



DISTRESS FOR VALUE ADDED TAX AND OTHER INDIRECT TAXES REGULATIONS 2015

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Statutory Document No. 2015/0030



Customs and Excise Management Act 1986 and Value Added Tax Act 1996

DISTRESS FOR VALUE ADDED TAX AND OTHER INDIRECT TAXES REGULATIONS 2015

Laid before Tynwald: 18 February 2015
Coming into Operation: 1 March 2015

The Treasury makes the following Regulations under section 163A of the Customs and Excise Management Act 1986 and paragraph 5(4)¹ of Schedule 12 to the Value Added Tax Act 1996.

1 Title

These Regulations are the Distress for Value Added Tax and Other Indirect Taxes Regulations 2015.

2 Commencement and transitional provisions

- (1) These Regulations come into operation on 1 March 2015.
- (2) Where a warrant is signed before the coming into operation of these Regulations, these Regulations shall apply to anything done after these Regulations come into operation in relation to that warrant or as a consequence of distress being levied.

3 Interpretation

- (1) In these Regulations —
 - “**authorised person**” means a person acting under the authority of the Treasury;
 - “**costs**” means any costs, charges, expenses and fees;
 - “**person in default**” means a person who has refused or neglected to pay any relevant tax due from that person;
 - “**relevant tax**” means any of the following —
 - (a) any duty of customs or excise;
 - (b) value added tax; and

¹ Paragraph 5(4) was substituted by SD 2015/0029.

(c) any agricultural levy of the European Union;

“**VAT Act**” means the Value Added Tax Act 1996;

“**walking possession agreement**” means an agreement under which, in consideration of any goods or chattels distrained upon being allowed to remain in the custody of the person in default and of the delaying of their sale, that person —

(a) acknowledges that the goods and chattels specified in the agreement are under distraint and held in walking possession; and

(b) undertakes that, except with the consent of the Treasury and subject to such conditions as it may impose, that person will not remove or allow the removal of the specified goods and chattels from the place named in the agreement;

“**warrant**” means a warrant signed by an officer of customs and excise of the grade of senior executive officer or above which authorises any officer of customs and excise, or directs any authorised person, to levy distress.

(2) Any reference in these Regulations to an amount of relevant tax includes a reference to any amount recoverable as if it were an amount of a relevant tax.

4 Revocation

The Distress for Value Added Tax and Other Indirect Taxes Regulations 1997² are revoked.

5 Levying distress

(1) Subject to regulation 6, if upon written demand a person refuses or neglects to pay any relevant tax that that person is due to pay an officer of customs and excise may levy distress on the goods and chattels of that person.

(2) Where paragraph (1) applies, a warrant must be produced that authorises any officer of customs and excise, or directs any authorised person, to levy distress against the goods and chattels of the person in default.

(3) Where a warrant has been produced, distress must be levied by or under the direction of, and in the presence of, the officer of customs and excise or the authorised person.

(4) Subject to regulation 7, distress may be levied on any goods and chattels located at any place, including on a public highway.

² SD 421/97.

6 Restrictions on levying distress

Where —

- (a) an amount of any duty of customs or excise or any agricultural levy of the European Union is due and the Treasury may be required under section 14 of the Finance Act 1994 (an Act of Parliament)³, as it has effect in the Island, to review a decision which, if that decision were varied or withdrawn would cause the amount to be reduced or extinguished; or
- (b) an amount of VAT is due under section 73(9) of the VAT Act,

no distress shall be levied before the expiry date of the last day on which the person who is liable to pay the amount concerned is required, by the VAT and Duties Tribunal Rules 2011⁴, to serve a notice of appeal with respect to that decision.

7 Goods and chattels not subject to levy

No distress shall be levied on any goods or chattels mentioned in Schedule 1 which, at the time of levy, are located in a place and used for a purpose mentioned in that Schedule.

8 Time for levying distress

- (1) Subject to paragraph (2), a levy of distress shall commence only during the period between eight o'clock in the morning and eight o'clock at night on any day of the week but it may be continued thereafter outside that period until the levy is completed.
- (2) Where a person holds out as conducting any profession, trade or business during hours which are partly within and partly outside, or wholly outside, the period mentioned in paragraph (1), a levy of distress may be commenced at any time during that period or during the hours of the day in which the person holds out as conducting that profession, trade or business and it may be continued thereafter outside that period or those hours until the levy is completed.

9 Costs

- (1) A person in respect of whose goods and chattels a warrant has been signed shall be liable to pay an officer of customs and excise or an authorised person all costs, in connection with anything done under these Regulations described in column 1 of Schedule 2, as determined in accordance with column 2 of that Schedule.

³ 1994 c.9 (of Parliament). Section 14 was applied in the Island by SD 369/94 and subsequently amended by means of SD 217/09.

⁴ SD 548/11.

- (2) An authorised person may, after deducting and accounting for the amount of relevant tax to the Treasury, retain costs from any amount received.

10 Sale

If any person on whose goods and chattels distress has been levied does not pay the amount of relevant tax due together with any costs within 5 days of a levy, an officer of customs and excise or an authorised person may sell the distress for payment of the amount of the relevant tax and costs; and the officer or authorised person, after deducting and retaining the amount of relevant tax and costs, shall restore any surplus to the owner of the goods upon which distress was levied.

11 Disputes as to costs

In the case of any dispute as to costs, the amount of those costs shall be assessed by the Chief Registrar, and the Chief Registrar may make such order as he or she thinks fit as to the costs of the taxation.

MADE 21st January 2015

W E Teare
Minister for the Treasury

SCHEDULE 1

[regulation 7]

GOODS AND CHATTELS NOT SUBJECT TO LEVY

- 1** Any of the following goods and chattels which are located in a dwelling house at which distress is being levied and are reasonably required for the domestic needs of any person residing in that dwelling house —
- (a) beds and bedding;
 - (b) household linen;
 - (c) chairs and settees;
 - (d) tables;
 - (e) food;
 - (f) lights and light fittings;
 - (g) heating appliances;
 - (h) curtains;
 - (i) floor coverings;
 - (j) furniture, equipment and utensils used for cooking, storing or eating food;
 - (k) refrigerators;
 - (l) articles used for cleaning, mending, or pressing clothes;
 - (m) articles used for cleaning the home;
 - (n) furniture used for storing —
 - (i) clothing, bedding or household linen;
 - (ii) articles used for cleaning the home;
 - (iii) utensils used for cooking or eating food;
 - (o) articles used for safety in the home;
 - (p) toys for the use of any child within the household;
 - (q) medical aids and medical equipment.
- 2** Any of the following items which are located in premises used for the purposes of any profession, trade or business —
- (a) fire fighting equipment for use on the premises;
 - (b) medical aids and medical equipment for use on the premises.

SCHEDULE 2

[regulation 9(1)]

SCALE OF COSTS

Matter (1)	Costs (2)
1. For attending to levy distress where payment is made of an amount of relevant tax due and distress is not levied.	£12.50
2. For levying distress -	
(a) where an amount of relevant tax demanded and due does not exceed £100;	£12.50
(b) where an amount of relevant tax demanded and due exceeds £100.	12½% on the first £100, 4% on the next £400, 2½% on the next £1,500, 1% on the next £8,000, ¼% on any additional sum.
3. For taking possession of distrained goods -	
(a) where a person remains in physical possession of goods at the place where distress was levied (the person to provide his own food and lodgings);	£4.50 per day
(b) where possession is taken under a walking possession agreement.	£7.00
4. For appraising goods upon which distress has been levied.	Reasonable costs of appraisal.
5. For arranging removal and storage of goods upon which distress has been levied.	Reasonable costs of arrangement.
6. For removing and storing goods upon which distress has been levied.	Reasonable costs of removal and storage.
7. For advertising the sale of goods upon which distress has been levied.	Reasonable costs of advertising.
8. For selling the distress -	
(a) where a sale by auction is held at the auctioneer's premises;	15% of the sum realised.
(b) where a sale by auction is held elsewhere;	7½% of the sum realised and the auctioneer's reasonable costs.

	(c)	where a sale by other means is undertaken.	7½% of the sum realised and reasonable costs.
9.	In addition to any amount specified in this scale in respect of goods or services on which value added tax is chargeable there may be added a sum equivalent to value added tax at the appropriate rate on that amount.		

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and replace the Distress for Value Added Tax and Other Indirect Taxes Regulations 1997. They provide for the levying of distress for the recovery of value added tax and other indirect taxes and duties under the care and management of the Treasury.

In addition to minor and drafting amendments, these Regulations —

- a) are made explicitly under paragraph 5(4) of Schedule 12 to the Value Added Tax Act 1996 as substituted by the Value Added Tax Act 1996 (Amendment) Order 2015⁵, as well as section 163A of the Customs and Excise Management Act 1986;
- b) clarify the process whereby a senior member of staff of the Customs and Excise Division of the Treasury must sign a distress warrant which formally directs another officer, or any authorised person (who would normally be a Coroner), to levy distress once the debt has been established and any time for appeal had elapsed; and
- c) updates references to the appeals mechanism available to taxpayers, which procedures are now governed by the VAT and Duties Tribunal Rules 2011.

The restrictions in Schedule 1 on those goods and chattels which may not be subject to distress, and the scale of costs that might be added to the amount of relevant tax being recovered in Schedule 2, are unchanged from the original, revoked Regulations.

Regulation 2(2) provides for where a warrant was signed before the coming into operation of these Regulations and any action is undertaken after they are in operation, it is these Regulations that shall apply in respect of that action.

⁵ SD 2015/0029.