STATUTORY INSTRUMENTS

1978 No. 1129

VALUE ADDED TAX

The Value Added Tax (Bad Debt Relief) Regulations 1978

Made - - - - - -	*2nd August* 1978
Laid before the House of Commons	*3rd August* 1978
Coming into Operation - -	*2nd October* 1978

The Commissioners of Customs and Excise, in exercise of the powers conferred on them by section 12(3) and (4) of the Finance Act 1978(**a**) and of all other powers enabling them in that behalf, hereby make the following Regulations:—

Citation and commencement

1. These Regulations may be cited as the Value Added Tax (Bad Debt Relief) Regulations 1978 and shall come into operation on 2nd October 1978.

Interpretation

2.—(1) In these Regulations—

"claimant" means a person who makes a claim in accordance with Regulation 3 of these Regulations for a refund of tax to which he is entitled by virtue of section 12 of the Finance Act 1978;

"debtor" means the individual, or company, mentioned in subsection 4 of section 12 of the Finance Act 1978 who, or which, has become insolvent within the meaning of the said section;

"purchaser" means a person (whether or not he is the debtor) to whom the claimant made a supply or supplies for consideration in money which the debtor is liable to pay;

"Principal Regulations" means the Value Added Tax (General) Regulations 1977(**b**) as amended(**c**);

"refund" means a refund of tax to which the claimant is entitled by virtue of section 12 of the Finance Act 1978.

(2) The Interpretation Act 1889(**d**) shall apply for the interpretation of these Regulations as it applies for the interpretation of an Act of Parliament.

The making of a claim to the Commissioners

3.—(1) Save as the Commissioners may otherwise allow or direct, the claimant shall make a claim to the Commissioners by including in box 8 of the return prescribed in paragraph (2) of this Regulation the correct amount of the refund.

(**a**) 1978 c. 42.
(**b**) S.I. 1977/1759.
(**c**) The relevant amending instrument is S.I. 1978/972.
(**d**) 1889 c. 63.

(2) The return shall be the one which the claimant is required to furnish in accordance with Regulation 51 of the Principal Regulations, for the prescribed accounting period during which he received the document mentioned in subparagraph (*a*) of Regulation 4 of these Regulations; except that in the case of an award of sequestration mentioned in subparagraph (*a*)(ii) of Regulation 9 of these Regulations, it shall be the next return which the claimant is required to furnish upon the expiration of the three months mentioned therein.

Evidence required of the claimant in support of his claim

4. Save as the Commissioners may allow, the claimant, before he makes a claim, shall hold—

(*a*) a document issued to him by the person with whom he proves in the insolvency of the debtor which specifies the total amount for which he has so proved (except that this requirement shall not apply in the case of an award of sequestration mentioned in subparagraph (*a*)(ii) of Regulation 9 of these Regulations);

(*b*) (i) a copy of the tax invoice which was provided in accordance with Part III of the Principal Regulations in respect of each taxable supply upon which the claim for the refund is based; or

(ii) in cases where there was no obligation to provide a tax invoice, a document which shows the time and nature of and the consideration in money for each taxable supply upon which the claim for the refund is based; and

(*c*) records, or other documents, showing that he has accounted for and paid the tax on each taxable supply upon which the claim for a refund of tax is based.

Preservation of documents and records and duty to produce

5.—(1) Save as the Commissioners may allow, the claimant shall preserve the documents, invoices and records which he holds in accordance with Regulation 4 of these Regulations for a period of 3 years from the making of the claim; and for the purpose of this Regulation a claim made by way of a return prescribed in paragrah (2) of Regulation 3 of the these Regulations is made on the day when the particular return is furnished.

(2) Upon demand made by an authorised person the claimant shall produce or cause to be produced any such documents, invoices and records for inspection by the authorised person and permit him to remove them at a reasonable time and for a reasonable period.

Set-off of amounts between the claimant and the debtor

6. Save as the Commissioners may allow, where the claimant owed an amount to the debtor when the debtor became insolvent which—

(*a*) under the law governing the insolvency of the debtor can be set off; or

(*b*) cannot be so set off but in respect of which payment can be lawfully demanded of the claimant by the person with whom the claimant proves in the insolvency of the debtor and which is not so paid at the time the claimant makes his claim to the Commissioners;

and—

(i) the claimant made only one supply to the purchaser, then the outstanding amount of the consideration in money for that supply shall be reduced by the amount which the claimant owed the debtor; or

(ii) the claimant made more than one supply to the purchaser and no part of the total amount of the consideration in money for those supplies was paid, then the outstanding amount of the consideration in money for each supply upon which tax was accounted for and paid shall be reduced to an amount obtained by dividing the consideration in money for such supply by the total amount of the consideration in money for all supplies (whether taxable or otherwise) and multiplying this by such total amount less the amount which the claimant owed the debtor;

and any refund shall be calculated from such reduced outstanding amount of consideration in money.

Determination of outstanding amount of consideration in money

7.—(1) Where, before the debtor became insolvent—

(*a*) the claimant made more than one supply to the purchaser,

(*b*) such supplies were at differing rates of tax (including the zero rate) or at least one supply was exempt, and

(*c*) part of the total amount of the consideration in money for such supplies was paid,

then, for the purpose of calculating any refund, the outstanding amount of the consideration in money for each supply upon which tax was accounted for and paid shall be taken to be such part of the debt as is attributed to such supply in accordance with the rules, set out in paragraph (3) of this Regulation, for attributing the debt to supplies (whether taxable or otherwise) referred to in that paragraph.

(2) In this Regulation "the debt" means the amount of the consideration in money for supplies made to the purchaser and owed by the debtor when he became insolvent less, save as the Commissioners may allow, any amount owed by the claimant to the debtor at the time he became insolvent which—

(*a*) under the law governing the insolvency of the debtor can be set off:

or

(*b*) cannot be so set off but in respect of which payment can be lawfully demanded of the claimant by the person with whom the claimant proves in the insolvency of the debtor and which is not so paid at the time the claimant makes his claim to the Commissioners.

(3) The debt shall be attributed to the supply which is the most recent in time before the debtor became insolvent, and if not wholly attributed to that supply, thereafter to supplies in the reverse order to the dates on which they were made, except that attribution shall not be made to any supply where the consideration in money for that supply was paid in full and the payment was allocated to that supply by the debtor at the time of payment, and where—

(*a*) the most recent supply and other supplies to which the whole of the debt could be attributed under this paragraph occur on one day, or

(*b*) the supplies to which the balance of the debt could be attributed under this paragraph occur on one day,

attribution shall be made to those supplies by dividing the consideration in money for each such supply upon which tax was accounted for and paid by the total amount of consideration in money for those supplies (whether taxable or otherwise) and multiplying by the debt or the balance of it as the case may be.

Repayment of a refund

8.—(1) Where the claimant fails to comply with Regulation 5 of these Regulations he shall repay to the Commissioners the amount of the refund by including that amount in box 4 of his return for a prescribed accounting period which the Commissioners designate for that purpose.

(2) Where the claimant proves subsequently in the insolvency of the debtor for—

(*a*) an amount consisting of the consideration, or of a portion thereof, for a taxable supply or supplies made by the claimant,

which, taken together with—

(*b*) the amount for which he has proved in the insolvency for the purpose of obtaining a refund of tax,

exceeds—

(*c*) the outstanding amount of the consideration for a taxable supply or, as the case may be, for all of the taxable supplies made by the claimant, less the amount of the refund received by him;

he shall repay to the Commissioners the amount of the refund by including that amount in box 4 of the return for the prescribed accounting period in which he so proves subsequently in the insolvency.

(3) If at the time the claimant is required to repay any refund by virtue of the preceding paragraphs of this Regulation he is no longer required to furnish returns to the Commissioners he shall repay such refund to the Commissioners at such time and in such form and manner as they direct.

Proving in the insolvency in Scotland

9. For the purpose of paragraph (*a*) of subsection (2) of section 12 of the Finance Act 1978, a claimant shall be taken to have proved in the insolvency if, in the case of—

(*a*) an award of sequestration of the estates of a debtor where—

(i) a person has been appointed a trustee, he lodges a claim with the trustee for the amount of the debt less the amount of the refund which he proposes to claim from the Commissioners, or

(ii) no person is appointed trustee within three months of the making of the award, he notifies the Commissioners in writing, at least one month before he makes his claim to them, of the amount of the refund which he proposes to claim, of the name and address of the debtor and of the number and date of the Edinburgh Gazette in which is intimated the sequestration of the estates of the debtor;

(*b*) the debtor executing a trust deed for behoof of his creditors or a judicial factor being appointed under section 163 of the Bankruptcy (Scotland) Act 1913(**a**) to divide the insolvent estate of the deceased debtor among that debtor's creditors, he claims upon respectively the trustee or the judicial factor for the amount of the debt less the amount of the refund which he proposes to claim from the Commissioners; or

(**a**) 1913 c. 20.

(*c*) a company registered in Scotland which is the subject of a creditors voluntary winding up or which the court has ordered to be wound up (the circumstances being such that in either case the company cannot pay its debts), he lodges a claim with the liquidator for the amount of the debt less the amount of the refund which he proposes to claim from the Commissioners.

J. C. Leeming,
Commissioner of Customs and Excise,

2nd August 1978,
King's Beam House,
Mark Lane,
London EC3R 7HE.

EXPLANATORY NOTE

(*This Note is not part of the Regulations.*)

These Regulations are made under section 12 of the Finance Act 1978. They regulate generally the administration of relief for VAT included in bad debts incurred on supplies where the debtor becomes formally insolvent after 1st October 1978.

Regulations 3 and 4 describe the procedure for claiming relief and the evidence to be held in support of claims.

Regulation 5 prescribes the minimum period for retention of evidence.

Regulations 6 and 7 prescribe how the outstanding consideration is to be calculated in cases of mutual debts and part payments respectively.

Regulation 8 provides for repayment by the claimant to Customs and Excise where conditions are breached after relief has been obtained.

Regulation 9 defines what constitutes proving in insolvencies in Scotland.

SI 1978/1129
ISBN 0-11-084129-8

