STATUTORY INSTRUMENTS

1978 No. 532

VALUE ADDED TAX

The Value Added Tax (General) (Amendment) Regulations 1978

Made - - - - -	*5th April* 1978
Laid before the House of Commons - -	13*th April* 1978
Coming into Operation:	
as to Regulations 1, 2 *and* 8	29*th April* 1978
as to the Remainder - -	4*th May* 1978

The Commissioners of Customs and Excise, in exercise of the powers conferred on them by sections 3(8), 4(3), 18, 33 and 35(1) of the Finance Act 1972(a) and of all other powers enabling them in that behalf, hereby make the following Regulations:—

1. These Regulations may be cited as the Value Added Tax (General) (Amendment) Regulations 1978 and shall come into operation as to Regulations 1, 2 and 8 on 29th April 1978 and as to the Remainder on 4th May 1978.

2.—(1) In these Regulations "the Principal Regulations" means the Value Added Tax (General) Regulations 1977(b).

(2) The Interpretation Act 1889(c) shall apply for the interpretation of these Regulations as it applies for the interpretation of an Act of Parliament and section 38(2) of that Act shall apply as if these Regulations were an Act of Parliament and as if the Regulations varied or deleted by these Regulations were Acts of Parliament repealed by an Act of Parliament.

3. Regulation 4 of the Principal Regulations shall be amended by the deletion of the words "of Changes" in the heading thereto and by adding after paragraph (4) thereof:—

"(5) Any notification by a registered person under paragraph 8 or 9 of Schedule 1 to the Act shall be made in writing to the Commissioners and, if under paragraph 8, shall state the date upon which he ceased to make taxable supplies.".

4. Regulation 10 of the Principal Regulations shall be amended by substituting "£25" for "£10" in paragraph (1), line 5.

(a) 1972 c. 41.
(b) S.I. 1977/1759.
(c) 1889 c. 63.

5. Regulation 33 of the Principal Regulations shall be deleted and the following substituted therefor—

"33. Goods imported by a registered taxable person in the course of a business carried on by him may, with the authority of the proper officer, be delivered or removed without payment of tax provided that—

(*a*) the registered taxable person has given any security or further security which the Commissioners have, under section 32(2) of the Act, required from him; and

(*b*) (i) where entry is made, the particulars in the entry include his registration number, or

(ii) where goods are imported by post and entry is not required to be made, his registration number is shown on the customs declaration attached to or accompanying the package; or

(iii) in any other case, the Commissioners have permitted the goods to be removed without entry.".

6. Regulation 59 of the Principal Regulations shall be amended by adding after paragraph (i) thereof—

"(*j*) Where, in the exercise of any power granted to or duty imposed by this Regulation, a sheriff or a sheriff officer makes a supply of services on which tax is chargeable, any amount allowed to that sheriff or sheriff officer for that supply under the provisions of this Regulation shall be increased by the amount of tax chargeable.".

7. After Regulation 60 of the Principal Regulations there shall be added a new Regulation as follows—

"61. Any requirement, direction, demand or permission by the Commissioners, under or for the purposes of these Regulations, may be made or given by a notice in writing, or otherwise.".

8. A new Part X shall be added to the Principal Regulations as follows:—

"PART X

PARTIAL EXEMPTION AND INPUT TAX

Application and transition

62. This Part shall supersede Part V of these Regulations except that:—

(*a*) where a person has commenced a longer period under Part V on 1st April 1978, Part V shall continue to apply to him throughout such period unless he opts to terminate it, in which case, Part X shall apply to him as from 1st April 1978;

(*b*) where a person has commenced a longer period under Part V which terminates on 30th April or 31st May 1978, Part V shall continue to apply to him until those dates and thereafter Part X shall apply to him;

(*c*) where a person has commenced a longer period under Part V which terminates on 31st March, 30th April or 31st May 1979, Part V shall continue to apply to him throughout such period unless he opts to terminate it on 31st March, 30th April or 31st May 1978, respectively, in which case Part X shall apply to him thereafter.

Interpretation and Longer Periods

63. In this Part of these Regulations—

(*a*) "method" means any method which is referred to in Regulation 65 and "special method" means a method the use of which may be allowed or directed by the Commissioners pursuant to paragraph (2) of that Regulation; and

(*b*) the "tax year" of a taxable person means a period of twelve calendar months commencing on the first day of his first prescribed accounting period beginning on or after the 1st April in any year, or on such other date as the Commissioners may approve or direct.

64.—(1) The provisions of paragraphs (2) to (4) of this Regulation shall be used for determining the longer period applicable to taxable persons under this Part.

(2) A taxable person who makes an exempt supply during a tax year shall have applied to him a longer period which shall correspond with his tax year unless he did not make an exempt supply during his immediately preceding tax year, in which case his longer period shall—

(*a*) begin on the first day of the first prescribed accounting period in which he makes an exempt supply; and

(*b*) end upon the last day of his tax year,

except where his only exempt supplies are in the last prescribed accounting period of his tax year, in which case no longer period shall be applied to him in respect of that tax year.

(3) In the case of a taxable person ceasing to be taxable during a longer period applicable to him, that longer period shall end on the day when he ceases to be taxable.

(4) The Commissioners may approve different provisions for different circumstances and particularly may approve, in the case of a taxable person who makes an exempt supply, or of a class of such persons, that a longer period shall apply which need not correspond with a tax year.

Attribution of input tax by a person making exempt supplies

65.—(1) Subject to paragraph (2) of this Regulation, the amount of input tax to be provisionally attributed to taxable supplies by any taxable person who makes exempt supplies shall be determined in any prescribed accounting period by either of the following methods—

Method 1

Subject to Regulation 66 he may deduct such part of his input tax as bears the same ratio to his total input tax as the value of taxable supplies by him bears to the value of all supplies by him.

Method 2

Subject to Regulation 66 he may deduct input tax on the supply to him of goods, or paid or payable by him on imported goods, which are shown to the satisfaction of the Commissioners to have been acquired by him for taxable supply by him in the same state and otherwise apply method 1.

(2) The Commissioners may allow or direct the use of a method other than one specified in paragraph (1) of this Regulation.

66. There shall be excluded from any calculation made by any taxable person for the purpose of using a method—

(*a*) all capital sums receivable by him in respect of an exempt supply of the grant, assignment or surrender of an interest in land which he has habitually occupied in the course of carrying on a business;

(*b*) input tax on supplies to him or paid by him on imported goods which is excluded from credit in any order made by the Treasury under section 3(9) of the Act;

(*c*) that part of the value of any supply of goods on which output tax is not chargeable by virtue of any order made by the Treasury under section 3(9) of the Act unless he acquired or imported the goods for the purpose of selling them;

(*d*) any sum receivable by him as consideration for an exempt supply such as is mentioned in item 4 of Group 5 of Schedule 5 to the Act except where the person using the method is a person whose business is wholly or mainly the negotiation, or undertaking of, or the making of arrangements for, transactions such as are mentioned in that item;

(*e*) any sum receivable by him as consideration for an exempt supply of the assignment of a debt;

(*f*) any sum receivable by him as consideration for an exempt supply comprised in item 2 of Group 5 of Schedule 5 to the Act except where the person using the method is a person whose business is wholly or mainly:—

(i) the provision of financial services such as are mentioned in Group 5 of Schedule 5 to the Act, other than those mentioned in paragraph (*e*) of this Regulation, or

(ii) the negotiation of, or the making of arrangements for, transactions such as are mentioned in item 4 of Group 5 of Schedule 5 to the Act, or

(iii) the provision of any insurance, re-insurance or insurance services such, in each case, as is comprised in Group 2 of Schedule 5 to the Act or (except in the case of persons described in the note contained in Group 2 of Schedule 5) in Group 9 of Schedule 4 to the Act.

Adjustment of attribution

67.—(1) Where, in one or more prescribed accounting periods occurring in a longer period, a taxable person has provisionally attributed an amount of input tax to taxable supplies in accordance with a method, and where all his

supplies in that longer period cannot be treated as taxable supplies under paragraph (2) or (3) of Regulation 68, and save as the Commissioners, in the case of a taxable person using a special method, may dispense with the following requirement to adjust, he shall:—

(*a*) determine for the longer period the amount of input tax which is attributable to taxable supplies according to the method used in the prescribed accounting periods; and

(*b*) ascertain (subject to paragraph (2) of this Regulation) whether there has been, overall, an over-deduction or an under-deduction of input tax, having regard to the above mentioned determination and to the sum of the amounts of input tax, if any, which were deducted in the returns for the prescribed accounting periods; and

(*c*) include any such amount of over-deduction or under-deduction as an adjustment in a return for the first prescribed accounting period next following the longer period, except where the Commissioners allow another return to be used for this purpose.

(2) (*a*) For the purposes of subparagraph (*b*) below the input tax of a person, who makes both taxable and exempt supplies, is "indirectly attributable" to those supplies if that tax would be attributed on any proportionate basis, when he is required to use a method or would be but for the operation of Regulation 68; and

(*b*) a taxable person shall disregard any over-deduction or under-deduction consisting of input tax which is indirectly attributable where such over-deduction or under-deduction does not differ by more than—

(i) an amount equal to 10 per cent of the total input tax which is indirectly attributable to both taxable and exempt supplies for the longer period; or

(ii) £5,

whichever is the greater: provided that this paragraph shall apply only where the taxable person has elected that it shall apply, being an election made at such time and in such form and manner and subject to such conditions as the Commissioners may prescribe and which shall be irrevocable for the longer period to which it relates and for the two longer periods next following.

(3) Where, in one or more prescribed accounting periods occurring in a longer period, a taxable person has attributed an amount of input tax to taxable supplies in accordance with a method, and where all his supplies in that longer period can be treated as taxable supplies under paragraph (2) or (3) of Regulation 68, he shall:—

(*a*) calculate the difference between the total amount of his input tax for that longer period and the sum of the amounts of input tax deducted in the returns for the prescribed accounting periods; and

(*b*) include that difference as an adjustment in a return for the first prescribed accounting period next following the longer period, except where the Commissioners allow another return to be used for this purpose.

Treatment of all supplies as taxable

68.—(1) Where, in any prescribed accounting period or in any longer period, a taxable person's only exempt supplies are of a description within any of subparagraphs (*a*), (*d*), (*e*) and (*f*) of Regulation 66 and in respect of which a sum mentioned therein can be excluded by the taxable person under that Regulation, all his supplies in that period shall be treated as taxable supplies.

(2) Where, in any prescribed accounting period or in any longer period, the value of a taxable person's exempt supplies amounts to less than any of the following—

(*a*) £100 per month on average; or

(*b*) 5 per cent of the value of all his supplies; or

(*c*) both £10,000 per month on average and 25 per cent of the value of all his supplies; or

(*d*) both £5,000 per month on average and 50 per cent of the value of all his supplies,

all his supplies in that period shall be treated as taxable supplies; and, for the purpose of a longer period, "exempt supplies" includes any exempt supplies which may have been treated as taxable supplies in any prescribed accounting period.

(3) Where, in any prescribed accounting period or in any longer period, the amount of a taxable person's input tax attributable to exempt supplies is less than 5 per cent of the whole of his input tax, all his supplies in that period shall, if the Commissioners see fit, be treated as taxable supplies, but, save as the Commissioners may otherwise allow, this paragraph shall apply only to taxable persons using a special method; and, for the purpose of a longer period, "exempt supplies" includes any exempt supplies which may have been treated as taxable supplies in any prescribed accounting period.

(4) For the purpose of any calculation made under paragraph (2) or (3) of this Regulation there is to be disregarded as the case may require—

(*a*) any sum mentioned in subparagraphs (*a*), (*d*), (*e*) or (*f*) of Regulation 66 which can be excluded by the taxable person under that Regulation, and any amount of input tax attributable to the exempt supply referable to that sum; and

(*b*) that part of the value of a supply of goods comprised in subparagraph (*c*) of Regulation 66.

Duration of use of a method

69. A taxable person using any method shall—

(*a*) use it for at least two tax years save as the Commissioners may otherwise allow or direct;

(*b*) if he elects to change from one method to another, make any such change as from 1st April in any year or such other date as the Commissioners may approve.

Exceptional claims for tax relief

70.—(1) Subject to paragraph (2) of this Regulation, if any taxable person makes a claim on the form numbered 3 in Schedule 1 to these Regulations within six months, or such other period as the Commissioners may allow, from the date with effect from which he was registered, supported by such evidence as the Commissioners may require and complying with all the conditions set out in that form, they may authorise him to treat as if it were input tax, tax on the supply of goods to him before that date, or paid by him on imported goods before that date, for the purpose of a business which either was carried on or was to be carried on by him at the time of such supply or payment.

(2) No tax may be treated as input tax under paragraph (1) of this Regulation in respect of goods which had been supplied by the taxable person making the claim before the date with effect from which he was registered or otherwise than is prescribed in this Part of these Regulations.

(3) If a person who has been, but is no longer, a taxable person makes a claim in such manner and supported by such evidence as the Commissioners may require, they may pay to him the amount of any tax on the supply of services to him after the date with effect from which he ceased to be registered, for the purpose of any business carried on by him when he was registered.".

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

5th April 1978.

King's Beam House,
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EXPLANATORY NOTE

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

These Regulations amend various provisions of, and add a new Part to, the Value Added Tax (General) Regulations 1977, (the "Principal Regulations").

By Regulation 3, Regulation 4 of the Principal Regulations has been extended to provide for certain notifications relating to the cancellation of registration to be in writing.

By Regulation 4, Regulation 10, paragraph (1) of the Principal Regulations has been amended to increase the limit for the issue of less detailed tax invoices to £25.

By Regulation 5, Regulation 33 of the Principal Regulations has been amended to provide for the giving of any security required by the Commissioners under section 32(2) of the Finance Act 1972 as a precondition for the release of imported goods without payment of tax.

By Regulation 6, Regulation 59 of the Principal Regulations has been amended to provide for an increase, by the amount of the value added tax made chargeable by the Finance Act 1977, in certain fees receivable by sheriffs and sheriff officers in Scotland when they do diligence.

Regulation 7 introduces a new Regulation 61 to the Principal Regulations which prescribes that certain directions etc. may be given by notice in writing.

Regulation 8 introduces a new Part X to the Principal Regulations in connection with Partial Exemption and Input Tax:—

New Regulation 62 provides for the introduction of and replacement by the new Regulation of Part V of the Principal Regulations.

New Regulation 63 provides definitions; and in particular introduces the concept of a "tax year".

New Regulation 64 provides for the application to registered persons, making taxable and exempt supplies, of a longer period by reference to which provisional attributions of input tax are required to be recalculated and adjusted.

New Regulation 65 provides for methods of attributing input tax to taxable and exempt supplies; and is similar to Regulation 24 of the Principal Regulations except that it includes a minor amendment clarification.

New Regulation 66 repeats Regulation 25 of the Principal Regulations, and excludes from partial exemption calculations the value of, or tax on, certain transactions which if they were included would distort those calculations.

New Regulation 67 provides for recalculation and adjustment procedures to be made by the registered person; and includes a tolerance rule within which an adjustment is not required to be made if he so elects.

New Regulation 68 extends the rules (provided for under Regulation 27 of the Principal Regulations) under which exempt and taxable supplies made by a registered person may be treated as if they were all taxable.

New Regulation 69 provides a minimum period for which a particular attribution method under Regulation 65 must be used and the date from which a change of method may take place. It is similar to Regulation 28 of the Principal Regulations.

New Regulation 70 repeats Regulation 29 of the Principal Regulations, and provides exceptionally for relief from tax incurred by a registered person outside the period for which he is registered.

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