

2003 No. 2318

VALUE ADDED TAX

**The Value Added Tax (Amendment) (No. 5)
Regulations 2003**

Made - - - - - 9th September 2003

*Laid before the House of
Commons - - - - - 9th September 2003*

Coming into force in accordance with regulation 1

The Commissioners of Customs and Excise, in exercise of the powers conferred on them by sections 6(14) and 16(1) of the Value Added Tax Act 1994(a), hereby make the following regulations:

1.—(1) These Regulations may be cited as the Value Added Tax (Amendment) (No. 5) Regulations 2003 and, subject to paragraph (2) below, come into force on 1st October 2003.

(2) Regulations 3 and 4 come into force on 1st October 2003 in relation to supplies of goods or services the benefit of which was received after the coming into force of these Regulations.

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

Continuous supplies

3. After regulation 94A insert—

“**94B.**—(1) This regulation applies in relation to the following supplies where they are provided in the circumstances referred to in paragraph (2) below—

- (a) supplies falling within regulation 85 above (leases treated as supplies of goods) other than any supply which is exempt by virtue of Group 1 of Schedule 9 to the Act or would be exempt but for the operation of paragraph 2(1) of Schedule 10 to the Act;
- (b) supplies falling within regulation 86(1) to (4) above (supplies of water, gas or any form of power, heat, refrigeration or ventilation);
- (c) supplies falling within regulation 90 above (continuous supplies of services) other than any supply which is exempt by virtue of Group 1 of Schedule 9 to the Act or would be exempt but for the operation of paragraph 2(1) of Schedule 10 to the Act.

(2) The circumstances referred to in paragraph (1) above are—

- (a) that the person making the supply and the person to whom it is made are connected with each other, or
- (b) one of those persons is an undertaking in relation to which the other is a group undertaking (except where both undertakings are treated under sections 43A to 43C of the Act as members of the same group), and

(a) 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.

(b) S.I. 1995/2518; relevant amending instruments are S.I. 1997/1525, 1997/2887, 1998/765, 2001/630.

(c) the supply is subject to the rates of VAT prescribed in section 2 or section 29A of the Act.

(3) But this regulation does not apply where a person can show that a person to whom he has made a supply of a description falling within paragraph (1) above is entitled under sections 25 and 26 of the Act to credit for all of the VAT on that supply.

(4) For the purposes of paragraph (2) above, any question whether a person is connected with another shall be determined in accordance with section 839 of the Income and Corporation Taxes Act 1988(a) and “undertaking” and “group undertaking” have the same meaning as in section 259 of the Companies Act 1985(b).

(5) Where this regulation applies, goods or services shall, to the extent that they have not already been treated as supplied by virtue of the regulations specified in paragraph (1) above (or any provision of the Act or other regulations made under the Act), and to the extent that they have been provided, be treated as separately and successively supplied—

(a) in the case of supplies the provision of which commenced on or before 1st October 2003, at the end of the period of twelve months after that date;

(b) in the case of supplies the provision of which commenced after 1st October 2003, at the end of the period of twelve months after the supplies commenced; or

(c) where the Commissioners are satisfied that each category of supply has been adequately identified, on such other period end date nominated for each category and falling within the period specified in sub-paragraph (5)(a) or (b) above as may be notified by the taxable person to the Commissioners in writing,

and thereafter at the end of each subsequent period of twelve months.

(6) But where the person making the supply, within the period of six months after the time applicable under paragraph (5) above either—

(a) issues a VAT invoice in respect of it, or

(b) receives a payment in respect of it,

the supply shall, to the extent that it has not been treated as taking place at some other time by virtue of the regulations specified in paragraph (1) above (or any provision of the Act or other regulations made under the Act), be treated as taking place at the time the invoice is issued or the payment is received, unless the person making the supply has notified the Commissioners in writing that he elects not to avail himself of this paragraph.

(7) The Commissioners may, at the request of a taxable person, allow paragraph (6) above to apply in relation to supplies made by him (or such supplies as may be specified) as if for the period of six months there were substituted such other period as may be prescribed by them.

(8) A taxable person may after the start of any period to be established under paragraph (5) above—

(a) in relation to some or all of his supplies, and

(b) where the Commissioners give their approval,

select an alternative period end date falling before the end of that period (which end date but for this paragraph would be established under paragraph (5) above), from which date subsequent periods of twelve months will end.

(9) A date selected and approved under paragraph (8) above shall be the date which establishes the end of the taxable person’s current period.

(10) For the purposes of paragraph (8) above, a reference to a period end established under paragraph (5) above includes a reference to a period end established by an earlier application of paragraph (8) above.

(11) Where the supply is one of the leasing of assets, and that leasing depends on one or more other leases of those assets (the superior lease or leases), then the reference in paragraph (2) above to the person making the supply includes a reference to any lessor of a superior lease.

(a) 1988 c. 1.

(b) 1985 c. 6; section 259 was inserted by section 22 of the Companies Act 1989 (c. 40).

(12) For the purposes of paragraph (11) above, a reference to the leasing of assets includes a reference to any letting, hiring or rental of assets however described, and “lessor” shall be construed accordingly.

(13) For the purposes of this regulation, goods or services are provided at the time when and to the extent that, the recipient receives the benefit of them.

(14) Where this regulation applies, the regulations specified in paragraph (1) above shall not apply to the extent that supplies have been treated as having taken place under this regulation.”.

4. In regulation 95, after “86(1) to (4)” delete “and” and insert “,” and after “88 to 93” insert “and 94B”.

Importations

5. For regulation 120(2)(b) substitute—

“(b) in Commission Regulation (EEC) No 2454/93(a) which contains provisions implementing the Community Customs Code—

- (i) Articles 496 to 523, Articles 536 to 544 and Article 550 (but only to the extent that these Articles apply to the drawback system of inward processing relief),
- (ii) Article 519 (compensatory interest),
- (iii) Articles 585 to 592 (outward processing) (and Articles 496 to 523 to the extent that they are relevant to outward processing),
- (iv) Articles 844 to 856 and Article 882 (returned goods).”.

6. After regulation 121 insert—

“**121A.**—(1) The application of the Customs Duties (Deferred Payment) Regulations 1976(b) 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) In regulation 4(1) (application for approval), regard “security” as being “appropriate security (which may be nil if there is no risk to the payment)”.

(3) In regulation 4(2) (security and payment arrangements), regard there being a second sub-paragraph as follows—

“Provided that the amount in question may exceed that of the security in the case of nil security.”.

(4) For regulation 4(3) (variations and revocations of approval), regard any Commissioners’ variation consequent on the adaptations prescribed by this regulation as only being able to have effect after 30th November 2003.

(5) Before “and” at the end of regulation 8(a) (deemed payment for certain purposes at time deferment granted), regard there being—

“(aa) Article 74(1) of Council Regulation (EEC) No 2913/92(c) (Community Customs Code) (no release of goods unless customs debt paid or secured);”.

121B.—(1) The application of Council Regulation (EEC) No 2913/92(d) (Community Customs Code) 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) But the adaptation in paragraph (5) only applies to the extent that the Commissioners grant deferment of payment of the relevant VAT with nil security.

(a) OJ L 253, 11.10.93, p 1; relevant amending instruments are the 1994 Act of Accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden (OJ C 241, 29.8.94, p 21) as adjusted by Council Decision 95/1/EC (OJ L 1, 1.1.95 p 1), Commission Regulation (EC) No 75/98 (OJ L 7, 13.1.98, p 3), Commission Regulation (EC) No 1677/98 (OJ L 212, 30.7.98, p 18), Commission Regulation (EC) No 993/2001 (OJ L 141, 28.5.01, p 1).

(b) S.I. 1976/1223, amended by S.I. 1978/1725.

(c) OJ L 302, 19.10.92, p 1, to which there are amendments not relevant to this adaptation.

(d) OJ L 302, 19.10.92, p 1, amended by European Parliament and Council Regulation (EC) No 955/1999 (OJ L 119, 7.5.99, p 1); there are other amending instruments but none is relevant to the adaptations in question.

(3) In Article 218(1) second sub-paragraph (single entry in the accounts), after “secured” regard there being “if required”.

(4) In Article 225 first sub-paragraph (deferment of payment conditional on security), after “applicant” regard there being “(but the customs authorities may waive this condition if there is no risk to the payment)”.

(5) Regard Article 225 as not being subject to Article 192 (fixing amount of security).

121C.—(1) The application of Commission Regulation (EEC) No 2454/93(a) (implementation of Community Customs Code) 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) But the adaptations in paragraphs (3) and (4) only apply to the extent that the Commissioners grant deferment of payment of the relevant VAT with nil security.

(3) Regard Articles 244, 248(1), 257(3), 257(4), 258, 262(1) and 876a(1) (circumstances in which duties have to be or are taken as having to be secured) as providing that the provision of security is at the discretion of the customs authorities.

(4) Regard Articles 244, 248(1), 257(3), 257(4) and 876a(1) (circumstances in which duties have to be secured) as not being subject to Article 192 of Council Regulation (EEC) No 2913/92(b) (Community Customs Code) (fixing amount of security).”.

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9th September 2003

M J Eland,
Commissioner of Customs and Excise

(a) OJ L 253, 11.10.93, p 1, amended by Commission Regulation (EC) No 12/97 (OJ L 9, 13.1.97, p 1); there are other amending instruments but none is relevant to the adaptations in question.

(b) OJ L 302, 19.10.92, p 1, amended by European Parliament and Council Regulation (EC) No 955/1999 (OJ L 119, 7.5.99, p 1); there are other amending instruments but none is relevant to the adaptations in question.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 1st October 2003, amend the Value Added Tax Regulations 1995 (S.I. 1995/2518) (“the principal Regulations”).

Continuous supplies

Regulation 3 gives effect to Article 1.1 of Council Directive 2000/65 EC of 17 October 2000^(a), which amends Article 10(2) of Council Directive 77/388 EEC (the Sixth Directive), in relation to the time of supply in cases of certain continuous supplies of goods or services.

The amendments introduced in regulation 3 impose a time of supply where no such earlier time has arisen under certain other provisions within the principal Regulations.

Regulation 3 inserts the new regulation 94B in the principal Regulations.

Paragraph 94B(1) applies the new regulation to supplies falling within regulations 85, 86(1) to (4) and 90 of the principal Regulations.

Paragraph 94B(2) limits the scope of the new time of supply to circumstances where the supplier and the recipient of the supply are “connected persons”, or are both members of a group undertaking (other than a VAT group registration) and the supply is liable to VAT at a positive rate.

Paragraph 94B(3) further limits the scope by disapplying the new time of supply in cases where the supplier can demonstrate that the recipient is able to recover all the VAT on the supply.

Paragraph 94B(4) defines what is meant by “connected persons”, “undertaking” and “group undertaking”.

Paragraph 94B(5) sets out the primary effect of the new regulation. This is to create a time of supply at the end of an initial twelve month period (or a shorter period where this has been notified by the supplier) and to each following twelve month period thereafter. But this only applies to the extent that the supplies have not already been treated as taking place during the course of that period.

Paragraph 94B(6) makes the period end time of supply subject to a further eventuality. The issue of a VAT invoice or receipt of a payment within six months of the period end creates a time of supply which overrides the period end date.

Paragraph 94B(7) gives the Commissioners the power to vary the six month period allowed in 94B(6) where this is requested by the taxable person for some or all of the supplies in question.

Paragraphs 94B(8) to (10) allow the Commissioners to approve changes to the period end dates originally established under regulation 94B(5). This might arise where a taxable person’s business circumstances change. In that event, the taxable person can apply to change the period end for some or all of those supplies affected by the change in circumstances.

Paragraph 94B(11) applies where the supply in question is one of leasing assets, and there is a chain of two or more leases of those assets that culminates in the lease in question. This means that the lease in question depends on the other, superior, leases being present. In such a case the “connected person” and group undertaking tests in paragraph (2) are also applied between the recipient and all the lessors in the chain.

Paragraph 94B(12) includes in the reference to the leasing of assets, any letting, hiring or rental.

Paragraph 94B(13) defines when and to what extent goods or services are treated as being provided for the purposes of the new regulation 94B.

Paragraph 94B(14) provides that the effects of the regulations specified in regulation 94B(1) are disappplied to the extent that the supplies in question fall within the scope of the new regulation 94B.

(a) OJ No L 269, 21.10.2000, p 44.

A transposition note setting out how regulation 3 implements Article 1.1 of Council Directive 2000/65 EC is available at www.hmce.gov.uk.

Regulation 4 brings the new regulation 94B within the ambit of regulation 95 (supplies spanning change of rate etc) of the principal Regulations.

Importations

Value added tax on the importation of goods from outside the member States is, in general, subject to the legislation applying to customs duties on importation**(a)**.

Community legislation requires that security must be provided if payment of duty is to be deferred for a month following importation**(b)**.

Regulation 6 prescribes adaptations to that Community legislation and to relevant national legislation**(c)**.

These adaptations mean that no security need be furnished for payment of the VAT in these circumstances if there is no risk to the payment.

A full regulatory impact assessment of the effect that regulation 6 will have on the costs of business is available from HM Customs and Excise, Customs and International Trade, Liability Team, 1W New King's Beam House, 22 Upper Ground, London SE1 9PJ or <http://www.hmce.gov.uk>.

Regulation 5 updates existing references in the principal Regulations to Community legislation**(d)**.

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- (a) Value Added Tax Act 1994 (c. 23) section 16.
- (b) Article 225 of the Community Customs Code (Council Regulation (EEC) No 2913/92) (OJ L 302, 19.10.92, p 1).
- (c) The adaptations implement Article 23 of the Sixth Council Directive of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes—common system of value added tax; uniform basis of assessment (OJ L 145, 13.6.77, p 1). A transposition note is available from HM Customs and Excise, Customs and International Trade, Liability Team, 1W New King's Beam House, 22 Upper Ground, London SE1 9PJ or <http://www.hmce.gov.uk>. The relevant national legislation is S.I. 1976/1223, amended by S.I. 1978/1725, whereby Customs and Excise may approve a person to apply for deferment of payment if Customs and Excise is satisfied with the security furnished and the arrangements for payment (see regulations 2(1), 4(1) and 4(2) of that instrument). Customs and Excise may vary approvals (see regulation 4(3)). Payment is deemed to have been made for certain purposes at the time deferment was granted (see regulation 8).
- (d) Reflecting changes in numbering made to Commission Regulation (EEC) No 2454/93 (implementation of Community Customs Code) (OJ L 253, 11.10.93, p 1) by Commission Regulation (EC) No 993/01 (OJ L 141, 28.5.01, p 1).

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