

2009 No.XXX

VALUE ADDED TAX

The Value Added Tax (Amendment) (No X) Regulations 2009

<i>Made</i> - - - -	2009
<i>Laid before the House of Commons</i>	2009
<i>Coming into force</i> - -	2009

The Commissioners for Her Majesty's Revenue and Customs(a) make the following Regulations in exercise of the powers conferred by sections 25(1), 58B of, and paragraphs 2(1) and (11) of Schedule 11 to, the Value Added Tax Act 1994(b); sections 132 and 133 of the Finance Act 1999(c); section 135 of the Finance Act 2002(d); section 204 of the Finance Act 2003(e) and section 95(1) of the Finance Act 2007(f).

1. These Regulations may be cited as the Value Added Tax (Amendment) (No. X) Regulations 2009 and come into force on DATE 2009.

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

3. In regulation 25(making of returns)—

(a) in paragraph (1)—

(i) for “on the form numbered 4 in Schedule 1 to these Regulations (“Form 4”)” substitute “in the form prescribed in regulation 25A”,

(ii) for “signed by him” substitute “signed by that person or by a person authorised to sign on that person’s behalf”;

(b) in paragraph (4)—

(i) for “on the form numbered 5 in Schedule 1 to these Regulations (“Form 5”)” substitute “in the form prescribed in regulation 25A”,

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- (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(2) 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; section 58B was inserted by section 95(8) of the Finance Act 2007 (c. 11) with effect from 19 July 2007; paragraph 2(1) of Schedule 11 was amended by sections 24(1)(b), (5) and 139 of and Schedule 40 part 2(2) to 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 section 406 of and paragraph 156 of Schedule 17 to the Communications Act 2003 (c. 21).
- (d) 2002 c. 23; section 135 was amended by section 50 of and paragraphs 94 and 95 of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 (c. 11) with effect from 18 April 2005 by virtue of S.I. 2005/1126 and by section 93 of the Finance Act 2007 with effect from 19 July 2007.
- (e) 2003 c.14; section 204 was amended by sections 94 and 95 of the Finance Act 2007 with effect from 19 July 2007.
- (f) 2007 c.11.
- (g) S.I. 1995/2518; relevant amending instruments are S.I.1996/1250, S.I. 2000/258, S.I. 2000/794, S.I. 2004/1675 and S.I. 2007/1418.

- (ii) for “signed by him” substitute “signed by that person or by a person authorised to sign on that person’s behalf”; and
- (c) omit paragraphs (4A) to (4M).

4. After regulation 25, insert—

“**25A.**—(1) Where a person makes a return required by regulation 25 using electronic communications, such a method of making a return shall be referred to in this Part as an “electronic return system”.

(2) Where a person makes a return on the form numbered 4 in Schedule 1 to these Regulations (“Form 4”) or, in the case of a final return, on the form numbered 5 in Schedule 1 to these Regulations (“Form 5”), such a method of making a return shall be referred to in this Part as a “paper return system”.

(3) A specified person must make a specified return using an electronic return system.

(4) In any case where an electronic return system is not used, a return must be made using a paper return system.

(5) In this regulation a “specified person” means a person who—

- (a) is registered for VAT with an effective date of registration on or after 1st April 2010 whether or not such registration is the result of a transfer of a going concern, or
- (b) is registered for VAT with an effective date of registration on or before 31st March 2010 and has as at 31st December 2009 or any date thereafter an annual VAT exclusive turnover of £100,000 or more whether or not that person’s turnover subsequently falls below this level,

provided that, in each case, that person has been notified as required by paragraph (7) below.

(6) However, the following are not specified persons for the purposes of this regulation—

- (a) a person who the Commissioners are satisfied is a practicing member of a religious society or order whose beliefs are incompatible with the use of electronic communications,
- (b) a non-established taxable person located outside the territory of the Community and the Channel Islands, or
- (c) a person in relation to whom an administrator is appointed or to whom an insolvency procedure as defined in any of paragraphs (d), (e) and (f) of section 81(4B) of the Act is applied.

(7) Where the Commissioners consider that a person is a specified person, they shall notify that person of that fact in writing.

(8) Where an electronic return system is used, it must take a form approved by the Commissioners in a specific or general direction.

(9) Where a paper return system is used, a return required by regulation 25(1) must be made on Form 4 and a return required by regulation 25(4) must be made on Form 5.

(10) A direction under paragraph (8) above may in particular—

- (a) modify or dispense with any requirement of Form 4 or Form 5 (as appropriate),
- (b) specify circumstances in which the electronic return system must or may be used, or not used, by or on behalf of the person required to make the return.

For the purposes of sub-paragraph (b), the direction may specify different circumstances for different cases.

(11) An electronic return system shall incorporate an electronic validation process.

(12) Subject to paragraph (13) below and unless the contrary is proved—

- (a) the use of an electronic return system shall be proved to have resulted in the making of the return to the Controller only if this has been successfully recorded as such by the relevant electronic validation process,
- (b) the time of making the return to the Controller using an electronic return system shall be conclusively presumed to be the time recorded as such by the relevant electronic validation process, and
- (c) the person delivering the return to the Controller shall be presumed to be the person identified as such by any relevant feature of the electronic return system.

(13) No return shall be treated as having been made using an electronic return system unless it is in the form required by paragraph (8) above.

The requirement in paragraph (8) above incorporates the matters mentioned in paragraph (10) above.

(14) In relation to returns made for prescribed accounting periods which end on or after 31 March 2011, a specified person who fails to comply with paragraph (3) above is liable to a penalty.

(15) But a specified person who has a reasonable excuse for so failing to comply at the time the specified return was due to be made is not liable to a penalty.

(16) The table below sets out the penalties depending on the level of turnover.

<i>Annual VAT exclusive turnover</i>	<i>Penalty</i>
<i>£22,800,001 and above</i>	<i>£400</i>
<i>£5,600,001 to £22,800,000</i>	<i>£300</i>
<i>£100,001 to £5,600,000</i>	<i>£200</i>
<i>£100,000 and under</i>	<i>£100</i>

(17) A person may appeal against the Commissioners' decision to impose a penalty only on the grounds that—

- (a) he is not a specified person,
- (b) paragraph (3) above was complied with,
- (c) the amount of the penalty is incorrect, or
- (d) paragraph (15) above applies.

(18) In calculating a person's annual VAT exclusive turnover for the purposes of paragraph (5)(b) above and the table in paragraph (16) above, the Commissioners shall use any available figures which they determine to be fair and reasonable in the circumstances and such figures shall be taken to be the correct figures for the purposes of the calculation.

(19) A return made using an electronic return system carries the same consequences as a return made using a paper return system, except in relation to any matter for which alternative or additional provision is made under this regulation.

(20) Additional time is allowed to make a return for which any related payment is made solely by means of electronic communications (see regulation 25(1) – time for making return, and regulations 40(2) to 40(4) – payment of VAT).

That additional time is only as the Commissioners may allow in a specific or general direction, and such a direction may allow different times for different means of payment.

The Commissioners need not give a direction pursuant to this paragraph.

(21) In this regulation—

- (a) a “specified return” is a return required by regulation 25 submitted for any accounting period which commences on or after 1st April 2010,

(b) a reference to an appeal is a reference to an appeal made under section 83(1)(zc) of the Act(a),

(c) “reasonable excuse” shall have the same limitation as it does in section 71(1)(b) of the Act.

(22) In paragraphs (8) and (20) above “direction” and “direct” refer only to a current direction, and a direction is not current to the extent that it is varied, replaced or revoked by another Commissioners’ direction.”

5. In regulation 40 (VAT to be accounted for on returns and payment of VAT)—

(a) in paragraph (2A)—

(i) after “a return is made” insert “or is required to be made”, and

(ii) for “regulation 25” substitute “regulations 25 and 25A”;

(b) after paragraph (2A), insert—

“(2B) With effect from 1st April 2010, where a person makes any payment to the Controller required by paragraph (2) above by cheque (whether or not in contravention of paragraph (2A) above)—

(a) the payment shall be treated as made on the day when the cheque clears to the account of the Controller, and

(b) that shall be the day when payment of any VAT shown as due on the return is to be treated as received by the Commissioners for the purposes of section 59 of the Act.

(2C) For the purposes of this regulation, the date on which a cheque clears to the account of the Controller is the second working day following but not including the date of its receipt.”.

Names

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

2009

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on DATE 2009, amend Part V of the VAT Regulations 1995 (S.I. 1995/2518). Part V deals with accounting, payment and records.

Regulation 3 amends regulation 25 (making of returns). It substitutes references to the forms prescribed in the new regulation 25A to be inserted by regulation 4 for references to the forms in Schedule 1 to the Regulations and provides that an authorised representative may sign a return.

Regulation 4 inserts a new regulation 25A to deal with the requirement to make returns using either an electronic return system or a paper return system. It makes provision as to who is required to make a return using an electronic return system and of the form which such a system must take. It provides that, where that requirement depends upon turnover any available fair and reasonable figures which the Commissioners use to determine turnover shall be conclusive even if alternative figures subsequently become available. It also provides for a penalty for failure to use an electronic return system where this is required and allows for additional time to make a return using such a system.

Regulation 5 amends regulation 40 (VAT to be accounted for on returns and payment of VAT) to refer to the new regulation 25A inserted by regulation 4 and to make provision as to payment where a return is made using an electronic or a paper return system.

(a) Section 83(zc) was inserted by section 93(8) of the Finance Act 2007 (c.11) with effect from 19 July 2007.

A full Impact Assessment of the effect that this instrument 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 website of the office of Public Sector Information at www.opsi.gov.uk.