

2015 No. 1978

VALUE ADDED TAX

The Value Added Tax (Amendment) Regulations 2015

Made - - - - *7th December 2015*

Laid before the House of Commons *9th December 2015*

Coming into force - - *1st January 2016*

The Commissioners for Her Majesty's Revenue and Customs, in exercise of the powers conferred by sections 25(1) and 26(1), (3) and (4) of the Value Added Tax Act 1994(a), make the following Regulations:

Citation, commencement and effect

1. These Regulations may be cited as the Value Added Tax (Amendment) Regulations 2015 and come into force on 1st January 2016.

2.—(1) Regulations 4, 5 and 6 have effect as follows—

- (a) regulation 4 will have effect in relation to longer periods commencing on or after 1st January 2016,
- (b) regulation 5 will have effect in relation to methods approved or directed under regulation 102 of the Value Added Tax Regulations 1995(b) on or after 1st January 2016,
- (c) regulation 6 will have effect in relation to prescribed accounting periods commencing on or after 1st January 2016.

(2) “Longer periods” in paragraph (1)(a) and “prescribed accounting periods” in paragraph (1)(c), mean the longer period and prescribed accounting period determined under Part 14 of the Value Added Tax Regulations 1995.

Amendment of the Value Added Tax Regulations 1995

3. The Value Added Tax Regulations 1995 are amended as follows.

4. In regulation 101 (input tax and partial exemption: attribution of input tax to taxable supplies)—

- (a) in paragraph (3)—

(a) 1994 c.23 (“the Act”). Section 96(1) of the Act defines “the Commissioners” to mean “the Commissioners of Customs and Excise” and “regulations” as meaning regulations made by the Commissioners under the Act. The functions of the Commissioners of Customs and Excise were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(1) of the Commissioners for Revenue and Customs Act 2005 (c.11), section 50(1) of which 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. Section 26(4) of the Act was amended by section 19 of, and paragraph 2 of Schedule 8 to, the Finance (No. 3) Act 2010 (c.33).

(b) S.I. 1995/2518; relevant amending instruments are S.I. 1996/1250, S.I. 1999/3114, S.I. 2004/3140, S.I. 2005/762, S.I. 2007/768, S.I. 2009/820, S.I. 2010/559.

- (i) after sub-paragraph (d), omit “and”, and
 - (ii) after sub-paragraph (e), insert—
 - “, and
 - (f) the value of supplies made from an establishment situated outside the United Kingdom.”;
 - (b) in paragraph (8) omit sub-paragraph (b) and the preceding “; or”.
- 5.** In paragraph (1A) of regulation 102 (input tax and partial exemption: use of other methods)—
- (a) after sub-paragraph (b), omit “and”;
 - (b) after sub-paragraph (c) insert—
 - “(d) may be based on sectors provided that the method reflects the use made of the goods and services in the business and each sector reflects—
 - (i) the use made of the goods and services in that sector,
 - (ii) the structure of the business, and
 - (iii) the type of activity undertaken by that sector, and
 - (e) must exclude the value of supplies made from an establishment situated outside the United Kingdom where the method is not based on sectors.”.
- 6.** In regulation 103 (input tax and partial exemption: attribution of input tax to foreign and specified supplies)—
- (a) renumber that regulation as regulation 103(1),
 - (b) after “directed by the Commissioners under regulation 102,” insert “subject to paragraph (1A)”,
 - (c) after paragraph (1) insert—
 - “(1A) In calculating the proportion of any input tax incurred on goods or services used or to be used by a taxable person in making both taxable and exempt supplies which is to be attributed or treated as attributed to taxable supplies, the calculation—
 - (a) may be based on sectors provided that the calculation reflects the use made of the goods and services in the business and each sector reflects—
 - (i) the use made of the goods and services in that sector,
 - (ii) the structure of the business, and
 - (iii) the type of activity undertaken by that sector; and
 - (b) must exclude the value of supplies made from an establishment situated outside the United Kingdom where the calculation is not based on sectors.”.

Jim Harra
Edward Troup

7th December 2015

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations come into force in accordance with regulation 2 and amend Part 14 (input tax and partial exemption) of the Value Added Tax Regulations 1995 (S.I. 1995/2518) (“the VAT Regulations”).

Council Directive 2006/112/EC (“the Principal VAT Directive”) establishes a common system of value added tax applicable throughout the European Union. Article 173 of the Principal VAT Directive deals with proportional deduction. In the light of the Court of Justice of the European Union’s decision in *Credit Lyonnais (Case C-388/11)*, Article 173 is to be interpreted as providing that, in calculating the proportion of input tax that a taxable person is entitled to deduct, that person may only use a method based on sectors if each sector reflects the use made of the goods and services in that sector, the structure of the business and the type of activity undertaken by that sector. Further, a taxable person may not take account of the value of supplies made from an establishment situated outside the United Kingdom (“UK”) unless that person is authorised or required to use a method based on sectors. The amendments made by these Regulations give effect to this.

Regulation 4 amends regulation 101 (attribution of input tax to taxable supplies) of the VAT Regulations which specifies the standard method by which input tax is provisionally attributed to taxable supplies to calculate the deductible proportion. It amends regulation 101(3) to exclude the value of supplies made from an establishment situated outside the UK from the calculation of the deductible proportion under paragraph (2)(d) or (g) and amends regulation 101(8) so that, in calculating the deductible proportion under regulation 101, input tax incurred on goods or services acquired by, or supplied to, a taxable person may not be attributed to taxable supplies on the basis of their use in making taxable supplies from an establishment situated outside the UK.

Regulation 5 amends paragraph (1A) of regulation 102 (use of other methods) of the VAT Regulations to: (i) provide that, where an approved or directed method is based on sectors, the method must reflect the use of goods and services and each sector must reflect the use of goods or services in that sector, the structure of the business and the type of activity undertaken by that sector and (ii) prohibit a taxable person from taking into account the value of supplies made from an establishment situated outside the UK unless that person is authorised or required to use a method based on sectors.

Regulation 6 amends regulation 103 (attribution of input tax to foreign and specified supplies) of the VAT Regulations which provides for the attribution of input tax incurred by a taxable person on goods imported or acquired by, or goods or services supplied to, that person which are used or to be used in whole or in part to make certain specified supplies in order to calculate the deductible proportion of input tax which has not otherwise been attributed under regulation 101 or regulation 102. Paragraphs (a) and (b) make consequential amendments following the insertion of new paragraph (1A) by paragraph (c). Paragraph (1A): (i) provides that, where the calculation required under regulation 103 is based on sectors, the calculation must reflect the use of goods and services and each sector must reflect the use of goods and services in that sector, the structure of the business and the type of activity undertaken by that sector and (ii) prohibits a taxable person from taking into account the value of supplies made from an establishment situated outside the UK unless the calculation is based on sectors.

A Tax Information and Impact Note covering this instrument was published on 18th March 2015 alongside draft legislation and is available on the government website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>. It remains an accurate summary of the impacts that apply to this instrument.

£4.25

UK2015120713 12/2015 19585

<http://www.legislation.gov.uk/id/uksi/2015/1978>

ISBN 978-0-11-114165-6



9 780111 141656