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STATUTORY INSTRUMENTS

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**2002 No. 2918**

**VALUE ADDED TAX**

**The Value Added Tax (Amendment) (No. 3) Regulations 2002**

*Made* - - - - 25th November 2002  
*Laid before the House of*  
*Commons* - - - - 27th November 2002  
*Coming into force* - - 28th November 2002

The Commissioners of Customs and Excise, in exercise of the powers conferred on them by section 6(14) of the Value Added Tax Act 1994<sup>(1)</sup> and of all other powers enabling them in that behalf, hereby make the following Regulations:

1. These Regulations may be cited as the Value Added Tax (Amendment) (No. 3) Regulations 2002 and come into force on 28th November 2002 in relation to grants or assignments made on or after that date.

2. The Value Added Tax Regulations 1995<sup>(2)</sup> are amended as follows.

3. At the beginning of regulation 84(2) insert “Subject to paragraphs (3) to (9) below,”.

4. After regulation 84(2) insert—

“(3) Paragraph (2) above shall not apply in relation to land—

- (a) which includes a new building or new civil engineering work;
- (b) which includes a building which has not been completed or a civil engineering work which has not been completed; or
- (c) on which the grantor intends or expects to construct a new building or new civil engineering work,

unless the conditions specified in paragraph (4) below are satisfied.

(4) The conditions referred to in paragraph (3) above are—

- (a) in relation to the land, the grantor has made an election under paragraph 2 of Schedule 10 to the Act (election to waive exemption) which has effect at the time the grant or assignment is made; and
- (b) sub-paragraph (3AA) of paragraph 2 of Schedule 10 to the Act does not prevent that election applying to supplies made under the grant or assignment.

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(1) 1994 c. 23; section 96(1) defines “the Commissioners” as meaning the Commissioners of Customs and Excise and “regulations” as meaning regulations made by the Commissioners.

(2) S.I. 1995/2518, to which there are amendments not relevant to these Regulations.

- (5) In the application of sub-paragraph (4)(b) above—
- (a) the land, building or civil engineering work (as the case may be) shall be treated as if it were a capital item subject to adjustments of input tax deduction under Part XV of these Regulations; and
  - (b) the grantor shall be treated as if he were the owner of that capital item.
- (6) Notes (2) and (4) to Group 1 of Schedule 9 to the Act shall apply in determining whether a building or civil engineering work is completed or new.
- (7) For the purposes of paragraphs (3) to (6) above, a building does not include a building designed as a dwelling or number of dwellings, or intended for use solely for a relevant residential purpose or a relevant charitable purpose.
- (8) Notes (4) to (6) to Group 5 of Schedule 8 to the Act shall apply in determining the meaning of use for a relevant residential purpose and use for a relevant charitable purpose.
- (9) For the purposes of paragraphs (3) to (5) above, “grantor” includes anyone whom the grantor expects to acquire the right to receive all or part of the consideration which is not determinable at the time of the grant or assignment.”.

New King’s Beam House,  
22 Upper Ground,  
London SE1 9PJ  
25th November 2002

*M. J. Eland*  
Commissioner of Customs and Excise

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations, which come into force on 28th November 2002, further amend the Value Added Tax Regulations 1995 (S.I.1995/2518) (“the principal Regulations”).

These Regulations restrict the application of regulation 84(2) of the principal Regulations (“regulation 84(2)”) in order to prevent avoidance. Regulation 84(2) applies where the grant or assignment of the fee simple (the freehold) of land is made for a consideration the amount of which cannot be fully determined at the time the grant or assignment is completed.

Regulation 1 applies the changes below to grants or assignments of freehold land made on or after 28th November 2002.

Regulation 3 makes the application of regulation 84(2) subject to new paragraphs (3) to (9), added to that regulation.

Regulation 4 adds new paragraphs (3) to (9) to regulation 84 of the principal Regulations as follows.

Paragraph (3) prevents the regulation 84(2) treatment applying to sales of land including a new or incomplete commercial building or civil engineering work, or land on which the grantor expects to construct such a building or work. However, this does not apply to sales that satisfy the conditions in paragraph (4).

Paragraph (4) sets out the conditions under which paragraph (3) does not apply. First, the grantor must elect to waive exemption (opt to tax) on the land before the grant is made. Secondly, that election must not be disapplied under existing option to tax anti-avoidance legislation applying to capital items.

Paragraph (5) provides that for the purpose of deciding whether the second condition contained in paragraph (4) is fulfilled, the land, building or civil engineering work is treated as if it were a capital item even if it is not.

Paragraph (6) adopts existing VAT law definitions of when a building or work is new and when it is completed.

Paragraph (7) prevents paragraph (3) applying to non-commercial buildings (dwellings, residential buildings, village halls and buildings used by charities for non-business purposes).

Paragraph (8) adopts existing VAT law definitions for this purpose.

Paragraph (9) includes in the term “grantor” anyone that the grantor expects to acquire the right to receive the consideration that is not determinable. This prevents the provisions of paragraph (3) being avoided by transferring the grantor’s interest in the sale contract to another person.