



VALUE ADDED TAX ACT 1996

VALUE ADDED TAX (AMENDMENT) (NO. 3) REGULATIONS 1998

Laid before Tyrwald

28 April 1998

Coming into operation

11 February 1998

In exercise of the powers conferred on the Treasury by section 80A(1), (3), (4), (5), (6) and (7) of the Value Added Tax Act 1996^(a), and of all other powers enabling it in that behalf, the following Regulations are hereby made :-

Citation and commencement

1. These Regulations may be cited as the Value Added Tax (Amendment) (No. 3) Regulations 1998 and shall be deemed to have come into operation on 11 February 1998.

Amendment

2. After regulation 37 of the Value Added Tax Regulations 1996^(b) insert -

Interpretation of regulations 37A to 37H

37A. In regulations 37A to 37H -

“claim” means a claim made (irrespective of when it was made) under section 80 of the Act for repayment of an amount paid to the Treasury by way of VAT which was not VAT due to it; and “claimed” and “claimant” shall be construed accordingly;

“reimbursement arrangements” means any arrangements (whether made before, on or after 30th January 1998) for the purposes of a claim which -

- (a) are made by a claimant for the purpose of securing that he is not unjustly enriched by the repayment of any amount in pursuance of the claim; and
- (b) provide for the reimbursement of persons (consumers) who have, for practical purposes, borne the whole or any part of the cost of the original payment of that amount to the Treasury;

“relevant amount” means that part (which may be the whole) of the amount of a

^(a) 1996 c.1, section 80A was inserted by SD 224/97.

^(b) SD 194/96.

claim which the claimant has reimbursed or intends to reimburse to consumers.

Reimbursement arrangements - general

37B. Without prejudice to regulation 37H, for the purposes of section 80(3) of the Act (defence by the Treasury that repayment by it of an amount claimed would unjustly enrich the claimant) reimbursement arrangements made by a claimant shall be disregarded except where they -

- (a) include the provisions described in regulation 37C; and
- (b) are supported by the undertakings described in regulation 37G.

Reimbursement arrangements - provisions to be included

37C. The provisions referred to in regulation 37B(a) are that -

- (a) reimbursement for which the arrangements provide will be completed by no later than 90 days after the repayment to which it relates;
- (b) no deduction will be made from the relevant amount by way of fee or charge (howsoever expressed or effected);
- (c) reimbursement will be made only in cash or by cheque;
- (d) any part of the relevant amount that is not reimbursed by the time mentioned in paragraph (a) will be repaid by the claimant to the Treasury;
- (e) any interest paid by the Treasury on any relevant amount repaid by it will also be treated by the claimant in the same way as the relevant amount falls to be treated under paragraphs (a) and (b); and
- (f) the records prescribed in regulation 37E will be kept by the claimant and produced by him to the Treasury, or to an officer in accordance with regulation 37F.

Repayments to the Treasury

37D. The claimant shall, without prior demand, make any repayment to the Treasury that he is required to make by virtue of regulation 37C(d) and (e) within 14 days of the expiration of the period of 90 days referred to in regulation 37C(a).

Records

37E. The claimant shall keep records of the following matters -

- (a) the names and addresses of those consumers whom he has reimbursed or whom he intends to reimburse;
- (b) the total amount reimbursed to each such consumer;
- (c) the amount of interest included in each total amount reimbursed to each consumer;

- (d) the date that each reimbursement is made.

Production of records

37F. (1) Where a claimant is given notice in accordance with paragraph (2), he shall, in accordance with such notice produce to the Treasury, or to an officer, the records that he is required to keep pursuant to regulation 37E.

- (2) A notice given for the purposes of paragraph (1) shall -
- (a) be in writing;
 - (b) state the place and time at which, and the date on which the records are to be produced; and
 - (c) be signed and dated by an officer.

and may be given before or after, or both before and after the Treasury has paid the relevant amount to the claimant.

Undertakings

37G. (1) Without prejudice to regulation 37H(b), the undertakings referred to in regulation 37B(b) shall be given to the Treasury by the claimant no later than the time at which he makes the claim for which the reimbursement arrangements have been made.

- (2) The undertakings shall be in writing, shall be signed and dated by the claimant, and shall be to the effect that -
- (a) at the date of the undertakings he is able to identify the names and addresses of those consumers whom he has reimbursed or whom he intends to reimburse;
 - (b) he will apply the whole of the relevant amount repaid to him, without any deduction by way of fee or charge or otherwise, to the reimbursement in cash or by cheque, of such consumers by no later than 90 days after his receipt of that amount (except insofar as he has already reimbursed them);
 - (c) he will apply any interest paid to him on the relevant amount repaid to him wholly to the reimbursement of such consumers by no later than 90 days after his receipt of that interest;
 - (d) he will repay to the Treasury without demand the whole or such part of the relevant amount repaid to him or of any interest paid to him as he fails to apply in accordance with the undertakings mentioned in sub-paragraphs (b) and (c);
 - (e) he will keep the records described in regulation 37E; and
 - (f) he will comply with any notice given to him in accordance with regulation 37F concerning the production of such records.

Reimbursement arrangements made before 11th February 1998

37H. Reimbursement arrangements made by a claimant before 11th February 1998 shall not be disregarded for the purposes of section 80(3) of the Act if, not later than 11th March 1998 -

- (a) he includes in those arrangements (if they are not already included) the provisions described in regulation 37C; and
- (b) gives the undertakings described in regulation 37G.”.

Made this

14th day of March

1998



Minister for the Treasury

EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations, which come into operation on 11th February 1998, further amend the Value Added Tax Regulations 1996 (the principal Regulations) by inserting new regulations 37A to 37H in the principal Regulations.

The new regulations describe the provisions that must be included in reimbursement arrangements made by a person making a claim under section 80 of the Value Added Tax Act 1996 (recovery of overpaid VAT), the undertakings that he must give and the other requirements with which he must comply, in order that his reimbursement arrangements are not to be disregarded for the purposes of determining whether he would be unjustly enriched if his claim is met.

Regulation 37A of the principal Regulations defines certain terms used in regulations 37A to 37H.

Regulation 37B of the principal Regulations describes, in general terms, the provisions which a claimant's reimbursement arrangements must include, and the undertakings which he must give, in order that his arrangements are not to be disregarded when determining whether he would be unjustly enriched if his claim is met.

Regulation 37C of the principal Regulations describes the detailed provisions that must be included in reimbursement arrangements, in order that the arrangements are not to be disregarded when determining whether a claimant would be unjustly enriched if his claim is met.

Regulation 37D of the principal Regulations requires a claimant to repay to the Treasury any amount which he received in order to reimburse consumers, but which he had failed to apply to that purpose within 14 days of his receipt of that amount.

Regulation 37E of the principal Regulations describes the records that the claimant must keep relating to his reimbursement arrangements.

Regulation 37F of the principal Regulations provides for the production of such records.

Regulation 37G of the principal Regulations describes in detail the undertakings that the claimant must give to comply with his reimbursement arrangements.

Regulation 37H of the principal Regulations contains provisions relating to reimbursement arrangements made before these Regulations came into force.