

**FINANCE ACT 2014**

**VALUE-ADDED TAX**

**NOTES FOR GUIDANCE**

*Issued by VAT Policy and Legislation Branch, 23 December 2014*

## **65. Interpretation (Part 3)**

This section defines the Principal Act as the Value-Added Tax Consolidation Act 2010 for the purposes of Part 3 of the Act. This is a conventional provision in Finance Acts. It allows abbreviated terms to be used for references to previous legislation and thus facilitates drafting and subsequent reading of the legislation. For example, the term “Principal Act” used in Part 3 of this Act refers to the Value-Added Tax Consolidation Act 2010.

## **66. Amendment of section 84 of the VAT Consolidation Act (duty to keep records)**

### **Summary**

This section amends section 84 of the VAT Consolidation Act, which deals with duty to keep records. The amendments provide for an extended period for retention of records in certain circumstances.

Where a transaction is the subject of an inquiry, investigation, claim, appeal or legal proceedings in relation to any matter to which the VAT Consolidation Act relates, the normal 6 year retention period for records is extended, where necessary, to ensure that records relating to that transaction and to any return impacted by that transaction are retained until the issue has been finally determined.

In addition, the amendments clarify that linking documents, meaning documents drawn up in the making of the accounts or returns and showing details of the calculations linking the records to the accounts or returns, are subject to the record-keeping requirements outlined in the VAT Consolidation Act.

### **Details**

*Paragraphs (a), (c) and (d)* define linking documents and clarify that they are covered by the record-keeping requirements. Linking documents are documents drawn up in the making of accounts and returns showing the calculations linking records to those accounts and returns.

*Paragraph (b)* amends subsection (4) and provides that where a transaction is the subject of an inquiry, investigation, claim, appeal or legal proceedings which extends beyond the 6 year retention period, the records relating to that transaction, and to any return impacted by that transaction, must be retained until the inquiry, investigation, claim, appeal or legal proceedings has been finally determined.

This provision will only apply where an inquiry, investigation, claim, appeal or legal proceedings have commenced within the normal 6 year retention period and that inquiry, investigation, claim, appeal or legal proceedings or any further appeals or legal proceedings have not been determined within that period.

### **Commencement**

This section has effect from the date of passing of the Finance Act (23 December 2014).

## **67. Amendment of section 86 of the VAT Consolidation Act (special provisions for tax invoiced by flat-rate farmers)**

### **Summary**

This section amends section 86 of the VAT Consolidation Act which provides for special provisions for tax invoiced by flat-rate farmers. It confirms the Budget increase in the farmers’ flat-rate addition from 5.0% to 5.2%.

## Details

The flat-rate scheme is a simplified and practical method of applying VAT to farming. It compensates unregistered farmers, on an overall basis, for the VAT charged to them on their purchases of goods and services. The scheme in general reduces administrative burdens, as it provides that such farmers can remain outside the normal VAT system thereby avoiding the obligations in respect of registration, returns etc.

### *How does the Farmers' Flat-rate Scheme work?*

The flat-rate scheme sets out a percentage amount, known as the flat-rate addition, which unregistered farmers apply to their prices when selling to VAT-registered businesses (co-ops, meat factories, etc). The VAT-registered business treats the flat-rate amount as a normal business input in its periodic VAT return.

From 1 January 2015, the flat-rate compensation to unregistered farmers is increased to 5.2%.

### *Example*

- An unregistered farmer sells agricultural goods worth €100 to a meat factory on 1 January 2015;
- The flat-rate addition of 5.2% means the farmer receives €105.20 from the meat factory and this is reflected in either the invoice or settlement voucher;
- The factory claims back the €5.20 flat-rate addition as a credit in its normal VAT return.

### *Livestock rate*

The livestock rate, which is the VAT rate charged by VAT-registered farmers and other businesses on the supply of livestock remains unchanged at 4.8%.

## Commencement

This section has effect from 1 January 2015.

## **68. Insertion of a new section 108B into the VAT Consolidation Act (notice of requirement to issue a document)**

### **Summary**

This section inserts a new Chapter heading – Chapter 1A – ‘Special measures for the protection of the tax’ in Part 13 of the VAT Consolidation Act. It also inserts a new section, section 108B into that Chapter, which deals with notice of requirement to issue a document. It provides that the Revenue Commissioners may serve a notice, for a specified period, on an accountable person requiring that person to issue a document, which is in the same format as a VAT invoice, in respect of all supplies for which a VAT invoice is not issued.

This section also amends section 115 of the VAT Consolidation Act, which deals with penalties generally, to provide for a penalty for failure to comply with a notice served under section 108B.

### **Details**

*Paragraph (a)* creates a new Chapter 1A in Part 13 of the VAT Consolidation Act entitled ‘Special measures for the protection of the tax’. This chapter contains the existing sections 108A to 109 and new measures introduced by *this section and section 69 of the Act* to address tax evasion and fraud.

*Paragraph (b)* inserts a new section 108B in Part 13 of the VAT Consolidation Act, which provides for a notice of requirement to issue a document.

Subsection (1) of the new section 108B provides that the Revenue Commissioners, where they have reasonable grounds to believe it will assist in the prevention and detection of tax evasion, may serve a notice on an accountable person, for a specified period, requiring that person to issue, at the time a supply is made, a document similar to a VAT invoice to each customer to whom a VAT invoice is not issued. The document should contain all of the particulars that would be required on a VAT invoice, including the name and address of the customer. It should also contain a reference to section 108B of the VAT Consolidation Act unless subsection (2) applies.

Subsection (2) provides that the document may be issued as if it were a VAT invoice using a number from a series of numbers used for VAT invoices. Where this occurs, the accountable person must retain a separate record of the numbers relating to documents issued under a section 108B notice.

Subsection (3) of the new section 108B provides that the specified period will commence no earlier than 7 days from the issue of the notice and will not exceed 2 months duration.

*Paragraph (c)* inserts a new subsection (8B) into section 115 of the VAT Consolidation Act which provides for a penalty of €4,000 for failure to comply with a notice issued under the new section 108B.

### **Commencement**

This section has effect from the date of passing of the Finance Act (23 December 2014).

## **69. Insertion of a new section, section 108C, into the VAT Consolidation Act (joint and several liability for tax)**

### **Summary**

This section inserts a new section, section 108C, into the VAT Consolidation Act, which deals with joint and several liability.

Section 108C provides that, where VAT has been fraudulently evaded, a person who knowingly or recklessly participates in transactions connected to that fraudulent evasion of VAT is jointly and severally liable for the VAT that has not been remitted and Revenue may notify them accordingly.

### **Details**

Joint and several liability for VAT means that, subject to certain conditions, an accountable person is liable for the unpaid VAT of another accountable person.

Section 108C applies to taxable supplies of goods or services and to intra-Community acquisitions of goods. It provides that anyone who is jointly and severally liable will be liable for the net amount of VAT due i.e. the amount of VAT that should have been paid in relation to a supply. A person who is jointly and severally liable under this section will also be liable to pay interest on the outstanding amount of tax but will not be subject to penalties. It is possible that more than one accountable person may be notified that they are jointly and severally liable for the unpaid VAT where they are participants in a chain of transactions involving the same goods or services and where those transactions are linked to the fraudulent evasion of VAT.

*Subsection (1)* inserts a new section, section 108C, into the VAT Consolidation Act which deals with joint and several liability for tax.

- Subsection (1) of section 108C provides for definitions.
- Subsection (2) provides that where at the time a supply or acquisition is made, a person knows or is reckless as to whether or not that supply or acquisition is connected with the fraudulent evasion of VAT which has not been paid to the Revenue Commissioners by the person who was originally liable, those persons are jointly and severally liable for that VAT.
- Subsection (3) provides the formula for the calculation of the VAT due.
- Subsection (4) provides for the notification of the person that he or she is jointly and severally liable for unpaid VAT, the amount for which he or she is liable and with whom he or she is jointly and severally liable.

*Subsection (2)* makes related amendments to various sections of the VAT Consolidation Act to provide as follows:

*Paragraph (a)* amends section 5(1) and clarifies that the person made jointly and severally liable is an accountable person.

*Paragraphs (b) and (c)* amend section 111(1) and provide that the assessment procedures apply to tax for which a person is jointly and severally liable.

*Paragraphs (d) and (e)* amend sections 115 and 116 and provide that a person who is liable for VAT, only as a result of being jointly and severally liable under *this section*, is not liable to pay any penalty in respect of that unpaid VAT.

### **Commencement**

This section has effect from the date of passing of the Finance Act (23 December 2014).

### **70. Amendment of section 111 of the VAT Consolidation Act (assessment of tax due)**

#### **Summary**

This section amends section 111 of the VAT Consolidation Act which deals with assessment of tax due.

A person on whom a notice of assessment is served is entitled to appeal that assessment. Current VAT legislation provides for an appeal only against the amount of the assessment. The amendment aligns VAT legislation with similar provisions in the Taxes Consolidation Act 1997 to provide that a person can appeal an assessment with which he or she is aggrieved.

#### **Details**

The VAT Consolidation Act currently provides that a person may appeal an assessment to the Appeal Commissioners, where the person claims that the amount of the assessment is excessive. This appeal provision is therefore restricted to the amount of the assessment. However, the Taxes Consolidation Act 1997 provides that a person who is “aggrieved by any assessment” may appeal to the Appeal Commissioners. The grounds for appeal are therefore broader under the Taxes Consolidation Act than under the VAT Consolidation Act. The amendment ensures there is equity between the grounds for appeal against assessments made under the VAT Consolidation Act and those made under the Taxes Consolidation Act 1997.

## Commencement

This section has effect from the date of passing of the Finance Act (23 December 2014).

## 71. Amendment of Schedule 1 (exempt activities), Schedule 2 (zero-rated goods and services) and Schedule 3 (goods and services chargeable at the reduced rate), to the VAT Consolidation Act.

### Summary

This section amends Schedules 1, 2 and 3 to the VAT Consolidation Act.

**Schedule 1**, which deals with exempt activities, is amended in relation to the VAT treatment of certain:

- golfing fees,
- fostering services and
- pension services.

#### *Golf club green fees and membership fees*

Green fees charged by member-owned golf clubs and by non-profit making organisations providing golf facilities, as well as currently taxable membership fees for member-owned golf clubs, will become exempt from VAT with effect from 1 March 2015. Most annual membership fees in member-owned golf clubs are already exempt from VAT.

#### *Fostering services*

The existing exemption from VAT for fostering services is being extended to the provision of certain fostering services by all bodies engaged by the Child and Family Agency.

#### *Defined contribution pension schemes*

The judgment in the ECJ case ATP Pension Service C464/12 provided that the management of certain defined contribution pension schemes, which are not one-member arrangements, are exempt from VAT. The amendment ensures that Irish VAT legislation is in compliance with the judgment and will take effect from 1 March 2015.

**Schedule 2**, which deals with zero-rated goods and services, is amended in order to clarify that herbal tea and preparations derived from tea or herbal tea when supplied in non-drinkable form attract the same rate of VAT as traditional tea. The amendment applies the zero rate of VAT to products which are commonly regarded as tea when sold in non-drinkable form. Such products when sold in drinkable form are excluded from the zero rate.

**Schedule 3**, which deals with goods and services chargeable at the reduced rate, is amended with effect from 1 March 2015 as a consequence of the amendment being made to Schedule 1 in relation to golf green fees and certain membership fees.

### Details

#### **Amendment of Schedule 1 to the VAT Consolidation Act**

##### **Golf club green fees and membership fees**

*Subsection (1)(a)* substitutes a new paragraph for paragraph 3(4) of Schedule 1.

Most annual memberships in member-owned golf clubs are currently exempt from VAT. The judgment of the ECJ in the Bridport & West Dorset Golf Club Ltd ECJ case (C-495/12) clarified that green fees and shorter membership fees should be treated, for VAT purposes, in the same way as annual membership fees.

From 1 March 2015, all green fees and membership fees charged by member-owned golf clubs and non-profit making organisations providing golf facilities will be exempt from VAT. This is to ensure that Irish VAT legislation is in compliance with the judgment in the Bridport case. The exemption will include memberships of less than 200 days and corporate memberships, both currently taxed at the 9% reduced rate. A consequential amendment is made in *subsection (3)(a)*, to Schedule 3 of the VAT Consolidation Act.

This amendment only effects the VAT treatment of fees for participation in golf. Fees for participating in other sports are not affected. Fees for use of facilities for participation in sporting or physical educational activities, or services closely related to the provision of those facilities, other than golf, are already exempt from VAT under paragraph 3(4) of Schedule 1 to the VAT Consolidation Act.

It is likely that previously, member-owned golf clubs would have been entitled to recover a certain proportion of the VAT incurred on their purchases and overheads based on the proportion their taxable activities bore to their overall activities. This may change from 1 March 2015 when green fees and membership fees will be treated as exempt from VAT.

Revenue eBrief No. 09/14 sets out Revenue's position following the judgment in the Bridport case and indicated that, arising from that judgment, member-owned golf clubs could, if they so decided, treat non-member green fees as exempt with effect from 1 January 2014.

#### **Fostering services**

*Subsection (1)(b)* inserts a new subparagraph (2A) into paragraph 4 of Schedule 1. The amendment extends exemption from VAT to certain fostering services provided by bodies, engaged by the Child and Family Agency, which provide these services on a profit-making basis.

As charities and statutory bodies who provide these services on a 'not for profit' basis are not required to charge VAT on such supplies, the amendment is necessary to eliminate the distortion of competition created by the different VAT treatment of the same service provided by different bodies.

#### **Granting of credit**

*Subsection (1)(c)(i)* makes a minor technical amendment to paragraph 6(1)(e) of Schedule 1.

#### **Defined contribution pension schemes**

*Subsection (1)(c)(ii)* inserts a new clause into paragraph 6(2) of Schedule 1. The amendment extends exemption from VAT to the management of certain defined contribution pension schemes.

The VAT Directive exempts the management of certain financial services from VAT including the management of special investment funds. The judgment in the ECJ case ATP Pension Service (C-464/12), which has direct effect in all Member States, found that certain defined contribution pension schemes constitute 'special investment funds' and therefore the management of those specific pension schemes should also be exempt from VAT. The amendment ensures that Irish VAT legislation is in compliance with the VAT Directive as interpreted by the ECJ.

The ECJ judgment covers certain defined contribution pension schemes which meet the following criteria:

- the fund must be funded by the person to whom the retirement benefit is paid,
- the fund must be invested using a risk spreading principle, and
- the pension customer must bear the investment risk.

“One-member arrangements” are excluded from the exemption as, unlike the pension schemes in question in the ATP Pension Service ECJ case, they do not display the essential characteristic of a special investment fund. The ECJ judgment stated that “the essential characteristic of a special investment fund is the pooling of assets of several beneficiaries, enabling the risk borne by those beneficiaries to be spread over a range of securities”.

### **Amendment of Schedule 2 to the VAT Consolidation Act**

#### **Sea-going vessels and aircraft**

*Subsection (2)(a)* amends paragraph 6(2)(d) of Schedule 2. The amendments correct minor drafting errors, thereby clarifying the various services supplied by an intermediary, in relation to the supply of certain sea-going vessels and aircraft and equipment incorporated therein, that qualify for the zero rate of VAT.

#### **Tea and herbal tea**

*Subsection (2)(b)* amends paragraph 8(1) of Schedule 2 in two places.

*Subsection (2)(b)(i)* makes an insertion into Part B of Table 1 of the Food and Drink Table to provide that tea, herbal tea and preparations derived from either tea or herbal tea or a combination of these when supplied in drinkable form is excluded from the zero rate of VAT.

*Subsection (2)(b)(ii)* makes an insertion into column (2) of Part E of Table 1 of the Food and Drink Table to provide that the zero rate of VAT applies to tea, herbal tea and preparations derived from either tea or herbal tea or a combination of these when supplied in non-drinkable form.

The interpretation of herbal tea and preparations derived from tea or herbal tea will encompass fruit teas, fruit infusions and fruit-flavoured teas which contain ingredients similar to the ingredients of herbal teas.

Tea and herbal tea supplied in drinkable form as a hot take-away drink or as part of a meal or in the course of catering is liable to VAT at the second reduced rate of 9%.

### **Amendment of Schedule 3 to the VAT Consolidation Act**

*Subsection (3)(a)* amends paragraph 12 by deleting subparagraphs (2) and (3). The amendment is consequential to the amendment made in *subsection (1)(a)* in relation to golf club membership fees and green fees.

*Subsection (3)(b)* amends paragraph 17(4). This is a minor technical amendment which updates references to the latest Mineral Oil Tax Regulations.

*Subsection (4)* applies 1 March 2015 as the date of effect of the changes made in relation to golfing fees and pension services.

#### **Commencement**

*Subsections (1)(a) and (3)(a)* (golf club green fees and membership fees) have effect from 1 March 2015.

*Subsection (1)(c)(ii)* (management of certain defined contribution pension schemes) has effect from 1 March 2015.

*Subsections (1)(b), (1)(c)(i), (2), (3)(b) and (4)* (all other amendments) have effect from the date of passing of the Finance Act (23 December 2014).