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STATUTORY INSTRUMENTS

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**1991 No. 2503**

**VALUE ADDED TAX**

**The Value Added Tax (Special Provisions) (Amendment) Order 1991**

*Made - - - - 4th November 1991*  
*Laid before the House of*  
*Commons - - - - 7th November 1991*  
*Coming into force - - 1st December 1991*

The Treasury, in exercise of the powers conferred on them by section 3(3) of the Value Added Tax Act 1983<sup>(1)</sup> 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 (Special Provisions) (Amendment) Order 1991 and shall come into force on 1st December 1991.

2. For article 12 of the Value Added Tax (Special Provisions) Order 1981<sup>(2)</sup> there shall be substituted the following:

“12 –

(1) Subject to paragraph (2) below, there shall be treated as neither a supply of goods nor a supply of services the following supplies by a person of assets of his business—

(a) their supply to a person to whom he transfers his business as a going concern where—

(i) the assets are to be used by the transferee in carrying on the same kind of business, whether or not as part of any existing business, as that carried on by the transferor, and

(ii) in a case where the transferor is a taxable person, the transferee is already, or immediately becomes as a result of the transfer, a taxable person or a person defined as such in section 2(2) of the Manx Act;

(b) their supply to a person to whom he transfers part of his business as a going concern where—

(i) that part is capable of separate operation,

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(1) 1983 c. 55.

(2) S.I.1981/1741.

- (ii) the assets are to be used by the transferee in carrying on the same kind of business, whether or not as part of any existing business, as that carried on by the transferor in relation to that part, and
  - (iii) in a case where the transferor is a taxable person, the transferee is already, or immediately becomes as a result of the transfer, a taxable person or a person defined as such in section 2(2) of the Manx Act.
- (2) A supply of assets shall not be treated as neither a supply of goods nor a supply of services by virtue of paragraph (1) above to the extent that it consists of—
- (a) a grant which would, but for an election which the transferor has made, fall within item 1 of Group 1 of Schedule 6 to the Value Added Tax Act 1983(3); or
  - (b) a grant of a fee simple which falls within paragraph (a) of item 1 of Group 1 of Schedule 6 to the Value Added Tax Act 1983, unless the transferee has made an election in relation to the land concerned which has effect on the relevant date and has given any written notification of the election required by paragraph 3(6) of Schedule 6A to the Value Added Tax Act 1983(4) no later than the relevant date.
- (3) In paragraph (2) of this article—
- “election” means an election having effect under paragraph 2 of Schedule 6A to the Value Added Tax Act 1983;
- “relevant date” means the date upon which the grant would have been treated as having been made or, if there is more than one such date, the earliest of them;
- “transferor” and
- “transferee” include a relevant associate of either respectively as defined in paragraph 3(8) of Schedule 6A to the Value Added Tax Act 1983.
- (4) There shall be treated as neither a supply of goods nor a supply of services the assignment by an owner of goods comprised in a hire-purchase or conditional sale agreement of his rights and interest thereunder, and the goods comprised therein, to a bank or other financial institution.”.

4th November 1991

*Thomas Sackville*  
*Sydney Chapman*  
Two of the Lords Commissioners of Her  
Majesty’s Treasury

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(3) Group 1 was amended by paragraph 4 of Schedule 3 to the Finance Act 1989 (c. 26) and by the Value Added Tax (Construction of Dwellings and Land) Order 1990 (S.I. 1990/2553).

(4) Schedule 6A was inserted by paragraph 6(2) of Schedule 3 to the Finance Act 1989.

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## EXPLANATORY NOTE

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

This Order amends article 12 of the Value Added Tax (Special Provisions) Order 1981 by substituting a new article 12. This new article continues to remove from the scope of value added tax most transfers of businesses as going concerns, but now expressly provides for an exception to the extent that the assets being transferred consist of certain categories of lands or buildings. These are:

- (i) land or buildings in respect of which the transferor has made an election to waive exemption (often referred to as “the option to tax”); and
- (ii) new and unfinished buildings and civil engineering works ordinarily liable to tax at the standard rate,

where the transferee has not, before the earliest relevant time of supply, made an election to waive exemption in respect of the land or buildings concerned which has effect on that date and has complied with any requirements relating to notification.