

SUBSIDIARY LEGISLATION 406.12

**VALUE ADDED TAX (ADJUSTMENTS RELATING
TO INPUT TAX ON CAPITAL GOODS)
REGULATIONS**

1st May, 2004

LEGAL NOTICE 318 of 2004, as amended by Legal Notices 426 of 2007 and 105 of 2008.

1. (1) The title of these regulations is the Value Added Tax (Adjustments relating to Input Tax on Capital Goods) Regulations.

Citation and
commencement.

(2) These regulations shall be deemed to have come into force on 1st May 2004, and shall apply only to input tax that was chargeable on or after the 1st of May, 2004:

Provided that where a balance of input tax was due as on 30th April, 2004 in terms of the limitation imposed by item 12 of the Eleventh Schedule to the Value Added Tax Act, prior to its amendment by Act X of 2003 which came into force on 1st May, 2004, such balance shall be refunded in four equal instalments and the provisions of article 24(3) of the Act shall not apply. The first payment may be claimed back in any tax return which ends between the 31st May, 2004 and the 31st July, 2004. Subsequent instalments may be claimed in each tax return as it falls due.

2. (1) For the purposes of these regulations, unless the context otherwise requires -

Definitions.
Amended by:
L.N. 426 of 2007;
L.N. 105 of 2008.
Cap. 406.

"the Act" means the Value Added Tax Act;

"capital goods" means all tangible fixed assets, which can be used on a long term basis as working tools or other means used for the carrying on of a an economic acticity. Small-equipment, working tools and office furniture, where their price, or open market value, is less than one thousand and one hundred and sixty euro (€1,160), as well as packaging materials, even if they can be used more than once, are not within the scope of these regulations;

"immovable property" that is subject to rights *in rem* is considered to be capital goods in the name of the holder of the right *in rem*;

"input tax on capital goods" means input tax paid on operations related to the realisation, the transformation or the improvement of capital goods referred to above. The following is not considered as input tax on capital goods:

- (a) input tax paid on the repair or the maintenance of capital goods as well as the purchase, the intra-Community acquisition or the importation of spare parts used for such operations;
- (b) input tax paid for the renting of capital goods, and more generally input tax paid for the giving up or the

granting of the use of such goods;

"other tangible property" is considered to be capital goods in the name of the person who lets them out or, more generally, the person who gives up or grants their use;

"period of reference" means, in the case of capital goods excluding immovable property, a period of five years, and in the case of immovable property, a period of twenty years.

(2) For the purposes of these regulations, a contract of works consisting of a construction contract shall be deemed to be a supply of goods.

(3) Other terms and expressions in these regulations shall have the meaning assigned to them in the Act.

Initial deduction.

3. The initial deduction shall be adjusted:

- (a) in respect of capital goods, excluding immovable property, during a period of five years which shall start to run from the first day of the month of the tax period during which the right to deduct arises;
- (b) in respect of immovable property, during a period of twenty years which shall start to run from the first day of the first month of the tax period during which the right to deduct arises:

Provided that, if the goods, both of a capital nature and contracts of works, are not used during the tax period during which the right to deduct arises, the starting date of the period of adjustment will be the first day of the month of the tax period during which the goods are first used.

Adjustments.

4. The adjustment is made where, during the period of reference as the case may be:

- (a) the capital good is used by the taxable person both for private purposes or for the purposes of operations in respect of which value added tax is not deductible or in respect of which value added tax is deductible in a proportion other than that of the initial deduction;
- (b) there are changes in the elements used for the calculation of the deducted input tax;
- (c) the capital good is subject to a supply for which the value added tax is deductible, insofar as the right to deduct input tax on this good has been limited. In this case, the additional amount of input tax which can be deducted is limited to the amount obtained by applying the taxable amount of the supply, the rate at which input tax was calculated for which the right to deduct is adjusted;
- (d) the capital good ceases to exist within the framework of the enterprise, unless it is proved that the capital good was subject to a supply for which the value added tax was deductible or that the capital good has been destroyed or stolen;

- (e) the taxable person becomes a non-taxable person or only carries out operations for which the value added tax is not deductible, unless it is proved that the capital good was subject to a supply for which the value added tax was deductible.

5. (1) The adjustment referred to in regulation 4(a) is made with respect to one-fifth or one-twentieth of the input tax initially deducted, as the case may be, for each year during which a change in the use occurs. If the capital good is used totally for private purposes or for operations for which the value added tax is not deductible, the adjustment is made once for the whole period of adjustment still to be covered, including the year during which the change occurs.

Period of adjustment.

(2) The adjustment referred to in regulation 4(b) is made each year with respect to one-fifth or one-twentieth of the input tax deducted, as the case may be, according to the conditions established by article 23 of the Act and item 6 of the Tenth Schedule thereof.

(3) The adjustments referred to in regulation 4(c), (d) and (e) are made once for the whole period of adjustment to be covered, including the year in which the reason for which the adjustment occurs, and up to one-fifth or one-twentieth for each year, as follows:

- (a) in the cases referred to in regulation 4(c), for the amount of input tax affected by the limitation of the deduction for which this provision takes account;
- (b) in the cases referred to in regulation 4(d) and (e), for the amount of the input tax initially deducted.

6. When the deduction is subject to the adjustment of input tax on capital goods, the time limit for the retention of records referred to in article 48(4) of the Act shall start to run from the end of the period of reference, as the case may be.

Retention of records.

7. The taxable person must keep a list of the capital goods subject to the adjustment on capital goods allowing the control of all input tax deducted and adjustments made. This list must be retained for the period referred in regulation 6 and shall form an integral part of the records required to be kept under the Act.

Additional records.