is eligible to apply to use annual accounting.

Regulation 3 increases the maximum turnover limit for those already operating the scheme from £825,000 to £1,600,000.

A full regulatory impact assessment of the effect that this part of the instrument will have on the costs of business, charities or voluntary bodies is available from www.hmrc.gov.uk.

Returned goods relief

Returned goods relief renders the payment of VAT unnecessary on the importation of goods to the United Kingdom that are in the same state compared to when they were previously exported from the European Community by the importer.

Regulations 4 and 5(a) align the rules for such import VAT relief with those for the returned goods relief from import duty. They do this by enabling adapted import duty provisions to apply(b), including rules for adjusting the amount of VAT relief to take account of the existing VAT status of transactions involving the goods in the European Community VAT territory. Any VAT deductible or refundable through the VAT system, such as input tax, is disregarded.

The VAT relief continues not to apply in the case of goods zero-rated for VAT under the United Kingdom's personal export schemes(c).

Regulation 5 also revokes the existing VAT provisions for returned goods relief.

A full regulatory impact assessment has not been produced for this part of the instrument as it has no impact on the costs of business, charities or voluntary bodies.

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- (a) Implementing Article 14.1(e) of Council Directive 77/388/EEC (OJ No L 145, 13.6.77, p 1). A transposition note is available from <http://www.hmrc.gov.uk> or HM Revenue and Customs, Portcullis House, 27 Victoria Avenue, Southend on Sea, Essex SS2 6AL.
- (b) Under section 16(1) of the Value Added Tax Act 1994 (c.23), and by replacing the provisions revoked by regulation 5 of this instrument with a new regulation 121D. The latter includes anti-avoidance rules in paragraphs (6) to (8).
- (c) See the new regulation 121D(8), which includes corresponding schemes in the Isle of Man.

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