

**Draft legislation for VAT partial exemption measure announced at PBR
2006 (changes in bold italics)**

PART XIV – INPUT TAX AND PARTIAL EXEMPTION – VAT REGULATIONS
1995

99 —

(1) In this Part -

(a) “exempt input tax” means input tax incurred by a taxable person on goods imported or acquired by, or goods or services supplied to, him in so far as they are used by him or are to be used by him, or a successor of his, in making exempt supplies, or supplies outside the United Kingdom which would be exempt if made in the United Kingdom, other than any input tax which is allowable under regulation **102**, 103, 103A or 103B;

101—

(1) Subject to regulation 102 and 103B, the amount of input tax which a taxable person shall be entitled to deduct provisionally shall be that amount which is attributable to taxable supplies in accordance with this regulation.

(2) In respect of each prescribed accounting period—

(a) goods imported or acquired by and goods or services supplied to, the taxable person in the period shall be identified,

(b) there shall be attributed to taxable supplies the whole of the input tax on such of those goods or services as are used or to be used by him exclusively in making taxable supplies,

(c) no part of the input tax on such of those goods or services as are used or to be used by him exclusively in making exempt supplies, or in carrying on any activity other than the making of taxable supplies, shall be attributed to taxable supplies, and

(d) there shall be attributed to taxable supplies such proportion of the input tax on such of those goods or services as are used or to be used by him in making both taxable and exempt supplies as bears the same ratio to the total of such input tax as the value of taxable supplies made by him bears to the value of all supplies made by him in the period.

(3) In calculating the proportion under paragraph (2)(d) above, there shall be excluded—

(a) any sum receivable by the taxable person in respect of any supply of capital goods used by him for the purposes of his business,

(b) any sum receivable by the taxable person in respect of any of the following descriptions of supplies made by him, where such supplies are incidental to one or more of his business activities—

(i) any supply of a description falling within Group 5 of Schedule 9 to the Act,

(ii) any other financial transaction, and

(iii) any real estate transaction,

(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 25(7) of the Act unless the taxable person has imported, acquired or been supplied with the goods for the purpose of selling them, and

(d) the value of any supply which, under or by virtue of any provision of the Act, the taxable person makes to himself.

(4) The ratio calculated for the purpose of paragraph (2)(d) above shall be expressed as a percentage and, if that percentage is not a whole number, it shall be rounded up as specified in paragraph (5) below.

(5) The percentage shall be rounded up—

(a) where in any prescribed accounting period or longer period which is applied the amount of input tax which is available for attribution under paragraph 2(d) above prior to any such attribution being made does not amount to more than £400,000 per month on average, to the next whole number, and

(b) in any other case, to two decimal places.

(6) For the purposes of this regulation, a “real estate transaction” includes any grant, assignment (including any transfer, disposition or sale), surrender or reverse surrender of any interest in, right over or licence to occupy land.

Use of other methods

102—

(1) Subject to **paragraphs (2) and (9)** below and regulations 103, 103A and 103B, the Commissioners may approve or direct the use by a taxable person of a method other than that specified in regulation 101.

(1A) A method approved or directed under paragraph (1) above-
(a) shall be in writing,
(b) may attribute input tax which would otherwise fall to be attributed under regulation 103 provided that, where it attributes any such input tax, it shall attribute it all, and
(c) shall identify the supplies in respect of which it attributes input tax by reference to the relevant paragraph or paragraphs of section 26(2) of the Act.

(2) Notwithstanding any provision of any method approved or directed to be used under this regulation which purports to have the contrary effect, in calculating the proportion of any input tax on goods or services used or to be used by the taxable person in making both taxable and exempt supplies which is to be treated as attributable to taxable supplies, the value of any supply **of a description falling within regulation 101(3) whether made within or outside the United Kingdom shall be excluded.**

(3) A taxable person using a method as approved or directed to be used by the Commissioners under paragraph (1) above shall continue to use that method unless the Commissioners approve or direct the termination of its use.

(4) Any direction under paragraph (1) or (3) above shall take effect from the date upon which the Commissioners give such direction or from such later date as they may specify.

(5) Any approval given or direction made under this regulation shall only have effect if it is in writing in the form of a document which identifies itself as being such an approval or direction.

(6) Where a taxable person who is using a method which has been approved or directed under this regulation incurs input tax of the description in paragraph (7) below, that input tax shall be attributed to taxable supplies to the extent that the goods or services are used or to be used in making taxable supplies expressed as a proportion of the whole use or intended use.

(7) The input tax referred to in paragraph (6) above is input tax—

(a) the attribution of which to taxable supplies is not prescribed in whole or in part by the method referred to in paragraph (6) above, and

(b) which does not fall to be attributed to taxable or other supplies as specified under regulations 103, 103A or 103B.

(8) Where the input tax specified in paragraph (7)(a) above is input tax the attribution of which to taxable supplies is only in part not prescribed by the method, only that part the attribution of which is not so prescribed shall fall within that paragraph.

(9) With effect from 1st April 2007 the Commissioners shall not approve the use of a method under this regulation unless the taxable person has

made a declaration to the effect that to the best of his knowledge and belief the method fairly and reasonably represents the extent to which goods or services are used or to be used by him in making taxable supplies.

(10) The declaration referred to in paragraph (9) above shall—

(a) be in writing,

(b) be signed by the taxable person or by a person authorised to sign it on his behalf, and

(c) include a statement that the person signing it has taken reasonable steps to ensure that he is in possession of all relevant information.

(11) Where it appears to the Commissioners that a declaration made under this regulation is incorrect in that—

(a) the method does not fairly and reasonably represent the extent to which goods or services are used or to be used by the taxable person in making taxable supplies, and

(b) the person who signed the declaration knew or ought reasonably to have known this at the time when the declaration was made by the taxable person,

they may subject to paragraph 12 below serve on the taxable person a notice to that effect, setting out their reasons in support of that notification and stating the effect of the notice.

(12) The Commissioners shall not serve a notice under this regulation unless they are satisfied that the overall result of the application of the method is an over-deduction of input tax by the taxable person.

(13) The effect of a notice served under this regulation is that regulation 102B(1) shall apply to the person served with the notice in relation to—

(a) prescribed accounting periods commencing on or after the effective date of the method, and

(b) longer periods to the extent of that part of the longer period falling after the effective date of the method save that no adjustment shall be required in relation to any part of any prescribed accounting period,

unless or until the method is terminated under regulation 102(3).

(14) The service of a notice on a taxable person under this regulation shall be without prejudice to the Commissioners' powers to serve a

notice on him under regulation 102A and any notice served under regulation 102A shall take priority in relation to the periods which it covers.

(15) In this regulation “the effective date of the method” is the date when the method to which the declaration relates first takes effect and may predate the date when the declaration was made.

(16) In this regulation and in regulations 102A, 102B, 102C and 107, where paragraph 1A(b) above applies, “taxable supplies” includes supplies of a description falling within regulation 103.

102A—

(1) Notwithstanding the Commissioners’ powers to serve a notice under regulation 102, where a taxable person—

(a) is for the time being using a method approved or directed under regulation 102, and

(b) that method does not fairly and reasonably represent the extent to which goods or services are used by him or are to be used by him in making taxable supplies,

the Commissioners may serve on him a notice to that effect, setting out their reasons in support of that notification and stating the effect of the notice.

(2) The effect of a notice served under this regulation is that regulation 102B shall apply to the person served with the notice in relation to—

(a) prescribed accounting periods commencing on or after the date of the notice or such later date as may be specified in the notice, and

(b) longer periods to the extent of that part of the longer period falling on or after the date of the notice or such later date as may be specified in the notice.

102B—

(1) Where this regulation applies, a taxable person shall calculate the difference between—

(a) the attribution made by him in any prescribed accounting period or longer period, and

(b) an attribution which represents the extent to which the goods or services are used by him or are to be used by him in making taxable supplies,

and account for the difference on the return for that prescribed accounting period or on the return on which that longer period adjustment is required to be made, except where the Commissioners allow another return to be used for this purpose.

(2) This regulation shall apply from the date prescribed under regulation 102A(2) or 102C(2), unless or until the method referred to in regulation 102A(1)(a) or 102C(1)(a) is terminated under regulation 102(3).

102C—

(1) Subject to regulation 102A, where a taxable person—

(a) is for the time being using a method approved or directed under regulation 102, and

(b) that method does not fairly and reasonably represent the extent to which goods or services are used by him or are to be used by him in making taxable supplies,

the taxable person may serve on the Commissioners a notice to that effect, setting out his reasons in support of that notification.

(2) Where the Commissioners approve a notice served under this regulation, the effect is that regulation 102B shall apply to the person serving the notice in relation to—

(a) prescribed accounting periods commencing on or after the date of the notice or such later date as may be specified in the notice, and

(b) longer periods to the extent of that part of the longer period falling on or after the date of the notice or such later date as may be specified in the notice.

Attribution of input tax to foreign and specified supplies

103—

Other than where it falls to be attributed under a method approved or directed by the Commissioners under regulation 102, input tax incurred by a taxable person in any prescribed accounting period on goods imported or acquired by, or goods or services supplied to, him which are used or to be used by him in whole or in part in making—

(a) supplies outside the United Kingdom which would be taxable supplies if made in the United Kingdom, or

(b) supplies specified in an Order under section 26(2)(c) of the Act, other than supplies of a description falling within regulation 103A below,

shall be attributed to taxable supplies to the extent that the goods or services are so used or to be used expressed as a proportion of the whole use or intended use.