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STATUTORY INSTRUMENTS

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**2017 No. 495**

**The Enactment of Extra-Statutory Concessions Order 2017**

**Disapplication of disallowance of input tax in insolvency where consideration not paid**

7.—(1) Part 1 of the Value Added Tax Act 1994(1) is amended as follows.

(2) After subsection (1) of section 26A (disallowance of input tax where consideration not paid) insert—

“(1A) Subsection (1) is subject to section 26AA (disapplication of disallowance under section 26A in insolvency).”.

(3) After section 26A insert—

**“26AA Disapplication of disallowance under section 26A in insolvency**

(1) Section 26A(1) does not apply to a person in relation to credit for input tax which relates to a supply where—

- (a) at the time of the supply, no insolvency procedure had effect in relation to the person,
- (b) at any time during the relevant period, an insolvency procedure had effect in relation to that person (“the insolvent person”), and
- (c) the Commissioners have been notified in writing of the matter mentioned in paragraph (b) by or on behalf of a person authorised to deal with the insolvent person’s affairs.

(2) But where the insolvency procedure mentioned in subsection (1)(b) is a bankruptcy order, award of sequestration, protected trust deed or voluntary arrangement and that bankruptcy order is annulled, that award of sequestration is recalled or that protected trust deed or voluntary arrangement has come to an end prematurely—

- (a) the disapplication of section 26A(1) by subsection (1) above ceases to have effect, and
- (b) the person to which the bankruptcy order, award of sequestration, protected trust deed or voluntary arrangement relates is to be taken for the purposes of section 26A(1) as not being entitled to the credit for the input tax concerned as from whichever is the later of—
  - (i) the end of the relevant period, and
  - (ii) the date on which the bankruptcy order was annulled, the award of sequestration recalled or the protected trust deed or voluntary arrangement has come to an end prematurely.

(3) Where the person mentioned in section 26A(1) is entitled as a member of a partnership to credit for input tax this section has effect as if—

- (a) the references in subsections (1)(a) and (b) to “the person” and “that person” were references to the partnership,

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(1) 1994 c. 23; section 26A was inserted by section 22(1) and (3) of the Finance Act 2002 (c. 23).

- (b) the reference in subsection (1)(c) to “the insolvent person’s affairs” were a reference to the insolvent partnership’s affairs, and
- (c) the reference in subsection (2)(b) to “the person”, in connection with a bankruptcy order or a voluntary arrangement, were a reference to the person who is a member of the partnership to which the bankruptcy order or voluntary arrangement relates.

(4) Subsection (1) does not apply where the insolvency procedure referred to in subsection (1)(b) has effect as part of, or as a consequence of, arrangements where the main purpose, or one of the main purposes, of those arrangements is to obtain a tax advantage by the operation of this section.

(5) Regulations may make such supplementary, incidental, consequential or transitional provisions as appear to the Commissioners to be necessary or expedient for the purposes of this section.

(6) For the purposes of this section “the relevant period”, in relation to a supply, is the period beginning immediately after the supply took place and ending six months after—

- (a) the date of that supply, or
- (b) if later, the date on which the relevant part of the consideration for the supply is payable.

(7) For the purposes of subsection (6) the relevant part of the consideration is the part of the consideration referable to the credit for input tax which would (ignoring the effect of this section) be disallowed under section 26A(1).

(8) For the purposes of this section an insolvency procedure has effect in relation to a person at a time when any of the following apply—

- (a) a bankruptcy order has been made under Chapter 1 of Part 9 of the Insolvency Act 1986(2) in relation to that person and has not been annulled,
- (b) a warrant has been granted for a petition for sequestration to be served on that person which has resulted in the sequestration of that person’s estate or an award of sequestration has been made on an application by that person, in both cases under section 22 of the Bankruptcy (Scotland) Act 2016(3), and in either case the award of sequestration has not been recalled,
- (c) a bankruptcy order has been made under Chapter 1 of Part 9 of the Insolvency (Northern Ireland) Order 1989(4) in relation to that person and has not been annulled,
- (d) where that person is a company registered under the Companies Act 2006(5) in England and Wales or Scotland or an unregistered company as defined in section 220 of the Insolvency Act 1986 which is deemed to be registered in England and Wales or Scotland under section 221 of that Act, a petition has been presented to the court which has resulted in a winding-up order being made under Chapter 6 of Part 4 or Part 5 of the Insolvency Act 1986 in relation to that person and that person has not been dissolved or that winding-up order has not been stayed or sisted,
- (e) where that person is a company registered under the Companies Act 2006 in Northern Ireland, or an unregistered company as defined in article 184 of the Insolvency (Northern Ireland) Order 1989 which is deemed to be registered in Northern Ireland under article 185 of that Order, a petition has been presented to the court which has resulted in a winding-up order being made under Part 5 or Part 6 of

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(2) 1986 c. 45.

(3) 2016 asp 21.

(4) S.I. 1989/2405 (N.I. 19); relevant amending instruments are S.I. 2002/3152 (N.I. 6) and 2005/1455 (N.I. 10) (which, amongst other things, inserted Schedule B1 into the 1989 Order); S.R. 2002 No. 334, 2004 No. 307, 2006 No. 61, 2006 No. 370 and 2006 No. 377; S.I. 2007/2194, 2008/948 and 2009/1941.

(5) 2006 c. 46.

- the Insolvency (Northern Ireland) Order 1989 and that person has not been dissolved or that winding-up order has not been stayed,
- (f) that person is in administration for the purposes of Schedule B1 to the Insolvency Act 1986<sup>(6)</sup> or Schedule B1 to the Insolvency (Northern Ireland) Order 1989,
  - (g) an appointment of an administrative receiver is in force in relation to that person disregarding any temporary vacancy in the office of receiver,
  - (h) an appointment of a liquidator is in force as a consequence of a creditors' voluntary winding up under Chapter 4 of Part 4 of the Insolvency Act 1986 or Chapter 4 of Part 5 of the Insolvency (Northern Ireland) Order 1989 in relation to that person disregarding any temporary vacancy in the office of liquidator,
  - (i) a voluntary arrangement has been approved in accordance with Part 1 or Part 8 of the Insolvency Act 1986 or Part 2 or Chapter 2 of Part 8 of the Insolvency (Northern Ireland) Order 1989 in relation to that person and that voluntary arrangement has not come to an end prematurely,
  - (j) a county court administration order has been made under Part 6 of the County Courts Act 1984<sup>(7)</sup> or Part 6 of the Judgments Enforcement (Northern Ireland) Order 1981<sup>(8)</sup> in relation to that person and has not ceased to take effect,
  - (k) a compromise or arrangement sanctioned by the court and delivered to the registrar in accordance with section 899 of the Companies Act 2006<sup>(9)</sup> is in place in relation to that person,
  - (l) that person's estate is vested in any other person as that person's trustee under a trust deed and that trust deed has become a protected trust deed,
  - (m) that person has died and an insolvency administration order has been made which has not been discharged in respect of that person's estate in accordance with an order under section 421 of the Insolvency Act 1986 or article 365 of the Insolvency (Northern Ireland) Order 1989 or that person's estate has been sequestrated under section 22 of the Bankruptcy (Scotland) Act 2016 and the award of sequestration has not been recalled,
  - (n) a voluntary arrangement has been approved in accordance with Part 1 of the Insolvency Act 1986 as applied by Part 2 of the Insolvent Partnerships Order 1994<sup>(10)</sup> or Part 2 of the Insolvency (Northern Ireland) Order 1989 as applied by Part 2 of the Insolvent Partnerships Order (Northern Ireland) 1995<sup>(11)</sup> in relation to that person and that voluntary arrangement has not come to an end prematurely,
  - (o) an appointment of a liquidator is in force as a consequence of a creditors' voluntary winding up under Chapter 4 of Part 4 of the Insolvency Act 1986 as applied by Parts 4 and 5 of the Insolvent Partnerships Order 1994, or Chapter 4 of Part 5 of the Insolvency (Northern Ireland) Order 1989 as applied by Part 4 of the Insolvent Partnerships Order (Northern Ireland) 1995 in relation to that person disregarding any temporary vacancy in the office of liquidator,

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(6) 1986 c. 45; Schedule B1 was inserted by Schedule 16 to the Enterprise Act 2002 (c. 40) and amended by paragraph 299 of Schedule 8 to the Courts Act 2003 (c. 39) and article 2 of S.I. 2003/2096.

(7) 1984 c. 28; section 112 (included in Part 6 of the Act) was amended by section 220 of the Insolvency Act 1985 (c. 65), paragraph 2 of Schedule 2 to the Civil Procedure Act 1997 (c. 12) and paragraph 10 of Schedule 9 to the Crime and Courts Act 2013 (c. 22).

(8) S.I. 1981/226 (N.I. 6).

(9) 2006 c. 46; section 899 was amended by paragraph 250 of Schedule 1 to S.I. 2008/948 and article 28 of S.I. 2011/1265 and was applied with modifications by regulation 45 of S.I. 2009/1804.

(10) S.I. 1994/2421; the relevant amending instruments are S.I. 1996/1308, 2002/1308, 2002/2708, 2005/1516 and 2006/622.

(11) S.R. 1995 No. 225; the relevant amending instruments are S.R. 1996 No. 472, 2003 No. 144, 2003 No. 550 and 2006 No. 515.

- (p) that person is in administration for the purposes of Schedule B1 to the Insolvency Act 1986 as applied by Part 3 of the Insolvent Partnerships Order 1994 or Schedule B1 to the Insolvency (Northern Ireland) Order 1989 as applied by Part 3 of the Insolvent Partnerships Order (Northern Ireland) 1995,
- (q) a voluntary arrangement has been approved in accordance with Part 1 of the Insolvency Act 1986 as applied by Part 4 of the Limited Liability Partnerships Regulations 2001<sup>(12)</sup> or Part 2 of the Insolvency (Northern Ireland) Order 1989 as applied by Part 4 of the Limited Liability Partnerships Regulations (Northern Ireland) 2004<sup>(13)</sup> in relation to that person and that voluntary arrangement has not come to an end prematurely,
- (r) an appointment of a liquidator is in force as a consequence of a creditors' voluntary winding up under Chapter 4 of Part 4 of the Insolvency Act 1986 as applied by Part 4 of the Limited Liability Partnerships Regulations 2001 or Chapter 4 of Part 5 of the Insolvency (Northern Ireland) Order 1989 as applied by Part 4 of the Limited Liability Partnerships Regulations (Northern Ireland) 2004 in relation to that person disregarding any temporary vacancy in the office of liquidator,
- (s) that person is in administration for the purposes of Schedule B1 to the Insolvency Act 1986 as applied by Part 4 of the Limited Liability Partnerships Regulations 2001 or Schedule B1 to the Insolvency (Northern Ireland) Order 1989 as applied by Part 4 of the Limited Liability Partnerships Regulations (Northern Ireland) 2004.
- (9) In this section—
- “administrative receiver” means an administrative receiver within the meaning of section 251 of the Insolvency Act 1986 or article 5(1) of the Insolvency (Northern Ireland) Order 1989;
- “protected trust deed” has the same meaning as in the Bankruptcy (Scotland) Act 2016;
- “tax advantage” has the same meaning as in Schedule 11A; and
- “trust deed” has the same meaning as in the Bankruptcy (Scotland) Act 2016.
- (10) In this section a voluntary arrangement comes to an end prematurely if it would be regarded as having come to an end prematurely under—
- (a) section 7B or section 262C of the Insolvency Act 1986<sup>(14)</sup>; or
- (b) article 20B or article 236C of the Insolvency (Northern Ireland) Order 1989<sup>(15)</sup>.
- (11) Section 6 applies for determining the time when a supply is to be treated as taking place for the purposes of construing this section.”.

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(12) S.I. 2001/1090.

(13) S.R. 2004 No. 307.

(14) 1986 c. 45; sections 7B and 262C were inserted by sections 2 and 3 of, paragraph 10 of Part 1 of Schedule 2 to, and paragraph 12 of Schedule 3 to, the Insolvency Act 2000 (c. 39).

(15) S.I. 1989/2405 (N.I. 19); article 20B was inserted by Schedule 2 to, and article 236C was inserted by Schedule 3 to, S.I.2002/3152 (N.I. 6).