

**EXPLANATORY MEMORANDUM TO**  
**THE VALUE ADDED TAX (AMENDMENT) (No.3) REGULATIONS 2009**

**2009 No. 1967**

1. This explanatory memorandum has been prepared by HM Revenue and Customs and is laid before House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 The regulations make two discrete amendments to the Value Added Tax Regulations 1995 (SI 1995/2518) (“the VAT Regulations”).

- 2.2 The first amendment relates to Part 11 of the VAT Regulations concerning the operation of some of the rules determining the time when a supply of goods or services is treated as made for the purposes of Value Added Tax (“VAT”). The operation of some of these rules is, in certain cases, dependent upon whether a person is connected with another person within the meaning of section 839 of the Income and Corporation Taxes Act 1988 (c. 1) (“ICTA”). The purpose of the amendment is to prevent a company being treated as connected to another company only because both are under the control of the Crown, a Minister of the Crown, a government department or a Northern Ireland department.

- 2.3 The second amendment amends regulation 201 and inserts regulation 201A of the VAT Regulations. It also substitutes the forms 11A and 11B for Form 11 contained in Schedule 1 to the VAT Regulations. Form 11 is used by individuals, acting in a private capacity and who are not registered for VAT, to claim back eligible VAT costs incurred in the construction of a new house or the conversion to a dwelling of a previously non-residential building. The purpose of the amendment is to simplify the claim forms, which have to be in a format prescribed by law, to assist claimants to have a better understanding of what may or may not be recovered under the DIY housebuilders and converters refund scheme (the Scheme). The forms will be focused on assisting claimants to better understand the workings of the Scheme and to provide the required information.

3. **Matters of special interest to the Select Committee on Statutory Instruments**

- 3.1 None.

4. **Legislative Context**

- 4.1 The Value Added Tax Act 1994 (“VATA”) (c.23) and the subordinate legislation made under it implement the United Kingdom’s obligation under EC law (principally now by virtue of Council Directive 2006/112/EC (“the Principal VAT

Directive”) to charge a turnover tax on supplies by businesses of their goods and services.

4.2 Section 6 of VATA provides for the times when supplies of goods or services are treated as made for the purposes of VAT. In addition to the basic time of supply rules contained in section 6 of the Act, the Commissioners for Her Majesty’s Revenue and Customs may, by regulations made in exercise the power contained in section 6(14), make further provision for the time when supplies are treated as made. Part 11 of the VAT Regulations makes further provision for the time when certain supplies are treated as made. The regulations amend regulations 84, 93 and 94B of the VAT Regulations.

4.3 Regulation 84 makes provision for the time when certain descriptions of land are treated as supplied for VAT purposes. In particular, regulation 84(2) makes provision in respect of the grant or assignment of land where the total consideration for it is not determinable at that time. The operation of regulation 84(2) is qualified by regulations 84(3)-(5) (which were inserted by the Value Added Tax (Amendment) (No. 2) Regulations 2003 (S.I. 2003/1069) and amended by the Value Added Tax (Amendment) (No. 6) Regulations 2003 (S.I. 2003/3220)).

4.4 Regulation 93 of the VAT Regulations (which was substituted by the Value Added Tax (Amendment) (No. 3) Regulations 1999 (S.I. 1999/1374)), makes provision for the time when certain supplies in the construction industry are treated as made for VAT purposes.

4.5 Regulation 94B of the VAT Regulations (which was inserted by Value Added Tax (Amendment) (No. 2) Regulations 2003 (S.I. 2003/2318)) makes for provision for the time when certain descriptions of leases and other supplies described in the regulation are treated as made.

4.6 The application of regulations 84, 93 and 94B to certain supplies is dependent, in part, upon whether a person is connected to another person within the meaning in section 839 of the Income and Corporation Taxes Act 1988. Section 5 and Schedule 1 of the Interpretation Act 1978 (c. 30) provide that, in any Act, unless the contrary intention appears, “person” includes a body of persons corporate or unincorporated. The changes made to regulations 84, 93, and 94B ensure that a company (which is an incorporated body) is not treated as connected to another company only because both are under the control of the Crown, a Minister of the Crown, a government department or a Northern Ireland department.

4.7 Section 35 of VATA provides for the refund of VAT to persons constructing certain buildings and carrying out residential conversions and for regulations determining how a claim for refund of VAT is to be entertained by HM Revenue and Customs.

4.8 Regulation 201 of the VAT Regulations determines the method and time for making a claim for refund of VAT.

4.9 Form 11 in Schedule 1 to the VAT Regulations reproduces the claim form (VAT 431) necessary to make a claim for refund of VAT.

4.10 By the amendment made to regulation 201 and the insertion of regulation 201A, claims for refund under section 35 of VATA must be made on form 11A or 11B depending upon the nature of the works carried out. Form 11A must be used for refunds in respect of works relating to the construction of a building designed as a

dwelling or number of dwellings or for use solely for certain residential or charitable purposes. Form 11B must be used for refunds in respect of works relating to the conversion of a non-residential building or a non-residential part of a building into a building designed as a dwelling or number of dwellings or for use solely for certain residential purposes.

## **5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 The first amendment made by the regulations relates to Part 11 of the VAT Regulations and concerns the operation of some of the rules determining the time when a supply of goods or services is treated as made for the purposes of VAT. The operation of regulations 84, 93 and 94B of the VAT Regulations is dependent upon whether a person is connected with another person within the meaning of section 839 of ICTA. In relation to companies, section 839 provides that a company is connected with another company where both are under the control of the same person. These rules are mainly used to ensure that the provisions that are subject to them are not used for tax avoidance purposes. In addition to regulations 84, 93 and 94B of the VAT Regulations, Schedule 10 to the Act (which governs the right of taxpayers to opt to tax certain of their supplies of land and buildings that would otherwise be VAT exempt supplies), also relies on the rule in section 839 ICTA in its anti-avoidance provisions.

7.2 It is important to ensure that banks that fall under the control of the Crown, a Minister of the Crown, a government department or a Northern Ireland department are not disadvantaged by the anti-avoidance legislation. As a result, banks which are so controlled will not be seen as being “connected” for the purposes of VAT. They will be in the same position as they were before the Government took shares in them. Amendments to Schedule 10 to the Act that are similar to those made by these Regulations are made by the Value Added Tax (Buildings and Land) Order 2009 (S.I. 2009/1966) (“the Buildings and Land Order 2009”).

7.3 The second amendment made by the Regulations amends regulation 201 and inserts regulation 201A. It also substitutes Forms 11A and 11B for Form 11 in Schedule 1 to the VAT Regulations. Claims for refund of VAT pursuant to section 35 VATA must be made on form 11A or 11B depending upon the nature of the works carried out in relation to a building. Form 11A must be used for refunds in respect of works relating to the construction of a building designed as a dwelling or number of dwellings or for use solely for certain residential or charitable purposes. Form 11B must be used for refunds in respect of works relating to the conversion of a non-residential building or a non-residential part of a building into a building designed as a dwelling or number of dwellings or for use solely for certain residential purposes.

7.4 When VAT was introduced in 1973, the sale or long lease of any building by the person who constructed it was zero-rated. Any service (with certain exceptions) supplied in the course of construction of that building and building materials supplied in conjunction with that service also qualified for the zero rate of VAT.

7.4 It soon became apparent that private individuals who built their own homes were unable to benefit from the above zero rates because they did not buy homes from developers nor contract builders to build homes for them.

7.5 As a result, a refund scheme was introduced in 1974 that enabled private individuals to claim from HMCE the VAT that they had incurred on the building materials that they purchased for the construction of their homes. The scheme ensured that those who built their own homes were on a roughly equal basis with those who bought their homes from developers as far as VAT was concerned.

7.6 Homeowners were not the only people who could use the scheme: charities who constructed buildings themselves for non-business purposes could also claim refunds of VAT incurred on materials purchased for the construction.

7.7 In 1996, the scope of the refund scheme was extended to include private individuals who convert non-residential buildings into homes. This reflected the introduction of the zero rate of VAT for the sale or long lease of a building converted into a home by the person who converted the building.

7.8 In April 1996, the current version of VAT 431, the claim form, was published and reproduced as Form 11 in Schedule 1 to the VAT Regulations.

7.9 In 2001, a reduced rate of VAT for residential conversions and renovations was introduced and this VAT too, can be recovered under the scheme by private individuals.

7.10 The changes made by the regulations are designed to make the forms easy to understand and address some of the common misunderstandings that previous claimants have had with the existing forms. These new forms are complemented by new guidance designed to work along side the new forms.

7.11 The intended effect of the changes to the claim forms and the guidance is that processes of submitting and receiving claims will be simplified and, with fewer errors, will result in claims being dealt with in a more expeditious manner.

## **8. Consultation**

8.1 The changes made to regulations 84, 93 and 94B of the VAT Regulations complement certain of the changes made to Schedule 10 to the Act by the Buildings and Land Order 2009. There has been continual consultation with business regarding Schedule 10 to VATA since it was substituted by the Value Added Tax (Buildings and Land) Order 2008 (S.I. 2008/1146) with effect from 1st June 2008. The amendments made by the Buildings and Land Order 2009 are a result of consultations with business. So far as is relevant to the regulations, the consultations with business identified necessary changes following the Government's bail-out of the banks.

8.2 It has not been considered necessary to undertake a consultation exercise in connection with the amendments to form 11 of Schedule 1 to the VAT Regulations. It would not have been practicable to enter into consultations because no representative body exists and great majority of individuals who claim refunds under the Scheme will only do so only once in a lifetime, thus having little or no previous experience to enable them to comment on whether the proposed amendments amount to an improvement.

## **9. Guidance**

9.1 In relation to regulations 84, 93 and 94B, public notice 742A *Opting to tax land and buildings* will be updated to reflect these changes.

9.2 In relation to the substitution of Forms 11A and 11B in place of Form 11 in Schedule 1 to the VAT Regulations, Notice 719 *VAT Refunds for 'do-it-yourself' builders and converters* is to be withdrawn. Guidance, together with the forms, will now be available in a booklet format either in hard copy or on line. There will be two versions:

- *How to claim for a VAT refund for a new build*
- *How to claim a VAT refund for converting an existing building into a dwelling*

## **10. Impact**

10.1 An Impact Assessment has not been prepared for this instrument as it has a negligible impact on business, charities, voluntary bodies or the public sector.

## **11. Regulating small business**

11.1 The amendments to regulations 84, 93 and 94B of the VAT Regulations do not apply to small businesses.

11.2 The substitution of form 11 of Schedule 1 to the VAT Regulations does not apply to small businesses.

## **12. Monitoring & review**

12.1 The use of the new forms together with the accompanying guidance will be reviewed as part of HMRC's on-going review and maintenance.

## **13. Contact**

The following are available to answer queries regarding the instrument.

In relation to the amendments to regulations 84, 93 and 94B of the VAT Regulations:

John Egerton, HM Revenue and Customs, CT&VAT, Property VAT Team, Room 3/34, 100 Parliament Street, London, SW1A 2BQ (Tel: 020 7147 0238 or email: [john.egerton@hmrc.gsi.gov.uk](mailto:john.egerton@hmrc.gsi.gov.uk)).

In relation to Forms 11A and 11B in Schedule 1 to the VAT Regulations:

Sandy Mackie, HM Revenue and Customs, CT&VAT, Property VAT Team, Room 3/34, 100 Parliament Street, London, SW1A 2BQ (Tel: 020 7147 0412 or email: [sandy.mackie@hmrc.gsi.gov.uk](mailto:sandy.mackie@hmrc.gsi.gov.uk)).