



# Finance Act 2016

## 2016 CHAPTER 24

### PART 7

#### VAT

#### **122 VAT: power to provide for persons to be eligible for refunds**

In Part 2 of VATA 1994 (reliefs, exemptions and repayments), after section 33D insert—

#### **“33E Power to extend refunds of VAT to other persons**

- (1) This section applies where—
  - (a) VAT is chargeable on—
    - (i) the supply of goods or services to a specified person,
    - (ii) the acquisition of any goods from another member State by a specified person, or
    - (iii) the importation of any goods from a place outside the member States by a specified person, and
  - (b) the supply, acquisition or importation is not for the purpose of—
    - (i) any business carried on by the person, or
    - (ii) a supply by the person which, by virtue of section 41A, is treated as a supply in the course or furtherance of a business.
- (2) If and to the extent that the Treasury so direct, the Commissioners shall, on a claim made by the specified person at such time and in such form and manner as the Commissioners may determine, refund to the person the amount of the VAT so chargeable.

This is subject to subsection (3) below.
- (3) A specified person may not make a claim under subsection (2) above unless it has been agreed with the Treasury that, in the circumstances specified in the

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agreement, the amount of the person's funding is to be reduced by all or part of the amount of the VAT so chargeable.

- (4) A claim under subsection (2) above in respect of a supply, acquisition or importation must be made on or before the relevant day.
- (5) The “relevant day” is—
  - (a) in the case of a person who is registered, the last day on which the person may make a return under this Act for the prescribed accounting period containing the last day of the financial year in which the supply is made or the acquisition or importation takes place;
  - (b) in the case of a person who is not registered, the last day of the period of 3 months beginning immediately after the end of the financial year in which the supply is made or the acquisition or importation takes place.
- (6) Subsection (7) applies where goods or services supplied to, or acquired or imported by, a specified person otherwise than for the purpose of—
  - (a) any business carried on by the person, or
  - (b) a supply falling within subsection (1)(b)(ii) above,
 cannot be conveniently distinguished from goods or services supplied to, or acquired or imported by, the person for such a purpose.
- (7) The amount to be refunded under this section is such amount as remains after deducting from the whole of the VAT chargeable on any supply to, or acquisition or importation by, the specified person such proportion of that VAT as appears to the Commissioners to be attributable to the carrying on of the business or (as the case may be) the making of the supply.
- (8) In this section, “specified person” means a person specified in an order made by the Treasury.
- (9) An order under subsection (8) may make transitional provision or savings.
- (10) References in this section to VAT do not include any VAT which, by virtue of an order under section 25(7), is excluded from credit under section 25.”

### **123 VAT: representatives and security**

- (1) Section 48 of VATA 1994 (VAT representatives) is amended in accordance with subsections (2) to (11).
- (2) In the heading, at the end insert “ and security ”.
- (3) In subsection (1)—
  - (a) for “Where” substitute “ Subsection (1ZA) applies where ”,
  - (b) in paragraph (c) after “residence” insert “ or permanent address ”, and
  - (c) omit the words after paragraph (c).
- (4) After subsection (1) insert—
 

“(1ZA) The Commissioners may direct the person to secure that there is a UK-established person who is—

  - (a) appointed to act on the person's behalf in relation to VAT, and
  - (b) registered against the name of the person in accordance with any regulations under subsection (4).”

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- (5) In subsection (1B) for paragraphs (a) and (b) substitute—
- “(a) section 87 of the Finance Act 2011 (mutual assistance for recovery of taxes etc) and Schedule 25 to that Act;
  - (b) section 173 of the Finance Act 2006 (international tax enforcement arrangements);”.
- (6) In subsection (2)—
- (a) in paragraph (a), for the words from “required” to “VAT” substitute “ given a direction under subsection (1ZA) ”,
  - (b) in paragraph (b) for “that subsection” substitute “ subsection (1) ”, and
  - (c) in the words after paragraph (b), for “another” substitute “ a UK-established ”.
- (7) In subsection (2A) for “(1)” substitute “ (1ZA) ”.
- (8) In subsection (4)—
- (a) omit the “and” at the end of paragraph (a), and
  - (b) after paragraph (b) insert—
    - “(c) give the Commissioners power to refuse to register a person as a VAT representative, or to cancel a person's registration as a VAT representative, in such circumstances as may be specified in the regulations.”
- (9) In subsection (7) for the words from the beginning to the first “him” substitute “ The Commissioners may require a person in relation to whom the conditions specified in paragraphs (a), (b) and (c) of subsection (1) are satisfied ”.
- (10) After subsection (7A) insert—
- “(7B) A direction under subsection (1ZA)—
- (a) may specify a time by which it (or any part of it) must be complied with;
  - (b) may be varied;
  - (c) continues to have effect (subject to any variation) until it is withdrawn or the conditions specified in subsection (1) are no longer satisfied.
- (7C) A requirement under subsection (7)—
- (a) may specify a time by which it (or any part of it) must be complied with;
  - (b) may be varied;
  - (c) continues to have effect (subject to any variation) until it is withdrawn.”
- (11) After subsection (8) insert—
- “(8A) For the purposes of subsections (1ZA) and (2)—
- (a) a person is UK-established if the person is established, or has a fixed establishment, in the United Kingdom, and
  - (b) an individual is also UK-established if the person's usual place of residence or permanent address is in the United Kingdom.”

<sup>F1</sup>(12) .....

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### Textual Amendments

- F1** S. 123(12) repealed (31.12.2020) by [Taxation \(Cross-border Trade\) Act 2018 \(c. 22\), s. 57\(3\), Sch. 8 para. 132\(n\)](#) (with savings and transitional provisions in [S.I. 2019/105](#) (as amended by [S.I. 2020/1495](#), [regs. 1\(2\), 21](#)), [S.I. 2020/1545](#), [Pt. 4](#) and [2020 c. 26, Sch. 2 para. 7\(7\)-\(9\)](#)); [S.I. 2020/1642](#), [reg. 4\(b\)](#) (with [reg. 7](#))

## 124 VAT: joint and several liability of operators of online marketplaces

- (1) VATA 1994 is amended in accordance with subsections (2) to (4).
- (2) After section 77A insert—

### “77B Joint and several liability: operators of online marketplaces

- (1) This section applies where a person (“P”) who is not UK-established—
  - (a) makes taxable supplies of goods through an online marketplace, and
  - (b) fails to comply with any requirement imposed on P by or under this Act (whether or not it relates to those supplies).
- (2) The Commissioners may give the person who is the operator of the online marketplace (“the operator”) a notice—
  - (a) stating that, unless the operator secures the result mentioned in subsection (3), subsection (5) will apply, and
  - (b) explaining the effect of subsection (5).
- (3) The result referred to in subsection (2)(a) is that P does not offer goods for sale through the online marketplace at any time between—
  - (a) the end of such period as may be specified in the notice, and
  - (b) the notice ceasing to have effect.
- (4) If the operator does not secure the result mentioned in subsection (3), subsection (5) applies.
- (5) The operator is jointly and severally liable to the Commissioners for the amount of VAT payable by P in respect of all taxable supplies of goods made by P through the online marketplace in the period for which the notice has effect.
- (6) A notice under subsection (2) (“the liability notice”) has effect for the period beginning with the day after the day on which it is given, and ending—
  - (a) with the day specified in a notice given by the Commissioners under subsection (7), or
  - (b) in accordance with subsection (8).
- (7) The Commissioners may at any time give the operator a notice stating that the period for which the liability notice has effect ends with the day specified in the notice.
- (8) If the person to whom the liability notice is given ceases to be the operator of the online marketplace, the liability notice ceases to have effect at the end of—
  - (a) the day on which the person ceases to be the operator, or

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(b) (if later) the day on which the person notifies the Commissioners that the person is no longer the operator.

(9) In this section—

“online marketplace” means a website, or any other means by which information is made available over the internet, through which persons other than the operator are able to offer goods for sale (whether or not the operator also does so);

“operator”, in relation to an online marketplace, means the person who controls access to, and the contents of, the online marketplace.

(10) For the purposes of this section a person is “UK-established” if the person is established in the United Kingdom within the meaning of Article 10 of Implementing [Regulation \(EU\) No 282/2011](#).

(11) The Treasury may by regulations provide that supplies made or goods offered for sale in circumstances specified in the regulations are, or are not, to be treated for the purposes of this section as having been made or offered through an online marketplace.

(12) The Treasury may by regulations amend this section so as to alter the meaning of—

“online marketplace”,

“operator”, and

“UK-established”.

### **77C Joint and several liability under section 77B: assessments**

(1) The Commissioners may assess the amount of VAT due from the operator of an online marketplace by virtue of section 77B to the best of their judgment and notify it to the operator.

(2) Subject to subsections (3) to (6), an assessment may be made for such period or periods as the Commissioners consider appropriate.

(3) An assessment for any month may not be made after the end of—

(a) 2 years after the end of that month, or

(b) (if later) one year after evidence of facts, sufficient in the opinion of the Commissioners to justify the making of an assessment for that month, comes to their knowledge.

(4) Subsection (5) applies if, after the Commissioners have made an assessment for a period, evidence of facts sufficient in the opinion of the Commissioners to justify the making of a further assessment for that period comes to their knowledge.

(5) The Commissioners may, no later than one year after that evidence comes to their knowledge, make a further assessment for that period (subject to subsection (6)).

(6) An assessment or further assessment for a month may not be made more than 4 years after the end of the month.

(7) An amount which has been assessed and notified to a person under this section is deemed to be an amount of VAT due from the person and may be

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recovered accordingly (unless, or except to the extent that, the assessment is subsequently withdrawn or reduced).

- (8) Subsection (7) is subject to the provisions of this Act as to appeals.
- (9) Expressions used in this section and in section 77B have the same meaning in this section as in section 77B.

#### **77D Joint and several liability under section 77B: interest**

- (1) If an amount assessed under section 77C is not paid before the end of the period of 30 days beginning with the day on which notice of the assessment is given, the amount assessed carries interest from the day on which the notice of assessment is given until payment.
  - (2) Interest under this section is payable at the rate applicable under section 197 of the Finance Act 1996.
  - (3) Where the operator of an online marketplace is liable for interest under this section the Commissioners may assess the amount due and notify it to the operator.
  - (4) A notice of assessment under this section must specify a date (not later than the date of the notice) to which the interest is calculated.
  - (5) A further assessment or assessments may be made under this section in respect of any interest accrued after that date.
  - (6) An amount of interest assessed and notified to the operator of an online marketplace under this section is recoverable as if it were VAT due from the operator (unless, or except to the extent that, the assessment is withdrawn or reduced).
  - (7) Interest under this section is to be paid without any deduction of income tax.
  - (8) Expressions used in this section and in section 77B have the same meaning in this section as in section 77B.”
- (3) In section 83(1) (appeals) after paragraph (ra) insert—
    - “(rb) an assessment under section 77C or the amount of such an assessment;”.
  - (4) In section 84 (further provision relating to appeals)—
    - (a) in subsection (3) after “(ra)” insert “ , (rb) ”, and
    - (b) in subsection (5) after “83(1)(p)” insert “ or (rb) ”.

#### **125 VAT: Isle of Man charities**

In Schedule 6 to FA 2010 (charities etc), in paragraph 2(2) (jurisdiction condition: meaning of “a relevant UK court”), after paragraph (c) (and on a new line) insert “ (and, for enactments relating to value added tax, includes the High Court of the Isle of Man). ”

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## 126 VAT: women's sanitary products

- (1) VATA 1994 is amended as follows.
- (2) In Schedule 7A (reduced rate)—
  - (a) in Part 1 (index), omit the entry relating to women's sanitary products;
  - (b) in Part 2 (the Groups), omit Group 4 (women's sanitary products).
- (3) In Schedule 8 (zero-rating), in Part 1 (index), at the end insert—

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“Women's sanitary products	Group 19”.
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- (4) In Schedule 8, in Part 2 (the Groups), after Group 18 insert—

### “GROUP 19 - WOMEN'S SANITARY PRODUCTS

#### *Item No.*

- 1 The supply of women's sanitary products.

#### NOTES

- (1) In this Group “women's sanitary products” means women's sanitary products of any of the following descriptions—
  - (a) subject to Note (2), products that are designed, and marketed, as being solely for use for absorbing, or otherwise collecting, lochia or menstrual flow;
  - (b) panty liners, other than panty liners that are designed as being primarily for use as incontinence products;
  - (c) sanitary belts.
- (2) Note (1)(a) does not include protective briefs or any other form of clothing.”
- (5) The amendments made by this section have effect in relation to supplies made, and acquisitions and importations taking place, on or after such day as the Treasury may by regulations made by statutory instrument appoint.
- (6) The date appointed under subsection (5) must not be after the later of—
  - (a) 1 April 2017, and
  - (b) the earliest date that may be appointed consistently with the United Kingdom's EU obligations.

#### **Commencement Information**

- II** S. 126 has effect as specified (31.12.2020) by [The Finance Act 2016, Section 126 \(Appointed Day\)](#), [the Taxation \(Cross-border Trade\) Act 2018 \(Appointed Day No. 8, Transition and Saving Provisions\)](#) and [the Taxation \(Post-transition Period\) Act 2020 \(Appointed Day No. 1\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1642\)](#), [reg. 3](#)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 19 para. 12(5)(b) inserted by [2017 c. 32 Sch. 14 para. 49\(2\)\(c\)](#)
- Sch. 19 para. 12(5)(a) word inserted by [2017 c. 32 Sch. 14 para. 49\(2\)\(b\)](#)
- Sch. 19 para. 51(8)(b) words inserted by [2017 c. 32 Sch. 14 para. 48\(2\)](#)
- Sch. 19 para. 53(1) words inserted by [2017 c. 32 Sch. 14 para. 48\(4\)\(a\)](#)
- Sch. 19 para. 53(1) words inserted by [2017 c. 32 Sch. 14 para. 48\(4\)\(b\)](#)
- Sch. 19 para. 12(5)(a) words renumbered as Sch. 19 para. 12(5)(a) by [2017 c. 32 Sch. 14 para. 49\(2\)\(a\)](#)
- Sch. 19 para. 58(1) words substituted by [2017 c. 32 Sch. 14 para. 48\(5\)](#)
- Sch. 20 para. 1(4)(e) inserted by [2021 c. 26 Sch. 27 para. 47\(2\)](#)
- Sch. 20 para. 3(3)(d) and word inserted by [2021 c. 26 Sch. 27 para. 47\(3\)\(b\)](#)
- Sch. 20 para. 5(5) inserted by [2021 c. 26 Sch. 27 para. 47\(5\)](#)
- Sch. 22 para. 2(4B) inserted by [2021 c. 26 Sch. 27 para. 48\(2\)\(c\)](#)
- Sch. 22 para. 3(4A) inserted by [2021 c. 26 Sch. 27 para. 48\(3\)](#)