



STATUTORY INSTRUMENTS

S.I. No. 238 of 2008



VALUE-ADDED TAX (AMENDMENT) REGULATIONS 2008

(Prn. A8/0963)

VALUE-ADDED TAX (AMENDMENT) REGULATIONS 2008

The Revenue Commissioners, in exercise of the powers conferred on them by sections 10, 12E, 15 and 32 of the Value-Added Tax Act 1972 (No. 22 of 1972) and, as respects paragraphs (j) and (k) of Regulation 3 of the following Regulations, with the consent of the Minister for Finance, make the following regulations:

1. These Regulations may be cited as the Value-Added Tax (Amendment) Regulations 2008.

2. In these Regulations “Regulations of 2007” means the Value-Added Tax (Amendment) Regulations 2007 (S.I. No. 272 of 2007).

3. The Value-Added Tax Regulations 2006 (S.I. No. 548 of 2006) are amended—

(a) in each provision specified in the first column of Schedule 1 to these Regulations for the words set out in the second column of that Schedule at that entry (in each place where those words occur in the provision concerned) there is substituted the words set out at the corresponding entry in the third column of that Schedule,

(b) in Regulation 2—

(i) by deleting the definition of “Sixth Council Directive”,

(ii) in the definition of “value-added tax identification number in another Member State” by substituting “VAT Directive;” for “Sixth Council Directive.”, and

(iii) by inserting the following after the definition of “value-added tax identification number in another Member State”:

“VAT Directive” means Council Directive 2006/112/EC of 28 November 2006 on the common system of value-added tax¹.”,

(c) in Regulation 8(1)—

(i) by substituting the following for the matter preceding paragraph (c):

“The full and true records of all transactions which affect or may affect the accountable person’s liability to tax and entitlement to deductibility, which every accountable person is required to

¹OJ No. L 347 of 11 December 2006, p. 1

keep in accordance with section 16 of the Act, shall be entered up to date and include—

- (a) in relation to consideration receivable from registered persons—
 - (i) the amount receivable from each such person in respect of each transaction for which an invoice or other document is required to be issued under section 17 of the Act, and
 - (ii) a cross-reference to the copy of the relevant invoice or other document,
- (b) in relation to consideration receivable from unregistered persons—
 - (i) a daily total of the consideration receivable from all such persons,
 - (ii) a cross-reference from that daily total to the relevant books or other documents which are in use for the purposes of the business, and
 - (iii) where the accountable person uses an electronic cash register or point of sale system the complete record of each entry on that register or system, uniquely identified by sequential number, date and time of such entry,”
- (ii) in paragraph (t) by substituting “matters,” for “matters, and”, and
- (iii) by substituting the following for subparagraph (u):
 - “(u) in relation to each capital good in respect of which a capital goods owner is required to create and maintain a capital good record in accordance with section 12E(12) of the Act—
 - (i) the total tax incurred,
 - (ii) the amount of the total tax incurred which is deductible in accordance with section 12 of the Act,
 - (iii) the date on which the adjustment period begins,
 - (iv) the number of intervals in the adjustment period,
 - (v) the initial interval proportion of deductible use,
 - (vi) the total reviewed deductible amount,

- (vii) the proportion of deductible use for each interval,
- (viii) details of any adjustments required to be made in accordance with section 12E, and
- (ix) details of any sale or transfer of the capital good or details of any assignment or surrender of a lease where section 12E(8)(b) applies in relation to that capital good,

and

- (v) in respect of supplies of goods specified in paragraph (i) of the Second Schedule to the Act—
 - (i) the name and address of the person to whom the goods are supplied,
 - (ii) a description of the goods supplied,
 - (iii) the amount of the consideration,
 - (iv) a cross-reference to the copy of the relevant invoice, and
 - (v) a cross-reference to the relevant Customs and transport documents.”,

(d) in Regulation 9—

(i) by substituting—

(I) in paragraph (1) “VAT Directive” for “Sixth Council Directive”, and

(II) in paragraph (8)(a) “Article 238 of the VAT Directive” for “Article 22(9)(d) of the Sixth Council Directive”,

and

(ii) by inserting the following after paragraph (9):

“(10) Where a document containing—

(a) a schedule of dates on which rent in respect of a letting of immovable goods which is chargeable to tax is due (in this paragraph referred to as ‘due dates’) under a letting agreement, and

(b) the particulars specified in paragraph (2),

is issued prior to the earliest of those due dates listed in that schedule, then that document shall be treated as an invoice issued in accordance with section 17(1) of the Act and shall be deemed to be so issued in respect of each rent payment listed in that schedule on the due date for that rent payment.

(11) Where the rate of tax changes during the period covered by the document referred to in paragraph (10) then that document shall be amended to provide for the new rate of tax and the corresponding amounts of tax due for the periods following the date of that change in the tax rate.”,

(e) in Regulation 15(5B) (inserted by the Regulations of 2007) by inserting “referred to in section 8(1B)(b) of the Act or” after “services”,

(f) in Regulation 16A (inserted by the Regulations of 2007) by substituting the following for paragraph (3)—

“(3) An accountable person who has accounted for tax in respect of a supply covered by paragraph (2) may subsequently claim bad debt relief for the tax attributable to the bad debt, where—

(a) that accountable person has taken all reasonable steps to recover the bad debt,

(b) the bad debt is allowable as a deduction under section 81(2)(i) of the Taxes Consolidation Act 1997 (No. 39 of 1997) in cases where the accountable person is chargeable to tax under Case I or II of Schedule D of that Act,

(c) the bad debt has been written off in the financial accounts of that accountable person and the requirements of Regulation 8(1)(m) in respect of that debt have been fulfilled by that accountable person, and

(d) the person from whom the debt is due is not connected with that accountable person, and the question of whether a person is connected with that accountable person shall be determined in accordance with section 7A(3) of the Act.”,

(g) in Regulation 18—

(i) by substituting the following for paragraph (1)—

“(1) In this Regulation—

“authorised officer” means a person authorised for the purposes of section 18 of the Act;

“final accounting year” means the period from the end of the previous accounting year to the date that a person ceases to be an accountable person;

“review period” means a period consisting of all the taxable periods which end during an accounting year.”,

and

(ii) by substituting the following for paragraph (3)(c)—

“(c) Where the adjustment under subparagraph (b) relates to the final accounting year of the accountable person concerned, then any necessary adjustment is required to be made by way of an increase or decrease in the amount of tax deductible for the taxable period in which that final accounting year ends. Any such adjustment is required to be made in the return to be furnished in accordance with section 19(3) of the Act in respect of the appropriate taxable period.”,

(h) by inserting the following after Regulation 21:

“The operation of the capital goods scheme

21A. (1) (a) For the purposes of section 12E of the Act where a capital goods owner changes the end date of his or her accounting year during a subsequent interval of the adjustment period for a capital good, then the duration of that subsequent interval shall be a period of 12 months from the start date of that subsequent interval and in such circumstances, starting from and including the first day following the end of that subsequent interval, the remaining subsequent intervals in the adjustment period shall be consecutive periods of 12 months.

(b) Notwithstanding subparagraph (a), where the change in the end date of the accounting year results in that accounting year ending—

(i) more than 12 months from the start date of the subsequent interval in which that change takes place, then the capital goods owner may extend the period of that subsequent interval to the end date of that accounting year, or

(ii) less than 12 months from the start date of the subsequent interval in which that change takes place, then the capital goods owner may extend the period of that subsequent interval to the end date of the following accounting year.

(2) (a) Where—

- (i) a capital good is transferred in accordance with section 12E(10) of the Act during a subsequent interval of the adjustment period for that capital good, and
- (ii) the accounting year of the transferee differs from the accounting year of the transferor,

then that subsequent interval shall be a period of 12 months from the start date of that subsequent interval in which the transfer takes place and in such circumstances, starting from and including the first day following the end of the subsequent interval during which the transfer takes place, the remaining subsequent intervals in the adjustment period shall be consecutive periods of 12 months.

(b) Notwithstanding subparagraph (a), in cases where the accounting year of the transferee ends—

- (i) more than 12 months from the start of the subsequent interval in which the transfer takes place, then the transferee may extend that subsequent interval to the last day of that accounting year, or
- (ii) less than 12 months from the start of the subsequent interval in which the transfer takes place, then the transferee may extend that subsequent interval to the last day of the following accounting year.

The supply of services comprising the use of business assets for private or non-business purposes

21B. (1) In this Regulation ‘private use proportion’ means the proportion which correctly reflects the extent to which immovable goods are used for private or non-business purposes in the relevant taxable period.

(2) Where section 5(3B) of the Act applies the private use proportion shall be calculated in accordance with the following formula:

$$\frac{A}{B}$$

where—

- A is equal to the floor area of that part of the immovable goods that is used for private or non-business purposes in the relevant taxable period, and
- B is equal to the total floor area of those immovable goods.

(3) The amount on which tax is chargeable in relation to the supply of services referred to in section 5(3B) of the Act in any taxable period shall be calculated in accordance with the following formula:

$$\frac{C \times D}{20 \times 6}$$

where—

- C is the amount on which tax is chargeable on the acquisition or development of the immovable goods,
- D is the private use proportion calculated in accordance with the formula in paragraph (2).

(4) The rate of tax applicable to the supply of services referred to in paragraph (3) is the rate specified in section 11(1)(a) of the Act.”,

- (i) in Regulation 23(1)(a) by substituting “VAT Directive” for “Sixth Council Directive”,
- (j) in Regulation 31(5) by substituting “Articles 4 and 35, the first paragraph of Article 139(3) and Articles 311 to 341 of the VAT Directive” for “Article 26a or 28o of the Sixth Council Directive”, and
- (k) in Regulation 37 by inserting the following after paragraph (4):

“(5) In accordance with section 15 of the Act, where goods are re-imported by the person who exported them, in the state in which they were exported, being goods which are exempt from customs duties on such re-importation, then those goods shall be exempt from value-added tax.”.

4. For convenience of reference, in the table of contents, cross headings and shoulder notes accompanying the printed version of the Value-Added Tax Regulations 2006 and specified in the first column of Schedule 2 to these Regulations for the words set out in the second column of that Schedule at that entry there is substituted the words set out at the corresponding entry in the third column of that Schedule.

SCHEDULE 1

MISCELLANEOUS AMENDMENTS RELATING TO THE
AMENDMENT OF THE DEFINITION OF TAXABLE PERSON

Amendments to Value-Added Tax Regulations 2006

S.I. No. 548 of 2006	Words to be replaced	Words to be inserted
3(1)	a taxable person	an accountable person
3(2)	a taxable person	an accountable person
3(3)	a taxable person	an accountable person
3(4)(a)	a taxable person	an accountable person
3(4)(b)	A taxable person	An accountable person
3(4)(b)	a taxable person	an accountable person
3(7)	a taxable person	an accountable person
3(8)	a taxable person	an accountable person
3(9)	a taxable person	an accountable person
4(4)	a taxable person	an accountable person
4(5)	the taxable person	the accountable person
7(1)	A taxable person	An accountable person
7(4)	a taxable person	an accountable person
8(1)(d)	the taxable person	the accountable person
8(1)(f)	the taxable person	the accountable person
8(g)	a taxable person	an accountable person
8(g)	the taxable person	the accountable person
8(h)	the taxable person	the accountable person
8(n)	the taxable person	the accountable person
8(n)	another taxable person	another accountable person
8(n)	other taxable person	other accountable person
8(o)	the taxable person	the accountable person
8(p)	the taxable person	the accountable person
8(q)	the taxable person	the accountable person
8(s)	the taxable person	the accountable person
9(2)	a taxable person	an accountable person
9(3)	a taxable person	an accountable person
9(4)	a taxable person	an accountable person
9(4)(c)	the taxable person	the accountable person
9(6)	a taxable person	an accountable person
10(2)	a taxable person	an accountable person
10(2)	the taxable person	the accountable person
10(3)	A taxable person	An accountable person
10(4)	A taxable person	An accountable person
13(1)	a taxable person	an accountable person
13(1)	the taxable person	the accountable person

S.I. No. 548 of 2006	Words to be replaced	Words to be inserted
13(2)	a taxable person	an accountable person
13(2)	that taxable person's	that accountable person's
13(2)	the taxable person	the accountable person
13(3)	a taxable person	an accountable person
14(1)	a taxable person	an accountable person
14(2)	a taxable person	an accountable person
14(3)	a taxable person	an accountable person
14(4)	a taxable person	an accountable person
14(5)	the taxable person	the accountable person
14(5)	any taxable person	any accountable person
14(5)	that taxable person	that accountable person
14(5)	A taxable person	An accountable person
14(5)	a taxable person	an accountable person
14(6)	the taxable person	the accountable person
14(6)	a taxable person	an accountable person
14(7)	A taxable person	An accountable person
14(9)	the taxable person	the accountable person
15(1)	a taxable person	an accountable person
15(2)	a taxable person	an accountable person
15(2)	said taxable person	said accountable person
15(3)	a taxable person	an accountable person
15(7)	A taxable person	An accountable person
15(7)	a taxable person	an accountable person
15(7)	the taxable person	the accountable person
15(9)	a taxable person	an accountable person
15(9)	the taxable person	the accountable person
16(1)	a taxable person	an accountable person
16(4)	a taxable person	an accountable person
16(4)	the taxable person	the accountable person
16(5)	the taxable person	the accountable person
16A(2)	a taxable person	an accountable person
16A(4)	a taxable person	an accountable person
16A(5)	a taxable person	an accountable person
16A(5)	the taxable person	the accountable person
16A(7)	a taxable person	an accountable person
16A(7)	the taxable person	the accountable person
16A(8)	the taxable person	the accountable person
16A(9)	A taxable person	An accountable person
18(2)	a taxable person	an accountable person
18(2)	the taxable person's	the accountable person's
18(2)	the taxable person	the accountable person
18(2)	that taxable person	that accountable person

S.I. No. 548 of 2006	Words to be replaced	Words to be inserted
18(3)	A taxable person	An accountable person
18(3)	the taxable person's	the accountable person's
18(3)	the taxable person	the accountable person
18(4)	a taxable person	an accountable person
21(2)	a taxable person	an accountable person
21(2)	the taxable person	the accountable person
21(3)	a taxable person	an accountable person
21(3)	the taxable person	the accountable person
21(4)	a taxable person	an accountable person
26(1)	A taxable person	An accountable person
26(1)	a taxable person	an accountable person
26(2)	the taxable person	the accountable person
26(2)	other taxable persons	other accountable persons
26(3)	the taxable person	the accountable person
28(2)(h)	from taxable persons	from accountable persons
28(2)(h)	not taxable persons	not accountable persons
32(3)	a taxable person	an accountable person
32(3)	the taxable person	the accountable person
32(3)	said taxable person	said accountable person
32(4)	A taxable person	An accountable person
32(4)	another taxable person	another accountable person
32(5)	A taxable person	An accountable person
32(6)	Every taxable person	Every accountable person
34(2)	a taxable person	an accountable person
41	a taxable person	an accountable person

SCHEDULE 2

MISCELLANEOUS CHANGES TO TABLE OF CONTENTS, CROSS
HEADINGS AND SHOULDER NOTES IN PRINTED VERSION OF
VALUE-ADDED TAX REGULATIONS 2006

(included for convenience of reference)

S.I. No. 548 of 2006	Words to be replaced	Words to be inserted
Cross heading "TAXABLE PERSON" in the Table of Contents	TAXABLE PERSON	ACCOUNTABLE PERSON
Title to Regulation 3 in Table of Contents	a taxable person	an accountable person
Cross heading " <i>Taxable Person</i> " before Regulation 3	<i>Taxable person</i>	<i>Accountable person</i>
Shoulder note to Regulation 3	a taxable person	an accountable person

GIVEN under my hand,
2 July 2008

MICHAEL O'GRADY
Revenue Commissioner.

The Minister for Finance consents to the making of paragraphs (j) and (k) of Regulation 3 of the foregoing Regulations.



GIVEN under my Official Seal,
2 July 2008

BRIAN LENIHAN
Minister for Finance.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations amend the Value-Added Tax Regulations 2006 (S.I. No. 548 of 2006)—

- to correct all references to taxable person and accountable person following the amendments to these terms in Finance Act 2008 (the changes are outlined in two Schedules to the Regulations),
- to update all references to the Sixth Directive which was repealed by Council Directive 2006/112/EC of 28 November 2006 (Regulations 2, 9, 23 and 31 of the 2006 VAT Regulations),
- to provide that records of transactions that affect a person’s entitlement to deductibility are required to be kept, to clarify the type of records required to be kept by businesses whose customers are unregistered persons and to set out the details required in a capital good record (Regulation 8 of the 2006 VAT Regulations),
- to provide that a document containing a schedule of dates on which rent is payable will be treated as a VAT invoice provided it contains all the information required for a VAT invoice (Regulation 9 of the 2006 VAT Regulations),
- to exclude from the cash basis of accounting the tax chargeable on construction services supplied by subcontractors to principal contractors and in respect of which tax the principal contractor must account on a reverse charge basis (Regulation 15 of the 2006 VAT Regulations),
- to ensure that persons who are not liable to tax under the TCA 1997 are entitled to make a claim for bad debt relief in respect of VAT (Regulation 16A of the 2006 VAT Regulations),
- to substitute “accounting year” for “accounting period” wherever it occurs following the amendment to section 12(4) of the Act in Finance Act 2008 (Regulation 18 of the 2006 VAT Regulations), and
- to insert a provision in relation to exempting goods that are re-imported by the person who exported them so as to align it with the Customs rules (Regulation 37 of the 2006 VAT Regulations).

Two new Regulations are also inserted into the Value-Added Tax Regulations 2006 as follows—

Regulation 21A in relation to the capital goods scheme to deal with a change in accounting year during an adjustment period, and

Regulation 21B in relation to the private or non-business use of business assets.

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