

2023 No. 68

VALUE ADDED TAX

The Value Added Tax (Margin Schemes and Removal or Export of Goods: VAT-related Payments) Order 2023

<i>Made</i>	- - - -	<i>24th January 2023</i>
<i>Laid before the House of Commons</i>		<i>25th January 2023</i>
<i>Coming into force</i>	- -	<i>1st May 2023</i>

The Treasury, in exercise of the powers conferred by section 50B(1) and (5) to (7) of the Value Added Tax Act 1994(a), make the following Order:

Citation, commencement and effect

1.—(1) This Order may be cited as the Value Added Tax (Margin Schemes and Removal or Export of Goods: VAT-related Payments) Order 2023 and comes into force on 1st May 2023.

(2) This Order has effect in relation to goods removed to Northern Ireland(b), or exported, on or after 1 May 2023.

Interpretation

2.—(1) In this Order—

“VATA” means the Value Added Tax Act 1994;

“claim” means claim for a VAT-related payment(c) under this Order;

“prescribed period” has the meaning given in article 8(5).

(2) For the purposes of this Order a person is only to be treated as having a business establishment in the United Kingdom if that establishment has a permanent presence of both the human and technical resources necessary for the provision of the taxable supplies for which that business is required to account as a taxable person(d).

(3) Where, in this Order, the Commissioners(e) are empowered to make provision by way of a direction—

(a) 1994 c. 23 (“VATA”). Section 50B was inserted by section 70 of the Finance Act 2022 (c. 3).
(b) Section 50B of VATA allows the Treasury to make provision for a VAT-related payment to be made in respect of a relevant supply. A “relevant supply” is defined in section 50B(2) of VATA. In order to qualify as a relevant supply, the supply must (amongst other things) be a supply to a person who takes possession of the supplied goods in Great Britain or the Isle of Man in circumstances where the goods are then removed to Northern Ireland or exported. The removals to which the Order applies are therefore removals to Northern Ireland.
(c) “VAT-related payment” is defined in section 50B(4) of VATA.
(d) Section 3(1) of VATA defines a person as being a taxable person for the purposes of VATA “while he is, or is required to be, registered under” VATA.
(e) Section 96(1) of VATA defines “the Commissioners” as meaning the Commissioners of Customs and Excise. The functions of the Commissioners of Customs and Excise were transferred to the Commissioners for His Majesty’s Revenue and Customs by section 5(1)(b) of the Commissioners for Revenue and Customs Act 2005 (c. 11); section 50(1) of that Act

- (a) they may make different provision for different cases and so a direction may be made generally or for a particular case or class of cases; and
- (b) a direction may be published in a public notice or addressed to an individual as the Commissioners think fit(a).

VAT-related payments

3. A person is entitled, on making a claim, to a VAT-related payment in respect of a relevant supply(b) of a description specified in article 4.

4.—(1) The supply specified for the purposes of article 3 is a relevant supply of a motor vehicle (“the vehicle”) which meets the conditions specified in paragraph (2).

(2) The conditions specified in this paragraph are that—

- (a) the vehicle is not an excluded good;
- (b) the vehicle has been removed to Northern Ireland or exported to a member State; and
- (c) the person who took possession of the vehicle in Great Britain or the Isle of Man is—
 - (i) in a case where the vehicle is removed to Northern Ireland, registered under VATA(c) at the time of the removal; or
 - (ii) in a case where the vehicle is exported to a member State, identified by that member State as being taxable in that member State(d) at the time of the export.

(3) In this article—

“antique” and “collectors’ item” have the meanings given in article 2 of the Value Added Tax (Special Provisions) Order 1995(e);

“excluded good” means a good which is an antique, collectors’ item or work of art;

“motor vehicle” means a mechanically propelled vehicle which is registered under either the Vehicle and Excise and Registration Act 1994(f) or the Licensing and Registration of Vehicles Act 1985 of the Isle of Man(g);

“work of art” has the meaning given in section 21(6) of VATA(h).

VAT-related payment: consideration for supply

5.—(1) Where the consideration for a relevant supply of goods (the goods) is more than the value of the goods at the time of their removal to Northern Ireland or export, section 50B(4) of VATA applies to that supply as if the consideration for the supply is the value of the goods at the time of their removal or export.

provides that a reference to the Commissioners of Customs and Excise shall be taken as a reference to the Commissioners for His Majesty’s Revenue and Customs.

- (a) Any general directions made by the Commissioners under this Order will be published at <https://www.gov.uk/government/collections/customs-vat-and-excise-uk-transition-legislation-from-1-january-2021#vat-notice-that-have-force-of-law>. A person unable to access the directions electronically may access them in hard copy by post free of charge on application to 0300 200 3700.
- (b) “relevant supply” is defined in section 50B(2) of VATA for the purposes of that section and in relation to a person making a claim for a VAT-related payment.
- (c) Section 3 of VATA provides that Schedules 1 to 3A and Parts 8 and 9 of Schedule 9ZA shall have effect with respect to registration and persons registered under any of those Schedules or Parts shall be registered in a single register kept by the Commissioners and accordingly references in VATA to being registered under VATA are references to being registered under those Schedules or Parts.
- (d) Paragraph 81(2) of Schedule 9ZA to VATA provides that references in VATA to a person being taxable in a member State are references to that person being taxable under so much of the law of that member State as makes provision for purposes corresponding, in relation to that member State, to the purposes of so much of VATA as makes provision as to whether a person is a taxable person. Schedule 9ZA was inserted by paragraphs 1 and 2 of Schedule 2 to the Taxation (Post-transition Period) Act 2020 (c. 26).
- (e) S.I. 1995/1268, amended by SI 1999/3120; there are other amending instruments, but none is relevant.
- (f) 1994 c. 22.
- (g) AT 21 of 1985.
- (h) Subsection (6) was inserted by section 22 of the Finance Act 1995 (c. 4) and then it and associated subsections (6A) to (6C) were substituted by section 12(2) of the Finance Act 1999 (c. 16).

(2) The value of the goods at the time of their removal or export is to be taken to be the amount that would be payable as consideration if the goods were to be supplied at that time between two persons who were standing in no such relationship with each other as would affect that consideration.

Payment representative

6.—(1) The Commissioners may, as a condition of allowing a claim under article 8 (a claim) to be paid, direct that a non-established claimant must appoint a person to act as a payment representative on that claimant's behalf in relation to that claim.

(2) A non-established claimant may, with the agreement of the Commissioners, appoint a person as a payment representative to act on that claimant's behalf in relation to a claim.

(3) A payment representative is —

- (a) entitled to act on behalf of the principal for any purpose connected with a claim; and
- (b) jointly and severally liable with the principal for any liability resulting from a claim being incorrect.

(4) A person may only be appointed as a payment representative under paragraph (1) or (2) if that person is registered under VATA and has a business establishment in the United Kingdom.

(5) A payment representative is not by virtue of sub-paragraph (3)(b) guilty of any offence except in so far as—

- (a) the payment representative has consented to, or connived in, the commission of the offence by the principal; or
- (b) the commission of the offence by the principal is attributable to any neglect on the part of the payment representative.

(6) The Commissioners may direct the manner and circumstances in which a person is to be appointed as a payment representative and a direction may include such provision as the Commissioners think fit for the maintenance of a register of the names of payment representatives recorded against the names of their principals.

(7) Where the Commissioners have made a direction under paragraph (1), the person (P) to whom the notice is addressed must not be treated as having been directed to appoint a payment representative unless the Commissioners have either—

- (a) served a notice of the direction on P; or
- (b) taken all such other steps as appear to them to be reasonable for bringing the direction to the attention of P.

(8) In this article—

“non-established claimant” means a person who—

- (a) does not have a business establishment in the United Kingdom; and
- (b) does not have an appointed VAT representative^(a);

“payment representative” means a person appointed in accordance with paragraph (1) or (2);

“principal” in relation to a payment representative means the non-established claimant on whose behalf that payment representative has been appointed.

(a) Section 48(2A) of VATA defines a VAT representative for the purposes of that Act as a person appointed under subsection (1ZA) or (2) of section 48.

Method of claiming

7.—(1) A taxable person who has a business establishment in the United Kingdom and who makes a claim must make it by accounting for it in that person's VAT return as if it were input tax^(a) incurred on the relevant supply at the relevant time^(b).

(2) Accordingly, any provision made by or under any enactment that applies to input tax applies to a claim made under paragraph (1), as if that claim were accounting for input tax.

(3) A person to whom paragraph (1) does not apply must make a claim in accordance with article 8.

8.—(1) A person making a claim under this article (the claim) must—

- (a) make it in the form and manner; and
- (b) furnish such information or supporting documentation; as the Commissioners direct.

(2) The claim—

- (a) must be made in respect of the prescribed period in which the relevant time applicable to the relevant supply occurs; and
- (b) may not be made if a period of more than 4 years has elapsed since the end of the prescribed period during which the relevant time applicable to the relevant supply occurred.

(3) Save as the Commissioners otherwise direct, no more than 4 claims may be made in respect of a prescribed period.

(4) The claim may not be made for a period of less than 3 months and may not be made for a longer period than a prescribed period, provided that the claim may be made for a period of less than 3 months where either—

- (a) that period represents the final part of a prescribed period; or
- (b) a prescribed period is a period of less than 3 months.

(5) Subject to paragraph (6), a prescribed period is a period of 12 months beginning on the first day of the month specified by the Commissioners in a direction.

(6) The Commissioners may direct that a prescribed period is a period of less than or more than 12 months.

Error correction

9.—(1) This article applies where a person (P) has made a claim under article 8 which has overstated or understated P's entitlement to a VAT-related payment (the entitlement).

(2) Where P has overstated the entitlement P must account for the overstatement in the form and manner directed by the Commissioners and by the earlier of the following—

- (a) the date on which P next makes a claim after the overstatement comes to P's knowledge; or
- (b) the end of the prescribed period in which the overstatement comes to P's knowledge.

(3) Where P has understated the entitlement P may make a claim under article 8 for the amount understated. The claim for the understatement may be made solely in connection with the amount understated or combined with a claim for a further VAT-related payment.

(a) "input tax" is defined in section 24(1) of VATA; section 24(1) was amended by section 43 of, and paragraphs 1 and 24 of Schedule 8 to, the Taxation (Cross-border) Trade Act 2018 (c. 22).

(b) "relevant time" is defined in section 50B(2)(c) of VATA as "the time of the removal or export".

(4) Paragraphs (2) and (3) do not apply if a period of 4 years has elapsed since the end of the prescribed period during which the relevant time applicable to the relevant supply which is the subject of the accounting under paragraph (2) or the claim under paragraph (3) occurs.

Denomination of payment and deduction of bank charges

10.—(1) This article applies where a VAT-related payment is made as a result of a claim under article 8.

(2) The payment must be made in pounds sterling.

(3) Where the payment is to be made to a person in a country other than the United Kingdom, the Commissioners may reduce the amount of the payment by the amount of any bank charges or costs incurred as a result thereof.

Records

11.—(1) A person who makes a claim must keep such records as the Commissioners may direct.

(2) The records which are required to be maintained under paragraph (1) must be preserved—

(a) in the form and manner directed by the Commissioners; and

(b) for such period as the Commissioners may direct not exceeding 6 years beginning with the date of the claim to which they relate.

Application of Schedule 36 to the Finance Act 2008

12. Schedule 36 to the Finance Act 2008(a) (information and inspection powers) applies as if the reference to any tax in paragraph 64(1) of that Schedule includes a reference to a claim made under article 8.

Offences

13.—(1) Section 72 of VATA(b) (offences) applies with the following modifications.

(2) Subsections (1) and (8) apply as if any references in those subsections—

(a) to the evasion of VAT include a reference to the obtaining of a VAT-related payment under article 8; and

(b) to the amount of the VAT are references, in relation to the obtaining of a VAT-related payment, to the amount falsely claimed by way of the claim made under article 8.

(3) Anything done for the purposes of a claim under article 8, including the production, furnishing or sending of any document and the furnishing of any information or any statement in relation to such a claim, is to be treated as being done for the purposes of VATA.

(4) Subsection (5) applies as if the reference to a refund under section 35 or 36 of VATA includes a reference to a VAT-related payment under article 8.

Penalties for errors

14.—(1) Schedule 24 to the Finance Act 2007(c) (penalties for errors) (the Schedule) applies to a claim made under article 8 (the claim) with the following modifications.

(2) Part 1(liability for penalty) applies as if—

(a) 2008 c. 9; paragraph 64 was amended by section 95 of, and paragraphs 1 and 22 of Schedule 47 to, the Finance Act 2009 (c. 10).

(b) Section 72 was amended by section 17(1) and (5) of the Finance Act 2003 (c. 14), section 84(4) of, and paragraphs 3 and 8(a) of Schedule 22 to, and section 114 of, and Part 5 of Schedule 27 to, the Finance Act 2007 (c. 11), regulation 2(2) and paragraph 8 of Schedule 2 of S.I. 2015/664 and section 43 of, and paragraphs 1 and 63 of Schedule 8 to, the Taxation (Cross-border Trade) Act 2018.

(c) 2007 c. 11.

- (a) the claim, including any return, statement or declaration made in connection with the claim, is a document of a kind listed in the Table in paragraph 1 of the Schedule;
- (b) the claim concerns a repayment of VAT; and
- (c) references to an assessment include an assessment under article 15;

and other Parts of the Schedule apply in accordance with these modifications.

- (3) References in the Schedule to a tax period include references to a prescribed period.

Assessment: overclaims

15.—(1) Where a person has made a claim under article 8 and, as a result of that claim, an amount has been paid or credited to that person which ought not to have been paid or credited, or which would not have been so paid or credited had the facts been known or been as they later turn out to be, the Commissioners may assess that amount to the best of their judgment and notify it to that person.

(2) An assessment under paragraph (1) must, subject to paragraph (4), be made within the time limit provided for in paragraph (3) and must not be made after the later of the following—

- (a) 2 years after the end of the prescribed period in which the claim was paid or credited; or
- (b) one year after evidence of facts, sufficient in the opinion of the Commissioners to justify the making of an assessment, comes to their knowledge,

but (subject to paragraph (3)) where such further evidence comes to the Commissioners' knowledge after the making of an assessment under paragraph (1), another assessment may be made under that paragraph, in addition to any earlier assessment.

(3) Subject to paragraph (4), an assessment under paragraph (1) must not be made more than 4 years after the end of the prescribed period in which the claim was paid or credited.

(4) Subsections (4) to (4B) of section 77 of VATA(a) (assessments: time limits and supplementary assessments) apply to an assessment under paragraph (1) as if the references to a loss of VAT included references to a payment or crediting of a claim or part of a claim under article 8 which was not due to the claimant.

(5) Paragraph (6) applies, subject to the provisions of VATA as to appeals which are applied by article 17, where an assessment has been made and notified to any person under paragraph (1).

(6) Where this paragraph applies—

- (a) the assessment is to be paid in the form and manner directed by the Commissioners; and
- (b) paragraph 5 of Schedule 11 (administration, collection and enforcement: recovery of VAT etc.) to VATA(b) applies to the amount assessed as if it is VAT due from the person assessed.

Set-off

16. In any case where—

- (a) an amount is due from the Commissioners to a person (P) under article 8; and
- (b) P is liable to pay a sum by way of an assessment under this Order, or a penalty under—
 - (i) VATA;
 - (ii) Schedule 24 to the Finance Act 2007; or
 - (iii) Schedule 36 to the Finance Act 2008;

(a) Subsections (4) to (4B) were substituted for subsection (4) as originally drafted by section 118(1) of, and paragraphs 32, 34(1) and (3) of Schedule 39 to, the Finance Act 2008 (c. 9), subsection (4A) was amended by section 66 of, and paragraph 51 of Schedule 17 to, the Finance (No. 2) Act 2017 (c. 32) and subsection (4) was amended by section 43 of, and paragraphs 1 and 69(1) and (5) of Schedule 8 to, the Taxation (Cross-border Trade) Act 2018.

(b) Paragraph 5 was amended by section 113 of, and Part 5(2) of Schedule 18 to, the Finance Act 1997 (c. 16).

the amount referred to in paragraph (a) is set-off against the sum referred to in paragraph (b) and, accordingly, to the extent of the set-off, the obligations of the Commissioners and P are discharged.

Appeals

17.—(1) An appeal lies to a tribunal^(a) in respect of the following—

- (a) the amount of a VAT-related payment pursuant to a claim under article 8; and
- (b) an assessment under article 15.

(2) Part 5 of VATA^(b) (reviews and appeals), and any orders or regulations made under that Part, apply for the purposes of this Order subject to the following modifications—

- (a) an appeal under paragraph (1) is to be treated as an appeal which lies to the tribunal under section 83(1) of VATA but not under any particular paragraph of that subsection; and
- (b) section 84 of VATA is to apply as if subsections (3) and (4) of that section include a reference to appeals against decisions relating to matters mentioned in sub-paragraphs (1)(a) and (b).

Steve Double
Andrew Stephenson

24th January 2023

Two of the Lords Commissioners of His Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for a VAT-related payment to be made in respect of a relevant supply (“relevant supply”) of goods of a description specified in the Order. The Order specifies a relevant supply of a motor vehicle subject to certain conditions. This Order comes into force on 1st May 2023 and has effect in relation to goods removed to Northern Ireland or exported to the EU on or after that date.

Section 50B (“section 50B”) of the Value Added Tax Act 1994 (c. 23) (“VATA”) allows the Treasury, by order, to provide that on making a claim a person (“the claimant”) is entitled to a VAT-related payment in respect of a relevant supply of goods of a description specified in the order. What constitutes a relevant supply, and the amount of the VAT-related payment, are defined in section 50B.

This Order specifies that a VAT-related payment may be made in respect of a relevant supply of a motor vehicle which meets the conditions specified in the Order. It makes provision about the amount of the VAT-related payment and the administration of claims including provisions about record keeping, assessment, interest, set-off and appeals. This Order also applies, with modifications, legislation relating to offences and penalties for errors.

Article 1 makes provision about citation, commencement and application.

Article 2 makes provision about the interpretation of the Order.

Article 3 provides that a person is entitled to a VAT-related payment in respect of a relevant supply of a description specified in article 4.

(a) “tribunal” is defined in section 82 of VATA.

(b) Part 5 was relevantly amended by section 31(3) of the Finance Act 1997, section 16 of, and paragraph 4 of Schedule 2 to, the Finance Act 1999 (c. 16), section 23(3) of the Finance Act 2002 (c. 23), section 17(1) and (7) of the Finance Act 2003 (c. 14), section 19(1) of, and paragraphs 5(1) and (3) of Schedule 2 to, the Finance Act 2004 (c. 12), section 93(9) of the Finance Act 2007, articles 3(1) and (3) of S.I. 2008/1146, paragraphs 216 to 224 of Schedule 1 to S.I. 2009/56, article 4 of S.I. 2014/1264, section 103 of, and paragraphs 11 and 17 of Schedule 22 to, the Finance Act 2014 (c. 26), section 124(1) and (4) of the Finance Act 2016 (c. 24), section 43 of, and paragraph 73 of Schedule 8 to, the Taxation (Cross-border Trade) Act 2018 and section 118(1) of, and paragraphs 15 and 24 to 27 of Schedule 27 to, the Finance Act 2021 (c. 26).

Article 4 specifies the relevant supply of a motor vehicle which is not an excluded good (as defined in article 2) and which has either been removed to Northern Ireland or exported to a member State. If the motor vehicle is removed to Northern Ireland the claimant must be registered under VATA. If the motor vehicle is exported to a member State the claimant must be registered for the purposes of that member State's VAT regime.

Article 5 provides that the amount of the VAT-related payment, in circumstances where the consideration for the relevant supply is more than the value of the goods at the time of their removal to Northern Ireland or export, is to be calculated by reference to the value of the goods at the time of that removal or export.

Article 6 makes provision for the appointment of a representative ("the representative") to act on behalf of the claimant where the claimant does not have either a business establishment in the UK (as defined in the Order) or a VAT representative appointed under section 48 of VATA. The article provides for the representative to be jointly and severally liable with the claimant for any liability resulting from an incorrect claim and also provides that the Commissioners for Revenue and Customs ("the Commissioners") may require the appointment of a representative as a condition of making a VAT-related payment.

Article 7 provides that a claimant who is registered under VATA and who has a business establishment in the United Kingdom must make a claim for a VAT-related payment by accounting for it in that claimant's VAT return as if it were input tax incurred on the relevant supply of the goods which are the subject of the claim. The article also provides that legislation which is relevant to input tax claims and to supplies which are the subject of input tax claims applies in relation to claims for VAT-related payments and to the supplies which are the subject of those claims.

Article 8 provides that a claimant to whom article 7 does not apply must make a claim for a VAT-related payment in such form and manner, and provide such documentation, as the Commissioners may direct. The article makes provision for a claim under this article to be made by reference to a prescribed period of 12 months commencing on the first day of the month specified by the Commissioners in a direction. The Commissioners also have discretion to direct a prescribed period of less than or more than 12 months.

Article 9 makes provision for how an error in a claim for a VAT-related payment under article 8 is to be corrected and the time limits applicable to that process.

Article 10 provides that claims made under article 8 must be paid in pounds sterling and that bank charges or other costs incurred as a result of the payment being made to a person in a country other than the United Kingdom may be deducted from the amount due under the claim.

Article 11 provides that a claimant must keep such records, for such period and in such form and manner as the Commissioners may direct.

Article 12 provides that Schedule 36 to the Finance Act 2008 (c. 9) (information and inspection powers) ("Schedule 36") is to apply as if the reference to any tax in paragraph 64(1) of that Schedule includes a reference to a claim made under article 8.

Article 13 provides that section 72 of VATA (offences) is to apply as if any reference in subsections (1) and (8) of that section to the evasion of VAT includes a reference to obtaining a VAT-related payment under article 8 and any references to the amount of VAT are references, in relation to the obtaining a VAT-related payment, to the amount falsely claimed under article 8.

Article 14 provides that Part 1 of Schedule 24 to the Finance Act 2007 (c. 11) (penalties for errors) ("Schedule 24") is to apply to a claim made under article 8 as if the claim, including any return or any other document made in connection with it, is a document of a kind listed in paragraph 1 of that Schedule, as if the claim is a claim for repayment of VAT and as if references to an assessment include an assessment made under article 15 of this Order. Other Parts of Schedule 24 are to apply in accordance with the modifications to the application of Part 1 and references in the Schedule to a tax period are to include references to a prescribed period under the Order.

Article 15 provides that an overclaim of a VAT-related payment may be recovered by way of an assessment. It provides for the same time limits as are applicable to assessments under VATA and provides that paragraph 5 of Schedule 11 to VATA (administration, collection and enforcement: recovery of VAT etc.) is to apply as if the amount assessed is VAT due from the person assessed.

Article 16 provides that any amount due from a claimant by way of an assessment under this Order or due as a penalty under VATA, Schedule 24 or Schedule 36, may be set off against an amount due to that claimant under article 8.

Article 17 provides that an appeal lies to the tribunal in respect of the amount of a VAT-related payment due under article 8 and in respect of any assessment under article 15. It also provides that Part 5 of VATA (reviews and appeals) is to apply for the purposes of this Order with certain modifications.

Any general directions made by the Commissioners under this Order will be published at <https://www.gov.uk/government/collections/customs-vat-and-excise-uk-transition-legislation-from-1-january-2021#vat-notices-that-have-force-of-law>. A person unable to access the directions electronically may access them in hard copy by post free of charge on application to 0300 200 3700

A Tax Information and Impact Note covering this instrument will be published on the government website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

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