

UPDATE February 2009 of REVENUE VAT GUIDE July 2008

This is a brief note of changes applicable to the VAT Guide 2008 arising out of the Finance Act (No. 2) 2008.

Please note the following amendments:

---Standard VAT rate---The standard 21% rate of VAT was increased to 21.5% with effect from 1 December 2008.

---Chapter 10, paragraphs 7 to 10 - Deductible VAT -- With effect from 24 December 2008 a taxable business can deduct 20% of the VAT charged on the purchase, hiring, intra-Community Acquisition or importation of certain qualifying vehicles where the vehicle is used for at least 60% business purposes. The car must be first registered for VRT purposes on or after 1 January 2009 and have a level of CO₂ emissions of less than 156g/km (i.e. CO₂ emission bands A, B and C).

The car must be used by the business, primarily for business purposes, for a period of at least two years. If a business disposes of that car within that two-year period, a clawback of some of the VAT deducted will arise. A clawback will also arise if business use goes below 60% in that two-year period. However, if the business sells the car after that two-year period, there will be no clawback.

---Chapter 11, paragraph 1 - When VAT becomes payable - insert after second paragraph: 'With effect from the 1 January 2009 an extension to the existing deadline for filing VAT returns where an accountable person both pays and files electronically via Revenue Online Service, whether voluntarily or under the mandatory regime, is available to VAT registered persons. The existing time limit of the nineteenth day of the month for filing a VAT return has been extended to the 23rd of the month.'

---Chapter 11, paragraph 10 – Unjust Enrichment -- With effect from 24 December 2008 the rules have changed for a claim for refund of VAT that has been overpaid as a result of a mistaken assumption in the operation of the tax. A claimant must now provide full details in writing of the circumstances of the case together with a calculation of the amount of tax due for each taxable period of the claim. In addition a claimant is required to submit such documentation in support of a claim as is requested by Revenue.

In determining whether unjust enrichment arises, Revenue must establish the extent to which the cost of the overpaid tax has been passed on in the price charged for goods or services to the customer. Revenue must also take account of any loss of profit suffered by the claimant, resulting from the mistaken assumption, based on Revenue's own analysis and on any information provided to them by the claimant.

---Chapter 17, paragraph 5 is superseded by the following---

17.5 Penalties generally

Where there is no agreement with a taxpayer on the amount of a penalty due or where an agreed penalty is not paid, the taxpayer is given an opportunity to have a court examine whether the taxpayer is liable for the civil penalty for contravention of the tax legislation. Where the person is found by the court to be liable to pay a penalty, the penalty may be recovered in the same way as tax is recovered. There is nothing, however, to prevent a person from agreeing with, and paying a penalty without the intervention of the court.

With effect from 24 December 2008 fixed penalty amounts are as follows:-

Failure to register as an accountable person	€4,000
Failure by a flat-rate farmer to issue an invoice showing the flat-rate addition	€4,000
Failure to keep proper books and records	€4,000
Failure to comply with invoicing requirements	€4,000
Failure to charge the tax and pay the tax over to Revenue	€4,000
Failure to furnish a quarterly statement of intra-Community supplies (VIES return) to the Revenue Commissioners	€4,000
Issue of a VAT invoice by a non-registered person	€4,000
Unauthorised charge of a flat-rate addition	€4,000
In the case where the failures or acts referred to above are carried out by a body of persons the secretary of the body is liable for the payment of a separate penalty	€4,000
Wilfully obstructing or delaying an officer authorized by the Revenue Commissioners in exercising his/her powers	€4,000
Preventing or obstructing a person authorized by the Revenue Commissioners to inspect property for the purposes of valuing the property for VAT purposes	€4,000
Supplying taxable goods and services in contravention of the requirement of security for the protection of the Revenue (Section 23A bond) in respect of each such supply	€4,000
Assisting in making incorrect returns, invoices, credit notes etc	€4,000

Reductions in these penalties apply in certain circumstances of co-operation and qualifying disclosure.

Paragraphs 17.6 and 17.7 are superseded by the following

17.6 Deliberate and careless behaviour

The concepts of 'fraud' and 'negligence' for the purpose of administering penalties have been superseded by the concepts of 'deliberate' and 'careless' behaviour with effect from 24 December 2008. The concepts of 'deliberate' and 'careless but not deliberate' have been introduced into VAT law.

17.7 Penalties for deliberate or careless behaviour

As stated above, with effect from 24 December 2008 the concepts of 'fraud' and 'negligence' for the purpose of administering penalties have been superseded. In cases where a person deliberately furnishes an incorrect return or makes an incorrect claim or declaration, VAT law now provides for penalties equal to the difference between the amount of tax paid or claimed and the amount properly paid or refundable. Where a person deliberately fails to furnish a return then he/she is liable for a penalty equal to the difference between the amount of tax paid for the relevant period, before the start of an investigation by Revenue, and the amount properly payable. These fines may be reduced to varying degrees depending on whether the person carelessly but not deliberately failed to comply, co-operates fully with Revenue, the timing of that co-operation in certain circumstances, whether a person makes a qualifying disclosure or a prompted or unprompted qualifying disclosure of the breach. (These terms are defined in the VAT Act.) The significance of the relative levels of tax underpaid is also recognised for the purposes of reduction of the penalties, as is the issue of second, third and subsequent qualifying disclosures within certain time frames.

Where a person referred to above is a body of persons the secretary is liable to a separate penalty of €1,500 or, in the case of deliberate behaviour, €3,000.

In the case of the recovery of penalties from the estate of a taxpayer after death, penalties will only be recovered where the person either agreed in writing to the penalties or a court determined before the person's death, that the person was liable to the penalties.

Where a person deliberately issues or makes use of a VAT invoice, credit note etc., number, account, bank statement, record, and then that person becomes liable to a penalty of €5,000. Where that person acts carelessly in such circumstances then the penalty is €3,000.

A penalty of €4,000 is provided for in a case where a person improperly procures the importation of goods without payment of tax in circumstances in which VAT is chargeable. The person must also pay to Revenue the amount of tax that should have been paid on the importation of the goods. Penalties for breach of Customs law may also apply. The goods are also liable to forfeiture.

Where a person uses an incorrect VAT number to acquire goods VAT free in another Member State that person becomes liable for a penalty of €4,000 and in addition, the VAT which would have been chargeable on the Intra-Community acquisition of those goods.

Where VAT has been remitted or repaid for the purposes of the 13A VAT Scheme and they are found in the State after the date on which they were alleged to have been transferred out of the State or any condition of the Revenue under the Scheme has not been complied with, then the goods are liable to forfeiture and the tax which was remitted or repaid becomes payable forthwith by the person to whom the goods were supplied or any person in whose possession the goods are found and the provisions of the Taxes Consolidation Act, 1997 (as amended) also apply. Revenue may waive all or part of that tax if they see fit.

Chapter 17, paragraph 17.13 This paragraph is deleted.

Appendix B Page 133 –in paragraph (xii) – substitute the following for Clauses I and II of subparagraph (b)

- (I) tea and preparations thereof when supplied in non-drinkable form
- (II) cocoa, coffee and chicory and other roasted coffee substitutes, and preparations and extracts thereof, when supplied in non-drinkable form,

CORRIGENDUM

Paragraph 18.3 Credit Notes

Delete ' must show VAT at the new rate even if the original invoice showed VAT at the old rate.', and substitute ' should show VAT at the rate in force at the time the original invoice issued.'

Further information

Enquiries regarding any issue contained in this addendum should be addressed to the Revenue District responsible for your tax affairs. Contact details for all Revenue Districts can be found on the [Contact Details page](#).

This leaflet is issued by

**VAT Appeals & Communications Branch
Indirect Taxes Division
Dublin Castle**

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