

Cross-border VAT changes 2010

Changes to the VAT refund procedure

HMRC guidance

The new electronic cross-border refund system will go live across the EU with effect from 1 January 2010. HM Revenue & Customs (HMRC) is in the process of implementing these changes in the UK, including the preparation of the necessary primary and secondary legislation. The primary legislation, contained in the Finance Bill 2009, covers the high level general principles, including the requirement for UK businesses to submit claims only via the UK portal, the claimant's right of appeal against decisions, and the payment of interest on late repayments. The secondary legislation will set out the detailed operation of the scheme. HMRC is now exposing the draft secondary legislation for comments together with a draft [Impact Assessment](#) (IA).

This guidance also sets out broadly how the new system will be operated in the UK and the views of HMRC on a number of associated issues. These are issues that have been identified by business and business representatives in discussions so far, based on the European legislation.

The document is split into three parts:

- The first part sets out some of the background and the main differences between the new system and the current, paper-based system.
- The second part summarises the changes for UK businesses making claims to the tax administrations in other Member States. It also describes the process from the user's point of view and in Question & Answer format.
- The third part contains the draft UK secondary legislation. The draft primary legislation is primarily an enabling provision and will be included in the Finance Bill.

Detailed guidance on the new system is currently being prepared and this will be published towards the end of the summer. **In the meantime HMRC would welcome comments within eight weeks on:**

- **how the new electronic refund system is proposed to operate in the UK as described in this document**
- **the draft UK legislation**
- **the discussion stage [Impact Assessment](#)**

These should be addressed to:

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The department will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Part 1

Background

Introduction

1. The cross-border refund system enables a business that incurs VAT on expenditure in a Member State where it is not established and makes no supplies to recover that VAT directly from that Member State (the Member State of Refund - MSR). The current system, known as the 8th VAT Directive refund system, is a lengthy, burdensome, paper-based system.

2. Under the new system, requests for refunds will continue, as now, to be dealt with by the MSR. The amount of refundable VAT will also continue to be determined under the VAT rules of the MSR and the relevant repayment will be made directly by that Member State to the business. However, the system will be an electronic one, with specified timescales and interest payable if these are not met. The new system, together with the rules on interest and timescales, will apply to all refund claims submitted on or after 1 January 2010.

Main changes to the current refund system

3. Under the new electronic system:

- The claim will be sent to the MSR, via the business's own tax authority (the Member State of Establishment ('MSE')) thus eliminating the need for a VAT certificate of status
- The format of the claim is to be simplified, introducing the use of standard fields for information and coding purposes. This user friendly approach will reduce the number of issues due to language problems.

4. From 1 January 2010, claimants will have an extended period of nine months (rather than the current six month period) in which to submit claims for VAT incurred in the preceding calendar year.

5. Once the MSR receives the claim, it must normally be processed within four months and, if approved, repaid within ten working days. If further information is requested by the MSR the processing period can be extended up to a maximum of eight months. If these time limits are exceeded then interest will be paid.

6. Businesses will be informed about the progress of their refund claims at certain key stages.

7. There will be standard de minimis limits for claims that will apply in all Member States.

8. In the event that a claim is refused in whole or in part, the decision by the MSR can be appealed. As now, the reconsideration and appeal process will be administered by the MSR in line with their existing procedures. Guidance on appeal procedures in each Member State will continue to be made available by HMRC.

Part 2

UK businesses claiming VAT incurred in other Member States - via the UK portal

Background

1. Under the current refund system, businesses send paper claims directly to the MSR, which then processes the claim. The MSE has no role to play in the process. Under the new electronic refund system, UK businesses wishing to claim VAT incurred in other Member States will need to do so through an electronic portal hosted by HMRC. This is a key difference between the current paper based system and the new electronic one. The MSR remains responsible for all other aspects of the refund process.

Registering on the UK portal

2. A UK business that wishes to make claims for recovering VAT incurred in another EU Member State will have to register on the UK portal via the Government Gateway. The portal will be open for registration late in 2009 and we will keep business informed of progress.

Submission of claims on the UK portal - general

3. When submitting claims, a UK business will need to record some basic details (eg name, address, VAT number, bank account details) and declare that (in line with the current exclusions) it does not account for VAT under a margin or flat rate scheme nor make any supplies in the MSR. This information will be stored and automatically transposed onto the individual claim forms for each MSR as each claim is made. Unlike when using the current paper system, these details need to be recorded only once per log in session (and will then persist for all claims completed during that session), although they can be updated if necessary.

4. As the UK will be verifying these basic details, certificates of UK VAT status to support claims will no longer be necessary. The UK portal will also identify errors in syntax and field completion and 'flag' these to the applicant for correction as each field is completed. Failure to correct these errors will not prevent the claim from being forwarded to the MSR, but the MSR may reject the claim for these or other reasons. In such cases, the MSR will notify the business of the reason(s) for rejection.

Questions & Answers

Can someone other than the applicant file the claim - eg a representative or agent?

Access to the UK portal will be via the Government Gateway, so the claim must be filed by a person who is registered for VAT in the UK, or for other HMRC services. We are hoping that it will also be possible for representatives who are not registered for any HMRC services to use the Government Gateway, but this is not certain at present. The UK portal will allow one set of contact information for the applicant and one for their representative. The onus will be on the applicant or the representative to notify any changes; both will be able to access the system.

Will the MSR require an agent to be authorised?

As under the current paper system, where a claim is submitted by, or payment made to an agent, the MSR may require evidence of some form of legal authority from the applicant. Details of the requirements in each MS and the form in which authority must be provided (eg hard copy or scanned copy) will be published in HMRC guidance.

Who should register as the applicant when the company incurring the overseas VAT is registered as a member of a UK VAT group?

Under the new electronic system, the UK portal will not be able to accept and forward claims from individual VAT group members. It will only recognise the name of the representative member of the group associated with the VAT registration. Claims for VAT incurred by members of UK VAT groups must therefore be consolidated and made in the name of the representative member, along with a declaration that no supplies have been made in the relevant MSR by the group companies incurring the VAT claimed. This is particularly important as there is a limit on the number of claims that can be submitted under a single VAT registration number per calendar year (see below).

Submission of claims on the UK portal - format

5. Separate claims will need to be submitted for VAT incurred in each Member State. The portal will allow up to six claims to be started and saved on the system before submission (ie it will not permit a seventh claim to be started and saved before at least one earlier claim has been submitted). It will not be possible to upload data direct from business' own accounting systems as an XML schema will not be available. Our strategy is to focus investment on robust IT which will provide easy and reliable access to the new refund system, giving the greatest benefit to the majority of businesses using the system. We hope to provide enhancements in future years and we will work with representative bodies to prioritise those enhancements.

6. The claim form itself has been largely standardised at EU level but there will be scope for MSR to dictate 'preferences' to deal with certain aspects, such as the language required for any free text areas for completion.

7. In order to simplify the completion of the electronic claim form, certain information items are coded. These are Business Activity and Expenditure Type.

Business activity codes

8. These are used to describe what business activity is undertaken by the claimant and helps the MSR to verify that the expenditure is incurred for taxable business purposes. Some Member States may allow more than one business activity to be used and this will be clear on the template for their claims.

Expenditure codes

9. Under the current system a description is needed of the nature of the goods/services on which the overseas VAT being claimed is incurred. Under the new system this is replaced with expenditure codes for the nine most commonly claimed expenses. This should greatly simplify completion of a claim.

The expenditure codes are listed below:

1 - Fuel

2 - Hiring of means of transport*

3 - Expenditure relating to means of transport (other than goods and services referred to under codes 1 and 2)*

4 - Road tolls and road user charges

5 - Travel expenses, such as taxi fares, public transport fares

6 - Accommodation*

7 - Food, drink and restaurant services*

8 - Admission to fairs and exhibitions*

9 - Expenditure on luxuries, amusements and entertainment

10 - Other goods and services

*Where a MS restricts recovery on a particular expenditure code this information will be provided in guidance via the electronic portal, and sub-codes will be provided against certain primary codes to identify VAT which may be subject to a total or partial block. For claims to the UK, these sub-codes will apply to primary codes 2 and 3 (to identify the purchase or leasing of cars), and 6, 7 and 8 (to identify business entertainment other than that covered by primary code 9).

10. Code 10 will be used for expenditure which cannot be categorised under any of codes 1 to 9. This code allows free text to be added to describe the expenditure, in the language preferred by the MSR. Any additional codes required by MSR will be advised as MSR preferences as these arise.

Partial exemption

11. As now, a partly exempt business can only recover VAT on costs incurred in other Member States in so far as those costs are used in making taxable supplies. UK businesses should determine how much VAT on costs incurred in other MS is recoverable by reference to the UK partial exemption rules. More detailed guidance on this area will be provided by HMRC.

De minimis limits

12. The following de minimis limits will apply to claims:

- If the claim relates to a period of less than one year but not less than three months it must be for at least EUR 400 or equivalent in national currency.
- If the claim relates to a whole year or the remainder of a year it must be for at least EUR 50 or the equivalent in national currency.

Questions & Answers

What language(s) may be used on refund claims?

The use of standard fields of information and standardised codes of information in the new electronic refund system will greatly reduce language problems. However, there are some limited free text fields and an MSR may also request further information. Applicants will have to follow the MSR language preferences for those fields. During the discussions on the development of the new system, many Member States indicated that as well as the language of that Member State, they intend allowing English to be used.

Submission of claims on the UK portal - time limits

13. As with the current system, claims must be made in respect of VAT incurred during a calendar year. The time limit for submission has been extended from six months after the end of the calendar year in which the VAT was incurred, to nine months.

14. A claim is considered submitted only when it is 'complete', which may include the attachment of scanned copies of invoices. Under the current system all the original paper invoices must be submitted with the claim. Under the new electronic refund system, MSR can only require invoices for values that exceed EUR 250 for fuel and EUR 1,000 for other supplies (or the equivalent in National currency) to be scanned and attached to the claim. If the MSR requires this, it will be clearly noted on that MSR's claim form.

15. There will be a facility to record the 'actual' date of submission on the application so that, in the event of a portal failure, this is recorded. As the UK has 15 days from this date to forward the claim to the MSR and it is not anticipated that the portal will be out of service for this length of time, we do not expect a claim will be out of time due to portal failure.

16. There will be a maximum of five claims that can be submitted to each MSR per year - essentially one per quarter, plus a final 'sweep-up' claim to capture any invoices not previously claimed during that year. But businesses do not have to make quarterly claims; for example, it is possible to make two six month claims or one 12 month claim. Claims may not, however, be made for a period of less than three months, unless they are for the remainder of a year.

17. One of the key benefits to business of the new system is the requirement on the MSR to repay the claim within four months and 10 working days of the claim being received by them from the MSE, unless they need to ask for further information, when the overall maximum will be eight months and 10 working days. The EC directive sets out specific time limits that the MSE and MSR must adhere to in order to speed up the process of verifying and repaying claims to meet this deadline.

18. Once the claim is submitted on the UK portal, the UK must verify the claimant's details and forward the claim to the MSR within 15 calendar days. The UK will forward claims even when they are apparently out of time, as it will be the MSR that will make the decision whether to accept an out of time claim.

19. The MSR then has four months from the date of receipt to verify the claim and notify its decision (whether to repay in full or in part or to refuse the claim) to the claimant, or to request further information. If the decision is to repay in whole or in part, repayment must be made within 10 working days of the decision. If this deadline is not met the claimant is entitled to be paid interest by the MSR at the same rate that it applies to taxpayers in that Member State.

20. Once a claim is submitted, a business will receive notifications showing when the claim was forwarded to the MSR and when the MSR has received it.

21. Where the MSR requires further information from the claimant, HMRC, or a third party, the time limit can be extended, but subject to a maximum of eight months from the date of receipt. For example, in the course of their verification process, MSRs will be able to request copies of paper invoices as part of any additional information deemed necessary by them after the electronic claim has been submitted.

22. Requests for further information about the claim will normally be made direct from the MSR to the business by email. When a final decision is made, the MSR will notify the MSE whether the claim is fully accepted, partially accepted or fully rejected. The actual details of the decision will be sent to the applicant directly. Any questions regarding the MSR's decisions will, as now, need to be addressed directly to the tax authorities in the MSR.

23. A MSR must make part payments where elements of a claim are approved. If these payments are not made within the prescribed 10 day period then interest will apply to that refundable amount.

Questions & Answers

If the MSR raises any queries regarding the claim is there a time limit for the claimant to respond?

Yes - the requested information must be provided within one month of the date on which the request reaches the person to whom it is addressed. If the information is not provided within this time limit, the MSR will have no liability to pay interest if the decision deadlines are exceeded.

Is there a time limit for the MSR to process any additionally requested information?

Yes - The MSR must notify the claimant of its decision to approve or refuse the refund application within two months of the date of receipt of the requested information or, if the information is not received, within three months of the date their request reached the person to whom it was addressed.

Ultimately, the MSR must notify the claimant of its decision within eight months of receipt of the application by that Member State. If the claimant has not been notified within this timescale then the default position is that the claim has been rejected. The claimant will then have the right to appeal this decision.

Is there a time limit for making the payment once the claim has been approved?

Yes - It must be paid by the MSR either:

- within 10 working days of expiry of four months from the date of receipt of the claim in the MSR; or
- in cases where additional information was requested, within 10 working days of the expiry of eight months from the date of receipt of the claim by the MSR

What happens if my supplier has incorrectly charged VAT?

Where VAT has been charged incorrectly under the rules of the MSR (eg on an exempt or zero-rated supply) the claim will be rejected. The business will normally need to contact the supplier for a reimbursement of any VAT incorrectly charged.

If I spot an error after I have submitted a claim, can I correct this?

Amendments can be made to claims previously submitted but only to change or delete existing lines, they cannot add new lines. Therefore, if a claimant realises that some invoices have been omitted from a claim they must be retained and included in the following claim, or the final sweep up claim for that year.

When a correction is made, the corrected application will be given a new time stamp. If the corrections are not significant then the MSR will work within the confines of the original receipt date and the consequent four month deadline. However, if the corrections are significant and the four month time period is advanced then the MSR can set a new receipt date if they feel it is justified. This will have the effect of starting the four month clock again. This deals with the problem of

a correction coming through three and half months into the four month consideration period with wholesale changes. Guidance will be issued on what is considered significant.

PART 3

Draft UK secondary legislation

EC Refunds – Draft Regulations

1.(1) In this Part—

"claimant" means a person making a claim under this Part or a person on whose behalf such a claim is made;

"motor car" means any motor vehicle of a kind normally used on public roads which has three or more wheels and either—

(a) is constructed or adapted solely or mainly for the carriage of passengers; or

(b) has to the rear of the driver's seat roofed accommodation which is fitted with side windows or which is constructed or adapted for the fitting of side windows;

"repayment year" means the period of 12 calendar months commencing on 1st January.

(2) For the purposes of this Part, a person (P) is treated as being established in a country if—

(a) P has there a business establishment or some other fixed establishment from which business transactions are effected, or

(b) P's usual place of residence is there where P has no such establishment as is described in paragraph (a) in that country or elsewhere.

(3) For the purposes of this Part—

(a) a person carrying on business through a branch or agency in any country is treated as having there an establishment from which business transactions are effected, and

(b) "usual place of residence", in relation to a body corporate, means the place where it is legally constituted.

VAT that may be repaid under this Part

2.(1) A person to whom this Part applies who-

(a) makes a valid claim for repayment of VAT in accordance with this Part, and

(b) fulfils the other requirements of this Part,

shall (subject to the other provisions in this Part) be entitled to repayment of the VAT described in regulation 5 incurred in the repayment period of the claim.

(2) Where a claim for repayment of VAT incurred in a repayment period is not made in the repayment application covering the repayment period in which that VAT was incurred, it may be made in a claim in a subsequent repayment period falling within the repayment year in which the VAT was incurred as if the VAT had been incurred in that period.

3. The Commissioners shall only make a repayment of VAT in accordance with this Part if they are satisfied that the claimant is entitled to the repayment.

Persons to whom this Part applies

4. This Part applies to a person carrying on business in a member State other than the United Kingdom for the whole of the repayment period of the claim other than a person who—

(a) is established in the United Kingdom during any part of the repayment period;

(b) makes supplies in the United Kingdom of goods or services during any part of the repayment period other than—

(i) transport of freight outside the United Kingdom or to or from a place outside the United Kingdom or services ancillary thereto,

(ii) services where the VAT on the supply is payable solely by the person to whom the services are supplied in accordance with the provisions of section 8 of the Act, and

(iii) goods where the VAT on the supply is payable solely by the person to whom they are supplied as provided for in section 9A or 14 of the Act;

(c) during any part of the repayment period of the claim, does not undertake or intend to undertake transactions in the member State where that person is established which afford that person a right of deduction in accordance with Articles 168 and 169 of Directive 2006/112/EC as applied in the member State where that person is established;

(d) makes or intends to make supplies in the repayment period of the claim upon which VAT was not or would not be charged by virtue of their being within the exemption afforded to small enterprises under Articles 284, 285, 286 and 287 of Directive 2006/112/EC as applied in the member State in which that person is established; or

(e) makes or intends to make supplies in the repayment period of the claim which are covered by the flat-rate scheme for farmers provided for in Article

295 to 305 of Directive 2006/112/EC as applied in the member State in which that person is established.

5.(1) The VAT referred to in regulation 2 is VAT charged on-

(a) an importation of goods by the claimant from a place outside the member States; and

(b) supplies of goods or services made to the claimant in the United Kingdom if that VAT would be input tax of the claimant if the claimant were a taxable person.

(2) The VAT described in regulation 6 shall be repayable only to the extent that, if it were chargeable in the member State in which the claimant is established, it would be deductible as required by Article 173 of Directive 2006/112/EC in the amount determined in accordance with Articles 174 and 175 of that Directive as applied in that State at the time when the claim for repayment is made.

(3) A claim for repayment may not be made in respect of VAT charged on-

(a) an importation of goods in respect of which the VAT charged thereon is eligible for other relief;

(b) a supply or importation of goods which the claimant has removed or intends to remove to another member State, or which the claimant has exported or intends to export to a place outside the member States;

(c) a supply or importation of goods or a supply of services which the claimant has used or intends to use for the purpose of any supply by the claimant in the United Kingdom,

(d) a supply [or importation of] goods or a supply of services which if made to a taxable person would be excluded from credit under section 25 of the Act,

(e) a supply [or importation of] goods or a supply of services to a travel agent which is for the direct benefit of a traveller other than the travel agent or the travel agent's employee.

(4) In this regulation-

“travel agent” includes a tour operator and any person who purchases and resupplies services of a kind enjoyed by travellers.

6. The VAT referred to in regulation 5(2) is VAT charged on a supply or importation of goods or supply of services which-

(a) is not VAT described in regulation 5(3); and

- (b) is used by the claimant both for transactions in the member State in which the claimant is established-
 - (i) giving rise to a right of deduction as required by Articles 168, 169 and 170 of Directive 2006/112/EC as applied in that State, and
 - (ii) for transactions in that State that do not give rise to a right of deduction.

7.(1) This regulation applies to VAT described in regulation 6 where-

(a) a repayment claim (“the original claim”) for that VAT to the extent allowed by regulation 5(2) has been made; and

(b) during the adjustment period there is a time when, if the claim had been made in a later repayment period within the adjustment period, the amount of the VAT that would have been repayable is more or less than the VAT claimed in the original claim.

(2) Where the amount of VAT claimed in the original claim is less than the VAT that would have been repayable if the claim had been made as described in paragraph (1), the VAT representing the difference between the two amounts may be claimed by a repayment claim submitted during the adjustment year as if that VAT had been incurred during the repayment period of the claim.

(3) Where the amount of VAT claimed in the original claim is more than the VAT that would have been repayable if the claim had been made as described in paragraph (1), the VAT representing the difference between the two amounts must be repaid-

(a) by way of adjustment of a repayment claim submitted in the adjustment year, or

(b) if no repayment claim is submitted as described in sub-paragraph (a), the repayment must be made pursuant to a declaration submitted to the member State in which the claimant is established via the electronic portal set up in that State for the purpose of facilitating repayments of VAT in accordance with Directive 2008/9/EC.

(4) In this regulation

“adjustment period” means the period of time commencing immediately after a claim in respect of the VAT described in regulation 7(1) is made [(or should have been made if the claim was not made in respect of the repayment period when the VAT was incurred)] and ending at the end of the adjustment year.

“adjustment year” means the repayment year beginning immediately after the repayment year in which the repayment period of the original claim occurred

[or would have occurred if the original claim had been made in respect of the repayment period when the VAT was incurred].

Time when VAT is incurred

8.(1) Paragraphs (2)-(4) apply for determining the time when VAT is incurred for the purposes of a claim under this Part

(2) VAT charged on the importation of goods is treated as incurred at the time when the VAT becomes chargeable.

(3) Where a supply of goods or services is treated as made at or before the time when the VAT invoice relating to it is issued, the VAT on that supply will be treated as incurred at the time when the VAT invoice is issued.

(4) Where a supply is treated as made after the time when the VAT invoice relating to it is issued, the VAT will be treated as incurred at the time when the supply is treated as made.

Repayment period

9. A repayment period may be for a period of time covering-

(a) a repayment year;

(b) three or more consecutive months occurring wholly within a repayment year;

(c) the remainder of the repayment year where the repayment period commences after 30th September in that year.

Minimum total claim for a repayment period

10.(1) A claim for a repayment period must not be made unless the total amount claimed for the period is equal to or exceeds the amount specified in paragraph (2).

(2) The minimum amount specified for a repayment period is-

(a) £xx [UK sterling equivalent of 50 Euros] in respect of a repayment period described in regulation **9(a) and (c)**; and

(b) xxx [UK sterling equivalent of 400 Euros] in respect of a repayment period described in regulation **9(b)**.

Requirements for a valid claim for repayment of VAT

11. A valid claim for repayment of VAT under this Part is, subject to regulation 12, a claim made by an electronic repayment application that-

(a) is addressed to the United Kingdom;

(b) contains the information required in regulations 14 and 15 completed in the English language;

(c) is submitted at any time before the day specified in regulation 28 via the electronic portal set up in the member State in which the claimant is established for the purpose of facilitating repayments of VAT in accordance with Directive 2008/9/EC.

12. A claim for repayment under this Part comprising or including a claim made in respect of a supply or importation described in regulation 13 is a valid claim under this Part only if the claimant submits at the same time via the electronic portal described in regulation 11(c)-

(a) a repayment application in accordance with that regulation; and

(b) in respect of a supply or importation described in regulation 13, copies of such documentary evidence of an entitlement to deduct VAT as may be required of a taxable person claiming deduction of input tax in accordance with the provisions of **regulation 29 of the VAT Regulations 1995**.

13. The supplies or importations referred to in regulation 12 are-

(a) a supply of goods or services for a value of equal to or exceeding £xxx[Sterling equivalent of 1000 Euros];

(b) an importation of goods of a value equal or exceeding £xxx[Sterling equivalent of 1000 Euros];and

(c) a supply or importation of fuel of a value equal or exceeding £xxx[Sterling equivalent of 250 Euros]

Contents of a repayment application

14. A **repayment application** must contain the following information-

(a) the claimant's name and full address;

(b) an address for contact by electronic means;

(c) a description of the claimant's business activity for which the goods or services were acquired [by reference to the harmonized codes determined in accordance with the second sub-paragraph of Article 43a(3) of Council Regulation (EC) No 1798/2003];

(d) the **repayment period** covered by the application;

(e) a declaration by the claimant in accordance with Article 8(1)(e) of Directive 2008/9/EC;

(f) the claimant's VAT identification number described in Article 214 of Directive 2006/112/EC or tax reference number described in Articles 239 and 240 of that Directive allocated to the claimant by the member State where the claimant is established;

(g) details of the bank account (including IBAN and BIC codes) to which the claimant requests the Commissioners to repay the VAT claimed;

(h) the information described in regulation 15 in relation to every importation of goods or supply in respect of which repayment of VAT charged thereon is claimed in the repayment application.

15. In respect of every importation of goods or supply in respect of which repayment of VAT charged thereon is claimed, a **repayment application** must contain the following information-

(a) the full name and address of the supplier;

(b) except in the case of an importation of goods, the registration number of the supplier and the prefix "GB" or such other prefix by which the United Kingdom is identified in accordance with the requirements of Article 215 of Directive 2006/112/EC;

(c) date of issue of and unique sequential number identifying the document authenticated or issued by a proper officer in respect of the importation of goods or the VAT invoice issued in respect of the supply;

(d) the value of the supply or of the imported goods (expressed in sterling) as determined under the Act but excluding the VAT chargeable on the supply or importation;

(e) the amount (expressed in sterling) of VAT chargeable on the supply or importation;

(f) the amount of VAT on the supply or importation eligible for repayment under this Part expressed in sterling;

(g) where applicable, the fraction described in regulation 16, expressed as a percentage; and

(h) the nature of goods and services acquired, described by reference to the primary codes in regulation 17 and, where appropriate, the supplementary codes in that regulation.

16. The fraction referred to in regulation 15(g) is the fraction determined in accordance with Article 174 of Directive 2006/112/EC for the purpose of determining the deductible proportion in accordance with Article 173 of that Directive as applied in the member State in which the claimant is established for the repayment period in which the claim under this Part is made

17.(1) The primary codes referred to in regulation 15(h) are-

1 in respect of fuel;

2 in respect of hiring of means of transport;

3 in respect of expenditure relating to means of transport (other than the good and services referred to under codes 1 and 2);

4 in respect of road tolls and road user charge;

5 in respect of travel expenses, such as taxi fares, public transport fares;

6 in respect of accommodation;

7 in respect of food, drink and restaurant services;

8 in respect of admissions to fairs and exhibitions;

9 in respect of expenditures on luxuries, amusements and entertainment;

10 in respect of other goods and services.

(2) If code 10 is used, the nature of the goods and services must be described.

[(3) The secondary codes referred to in regulation 15(h)are-

** in respect of the supply or importation of a motor car falling within primary code 2 or 3 if the VAT charged on that supply or importation would, if it had been supplied to a taxable person, be excluded from any credit under section 25 of the Act by virtue of Article 7 of Value Added Tax (Input Tax) Order 1992;

** in respect of a supply of goods or services or importation of goods falling within primary code 6 or 7 which are used or to be used for the purpose of business entertainment and would, if the goods or services had been supplied to or imported by a taxable person, be excluded from any credit under section 25 of the Act by virtue of Article 5 of that order.]

[(3) The secondary codes are-

** in respect of the supply or importation of a motor car falling within primary code 2 or 3;

** in respect of a supply of goods or services or importation of goods falling within primary code 6 or 7 which are used or to be used for the purpose of business entertainment.]

(4) In this regulation “business entertainment” means entertainment including hospitality of any kind provided by the claimant in connection with a business carried on by him.

Day by which a claim under this Part must be made

18.(1) The day before which a repayment application in respect of a repayment period must be submitted in accordance with regulation 11(c) is 1st October of the repayment year immediately following the repayment year in which the repayment period covered by the repayment application falls.

(2) A repayment application will be treated as having been submitted in accordance with regulation 11(c) only if its submission is successfully recorded by the validation process of the electronic portal described in that regulation.

(3) The time of submission of a repayment application will be conclusively presumed to be the time recorded as such by the electronic portal.

(4) The Commissioners must, by electronic means, notify a claimant of the day on which the claimant’s repayment application is received by the Commissioners.

Notification of entitlement to repayment

19.(1) The Commissioners must notify a claimant whether they are satisfied that the claimant is entitled to repayment of VAT claimed under this Part before the expiry of relevant period applicable to the VAT in question.

(2) If the Commissioners are not satisfied that the claimant is entitled to repayment of any VAT claimed, they must state their reasons in the notification.

(3) If the Commissioners do not, in relation to any VAT claimed for repayment under this Part, notify a claimant in accordance with paragraph (1), they shall be deemed to have refused to make payment of the VAT in question.

Meaning of “relevant period”

20. Where a relevant request in relation to any VAT claimed under this Part is made before the expiry of 4 months from the day on which the Commissioners receive the repayment application in respect of that VAT, the relevant period in relation to that VAT is the period of time beginning on the day when the Commissioners receive the repayment application and ending on the day occurring on the earlier of -

- (a) the day when the period would be treated as ending in accordance with regulations **21** or **22**; or
- (b) upon the expiry of 8 months from the day on which the repayment application is received by the Commissioners.

21.(1) If no relevant request is made after the expiry of 3 months from the day on which the Commissioners receive the repayment application, the relevant period is treated as ending on the expiry of 6 months from the day on which the Commissioners receive the repayment application.

(2) A relevant request may not be made in relation to a repayment application after the expiry of 6 months from the day on which the Commissioners receive it if no relevant request is made in relation to the repayment application after the expiry of 3 months from the day on which the Commissioners receive it.

REGULATION 22 – ALTERNATIVE VERSION 1

[22.(1) Where regulation **21** does not apply, a relevant period is treated as ending upon the expiry of the later of-

- (a) 6 months from the day a repayment application is received by the Commissioners;
- (b) 2 months from the day when the Commissioners receive information or a document requested by a final relevant request if provided before the expiry of the period mentioned in (c); or
- (c) 3 months from the day on which the final relevant request reaches the person to whom it is made.

(2) A relevant request is a final relevant request in relation to the VAT to which it relates if no other relevant request is made in respect of that VAT is made before the expiry of the later of-

- (a) 2 months from the day when the Commissioners receive the information or documentation requested by a final relevant request if provided before the expiry of the period mentioned in (b); or
- (b) 3 months from the day on which the final relevant request reaches the person to whom it is made.]

REGULATION 22 – ALTERNATIVE VERSION 2

[22.(1) Where-

- (a) regulation 21; and
- (b) paragraphs (2) and (3) of this regulation,

do not apply, a relevant period is treated as ending upon the expiry of the 6 months from the day a repayment application is received by the Commissioners.

(2) This paragraph applies where the Commissioners receive the information or document requested by a final relevant request before the expiry of 3 months from the day on which that request reaches the person to whom it is made.

(3) This paragraph applies where the Commissioners **do not** receive the information or document requested by a final relevant request before the expiry of 3 months from the day on which that request reaches the person to whom it is made.

(4) Where paragraph (2) of this regulation applies, a relevant period is treated as ending 2 months from the day when the Commissioners receive the information or document requested.

(5) Where paragraph (3) of this regulation applies, a relevant period is treated as ending 3 months from the day on which the final relevant request reaches the person to whom it is made.

(6) A relevant request is a final relevant request in relation to the VAT to which it relates if no other relevant request is made in respect of that VAT before the expiry of the later of-

- (a) 2 months from the day when the Commissioners receive the information or documentation requested by a final relevant request if provided before the expiry of the period mentioned in (b); or
- (b) 3 months from the day on which the final relevant request reaches the person to whom it is made.

23. Where the Commissioners do not make a relevant request before the expiry of 4 months from the day on which the Commissioners receive the repayment application, the relevant period in relation to that VAT is the period of time beginning on the day on which the repayment application is received by the Commissioners and ending on the expiry of 4 months from that day.

Meaning of “relevant request”

24. (1) In regulations 20, 21, 22 and 23 “relevant request” means-

- (a) a notice made by relevant means requiring a person to provide information or to produce a document to the Commissioners pursuant to Schedule 36 of the Finance Act 2008; or
- (b) a request made by relevant means to the competent authority of a member State to provide information to the Commissioners in accordance with EC Regulation 1798/2003/EC,

which the Commissioners require in order to satisfy themselves whether a claimant is entitled to a repayment of VAT under this Part.

Meaning of “relevant means”

25.(1) A request for information or documentation made to the claimant or competent authority of a member State is made by relevant means only if it is made by electronic means.

(2) The relevant means in respect of a request for information or documentation made to a person other than the claimant or competent authority is-

- (a) electronic means if such means are available to that person; or
- (b) such other means as are expedient if electronic means are not available to that person.

The time when a repayment of VAT must be made

26. VAT to which a claimant is entitled to repayment under this Part must be paid by the Commissioners before the expiry of 10 working days after the expiry of the relevant period in relation to that VAT.

Interest on late repayments

27.(1) Where the Commissioners fail to repay VAT to which a claimant is entitled to repayment under this Part before the expiry of the 10-day period described in regulation 26, they must pay interest on that amount to the claimant for the applicable period.

(2) The “applicable period” is the period-

(a) beginning upon the expiry of the 10-day period described in regulation 26, and

(b) ending on the day when the repayment is made to the claimant.

(3) Interest under this regulation shall be payable at the same rate as would have been payable if the Commissioners had been required to pay interest to the claimant pursuant to section 78(1) of the Act during the applicable period.

(4) Where-

(a) the Commissioners issue a notice pursuant to section 36 of the Finance act 2008 requiring a claimant provide information or to produce a document in order to satisfy themselves whether a claimant is entitled to a repayment of the VAT; and

(b) the claimant fails to provide the information or to produce the document within 1 month of receiving the notice, the Commissioners shall not be liable to pay any interest under this regulation in respect of the VAT concerned even if the claimant provides the information or produces the document concerned at a later time.

(5) The Commissioners will not be liable to pay interest under this regulation during any period where a claimant has not provided to the Commissioners the documents described in regulation **12(b)** that are required to be submitted at the same time as a repayment application in respect of supplies or importations described in regulation 13.

28. Where-

(a) any amount has been paid to any person by way of interest under regulation 27, but

(b) that person was not entitled to that amount under that regulation,

the amount paid shall be treated for the purposes of the Act as if it had been an amount paid to that person by way of interest under section 78 of the Act in circumstances where that person was not entitled to that amount under that section.

29. A claim for repayment of VAT under this Part shall be treated as if it were a return under the Act [made in respect of a prescribed accounting period comprising the repayment period of the claim].

30. A repayment made following a claim under this Part shall be treated as if it were a repayment of input tax.

31. Where any repayment is to be made to a claimant in the country in which the claimant is established, the amount of the repayment must may be reduced by the amount of any bank charges or costs incurred by the Commissioners as a result thereof.

32. Where any sum has been repaid to a claimant as a result of an incorrect claim, the amount of any subsequent repayment to that claimant may be reduced by the said sum.