

Status: Point in time view as at 01/12/1992.

Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 1992, Cross Heading: Special rules for valuation. (See end of Document for details)

SCHEDULES

SCHEDULE 3

VALUE ADDED TAX: ABOLITION OF FISCAL FRONTIERS ETC.

Commencement Information

- II** Sch. 3 wholly in force; Sch. 3 not in force at Royal Assent see s. 14(3); Sch. 3 partly in force at 1.8.1992 by S.I. 1992/1867, art. 3, Sch. Pt. I; Sch. 3 partly in force at 1.12.1992 S.I. 1992/2979, art. 4, Sch. Pt. II; Sch. 3 in force, insofar as not already in force, at 1.1.1993 by S.I. 1992/3261, art. 3, Sch. (with transitional provisions in arts. 4, 5, 6, and 7).

PART I

AMENDMENTS OF THE VALUE ADDED TAX ACT 1983 (C. 55)

Special rules for valuation

- 61 (1) In Schedule 4, paragraphs 2 and 5 (valuation for purposes of tax on importation where persons connected and prompt payment discounts) shall cease to have effect.
- (2) After paragraph 3 of that Schedule there shall be inserted the following paragraph—
- “3A (1) Where—
- (a) any goods whose supply involves their removal to the United Kingdom—
- (i) are charged in connection with their removal to the United Kingdom with a duty of excise or with car tax; or
- (ii) on that removal are subject, in accordance with any provision for the time being having effect for transitional purposes in connection with the accession of any State to the European Communities, to any Community customs duty or agricultural levy of the Economic Community;
- or
- (b) the time of supply of any dutiable goods, or of any goods which comprise a mixture of dutiable goods and other goods, is determined under section 35(4) of this Act to be the duty point, then the value of the supply shall be taken for the purposes of this Act to be the sum of its value apart from this paragraph and the amount, so far as not already included in that value, of the duty, tax or, as the case

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may be, agricultural levy which has been or is to be paid in respect of the goods.

(2) In this paragraph “dutiable goods” and “duty point” have the same meanings as in section 35 of this Act.”

(3) In paragraph 7 of that Schedule (valuation of supplies where there is no consideration)—

- (a) at the beginning there shall be inserted “ (1) ”;
- (b) in sub-paragraph (b), after “paragraph 5(1)” there shall be inserted “ or 5A ”; and
- (c) for the words from “the value” to the end of the paragraph there shall be substituted—

“then, except where paragraph 10 below applies, the value of the supply shall be determined as follows.

(2) The value of the supply shall be taken to be—

- (a) such consideration in money as would be payable by the person making the supply if he were, at the time of the supply, to purchase goods identical in every respect (including age and condition) to the goods concerned; or
- (b) where the value cannot be ascertained in accordance with paragraph (a) above, such consideration in money as would be payable by that person if he were, at that time, to purchase goods similar to, and of the same age and condition as, the goods concerned; or
- (c) where the value can be ascertained in accordance with neither paragraph (a) nor paragraph (b) above, the cost of producing the goods concerned if they were produced at that time.

(3) For the purposes of sub-paragraph (2) above the amount of consideration in money that would be payable by any person if he were to purchase any goods shall be taken to be the amount that would be so payable after the deduction of any amount included in the purchase price in respect of value added tax on the supply of the goods to that person.”

(4) After paragraph 8 of that Schedule there shall be inserted the following paragraph—

“8A Where any supply of services is treated by virtue of section 7 of this Act as made by the person by whom they are received, the value of the supply shall be taken—

- (a) in a case where the consideration for which the services were in fact supplied to him was a consideration in money, to be such amount as is equal to that consideration; and
- (b) in a case where that consideration did not consist or not wholly consist of money, to be such amount in money as is equivalent to that consideration.”

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(5) For paragraph 11 of that Schedule (rates of exchange) there shall be substituted the following paragraph—

- “11 (1) Subject to the following provisions of this paragraph, where—
- (a) there is a supply of goods or services; and
 - (b) any sum relevant for determining the value of the supply is expressed in a currency other than sterling,
- then, for the purpose of valuing the supply, that sum is to be converted into sterling at the market rate which, on the relevant day, would apply in the United Kingdom to a purchase with sterling by the person to whom they are supplied of that sum in the currency in question.
- (2) Where the Commissioners have published a notice which, for the purposes of this paragraph, specifies—
- (a) rates of exchange; or
 - (b) methods of determining rates of exchange,
- a rate specified in or determined in accordance with the notice, as for the time being in force, shall apply (instead of the rate for which sub-paragraph (1) above provides) in the case of any supply by a person who opts, in such manner as may be allowed by the Commissioners, for the use of that rate in relation to that supply.
- (3) An option for the purposes of sub-paragraph (2) above for the use of a particular rate or method of determining a rate—
- (a) shall not be exercised by any person except in relation to all such supplies by him as are of a particular description or after a particular date; and
 - (b) shall not be withdrawn or varied except with the consent of the Commissioners and in such manner as they may require.
- (4) In specifying a method of determining a rate of exchange a notice published by the Commissioners under sub-paragraph (2) above may allow a person to apply to the Commissioners for the use, for the purpose of valuing some or all of his supplies, of a rate of exchange which is different from any which would otherwise apply.
- (5) On an application made in accordance with provision contained in a notice under sub-paragraph (4) above, the Commissioners may authorise the use with respect to the applicant of such a rate of exchange, in such circumstances, in relation to such supplies and subject to such conditions as they think fit.
- (6) A notice published by the Commissioners for the purposes of this paragraph may be withdrawn or varied by a subsequent notice published by the Commissioners.
- (7) The time by reference to which the appropriate rate of exchange is to be determined for the purpose of valuing any supply is the time when the supply takes place; and, accordingly, the day on which it takes place is the relevant day for the purposes of sub-paragraph (1) above.”

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Commencement Information

- I2** Sch. 3 para. 61 wholly in force; Sch. 3 not in force at Royal Assent see s. 14(3); Sch. 3 para. 61(3) wholly in force at 1.8.1992 by S.I. 1992/1867, art. 3, Sch. Pt. I; Sch. 3 partly in force at 1.12.1992 by S.I. 1992/2979, art. 4, Sch. Pt. II; Sch. 3 in force, insofar as not already in force, at 1.1.1993 by S.I. 1992/3261, art. 3, Sch. (with transitional provisions in arts. 4, 5, 6, and 7).

62 After Schedule 4 there shall be inserted the following Schedule—

“SCHEDULE
4A

VALUATION OF ACQUISITIONS FROM OTHER MEMBER STATES - SPECIAL CASES

- 1 (1) Where, in the case of the acquisition of any goods from another member State—
- (a) the relevant transaction is for a consideration in money;
 - (b) the value of the relevant transaction is (apart from this paragraph) less than the transaction’s open market value;
 - (c) the supplier and the person who acquires the goods are connected; and
 - (d) that person is not entitled under sections 14 and 15 of this Act to credit for all the tax on the acquisition,
- the Commissioners may direct that the value of the relevant transaction shall be taken to be its open market value.
- (2) A direction under this paragraph shall be given by notice in writing to the person by whom the acquisition in question is made; but no direction may be given more than three years after the relevant time.
- (3) A direction given to a person under this paragraph in respect of a transaction may include a direction that the value of any transaction—
- (a) in pursuance of which goods are acquired by him from another member State after the giving of the notice, or after such later date as may be specified in the notice; and
 - (b) as to which the conditions in paragraphs (a) to (d) of sub-paragraph (1) above are satisfied,
- shall be taken to be its open market value.
- (4) For the purposes of this paragraph the open market value of a transaction in pursuance of which goods are acquired from another member State shall be taken to be the amount which would fall to be taken as its value under section 10A(3) of this Act if it were for such consideration in money as would be payable by a person standing in no such relationship with any person as would affect that consideration.
- (5) For the purposes of this paragraph any question whether a person is connected with another shall be determined in accordance with section 839 of the Income and Corporation Taxes Act 1988.

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- (6) A direction under this paragraph may be varied or withdrawn by the Commissioners by a further direction given by notice in writing.
- 2 (1) Where, in such cases as the Commissioners may by regulations prescribe, goods acquired in the United Kingdom from another member State—
- (a) are charged in connection with their removal to the United Kingdom with a duty of excise or with car tax; or
 - (b) on that removal are subject, in accordance with any provision for the time being having effect for transitional purposes in connection with the accession of any State to the European Communities, to any Community customs duty or agricultural levy of the Economic Community,
- then the value of the relevant transaction shall be taken for the purposes of this Act to be the sum of its value apart from this paragraph and the amount, so far as not already included in that value, of the duty, tax or, as the case may be, agricultural levy which has been or is to be paid in respect of those goods.
- (2) Sub-paragraph (1) above shall not require the inclusion of any amount of duty or agricultural levy in the value of a transaction in pursuance of which there is an acquisition of goods which, under subsection (4) of section 35 of this Act, is treated as taking place before the time which is the duty point within the meaning of that section.
- 3 (1) Where goods are acquired from another member State in pursuance of anything which is treated as a supply for the purposes of this Act by virtue of paragraph 5(1) or 5A of Schedule 2 to this Act, the value of the relevant transaction shall be determined, in a case where there is no consideration, as follows.
- (2) The value of the transaction shall be taken to be—
- (a) such consideration in money as would be payable by the supplier if he were, at the time of the acquisition, to purchase goods identical in every respect (including age and condition) to the goods concerned; or
 - (b) where the value cannot be ascertained in accordance with paragraph (a) above, such consideration in money as would be payable by the supplier if he were, at that time, to purchase goods similar to, and of the same age and condition as, the goods concerned; or
 - (c) where the value can be ascertained in accordance with neither paragraph (a) nor paragraph (b) above, the cost of producing the goods concerned if they were produced at that time.
- (3) For the purposes of sub-paragraph (2) above the amount of consideration in money that would be payable by any person if he were to purchase any goods shall be taken to be the amount that would be so payable after the deduction of any amount included in the purchase price in respect of value added tax on the supply of the goods to that person.
- 4 (1) Subject to the following provisions of this paragraph, where—
- (a) goods are acquired from another member State; and
 - (b) any sum relevant for determining the value of the relevant transaction is expressed in a currency other than sterling,

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then, for the purpose of valuing the relevant transaction, that sum is to be converted into sterling at the market rate which, on the relevant day, would apply in the United Kingdom to a purchase with sterling by the person making the acquisition of that sum in the currency in question.

- (2) Where the Commissioners have published a notice which, for the purposes of this paragraph, specifies—
- (a) rates of exchange; or
 - (b) methods of determining rates of exchange,
- a rate specified in or determined in accordance with the notice, as for the time being in force, shall apply (instead of the rate for which sub-paragraph (1) above provides) in the case of any transaction in pursuance of which goods are acquired by a person who opts, in such manner as may be allowed by the Commissioners, for the use of that rate in relation to that transaction.
- (3) An option for the purposes of sub-paragraph (2) above for the use of a particular rate or method of determining a rate—
- (a) shall not be exercised by any person except in relation to all such transactions in pursuance of which goods are acquired by him from another member State as are of a particular description or after a particular date; and
 - (b) shall not be withdrawn or varied except with the consent of the Commissioners and in such manner as they may require.
- (4) In specifying a method of determining a rate of exchange a notice published by the Commissioners under sub-paragraph (2) above may allow a person to apply to the Commissioners for the use, for the purpose of valuing some or all of the transactions in pursuance of which goods are acquired by him from another member State, of a rate of exchange which is different from any which would otherwise apply.
- (5) On an application made in accordance with provision contained in a notice under sub-paragraph (4) above, the Commissioners may authorise the use with respect to the applicant of such a rate of exchange, in such circumstances, in relation to such transactions and subject to such conditions as they think fit.
- (6) A notice published by the Commissioners for the purposes of this paragraph may be withdrawn or varied by a subsequent notice published by the Commissioners.
- (7) Where goods are acquired from another member State, the appropriate rate of exchange is to be determined for the purpose of valuing the relevant transaction by reference to the relevant time; and, accordingly, the day on which that time falls is the relevant day for the purposes of sub-paragraph (1) above.

5 In this Schedule—

“relevant transaction”, in relation to any acquisition of goods from another member State, means the transaction in pursuance of which the goods are acquired;

“the relevant time”, in relation to any such acquisition, means—

- (a) if the person by whom the goods are acquired is not a taxable person and the time of acquisition does not fall to be determined

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in accordance with regulations made under section 8B(3) above, the time of the event which, in relation to that acquisition, is the first relevant event for the purposes of taxing the acquisition; and

(b) in any other case, the time of acquisition.”

Commencement Information

I3 Sch. 3 para. 62 wholly in force; Sch. 3 not in force at Royal Assent see s. 14(3); Sch. 3 partly in force at 1.12.1992 by S.I. 1992/2979, art. 4, Sch. Pt. II; Sch. 3 in force, insofar as not already in force, at 1.1.1993 by S.I. 1992/3261, art. 3, Sch. (with transitional provisions in arts. 4, 5, 6, and 7).

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