

2012 No.

VALUE ADDED TAX

The Value Added Tax (Amendment) (No. X) Regulations 2012

<i>Made</i>	- - - -	2012
<i>Laid before the House of Commons</i>		2012
<i>Coming into force</i>	- -	October 2012

The Commissioners for Her Majesty's Revenue and Customs(**a**) make the following Regulations in exercise of the powers conferred by sections 3(2), 3(4), 18B(2A), 18C(1A), 25(1), 26B(1), 35(2), 39(1) and (3), 48(4), (4A) and (6), 49(2) and 54(1) and (6) of, and paragraph 17 of Schedule 1, paragraph 14 of Schedule 1A, paragraph 9 of Schedule 2, paragraph 10 of Schedule 3, paragraph 8 of Schedule 3A and paragraphs 2(1), (3), (4), (5), (10) and 7(1) of Schedule 11 to, the Value Added Tax Act 1994(**b**), sections 132 and 133 of the Finance Act 1999(**c**) and sections 135 and 136 of the Finance Act 2002(**d**).

Citation and commencement

1. These Regulations may be cited as the Value Added Tax (Amendment) (No X) Regulations 2012 and come into force on [DATE] October 2012.

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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 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 3(2) was amended by section 136(1) of the Finance Act 2000 (c. 17); sections 18B and 18C were inserted by paragraph 5 of Schedule 3 to the Finance Act 1996 (c. 8) and amended by paragraphs 2 and 3 of Schedule X to the Finance Act 2012 (c. Y); section 26B was inserted by section 23(1) and (4) of the Finance Act 2002 (c. 23); section 35(2) was amended by section 30 of the Finance Act 1996 and by paragraph 4 of Schedule X to the Finance Act 2012; section 39(3) was amended by section 77 of the Finance Act 2009 (c. 10) and by paragraph 5 of Schedule X to the Finance Act 2012; section 48 was amended by paragraph 6 of Schedule X to the Finance Act 2012; section 49(2) was amended by sections 100 and 114 of, and Part 6(2) of Schedule 27 to, the Finance Act 2007 (c. 11); section 54(6) was amended by paragraph 7 of Schedule X to the Finance Act 2012; paragraph 17 of Schedule 1 was amended by paragraph 8 of Schedule X to the Finance Act 2012; Schedule 1A was inserted by section X of the Finance Act 2012, paragraph 9 of Schedule 2 was amended by paragraph 9 of Schedule X to the Finance Act 2012; paragraph 10 of Schedule 3 was amended by paragraph 10 of Schedule X to the Finance Act 2012; Schedule 3A was inserted by section 136(8) of, and Schedule 36 to, the Finance Act 2000 and paragraph 8 was amended by paragraph 11 of Schedule X to the Finance Act 2012; paragraph 2(1) of Schedule 11 was amended by sections 24(1)(b) and (5) and 139 of, and Part 2(2) of Schedule 40 to, the Finance Act 2002 and by paragraph 12(2) of Schedule X to the Finance Act 2012; paragraph 2(3) of Schedule 11 was amended by section 78 of the Finance Act 2009 and by paragraph 12(3) of Schedule X to the Finance Act 2012; paragraph 2(4) of Schedule 11 was amended by paragraph 12(6) of Schedule X to the Finance Act 2012; paragraph 2(5) of Schedule 11 was amended by paragraph 12(7) of Schedule X to the Finance Act 2012; paragraph 2(10) was amended by section 38 of the Finance Act 1996.
- (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) and section 93(1) to (3) of the Finance Act 2007 (c. 11).

Amendment to the Value Added Tax Regulations 1995

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

3. In regulation 2—

- (a) in the definition of “registered person” in paragraph (1), after “1,” insert “1A,”;
- (b) in paragraph (3) for “prescribed in Schedule 1 to these Regulations” substitute “specified in a notice published by the Commissioners”.

Electronic communication

4. After regulation 4 (requirement, direction, demand or permission), insert—

“Electronic communication

4A.—(1) A specified communication may be made to the Commissioners using an electronic communications system.

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

(3) A direction under paragraph (2) may in particular—

- (a) modify or dispense with any requirement of the relevant form specified in a notice published by the Commissioners;
- (b) specify different forms of electronic communications system for different cases; and
- (c) specify different circumstances in which the electronic communications system may be used, or not used, by or on behalf of the person required to make the communication and specify different circumstances for different cases.

(4) An electronic communications system shall incorporate an electronic validation process.

(5) Subject to paragraph (6) below and unless the contrary is proved—

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

(6) No communication shall be treated as having been made using an electronic communications system unless it is in the form required by paragraph (2) above.

(7) A communication made using an electronic communications system carries the same consequences as a communication made in paper form.

(8) In paragraph (2) “direction” refers 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.

4B.—A specified communication is—

(a) S.I. 1995/2518; relevant amending instruments are S.I 1996/1250, 1997/1086, 2000/258, 2000/794, 2004/1675, 2007/2085, 2009/1967, 2009/2978, 2009/3241 and 2010/559.

- (a) an application under section 43B(1), (2) or (3) of the Act (a) (Groups: applications);
- (b) a notification under regulation 5(1), (2) or (3) (registration and notification);
- (c) an application under regulation 6(1)(d) (transfer of a going concern);
- (d) a notification under regulation 10(1) or (4) (VAT representatives);
- (e) an application under regulation 52(1) (annual accounting scheme: eligibility);
- (f) a notification under regulation 54(2) (annual accounting scheme: termination);
- (g) a notification under regulation 55(1)(d) (annual accounting scheme: termination);
- (h) a notification under regulation 55B(1)(a) (flat-rate scheme for small businesses: notification of desire to join the scheme); and
- (i) a notification under regulation 55Q(1)(e) (flat-rate scheme for small businesses: notification of decision to withdraw from the scheme).”.

Registration and notification

5. In regulation 5 (registration and notification)—

- (a) in paragraph (1)—
 - (i) after “Schedule 1,” insert “paragraph 5(1), 6(1) or (13)(3) of Schedule 1A(b),” ,
 - (ii) for “in forms numbered 1, 6, 7 and 7A respectively in Schedule 1 to these Regulations and shall be made in those forms” substitute “in the relevant form specified in a notice published by the Commissioners and shall be made in that form”, and
 - (iii) for “the form numbered 2 in that Schedule” substitute “the relevant form specified in a notice published by the Commissioners”;
- (b) in paragraph (2)—
 - (i) after “Schedule 1,” insert “paragraph 7, 8 or 9(1) of Schedule 1A,”; and
 - (ii) omit “in writing”;
- (c) in paragraph (3) omit “shall be made in writing to the Commissioners and”; and
- (d) omit paragraphs (4) to (14).

Forms

6. In regulation 6 (transfer of a going concern)—

- (a) in paragraph (1)—
 - (i) in sub-paragraph (b), after “Schedule 1” insert “or 1A”,
 - (ii) in sub-paragraph (c), for “under that Schedule” wherever it occurs substitute “under either Schedule” and for “under paragraph 9 of that Schedule” substitute “under paragraph 9 of Schedule 1 to the Act”,
 - (iii) in sub-paragraph (d) for “the form numbered 3 in Schedule 1 to these Regulations” substitute “the form specified in a notice published by the Commissioners”, and
 - (iv) for “cancel the registration under Schedule 1” to the end substitute “cancel the registration under Schedule 1 or 1A to the Act of the transferor and register the transferee under Schedule 1 or 1A to the Act as appropriate with the registration number previously allocated to the transferor”;
- (b) in paragraph (2) after “Schedule 1” insert “or paragraph 7 of Schedule 1A”; and

(a) Section 43B was inserted by section 16 of, and paragraph 2 of Schedule 2 to, the Finance Act 1999 (c. 16) and was amended by section 20(4) of the Finance Act 2004 (c. 12).

(b) Schedule 1A was inserted by section X of the Finance Act 2012 (c. X) with effect from 1 December 2012.

- (c) in paragraph (3) after “1” insert “or 1A”.
- 7.** In regulation 10(1) (VAT representatives)—
- (a) for “on the form numbered 8 in Schedule 1 to these Regulations” substitute “in the form specified in a notice published by the Commissioners”; and
 - (b) for “in that form” substitute “in that notice”.
- 8.** For regulation 22(2)(a) (EC sales statements: submission of statements) substitute—
- “(a) be made in the form specified in a notice published by the Commissioners.”.
- 9.** For regulation 22A(2)(a) substitute —
- “(a) made in the form specified in a notice published by the Commissioners.”.
- 10.** For regulation 22C(3)(a) substitute—
- “(a) be made in the form specified in a notice published by the Commissioners.”.
- 11.** In regulation 25 (making of returns), in paragraph (1)(b), after “Schedules 1,” insert “1A,”.
- 12.** In regulation 25A —
- (a) in paragraph (2), for “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”)” substitute “or a final return on the relevant form specified in a notice published by the Commissioners”;
 - (b) in paragraph (9) for “must be made on Form 4” to the end substitute “or 25(4) must be made on the relevant form specified in a notice published by the Commissioners”; and
 - (c) in paragraph (10)(a) for “Form 4 or Form 5 (as appropriate)” substitute “the relevant form specified in a notice published by the Commissioners”.
- 13.** In regulation 145B(1) (fiscal warehousing: certificates), for “in the form numbered 17 in Schedule 1 to these Regulations” substitute “in the form specified in a notice published by the Commissioners”.
- 14.** In regulation 145C (fiscal warehousing: certificates connected with services in fiscal or other warehousing regimes), for “in the form numbered 18 in Schedule 1 to these Regulations” substitute “in the form specified in a notice published by the Commissioners”.
- 15.** In regulation 191(1) (repayments to third country traders: method of claiming)—
- (a) in sub-paragraph (a), for “the form numbered 9 in Schedule 1 to these Regulations” substitute “the form specified in a notice published by the Commissioners”; and
 - (b) in sub-paragraph (b)(i), for “the form numbered 10 in Schedule 1 to these Regulations” substitute “the form specified in a notice published by the Commissioners”.
- 16.** For regulation 201A (refunds to “do-it-yourself” builders: relevant form) substitute—
- “**201A.** The relevant form for the purposes of a claim is the form specified in a notice published by the Commissioners for a claim which relates to—
- (a) works described in section 35(1A)(a) or (b) of the Act^(a); or
 - (b) works described in section 35(1A)(c) of the Act.”.
- 17.** In regulation 204(c) (flat-rate scheme for farmers: admission to the scheme), for “numbered 14 in Schedule 1 to these Regulations” substitute “specified in a notice published by the Commissioners”.
- 18.** In regulation 206(1)(f) (flat-rate scheme for farmers: cancellation of certificates) after “1” insert “, 1A”.

(a) Section 35(1A) was inserted by section 30 of the Finance Act 1996 (c. 8).

19. In regulation 208(a) (flat-rate scheme for farmers: further certification) after “1” insert “, 1A”.

20. Omit Schedule 1.

Name

Name

October 2012

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the VAT Regulations (S.I. 1995/2518) ('the Principal Regulations').

Regulation 4 inserts regulations 4A and 4B (electronic communication) to enable businesses to make what are termed "specified communications" (listed in regulation 4B) using an electronic communications system specified in a direction made by the Commissioners for HM Revenue and Customs ("the Commissioners"). Regulation 4A makes specific provision in relation to the making, timing and identifying the deliverer of an electronic communication and provides that an electronic communication otherwise carries the same consequences as a communication in paper form.

The other regulations make amendments in consequence of amendments made to the Value Added Tax Act 1994 ("VATA") by the Finance Act 2012 to: (1) allow the Commissioners to determine the form of a number of communications the form of which is currently prescribed in Schedule 1 to the Principal Regulations in a notice made under the Principal Regulations and (2) make provision about the registration of non-established taxable persons in a new Schedule 1A (registration in respect of taxable supplies: non-UK establishment) to be inserted into VATA.

Regulation 3 and regulations 5 to 19: (1) remove the specific references to forms in Schedule 1 to the Principal Regulations, providing instead that the form of those communications is to be specified in a notice published by the Commissioners and (2) insert references to the new Schedule 1A where appropriate. Regulation 5 also makes some consequential amendments following the introduction of regulations 4A and 4B.

Regulation 20 omits Schedule 1.

A Tax Information and Impact Note covering this instrument will be published on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>.