

**FINANCE ACT 2012**

**VALUE-ADDED TAX**

**NOTES FOR GUIDANCE**

*Issued by VAT Policy and Legislation Branch, April 2012*

## **84. 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.

## **85. Ministerial Orders**

### **Summary**

This section amends sections 2(1), 52(2) and 103 of the VAT Consolidation Act, which relate to the powers of the Minister to make certain orders in relation to VAT.

The amendments strengthen the provisions relating to the making of Ministerial Orders and provide that the Minister may include in an order certain requirements to be complied with by a person following receipt of a refund under that order.

The amendments to section 103, together with the amendments in *sections 91, 92 and 93 of this Finance Act*, form a suite of measures to prevent the abuse of refund orders.

### **Details**

Current VAT legislation authorises the Minister for Finance to make an order declaring any supply of goods or services to be exempt from VAT. The amendments to sections 2(1) and 52(2) provide that the Minister may amend Schedule 1, which lists supplies that are exempt from VAT, by order.

#### **Section 2(1) –**

*Paragraph (a)* amends section 2(1) in the definition of “exempted activity”. The amendment is consequential to the amendment to section 52(2).

#### **Section 52(2) –**

*Paragraph (b)* amends section 52(2) to provide that the Minister may, by order, amend Schedule 1.

#### **Section 103 –**

Currently this section authorises the Minister for Finance to order repayment of tax in certain circumstances. It allows the Minister to make orders, which will enable repayment of tax to be made to persons who fulfill the conditions set out in the orders.

*Paragraphs (c) and (d)* are technical amendments.

*Paragraph (e)* inserts two new subsections (2A) and (2B) into section 103.

**Subsection 2A** provides that when making a refund order, the Minister considers the nature of the goods or services to which the order relates and/or the nature of the person to whom the refund order relates.

**Subsection 2B** provides that the Minister may include in an order a requirement for a person who receives a refund to carry out a review, to ensure that conditions in the order have been fulfilled, and to repay all or part of the refund to the Revenue Commissioners if those conditions have not been fulfilled.

## **Commencement**

This section has effect from the date of passing of the Finance Act (31 March 2012).

## **86. Supplies of construction services between connected persons – Reverse Charge**

### **Summary**

This section amends sections 16, 19, 41, 59 and 66 of the VAT Consolidation Act.

The amendments extend the VAT reverse charge mechanism to the supply of construction services between connected persons with effect from 1 May 2012.

### **Details**

The amendments provide for the application of a reverse charge in the case of an accountable person carrying on a business in the State, who supplies construction services to a connected person (as defined in section 97(3)) in the course or furtherance of business.

#### **Section 16**

*Subsection (1)(a)* amends section 16 by inserting a new subsection (5). It sets out what constitutes construction work and provides for the introduction of a reverse charge mechanism, making the recipient of the construction services the accountable person for the VAT due in relation to the supply of such services between connected persons (within the meaning of section 97(3)).

#### **Section 19**

*Subsection (1)(b)* amends section 19(1), which defines a supply of goods, by deleting paragraph (d). It removes a provision relating to immovable goods which no longer has any practical application.

#### **Section 41**

*Subsection (1)(c)* amends section 41(4) by inserting a reference to the new section 16(5). This amendment provides that the 'two-thirds rule' does not apply to supplies of construction services between connected persons subject to the new reverse charge mechanism.

#### **Section 59**

*Subsection (1)(d)* amends section 59(2) by inserting a new paragraph (ib), which provides that tax incurred by the recipient of the construction services may be deducted by that person, subject to the usual deductibility rules.

#### **Section 66**

*Subsection (1)(e)* amends section 66 by inserting a new subsection (4B) which provides that the supplier of the construction services, who is subject to the new reverse charge rule, must provide a document to the recipient indicating that the recipient is liable to account for the VAT, unless the recipient and the person who supplied the construction services agree that the document can be drawn up by the recipient. This document must contain the details required on an invoice, other than the amount of tax payable and the rate of tax applicable.

*Subsection (2)* provides that these provisions come into effect on 1 May 2012.

## **Commencement**

This section has effect from 1 May 2012.

## **87. Amendment of section 46 of the VAT Consolidation Act (rates of tax)**

### **Summary**

This section amends section 46 of the VAT Consolidation Act, which relates to rates of tax.

The amendment confirms the Budget announcement of 6 December 2011 in which the standard rate of VAT was increased from 21 per cent to 23 per cent.

### **Details**

The standard rate of VAT was increased from 21 per cent to 23 per cent with effect from 1 January 2012.

Detailed information on the effect of the increase in the rate of VAT is outlined in the Revenue information leaflet '[Budget Rate Change 2012](#)' published in December 2011. The leaflet covers the effect on fixed interval payments, continuous supplies and traders accounting for tax on the invoice basis and/or cash receipts basis.

### **Commencement**

This section has effect from 1 January 2012.

## **88. Amendment of section 66 of the VAT Consolidation Act (issue of invoices and other documents)**

### **Summary**

This section amends section 66 of the VAT Consolidation Act, which deals with the issue of invoices and other documents.

The amendment removes a provision which facilitated VAT deductibility within the travel agents' margin scheme.

### **Details**

The amendment deletes subsection (5), which facilitated deductibility by allowing a travel agent to issue a document showing the VAT chargeable on qualifying accommodation for the purposes of attending a qualifying conference under the travel agents' margin scheme.

The amendment is necessary to ensure that Irish VAT legislation is in compliance with the VAT Directive.

VAT deductibility in relation to conference accommodation where the accommodation is supplied under the normal VAT rules is not affected.

### **Commencement**

This section has effect from the date of passing of the Finance Act (31 March 2012).

## **89. 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 amendment provides that records must be retained for a period of 6 years where a company has been liquidated.

### **Details**

Section 84 imposes a general requirement on persons accountable for VAT to retain records for 6 years. However, in the case of a company being wound up, the provisions of Section 305(1) of the Companies Act 1963 apply, which requires records to be kept by the liquidator for a period of 3 years from the date of dissolution.

The amendment deletes the provision relating to the Companies Act, thereby providing that where a company has been liquidated, records must be retained for a period of 6 years. The amendment corresponds with changes being made to the Taxes Consolidation Act 1997.

### **Commencement**

This section has effect from the date of passing of the Finance Act (31 March 2012).

## **90. Amendment of section 95 of the VAT Consolidation Act (transitional measures for supplies of immovable goods)**

### **Summary**

This section amends section 95 of the VAT Consolidation Act, which provides for transitional measures for supplies of immovable goods.

The amendment confirms that the adjustment period for transitional properties will not revert to 20 years where development has taken place and where that development constitutes a 'refurbishment' for VAT purposes.

### **Details**

Section 95 provides for transitional measures in relation to supplies of immovable goods for both transitional freehold properties and legacy leases. These transitional measures were introduced in Finance Act 2008, when the new VAT on property regime came into effect.

Immovable goods have their own VAT lifespan. If an immovable good is further developed, that development would, where appropriate, create a new and separate capital good with its own lifespan. A property could have two separate VAT life spans – one for the original completed property and a second for the later development (which is classified as a refurbishment for VAT purposes and has a 10 year lifespan). On the assignment of a lease, for example, there would be two VAT amounts to be accounted for – one for the original capital good (the lease) and a further one for the subsequent development on that leasehold interest (the refurbishment).

Section 95(12) sets out the periods during which adjustments of deductions are required to be made in respect of transitional properties and legacy leases for the purposes of the capital goods scheme.

The amendment to section 95(12)(c) confirms that the adjustment period for transitional properties will not revert to 20 years where development has taken place and where that development constitutes a 'refurbishment' for VAT purposes. This ensures the correct calculation of VAT over the lifetime of a property.

### **Commencement**

This section has effect from the date of passing of the Finance Act (31 March 2012).

## **91. 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.

The amendment provides that an assessment may be raised to recover VAT refunded to a person under a refund order where that VAT was not properly refundable.

The amendment, together with the amendments *in sections 85, 92 and 93 of this Finance Act*, form a suite of measures to prevent the abuse of refund orders.

### **Details**

Ministerial Refund Orders made in accordance with section 103 of the VAT Consolidation Act provide for the refund of VAT, in certain circumstances, to persons who are not accountable persons and who are therefore not otherwise entitled to recover VAT.

The amendment provides that where a person obtains a refund of VAT in accordance with a refund order made under section 103 and it subsequently transpires that the VAT was not properly refundable (for example, the item the subject of the refund, was not used for the purpose intended by the order), in such circumstances, an assessment may be raised to recover the amount not properly refundable.

*Paragraph (a)* is a technical amendment.

*Paragraph (b)* inserts a new paragraph (d), into subsection (1), which extends the list of circumstances in which an assessment may be made to include tax not properly refundable under a refund order.

*Paragraph (c)* amends subsection (1)(i) to allow the Revenue Commissioners to make an assessment in one sum of the total tax which should have been refunded (including a nil amount) under a refund order in relation to any period.

### **Commencement**

This section has effect from the date of passing of the Finance Act (31 March 2012).

## **92. Insertion of new section 114A into the VAT Consolidation Act (interest payable in certain circumstances)**

### **Summary**

This section inserts a new section 114A into the VAT Consolidation Act to provide that interest may apply where a person who receives a refund of tax under a refund order fails to repay the amount of that refund to Revenue where the tax was not properly refundable to the person.

The new section, together with the amendments in *sections 85, 91 and 93 of this Finance Act*, form a suite of measures to prevent the abuse of refund orders.

### **Details**

Ministerial Refund Orders made in accordance with section 103 of the VAT Consolidation Act provide for the refund of VAT, in certain circumstances, to persons who are not accountable persons and who are therefore not otherwise entitled to recover VAT.

Section 114A provides for interest payable by persons who are not accountable persons.

Subsection (1) provides that where a person obtains a refund of VAT under an order and where that VAT was not properly refundable, the person will be liable to interest on the amount refunded from the date the refund was made.

Subsection (2) provides that where an assessment is raised to recover an amount refunded under a refund order interest will apply from the period to which the assessment relates.

### **Commencement**

This section has effect from the date of passing of the Finance Act (31 March 2012).

## **93. Amendment of section 115 of the VAT Consolidation Act (penalties generally)**

### **Summary**

This section amends section 115 of the VAT Consolidation Act, which deals with penalties.

The amendment provides for a fixed penalty of €4,000 where a person fails to comply with a requirement specified in a refund order.

The amendment, together with the amendments in *sections 85, 91 and 92 of this Finance Act*, form a suite of measures to prevent the abuse of refund orders.

### **Details**

Ministerial Refund Orders made in accordance with section 103 of the VAT Consolidation Act provide for the refund of VAT, in certain circumstances, to persons who are not accountable persons and who are therefore not otherwise entitled to recover VAT.

A new subsection (7B) is inserted into section 115, which provides for a fixed penalty of €4,000 where a person obtains a refund of VAT under an order and that person fails to comply with a requirement in that order.

## **Commencement**

This section has effect from the date of passing of the Finance Act (31 March 2012).

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

### **Summary**

This section makes two amendments to Schedule 2 to the VAT Consolidation Act, which deals with goods and services chargeable at the zero rate.

The amendments update the definition of bread so as to ensure that certain products that are commonly accepted as being bread are not excluded from the application of the zero rate.

### **Details**

The amendments extend the definition of bread for the application of the zero rate of VAT.

*Paragraph (a)* amends Part F of Table 1 in paragraph 8 to ensure that breads made from non-cereal flours, for example, gluten free breads, qualify for the zero rate.

*Paragraph (b)* substitutes a new Table 2 for the existing Table 2 in paragraph 8 which sets out ingredients and weight limits for the definition of bread.

Breads subject to the zero rate include loaves, rolls, batch bread, certain bagels, baps, blaa bread, burger buns, finger rolls, wraps, naan bread and pitta bread.

Certain bakery products with high levels of sugar and fat, such as brioche and croissants, remain outside the definition of bread and are liable to VAT at the 13.5 per cent rate. Bakery products containing egg are not considered bread.

## **Commencement**

This section has effect from the date of passing of the Finance Act ( April 2012).

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

### **Summary**

This section amends Schedule 3 to the VAT Consolidation Act, which deals with goods and services chargeable at the reduced rate.

The amendments relate to

- the admission to built and natural heritage facilities,
- the admission to open farms, and
- the supply of district heating.

### **Details**

*Subsection (1)(a)* is a technical amendment.

*Subsection (1)(b)* defines an open farm for the purposes of Schedule 3.

*Subsection (1)(c)* makes two amendments to paragraph 8:-

- Firstly subparagraph (4) is amended to extend the temporary reduced rate of 9 per cent to the admission to built and natural heritage facilities.
- Secondly a new subparagraph (5) is inserted which provides that admission to an open farm is liable to VAT at the temporary reduced rate of 9 per cent.

Where such admission charges include a charge for goods or services other than admission to the built and natural heritage facilities or to the open farm, the rate appropriate to those goods or services will apply to that element of the charge.

*Subsection (2)* prescribes 1 January 2012 as the effective date for the application of the temporary 9 per cent rate to the admission to built and natural heritage facilities and to open farms.

*Subsection (3)* inserts a new Part 2A into Schedule 3, which provides that the supply of district heating is liable to VAT at the reduced rate of 13.5 per cent.

*Subsection (4)* prescribes 1 March 2012 as the effective date for the application of the 13.5 per cent rate to the supply of district heating.

### **Commencement**

*Subsection (1)* has effect from 1 January 2012.

*Subsection (3)* has effect from 1 March 2012.