



# VALUE ADDED TAX ACT 1996 (AMENDMENT) ORDER 2018

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Statutory Document No. 2018/0024

*Value Added Tax Act 1996*

## VALUE ADDED TAX ACT 1996 (AMENDMENT) ORDER 2018

*Approved by Tynwald:*                      20<sup>th</sup> February 2018  
*Coming into Operation:*                      1 March 2018

The Treasury makes the following Order under sections 95 and 96(1)<sup>1</sup> of the Value Added Tax Act 1996.

### 1 Title

This Order is the Value Added Tax Act 1996 (Amendment) Order 2018.

### 2 Commencement

If approved by Tynwald, this Order comes into operation on 1 March 2018.

### 3 Penalty for transactions connected with VAT fraud

- (1) The Value Added Tax Act 1996 is amended as follows.
- (2) After section 69B (breach of record-keeping requirements imposed by directions) of the Act insert —

#### **69C Transactions connected with VAT fraud**

- (1) A person (“T”) is liable to a penalty where —
  - (a) T has entered into a transaction involving the making of a supply by or to T (“**the transaction**”); and
  - (b) conditions A to C are satisfied.
- (2) Condition A is that the transaction was connected with the fraudulent evasion of VAT by another person (whether occurring before or after T entered into the transaction).

<sup>1</sup> An order made under section 96 must be laid before Tynwald as soon as practicable after it is made, and if Tynwald at the sitting at which the order is laid fails to approve the order, the order shall thereupon cease to have effect.

- (3) Condition B is that T knew or should have known that the transaction was connected with the fraudulent evasion of VAT by another person.
- (4) Condition C is that the Treasury has issued a decision (“**the denial decision**”) in relation to the supply which –
- (a) prevents T from exercising or relying on a VAT right in relation to the supply;
  - (b) is based on the facts which satisfy conditions A and B in relation to the transaction; and
  - (c) applies a relevant principle of EU case law (whether or not in circumstances that are the same as the circumstances in which any relevant case was decided by the European Court of Justice).
- (5) In this section “**VAT right**” includes the right to deduct input tax, the right to apply a zero rate to international supplies and any other right connected with VAT in relation to a supply.
- (6) The relevant principles of EU case law for the purposes of this section are the principles established by the European Court of Justice in the following cases –
- (a) Joined Cases C-439/04 and C-440/04 *Axel Kittel v. Belgian State; Belgium v. Recolta Recycling* (denial of right to deduct input tax); and
  - (b) Case C-273/11 *Mecsek-Gabona Kft v. Nemzeti Adó- és Vámhivatal Del-dunantuli Regionális Adó Főigazgatósága* (denial of right to zero rate);
- as developed or extended by that Court (whether before or after the coming into operation of this section) in other cases relating to the denial or refusal of a VAT right in order to prevent abuses of the VAT system.
- (7) The penalty payable under this section is 30% of the potential lost VAT.
- (8) The potential lost VAT is –
- (a) the additional VAT which becomes payable by T as a result of the denial decision;
  - (b) the VAT which is not repaid to T as a result of that decision; or
  - (c) in a case where as a result of that decision VAT is not repaid to T and additional VAT becomes payable by T, the aggregate of the VAT that is not repaid and the additional VAT.

- (9) Where T is liable to a penalty under this section the Treasury may assess the amount of the penalty and notify it to T accordingly.
- (10) No assessment of a penalty under this section may be made more than 2 years after the denial decision is issued.
- (11) The assessment of a penalty under this section may be made immediately after the denial decision is made (and notice of the assessment may be given to T in the same document as the notice of the decision).
- (12) Where by reason of actions involved in making a claim to exercise or rely on a VAT right in relation to a supply T —
- (a) is liable to a penalty for an inaccuracy under paragraph 1 of Schedule 24 to the Finance Act 2007 (of Parliament)<sup>2</sup>, as it has effect in the Island, for which T has been assessed (and the assessment has not been successfully appealed against by T or withdrawn); or
  - (b) is convicted of an offence (whether under this Act or otherwise);
- those actions do not give rise to liability to a penalty under this section.
- (13) This section does not apply in relation to transactions entered into before this section comes into operation.

#### 69D Penalties under section 69C: officer's liability

- (1) Where —
- (a) a company is liable to a penalty under section 69C; and
  - (b) the actions of the company which give rise to that liability were attributable to an officer of the company ("**the officer**");
- the officer is liable to pay such portion of the penalty (which may be equal to or less than 100%) as the Treasury may specify in a notice given to the officer (a "**decision notice**").
- (2) Before giving the officer a decision notice the Treasury must —
- (a) inform the officer that they are considering doing so; and
  - (b) afford the officer the opportunity to make representations about whether a decision notice should be given or the portion that should be specified.
- (3) A decision notice —

<sup>2</sup> Schedule 24 to the Finance Act 2007 was applied in the Island by SD 638/08.

- (a) may not be given before the amount of the penalty due from the company has been assessed (but it may be given immediately after that has happened); and
  - (b) may not be given more than 2 years after the denial decision relevant to that penalty was issued.
- (4) Where the Treasury has specified a portion of the penalty in a decision notice given to the officer —
- (a) section 70 applies to the specified portion as to a penalty under section 69C;
  - (b) the officer must pay the specified portion before the end of the period of 30 days beginning with the day on which the notice is given;
  - (c) section 76(9) applies as if the decision notice were an assessment notified under section 76; and
  - (d) a further decision notice may be given in respect of a portion of any additional amount assessed in an additional assessment.
- (5) The Treasury may not recover more than 100% of the penalty through issuing decision notices in relation to 2 or more persons.
- (6) A person is not liable to pay an amount by virtue of this section if the actions of the company concerned are attributable to the person by reference to conduct for which the person has been convicted of an offence.
- In this subsection “**conduct**” includes omissions.
- (7) In this section “**company**” means a body corporate (including a limited partnership that has elected to have legal personality for the purposes of section 48B of the Partnership Act 1909) or unincorporated association but does not include a partnership, a local authority or a local authority association.
- (8) In its application to a body corporate (other than a limited partnership that has elected to have legal personality for the purpose of section 48B of the Partnership Act 1909), “**officer**” means —
- (a) a director;
  - (b) a manager;
  - (c) the registered agent or a member of a limited liability company; or
  - (d) a secretary.
- (9) In its application to a limited partnership that has elected to have legal personality for the purposes of section 48B of the Partnership Act 1909, “**officer**” means a member.

- (10) In its application in any other case, “officer” means —
  - (a) a director;
  - (b) a manager;
  - (c) a secretary; or
  - (d) any other person managing or purporting to manage any of the company’s affairs.

**69E Publication of details of persons liable to penalties under section 69C**

- (1) The Treasury may publish information about a person if —
  - (a) in consequence of an investigation the person has been found liable to one or more penalties under section 69C (the amount of which has been assessed); and
  - (b) the potential lost VAT in relation to the penalty (or the aggregate of the potential lost VAT in relation to each of the penalties) exceeds £50,000.
- (2) The information that may be published under subsection (1) is —
  - (a) the person’s name (including any trading name, previous name or pseudonym);
  - (b) the person’s address (or registered office);
  - (c) the nature of any business carried on by the person;
  - (d) the amount of the penalty or penalties in question;
  - (e) the periods or times to which the actions giving rise to the penalty or penalties relate;
  - (f) any other information that the Treasury considers it appropriate to publish in order to make clear the person’s identity.
- (3) In a case where —
  - (a) the requirements in subsection (1)(a) and (b) are met in relation to a penalty or penalties for which a company is liable;
  - (b) information about the company is published by virtue of this section;
  - (c) a person (“**the officer**”) has been given a decision notice under section 69D specifying a portion of the penalty (or, if there is more than one penalty, of any of the penalties) payable by the company as a portion which the officer is liable to pay; and
  - (d) the amount (or, if the decision notice specifies portions of more than one penalty, the aggregate amount) which the

- officer is liable to pay under the decision notice exceeds £25,000;
- the Treasury may publish information about the officer.
- (4) The information that may be published under subsection (3) is —
- (a) the officer's name;
  - (b) the officer's address;
  - (c) the officer's position (or former position) in the company;
  - (d) the amount of any penalty imposed on the company of which a portion is payable by the officer under the decision notice and the portion so payable;
  - (e) the periods or times to which the actions giving rise to any such penalty relate;
  - (f) any other information that the Treasury considers it appropriate to publish in order to make clear the officer's identity.
- (5) Information published under this section may be published in any manner that the Treasury considers appropriate.
- (6) Before publishing any information under this section the Treasury must —
- (a) inform the person or officer to which it relates that it is considering doing so (in the case of an officer, on the assumption that it publishes information about the company); and
  - (b) afford the person or officer the opportunity to make representations about whether it should be published.
- (7) No information may be published under subsection (1) before the day on which the penalty becomes final or, where more than one penalty is involved, the latest day on which any of the penalties becomes final.
- (8) No information may be published under subsection (1) for the first time after the end of the period of one year beginning with that day.
- (9) No information may be published under subsection (3) before whichever is the later of —
- (a) the day mentioned in subsection (7); and
  - (b) the day on which the decision notice given to the officer becomes final.
- (10) No information may be published under subsection (3) for the first time after the end of the period of one year beginning with the later of the 2 days mentioned in subsection (9).

- (11) No information may be published (or continue to be published) under subsection (1) or (3) after the end of the period of 3 years beginning with the day mentioned in subsection (7).
  - (12) For the purposes of this section a penalty or a decision notice becomes final when the time for any appeal or further appeal relating to it expires or, if later, any appeal or final appeal relating to it is finally determined.
  - (13) The Treasury may by regulations —
    - (a) amend subsection (1) to vary the amount for the time being specified in paragraph (b); or
    - (b) amend subsection (3) to vary the amount for the time being specified in paragraph (d). **22**.
- (3) In section 70 (mitigation of penalties) —
- (a) in the heading, for “and 69A” substitute **69** 69A and 69C **22**;
  - (b) in subsection (1), for “or 69A” substitute **69**, 69A or 69C **22**; and
  - (c) after subsection (4) insert —
- 69**(5) In the application of subsections (3) and (4) in relation to a penalty under section 69C, subsection (4) has effect with the omission of paragraphs (b) and (c). **22**.
- (4) In section 76 (assessment of amounts due by way of penalty, interest or surcharge), in subsection (1) for “to 69B” (in both places) substitute **69** to 69C **22**.
- (5) In section 83(1) (appeals), after paragraph (n) insert —
- 69**(na) any liability to a penalty under section 69C, any assessment of a penalty under that section or the amount of such an assessment;
  - (nb) the giving of a decision notice under section 69D or the portion of a penalty assessed under section 69C which is specified in such a notice; **22**.

#### 4 Digital reporting and record-keeping for VAT

- (1) Schedule 12 to the Value Added Tax Act 1996 is amended as follows.
- (2) In paragraph 2 (accounting for VAT and payment of VAT) —
  - (a) in sub-paragraph (1) for “and the making of returns” substitute **69**, the making of returns and the submission of information **22**;
  - (b) after sub-paragraph (11) insert —

**69**(11A) Regulations under this paragraph may include incidental, supplemental, consequential, saving, transitional or transitory provision. **22**.
- (3) In paragraph 8 (duty to keep records) —

- (a) on the coming into operation of the first regulations made under paragraph 8(5) of Schedule 12 to the Value Added Tax Act 1996 (as substituted by sub-paragraph (b) below), omit sub-paragraph (4);
- (b) for sub-paragraphs (5) and (6) substitute —
- (5) The Treasury may by regulations make provision about the form in which, and means by which, records are to be kept and preserved.
- Regulations under this sub-paragraph may not make provision requiring records to be kept or preserved in electronic form which has effect before 1 April 2019.
- (6) Regulations under sub-paragraph (5) may —
- (a) make different provision for different cases;
- (b) provide for any provision of the regulations to be subject to conditions or exceptions specified in writing by the Treasury;
- (c) include incidental, supplemental, consequential, saving, transitional or transitory provision.
- (7) If regulations under sub-paragraph (5) make provision requiring records to be kept or preserved in electronic form they must make provision for a taxable person to be exempt from those requirements for any month (“**the current month**”) if —
- (a) the value of the person’s taxable supplies, in the period of one year ending with the month before the current month, was less than the VAT threshold; and
- (b) the person was not subject to those requirements in the month before the current month.
- (8) The regulations may modify the exemption for cases where a business or part of a business carried on by a taxable person is transferred to another person as a going concern.
- (9) The “**VAT threshold**” means the amount specified in paragraph 1(1)(a) of Schedule 2 on the first day of the current month.
- (10) Regulations under sub-paragraph (5) requiring records to be kept or preserved in electronic form may (among other things) make provision —
- (a) as to the electronic form in which records are to be kept or preserved;
- (b) for the production of the contents of records kept or preserved in accordance with the regulations;
- (c) as to conditions that must be complied with in connection with the keeping or preservation of electronic records;

- (d) for treating records as not having been kept or preserved unless conditions are complied with;
  - (e) for authenticating records;
  - (f) about the manner of proving for any purpose the contents of any records (including provision for the application of conclusive or other presumptions).
- (11) Regulations under sub-paragraph (5) requiring records to be kept or preserved in electronic form may –
- (a) allow any authorisation or requirement for which the regulations may provide to be given by means of a specific or general direction given by the Treasury;
  - (b) provide that the conditions of an authorisation or requirement are to be taken to be satisfied only where the Treasury is satisfied as to specified matters. **22**.
- (4) On the coming into operation of the first regulations made under paragraph 8(5) of Schedule 12 to the Value Added Tax Act 1996 (as substituted by paragraph (3)(b) of this article), in paragraph 8A (power to direct keeping of records), for sub-paragraph (7) substitute –
- 23**(7) Regulations under paragraph 8(5) apply for the purposes of this paragraph as they apply for the purposes of paragraph 8. **22**.
- (5) In section 83(1) (appeals) of the Value Added Tax Act 1996, after paragraph (zc) insert –
- 23**(zd) a decision of the Treasury about the application of any provision of regulations under paragraph 2 or 8 of Schedule 12 which –
- (i) requires returns to be made or information to be submitted by electronic communications; or
  - (ii) requires records to be kept or preserved in electronic form,
- (including in particular a decision as to whether such a requirement applies). **22**.

## 5 Minor Amendments to the Value Added Tax Act 1996

- (1) In section 26AAB(8)(e) of the Value Added Tax Act 1996 (disapplication of disallowance under section 26AA in insolvency) for “section 889 of the Companies Act 1989” substitute **23**section 899 of the Companies Act 2006 **22**.
- (2) In section 79(6) of the Value Added Tax Act 1996 (repayment supplement in respect of certain delayed payments or refunds) for “section 33A” substitute **23**section 33A or 33B **22**.

MADE 25<sup>TH</sup> JANUARY 2018

**A L CANNAN**  
*Minister for the Treasury*

*EXPLANATORY NOTE**(This note is not part of the Order)*

This Order makes amendments to the Value Added Tax Act 1996 (“the Act”), to insert new sections 69C, 69D and 69E into the Act, and to make amendments to Schedule 12 to the Act and minor amendments to sections 26AAB and 79 of the Act. The amendments make changes that correspond to those made to the equivalent United Kingdom legislation (the Value Added Tax Act 1994<sup>3</sup>).

Article 3 introduces a new and more effective penalty against participation in VAT fraud into the Act. It will apply to businesses and company officers when they knew or should have known that their transactions were connected with VAT fraud.

The new penalty will —

- a) be a fixed rate of 30% for participants in VAT fraud;
- b) apply to businesses but can also be applied to company officers;
- c) give the Treasury the option to name those that participate in the fraud;
- d) not include reductions for disclosure.

Article 4 amends the Treasury’s powers to make regulations so that it may require businesses which are registered for VAT or liable to be registered for VAT to use digital tools to keep records and to provide VAT information and VAT returns through the use of digital tools. The amendment also allows for regulations to provide for exemptions to those obligations. In particular, if regulations are made providing for records to be kept or preserved digitally then VAT-registered persons with turnover below the registration threshold will be exempted. Regulations providing for digital record keeping cannot come into operation before 1 April 2019.

Article 5 makes minor amendments to —

- a) sections 26AAB of the Act to correct a drafting error in the Value Added Tax Act 1996 (Amendment) (No. 2) Order 2017<sup>4</sup> to correctly make reference to the Companies Act 2006; and
- b) section 79(6) of the Act to correct a drafting error in the Value Added Tax Act 1996 (Amendment) (No. 2) Order 2015<sup>5</sup>, which will now make reference to sections 33A and 33B in relation to repayment supplement.

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<sup>3</sup> 1994 c.23 (of Parliament).

<sup>4</sup> SD 2017/0222.

<sup>5</sup> SD 2015/0159.