

2012 No. 1899

VALUE ADDED TAX

The Value Added Tax (Amendment) (No. 2) Regulations 2012

Made - - - - *18th July 2012*

Laid before the House of Commons *19th July 2012*

Coming into force in accordance with regulation 2

The Commissioners for Her Majesty's Revenue and Customs(a) make the following Regulations in exercise of the powers conferred by sections 3(2) and (4), 18B(2A), 18C(1A), 25(1), 26(3) and (4), 26B(1), 35(2), 39(1) and (3), 48(4), (4A) and (6), 49(2) and 54(1) and (6) of, and paragraph 17 of Schedule 1, paragraph 14 of Schedule 1A, paragraph 9 of Schedule 2, paragraph 10 of Schedule 3, paragraph 8 of Schedule 3A and paragraphs 2(1), (3), (4), (5), (10), 2A and 7(1) of Schedule 11 to, the Value Added Tax Act 1994(b), sections 132 and 133 of the Finance Act 1999(c), sections 135 and 136 of the Finance Act 2002(d) and paragraph 10 of Schedule 27 to the Finance Act 2012(e).

Citation and commencement

1. These Regulations may be cited as the Value Added Tax (Amendment) (No. 2) Regulations 2012 and come into force in accordance with regulation 2.

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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) 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 3(2) was amended by section 136(1) of the Finance Act 2000 (c. 17); sections 18B and 18C were inserted by paragraph 5 of Schedule 3 to the Finance Act 1996 (c. 8) and amended by paragraphs 2 and 3 of Schedule 29 to the Finance Act 2012 (c. 14); section 26B was inserted by section 23(1) and (4) of the Finance Act 2002 (c. 23); section 35(2) was amended by section 30 of the Finance Act 1996 and by paragraph 4 of Schedule 29 to the Finance Act 2012; section 39(3) was amended by section 77 of the Finance Act 2009 (c. 10) and by paragraph 5 of Schedule 29 to the Finance Act 2012; section 48 was amended by paragraph 6 of Schedule 29 to the Finance Act 2012; section 49(2) was amended by sections 100 and 114 of, and Part 6(2) of Schedule 27 to, the Finance Act 2007 (c. 11); section 54(6) was amended by paragraph 7 of Schedule 29 to the Finance Act 2012; paragraph 17 of Schedule 1 was amended by paragraph 8 of Schedule 29 to the Finance Act 2012; Schedule 1A was inserted by section 203 of, and Schedule 28 to, the Finance Act 2012, paragraph 9 of Schedule 2 was amended by paragraph 9 of Schedule 29 to the Finance Act 2012; paragraph 10 of Schedule 3 was amended by paragraph 10 of Schedule 29 to the Finance Act 2012; Schedule 3A was inserted by section 136(8) of, and Schedule 36 to, the Finance Act 2000 and paragraph 8 was amended by paragraph 11 of Schedule 29 to the Finance Act 2012; paragraph 2(1) of Schedule 11 was amended by sections 24(1)(b) and (5) and 139 of, and Part 2(2) of Schedule 40 to, the Finance Act 2002 and by paragraph 12(2) of Schedule 29 to the Finance Act 2012; paragraph 2(3) of Schedule 11 was amended by section 78 of the Finance Act 2009 and by paragraph 12(3) of Schedule 29 to the Finance Act 2012; paragraph 2(4) of Schedule 11 was amended by paragraph 12(6) of Schedule 29 to the Finance Act 2012; paragraph 2(5) of Schedule 11 was amended by paragraph 12(7) of Schedule 29 to the Finance Act 2012; paragraph 2(10) was amended by section 38 of the Finance Act 1996.
- (c) 1999 c. 16; section 132 was amended by section 406 of, and paragraph 156 of Schedule 17 to, the Communications Act 2003 (c. 21).
- (d) 2002 c. 23; section 135 was amended by section 50 of, and paragraphs 94 and 95 of Schedule 4 to, the Commissioners for Revenue and Customs Act 2005 (c. 11) and section 93(1) to (3) of the Finance Act 2007 (c. 11).
- (e) 2012 c. 14.

- 2.—(1) Regulations 1, 2, 3, 9 and 17 come into force on 1st October 2012.
(2) The remaining regulations come into force on 15th October 2012.

Amendment to the Value Added Tax Regulations 1995

3. The Value Added Tax Regulations 1995(a) are amended as follows.
4. In regulation 2—
- (a) in the definition of “registered person” in paragraph (1), after “1,” insert “1A,”;
 - (b) in paragraph (3) for “prescribed in Schedule 1 to these Regulations” substitute “specified in a notice published by the Commissioners”.

Electronic communication

5. After regulation 4 (requirement, direction, demand or permission), insert—

“Electronic communication

4A.—(1) A specified communication may be made to the Commissioners using an electronic communications system.

(2) Where an electronic communications system is used it must take a form approved by the Commissioners in a specific or general direction.

(3) A direction under paragraph (2) may in particular—

- (a) modify or dispense with any requirement of a form mentioned in regulation 2(3) used to make a specified communication;
- (b) specify different forms of electronic communications system for different cases; and
- (c) specify different circumstances in which the electronic communications system may be used, or not used, by or on behalf of the person required to make the communication and specify different circumstances for different cases.

(4) An electronic communications system shall incorporate an electronic validation process.

(5) Subject to paragraph (6) below and unless the contrary is proved—

- (a) the use of an electronic communications system shall be presumed to have resulted in the making of a communication to the Commissioners only if this has been successfully recorded as such by the relevant electronic validation process;
- (b) the time of making a communication to the Commissioners using an electronic communications system shall be presumed to be the time recorded as such by the relevant electronic validation process; and
- (c) the person delivering a communication to the Commissioners shall be presumed to be the person identified as such by any relevant feature of the electronic communications system.

(6) No communication shall be treated as having been made using an electronic communications system unless it is in the form required by paragraph (2).

(7) A communication made using an electronic communications system carries the same consequences as a communication made in paper form.

(8) In paragraph (2) “direction” refers only to a current direction, and a direction is not current to the extent that it is varied, replaced or revoked by another Commissioners’ direction.

(a) S.I. 1995/2518; relevant amending instruments are S.I 1996/1250, 1997/1086, 2000/258, 2000/794, 2004/1675, 2007/2085, 2009/1967, 2009/2978, 2009/3241 and 2010/559.

4B.—(1) A specified communication is—

- (a) an application under section 43B(1), (2)(d) or (3) of the Act(a) (Groups: applications);
- (b) a notification under regulation 5(1), (2) or (3) (registration and notification);
- (c) an application under regulation 6(1)(d) (transfer of a going concern);
- (d) a notification under regulation 10(1) or (4) (VAT representatives);
- (e) an application under regulation 52(1) (annual accounting scheme: eligibility);
- (f) a notification under regulation 54(2) (annual accounting scheme: termination);
- (g) a notification under regulation 55(1)(d) (annual accounting scheme: termination);
- (h) a notification under regulation 55B(1)(a) (flat-rate scheme for small businesses: notification of desire to join the scheme); and
- (i) a notification under regulation 55Q(1)(e) (flat-rate scheme for small businesses: notification of decision to withdraw from the scheme).”.

Registration and notification

6. In regulation 5 (registration and notification)—

- (a) in paragraph (1)—
 - (i) after the first use of “Schedule 1,” insert “paragraph 5(1), 6(1) or (13)(3) of Schedule 1A(b),” ,
 - (ii) for “in forms numbered 1, 6, 7 and 7A respectively in Schedule 1 to these Regulations and shall be made in those forms” substitute “in the relevant form specified in a notice published by the Commissioners and shall be made in that form”, and
 - (iii) for “the form numbered 2 in that Schedule” substitute “the relevant form specified in a notice published by the Commissioners”;
- (b) in paragraph (2)—
 - (i) after “Schedule 1,” insert “paragraph 7, 8 or 9(1) of Schedule 1A,”, and
 - (ii) omit “in writing”;
- (c) in paragraph (3) omit “shall be made in writing to the Commissioners and”; and
- (d) omit paragraphs (4) to (14).

General amendments

7. In regulation 6 (transfer of a going concern)—

- (a) in paragraph (1)—
 - (i) in sub-paragraph (b), after “Schedule 1” insert “or 1A”,
 - (ii) in sub-paragraph (c), for “under that Schedule” wherever it occurs substitute “under either Schedule” and for “under paragraph 9 of that Schedule” substitute “under paragraph 9 of Schedule 1 to the Act”,
 - (iii) in sub-paragraph (d) for “the form numbered 3 in Schedule 1 to these Regulations” substitute “the form specified in a notice published by the Commissioners”, and
 - (iv) for “cancel the registration under Schedule 1” to the end substitute “cancel the registration under Schedule 1 or 1A to the Act of the transferor and register the

(a) Section 43B was inserted by section 16 of, and paragraph 2 of Schedule 2 to, the Finance Act 1999 (c. 16) and was amended by section 20(4) of the Finance Act 2004 (c. 12).

(b) Schedule 1A was inserted by section 203 of, and Schedule 28 to, the Finance Act 2012 (c. 14) with effect from 1 December 2012.

transferee under Schedule 1 or 1A to the Act as appropriate with the registration number previously allocated to the transferor”;

- (b) in paragraph (2) after “Schedule 1” insert “or paragraph 7 of Schedule 1A”; and
- (c) in paragraph (3) after “Schedule 1” insert “or 1A”.

8. In regulation 10(1) (VAT representatives)—

- (a) for “on the form numbered 8 in Schedule 1 to these Regulations” substitute “in the form specified in a notice published by the Commissioners”; and
- (b) for “in that form” substitute “in that notice”.

9. After regulation 15A, insert—

“Change of liability: anti-forestalling invoices

15B.—(1) Where—

- (a) an anti-forestalling charge is due under Schedule 27 to the Finance Act 2012^(a) in relation to any supply,
- (b) the person making the supply (“the supplier”) would have been required to provide the person to whom the supply is made (“the recipient”) with a VAT invoice under regulation 13 in respect of the supply at the time it was made had the supply been subject to the standard rate of VAT at that time, and
- (c) where the supply has been included in a VAT invoice, the supplier has not included the anti-forestalling charge in that VAT invoice,

the supplier shall, within 45 days after the date when the anti-forestalling charge becomes due, provide the recipient with an invoice headed “Anti-forestalling charge invoice” and containing the particulars specified in paragraph (2) or (3) as appropriate.

(2) Where the supply has not been included in a VAT invoice, the particulars are the particulars required in regulation 14.

(3) Where the supply has been included in a VAT invoice which does not include the anti-forestalling charge, the particulars are—

- (a) the identifying number and date of issue of the anti-forestalling charge invoice,
- (b) the amount of the anti-forestalling charge to VAT,
- (c) the name, address and registration number of the supplier,
- (d) the name and address of the recipient, and
- (e) the identifying number and date of issue of the VAT invoice in which the supply was previously included.”.

10. For regulation 22(2)(a) (EC sales statements: submission of statements) substitute—

“(a) be made in the form specified in a notice published by the Commissioners.”.

11. For regulation 22A(2)(a) substitute —

“(a) made in the form specified in a notice published by the Commissioners.”.

12. For regulation 22C(3)(a) substitute—

“(a) be made in the form specified in a notice published by the Commissioners.”.

13. In regulation 25 (making of returns)—

- (a) in paragraph (1)(b), after “Schedules 1,” insert “1A,”; and

(a) 2012 c. 14.

- (b) in paragraph (4)(b), after “Schedule 1” insert “, paragraph 4 of Schedule 2 or paragraph 4 of Schedule 3”.

14. In regulation 25A —

- (a) in paragraph (2), for “on the form numbered 4 in Schedule 1 to these Regulations (“Form 4”) or, in the case of a final return, on the form numbered 5 in Schedule 1 to these Regulations (“Form 5”)” substitute “or a final return on the relevant form specified in a notice published by the Commissioners”;
- (b) in paragraph (9) for “must be made on Form 4” to the end substitute “or 25(4) must be made on the relevant form specified in a notice published by the Commissioners”; and
- (c) in paragraph (10)(a) for “Form 4 or Form 5 (as appropriate)” substitute “the relevant form specified in a notice published by the Commissioners”.

15. In regulation 34 (correction of errors), in paragraph (3) for “see regulation 25 and Schedule 1 Forms 4 and 5” substitute “see regulations 25 and 25A and the relevant forms specified in a notice published by the Commissioners”.

16. In regulation 99 (input tax and partial exemption: interpretation of Part XIV and longer periods)—

- (a) in paragraph (1)(c)(ii), after “Schedule 1,” insert “1A,”;
- (b) in paragraph (1)(d)(i), after “Schedule 1,” insert “1A,”; and
- (c) in paragraph (1)(e), after “Schedule 1,” insert “1A,”.

17. After regulation 113 (adjustments to the deduction of input tax on capital items: capital items to which this Part applies) insert—

“**113A.**—(1) This regulation applies where—

- (a) the owner of an item described by regulation 113(2)(a) to (c) (“O”) (or a person to whom O has granted an interest in that item) uses that item to make a grant that falls within item 1(ka) of Group 1 of Schedule 9 to the Act(a),
- (b) apart from this regulation, the item would not be a capital item to which this Part applies,
- (c) O has, no later than 31st March 2013, decided to treat the item as a capital item for the purposes of this Part, and
- (d) O has made a written record of that decision specifying the date that it was made.

(2) Where this regulation applies, for the item in question—

- (a) for “£250,000” in regulation 113(4)(a) substitute “£1”, but
- (b) no adjustment of deductions of input tax shall be made under this Part for any intervals ending before 1st October 2012 that fall within the period of adjustment for the capital item as prescribed in regulation 114.”.

18. In regulation 145B(1) (fiscal warehousing: certificates), for “in the form numbered 17 in Schedule 1 to these Regulations” substitute “in the form specified in a notice published by the Commissioners”.

19. In regulation 145C (fiscal warehousing: certificates connected with services in fiscal or other warehousing regimes), for “in the form numbered 18 in Schedule 1 to these Regulations” substitute “in the form specified in a notice published by the Commissioners”.

20. In regulation 191(1) (repayments to third country traders: method of claiming)—

- (a) in sub-paragraph (a), for “the form numbered 9 in Schedule 1 to these Regulations” substitute “the form specified in a notice published by the Commissioners”; and

(a) Item 1(ka) was inserted into Group 1 of Schedule 9 by section 196(1) of, and Schedule 26 to, the Finance Act 2012 (c. 14).

(b) in sub-paragraph (b)(i), for “the form numbered 10 in Schedule 1 to these Regulations” substitute “the form specified in a notice published by the Commissioners”.

21. For regulation 201A (refunds to “do-it-yourself” builders: relevant form) substitute—

“**201A.** The relevant form for the purposes of a claim is—

- (a) form VAT 431NB where the claim relates to works described in section 35(1A)(a) or (b) of the Act^(a); and
- (b) form VAT 431C where the claim relates to works described in section 35(1A)(c) of the Act.”.

22. In regulation 203 (flat-rate scheme for farmers: flat-rate scheme), in paragraph (2) after “1” insert “or 1A”.

23. In regulation 204(c) (flat-rate scheme for farmers: admission to the scheme), for “numbered 14 in Schedule 1 to these Regulations” substitute “specified in a notice published by the Commissioners”.

24. In regulation 205 (flat-rate scheme for farmers: certification), after “1” insert “, 1A”.

25. In regulation 206(1)(f) (flat-rate scheme for farmers: cancellation of certificates) after “1” insert “, 1A”.

26. In regulation 208(a) (flat-rate scheme for farmers: further certification) after “1” insert “, 1A”.

27. Omit Schedule 1.

Mike Eland
Dave Hartnett

18th July 2012

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

(a) Section 35(1A) was inserted by section 30 of the Finance Act 1996 (c. 8).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the VAT Regulations 1995 (S.I. 1995/2518) ('the Principal Regulations').

Regulation 5 inserts regulations 4A and 4B (electronic communication) into the Principal Regulations to enable businesses to make what are termed "specified communications" (listed in regulation 4B) using an electronic communications system specified in a direction made by the Commissioners for HM Revenue and Customs ("the Commissioners"). Regulation 4A makes specific provision in relation to the making, timing and means of identifying the deliverer of an electronic communication and provides that an electronic communication otherwise carries the same consequences as a communication in paper form.

Regulation 9 inserts regulation 15B into the Principal Regulations to make provision about invoices required in relation to the anti-forestalling charge provided for in Schedule 27 to the Finance Act 2012.

Regulation 17 inserts regulation 113A into the Principal Regulations to make special transitional provision in the case of items used to make grants of facilities for the self storage of goods under item (1)(ka) of Group 1 of Schedule 9 to the Value Added Tax Act 1994 ("VATA") that would not otherwise fall within the ambit of the capital goods scheme due to their low value. If the owner of the item so decides and the specified conditions are otherwise satisfied, the item is treated as a capital item for the purposes of the capital goods scheme.

Regulation 4 and regulations 6 to 8, 10 to 16 and 18 to 26 make amendments in consequence of amendments made to VATA by sections 203 and 204 of, and Schedules 28 and 29 to, the Finance Act 2012 to: (1) allow the Commissioners to determine the form of a number of communications the form of which is currently prescribed in Schedule 1 to the Principal Regulations in a notice made under the Principal Regulations and (2) make provision about the registration of non-established taxable persons in a new Schedule 1A (registration in respect of taxable supplies: non-UK establishment) to be inserted into VATA.

These regulations: (1) remove the specific references to forms in Schedule 1 to the Principal Regulations, providing instead that the form of those communications is to be specified in a notice published by the Commissioners and (2) insert references to the new Schedule 1A where appropriate. Regulation 6 also makes some consequential amendments following the insertion of regulations 4A and 4B.

Regulation 27 omits Schedule 1.

A Tax Information and Impact Note covering the changes made by this instrument other than those made by regulations 9 and 17 was published in December 2011 on the HMRC website and a revised Tax Information and Impact Note will be issued in summer 2012 which will also be published on the HMRC website (in both cases at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>). The changes made by regulations 9 and 17 were included in a Tax Information and Impact Note published on 28 June 2012 as part of the "VAT: Addressing borderline anomalies" Summary of Responses document published on the HMRC website at <http://www.hmrc.gov.uk/thelibrary>.

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