

Status: Point in time view as at 31/07/2009.

Changes to legislation: There are currently no known outstanding effects for the Value Added Tax Act 1994, Cross Heading: Power to give directions. (See end of Document for details)

SCHEDULES

[^{F1}SCHEDULE 9A

ANTI-AVOIDANCE PROVISIONS: GROUPS

Textual Amendments

F1 Sch. 9A inserted (29.4.1996) by 1996 c. 8, s. 31, Sch. 4

Power to give directions

- 1 (1) Subject to paragraph 2 below, the Commissioners may give a direction under this Schedule if, in any case—
- (a) a relevant event has occurred;
 - (b) the condition specified in sub-paragraph (3) below is fulfilled;
 - (c) that condition would not be fulfilled apart from the occurrence of that event; and
 - (d) in the case of an event falling within sub-paragraph (2)(b) below, the transaction in question is not a supply which is the only supply by reference to which the case falls within paragraphs (a) to (c) above.
- (2) For the purposes of this Schedule, a relevant event occurs when a body corporate—
- (a) begins to be, or ceases to be, treated as a member of a group; or
 - (b) enters into any transaction.
- (3) The condition mentioned in sub-paragraph (1) above is that—
- (a) there has been, or will or may be, a taxable supply on which VAT has been, or will or may be, charged otherwise than by reference to the supply's full value;
 - (b) there is at least a part of the supply which is not or, as the case may be, would not be zero-rated; and
 - (c) the charging of VAT on the supply otherwise than by reference to its full value gives rise or, as the case may be, would give rise to a tax advantage.
- (4) For the purposes of this paragraph the charging of VAT on a supply (“the undercharged supply”) otherwise than by reference to its full value shall be taken to give rise to a tax advantage if, and only if, a person has become entitled—
- (a) to credit for input tax allowable as attributable to that supply or any part of it, or
 - (b) in accordance with regulations under section 39, to any repayment in respect of that supply or any part of it.
- (5) The cases where a person shall be taken for the purposes of sub-paragraph (4) above to have become entitled to a credit for input tax allowable as attributable to the undercharged supply, or to a part of it, shall include any case where—

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- (a) a person has become entitled to a credit for any input tax on the supply to him, or the acquisition or importation by him, of any goods or services; and
 - (b) whatever the supplies to which the credit was treated as attributable when the entitlement to it arose, those goods or services are used by him in making the undercharged supply, or a part of it.
- (6) For the purposes of sub-paragraphs (4) and (5) above where—
- (a) there is a supply of any of the assets of a business of a person (“the transferor”) to a person to whom the whole or any part of that business is transferred as a going concern (“the transferee”), and
 - (b) that supply is treated, in accordance with an order under section 5(3), as being neither a supply of goods nor a supply of services,
- the question, so far as it falls to be determined by reference to those assets, whether a credit for input tax to which any person has become entitled is one allowable as attributable to the whole or any part of a supply shall be determined as if the transferor and the transferee were the same person.
- (7) Where, in a case to which sub-paragraph (6) above applies, the transferor himself acquired any of the assets in question by way of a supply falling within paragraphs (a) and (b) of that sub-paragraph, that sub-paragraph shall have the effect, as respects the assets so acquired, of requiring the person from whom those assets were acquired to be treated for the purposes of sub-paragraphs (4) and (5) above as the same person as the transferor and the transferee, and so on in the case of any number of successive supplies falling within those paragraphs.
- (8) For the purposes of this paragraph any question—
- (a) whether any credit for input tax to which a person has become entitled was, or is to be taken to have been, a credit allowable as attributable to the whole or any part of a supply, or
 - (b) whether any repayment is a repayment in respect of the whole or any part of a supply,
- shall be determined, in relation to a supply of a right to goods or services or to a supply of goods or services by virtue of such a right, as if the supply of the right and supplies made by virtue of the right were a single supply of which the supply of the right and each of those supplies constituted different parts.
- (9) References in this paragraph to the full value of a supply are references to the amount which (having regard to any direction under paragraph 1 of Schedule 6) would be the full value of that supply for the purposes of the charge to VAT if that supply were not a supply falling to be disregarded, to any extent, in pursuance of section 43(1)(a).
- (10) References in this paragraph to the supply of a right to goods or services include references to the supply of any right, option or priority with respect to the supply of goods or services, and to the supply of an interest deriving from any right to goods or services.]

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