

Status: Point in time view as at 10/04/2003.

Changes to legislation: There are currently no known outstanding effects for the Value Added Tax Act 1994, SCHEDULE 10. (See end of Document for details)

SCHEDULES

SCHEDULE 10 **U.K.**

Section 51.

BUILDINGS AND LAND

Residential and charitable buildings: change of use etc

- 1 (1) In this paragraph “relevant zero-rated supply” means a grant or other supply taking place on or after 1st April 1989 which—
- (a) relates to a building intended for use solely for a relevant residential purpose or a relevant charitable purpose or part of such a building; and
 - (b) is zero-rated, in whole or in part, by virtue of Group 5 of Schedule 8.
- (2) Sub-paragraph (3) below applies where—
- (a) one or more relevant zero-rated supplies relating to a building (or part of a building) have been made to any person,
 - (b) within the period of 10 years beginning with the day on which the building is completed, the person grants an interest in, right over or licence to occupy the building or any part of it (or the building or any part of it including, consisting of or forming part of the part to which the relevant zero-rated supply or supplies related), and
 - (c) after the grant the whole or any part of the building, or of the part to which the grant relates, (or the whole of the building or of the part to which the grant relates, or any part of it including, consisting of or forming part of the part to which the relevant zero-rated supply or supplies related) is not intended for use solely for a relevant residential purpose or a relevant charitable purpose.
- (3) Where this sub-paragraph applies, to the extent that the grant relates to so much of the building as—
- (a) by reason of its intended use gave rise to the relevant zero-rated supply or supplies; and
 - (b) is not intended for use solely for a relevant residential purpose or a relevant charitable purpose after the grant,
- it shall be taken to be a taxable supply in the course or furtherance of a business which is not zero-rated by virtue of Group 5 of Schedule 8 (if it would not otherwise be such a supply).
- (4) Sub-paragraph (5) below applies where—
- (a) one or more relevant zero-rated supplies relating to a building (or part of a building) have been made to any person; and
 - (b) within the period of 10 years beginning with the day on which the building is completed, the person uses the building or any part of it (or the building or any part of it including, consisting of or forming part of the part to which the relevant zero-rated supply or supplies related) for a purpose which is neither a relevant residential purpose nor a relevant charitable purpose.

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- (5) Where this sub-paragraph applies, his interest in, right over or licence to occupy so much of the building as—
- (a) by reason of its intended use gave rise to the relevant zero-rated supply or supplies, and
 - (b) is used otherwise than for a relevant residential purpose or a relevant charitable purpose,

shall be treated for the purposes of this Act as supplied to him for the purpose of a business carried on by him and supplied by him in the course or furtherance of the business when he first uses it for a purpose which is neither a relevant residential purpose nor a relevant charitable purpose.

- (6) Where sub-paragraph (5) applies—
- (a) the supply shall be taken to be a taxable supply which is not zero-rated by virtue of Group 5 of Schedule 8 (if it would not otherwise be such a supply); and
 - [^{F1}(b) the value of the supply shall be taken to be such amount as is obtained by using the formula—

$$A \times \frac{(10 - B)}{10}$$

where—

A is the amount that yields an amount of VAT chargeable on it equal to the VAT which would have been chargeable on the relevant zero-rated supply (or, where there was more than one supply, the aggregate amount which would have been chargeable on them) had so much of the building as is mentioned in sub-paragraph (5) above not been intended for use solely for a relevant residential purpose or a relevant charitable purpose; and

B is the number of whole years since the day the building was completed for which the building or part concerned has been used for a relevant residential purpose or a relevant charitable purpose.]

Textual Amendments

- F1** Sch. 10 para. 1(6)(b) substituted (1.6.2002) by [The Value Added Tax \(Buildings and Land\) Order 2002 \(S.I. 2002/1102\)](#), **art. 2**

Election to waive exemption

- 2 (1) Subject to sub-paragraphs [^{F2}(2), (3) and (3A)] and paragraph 3 below, where an election under this paragraph has effect in relation to any land, if and to the extent that any grant made in relation to it at a time when the election has effect by the person who made the election, or where that person is a body corporate by that person or a relevant associate, would (apart from this sub-paragraph) fall within Group 1 of Schedule 9, the grant shall not fall within that Group.
- (2) Sub-paragraph (1) above shall not apply in relation to a grant if the grant is made in relation to—

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- (a) a building or part of a building intended for use as a dwelling or number of dwellings or solely for a relevant residential purpose; or
 - (b) a building or part of a building intended for use solely for a relevant charitable purpose, other than as an office.
 - [^{F3}(c) a pitch for a residential caravan;
 - ^{F3}(d) facilities for the mooring of a residential houseboat.]
- [^{F4}(2A) Subject to the following provisions of this paragraph, where—
- (a) an election has been made for the purposes of this paragraph in relation to any land, and
 - (b) a supply is made that would fall, but for sub-paragraph (2)(a) above, to be treated as excluded by virtue of that election from Group 1 of Schedule 9,
- then, notwithstanding sub-paragraph (2)(a) above, that supply shall be treated as so excluded if the conditions in sub-paragraph (2B) below are satisfied.
- (2B) The conditions mentioned in sub-paragraph (2A) above are—
- (a) that an agreement in writing made, at or before the time of the grant, between—
 - (i) the person making the grant, and
 - (ii) the person to whom it is made,declares that the election is to apply in relation to the grant; and
 - (b) that the person to whom the supply is made intends, at the time when it is made, to use the land for the purpose only of making a supply which is zero-rated by virtue of paragraph (b) of item 1 of Group 5 of Schedule 8.]
- (3) Sub-paragraph (1) above shall not apply in relation to a grant if—
- (a) the grant is made to a [^{F5}relevant housing association] and the association has given to the grantor a certificate stating that the land is to be used (after any necessary demolition work) for the construction of a building or buildings intended for use as a dwelling or number of dwellings or solely for a relevant residential purpose; or
 - (b) the grant is made to an individual and the land is to be used for the construction, otherwise than in the course or furtherance of a business carried on by him, of a building intended for use by him as a dwelling.
- [^{F6}(3AA) Where an election has been made under this paragraph in relation to any land, a supply shall not be taken by virtue of that election to be a taxable supply if—
- (a) the grant giving rise to the supply was made by a person (“the grantor”) who was a developer of the land; and
 - (b) at the time of the grant [^{F7}or at the time it was treated as made by virtue of sub-paragraph (3AAA) below], it was the intention or expectation of—
 - (i) the grantor, or
 - (ii) a person responsible for financing the grantor’s development of the land for exempt use,that the land would become exempt land (whether immediately or eventually and whether or not by virtue of the grant) or, as the case may be, would continue, for a period at least, to be such land.]

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- [^{F8}(3AAA) For the purposes of sub-paragraph (3AA) above a grant (the original grant) in relation to land made on or after 19th March 1997 and before 10th March 1999 shall be treated as being made on 10th March 1999 if at the time of the original grant—
- (a) the grantor or a person responsible for financing the grantor's development of the land for exempt use, intended or expected that the land or a building or part of a building on, or to be constructed on, that land would become an asset falling in relation to—
 - (i) the grantor, or
 - (ii) any person to whom that land, building or part of a building was to be transferred either in the course of a supply or in the course of a transfer of a business or part of a business as a going concern, to be treated as a capital item for the purposes of any regulations made under section 26(3) and (4) providing for adjustments relating to the deduction of input tax to be made as respects that item, and
 - (b) the land or a building or part of a building on, or to be constructed on, that land had not become such an asset.]
- (3A)
- (4) Subject to the following provisions of this paragraph, no input tax on any supply or importation which, apart from this sub-paragraph, would be allowable by virtue of the operation of this paragraph shall be allowed if the supply or importation took place before the first day for which the election in question has effect.
 - (5) Subject to sub-paragraph (6) below, sub-paragraph (4) above shall not apply where the person by whom the election was made—
 - (a) has not, before the first day for which the election has effect, made in relation to the land in relation to which the election has effect any grant falling within Group 1 of Schedule 9; or
 - (b) has before that day made in relation to that land a grant or grants so falling but the grant, or all the grants—
 - (i) were made in the period beginning with 1st April 1989 and ending with 31st July 1989; and
 - (ii) would have been taxable supplies but for the amendments made by Schedule 3 to the ^{M1}Finance Act 1989.
 - (6) Sub-paragraph (5) above does not make allowable any input tax on supplies or importations taking place before 1st August 1989 unless—
 - (a) it is attributable by or under regulations to grants made by the person on or after 1st April 1989 which would have been taxable supplies but for the amendments made by Schedule 3 to the Finance Act 1989, and
 - (b) the election has effect from 1st August 1989.
 - (7) Sub-paragraph (4) above shall not apply in relation to input tax on grants or other supplies which are made in the period beginning with 1st April 1989 and ending with 31st July 1989 [^{F9}if]—
 - (a) they would have been zero-rated by virtue of item 1 or 2 of Group 5 of Schedule 8 or exempt by virtue of item 1 of Group 1 of Schedule 9 but for the amendments made by Schedule 3 to the Finance Act 1989; and
 - (b) the election has effect from 1st August 1989.

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- (8) Sub-paragraph (4) above shall not apply in relation to any election having effect from any day on or after 1st January 1992, except in respect of the input tax on a supply or importation which took place before 1st August 1989.
- (9) Where a person has made an exempt grant in relation to any land and has made an election in relation to that land which has effect from any day before 1st January 1992, he may apply to the Commissioners for sub-paragraph (4) above to be disapplied in respect of any input tax on a supply or importation which took place on or after 1st August 1989, but the Commissioners shall only permit the disapplication of that sub-paragraph if they are satisfied, having regard to all the circumstances of the case, and in particular to—
- (a) the total value of—
 - (i) exempt grants made;
 - (ii) taxable grants made or expected to be made, in relation to the land;and
 - (b) the total amount of input tax in relation to the land which had been incurred before the day from which the election had effect,
- that a fair and reasonable attribution of the input tax mentioned in paragraph (b) above will be secured.

Textual Amendments

- F2** Words in Sch. 10 para. 2(1) substituted (30.11.1994) by [S.I. 1994/3013](#), [arts. 1, 2\(a\)\(i\)](#)
- F3** Sch. 10 para. 2(c)(d) inserted (1.3.1995) by [S.I. 1995/279](#), [arts. 1, 3\(a\)](#)
- F4** Sch. 10 para. 2(2A)(2B) inserted (19.3.1997 with effect as mentioned in [s. 36\(2\)](#) of the amending Act) by [1997 c. 16, s. 36\(1\)\(2\)](#)
- F5** Words in Sch. 10 para. 2(3)(a) substituted (1.3.1997) by [S.I. 1997/51](#), [arts. 1, 2\(a\)](#)
- F6** Sch. 10 para. 2(3AA) inserted (19.3.1997 with effect as mentioned in [s. 37\(4\)-\(6\)](#) of the amending Act) by [1997 c. 16, s. 37\(2\)\(4\)\(6\)](#)
- F7** Words in Sch. 10 para. 2(3AA)(b) inserted (10.3.1999) by [S.I. 1999/593](#), [art. 3](#)
- F8** Sch. 10 para. 2(3AAA) inserted (10.3.1999) by [S.I. 1999/593](#), [art. 4](#)
- F9** Word in Sch. 10 para. 2(7) inserted (1.3.1995) by [S.I. 1995/279](#), [arts. 1, 3\(b\)](#)

Marginal Citations

- M1** [1989 c. 26](#).

- 3 (1) An election under paragraph 2 above shall have effect—
- (a) subject to the following provisions of this paragraph, from the beginning of the day on which the election is made or of any later day specified in the election; or
 - (b) where the election was made before 1st November 1989, from the beginning of 1st August 1989 or of any later day so specified.
- (2) An election under paragraph 2 above shall have effect in relation to any land specified, or of a description specified, in the election.
- (3) Where such an election is made in relation to, or to part of, a building (or planned building), it shall have effect in relation to the whole of the building and all the land within its curtilage and for the purposes of this sub-paragraph buildings linked internally or by a covered walkway, and ^{F10}complexes consisting of a number of

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units grouped around a fully enclosed concourse], shall be taken to be a single building (if they otherwise would not be).

[^{F11}(4) Subject to sub-paragraph (5) below, an election under paragraph 2 above shall be irrevocable.

(5) Where—

- (a) the time that has elapsed since the day on which an election had effect is—
 - (i) less than 3 months; or
 - (ii) more than 20 years;
- (b) in a case to which paragraph (a)(i) above applies—
 - (i) no tax has become chargeable and no credit for input tax has been claimed by virtue of the election; and
 - (ii) no grant in relation to the land which is the subject of the election has been made which, by virtue of being a supply of the assets of a business to a person to whom the business (or part of it) is being transferred as a going concern, has been treated as neither a supply of goods nor a supply of services; and
- (c) the person making the election obtains the written consent of the Commissioners;

the election shall be revoked, in a case to which paragraph (a)(i) above applies, from the date on which it was made, and in a case to which paragraph (a)(ii) above applies, from the date on which the written consent of the Commissioners is given or such later date as they may specify in their written consent.]

[^{F12}(5A) Where—

- (a) an election under paragraph 2 above is made in relation to any land, and
- (b) apart from this sub-paragraph, a grant in relation to that land would be taken to have been made (whether in whole or in part) before the time when the election takes effect,

that paragraph shall have effect, in relation to any supplies to which the grant gives rise which are treated for the purposes of this Act as taking place after that time, as if the grant had been made after that time.

(5B) Accordingly, the references in paragraph 2(9) above and sub-paragraph (9) below to grants being exempt or taxable shall be construed as references to supplies to which a grant gives rise being exempt or, as the case may be, taxable.]

[^{F11}(6) An election under paragraph 2 above shall have effect after 1st March 1995 only if—

- (a) in the case of an election made before that date—
 - (i) it also had effect before that date; or
 - (ii) written notification of the election is given to the Commissioners not later than the end of the period of 30 days beginning with the day on which the election was made, or not later than the end of such longer period beginning with that day as the Commissioners may in any particular case allow, together with such information as the Commissioners may require;
- (b) in the case of an election made on or after that date—
 - (i) written notification of the election is given to the Commissioners not later than the end of the period of 30 days beginning with the day on which the election is made, or not later than the end of such longer period beginning with that day as the Commissioners may

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in any particular case allow, together with such information as the Commissioners may require; and

(ii) in a case in which sub-paragraph (9) below requires the prior written permission of the Commissioners to be obtained, that permission has been given.]

(7) In paragraph 2 above and this paragraph “relevant associate”, in relation to a body corporate by which an election under paragraph 2 above has been made in relation to any building or land, means a body corporate which under section 43—

- (a) was treated as a member of the same group as the body corporate by which the election was made at the time when the election first had effect;
- (b) has been so treated at any later time when the body corporate by which the election was made had an interest in, right over or licence to occupy the building or land (or any part of it); or
- (c) has been treated as a member of the same group as a body corporate within paragraph (a) or (b) above or this paragraph at a time when that body corporate had an interest in, right over or licence to occupy the building or land (or any part of it).

[^{F13}(7A) In paragraph 2 above—

- (a) “houseboat” means a houseboat within the meaning of Group 9 of Schedule 8; and
- (b) a houseboat is not a residential houseboat if residence in it throughout the year is prevented by the terms of a covenant, statutory planning consent or similar permission.]

[^{F14}(8) In paragraph 2 above “relevant housing association” means—

- (a) a registered social landlord within the meaning of Part I of the Housing Act 1996 ^{F15},
- (b) a registered housing association within the meaning of the Housing Associations Act 1985 ^{F16} (Scottish registered housing associations), or
- (c) a registered housing association within the meaning of Part II of the Housing (Northern Ireland) Order 1992 ^{F17} (Northern Irish registered housing associations).]

(8A)

(9) Where a person who wishes to make an election in relation to any land (the relevant land) to have effect on or after 1st January 1992, has made, makes or intends to make, an exempt grant in relation to the relevant land at any time between 1st August 1989 and before the beginning of the day from which he wishes an election in relation to the relevant land to have effect, he shall not make an election in relation to the relevant land unless [^{F18}the conditions for automatic permission specified in a notice published by the Commissioners are met or] he obtains the prior written permission of the Commissioners, who shall only give such permission if they are satisfied having regard to all the circumstances of the case and in particular to—

- (a) the total value of exempt grants in relation to the relevant land made or to be made before the day from which the person wishes his election to have effect;
- (b) the expected total value of grants relating to the relevant land that would be taxable if the election were to have effect; and

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- (c) the total amount of input tax which has been incurred on or after 1st August 1989 or is likely to be incurred in relation to the relevant land, that there would be secured a fair and reasonable attribution of the input tax mentioned in paragraph (c) above to grants in relation to the relevant land which, if the election were to have effect, would be taxable.

Textual Amendments

- F10** Words in Sch. 10 para. 3(3) substituted (1.3.1995) by S.I. 1995/279, arts. 1, 4(a)
F11 Sch. 10 para. 3(4)(5)(6) substituted (1.3.1995) by S.I. 1995/279, arts. 1, 4(b)
F12 Sch. 10 para. 3(5A)(5B) inserted (retrospectively) by 1997 c. 16, s. 35(2)(4)
F13 Sch. 10 para. 3(7A) inserted (1.3.1995) by S.I. 1995/279, arts. 1, 4(c)
F14 Sch. 10 para. 3(8) substituted (1.3.1997) by S.I. 1997/51, arts. 1, 2(b)
F15 1996 c.52.
F16 1985 c.69.
F17 S.I. 1992/1725 (N.I.15).
F18 Words in Sch. 10 para. 3(9) substituted (1.3.1995) by S.I. 1995/279, arts. 1, 4(d)

[^{F19}3A(1) This paragraph shall have effect for the construction of paragraph 2(3AA) [^{F20}and (3AAA)] above.

[For the purposes of paragraph 2(3AA) and (3AAA) above, a grant made by any ^{F21}(2) person in relation to any land is a grant made by a developer of that land if—

- (a) the land or building or part of a building on that land is an asset falling in relation to that person to be treated as a capital item for the purposes of any regulations under section 26(3) and (4) providing for adjustments relating to the deduction of input tax; or
- (b) that person or a person financing his development of the land for exempt use intended or expected that the land or a building or part of a building on, or to be constructed on, that land would become an asset falling in relation to—
- (i) the grantor, or
- (ii) any person to whom it was to be transferred either in the course of a supply or in the course of a transfer of a business or part of a business as a going concern,

to be treated as a capital item for the purposes of the regulations referred to in sub-paragraph (a) above,

unless the grant was made at a time falling after the expiry of the period over which such regulations require or allow adjustments relating to the deduction of input tax to be made as respects that item.]

(3) In paragraph 2(3AA) [^{F22}and (3AAA)] above and this paragraph the references to a person's being responsible for financing the grantor's development of the land for exempt use are references to his being a person who, with the intention or in the expectation that the land will become, or continue (for a period at least) to be, exempt land—

- (a) has provided finance for the grantor's development of the land; or
- (b) has entered into any agreement, arrangement or understanding (whether or not legally enforceable) to provide finance for the grantor's development of the land.

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- (4) In sub-paragraph (3)(a) and (b) above the references to providing finance for the grantor's development of the land are references to doing any one or more of the following, that is to say—
- (a) directly or indirectly providing funds for meeting the whole or any part of the cost of the grantor's development of the land;
 - (b) directly or indirectly procuring the provision of such funds by another;
 - (c) directly or indirectly providing funds for discharging, in whole or in part, any liability that has been or may be incurred by any person for or in connection with the raising of funds to meet the cost of the grantor's development of the land;
 - (d) directly or indirectly procuring that any such liability is or will be discharged, in whole or in part, by another.
- (5) The references in sub-paragraph (4) above to the provision of funds for a purpose referred to in that sub-paragraph include references to—
- (a) the making of a loan of funds that are or are to be used for that purpose;
 - (b) the provision of any guarantee or other security in relation to such a loan;
 - (c) the provision of any of the consideration for the issue of any shares or other securities issued wholly or partly for raising such funds; or
 - (d) any other transfer of assets or value as a consequence of which any such funds are made available for that purpose.
- [In sub-paragraph (4) above the references to the grantor's development of the land^{F23}(6) are references to the acquisition by the grantor of the asset which—
- (a) consists in the land or a building or part of a building on the land, and
 - (b) in relation to the grantor falls or, as the case may be, is intended or expected to fall to be treated for the purposes mentioned in sub-paragraph (2)(a) or (b) above as a capital item;
- and for the purposes of this sub-paragraph the acquisition of an asset shall be taken to include its construction or reconstruction and the carrying out in relation to that asset of any other works by reference to which it falls or, as the case may be, is intended or expected to fall, to be treated for the purposes mentioned in sub-paragraph (2)(a) or (b) above as a capital item.]
- (7) For the purposes of paragraph 2(3AA) [^{F24}and (3AAA)]above and this paragraph land is exempt land if, [^{F25}at a time falling before the expiry of the period provided in regulations made under section 26(3) and (4) for the making of adjustments relating to the deduction of input tax as respects that land]—
- (a) the grantor,
 - (b) a person responsible for financing the grantor's development of the land for exempt use, or
 - (c) a person connected with the grantor or with a person responsible for financing the grantor's development of the land for exempt use,
- is in occupation of the land without being in occupation of it wholly or mainly for eligible purposes.
- (8) For the purposes of this paragraph, but subject to sub-paragraphs (10) and (12) below, a person's occupation at any time of any land is not capable of being occupation for eligible purposes unless he is a taxable person at that time.

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- (9) Subject to sub-paragraphs (10) to (12) below, a taxable person in occupation of any land shall be taken for the purposes of this paragraph to be in occupation of that land for eligible purposes to the extent only that his occupation of that land is for the purpose of making supplies which—
- (a) are or are to be made in the course or furtherance of a business carried on by him; and
 - (b) are supplies of such a description that any input tax of his which was wholly attributable to those supplies would be input tax for which he would be entitled to a credit.
- (10) For the purposes of this paragraph—
- (a) occupation of land by a body to which section 33 applies is occupation of the land for eligible purposes to the extent that the body occupies the land for purposes other than those of a business carried on by that body; and
 - (b) any occupation of land by a Government department (within the meaning of section 41) is occupation of the land for eligible purposes.
- (11) For the purposes of this paragraph, where land of which any person is in occupation—
- (a) is being held by that person in order to be put to use by him for particular purposes, and
 - (b) is not land of which he is in occupation for any other purpose,
- that person shall be deemed, for so long as the conditions in paragraphs (a) and (b) above are satisfied, to be in occupation of that land for the purposes for which he proposes to use it.
- (12) Sub-paragraphs (8) to (11) above shall have effect where land is in the occupation of a person who—
- (a) is not a taxable person, but
 - (b) is a person whose supplies are treated for the purposes of this Act as supplies made by another person who is a taxable person,
- as if the person in occupation of the land and that other person were a single taxable person.
- (13) For the purposes of this paragraph a person shall be taken to be in occupation of any land whether he occupies it alone or together with one or more other persons and whether he occupies all of that land or only part of it.
- (14) Any question for the purposes of this paragraph whether one person is connected with another shall be determined in accordance with section 839 of the Taxes Act.]

Textual Amendments

- F19** Sch. 10 para. 3A inserted (19.3.1997 with effect as mentioned in s. 37(4)-(6) of the amending Act) by 1997 c. 16, s. 37(3)-(6)
- F20** Words in Sch. 10 para. 3A(1) inserted (10.3.1999) by S.I. 1999/593, art. 5(a)
- F21** Sch. 10 para. 3A(2) substituted (10.3.1999) by S.I. 1999/593, art. 5(b)
- F22** Words in Sch. 10 para. 3A(3) inserted (10.3.1999) by S.I. 1999/593, art. 5(c)
- F23** Sch. 10 para. 3A(6) substituted (10.3.1999) by S.I. 1999/593, art. 5(d)
- F24** Words in Sch. 10 para. 3A(7) inserted (10.3.1999) by S.I. 1999/593, art. 5(e)(i)
- F25** Words in Sch. 10 para. 3A(7) substituted (10.3.1999) by S.I. 1999/593, art. 5(e)(ii)

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F26⁴

Textual Amendments

F26 Sch. 10 para. 4 deleted (1.3.1995) by S.I. 1995/279, arts. 1, 5

Developers of certain non-residential buildings etc.

5 [F27(1) Paragraph 6 below shall apply—

- (a) on the first occasion during the period beginning with the day when the construction of a building or work within sub-paragraph (2) below is first planned and ending 10 years after the completion of the building or work on which a person who is a developer in relation to the building or work—
 - (i) grants an interest in, right over or licence to occupy the building or work (or any part of it) which is an exempt supply; or
 - (ii) is in occupation of the building, or uses the work (or any part of it) when not a fully taxable person (or, if a person treated under section 43 as a member of a group when the representative member is not a fully taxable person); or
- (b) if construction commenced before 1st March 1995 and the period referred to in paragraph (a) above has not then expired, on 1st March 1997;

whichever is the earlier.]

(2) Subject to sub-paragraph (3) [F28 and (3A)] below, the buildings and works within this sub-paragraph are—

- (a) any building neither designed as a dwelling or number of dwellings nor intended for use solely for a relevant residential purpose or a relevant charitable purpose; and
- (b) any civil engineering work, other than a work necessary for the development of a permanent park for residential caravans.

(3) A building or work is not within sub-paragraph (2) above if—

- (a) construction of it was commenced before 1st August 1989 [F29 or after 28th February 1995]; or
- (b) a grant of the fee simple in it which falls within paragraph (a)(ii) or (iv) of item 1 of Group 1 of Schedule 9 has been made before the occasion concerned.

[F30(3A) A building or work which would, apart from this sub-paragraph, fall within sub-paragraph (2) above is not within that sub-paragraph if—

- (a) construction of it was commenced before 1st March 1995 but had not been completed by that date; and
- (b) the developer—
 - (i) makes no claim after that date to credit for input tax, entitlement to which is dependent upon his being treated in due course as having made a supply by virtue of paragraph 6 below; and
 - (ii) has made no such claim prior to that date; or
 - (iii) accounts to the Commissioners for a sum equal to any such credit that has previously been claimed.]

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- (4) For the purposes of this paragraph a taxable person is, in relation to any building or work, a fully taxable person throughout a prescribed accounting period if—
- (a) at the end of that period he is entitled to credit for input tax on all supplies to, and [^{F31}acquisitions and] importations by, him in the period (apart from any on which input tax is excluded from credit by virtue of section 25(7)); or
 - (b) the building or work is not used by him at any time during the period in, or in connection with, making any exempt supplies of goods or services.
- (5) Subject to sub-paragraph (6) below, in this paragraph and paragraph 6 below “developer”, in relation to a building or work, means any person who—
- (a) constructs it;
 - (b) order it to be constructed; or
 - (c) finances its construction,
- with a view to granting an interest in, right over or licence to occupy it (or any part of it) or to occupying or using it (or any part of it) for his own purposes.
- (6) Where—
- (a) a body corporate treated under section 43 as a member of a group is a developer in relation to a building or work; and
 - (b) it grants an interest in, right over or licence to occupy the building or work (or any part of it) to another body corporate which is treated under that section as a member of the group,
- then, for the purposes of this paragraph and paragraph 6 below, as from the time of the grant any body corporate such as is mentioned in sub-paragraph (7) below shall be treated as also being a developer in relation to the building or work.
- (7) The bodies corporate referred to in sub-paragraph (6) above are any which under section 43—
- (a) was treated as a member of the same group as the body corporate making the grant at the time of the grant; or
 - (b) has been so treated at any later time when the body corporate by which the grant was made had an interest in, right over or licence to occupy the building or work (or any part of it); or
 - (c) has been treated as a member of the same group as a body corporate within paragraph (a) or (b) above or this paragraph at a time when that body corporate had an interest in, right over or licence to occupy the building or work (or any part of it).
- (8) Subject to sub-paragraph (10) below, [^{F32}sub-paragraphs (1), (2) and (3A) to (7)]above shall apply in relation to any of the following reconstructions, enlargements or extensions—
- (a) a reconstruction, enlargement or extension of an existing building which is commenced on or after 1st January 1992 [^{F33}and before 1st March 1995] and—
 - (i) which is carried out wholly or partly on land (hereafter referred to as new building land) adjoining the curtilage of the existing building, or
 - (ii) as a result of which the gross external floor area of the reconstructed, enlarged or extended building (excluding any floor area on new building land) exceeds the gross external floor area of the existing

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- building by not less than 20 per cent. of the gross external floor area of the existing building;
- (b) a reconstruction of an existing building which is commenced on or after 1st January 1992 [^{F33}and before 1st March 1995] and in the course of which at least 80 per cent. of the area of the floor structures of the existing building are removed;
- (c) a reconstruction, enlargement or extension of a civil engineering work which is commenced on or after 1st January 1992 [^{F33}and before 1st March 1995]and which is carried out wholly or partly on land (hereafter referred to as new land) adjoining the land on or in which the existing work is situated, as if references to the building or work were references to the reconstructed, enlarged or extended building or work and as if references to construction were references to reconstruction, enlargement or extension.
- (9) For the purposes of sub-paragraph (8)(a) above, extensions to an existing building shall include the provision of any annex having internal access to the existing building.
- (10) Sub-paragraphs (1) and (2) and [^{F34}sub-paragraphs (3A) to (7)] above shall not apply to a reconstruction, enlargement or extension—
- (a) falling within sub-paragraph (8)(a)(i) or (ii) or (c) above where the developer has held an interest in at least 75 per cent. of all of the land on which the reconstructed, enlarged or extended building or work stands, or is constructed, throughout the period of 10 years ending with the last day of the prescribed accounting period during which the reconstructed, enlarged or extended building or work becomes substantially ready for occupation or use; or
- (b) to the extent that it falls within sub-paragraph (8)(a)(ii) above or falling within sub-paragraph (8)(b) above, where the interest in, right over or licence to occupy the building concerned (or any part of it) has already been treated as supplied to and by the developer under paragraph 6(1) below.

Textual Amendments

- F27** Sch. 10 para. 5(1) substituted (1.3.1995) by S.I. 1995/279, arts. 1, 6(a)
F28 Words in Sch. 10 para. 5(2) inserted (1.3.1995) by S.I. 1995/279, arts. 1, 6(b)
F29 Words in Sch. 10 para. 5(3)(a) inserted (1.3.1995) by S.I. 1995/279, arts. 1, 6(c)
F30 Sch. 10 para. 5(3A) inserted (1.3.1995) by S.I. 1995/279, arts. 1, 6(d)
F31 Sch. 10 para. 5(4)(a) inserted (1.3.1995) by S.I. 1995/279, arts. 1, 6(e)
F32 Words in Sch. 10 para. 5(8) substituted (1.3.1995) by S.I. 1995/279, arts. 1, 6(f)(i)
F33 Words in Sch. 10 para. 5(8) inserted (1.3.1995) by S.I. 1995/279, arts. 1, 6(f)(ii)
F34 Words in Sch. 10 para. 5(10) substituted (1.3.1995) by S.I. 1995/279, arts. 1, 6(g)

- 6 (1) Where this paragraph applies the interest in, right over or licence to occupy the buildings or work (or any part of it) held by the developer shall be treated for the purposes of this Act as supplied to the developer for the purpose of a business carried on by him and supplied by him in the course or furtherance of the business on the last day of the prescribed accounting period during which it applies, or, if later, of the prescribed accounting period during which the building or work becomes substantially ready for occupation or use.

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- (2) The supply treated as made by sub-paragraph (1) above shall be taken to be a taxable supply and the value of the supply shall be the aggregate of—
- (a) the value of grants relating to the land on which the building or work is constructed made or to be made to the developer, but excluding, in a case where construction of the building or work in question commenced before 1st January 1992, the value of any grants to be made for consideration in the form of rent the amount of which cannot be ascertained by the developer when the supply is treated as made, and in any other case excluding the value of any—
 - (i) grants made before the relevant day to the extent that consideration for such grants was in the form of rent, and to the extent that such rent was properly attributable to a building which has been demolished,
 - (ii) grants made before the relevant day in respect of a building which has been reconstructed, enlarged or extended so that the reconstruction, enlargement or extension falls within paragraph 5(8)(a)(ii) above, and does not fall also within paragraph 5(8)(b) above, to the extent that consideration for such grants was in the form of rent, and to the extent that such rent was properly attributable to the building as it existed before the commencement of the reconstruction, enlargement or extension,
 - (iii) grants made before the relevant day in respect of a building which has been so reconstructed that the reconstruction falls within paragraph 5(8)(b) above, to the extent that consideration for such grants was in the form of rent, and to the extent that such rent was properly attributable to the building before the reconstruction commenced,
 - (iv) grants falling within paragraph (b) of item 1 of Group 1 of Schedule 9, and
 - (b) the value of all the taxable supplies of goods and services, other than any that are zero-rated, made or to be made for or in connection with the construction of the building or work.
- (3) Where the rate of VAT (the lower rate) chargeable on a supply (the construction supply) falling within sub-paragraph (2)(b) above, the value of which is included in the value of a supply (the self-supply) treated as made by sub-paragraph (1) above, is lower than the rate of VAT (the current rate) chargeable on that self-supply, then VAT on the self-supply shall be charged—
- (a) on so much of its value as is comprised of the relevant part of the value of the construction supply, at the lower rate; and
 - (b) on the remainder of its value at the current rate.
- (4) For the purposes of sub-paragraph (3)(a) above, the relevant part of the value of the construction supply means—
- (a) where the construction supply is a supply of goods, the value of such of those goods as have actually been delivered by the supplier;
 - (b) where the construction supply is a supply of services, the value of such of those services as have actually been performed by the supplier,
- on or before the last day upon which the lower rate is in force.

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- (5) Where the value of a supply which, apart from this sub-paragraph, would be treated as made by sub-paragraph (1) above would be less than £100,000, no supply shall be treated as made by that sub-paragraph.
- (6) For the purposes of sub-paragraph (2)(a)(i) above, the relevant day is the day on which the demolition of the building in question commenced and, for the purposes of sub-paragraph (2)(a)(ii) and (iii) above, the relevant day is the day on which the reconstruction, enlargement or extension in question commenced.
- (7) In the application of sub-paragraphs (1) to (6) above to a reconstruction, enlargement or extension to which sub-paragraphs (1) and (2) and ^{F35}sub-paragraphs (3A) to (7)] of paragraph 5 above apply by virtue of paragraph 5(8) above—
- (a) references to the building or work shall be construed as references to the reconstructed enlarged or extended building or work, and references to construction shall be construed as references to reconstruction, enlargement or extension;
 - (b) the reference in paragraph (a) of sub-paragraph (2) to the value of grants relating to the land on which the building or work is constructed shall be construed as a reference—
 - (i) in relation to a reconstruction, enlargement or extension of an existing building to the extent that it falls within paragraph 5(8)(a) (i) above and does not fall also within paragraph 5(8)(b) above, to the value of grants relating to the new building land;
 - (ii) in relation to a reconstruction, enlargement or extension of an existing building, to the extent that it falls within paragraph 5(8)(a) (ii) above and does not fall also within paragraph 5(8)(b) above, to the value of grants relating to the land on which the existing building stands multiplied by the appropriate fraction;
 - (iii) in relation to a reconstruction, enlargement or extension to a work falling within paragraph 5(8)(c) above, to the value of grants relating to the new land.
- (8) For the purposes of sub-paragraph (7)(b)(ii) above the appropriate fraction shall be calculated by dividing the additional gross external floor area resulting from the reconstruction, enlargement or extension (excluding any floor area on new building land) by the gross external floor area of the reconstructed, enlarged or extended building (excluding any floor area on new building land).
- ^{F36}(9) Where this paragraph applies by virtue of paragraph 5(1)(b) above it shall have effect as if—
- (a) in sub-paragraph (1)—
 - (i) the words “(or any part of it)” were omitted; and
 - (ii) for the words “the last day” to “ready for occupation or use” there were substituted “ 1st March 1997 ”]

Textual Amendments

F35 Words in Sch. 10 para. 6(7) substituted (1.3.1995) by S.I. 1995/279, arts. 1, 7(a)

F36 Sch. 10 para. 6(9) added (1.3.1995) by S.I. 1995/279, arts. 1, 7(b)

- 7 (1) Where a developer is a tenant, lessee or licensee and becomes liable to a charge to VAT under paragraph 6(1) above ^{F37}(except where that paragraph applies by virtue of

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paragraph 5(1)(b))] in respect of his tenancy, lease or licence he shall notify forthwith in writing his landlord, lessor or licensor (as the case may be)—

- (a) of the date from which the tenancy, lease or licence becomes a developmental tenancy, developmental lease or developmental licence for the purposes of paragraph (b) of item 1 of Group 1 of Schedule 9;
 - (b) in a case falling within paragraph 5(8)(a)(ii) above, of the appropriate fraction determined in accordance with paragraph 6(8) above.
- (2) Where the appropriate fraction has been notified in accordance with subparagraph (1)(b) above, any supply made pursuant to the tenancy, lease or licence in question shall be treated as made pursuant to a developmental tenancy, developmental lease or developmental licence (a developmental supply) as if, and only to the extent that, the consideration for the developmental supply is for an amount equal to the whole of the consideration for the supply made pursuant to the tenancy, lease or licence, multiplied by the appropriate fraction.

Textual Amendments

F37 Words in [Sch. 10 para. 7](#) inserted (1.3.1995) by [S.I. 1995/279](#), [arts. 1, 8](#)

General

- 8 Where the benefit of the consideration for the grant of an interest in, right over or licence to occupy land accrues to a person but that person is not the person making the grant—
- (a) the person to whom the benefit accrues shall for the purposes of this Act be treated as the person making the grant; and
 - (b) to the extent that any input tax of the person actually making the grant is attributable to the grant it shall be treated as input tax of the person to whom the benefit accrues.
- 9 [^{F38}Notes (1) to (6), (10), (12) and (19)] to Group 5 of Schedule 8 and [^{F38}Notes (1), (1A), (2) and (15)] to Group 1 of Schedule 9 apply in relation to this Schedule as they apply in relation to their respective Groups but subject to any appropriate modifications.

Textual Amendments

F38 Words in [Sch. 10 para. 9](#) substituted (1.3.1995) by [S.I. 1995/279](#), [arts. 1, 9](#)

Status:

Point in time view as at 10/04/2003.

Changes to legislation:

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