

Adjustment of tax deductible regarding unpaid consideration

This document should be read in conjunction with section 62A of the VAT Consolidation Act 2010 (VATCA 2010)

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Introduction

Finance (No.2) Act 2013¹ inserted a new section 62A in the VAT Consolidation Act (VATCA) 2010 which provides for the adjustment of tax deductible in relation to unpaid consideration. Where a person, who has taken a deduction of VAT in a taxable period, has not paid the supplier for the related goods or services within 6 months of the end of that taxable period, section 62A provides for an adjustment of the amount of VAT input credit claimed.

In cases where a genuine dispute or issue arises in relation to a supply, the matter will normally be rectified by way of issue of a credit note and, where relevant, adjustment in the VAT returns of both parties. However, there may be exceptional circumstances where a customer will not pay the full consideration for a supply and where the right to deductibility should not be withdrawn. These will be considered by Revenue on a case by case basis. The steps to be taken by the accountable person and by Revenue Branches are set out below.

1. Possible reasonable grounds for non-adjustment

Where there are genuine commercial reasons why a business should retain its right to deductibility, not having paid the consideration, and Revenue is satisfied with these reasons, no adjustment is required. The accountable person should satisfy Revenue, on or before the due date for submission of the return in which the adjustment would be required, that no adjustment is being made because of genuine commercial reasons. In this regard, the full facts and circumstances of each case will be looked at by the Revenue Branch involved to determine whether the reasons claimed by the accountable person are acceptable.

For example, reasonable grounds could include:

- In respect of an arm's length transaction, credit terms agreed between the parties for genuine commercial reasons exceed 6 months.
- In exceptional circumstances, refusal to pay due to a dispute - in general, where an accountable person has not paid the consideration or part of the consideration for a supply of goods or services because of a dispute, there is no economic or financial justification for retaining deductibility. In such circumstances the supplier may not have returned VAT on the supply (if accounting on a cash receipts basis) or may have claimed bad debt relief. However, there may be circumstances or grounds for retaining deductibility and the accountable person concerned in such cases should provide their Revenue Branch with a comprehensive submission including details of the nature of the

¹ As inserted by Section 60 Finance (No.2) Act 2013

dispute and evidence that a process to resolve the dispute is being actively pursued.

Any application citing “Inability to pay” as reasonable grounds for non-adjustment will not be accepted for section 62A purposes.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

2. Bad debt adjustment

The introduction of section 62A in the VATCA 2010 does not impact on the existing bad debt adjustment rules relating to the supplier. A supplier who is on the cash receipts basis of accounting is not required to account for the VAT until he or she has been paid by the customer. Therefore, the issue of a bad debt adjustment does not arise.

For suppliers on the invoice basis of accounting, the current rules in relation to bad debt adjustments continue to apply. In general, an accountable person who has accounted for VAT on a supply may claim relief for the VAT attributable to the supply where s/he is in a position to demonstrate that:

- s/he has taken all reasonable steps to recover the bad debt,
- the bad debt is allowable as a deduction in arriving at the tax-adjusted profits for Income Tax or Corporation Tax, and
- the bad debt has been written off in the financial accounts of the accountable person and the obligation to keep relevant records in relation to the debt have been fulfilled, and the person from whom the debt is due is not connected to the accountable person.

3. Making the adjustment/re-adjustment

The VAT input credit adjustment, as provided for in section 62A VATCA 2010, for consideration unpaid for goods/services will be made by the accountable person(s) in the third taxable period following the period in which the tax was deducted. The formula for calculating the adjustment in relation to unpaid consideration is as follows:

$$(A-B) \times C$$

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|---|
| A = the total consideration (exclusive of value-added tax) |
| B = the consideration or part thereof (exclusive of value-added tax) that has been paid |
| C = the percentage rate of tax chargeable in relation to the supply of the goods or services |

4. Circumstances where an adjustment is made and consideration is subsequently paid

Where an accountable person makes an adjustment in relation to consideration unpaid and the consideration is subsequently paid in full or in part, a corresponding re-adjustment is permitted in the period in which the full or partial consideration was paid using the following formula:

| |
|---|
| D x C |
| D = the consideration or part thereof (exclusive of value-added tax) paid during that period |
| C = the percentage rate of tax chargeable in relation to the supply of the goods or services |

Where the accountable person is not entitled to full deductibility, the amount of the VAT for adjustment should be based on the proportion of the VAT deductible.

5. Reduced frequency filers

Where an accountable person is authorised to file returns for an accounting period other than for a taxable period i.e. 4 monthly, 6 monthly or annual return, the adjustment or re-adjustment, as appropriate, should be made in the return for the accounting period which covers the taxable period in which the obligation to adjust, or entitlement to re-adjust, occurred.

6. Action to be taken by Revenue Branches

The provision is introduced with effect from 1 January 2014. On the basis that a supply of goods or services is made by an accountable person in the first possible “initial period” of 2014 (i.e. January/February 2014) and consideration has not been paid by the last day of the 6th month following the initial period (i.e. 31 August 2014), the adjustment of tax deductible should be made in the July/August 2014 VAT return. **Revenue Branches are advised, therefore, that the earliest an adjustment of tax deductible can be made is in the July/August 2014 VAT return.**

There are 3 possible scenarios that Revenue Branches will face:

1. The adjustment will be made by the taxable person without contact with the Revenue Branch. There are no issues here for the Branch.
2. If the accountable person feels that s/he has reasonable grounds for believing that no adjustment should be made, s/he should supply the Revenue Branch with detailed reasons for non-payment of the supply and for not taking the adjustment. The Revenue Branch should be satisfied, on or before the due date of the return relating to the period in which the adjustment would be required, that there are reasonable grounds for the customer not having paid the full consideration or part thereof.
3. No adjustment is made and the Revenue Branch is not advised. VAT is a self-assessment tax and Revenue will not know about this unless we are advised by the taxpayer’s agent or others. We may, of course, identify such an issue in the course of an intervention on that accountable person or on the other person involved in the transaction. In these cases, Revenue Branches should ensure that the VAT is adjusted, that interest is calculated back to the period when the adjustment should have been made, and that tax geared penalties / penalties for an incorrect return are levied where appropriate.

It is important to remember that the onus is on the accountable person to contact their Revenue Branch. The Revenue Branch must evaluate the case and determine

whether such reasons provided are genuine. Where the Revenue Branch is not satisfied that there are genuine commercial reasons involved, the accountable person must be informed that an adjustment should be made in the return relating to the third taxable period after the “initial period”.

Where a difference of opinion arises, details of Revenue’s Complaint and Review Procedures are set out in [“Revenue Complaint and Review Procedures - CS4”](#) which can be accessed on the Revenue website. Where Revenue raise an assessment in respect of an additional liability due in accordance with the provisions of section 62A, this assessment can be appealed to the Tax Appeal Commission.

Where the Revenue Branch agrees that non-payment and non-adjustment have arisen for genuine commercial reasons, they must inform the accountable person that they are released from the obligation to re-adjust for the input credit previously claimed. However, it is important that the Revenue Branch continues to monitor these cases on an on-going basis.

Summary

Section 62A provides for an adjustment of the amount of VAT input credit claimed where consideration has not been paid, subject to certain exceptions outlined above.

In monitoring and evaluating the effectiveness of the provision, where a Division/Branch comes across particular problems or trends in the operation of the provision or particular issues relating to non-compliance with the provision, they are advised to alert Indirect Taxes Division, VAT Policy and Legislation, Dublin Castle, Dublin 2.

Appendix A

The Legislation

The legislation is contained in section 62A of VAT Consolidation Act 2010.

Subsection (1) provides that where an accountable person deducts VAT charged to him or her in a taxable period referred to as the “initial period” and consideration for the related supplies of goods or services remains unpaid or partially unpaid after 3 taxable periods (i.e. 6 months) following the initial period, an adjustment of the amount of tax deducted is required.

Subsection (2) provides that the adjustment must be made in the third taxable period following the period in which tax was deducted and includes the formula for calculation of the adjustment (see section 4 of this guidance, above). The new provision has effect in relation to initial periods beginning on or after 1 January 2014.

Subsection (3) provides that, where an adjustment has been made and the person subsequently pays the full consideration or part thereof, a corresponding re-adjustment should be made in the period in which the full or partial consideration was paid.

Subsection (4) provides that where the Revenue Commissioners are satisfied that there are **reasonable grounds** for not having paid the full consideration or part thereof, an adjustment will not be required.

Appendix B

Section 62A VATCA 2010

Report on cases released from obligation to adjust

Please complete **all** fields – Reports should be emailed to [Insert Divisional email]

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|--|--|--|
| Date | | |
| Division | | |
| Branch | | |
| Approved by (Officer) | | |
| Accountable Person - Name | | |
| Accountable Person - PPSN | | |
| | Please enter 'Y' for the relevant transaction | |
| Transaction involved | Supply of goods | |
| | Supply of services | |
| | Intra Community Acquisition | |
| | Services supplied under reverse charge | |
| Please provide details of the grounds on which release was granted: | | |
| | | |