

[2018 No. XXXX]

VALUE ADDED TAX

The [Value Added Tax (Amendment) Regulations 2018]

Made - - - - - ***

Laid before the House of Commons ***

Coming into force - - - - - *1st April 2019*

The Commissioners for Her Majesty’s Revenue and Customs, in exercise of the powers conferred by paragraphs 2(1), (10)(b), (11), (11A) and 6(5), (6), (8), (10)(a) and (11) of Schedule 11 to the Value Added Tax Act 1994(a), section 132(1)(b), (3)(b), (d) and (i) and (5) of the Finance Act 1999(b) and section 135(1), (2), (4)(a) and (7) of the Finance Act 2002(c), make the following Regulations:

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Value Added Tax (Amendment) Regulations 2018 and come into force on 1st April 2019.

(2) The amendments made by these regulations have effect from 1st April 2019 where a taxpayer has a prescribed accounting period which begins on that date and otherwise from the first day of a taxpayer’s first prescribed accounting period beginning after the 1st April 2019.

Amendment of the Value Added Tax Regulations 1995

2. Part 5 of the Value Added Tax Regulations 1995 (accounting, payment and records)(d) is amended as follows.

3. In regulation 24 before “increase in consideration” insert—

“ “API platform” means the application programming interface that enables electronic communication with HMRC, as specified by the Commissioners in a specific or general direction;

(a) 1994 (c.23) (“the Act”). Section 96(1) of the Act defines “the Commissioners” as meaning “the Commissioner of Customs and Excise” and “regulations” as meaning regulations made by the Commissioners under the Act. The functions of the Commissioners of Customs and Excise were transferred to the Commissioners for Her Majesty’s Revenue and Customs by section 5(1) of the Commissioners for Revenue and Customs Act 2005 (c.11), section 50(1) of which 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. Paragraph 2 of Schedule 11 of the Act was amended by paragraph 12(2) of Schedule 29 to the Finance Act 2012 (2012 c.14) and section 62(2) of the Finance (No. 2) Act 2017 (c.32). Paragraph 6 of Schedule 11 was amended by section 62(3) of the Finance (No. 2) Act 2017.

(b) 1999 (c.16); section 132 was amended by paragraph 156 of Schedule 17 to the Communications Act 2003 (c.21) and S.I.2011/1043.

(c) 2002 (c.23); section 135 was amended by paragraph 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(2) and (3) of the Finance Act 2007 (c.11).

(d) S.I 1995/2518; relevant amending instruments are S.I.1996/1250, 1999/3114, 2000/258, 2003/1485, 2003/2096, 2003/3220, 2004/1675, 2007/1418, 2009/2978, 2010/559, 2012/33, 2012/1899 and 2014/1497.

“functional compatible software” means a software program or set of compatible software programs the functions of which include—

- (a) recording and preserving electronic records in an electronic form;
- (b) providing information to HMRC from the electronic records and returns in an electronic form and by using the API platform; and
- (c) receiving information from HMRC using the API platform in relation to a person’s compliance with obligations under these Regulations which are required to be met by use of the software;”.

4. In regulation 25A—

- (a) before paragraph (1) insert—

“(A1) Where a person makes a return required by regulation 25 by means of electronic communications using functional compatible software, such a method of making a return shall be referred to in this Part as a “compatible software return system”.”;

- (b) in paragraph (1) after “electronic communications” insert “other than functional compatible software”;

- (c) after paragraph (2) insert—

“(2A) A person who is subject to the requirements of regulation 32A, including by virtue of an election in accordance with regulation 32C, must make a return required by regulation 25 using a compatible software return system.”;

- (d) in paragraph (3) for “paragraph (6) below” substitute “paragraphs (2A) above and (6) below”;

- (e) in paragraphs (4), (8), (10)(b), (11), (12)(a) to (c), (13), (14), (18)(a), and (20)(b) after “electronic return system” insert in each case “or a compatible software return system”;

- (f) in paragraph (15) before “(3)” insert “(2A) or”;

- (g) in paragraph 20(a) after “electronic return system,” insert “, a compatible software return system”.

5. After regulation 31(1)(k) insert—

“(l) where the taxable person is subject to the requirements of regulation 32A, the electronic account required by that regulation.”.

6. After regulation 31 insert—

“31AA Preservation of records

(1) The electronic account required to be kept pursuant to regulation 31(1)(l) must be preserved using functional compatible software.

(2) Subject to paragraph (1) the duty to preserve records required to be kept pursuant to regulations 31 and 31A may be discharged by—

- (a) preserving them in any form or by any means; or
- (b) preserving the information in them by any means,

subject to any conditions or exceptions specified in writing by the Commissioners.

(3) The functional compatible software must take a form approved by the Commissioners in a specific or general direction.

(4) A direction under paragraph (3) may also specify the circumstances in which functional compatible software may be used or not used.”.

7. After regulation 32 insert—

“32A Recording and keeping of information in electronic form

(1) Subject to regulation 32B a taxable person shall keep and maintain the information specified in paragraphs (2) and (3) in an electronic form (“the electronic account”).

(2) The information specified for the purposes of paragraph (1) is—

- (a) the name of the taxable person;
- (b) the address of the taxable person’s principal place of business;
- (c) the taxable person’s VAT registration number; and
- (d) any VAT accounting schemes used by the taxable person.

(3) Subject to paragraph (4) the information specified for the purposes of paragraph (1) for each accounting period is—

- (a) subject to sub-paragraph (c) for each supply made within the period—
 - (i) the time of supply,
 - (ii) the value of the supply, and
 - (iii) the rate of VAT charged;
- (b) subject to sub-paragraph (c) for each supply received within the period—
 - (i) the time of supply,
 - (ii) the value of the supply, and
 - (iii) the total amount of input tax for which credit is allowable under section 26 of the Act^(a);
- (c) where more than one supply is recorded on a tax invoice and those supplies are either—
 - (i) supplies made which are required to be accounted for in respect of the same prescribed accounting period and are subject to the same rate of VAT, or
 - (ii) supplies received for which credit is allowable in the same prescribed accounting period,they may be treated as a single supply for the purposes of either sub-paragraph (a) or (b), whichever is relevant;
- (d) the information specified in each sub-paragraph of paragraphs (3) and (4) of regulation 32;
- (e) where adjustment or correction is made to the VAT account which is required or allowed by any provision of the Act or any regulations made under the Act, the total amount adjusted or corrected for the period pursuant to that provision or those regulations;
- (f) the proportions of the total of the VAT exclusive value of all outputs for the period which are attributable in each case to standard rated, reduced rated, zero-rated, exempt or outside the scope outputs.

(4) The information specified in paragraph (3) may be varied by direction of the Commissioners to make provision for supplies of investment gold which are subject to the provisions of regulation 31A and for the operation of flat-rate schemes and retail schemes under, respectively, Part 7A and Part 9 of these Regulations.

(5) The electronic account must be kept and maintained using functional compatible software.

(6) The functional compatible software must take a form approved by the Commissioners in a specific or general direction.

(a) “the Act” is defined for the purposes of the Value Added Tax Regulations 1995 (S.I. 1995/251) by article 2(1) of those Regulations as “the Value Added Tax Act 1994”

(7) A direction under paragraph (6) may also specify the circumstances in which functional compatible software may be used or not used.

(8) The information specified in paragraph (3) must be entered in the electronic account for the relevant prescribed accounting period no later than the earlier of the date by which the taxable person is required to make the return or the date the return is made for that prescribed accounting period.

(9) Changes to the information specified in paragraph (2) must be made no later than the end of the prescribed accounting period in which those changes occur.

(10) Where a taxable person discovers an error or omission in the electronic account that person must correct the electronic account as soon as possible but in any event no later than the end of the prescribed accounting period in which the error is discovered.

32B Exemption from the electronic recording requirements

(1) The requirements imposed by regulation 32A do not apply to a person—

- (a) who the Commissioners are satisfied is a practising member of a religious society or order whose beliefs are incompatible with the use of electronic communications, or
- (b) for whom an insolvency procedure as described in any of paragraphs (a) to (f) of section 81(4B) of the Act is applied, or
- (c) for whom the Commissioners are satisfied that it is not reasonably practicable to make a return using a compatible software return system for reasons of disability, age, remoteness of location or any other reason.

(2) This paragraph applies if, for any month (“the current month”), the value of a taxable person’s taxable supplies in the period of one year ending with the month before the current month was less than the VAT threshold^(a).

(3) Where paragraph (2) applies to a taxable person for the current month and has not ceased to apply for any month prior to the current month then the requirements of regulation 32A shall not apply to that person.

(4) In a case where paragraph (2) ceases to apply to a taxable person, the requirements of regulation 32A shall apply from the beginning of that person’s next taxable period falling on or after the day on which that application ceases.

(5) Where a business or a part of a business carried on by a taxable person is transferred to another person as a going concern then, for the purposes of determining whether paragraph (2) applies to the transferee, the transferee shall be treated as having carried on the business or part of the business before as well as after the transfer and the supplies by the transferor shall be treated accordingly.

(6) The exemptions under paragraphs (1)(b) and (3) do not apply if a person has elected not to be exempt in accordance with regulation 32C.

32C Election not to be exempt

(1) An election not to be exempt under regulation 32B must—

- (a) be made before the start of the next prescribed accounting period (“the period”) in which the exemption would otherwise apply, and
- (b) specify the date that the next period begins.

(2) An election has effect for the next period referred to in paragraph (1)(b) and for subsequent periods in which the exemption would otherwise apply.

(a) “VAT threshold” is defined in paragraph 6(9) of Schedule 11 to the Act (inserted by section 62(9) of the Finance (No.2) Act 2017) as “the amount specified in paragraph 1(1)(a) of Schedule 1 [to the Value Added Tax Act 1994] on the first day of the current month”.

(3) An election may be withdrawn and the withdrawal shall have effect for the period which immediately follows the period in which it is notified and for subsequent periods.

(4) An election and withdrawal of an election must be made by notice to the Commissioners.”.

8. In paragraph 40(2A) after “electronic return system” insert “or a compatible software return system”.

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

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations, which come into force on 1st April 2019, amend Part 5 (accounting, payment and records) of the Value Added Tax Regulations 1995 (S.I. 1995/2518: “the Principal Regulations”). They have effect from 1st April 2019 for those taxpayers who have a prescribed accounting period beginning on that date and otherwise from the first day of a taxpayer’s first prescribed accounting period beginning after that date.

A VAT registered taxpayer is obliged to keep and maintain accounts, preserve records and render returns and all VAT registered taxpayers are required to render returns using an electronic return system unless they fall within specified exemptions. The effect of these Regulations is to impose an obligation on registered taxpayers to keep, maintain and preserve an electronic account containing specified information using a defined form of software (“functional compatible software”). If taxpayers are subject to that obligation, they must also render electronic returns using functional compatible software. These obligations are subject to exemptions.

Regulation 3 inserts a definition for “functional compatible software” and for the concept of “API platform” on which it depends.

Regulation 4 amends regulation 25A of the Principal Regulations to provide that a person who is subject to the requirement to maintain an electronic account pursuant to regulation 32A of those regulations must also furnish returns using a compatible software return system. The provisions relating to the use of an electronic return system are amended, where appropriate, to apply also to the use of a compatible software return system.

Regulation 5 inserts a new sub-paragraph (l) into regulation 31(1) of the Principal Regulations to add the electronic account to the list of records which a taxable person is required to keep.

Regulation 6 inserts a new regulation 31AA into the Principal Regulations which provides how the electronic account provided for in regulation 32A must be preserved and also how other records are to be preserved.

Regulation 7 inserts new regulations 32A to 32C into the Principal Regulations.

Regulation 32A of the Principal Regulations (“regulation 32A”) requires a taxable person to keep and maintain specified information in an electronic form (“the electronic account”), provides a power to the Commissioners to vary the specified information for supplies of investment gold which are subject to the provisions of regulation 31A and for the operation of flat rates schemes and retail schemes under Parts 7A and 9 respectively of the Principal Regulations. It requires the electronic account to be kept and maintained using functional compatible software which must take a form approved by the Commissioners in a specific or general direction. It specifies when information relating to supplies must be entered in the account, when changes should be made and when errors or omissions should be corrected.

Regulation 32B of the Principal Regulations (“regulation 32B”) provides for exemption from the requirement to maintain an electronic account pursuant to regulation 32A on the grounds of the

taxpayer's religious beliefs, practical inability to use a functional compatible software system or subjection to an insolvency procedure. It provides for a further exemption where the value of a taxpayer's taxable supplies, for the year ending immediately prior to the month for which the test for exemption is applied ("the test month"), is under the threshold for compulsory VAT registration applicable on the first day of the test month. If a taxpayer ceases to be exempt then that taxpayer will be subject to the obligations of regulation 32A from the beginning of the next prescribed accounting period occurring on or after the day on which the exemption ceased to apply. Where a business is transferred as a going concern, the taxable supplies of that business both before and after transfer must be taken into account for the purpose of determining the value of its taxable supplies. Regulation 32B also provides that a taxable person may elect to waive the exemption.

Regulation 32C of the Principal Regulations makes provision for when and how an election to waive the exemption provided for in regulation 32B may be made and withdrawn and also provides when the election or withdrawal of an election is to take effect.

Regulation 8 amends regulation 40(2A) so that a person who makes a return using a compatible software return system is also required to make any payment pursuant to that return using electronic means.

Because these Regulations are made under, inter alia, paragraph 6(5) of Schedule 11 to the Value Added Tax Act 1994 (c.23) ("Schedule 11"), by virtue of subsection (6) of section 62 of the Finance (No.2) Act (c.32) subsections (3)(a) and (4) of that section come into force. The effect is that paragraph 6(4) of Schedule 11 (the discharge of the duty to keep records) is omitted and a new sub-paragraph (7) is substituted in paragraph 6A of Schedule 11 (power to direct the keeping of records) which provides that regulations made under paragraph 6(5) of Schedule 11 requiring records to be kept or preserved in electronic form shall apply for the purposes of paragraph 6A of Schedule 11 as they apply for the purposes of paragraph 6 of that Schedule.

A Tax Information and Impact Note covering this instrument was published on 8th March 2017 on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>. Subsequently, a technical note containing a revised statement of impacts was published on 1st December 2017 at <https://www.gov.uk/government/publications/making-tax-digital-changing-the-scope-and-pace-technical-note/making-tax-digital-for-business>.