



# Value Added Tax Act 1994

## 1994 CHAPTER 23

### PART VI

#### SUPPLEMENTARY PROVISIONS

##### *Interpretative provisions*

#### **92 Taxation under the laws of other member States etc.**

- (1) Subject to the following provisions of this section, references in this Act, in relation to another member State, to the law of that member State shall be construed as confined to so much of the law of that member State as for the time being has effect for the purposes of any Community instrument relating to VAT.
- (2) Subject to the following provisions of this section—
  - (a) references in this Act to a person being taxable in another member State are references to that person being taxable under so much of the law of that member State as makes provision for purposes corresponding, in relation to that member State, to the purposes of so much of this Act as makes provision as to whether a person is a taxable person; and
  - (b) references in this Act to goods being acquired by a person in another member State are references to goods being treated as so acquired in accordance with provisions of the law of that member State corresponding, in relation to that member State, to so much of this Act as makes provision for treating goods as acquired in the United Kingdom from another member State.
- (3) Without prejudice to subsection (5) below, the Commissioners may by regulations make provision for the manner in which any of the following are to be or may be proved for any of the purposes of this Act, that is to say—
  - (a) the effect of any provisions of the law of any other member State;
  - (b) that provisions of any such law correspond or have a purpose corresponding, in relation to any member State, to or to the purpose of any provision of this Act.

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- (4) The Commissioners may by regulations provide—
- (a) for a person to be treated for prescribed purposes of this Act as taxable in another member State only where he has given such notification, and furnished such other information, to the Commissioners as may be prescribed;
  - (b) for the form and manner in which any notification or information is to be given or furnished under the regulations and the particulars which it is to contain;
  - (c) for the proportion of any consideration for any transaction which is to be taken for the purposes of this Act as representing a liability, under the law of another member State, for VAT to be conclusively determined by reference to such invoices or in such other manner as may be prescribed.
- (5) In any proceedings (whether civil or criminal), a certificate of the Commissioners—
- (a) that a person was or was not, at any date, taxable in another member State; or
  - (b) that any VAT payable under the law of another member State has or has not been paid,
- shall be sufficient evidence of that fact until the contrary is proved, and any document purporting to be a certificate under this subsection shall be deemed to be such a certificate until the contrary is proved.
- (6) Without prejudice to the generality of any of the powers of the Commissioners under the relevant information provisions, those powers shall, for the purpose of facilitating compliance with any Community obligations, be exercisable with respect to matters that are relevant to a charge to VAT under the law of another member State, as they are exercisable with respect to matters that are relevant for any of the purposes of this Act.
- (7) The reference in subsection (6) above to the relevant information provisions is a reference to the provisions of section 73(7) and Schedule 11 relating to—
- (a) the keeping of accounts;
  - (b) the making of returns and the submission of other documents to the Commissioners;
  - (c) the production, use and contents of invoices;
  - (d) the keeping and preservation of records; and
  - (e) the furnishing of information and the production of documents.

### **93 Territories included in references to other member States etc.**

- (1) The Commissioners may by regulations provide for the territory of the Community, or for the member States, to be treated for any of the purposes of this Act as including or excluding such territories as may be prescribed.
- (2) Without prejudice to the generality of the powers conferred by subsection (1) and section 16, the Commissioners may, for any of the purposes of this Act, by regulations provide for prescribed provisions of any customs and excise legislation to apply in relation to cases where any territory is treated under subsection (1) above as excluded from the territory of the Community, with such exceptions and adaptations as may be prescribed.
- (3) In subsection (2) above the reference to customs and excise legislation is a reference to any enactment or subordinate or Community legislation (whenever passed, made or adopted) which has effect in relation to, or to any assigned matter connected with, the importation or exportation of goods.

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- (4) In subsection (3) above “assigned matter” has the same meaning as in the Management Act.

#### **94 Meaning of “business” etc.**

- (1) In this Act “business” includes any trade, profession or vocation.
- (2) Without prejudice to the generality of anything else in this Act, the following are deemed to be the carrying on of a business—
- (a) the provision by a club, association or organisation (for a subscription or other consideration) of the facilities or advantages available to its members; and
  - (b) the admission, for a consideration, of persons to any premises.
- (3) Where a body has objects which are in the public domain and are of a political, religious, philanthropic, philosophical or patriotic nature, it is not to be treated as carrying on a business only because its members subscribe to it, if a subscription obtains no facility or advantage for the subscriber other than the right to participate in its management or receive reports on its activities.
- (4) Where a person, in the course or furtherance of a trade, profession or vocation, accepts any office, services supplied by him as the holder of that office are treated as supplied in the course or furtherance of the trade, profession or vocation.
- (5) Anything done in connection with the termination or intended termination of a business is treated as being done in the course or furtherance of that business.
- (6) The disposition of a business as a going concern, or of its assets or liabilities (whether or not in connection with its reorganisation or winding up), is a supply made in the course or furtherance of the business.

#### **95 Meaning of “new means of transport”.**

- (1) In this Act “means of transport” in the expression “new means of transport” means, subject to subsection (2) below, any of the following, that is to say—
- (a) any ship exceeding 7.5 metres in length;
  - (b) any aircraft the take-off weight of which exceeds 1550 kilograms;
  - (c) any motorized land vehicle which—
    - (i) has an engine with a displacement or cylinder capacity exceeding 48 cubic centimetres; or
    - (ii) is constructed or adapted to be electrically propelled using more than 7.2 kilowatts.
- (2) A ship, aircraft or motorized land vehicle does not fall within subsection (1) above unless it is intended for the transport of persons or goods.
- [<sup>F1</sup>(3) For the purposes of this Act a means of transport shall be treated as new, in relation to any supply or any acquisition from another member State, at any time unless at that time—
- (a) the period that has elapsed since its first entry into service is—
    - (i) in the case of a ship or aircraft, a period of more than 3 months; and
    - (ii) in the case of a land vehicle, a period of more than 6 months;
- and]

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- (b) it has, since its first entry into service, travelled under its own power—
- (i) in the case of a ship, for more than 100 hours;
  - (ii) in the case of an aircraft, for more than 40 hours; and
  - (iii) in the case of a land vehicle, for more than [<sup>F2</sup>6000 kilometres].
- (4) The Treasury may by order vary this section—
- (a) by adding or deleting any ship, aircraft or vehicle of a description specified in the order to or from those which are for the time being specified in subsection (1) above; and
  - (b) by altering, omitting or adding to the provisions of subsection (3) above for determining whether a means of transport is new.
- (5) The Commissioners may by regulations make provision specifying the circumstances in which a means of transport is to be treated for the purposes of this section as having first entered into service.

#### Textual Amendments

- F1** Words in s. 95(3) substituted (1.1.1995 with effect as mentioned in art. 2(4) of the amending S.I.) by S.I. 1995/3128, art. 2(2)
- F2** Words in s. 95(3)(b)(iii) substituted (1.1.1995 with effect as mentioned in art. 2(4) of the amending S.I.) by S.I. 1994/3128, art. 2(3)

## 96 Other interpretative provisions.

- (1) In this Act—

“the 1983 Act” means the <sup>M1</sup>Value Added Tax Act 1983;

“another member State” means, subject to section 93(1), any member State other than the United Kingdom, and “other member States” shall be construed accordingly;

“assignment”, in relation to Scotland, means assignation;

“authorised person” means any person acting under the authority of the Commissioners;

“the Commissioners” means the Commissioners of Customs and Excise;

[<sup>F3</sup>“copy”, in relation to a document, means anything onto anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly.]

[<sup>F4</sup>“document” means anything in which information of any description is recorded; and]

“fee simple”—

- (a) in relation to Scotland, means the estate or interest of the proprietor of the dominium utile or, in the case of land not held on feudal tenure, the estate or interest of the owner;

- (b) in relation to Northern Ireland, includes the estate of a person who holds land under a fee farm grant;

“invoice” includes any document similar to an invoice;

“input tax” has the meaning given by section 24;

“interim trustee” has the same meaning as in the <sup>M2</sup>Bankruptcy (Scotland) Act 1985;

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“local authority” has the meaning given by subsection (4) below;

“major interest”, in relation to land, means the fee simple or a tenancy for a term certain exceeding 21 years, and in relation to Scotland means—

- (a) the estate or interest of the proprietor of the dominium utile; or
- (b) in the case of land not held on feudal tenure, the estate or interest of the owner, or the lessee’s interest under a lease for a period [<sup>F5</sup>of not less than 20 years];

“the Management Act” means the <sup>M3</sup>Customs and Excise Management Act 1979;

“money” includes currencies other than sterling;

“output tax” has the meaning given by section 24;

“permanent trustee” has the same meaning as in the <sup>M4</sup>Bankruptcy (Scotland) Act 1985;

“prescribed” means prescribed by regulations;

“prescribed accounting period” has the meaning given by section 25(1);

“quarter” means a period of 3 months ending at the end of March, June, September or December;

“regulations” means regulations made by the Commissioners under this Act;

“ship” includes hovercraft;

“subordinate legislation” has the same meaning as in the <sup>M5</sup>Interpretation Act 1978;

“tax” means VAT;

“taxable acquisition” has the meaning given by section 10(2);

“taxable person” means a person who is a taxable person under section 3;

“taxable supply” has the meaning given by section 4(2);

“the Taxes Act” means the <sup>M6</sup>Income and Corporation Taxes Act 1988;

“tribunal” has the meaning given by section 82;

“VAT” means value added tax charged in accordance with this Act or, where the context requires, with the law of another member State;

“VAT credit” has the meaning given by section 25(3);

“VAT invoice” has the meaning given by section 6(15);

“VAT representative” has the meaning given by section 48;

and any reference to a particular section, Part or Schedule is a reference to that section or Part of, or Schedule to, this Act.

(2) Any reference in this Act to being registered shall be construed in accordance with section 3(3).

(3) Subject to section 93—

- (a) the question whether or not goods have entered the territory of the Community;
- (b) the time when any Community customs debt in respect of duty on the entry of any goods into the territory of the Community would be incurred; and
- (c) the person by whom any such debt would fall to be discharged,

shall for the purposes of this Act be determined (whether or not the goods in question are themselves subject to any such duties) according to the Community legislation applicable to goods which are in fact subject to such duties.

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- (4) In this Act “local authority” means the council of a county, [<sup>F6</sup>county borough,]district, London borough, parish or group of parishes (or, in Wales, community or group of communities), the Common Council of the City of London, the Council of the Isles of Scilly, and any joint committee or joint board established by two or more of the foregoing and, in relation to Scotland, a [<sup>F7</sup>council constituted under section 2 of the Local Government etc. (Scotland) Act 1994, any two or more such councils and any joint committee or joint board within the meaning of section 235(1) of the Local Government (Scotland) Act 1973].
- (5) Any reference in this Act to the amount of any duty of excise on any goods shall be taken to be a reference to the amount of duty charged on those goods with any addition or deduction falling to be made under section 1 of the <sup>M7</sup>Excise Duties (Surcharges or Rebates) Act 1979.
- <sup>F8</sup>(6) .....
- <sup>F8</sup>(7) .....
- (8) The question whether, in relation to any supply of services, the supplier or the recipient of the supply belongs in one country or another shall be determined (subject to any provision made under section 8(6)) in accordance with section 9.
- (9) Schedules 8 and 9 shall be interpreted in accordance with the notes contained in those Schedules; and accordingly the powers conferred by this Act to vary those Schedules include a power to add to, delete or vary those notes.
- (10) The descriptions of Groups in those Schedules are for ease of reference only and shall not affect the interpretation of the descriptions of items in those Groups.
- [<sup>F9</sup>(10A) Where—
- (a) the grant of any interest, right, licence or facilities gives rise for the purposes of this Act to supplies made at different times after the making of the grant, and
- (b) a question whether any of those supplies is zero-rated or exempt falls to be determined according to whether or not the grant is a grant of a description specified in Schedule 8 or 9 or paragraph 2(2) or (3) of Schedule 10,
- that question shall be determined according to whether the description is applicable as at the time of supply, rather than by reference to the time of the grant.]
- (11) References in this Act to the United Kingdom include the territorial sea of the United Kingdom.

#### Extent Information

**E1** S. 96(6) does not extend to Scotland see s. 96(6).

#### Textual Amendments

**F3** S. 96(1): definition of “copy”  
inserted (31.1.1997) by 1995 c. 38, s. 15(1), **Sch. 1 para. 20** (with ss. 1(3), 6(4)(5), 14); S.I. 1996/3217, **art. 2**

**F4** S. 96(1): definition of “document”  
inserted (31.1.1997) by 1995 c. 38, s. 15(1), **Sch. 1 para. 20** (with ss. 1(3), 6(4)(5), 14); S.I. 1996/3217, **art. 2**

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- F5** S. 96(1): words in para. (b) of the definition of “major interest” substituted (31.7.1998) by 1998 c. 36, s. 24
- F6** S. 96(4): words in definition of “local authority” inserted (16.6.1995) by S.I. 1995/1510, art. 2
- F7** S. 96(4): words in definition of “local authority” substituted (1.4.1996) by S.I. 1996/739, art. 7(1), Sch. 1 Pt. I para. 8
- F8** S. 96(6)(7) repealed (31.1.1997) by 1995 c. 38, s. 15(2), Sch. 2 (with ss. 1(3), 6(4)(5), 14); S.I. 1996/3217, art. 2
- F9** S. 96(10A) inserted (retrospectively) by 1997 c. 16, s. 35(1)(4)

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**Marginal Citations**

- M1** 1983 c. 55.  
**M2** 1985 c. 66.  
**M3** 1979 c. 2.  
**M4** 1985 c. 66.  
**M5** 1978 c. 30.  
**M6** 1988 c. 1.  
**M7** 1979 c. 8.

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