

Chapter 5 Expression of doubt

Letter of expression of doubt. VATA s. 19B

81.—(1) For the purposes of this section—

“accountable person” includes a person who is not a registered person and is in doubt as to whether he or she is an accountable person in respect of a transaction and, in that case, references to a return and records are to be construed as referring to a return that would be due under Chapter 3 and records that would be kept for the purposes of Chapter 7 or section 124 (7), if that person were in fact an accountable person;

“the law” has the meaning assigned to it by subsection (2);

“letter of expression of doubt” means a communication received in legible form which—

(a) sets out full details of the circumstances of the transaction and makes reference to the provisions of the law giving rise to the doubt,

(b) identifies the amount of tax in doubt in respect of the taxable period to which the expression of doubt relates,

(c) is accompanied by supporting documentation as relevant, and

(d) is clearly identified as a letter of expression of doubt for the purposes of this section,

and reference to “an expression of doubt” shall be construed accordingly.

(2)(a) Subject to paragraph (b), where an accountable person is in doubt as to the correct application of any enactment relating to value-added tax (in this section referred to as “the law”) to a transaction which could—

(i) give rise to a liability to tax by that person, or

(ii) affect that person’s liability to tax or entitlement to a deduction or refund of tax,

then the accountable person may, at the same time as the accountable person furnishes to the Collector-General the return due in accordance with Chapter 3 for the period in which the transaction occurred, lodge a letter of expression of doubt with the Revenue Commissioners at the office of the Commissioners which would normally deal with the examination of the records kept by that person in accordance with Chapter 7 or section 124 (7).

(b) This section shall apply only if the return referred to in paragraph (a) is furnished within the time limits prescribed in Chapter 3.

(3) A person whose expression of doubt concerns whether he or she is an accountable person shall lodge that expression of doubt for the purposes of applying subsection (4) not later than the 19th day of the month following the taxable period in which the transaction giving rise to the expression of doubt occurred.

(4) Subject to subsection (5), where a return and a letter of expression of doubt relating to a transaction are furnished by an accountable person to the Revenue Commissioners in accordance with this section, section 114 shall not apply to any additional liability arising from a notification to that person by the Revenue Commissioners of the correct application of the law to that transaction, on condition that such additional liability is accounted for and remitted to the Collector-General by the accountable person as if it were tax due for the taxable period in which the notification is issued.

(5) Subsection (4) does not apply where the Revenue Commissioners do not accept as genuine an expression of doubt in respect of the application of the law to a transaction, and an expression of doubt shall not be accepted as genuine in particular where the Commissioners—

(a) have issued general guidelines concerning the application of the law in similar circumstances,

(b) are of the opinion that the matter is otherwise sufficiently free from doubt as not to warrant an expression of doubt, or

(c) are of the opinion that the accountable person was acting with a view to the evasion or avoidance of tax.

(6) Where the Revenue Commissioners do not accept an expression of doubt as genuine, they shall notify the accountable person accordingly, and the accountable person shall account for any tax, which was not correctly accounted for in the return referred to in subsection (2), as tax due for the taxable period in which the transaction occurred, and section 114 shall apply accordingly.

(7) An accountable person who is aggrieved by a decision of the Revenue Commissioners that the person's expression of doubt is not genuine may, by giving notice in writing to the Revenue Commissioners within the period of 21 days after the notification of the decision, require the matter to be referred to the Appeal Commissioners.

(8) A letter of expression of doubt shall be deemed not to have been made unless its receipt is acknowledged by the Revenue Commissioners and that acknowledgement forms part of the records kept by the accountable person for the purposes of Chapter 7 or section 124 (7).