

FINANCE ACT 2020
VALUE-ADDED TAX
NOTES FOR GUIDANCE

37. 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.

38. Amendment of section 2 of the Value-Added Tax Consolidation Act 2010 (Interpretation General)

Summary

This section amends section 2 of the Value-Added Tax Consolidation Act 2010 to provide that the definition of ‘immovable goods’ reflects the definition as provided for in the EU VAT Directive.

Details

A change to the definition of ‘land’ in the Interpretation Act 2005 affected the definition of ‘immovable goods’ in the Value-Added Tax Consolidation Act 2010.

This amendment to section 2 of the Value-Added Tax Consolidation Act 2010 clarifies the interpretation and application of VAT legislation as it relates to certain property transactions involving the sale of rights in land or property. This amendment clarifies that such transactions are taxed at the standard rate of VAT.

Commencement

This section has effect from the date of passing of the Finance Act (19 December 2020).

39. 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 9% rate of VAT temporarily applies from the 1st of November 2020 to 31st of December 2021 to supplies of certain goods and services which primarily relate to the hospitality and tourism sector. These supplies were previously subject to the VAT rate of 13.5%.

Details

Paragraph (a) amends section 46(1) of the Value-Added Tax Consolidation Act 2010 by providing for a further exclusion of paragraph (cb) from the 13.5 per cent rate. This has the effect of extending the items liable at the rate of 9 per cent.

Paragraph (b) amends section 46(1) of the Value-Added Tax Consolidation Act 2010 by inserting a new paragraph (cb) into that section. This amendment provides that the 9% rate of VAT temporarily applies to supplies of restaurant and catering services, guest and holiday accommodation, various entertainment services such as admissions to cinemas, theatres, museums, fairgrounds and amusement parks. The 9% VAT rate also temporarily applies to hairdressing services and to certain printed matter such as brochures, maps, and programmes.

Items which were previously liable at the rate of 9 per cent such as newspapers, periodicals, electronic publications (being books, newspapers and periodicals supplied electronically), along with the provision of facilities for taking part in sport, all remain liable at that rate.

Commencement

This section has effect from 1st November 2020.

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

Summary

This section amends section 86 of the Value-Added Tax Consolidation Act 2010 to confirm the increase in the farmers' flat-rate addition from 5.4 per cent to 5.6 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.

This section amends section 86(1) of the Value-Added Tax Consolidation Act 2010 to provide for the increase in the Farmers' Flat-rate addition from 5.4% to 5.6%.

Commencement

This section has effect from 1 January 2021.

41. Insertion of a new Section 109A into the Value-Added Tax Consolidation Act 2010 (Tax Representative)

Summary

This section inserts a new section 109A in Part 13 of the Value-Added Tax Consolidation Act 2010. Section 109A provides that the Revenue Commissioners may, where it appears requisite for them to do so for the protection of the revenue, require a non-EU established supplier to appoint a tax representative who will be the person liable for the payment of tax due when that non-EU supplier is making taxable supplies of goods or services in the State.

Details

Section 109A grants Revenue the power to notify a taxable person who is not established in the EU that he/she is required to appoint a tax representative, who is established in the EU, as the person liable for the payment of tax due that arises in respect of that person making supplies in the State.

This section also provides that a tax representative appointed under this provision will be held jointly and severally liable for the VAT liability arising from any supply of goods or services made in the State by that taxable person.

Paragraph (a) amends section 5 of the Value-Added Tax Consolidation Act 2010 which provides for the rules in relation to persons who are, or who may become, accountable persons. This paragraph amends section 5(1)(b) to provide for the inclusion of persons specified in section 109A as accountable persons.

Paragraph (b) amends the Value-Added Tax Consolidation Act 2010 by inserting a new section 109A into that Act.

Subsections (1) and (2) provide that the Revenue Commissioners may for the protection of revenue serve a notice on a taxable person, who is not established in the State nor in any country which is covered by mutual assistance provisions similar to Directive 76/308/EEC and Regulation (EC) No. 1798/2003, requiring that person to appoint a tax representative who is established in the Community. That tax representative shall then be liable to account for the tax due by the taxable person he or she represents.

Subsection (3) provides that subsection (1) shall not apply to a person not established in the EU who has opted to avail of the non-Union scheme under MOSS and from 1 July 2021 the non-Union scheme under OSS.

Subsection (4) provides that a tax representative appointed under this section will be jointly and severally liable with the taxable person for payment of the tax due and payable by the taxable person as though the tax was due and payable by that tax representative.

Subsection (5) provides that a notice issued under subsection (1) requires the taxable person to furnish Revenue with details of the appointment of the tax representative within 21 days of receipt of the notice, specifies the form in which those details will be furnished and informs the taxable person of the penalty for failing to comply with the notice.

Paragraph (c) provides that assessments of tax may be raised under section 111(1) on the tax representative where all or some of the tax has not been paid, subject to the usual time limits.

Paragraph (d)(i) provides that the penalty provisions do not apply to a tax representative in respect of a joint and several liability under section 115(1)(a).

Paragraph (d)(ii) provides that a fixed penalty of €4,000 will apply to the taxable person where that person fails to comply with a notice served under section 109A.

Paragraph (e) provides that a tax representative who is liable for VAT only as a result of being jointly and severally liable under section 109A is not liable under section 116 to pay any penalty in respect of that unpaid VAT.

Commencement

This section has effect from the date of passing of the Finance Act (19 December 2020).

42. Amendment of section 24, Schedule 1 and Schedule 2 of the VAT Consolidation Act 2010

Summary

This section amends section 24 of, and Schedules 1 and 2 to, the Value-Added Tax Consolidation Act 2010 in relation to application of a zero-rate of VAT to certain supplies of goods and services to NATO forces and EU defence forces.

Details

Subsection 1(a) amends section 24 by inserting a new subsection (2A) which provides that goods purchased by the armed forces of a Member State taking part in an EU common security and defence policy (CSDP) for the use of those forces or their civilian staff which have not been subject to tax at the time of purchase in a Member State shall be treated as an intra-Community acquisition of goods for consideration where their importation would not be eligible for an exemption in the Member State where purchased.

This relates to goods purchased in a Member State by the forces of another Member State that are stationed in that Member State, where those goods were not purchased under local VAT rules in that host Member State and where an exemption from VAT on the importation of those goods was not applicable.

Subsection 1(b) amends paragraph 15 of Schedule 1 by inserting a new subparagraph (3) which provides for the exemption from VAT to apply to

the importation of goods by the armed forces of a Member State other than the State for their use or that of their civilian staff or for use in their messes or canteens where those forces take part in a defence effort under the CSDP of the EU.

Subsection 1(c)(i) amends paragraph 5 of Schedule 2 by inserting a new subparagraph (1B) which provides for the zero-rating of the supply of goods or services from the State to a Member State other than the State for the armed forces of any state which is a party to the North Atlantic Treaty, other than the Member State of destination of the goods or services, for their use or that of their civilian staff or for use in their messes or canteens where those forces take part in a common defence effort under the North Atlantic Treaty.

Subsection 1(c)(ii) amends paragraph 5 of Schedule 2 by inserting new subparagraphs (1C) and (1D) which provide respectively for the zero-rating of the supply of goods or services in the State to the armed forces of a Member State other than the State for the use of those forces or their civilian staff or their messes or canteens where those forces take part in a defence effort for the implementation of a European Union activity under the European Union CSDP. It also provides for the zero-rating of the supply of goods or services from the State to another Member State intended for the armed forces of any Member State, other than the Member State of destination of the goods or services, for the use of those forces or of their civilian staff or their messes or canteens where those forces take part in a defence effort for the implementation of a European Union activity under the CSDP.

Section 2 provides for the appropriate commencement dates.

Commencement

Subsection 1(c)(i) has effect from the date of passing of the Finance Act (19 December 2020) while all other subsections of this section shall apply from 1 July 2022.

43. Food and drink

Summary

This section amends section 25 and Schedules 2 and 3 of the Value-Added Tax Consolidation Act 2010 in relation to restaurant and catering services and updates the Act as regards the VAT treatment of food and drink supplied by means of vending machines. This amendment aligns the Value-Added Tax Consolidation Act 2010 with the EU VAT Directive.

Details

Paragraph (a) deletes section 25(2) so that the provision of food and drink of a kind specified in paragraph 8 of Schedule 2 is no longer deemed, for VAT purposes, to be a supply of a service, where that food and drink is supplied by means of a vending machine, or in the course of operating a hotel, restaurant, café refreshment house, canteen, establishment licensed for the sale of intoxicating liquor, catering or similar business, or where there are facilities for the consumption of food and drink.

Paragraph (b)(i) amends paragraph 8(1)(a) of Schedule 2 by including a reference to paragraph 3(1) as well as paragraph 3(3) of Schedule 3. This is a consequential amendment which clarifies that supplies within the scope of paragraph 3 of Schedule 3 continue to be excluded from the zero rate of VAT.

Paragraphs (b)(ii) and (iii) are technical amendments made to paragraph 8(1)(b) and (c) of Schedule 2.

Paragraph (b)(iv) inserts clause (d) in paragraph 8(1) of Schedule 2. This consequential amendment reflects the continuing exemption from VAT of catering services supplied to patients in a hospital or nursing home or to school students at their school.

Paragraph (c)(i) amends paragraph (1)(1) Schedule 3 by deleting the definition of “in the course of catering”.

Paragraph (c)(ii) amends paragraph 3(1) of Schedule 3 by inserting a new subparagraph referring to the supply of restaurant or catering services as being liable at the reduced rate, currently 9 per cent. This amendment continues to exclude from the reduced rate of VAT catering services supplied to patients in a hospital or nursing home or to school students at their school, the supply of food and drink that falls within Part A of the food and drink table and the supply of food and drink that falls within column (1) of Part E of the food and drink table, but excluding juices extracted from fruit.

Paragraph (c)(ii) also deletes paragraph 3(2) of Schedule 3.

Commencement

This section has effect from the date of passing of the Finance Act (19 December 2020).

44. Amendment to Schedule 2 (Zero Rated Goods and Services), and Section 46 (Rates of Tax) of, Principal Act

Summary

This section amends Schedule 2 to, and section 46 of, the Value-Added Tax Consolidation Act 2010 to provide for the temporary application of the zero rate of VAT to certain goods used in the delivery of COVID-19 related health care services. The application of the zero rate of VAT in these circumstances is an exceptional measure. This measure has effect from 9th of April 2020 until 30 April 2021.

If the EU Commission extend the date beyond 30 April 2021, then that extension of the application of the zero rate shall be provided for by way of a Ministerial Order.

Details

Revenue provided, in accordance with an EU decision and on an administrative basis from 9th April 2020, that the zero rate of VAT applies

to the supply and intra-Community acquisition of these goods when supplied to or acquired by the HSE, hospitals, nursing homes, care homes and GP practices for use in the delivery of COVID-19 related health care services to their patients. This amendment provides a legislative basis for the zero rating of such supplies.

The goods which are subject to the zero rate of VAT are:

- personal protection equipment (PPE)
- thermometers
- hand sanitiser
- medical ventilators and specialist respiratory equipment such as respirators for intensive and sub-intensive care and other oxygen therapy apparatus including oxygen tents, and
- oxygen.

Paragraph (a) amends paragraph 11 of Schedule 2 by inserting a new subparagraph (4). This amendment zero-rates the supply of personal protection equipment, thermometers, hand sanitiser, oxygen, medical ventilators and specialist respiratory equipment for intensive and sub-intensive care and other oxygen therapy equipment when supplied to the HSE for use in the delivery of Covid-19 related health care services and to hospitals, GPs, nursing homes and residential care facilities for the use in the delivery of Covid-19 related health care services to their patients or residents during the period starting on 9 April 2020 up to 30 April 2021. This amendment applies the same definition of Covid-19 in paragraph 11(4) as already defined in the Emergency Measures in the Public Interest (Covid-19) Act 2020.

Paragraph (b) amends section 46 by inserting a new subsection (5) to provide that where the European Commission adopts a decision to extend or further extend the period of application during which relief is granted by Commission Decision (EU) 2020/491 to a date later than 30 April 2021 or to any later date, the Minister shall by order amend paragraph 11(4)(a) of Schedule 2 to such date or further extended period and this order may have

retrospective effect if so expressed and must be laid before the Dáil after it has been made in the usual manner. The definitions of Commission Decision (EU) 2020/491 and Covid-19 are also clarified for the purposes of this subsection.

Commencement

This section has effect from the date of passing of the Finance Act (19 December 2020).

45. Amendment of Section 120 and Schedules 1 and 3 to the Value-Added Tax Consolidation Act 2010 (Accommodation)

Summary

This section amends the Value-Added Tax Consolidation Act 2010 to clarify that a reduced rate of VAT, currently 9%, applies to all supplies of guest or holiday accommodation.

This section amends section 120 of the Value-Added Tax Consolidation Act, along with Schedules 1 and 3 to that Act to help clarify the application of VAT to all supplies of guest or holiday accommodation.

Details

Paragraph (a) amends section 120(15)(a) of the Value-Added Tax Consolidation Act which provides the Revenue Commissioners with the power to make regulations, with the consent of the Minister, to provide for the circumstances, terms and conditions under which a letting of immovable goods constitutes a letting in the guest or holiday sector or accommodation constitutes guest or holiday accommodation for the purposes of paragraph 11 of Schedule 3.

Paragraph (b) amends paragraph 11 of Schedule 1 to the Value-Added Tax Consolidation Act 2010 and provides that supplies to which paragraph 11 of Schedule 3 relates are not exempt from VAT.

Paragraph (c) amends paragraph 11 of Schedule 3 and clarifies that the letting of immovable goods consisting of a room in a hotel or guesthouse or

the provision of holiday or guest accommodation in a hotel, guesthouse, all or part of a house or apartment or other establishment, including a place in a caravan park or camping site are all liable at the reduced rate of VAT (currently 9 per cent).

The reduced rate, currently 9%, applies to all supplies of guest or holiday accommodation irrespective of the duration.

Commencement

This section has effect from the date of passing of the Finance Act (19 December 2020).

46. Amendment to Schedules 2 & 3 to the Value-Added Tax Consolidation Act 2010.

Summary

This section makes four amendments to Schedules 2 and 3 to the VAT Consolidation Act 2010, which relate to zero rated supplies and supplies which are subject to the reduced rate of VAT.

Details

Amendment of paragraphs (4) and (6) of Schedule 2 to the VAT Consolidation Act 2010

Section 46(a)(i) amends paragraph (4) and paragraph (6) of Schedule 2 to the Value-Added Tax Consolidation Act 2010 to provide for the application of the zero rate of VAT to certain supplies of services in relation to certain vessels and aircraft, or their cargoes.

Clause (I) inserts a new subparagraph (2A) in paragraph 4 of Schedule 2 and provides that the supply of services, other than those services already included in subparagraph (2), that meet the direct needs of sea-going vessels of more than 15 tons or their cargoes, or of aircraft operating chiefly on international routes or their cargoes, are liable at the zero rate of VAT

Clause (II) amends paragraph (6)(2)(d) of Schedule 2 to provide that supplies of services of the kind referred to in paragraph 4(2A) of Schedule 2

are also subject to the zero rate of VAT when supplied by an intermediary. This provision ensures that services that meet the direct needs of vessels or aircraft to which paragraph 4(2) relates, or their cargoes, are also subject to the zero rate of VAT when supplied by an intermediary.

Commencement

Section 46(a)(i) has effect from the date of passing of the Finance Act (19 December 2020).

Amendment of Paragraph 13 of Schedule 2 to the VAT Consolidation Act 2010

Details

Section 46(a)(ii) provides that, by deleting paragraph 13(4) of Schedule 2, wax candles and night lights that are white and cylindrical will be liable at the standard rate of VAT from 1 January 2022. This will mean that all candles will be liable at the standard rate from that date.

Commencement

Section 46(a)(ii) has effect from 1 January 2022.

Amendment of Schedule 3 to the Value-Added Tax Consolidation Act 2010

Details

Section 46(b)(i) inserts a new paragraph 5A into Schedule 3 which provides that the reduced rate (currently 13.5 per cent) applies to menstrual cups, menstrual pants and menstrual sponges with effect from 1 January 2021.

The supply of sanitary towels and sanitary tampons remains liable at the zero rate.

Commencement

Section 46(b)(i) has effect from 1 January 2021.

Details

Section 46(b)(ii) amends paragraph 8(3) of Schedule 3 to provide that admissions to fairgrounds or amusement parks are liable to VAT at the reduced rate (currently 9 per cent), excluding the supply of goods or services which may be included in the admission fee.

As a result of this amendment, amusement services in fairgrounds or amusement parks are liable to VAT at the standard rate.

Commencement

Section 46(b)(ii) has effect from the date of passing of the Finance Act (19 December 2020).