

2010 No. 3022

VALUE ADDED TAX

The Value Added Tax (Amendment) (No. 4) Regulations 2010

Made - - - - *20th December 2010*

Laid before the House of Commons *21st December 2010*

Coming into force in accordance with regulation 1

The Commissioners for Her Majesty's Revenue and Customs(a) make the following Regulations in exercise of the powers conferred by sections 6(14)(b), 24(6), 24(6A)(c), 25(1) and 26 of the Value Added Tax Act 1994(d).

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Value Added Tax (Amendment) (No. 4) Regulations 2010 and come into force on 1st January 2011.

(2) Regulations 3 and 4 have effect in relation to supplies made on or after 1st January 2011.

(3) Regulations 8, 11 and 13(g) have effect in relation to input tax incurred by a taxable person on goods imported or acquired by, or goods or services supplied to, that taxable person on or after 1st January 2011.

(4) Regulation 9 has effect in relation to any person registering for VAT on or after 1st January 2011.

(5) Regulation 12 has effect in relation to any capital item where the first interval of its adjustment period (as determined under the law prior to regulations 5 to 15 coming into force) has not started before 1st January 2011.

Amendment of the Value Added Tax Regulations 1995

2. The Value Added Tax Regulations 1995(e) are amended as follows.

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- (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 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) Section 6 was amended by section 26 of, and paragraph 1 of Schedule 3 to, the Finance Act 1996 (c. 8), section 22 of the Finance Act 1998 (c. 36) and section 76 of, and paragraphs 1 and 2 of Part 1 of Schedule 36 to, the Finance Act 2009 (c. 10); there are further amendments but they are not relevant.
- (c) Section 24(6A) was inserted by paragraph 1(6) of Schedule 8 to the Finance (No. 3) Act 2010 (c. 33).
- (d) 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.
- (e) S.I. 1995/2518; relevant amending instruments are S.I. 1995/3147, 1997/1086, 1997/1614, 1999/599, 1999/3114, 2000/258, 2000/794, 2002/1074, 2003/3220, 2004/3140, 2007/768, 2007/3099, 2008/1146, 2009/586, 2009/820 and 2010/559.

Water, gas or any form of power, heat, refrigeration or ventilation

3. In regulation 86 (supplies of water, gas or any form of power, heat, refrigeration or ventilation)—

- (a) in paragraph (1)(d) after “refrigeration” insert “or other cooling,”
- (b) in the heading after “refrigeration” insert “or other cooling.”

4. In the heading to regulation 87 after “refrigeration” insert “or other cooling.”

Input tax and partial exemption

5. In regulation 99 (interpretation of Part XIV and longer periods) after paragraph (1) insert—

“(1A) In this Part “non-business VAT” has the meaning given in section 24(5)(b) of the Act(a).”

6. After regulation 102 (use of other methods), insert—

“**102ZA.**—(1) A taxable person who is required to make an apportionment under section 24(5) of the Act in relation to goods or services which are used or are to be used partly for business purposes and partly for other purposes may effect that apportionment using a method provided for in regulation 102(1).

(2) Where the taxable person referred to in paragraph (1) is not a fully taxable person, the method used shall be the only method used to calculate that person’s deductible input tax.

(3) Where a person who was a fully taxable person at the time when the method was approved subsequently incurs exempt input tax, regulation 102B shall apply from the date on which that person first incurs such exempt input tax.

(4) Where a person effects the apportionment referred to in paragraph (1) using a method provided for in regulation 102(1)—

- (a) regulations 102(1A) to (17) and 102A to 102C shall apply;
- (b) regulations 105A, 106 and 106ZA shall not apply; and
- (c) for the purposes of defining a longer period and determining an adjustment of attribution under regulation 107, “exempt input tax” shall include non-business VAT.

(5) In this regulation, a fully taxable person is a person who, disregarding paragraph (4)(c), has not incurred any exempt input tax in that person’s current or immediately preceding (if any) tax year or registration period.”

7. In regulation 107 (adjustment of attribution) in paragraph (1)(e) between “shall” and “apply” insert “, except where a taxable person is using a method provided for in regulation 102(1) to make the apportionment referred to in regulation 102ZA(1),”.

8. In regulation 110, after paragraph (4) insert—

“(5) In regulations 108 and 109 a reference to—

- (a) “exempt supplies” includes a reference to non-business activities that give rise to an amount of non-business VAT;
- (b) a method which a taxable person is required to use includes a reference to an apportionment which a taxable person is required to make under section 24(5) of the Act.”

9. In regulation 111 (exceptional claims for VAT relief)—

- (a) delete “or” at the end of paragraph (2)(c); and

(a) Section 24(5)(b) was inserted by paragraph 1(3) of Schedule 8 to the Finance (No. 3) Act 2010.

- (b) after paragraph (2)(d) insert “or (e) in respect of capital items of a description falling within regulation 113.”.

Adjustments to the deduction of input tax on capital items

10. In regulation 112 (interpretation of Part XV)—

- (a) in paragraph (2), after “a person” insert “who has or acquires an interest in the item in question”;
- (b) after paragraph (2) insert—

“(3) In this regulation and in regulation 114, an interest includes an interest which is treated as being supplied to a person under paragraph 37(3) of Schedule 10 to the Act provided that the numerator of the fraction in paragraph 37(5) of that Schedule is 3 or more.

(4) The reference to “owner” in paragraph (2) shall be taken to refer to—

- (a) subject to sub-paragraph (b), the transferee where the whole or part of a capital item is transferred from one person to another and that transfer is not treated as a supply for the purposes of VAT; and
- (b) the representative member of a group under section 43 of the Act if the capital item is owned by a member of the group.

(5) Where the owner is a transferee or representative member, that person shall be treated as having done everything that the transferor or group member (as may be the case) has done in respect of the capital item.”.

11. For regulation 113 (capital items to which this Part applies) substitute—

“**113.**—(1) The capital items to which this Part applies are any of the items specified in paragraph (2) on or in relation to which the owner incurs VAT bearing capital expenditure of a type specified in paragraph (3), the value of which is not less than that specified in paragraph (4).

(2) The items are—

- (a) land;
- (b) a building or part of a building;
- (c) a civil engineering work or part of a civil engineering work;
- (d) a computer or an item of computer equipment;
- (e) an aircraft;
- (f) a ship, boat or other vessel.

(3) The expenditure—

- (a) in the case of an item falling within paragraph (2)(a) or (d), is the expenditure relating to its acquisition;
- (b) in the case of an item falling within paragraph (2)(b), (c), (e) or (f), is the expenditure relating to its—
 - (i) acquisition,
 - (ii) construction (including where appropriate manufacture),
 - (iii) refurbishment,
 - (iv) fitting out,
 - (v) alteration, or
 - (vi) extension (including the construction of an annex).

(4) The value for the purposes of paragraph (3) is—

- (a) not less than £250,000 where the item falls within paragraph (2)(a), (b) or (c);
- (b) not less than £50,000 where the item falls within paragraph (2)(d), (e) or (f).”.

12. In regulation 114 (period of adjustment) for paragraphs (3) and (4) substitute—

“(3) Subject to paragraphs (3A) and (3B), the period of adjustment is—

- (a) 10 successive intervals in the case of a capital item of a description falling within regulation 113(2)(a) to (c);
- (b) 5 successive intervals in the case of a capital item of a description falling within regulation 113(2)(d) to (f),

determined in accordance with paragraphs (4) to (5B) and (7).

(3A) If, at the time of the owner’s first use, the number of intervals specified in paragraph (3)(a) or (b) (as may be the case) exceeds the number of complete years that the owner’s interest in the capital item has to run by more than one, the number of intervals shall be reduced to one more than the number of complete years that the owner’s interest has to run calculated from the date of the owner’s first use of the item (but not to less than three intervals).

(3B) Where the owner’s interest falls within regulation 112(3), the number of intervals shall be the same as the numerator of the fraction in paragraph 37(5) of Schedule 10 to the Act.

(3C) Where paragraph (3A) or (3B) applies, the relevant denominator in regulation 115(1) shall be adjusted accordingly.

(3D) Where a person who registers for VAT already owns an item of a description falling within regulation 113, for the purposes of calculating the period of adjustment—

- (a) one complete interval shall be deducted for each complete year which has elapsed since the date of that person’s first use of the capital item prior to the date of VAT registration, and
- (b) the first interval applicable to the capital item which ends after the date of VAT registration shall be treated as a subsequent interval for the purposes of regulation 115(1).

(4) Subject to paragraphs (5A), (5B) and (7), the first interval applicable to a capital item shall commence on the day on which the owner first uses the capital item and shall end on the day before the start of his next tax year whether or not this is his first tax year.”.

13. In regulation 115 (method of adjustment)—

- (a) in paragraph (1)(a), for “regulation 114(3)(a) or (b)” substitute “regulation 114(3)(b)”;
- (b) in paragraph (1)(b), for “regulation 114(3)(c)” substitute “regulation 114(3)(a)”;
- (c) for paragraph (3) substitute—

“(3) Paragraph (3ZA) applies where, during an interval other than the last interval applicable to a capital item, the owner—

- (a) supplies the whole or part of his interest in the capital item, or
- (b) is deemed to supply the whole or part of his interest in the capital item, or
- (c) would have been deemed to supply the whole of his interest in the capital item but for the fact that the VAT on the deemed supply (whether by virtue of its value or because it is zero-rated or exempt) would not have exceeded the sum specified in paragraph 8(1)(c) of Schedule 4 to the Act.

(3ZA) If the supply (or deemed supply) of the capital item referred to in paragraph (3) is—

- (a) a taxable supply, the owner shall be treated as using the whole or part (as may be the case) of the capital item for each of the remaining complete intervals applicable to it wholly in making taxable supplies, or
- (b) an exempt supply, the owner shall be treated as not using the whole or part (as may be the case) of the capital item for any of the remaining complete intervals applicable to it in making any taxable supplies,

and, in each case, the owner shall, except where paragraph (3A) applies, calculate for each of the remaining complete intervals applicable to the capital item, in accordance with paragraph (1) or (2) as the case may require, such amount as the owner may deduct or be liable to pay to the Commissioners.”;

- (d) in paragraph (3A)—
 - (i) for “paragraph (3)” substitute “paragraph (3ZA)”; and
 - (ii) for “on the supply of that capital item” substitute “on the supply of the whole or part of that capital item”;
- (e) in paragraph (3B), for “on the supply of the capital item” substitute “on the supply of the whole or part of the capital item”;
- (f) for paragraph (4) substitute—

“(4) If a capital item is irretrievably lost or stolen or is totally destroyed, no further adjustment shall be made in respect of any remaining complete intervals applicable to it.”;
- (g) for paragraph (5) substitute—

“(5) Subject to paragraph (5A), for the purposes of this Part —

“the adjustment percentage” means the difference (if any) between the extent, expressed as a percentage, to which the whole or part as appropriate of the capital item was used or to be used for the making of taxable supplies at the time the original entitlement to deduction of the input tax was determined and the extent to which the whole or part of it as appropriate is so used, or is treated under paragraph (3ZA) as being so used, in the subsequent interval in question;

“the original entitlement to deduction” means the entitlement to deduction under sections 24 to 26 of the Act and regulations made under those sections;

“the total input tax on the capital item” means—

in relation to any capital item, all VAT incurred by the owner on the capital expenditure on that item (whether or not the person incurring it is VAT registered at the time that it is incurred) including any non-business VAT; and

where a person is treated as making a supply to himself under paragraph 37(3) of Schedule 10 to the Act, the VAT charged on that supply;

“VAT bearing capital expenditure” means capital expenditure on which VAT is charged at the standard rate or at a reduced rate.”;
- (h) after paragraph (5) insert—

“(5A) Where paragraph (3ZA) applies in respect of part of a capital item, for the remaining complete intervals the total VAT incurred on the capital item as defined in paragraph (5) shall be reduced accordingly.

(5B) The person responsible for making an adjustment under paragraph (1), (2) or (3ZA) shall be the person who is treated as the owner of the capital item under regulation 112 at the point immediately prior to the end of the interval in question or, in the case of an adjustment under paragraph (3ZA), the event specified in paragraph (3). ”;
- (i) in paragraph (6)—
 - (i) for “paragraph (8)” substitute “paragraphs (9) and (11)”; and
 - (ii) omit the words from “provided that” to the end;
- (j) in paragraph (7)—
 - (i) for “paragraph (8)” substitute “paragraphs (9) and (11)”; and
 - (ii) for “(3)” substitute “(3ZA)”;
- (k) for paragraph (8), substitute—

“(8) For the purposes of paragraph (9), a “specified return” means a return specified in paragraph (6) or (7).”;
- (l) in paragraph (9), omit “Subject to paragraph (10) below.”;

(m) omit paragraph (10);

(n) after paragraph (10) insert—

“(11) Where a person is required to make an adjustment under paragraph (1), (2) or (3ZA) at a time when he is no longer registered for VAT, he shall make the required adjustment in his final VAT return.”.

14. In regulation 116 (ascertainment of taxable use of a capital item), in paragraph (1), for “in accordance with the method used under Part XIV for that interval” substitute “in accordance with the provisions of sections 24 to 26 of the Act and regulations made under those sections as they apply to that interval”.

Goods used for non-business purposes during their economic life

15. In regulation 116B (interpretation of this Part)—

(a) in the definition of “the full cost of the goods” in paragraph (1), after sub-paragraph (b) insert “but, in relation to any goods which are relevant assets, the full cost shall exclude any costs on which VAT was incurred on or after 1 January 2011;”;

(b) after the definition of “predecessor” insert—

““relevant asset” has the same meaning as it has in section 24(5B)(a) of the Act.”.

Steve Lamey
Dave Hartnett

20th December 2010

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 in accordance with regulation 1, amend Parts 11 (time of supply and time of acquisition), 14 (input tax and partial exemption), 15 (adjustments to the deduction of input tax on capital items) and 15A (goods used for non-business purposes during their economic life) of the Value Added Tax Regulations 1995 (S.I. 1995/2518).

Regulation 3 amends regulation 86 (supplies of water, gas or any form of power, heat, refrigeration or ventilation) to add a reference to ‘other cooling’ to the description of supplies which fall within paragraph (1) of that regulation following an amendment to paragraph 3 of Schedule 4 to the Value Added Tax Act 1994.

Regulation 4 amends the title to regulation 87 (acquisitions of water, gas or any form of power, heat, refrigeration or ventilation). Regulation 87 applies to goods described in regulation 86 and its heading is amended in accordance with the amendments to regulation 86.

Regulation 5 amends regulation 99 (interpretation of Part XIV and longer periods) to insert a definition of “non-business VAT”.

Regulation 6 inserts a new regulation 102ZA to allow a taxable person who is required to make an apportionment under section 24(5) of the Value Added Tax Act 1994 to use a method provided for in regulation 102(1) and makes provision as to how that method will operate.

Regulation 7 amends regulation 107 (adjustment of attribution) to confirm that a taxable person operating a method provided for in regulation 102(1) to make the apportionment referred to in regulation 102ZA(1) is not eligible to treat all of his input tax as attributable to taxable supplies under regulation 106.

(a) Section 24(5B) was inserted by paragraph 1(4) of Schedule 8 to the Finance (No. 3) Act 2010.

Regulation 8 amends regulation 110 (adjustment of attribution) to widen the scope of regulations 108 and 109 to cater for non-business VAT to ensure consistency with EU law.

Regulation 9 amends regulation 111 (exceptional claims for VAT relief) to insert a new paragraph (2)(e) to add a further category of VAT that may not be treated as input tax under paragraph (1) of that regulation as deduction becomes available in accordance with regulations 12 and 13.

Regulation 10 amends regulation 112 (interpretation of Part XV) to clarify the meaning of references to “an interest” and “owner”.

Regulation 11 substitutes a new regulation 113 (capital items to which this Part applies) to specify the capital items to which Part 15 of the Regulations applies. Ships and aircraft are brought into the capital goods scheme in accordance with EU law and some existing definitions are simplified.

Regulation 12 amends regulation 114 (period of adjustment) to substitute new paragraphs (3), (3A), (3B), (3C), (3D) and (4) for paragraphs (3) and (4) to align the period of adjustment of a capital item more closely with the owner’s interest in the item. It also provides that the period of adjustment is amended in circumstances where a business is not registered for VAT at the time it acquires a capital item to ensure a fair recovery of VAT.

Regulation 13 amends regulation 115 (method of adjustment) to simplify the wording and to remove an anti-avoidance provision that has become superfluous. It makes provision for the partial disposal of capital items in line with EU case law. The definitions are amended to widen the scope of Part 15 to cater for non-business VAT as required by EU law and to include VAT on costs incurred by businesses that are not registered for VAT to ensure that they are treated in the same way as businesses that are registered. It also confirms who is responsible for accounting for VAT adjustments in various circumstances and how a business that deregisters from VAT must account for any required adjustment.

Regulation 14 amends regulation 116 (ascertainment of taxable use of a capital item) to confirm that a taxable person must review the extent to which a capital item is used for business purposes when ascertaining its taxable use.

Regulation 15 amends regulation 116B (interpretation of this Part) to amend the definition of “the full cost of the goods” to make it clear that, in the case of relevant assets (as defined), the full cost excludes any costs on which VAT was incurred on or after 1 January 2011.

A full Impact Assessment has not been produced in relation to the changes made by regulations 3 and 4 as they have no impact on business, charities or voluntary bodies.

A full Impact Assessment of the effect that the changes made by regulations 5 to 15 will have on the costs of business and the voluntary sector is available at <http://www.hmrc.gov.uk>.

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£5.75