STATUTORY INSTRUMENTS

2010 No. 559

VALUE ADDED TAX

The Value Added Tax (Amendment) Regulations 2010

Made - - - -	*2nd March 2010*
Laid before the House of Commons	*3rd March 2010*
Coming into force - -	*1st April 2010*

The Commissioners for Her Majesty's Revenue and Customs(**a**), in exercise of the powers conferred by sections 25(1) and 26(1), (3) and (4) of, and paragraph 2(1) of Schedule 11 to, the Value Added Tax Act 1994(**b**), section 132 of the Finance Act 1999(**c**) and section 135 of the Finance Act 2002(**d**) make the following Regulations:

1. These Regulations may be cited as the Value Added Tax (Amendment) Regulations 2010 and come into force on 1st April 2010.

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

3. In regulation 25A(12) (making of returns)—

(a) in sub-paragraph (a) for "proved" substitute "presumed", and

(b) in sub-paragraph (b) omit "conclusively".

4. In regulation 101(1) (attribution of input tax to taxable supplies), for "regulation 102 and 103A" substitute "regulations 102, 103A, 105A and 106ZA".

5. In regulation 102(1) (use of other methods), for "and 103B" substitute ", 103B, 105A and 106ZA".

6. Immediately before regulation 106, insert—

"**105A**—(1) Subject to regulation 106ZA(1), where, in relation to a taxable person, total input tax incurred less any input tax incurred on goods or services used or to be used exclusively in making taxable supplies—

(a) in any prescribed accounting period, or

(**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; paragraph 2(1) of Schedule 11 was amended by sections 24(1)(b) and 24(5) of the Finance Act 2002 (c. 23) with effect from 1 December 2003 by virtue of S.I. 2003/3043.

(**c**) 1999 c. 16; section 132 was amended by paragraph 156 of Schedule 17 to the Communications Act 2003 (c. 21).

(**d**) 2002 c. 23; section 135 was amended by paragraphs 94 and 95 of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 with effect from 18 April 2005 by virtue of S.I. 2005/1126 and by section 93 of the Finance Act 2007 (c. 11) with effect from 19 July 2007.

(**e**) S.I. 1995/2518, relevant amending instruments are S.I. 1999/599, 2002/1074, 2004/3140, 2007/768 and 2009/820 and S.I. 2009/2978, regulation 4 of which inserted regulation 25A.

(b) in any applicable longer period,

does not amount to more than £625 per month on average, all input tax incurred in that period shall be treated as attributable to taxable supplies provided that the value of exempt supplies does not exceed one half of the value of all supplies.

(2) In the application of paragraph (1) above to a longer period—

(a) any treatment of input tax as attributable to taxable supplies in any prescribed accounting period shall be disregarded, and

(b) the amount of input tax incurred on goods or services used or to be used exclusively in making taxable supplies must reflect any changes in use or intention during that period.

(3) In this regulation—

(a) "taxable supplies" includes supplies of a description falling within regulation 103, and

(b) "exempt supplies" means any supplies that are not taxable supplies.".

7. In regulation 106(1) (treatment of input tax attributable to exempt supplies as being attributable to taxable supplies) for "Subject to regulation 106A" substitute "Where regulation 105A does not apply then, subject to regulations 106A and 106ZA(1)".

8. After regulation 106, insert—

"**106ZA**—(1) A taxable person who—

(a) was entitled to attribute his input tax to taxable supplies under regulation 105A(1)(b) or regulation 106(1)(b) in his immediately preceding longer period, and

(b) does not expect to incur more than £1,000,000 input tax in his current longer period,

may treat input tax incurred in each prescribed accounting period within his current longer period as attributable to taxable supplies, provided that he does so for all of the prescribed accounting periods that fall within that longer period.

(2) For the purposes of this regulation in relation to a taxable person, "immediately preceding longer period" means the longer period applicable to that person which ends immediately before the longer period in which the prescribed accounting period in respect of which he is making the attribution under paragraph (1) above falls.".

9. In regulation 107(1) (adjustment of attribution)—

(a) at the beginning, insert "Subject to regulation 105A(1)(b),",

(b) after "in accordance with a method", insert "or treated an amount of input tax as attributable to taxable supplies under regulation 105A(1)(a) or regulation 106ZA(1)",

(c) in sub-paragraph (a), for "subparagraphs (b), (c) and (d) below" substitute "sub-paragraphs (b), (c), (d) and (da) below",

(d) after sub-paragraph (d), insert—

"(da) shall, where he has treated an amount of input tax as attributable to taxable supplies under regulation 105A(1)(a) or regulation 106ZA(1), determine for the longer period the amount of input tax that is attributable to taxable supplies in accordance with sub-paragraphs (a) to (d) above as appropriate,".

Melanie Dawes
Bernadette Kenny

2nd March 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 on 1st April 2010, amend Parts 5 (accounting, payment and records) and 14 (input tax and partial exemption) of the Value Added Tax Regulations 1995 (S.I. 1995/2518).

Regulation 3 amends regulation 25A to correct a drafting error and provide consistent terminology.

Regulations 4 and 5 amend regulations 101(1) and 102(1) respectively to make it clear that, when either new regulation 105A (inserted by regulation 6) or new regulation 106ZA (inserted by regulation 8) applies, the calculations that would normally be required by regulation 101 or 102 should not be carried out.

Regulation 6 inserts a new regulation 105A which provides a simplified method for calculating whether a taxable person is "de minimis" and therefore able to recover all of his input tax which relates to exempt supplies.

Regulation 7 amends regulation 106(1) to make it clear that it only applies where new regulation 105A does not apply and to make it subject to regulation 106ZA(1).

Regulation 8 inserts a new regulation 106ZA which allows a taxable person who has satisfied the "de minimis" test in relation to a longer period and does not expect his input tax to exceed £1,000,000 in the next longer period applicable to him to proceed on the assumption that he is "de minimis" in that next longer period provided that he proceeds on that assumption for the whole of that longer period.

Regulation 9 makes amendments to regulation 107 to take account of new regulations 105A and 106ZA requiring an adjustment where appropriate.

A full Impact Assessment of the effect that this instrument (other than the changes effected by regulation 3) will have on the costs of business and the voluntary sector is available from H M Revenue and Customs, 100 Parliament Street, London SW1A 2BQ and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website (http://www.opsi.gov.uk).

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