

FINANCE ACT 2022
VALUE-ADDED TAX
NOTES FOR GUIDANCE

52. 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.

53. Amendment of section 46 of the Value-Added Tax Consolidation Act 2010 (rates of tax)

Summary

This section amends section 46 of the Value-Added Tax Consolidation Act 2010 to provide that the temporary VAT rate of 9% continues to apply to supplies of gas and electricity up until 28 February 2023.

Details

Under the provisions of the Finance (Covid-19 and Miscellaneous Provisions) Act 2022, the 9% rate of VAT for supplies of gas and electricity was introduced from 1 May 2022 up to 31 October 2022. This rate of 9% has been extended to apply to supplies of gas and electricity up to 28 February 2023.

This amendment formalises the associated Financial Resolution which was passed on Budget Night, 27 September 2022.

Commencement

This section has effect from 1 November 2022.

54. Amendment of section 59 of and Schedule 1 to the Value-Added Tax Consolidation Act 2010

Summary

This section amends section 59 and paragraph 6(1)(a) of Schedule 1 to the Value-Added Tax Consolidation Act 2010. The amendments provide clarification in respect of the application of VAT to the issue of new stocks, new shares, new debentures or new securities and the entitlement to VAT deductibility.

Details

Paragraph (a) provides for the deletion of section 59(1)(e) as a consequence of the removal of the reference to the issue of new shares in paragraph 6(1)(a) of Schedule 1. A specific entitlement to deduction in respect of the issue of new stocks, shares, debentures and other securities for raising capital is no longer necessary, as entitlement to deduction arises to the extent that the outputs of the accountable person are taxable transactions. This is already provided for under section 59(2).

Paragraph (b) provides for an amendment to paragraph 6(1)(a) of Schedule 1. This amendment removes the reference to ‘other than new stocks, new shares, new debentures or new securities for raising capital’ from paragraph 6(1)(a). Financial services consisting of issuing, transferring or otherwise dealing in these products is outside the scope of VAT. The previous wording implied that such services were excluded from the exemption and therefore taxable. The amendment clarifies the position.

Commencement

This section has effect from the date of passing of the Act (15 December 2022).

55. Amendment of section 65 of the Value-Added Tax Consolidation Act 2010 (Registration)

Summary

This section amends section 65(3), as well as making consequential changes to sections 91C(2), 91E(2) and 91K(2) of the Value-Added Tax Consolidation Act 2010. A new requirement for VAT-registered traders who commence cross-border trade within the EU has been introduced. Traders that operate under a domestic VAT registration number are required to inform Revenue when they commence intra-Community trade to allow their registration status to be updated.

Details

Paragraph (a)(i) designates a new section 65(3) (a) which has been transposed from the restructuring of subsection of 65(3), which requires particulars specified in regulations to be furnished to Revenue in writing for the purpose of registering the person for tax within 30 days of the person first becoming an accountable person.

Paragraph (a)(ii) provides for the insertion of a new subsection (3)(b) whereby an accountable person who has complied with subsection (3)(a) and stated that he or she shall not engage in intra-Community trade and subsequently does so, he or she must advise Revenue of this within 30 days of first engagement in the intra-Community trade.

Paragraph (a)(ii) also provides for a new subsection (3)(c) to enable Revenue to request a person to correct the particulars previously furnished in an application for VAT registration when they are notified that the accountable person has engaged in intra-Community trade.

Paragraph (a)(ii) provides a definition of “intra-Community trade” in a new subsection (3)(d).

Paragraphs (b), (c) and (d) provide for cross-reference changes arising in sections 91C(2), 91E(2) and 91K(2) due to the re-structuring of section 65(3).

Commencement

This section has effect from the date of passing of the Act (15 December 2022).

56. Amendment of section 86 of the Value-Added Tax Consolidation Act 2010 (special provision for tax invoiced by flat-rate farmers)

Summary

This section amends section 86 of the Value-Added Tax Consolidation Act 2010 to confirm the decrease in the farmers' flat-rate addition from 5.5 per cent to 5 per cent as announced in the Budget.

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 reduces their administrative burdens as it provides that such farmers can remain outside the normal VAT system thereby avoiding the obligations of registration and returns. 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 businesses treat the flat-rate amount as normal business inputs in their periodic VAT returns.

The new rate of 5 per cent for 2023 will achieve full compensation under the scheme.

Commencement

This section has effect from 1 January 2023.

57. Amendment of Part 13 of the Value-Added Tax Consolidation Act 2010 (administration and general)

Summary

This section introduces powers in Section 108 of the Value-Added Tax Consolidation Act 2010 to allow Revenue to exchange information held by financial institutions with other Member States when requested to do so under Council Regulation (EU) 904/2010 on administrative cooperation and combating fraud in the field of VAT.

Details

Paragraph (a)(i) is a technical amendment to correct a cross-reference.

Paragraph (a)(ii) substitutes a new subsection for subsection 108(8). Subsection 108(8) provides that the powers conferred on authorised officers by this section may be used by them in respect of mutual assistance requests received from other Member States under Council Regulation (EU) 904/2010 on administrative cooperation and combating VAT fraud in the field of value added tax. It also grants Revenue the power to access information held by financial institutions where that information is relevant to a mutual assistance request.

Paragraph (a) of subsection 108(8) contains various definitions for the purposes of the subsection, including EEA (European Economic Area) Agreement, EEA state, EU value-added tax (which includes VAT in the State as well as VAT in other Member States), financial institutions and records.

Paragraph (b) of subsection 108(8) provides that the powers contained in section 108 of the VAT Consolidation Act, which enables authorised officers of the Revenue Commissioners to enter business premises, inspect business records and, in certain circumstances, to remove the records and retain them

for a reasonable time, may be used by Revenue in respect of mutual assistance requests received from other Member States.

Paragraph (c) of subsection 108(8) provides that an authorised officer may serve a notice on a financial institution, requiring it, within a period of not less than 30 days, to make available for inspection the books, records or other documents, and/or to furnish the information, relevant to the mutual assistance request and which is specified in the notice. The notice issued shall also inform the financial institution of the fixed penalty for failing to comply with the notice.

Paragraph (d) of subsection 108(8) provides that where the financial institution complies with the notice by making books, accounts, etc., available, it is also obliged to provide reasonable assistance to the authorised officer in carrying out his or her inspection.

Paragraph (e) of subsection 108(8) provides that before a notice can be issued under the section, the authorised officer must have reasonable grounds to believe that the financial institution concerned is likely to have information relevant to the mutual assistance request and the officer must also obtain the written consent of a Revenue Commissioner.

Paragraph (f) of subsection 108(8) provides that an authorised officer may take extracts from or make copies of all or part of books, records, etc., made available by a financial institution following the issue of a notice.

Paragraph (b) amends section 115, which deals with penalties generally, to provide for a fixed penalty of €4,000 where a financial institution fails to comply with a notice served on it to provide the information.

Commencement

This section has effect from the date of passing of the Finance Act (15 December 2022).

58. Amendment of paragraph 2 of Schedule 1 to the Value-Added Tax Consolidation Act 2010 (medical and related services)

Summary

This section amends paragraph 2(3) of Schedule 1 of the Value-Added Tax Consolidation Act 2010 to clarify what medical professionals come within the scope of this exemption.

Details

This amendment clarifies that the exemption from VAT is limited to the provision of medical care services by medical and healthcare professionals who are registered or enrolled in a statutory register in the State.

Commencement

This section has effect from the date of passing of the Finance Act (15 December 2022).

59. Amendment of paragraph 3 of Schedule 1 to the Value-Added Tax Consolidation Act 2010 (certain independent groups, non-profit making organisations and other bodies)

Summary

This section amends paragraph 3(1) of Schedule 1 to the Value-Added Tax Consolidation Act 2010 to ensure that the VAT exemption for an independent group of persons, or cost sharing groups as they are more commonly known, can also apply to members of the group that carry out taxable activities in addition to their exempt and/or non-taxable activities.

Details

Two or more organisations with exempt and/or non-business activities who operate in the public interest may join together on a co-operative basis to form a cost sharing group to supply themselves with certain services at cost.

This amendment ensures that the exemption can also apply where members of the group have both taxable and exempt and/or non-taxable activities, provided all the other conditions of the exemption are met.

Commencement

This section has effect from the date of passing of the Finance Act (15 December 2022).

60. Amendment of paragraph 6(2) of Schedule 1 to the Value-Added Tax Consolidation Act 2010 (financial services – EU funds)

Summary

This section amends paragraph 6(2) of Schedule 1 to the Value-Added Tax Consolidation Act 2010 to clarify that financial funds subject to Directive 2009/65/EC (the Undertakings for Collective Investment in Transferable Securities Directive) and Directive 2011/61/EU (the Alternative Investment Funds Managers Directive) and which are registered in other EU Member States are exempt from VAT, similar to equivalent financial funds registered in the State. This amendment ensures that the Value-Added Tax Consolidation Act 2010 is correctly aligned with the VAT Directive.

Details

This section inserts new clauses (ec) and (ed) into paragraph 6(2) of Schedule 1. Paragraph 6(2) of Schedule 1 lists the categories of financial services where the management of an undertaking involved in the provision of such financial services is exempt from VAT.

The new clause (ec) includes an undertaking for collective investment in transferable securities (within the meaning provided in Article 1 of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009) duly authorised in another Member State within the list of categories of financial services.

Further, the new clause (ed) includes an EU AIF (as defined in point (k) of Article 4(1) of Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011³²) managed by an AIFM (as defined in point (b) of Article 4(1) of that Directive) which has been authorised by the competent authority (as defined in point (g) of Article 4(1) of that Directive) of another Member State as another category of financial service within the list contained in paragraph 6(2) of Schedule 1.

Commencement

This section has effect from the date of passing of the Finance Act (15 December 2022).

61. Amendment of paragraph 6(2) of Schedule 1 to the Value-Added Tax Consolidation Act 2010 (financial services – section 110 companies)

Summary

This section amends paragraph 6(2)(e) of Schedule 1 to the Value-Added Tax Consolidation Act 2010. Paragraph 6(2)(e) provides for a VAT exemption in respect of the management of an undertaking that is a qualifying company for the purposes of section 110 of the Taxes Consolidation Act 1997. The amendment restricts the application of this VAT exemption.

Details

This amendment removes the VAT exemption for the management of certain section 110 companies, specifically those holding ‘qualifying assets’ in the form of plant and machinery.

Commencement

This section has effect from 1 March 2023.

62. Amendment of paragraph 7 of Schedule 1 to the Value-Added Tax Consolidation Act 2010 (agency services)

Summary

This section amends paragraph 7 of Schedule 1 to the Value-Added Tax Consolidation Act 2010 to provide that the provision of agency services related to the management of an undertaking specified in paragraph 6(2) is not exempt from VAT.

Details

This section amends Schedule 1 by deleting paragraph 7(2). Paragraph 7 of Schedule 1 provides for an exemption from VAT for agency services provided to a business involved in financial services. Paragraph 7(2) includes the provision of agency services related to fund management within that exemption from VAT. The amendment removes the provision of those services from the VAT exemption.

Commencement

This section has effect from the date of passing of the Finance Act (15 December 2022).

63. Amendment of Schedule 2 to the Value-Added Tax Consolidation Act 2010 (zero-rated goods and services)

Summary

This section amends Schedule 2 to the Value-Added Tax Consolidation Act 2010. The amendment removes the wording “and preparations and extracts derived from milk” from paragraph 8(1) item (c) of column (2) of Part E of Table 1 of Schedule 2 as this wording is superfluous.

Details

The amendment clarifies that beverages such as smoothies and milkshakes are subject to VAT at the standard rate while preparations and extracts derived from milk which have been zero-rated in the past will continue to attract that zero-rating in line with current practice.

Commencement

This section has effect from the date of passing of the Finance Act (15 December 2022).

64. Amendment of Schedule 2 and Schedule 3 to the Value-Added Tax Consolidation Act 2010 (zero-rated goods and services)

Summary

This section amends Schedule 2 and 3 to the Value-Added Tax Consolidation Act 2010 to provide for the application of the zero-rate of VAT to the supply of:

- newspapers, including e-newspapers,
- non-oral hormone replacement therapy medicine and non-oral nicotine replacement therapy medicine,
- automated external defibrillators, including parts or accessories suitable for use solely or principally with an automated external defibrillator, and
- menstrual cups, menstrual pants and menstrual sponges.

Details

- **Newspapers and e-newspapers**

Paragraphs (a)(i) and (a)(ii) of this section amend Part 2 of Schedule 2 to apply the zero-rate of VAT to newspapers, including electronically supplied newspapers.

The amendments contained in (b)(ii) and (iii) of this section are consequential amendments to Schedule 3, which sets out goods and services which are chargeable at the reduced rate of VAT. These amendments delete references to newspapers and electronically supplied newspapers from Schedule 3.

- **Non-oral Hormone Replacement Therapy medicine and non-oral Nicotine Replacement Therapy medicine**

Paragraph (a)(iii)(I) of this section amends paragraph 11(1) of Schedule 2 to apply the zero-rate of VAT to non-oral hormone replacement therapy and non-oral nicotine replacement therapy.

- **Automated external defibrillators, including parts or accessories suitable for use solely or principally with an automated external defibrillator.**

Paragraph (a)(iii)(II) of this section contains an amendment to paragraph 11(3) of Schedule 2. The amendment involves the insertion of a new clause (ba) and the amendment of clause (d). The new clause (ba) provides that automated external defibrillators are subject to the zero-rate of VAT. The amendment to clause (d) is a consequential amendment, which provides that parts or accessories suitable for use solely or principally with an automated external defibrillator are also subject to the zero-rate of VAT.

- **Menstrual cups, menstrual pants and menstrual sponges**

Paragraph (a)(iv) of this section amends paragraph 13(3) of Schedule 2 to extend the zero-rate of VAT to menstrual cups, menstrual pants and menstrual sponges. This zero-rate already applies to the supply of sanitary towels and sanitary tampons. *Paragraph (b)(i)* contains a related, consequential amendment of Schedule 3. This amendment deletes paragraph 5A of that Schedule to remove menstrual cups, menstrual pants and menstrual sponges from Schedule 3.

Commencement

This section has effect from 1 January 2023.