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## SCHEDULES

### SCHEDULE 3

#### VALUE ADDED TAX: BUILDINGS AND LAND

##### *Other provisions*

- 6 (1) The following section shall be inserted in the <sup>M1</sup>Value Added Tax Act 1983 after section 35—

**“35A Buildings and land.**

- (1) Schedule 6A to this Act shall have effect with respect to buildings and land.
- (2) The Treasury may by order amend Schedule 6A to this Act.”
- (2) The following Schedule shall be inserted in the Value Added Tax Act 1983 after Schedule 6—

“SCHEDULE 6A

Section 35A.

#### 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 8 of Schedule 5 to this Act.
- (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 ten 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

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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 8 of Schedule 5 to this Act (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 ten 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.

(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) above applies—

- (a) the supply shall be taken to be a taxable supply which is not zero-rated by virtue of Group 8 of Schedule 5 to this Act (if it would not otherwise be such a supply); and
- (b) the value of the supply shall be such that the amount of tax chargeable on it is equal to the amount of the tax which would have been chargeable on the relevant zero-rated supply (or, where there was more than one such 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.

#### *Election to waive exemption*

- 2 (1) Subject to sub-paragraphs (2) and (3) 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

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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 6 to this Act, 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—
  - (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.
- (3) Sub-paragraph (1) above shall not apply in relation to a grant if—
  - (a) the grant is made to a registered 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.
- (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 6 to this Act; 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 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 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 if—

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- (a) they would have been zero-rated by virtue of item 1 or 2 of Group 8 of Schedule 5 to this Act or exempt by virtue of item 1 of Group 1 of Schedule 6 to this Act but for the amendments made by Schedule 3 to the Finance Act 1989; and
  - (b) the election has effect from 1st August 1989.
- 3 (1) An election under paragraph 2 above shall have effect—
- (a) 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 is 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 parades, precincts and complexes divided into separate units, shall be taken to be a single building (if they otherwise would not be).
- (4) Where such an election is made in relation to agricultural land (including a building on agricultural land), it shall have effect in relation to any other agricultural land if that other land is not separated from it by—
- (a) land which is not agricultural land; or
  - (b) agricultural land in separate ownership.
- (5) For the purposes of sub-paragraph (4) above—
- (a) land shall be taken not to be separated from other land if it is separated from it only by a road, railway, river or something similar; and
  - (b) land is in separate ownership from land in relation to which an election is made if the person by whom the election is made has no interest in, right over or licence to occupy it and, where that person is a body corporate, no relevant associate has any such interest, right or licence.
- (6) An election under paragraph 2 above shall be irrevocable and, except where it is an election of a description specified in a notice published by the Commissioners, shall not have effect unless written notification of it is given to the Commissioners together with such information as the Commissioners may require.
- (7) Except where the Commissioners otherwise allow, a notification required under sub-paragraph (6) above shall be given not later than the end of the period of thirty days beginning with the day on which the election is made.
- (8) 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 29 of this Act—

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- (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).
- (9) In paragraph 2 above “registered housing association” means a registered housing association within the meaning of the Housing Associations Act 1985 or Part VII of the Housing (Northern Ireland) Order 1981.
- 4 (1) This paragraph has effect where rent is payable in consideration of the grant of an interest in, right over, or licence to occupy any building or land to which an election under paragraph 2 above relates (or any part of any such building or land).
- (2) If—
- (a) the rent relates to a period beginning before and ending on or after the first day for which the election has effect; and
  - (b) the grant for which the rent is consideration would, apart from this sub-paragraph, take place before that day,
- the grant shall be treated as taking place on that day to the extent that it is made for rent relating to the part of the period falling on or after that day.
- (3) If—
- (a) the rent relates to a period beginning on or after the first day for which the election has effect; and
  - (b) the grant for which the rent is consideration would, apart from this sub-paragraph, take place before that day,
- the grant shall be treated as taking place on the first day of the period to which the rent relates.
- (4) If—
- (a) the rent relates to a period beginning before the first day for which the election has effect; and
  - (b) the grant for which the rent is consideration takes place on or after that day,
- tax shall not be chargeable on the grant by virtue of paragraph 2 above to the extent that it is made for rent relating to any time before that day.
- (5) Where the rent is payable by a person in relation to a period when he is in occupation of a building completed before 1st August 1989 (or part of such a building) or land of which he was in occupation immediately before that date, any tax which would be chargeable by virtue of paragraph 2 above on the grant for which the rent is consideration—
- (a) except in the case of a charity, shall be chargeable as if the consideration were reduced by 50 per cent. if and to the extent that the rent relates to or to any part of the year beginning on 1st August 1989 and ending on 31st July 1990; and

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- (b) in the case of a charity—
- (i) shall be chargeable as if the consideration were reduced by 80 per cent. if and to the extent that the rent relates to or to any part of the year beginning on 1st August 1989 and ending on 31st July 1990;
  - (ii) shall be chargeable as if the consideration were reduced by 60 per cent. if and to the extent that the rent relates to or to any part of the year beginning on 1st August 1990 and ending on 31st July 1991;
  - (iii) shall be chargeable as if the consideration were reduced by 40 per cent. if and to the extent that the rent relates to or to any part of the year beginning on 1st August 1991 and ending on 31st July 1992; and
  - (iv) shall be chargeable as if the consideration were reduced by 20 per cent. if and to the extent that the rent relates to or to any part of the year beginning on 1st August 1992 and ending on 31st July 1993.

*Developers of certain non-residential buildings etc.*

- 5 (1) Paragraph 6 below shall apply 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 ten years after the completion of the building or work on which a person who is a developer in relation to the building or work—
- (a) 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
  - (b) 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 29 of this Act as a member of a group, when the representative member is not a fully taxable person).
- (2) Subject to sub-paragraph (3) 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; 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 6 to this Act has been made before the occasion concerned.
- (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 importations by, him in the period (apart from any

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- on which input tax is excluded from credit by virtue of section 14(10) of this Act); 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) orders 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 29 of this Act 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 29 of this Act—
- (a) was treated as a member of the same group as the body corporate making the grant at the time of the grant;
- (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).
- 6 (1) Where this paragraph applies the interest in, right over or licence to occupy the building 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.
- (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, other than any grants to be made for consideration in the form of rent the value of which cannot be ascertained by the developer when the supply is treated as made; and

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- (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 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.

*General*

- 7 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.
- 8 The Notes to Group 8 of Schedule 5 to this Act and Group 1 of Schedule 6 to this Act apply in relation to this Schedule as they apply in relation to their respective Groups but subject to any appropriate modifications.”

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**Marginal Citations**

**M1** 1983 c. 55.



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