
STATUTORY INSTRUMENTS

1999 No. 593

VALUE ADDED TAX

The Value Added Tax (Buildings and Land) Order 1999

Approved by the House of Commons

<i>Made</i>	- - - -	<i>9th March 1999</i>
<i>Laid before the House of Commons</i>	- - - -	<i>9th March 1999</i>
<i>Coming into force on</i>	- -	<i>10th March 1999</i>

The Treasury, in exercise of the powers conferred on them by section 51(2) of the Value Added Tax Act 1994⁽¹⁾ and of all other powers enabling them in that behalf, hereby make the following Order:

1. This Order may be cited as the Value Added Tax (Buildings and Land) Order 1999 and shall come into force on 10th March 1999 in respect of supplies, other than a supply arising from a relevant pre-commencement grant within the meaning of section 37 of the Finance Act 1997⁽²⁾, made on or after that date.

2. Schedule 10⁽³⁾ to the Value Added Tax Act 1994 shall be amended in accordance with the following articles.

3. In paragraph 2(3AA)(b)⁽⁴⁾ after “at the time of the grant” there shall be inserted “or at the time it was treated as made by virtue of sub-paragraph (3AAA) below,”.

4. After paragraph 2(3AA) there shall be inserted—

“(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,

(1) 1994 c. 23.

(2) 1997 c. 16.

(3) Relevant amendments to Schedule 10 were made by section 37 of the Finance Act 1997 (c. 16).

(4) Sub-paragraph (3AA) was inserted by section 37(2) of the Finance Act 1997.

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.”.

5. Paragraph 3A(5) shall be amended as follows—

- (a) in sub-paragraph (1) after “paragraph 2(3AA)” there shall be inserted “and (3AAA)”;
- (b) for sub-paragraph (2), there shall be substituted—

“(2) For the purposes of paragraph 2(3AA) and (3AAA) above, a grant made by any 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.;

- (c) in sub-paragraph (3) after “paragraph 2(3AA)” there shall be inserted “and (3AAA)”;
- (d) for sub-paragraph (6) there shall be substituted—

“(6) In sub-paragraph (4) above the references to the grantor’s development of the land 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.”: and

- (e) in sub-paragraph (7),
- (i) after “paragraph 2(3AA)” there shall be inserted “and (3AAA)”;
- and

- (ii) for “at a time falling within the period mentioned in sub-paragraph (2)(b) above”, there shall be substituted “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”.

9th March 1999

David Jamieson
Jim Dowd
Two of the Lords Commissioners of Her
Majesty’s Treasury

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends Schedule 10 (Buildings and Land) to the Value Added Tax Act 1994 with effect from 10th March 1999 so as to extend the scope of the anti-avoidance restriction in paragraph 2(3AA) on use of the election to waive exemption. The restriction now extends to a development of land which will result in a capital item for the purpose of the Capital Goods Scheme as well as land or buildings which are already capital items. The Order does not, however, affect any grant of an interest in, right over or licence to occupy land made before 26th November 1996 or one made before 30th November 1999 if made pursuant to an agreement in writing entered into before 26th November 1996 which fixed the terms of the grant (a relevant pre-commencement grant within the meaning of section 37 of the Finance Act 1997).

Article 4 inserts a new paragraph 2(3AAA) into Schedule 10. For the purposes of the restriction in paragraph 2(3AA), where the grant of an interest in, right over or licence to occupy land took place between 19th March 1997 and 9th March 1999 it is deemed also to have taken place on 10th March 1999 if at the time of the grant the land in question was not a capital item, but the person making the grant or the person providing finance to the grantor expected that it would become a capital item either for the grantor or for any person to whom the property is transferred. As a result of this amendment any election to waive exemption will not apply to supplies arising from such a grant, made on or after 10th March 1999.

Article 5 amends paragraph 3A(2) which defines what developments are within the scope of paragraph 2(3AA). Land, a building or a part of a building is now within the scope of paragraph 2(3AA) if it is a capital item within the Capital Goods Scheme or if the grantor or the person financing the grantor intends that it will become one, and the grant of an interest in, right over or licence to occupy the property takes place before the expiry of the ten year period over which the Capital Goods Scheme runs.

Article 5 also makes consequential amendments to paragraph 3A(3), 3A(6) and 3A(7) of Schedule 10.